

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

BRIAN EDWARD PINEAU
(CRD No. 2562832),

Respondent.

Disciplinary Proceeding
No. 2011028001901

Hearing Officer – RLP

DEFAULT DECISION

September 7, 2012

For falsifying annuity applications, in violation of FINRA Rule 2010, and for causing firm to maintain false records, in violation of NASD Rule 3110(a) and FINRA Rule 2010, Respondent is barred from associating with any FINRA member in any capacity.

Appearances

Bonnie S. McGuire, Senior Regional Counsel, and John M. D'Amico, Regional Chief Counsel, Boston, MA, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

I. Introduction

FINRA investigators began the inquiry that led to this disciplinary proceeding against Brian Edward Pineau after FINRA received notification from Investment Professionals, Inc. ("IPI") that Pineau may have altered information on annuity applications. In its ensuing Complaint, the FINRA Department of Enforcement ("Enforcement") charged that Pineau submitted to IPI falsified annuity applications—ten for fixed annuities and two for variable annuities—in order to obtain unwarranted commissions, in violation of FINRA Rule 2010.

Enforcement further charged that, by falsifying the variable annuity applications, Pineau caused IPI to maintain false books and records, and that he thereby violated NASD Conduct Rule 3110(a) and FINRA Rule 2010.¹ Pineau did not answer or otherwise respond to the Complaint. Consequently, on August 2, 2012, Enforcement filed a Motion for Entry of Default Decision, together with the Declaration of Bonnie S. McGuire and four exhibits. Pineau did not respond to the motion.²

II. Jurisdiction

From March 14, 2008, through May 31, 2011, Pineau was registered as a General Securities Representative through IPI, a FINRA member. He has not been associated with or registered through a FINRA member firm since then.³

Although Pineau is not currently registered with a FINRA member firm, FINRA has jurisdiction over this disciplinary proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because the Complaint (1) was filed within two years following the termination of Pineau's registration with IPI, and (2) charges Pineau with misconduct that occurred while he was registered with IPI.⁴

III. Respondent's Default

On May 9, 2012, Enforcement served Pineau with the Notice of Complaint and the Complaint by first-class mail and certified mail (return receipt requested) addressed to his

¹ In 2007, NASD consolidated with the member regulation function of NYSE Regulation and began operating under a new corporate name, the Financial Industry Regulatory Authority ("FINRA"). As a consolidated rulebook has taken shape, NASD Conduct Rule 3110(a) has been superseded by FINRA Rule 4511 (effective December 2011). This decision refers to the rules that were in effect at the time of Respondent's misconduct. These rules are available at www.finra.org/Industry/Regulation/FINRARules.

² Given that Pineau is in default, as detailed below, the factual determinations in this decision are based on allegations in the attached Complaint, which are deemed admitted, as well as Bonnie S. McGuire's Declaration Supporting the Motion for Entry of Default Decision ("McGuire Decl.") and attached exhibits.

³ McGuire Decl., ¶¶5-6; Complainant's Exhibit ("CX")-1.

⁴ See Article V, Sec. 4(a), FINRA By-Laws, available at www.finra.org/Industry/Regulation/FINRARules (then follow "FINRA Manual" hyperlink to "Corporate Organization: By-Laws").

residential address as recorded in FINRA's Central Registration Depository ("CRD Address"). The U.S. Postal Service returned the certified mailing to the staff, stamping it as "unclaimed." The first-class mailing was not returned to FINRA. Pineau nevertheless did not answer the Complaint by the June 6, 2012, deadline specified in the Notice of Complaint.⁵

On June 7, 2012, Enforcement sent the Second Notice of Complaint and the Complaint to Pineau's CRD Address by first-class mail and certified mail (return receipt requested). Again, the first-class mailing was not returned to FINRA. The certified mailing was delivered and signed for on June 11, 2012. The signature, identified as that of Pineau's "agent," was illegible. Pineau did not respond to the Second Notice and, to date, he has not filed an Answer with the Office of Hearing Officers or otherwise responded to the Complaint.⁶

Even assuming that Pineau did not receive actual notice of this proceeding, he did receive valid constructive notice and, therefore, the Hearing Officer finds that Pineau defaulted by failing to answer the Complaint.⁷

IV. Findings of Fact and Conclusions of Law

A. Falsifying Records to Obtain Unwarranted Commissions

The Complaint's First Cause of Action alleges that Pineau provided to his firm falsified annuity applications so that he would realize unwarranted, additional commissions. Enforcement alleges that this conduct violated FINRA Rule 2010.⁸

⁵ McGuire Decl., ¶¶17-19; CX-2.

⁶ McGuire Decl., ¶¶20-22; CX-4.

⁷ *Dep't of Enforcement v. Moore*, No. 2008015105601, 2012 FINRA Discip. LEXIS 45, at *19-21 (N.A.C. July 26, 2012) (finding that respondent had constructive notice of complaint mailed to his CRD address); *see also* Notice to Members 99-77, available at www.finra.org/Industry/Regulation/Notices/1999/P004087 (reminding individuals no longer associated with member firms that, during the two-year period from the termination of their last registration, disciplinary complaints are mailed to their last CRD address, and "are considered to have been received at that address, whether or not the individual has actually received them" and cautioning those who have failed to update their addresses during the two years that they might have a default decision issued against them).

⁸ Complaint, ¶¶4-10.

In 2009, Pineau was a registered representative selling annuities to elderly customers. From May 2009 through February 2011, Pineau set about altering the information on 12 annuity applications, so as to obtain commissions to which he was not entitled. Pineau's commission percentage was based on his customers' ages at the time they purchased the annuities; the younger the purchaser, the higher the commission. Accordingly, without his customers' knowledge or consent, Pineau changed the dates of birth on their applications to make it appear that they were younger than they actually were, as follows: Customer WA's actual date of birth was 5/21/1931 but Pineau recorded the date as 5/21/1939; Customers WB's and FB's birthdates were 5/17/1930 and 7/2/1929, respectively, but Pineau recorded the dates as 5/17/1940 and 7/2/1939, respectively; Customer VC's birthdate was 8/1/1926 but Pineau recorded the date as 8/1/1931; Customer DK's birthdate was 6/18/1924 but Pineau recorded the date as 6/18/1934; Customer MF's birthdate was 9/27/1927 but Pineau recorded the date as 9/27/1930; Customer MS's date of birth was 2/15/1926 but Pineau twice recorded the date as 2/15/1930; Customer KK's date of birth was 6/8/1925 but Pineau recorded the date as 6/8/1929; Customer HB's birthdate was 5/11/1927 but Pineau recorded the date at 5/11/1929; Customer RB's birthdate was 11/15/1928 but Pineau recorded the date as 11/15/1938; and Customer MPS' birthdate was 6/23/1935 but Pineau recorded the date as 6/23/1936.⁹

Commission schedules from IPI and the issuers of the annuities involved, together with information about the commissions Pineau received from selling the annuities to the above-referenced customers, demonstrate that Pineau received an additional \$3,148 in commissions as a result of the false information he provided on 11 of the 12 applications.¹⁰ Indeed, in some

⁹ Complaint, ¶¶1, 5-9; McGuire Decl., ¶13.

¹⁰ Complaint, ¶9; McGuire Decl., ¶¶13-14. Pineau did not receive any additional compensation by falsifying MPS' application. Complaint, ¶9.

instances, customers did not even qualify for the annuities that Pineau sold to them because they were older than the maximum age set by the issuers of the product involved. Thus, by altering the birthdates of those customers—HF, MS, and KK—Pineau was able to realize commissions on products he could not otherwise have sold.¹¹

Rule 2010 states that “[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.”¹² Rule 2010 thus articulates a “broad ethical principle,” rather than prohibiting specific acts.¹³ Indeed, a violation of the Rule does not depend on whether the registered representative has committed a legally cognizable wrong,¹⁴ and, so long as the challenged activity occurs “in the conduct of” a representative’s business and violates high standards of commercial honor, the representative may run afoul of Rule 2010 even if a security is not involved.¹⁵ It is well established that falsifying customer records to obtain unwarranted commissions is inconsistent with the Rule’s

¹¹ Complaint, ¶8.

¹² Rule 2010 applies to Pineau through Rule 0140, which provides that persons associated with a FINRA member have the same duties and obligations as the member.

¹³ *Dep’t of Enforcement v. Shvarts*, No. CAF980029, 2000 NASD Discip. LEXIS 6, at *11 (N.A.C. June 2, 2000) (quoting *Timothy L. Burkes*, Exchange Act Rel. No. 32142, 51 S.E.C. 356 (1993), *aff’d mem.*, *Burkes v. SEC*, 29 F.3d 630 (9th Cir. 1994)).

¹⁴ *E.g., id.*; *Dep’t of Enforcement v. DiFrancesco*, No. 2007009848801, 2009 FINRA Discip. LEXIS 45, at *8 (O.H.O. Dec. 1, 2009).

¹⁵ *Id.* (citing *Dep’t of Enforcement v. Foran*, No. C8A990017, 2000 NASD Discip. LEXIS 8, at *12-14 (N.A.C. Sept. 1, 2000)); *Shvarts*, 2000 NASD Discip. LEXIS 6, at *16-17 (noting that predecessor Rule 2110 was “not limited to securities-related conduct; instead, it covers all unethical business-related conduct.”). That Pineau falsified applications for fixed annuities is, therefore, of no moment; his misconduct was undertaken in the course of his business relationship with his employer and in the conduct of his commercial relationships with his clients. *See, e.g., Foran*, 2000 NASD Discip. LEXIS 8, at *13.

exacting ethical standards.¹⁶ Therefore, based on the foregoing facts, the Hearing Officer finds that Pineau violated Rule 2010.

B. Causing a Firm to Maintain False Records

The Complaint's Second Cause of Action alleges that Pineau's alterations to the two variable annuity applications he submitted to IPI caused IPI to maintain false records in contravention of the firm's obligation to keep accurate records concerning the purchase or sale of securities.

NASD Conduct Rule 3110(a) required, at all times pertinent to this proceeding, that each member "make and preserve books, accounts, records, memoranda, and correspondence in conformity with all applicable laws, rules, [and] regulations," including SEC Rule 17a-3. SEC Rule 17a-3, in turn, requires broker-dealers to prepare and maintain accurate books and records, including memoranda "of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities." 17 C.F.R. § 240.17a-3(a)(6)(i). The requirement that records be kept embodies the requirement that they be accurate.¹⁷ It has been consistently held that a registered representative who enters inaccurate information in a member firm's books or

¹⁶ *Dist. Bus. Conduct Comm. v. Sickels*, No. C9A950036, 1997 NASD Discip. LEXIS 23, at *10 (N.B.C.C. Jan. 22, 1997) (holding that, when Sickels signed a colleague's name to life insurance applications in order to receive advanced commissions on the sales, Sickels "clearly contravened" the ethical standards now set out in Rule 2010); see also *Charles E. Kautz*, Exchange Act Rel. No. 37072, 52 S.E.C. 730, 733 (1996) (holding that Kautz violated ethical standards now set out in Rule 2010 by causing sales representatives under his supervision to falsely list their names as the selling agents for sales of variable annuities, which were in fact sold by Kautz); *Dep't of Enforcement v. Skiba*, No. E8A2004072203, 2010 FINRA Discip. LEXIS 6, at *13 (N.A.C. Apr. 23, 2010) (holding that Skiba's submission of four false variable annuity applications to his firm violated Rule 2010's predecessor rule); *Dep't of Enforcement v. Prout*, No. C01990014, 2000 NASD Discip. LEXIS 18, at *6 (N.A.C. Dec. 18, 2000) (finding that Prout violated Rule 2010's predecessor when he entered false birthdates on three variable annuity contracts).

¹⁷ *Fox & Co. Inv., Inc.*, Exchange Act Rel. No. 52697, 2005 SEC LEXIS 2822, at *29-30 (Oct. 28, 2005).

records violates NASD Conduct Rule 3110.¹⁸ Such conduct also violates Rule 2010's requirement that registered persons act in accordance with high standards of commercial honor.¹⁹

The Hearing Officer finds that, when Pineau falsified the variable annuity applications he submitted to IPI, he violated NASD Conduct Rule 3110(a) and FINRA Rule 2010.

V. Sanctions

Because Pineau's violations "stem[med] from a single source," which was his falsification of annuity applications, it is appropriate to impose a single, unitary sanction.²⁰ For falsifying documents, FINRA's Sanction Guidelines recommend that "[i]n cases where mitigating factors exist, [the adjudicator] consider suspending respondent in any or all capacities for up to two years" and that in "egregious cases, [the adjudicator] consider a bar."²¹ Principal considerations include the nature of the documents falsified and whether the respondent had a good-faith, but mistaken, belief of express or implied authority.²²

The nature of the documents falsified is an important consideration in determining the appropriate sanction. In this case, this factor is aggravating. The annuity applications that Pineau altered were important documents that his member firm needed to supervise his sales and that the annuity companies needed to determine whether the customers qualified for the products

¹⁸ *E.g., Dep't of Enforcement v. Nouchi*, No. E102004083705, 2009 FINRA Discip. LEXIS 8, at *6-7 (N.A.C. Aug. 7, 2009); *Dep't of Enforcement v. Corroero*, No. E102004083702, 2008 FINRA Discip. LEXIS 29, at *13-16 (N.A.C. Aug. 12, 2008).

At all times pertinent to this proceeding, NASD Conduct Rule 3110 applied, through FINRA Rule 0140, to all persons associated with members.

¹⁹ This holds true both because falsifying documents is a serious breach of Rule 2010's ethical standards and because a violation of other rules constitutes a violation of Rule 2010. *Corroero*, 2008 FINRA Discip. LEXIS 29, at *15-16 (quoting *Stephen J. Gluckman*, Exchange Act Rel. No. 41628, 54 S.E.C. 175, 185 (1999)).

²⁰ *Dep't of Enforcement v. Braff*, No. 2007011937001, 2011 FINRA Discip. LEXIS 15, at *25 (N.A.C. May 13, 2011), *aff'd* *Howard Braff*, Exchange Act Rel. No. 66467, 2012 SEC LEXIS 620 (Feb. 24, 2012).

²¹ *FINRA Sanction Guidelines* 37 (2011).

²² *Id.*

they purchased.²³ As stated, the altered information—concerning the customers’ birthdates—also was material to the amount of commissions Pineau would receive as a result of the sales.

Pineau’s financial gain is also a substantial factor in determining the appropriate sanction, as is the fact that Pineau engaged in numerous acts of misconduct over an extended period of time.²⁴ Again, these considerations are aggravating. Over nearly two years, Pineau knowingly falsified 12 annuity applications in order to receive higher commissions. Nothing suggests that he acted in good faith.

Pineau’s misconduct was egregious. Taking into consideration the absence of any mitigating factors, the Hearing Officer finds that Pineau should be barred from associating with any FINRA member firm in any capacity.

VI. Order

For falsifying customer records to obtain unwarranted commissions, in violation of FINRA Rule 2010, and for causing IPI to maintain false records, in violation of NASD Conduct Rule 3110 and FINRA Rule 2010, Pineau is barred from associating with any FINRA member in any capacity. The bar shall become effective immediately if this decision becomes FINRA’s final disciplinary action.

Rada Lynn Potts

Rada Lynn Potts
Hearing Officer

²³ See, e.g., *Dep’t of Enforcement v. Grasso*, No. CLI050016, 2006 NASD Discip. LEXIS 10, at *10 (O.H.O. Apr. 17, 2006) (noting that annuity applications “provide critical information to guide the . . . issuer’s determinations regarding whether and under what terms to issue the annuity.”).

²⁴ See *Principal Considerations in Determining Sanctions*, Nos. 8, 9, and 17, *FINRA Sanction Guidelines* 6-7 (2011).

Copies to:

Brian Edward Pineau (*via overnight courier and first-class mail*)
Bonnie S. McGuire, Esq. (*via electronic and first-class mail*)
John M. D'Amico, Esq. (*via electronic mail*)
Mark P. Dauer, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Brian Edward Pineau (CRD No. 2562832),

Respondent.

DISCIPLINARY PROCEEDING
No. 2011028001901

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. From May 2009 through February 2011 (the relevant time period), Respondent Brian Edward Pineau provided false information on 12 variable and fixed annuity applications he submitted to his employer member firm, making the customers appear younger than their true ages at the time. Pineau's commission percentage was based on the age of the customers at the time the annuities were purchased; he received higher commissions for younger annuity purchasers. Pineau made an additional \$3,148 in commissions as a result of the false information he provided on the applications. In addition, in 3 of the 12 transactions, Pineau's falsification of the customers' ages made them appear to be younger than the maximum age at which they would be qualified to purchase the annuities when, in fact, they were not. By submitting false documents to the Firm in order to obtain compensation to which he was not entitled, Pineau violated FINRA Rule 2010. Moreover, by falsifying

documents and causing the Firm to retain inaccurate records, Pineau violated NASD Conduct Rule 3110 and FINRA Rule 2010.

RESPONDENT AND JURISDICTION

2. On March 14, 1996, Pineau first became registered with FINRA as a General Securities Representative. From March 10, 2008 through May 31, 2011, Pineau was registered in that capacity through Investment Professionals, Inc. (the Firm).
3. Although Pineau is no longer registered or associated with a FINRA member, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years after the effective date of termination of his registration with the Firm, namely, May 31, 2011; and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member.

FIRST CAUSE OF ACTION

Submission of False Documents to Obtain Unwarranted Commissions (FINRA Rule 2010)

4. The Department realleges and incorporates by reference paragraphs 1 through 3 above.
5. During the relevant time period, Pineau altered 12 variable and fixed annuity applications by changing the customers' years of birth to make them appear younger than their true ages at the time. He then submitted those falsified applications to the Firm.
6. Pineau altered the customers' years of birth on the respective annuity applications as follows:

Customer	Actual Date Of Birth	Date Of Birth Written on Form by Pineau	Type of Annuity
WA	5/21/1931	5/21/1939	Variable annuity
WB and FB (Joint Policy)	5/17/1930 7/2/1929	5/17/1940 7/2/1939	Fixed annuity
VC	8/1/1926	8/1/1931	Fixed annuity
DK	6/18/1924	6/18/1934	Fixed annuity
MF	9/27/1927	9/27/1930	Fixed annuity
HF	3/11/1927	3/11/1930	Fixed annuity
MS	2/15/1926 2/15/1926	2/15/1930 2/15/1930	Fixed annuity Fixed annuity
KK	6/8/1925	6/8/1929	Fixed annuity
HB	5/11/1927	5/11/1929	Fixed annuity
RB	11/15/1928	11/15/1938	Fixed annuity
MPS	6/23/1935	6/23/1936	Variable annuity

7. Pineau made those changes to the annuity applications without the customers' knowledge or consent.
8. Customers HF, MS and KK did not qualify for the annuities that Pineau sold to them because they were older than the maximum age set by the issuers of the annuities for those products. By falsifying their years of birth, Pineau was able to sell them the annuities and receive commissions.
9. Pineau's commission percentage was based on the age of the customers at the time the annuities were purchased; he received higher commissions for younger annuity purchasers. Pineau received an additional \$3,148 in commissions as a result of the false information he provided on 11 of the 12 applications (he did not receive any additional compensation by falsifying customer MPS's application).

10. By virtue of such conduct, Pineau violated FINRA Rule 2010.

SECOND CAUSE OF ACTION

Falsification of Records Relating to Variable Annuity Sales (NASD Conduct Rule 3110 and FINRA Rule 2010)

11. The Department realleges and incorporates by reference paragraphs 1 through 10 above.
12. WA's and MPS's variable annuity applications were records that the Firm was required to make and preserve.
13. As noted in paragraph 6 above, Pineau altered WA's and MPS's years of birth on their respective variable annuity applications.
14. Pineau's alterations caused the Firm to retain inaccurate records.
15. By virtue of such conduct, Pineau violated NASD Conduct Rule 3110 and FINRA Rule 2010.

RELIEF REQUESTED

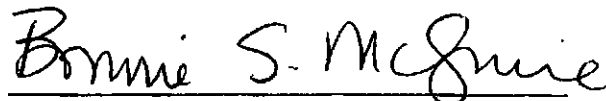
WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed, including that Respondent be required to disgorge fully any and all ill-gotten gains; and

- C. order that Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date: May 9, 2012



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