

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ALLEN WAYNE ST. AMOUR
(CRD No. 4188891),

Respondent.

Disciplinary Proceeding
No. 2011028324101

Hearing Officer – LBB

DEFAULT DECISION

Dated: December 16, 2013

Respondent is suspended for four months, fined \$15,000, and ordered to disgorge \$114,030 in commissions, for engaging in outside business activities without submitting prior written notice to his firm, in violation of FINRA Rules 3270 and 2010. He is suspended an additional month and fined an additional \$5,000, for signing a customer's name to documents that he submitted to his member firm without obtaining written authorization from the customer, and in contravention of his firm's policies, in violation of FINRA Rule 2010. Additionally, Respondent is suspended for one month and fined \$2,500 for failing to update his Form U4, in violation of FINRA Rules 1122 and 2010 and FINRA's By-Laws. The suspensions shall run consecutively. In total, Respondent is suspended for six months from association with any member firm in any capacity, fined \$22,500, and ordered to disgorge \$114,030.

Appearances

Dale A. Glanzman, Esq., for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

The Department of Enforcement ("Enforcement") filed the three-cause Complaint in this disciplinary proceeding on September 5, 2013. The First Cause of Action charges Respondent with engaging in outside business activities while at two member firms, without submitting prior written notice to the firms. The Second Cause of Action charges Respondent with signing a customer's name to forms Respondent submitted to his member firm without obtaining written

approval from the customer, when the firm did not permit its representatives to sign on behalf of customers. The Third Cause of Action charges Respondent with failing to update his Uniform Application for Securities Industry Registration or Transfer (Form U4) to report that he was fined by a state insurance regulator. Despite being properly served with the Complaint, Notice of Complaint, Second Notice of Complaint, and Fourth Notice of Complaint, Respondent has not filed an Answer or otherwise responded to the Complaint.

On November 27, 2013, Enforcement filed a Motion for Entry of Default Decision and Supporting Memorandum. Respondent did not file a response to Enforcement's motion. Enforcement's motion is granted, and the Hearing Officer finds that Respondent has defaulted. Accordingly, pursuant to FINRA Rules 9215(f) and 9269, the allegations of the Complaint are deemed admitted.¹

I. Respondent

Respondent was first registered with FINRA in 2000. He was registered with member firm NYLIFE Securities LLC from 2001 until June 2011, and with member firm MML Investors Services, LLC, from August 2011 until November 2011. He has not been registered with a FINRA member firm since November 2011. Decl. ¶ 5; CX-2.

Respondent remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because the Complaint was filed within two years after the termination of his registration with FINRA, and it charges him with misconduct while he was registered with member firms.

¹ The factual determinations in this decision are based on the allegations of the attached Complaint and the materials Enforcement filed with its default motion, which included the Declaration Supporting a Motion for Entry of Default Decision, signed by Enforcement counsel Dale A. Glanzman, and supporting documentation that was attached to counsel's Declaration. Counsel's Declaration is cited herein as "Decl. ¶ ____." The supporting documentation is cited as "CX-____."

II. Respondent's Default

Enforcement served the Complaint and Notice of Complaint on Respondent at his residential address as listed in the Central Registration Depository ("CRD"), by first-class and certified mail, on September 5, 2013. The Postal Service website reported that the certified mailing was delivered to Respondent's CRD address. In addition, Respondent called Enforcement about the Complaint soon after it was served, and said he did not intend to file an answer. Decl. ¶ 6; CX-3, CX-4. On October 4, 2013, Enforcement served the Second Notice of Complaint and Complaint on Respondent at his CRD address, by first-class and certified mail. Respondent has not answered or otherwise responded to the Complaint. Decl. ¶¶ 7, 8.

Despite being properly served with the Complaint, Notice of Complaint, Second Notice of Complaint, and Fourth Notice of Complaint, Respondent has not answered or otherwise responded to the Complaint. By failing to file a response, he defaulted.

III. Respondent Violated FINRA Rules 3270 and 2010 by Engaging in Outside Business Activities Without Submitting Prior Written Notice to His Member Firm

During March and April 2011, while employed at NYLife, Respondent sold equity indexed annuities to four NYLife customers without given prior written notice to the firm. Respondent sold \$711,688 of the annuities, for which he received \$53,004 in compensation. Complaint ¶ 4.

Between July 18, 2011, and October 2, 2011, Respondent sold equity indexed annuities to seven MML customers without giving prior written notice to his firm. Respondent sold \$840,025 of the annuities, for which he received \$61,026 in compensation. Complaint ¶¶ 6, 7.

FINRA has recently sanctioned a registered representative for violating its rules requiring written notice of outside business activities when he failed to notify his member firms that he

was selling equity indexed securities.² Accordingly, the Hearing Officer finds that the allegations of the Complaint, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent violated FINRA Rules 3270 and 2010 by engaging in outside business activities without providing prior written notice to his firm.

IV. Respondent Violated FINRA Rule 2010 by Signing a Customer's Name to Documents in Contravention of His Firm's Procedures, and Without Receiving Written Authorization from the Customer

The Second Cause of Action charges Respondent with signing a customer's name on documents related to the purchase of variable annuities, in contravention of his firm's rules, and without receiving written authorization from the customer to sign the customer's name.

On March 2, 2011, Respondent signed customer J.T.'s name to documents related to the purchase of variable annuities, including a "Policy Receipt" form, an "Application for Deferred Variable Annuities" form, a "Disclosure Regarding Suitability of Variable Annuity" form, and a "Qualified Transfer/Direct Rollover" form. None of the documents that Respondent signed contained any notation that it had been signed by someone other than customer J.T., whose name appeared on the document. Complaint ¶ 10. At the time Respondent signed customer J.T.'s name on the documents, he had verbal authorization from J.T. to do so. However, at that time, NYLife's policies prohibited its representatives from signing documents on behalf of a client, even if the client gave his or her consent to do so. Complaint ¶ 11.

Respondent submitted the documents to NYLife. He did not inform anyone at the firm that he had signed the customer's name on the documents. Complaint ¶ 12.

The allegations of the Complaint, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent violated FINRA Rule 2010 by signing a

² *Dep't of Enforcement v. Moore*, 2012 FINRA Discip. LEXIS 43 (July 26, 2012); *but see, American Equity Investment Life Ins. Co. v. SEC*, 613 F.3d 166 (D.C. Cir. 2009).

customer's name to documents that he submitted to his firm, in contravention of his firm's procedures, and without obtaining written authorization from the customer to sign his name.

V. Respondent Violated Article V, Section 2 of the FINRA By-Laws, and FINRA Rules 1122 and 2010, by Failing to Update His Form U4

Article V, Section 2 of FINRA's By-Laws requires that persons who apply for registration with FINRA must provide "such ... reasonable information with respect to the applicant as [FINRA] may require." Applicants must complete a Form U4 disclosing, among other things, information concerning unsatisfied judgments and bankruptcy filings. Article V, Section 2(c) of FINRA's By-Laws requires that associated persons keep their Forms U4 "current at all times by supplementary amendments," which must be filed "not later than 30 days after learning of the facts or circumstances giving rise to the amendment." FINRA Rule 1122 provides that no associated person shall file with FINRA information with respect to membership or registration which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or fail to correct such filing after notice thereof." Failure to update a Form U4 violates FINRA Rules 1122 and 2010.³

FINRA, other self-regulatory organizations, state regulators, and member firms use the Form U4 to screen applicants and evaluate their fitness to be in the securities industry.⁴ The

³ *Dep't of Enforcement v. Kaweske*, No. C07040042, 2007 NASD Discip. LEXIS 5, at *36 (Feb. 12, 2007) (failure to update violates NASD Rule 2110, predecessor of FINRA Rule 2010, and IM-1000-1, predecessor of FINRA Rule 1122).

⁴ *See, Joseph S. Amundsen*, Exchange Act Rel. No. 69406, 2013 SEC LEXIS 1148, at *23 (Apr. 18, 2013), *appeal docketed*, No. 13-71472 (D.C. Cir. Apr. 25, 2013); *Richard A. Neaton*, Exchange Act Rel. No. 65598, 2011 SEC LEXIS 3719, at *16 (Oct. 20, 2011); *Jason A. Craig*, Exchange Act Rel. No. 59137, 2008 SEC LEXIS 2844, at *8 (Dec. 22, 2008); *Dep't of Enforcement v. Kaweske*, No. C07040042, 2007 NASD Discip. LEXIS 5, at *33 (N.A.C. Feb. 12, 2007) (citing *Rosario R. Ruggiero*, 52 S.E.C. 725, 728 (1996)).

Form U4 information is also useful for members of the public, who can access much of the Form U4 information on BrokerCheck.⁵

On May 31, 2011, Respondent signed an “Agreed Entry” with the Indiana Commissioner of Insurance. Pursuant to the terms of the Agreed Entry, and the ensuing Final Order, both of which were filed on July 21, 2011, the Indiana Commissioner of Insurance fined Respondent \$500 for the nondisclosure of administrative actions filed against him by the states of South Dakota and Arizona. Respondent paid the fine, and was reinstated in Indiana. Complaint ¶ 15. Respondent, who was registered with MML between July 2011 and November 2011, failed to file an amended Form U4 to disclose the fine imposed by the Indiana Commissioner of Insurance. Complaint ¶ 16.

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent violated Article V, Section 2 of the FINRA By-Laws, and FINRA Rules 1122 and 2010 by failing to update his Form U4 to disclose material information.

VI. Sanctions

A. Sanction for Violation of FINRA Rules 3270 and 2010

For FINRA Rule 3270 violations, the Sanction Guidelines suggest a fine of \$2,500 to \$50,000.⁶ The Sanction Guidelines also note that the adjudicator may also add disgorgement. The Guidelines also recommend a suspension of up to 30 business days if there are no aggravating factors. Where there are aggravating factors, the Sanction Guidelines recommend consideration of a suspension of up to one year, and a bar in egregious cases.

⁵ *Joseph S. Amundsen*, 2013 SEC LEXIS 1148, at *23-24; *Robert D. Tucker*, Exchange Act Rel. No. 68210, 2012 SEC LEXIS 3496, at *26 (Nov. 9, 2012).

⁶ FINRA Sanction Guidelines 13 (2011).

The Principal Considerations are:

1. Whether the outside activity involved customers of the firm.
2. Whether the outside activity resulted directly or indirectly in injury to customers of the firm and, if so, the nature and extent of the injury.
3. The duration of the outside activity, the number of customers and the dollar volume of sales.
4. Whether the respondent's marketing and sale of the product or service could have created the impression that the employer (member firm) had approved the product or service.
5. Whether the respondent misled his or her employer member firm about the existence of the outside activity or otherwise concealed the activity from the firm.⁷

The Hearing Officer also considers the General Principals and the Principal Considerations applicable to all violations.⁸

There are aggravating factors that support a suspension longer than 30 business days.

The outside activity involved customers of the firm. The activity took place over two separate periods, one lasting two months and the other three, at two separate firms. The dollar volume of the activity was substantial. The Complaint alleges that the combined sales to the customers was \$1,751,714.26.

Enforcement recommends a four-month suspension and a fine of \$15,000, and that he be required to disgorge the \$114,030 in commissions he received. The Hearing Officer finds that the sanctions recommended by Enforcement are appropriate. For violating FINRA Rules 3270 and 2010 by engaging in outside business activities without providing prior written notice to his firm, Respondent is suspended from associating with any member firm in any capacity for four months, fined \$15,000, and ordered to disgorge \$114,030.

⁷ *Id.*

⁸ Sanction Guidelines at 2-7.

B. Sanction for Violation of FINRA Rule 2010 by Signing a Customer's Name to Documents

For improperly signing a customer's name to documents that were submitted to his firm, Enforcement refers to the Sanction Guideline for forgery and falsification of documents. For forgery, the Sanction Guidelines recommend consideration of a fine of \$5,000 to \$50,000 and a suspension in any or all capacities for up to two years.⁹ In egregious cases, the Sanction Guidelines recommend consideration of a bar. The Principal Considerations are the nature of the documents forged or falsified, and whether the respondent had a good-faith, but mistaken, belief of express or implied authority.¹⁰ The Hearing Officer considered the General Principals and the Principal Considerations applicable to all violations.

The documents that Respondent signed on the customer's behalf were significant. Respondent's falsification of the customer's signature on the "Disclosure Regarding Suitability of Variable Annuity" form was especially significant, because the failure to get a genuine customer signature left the firm open to liability if the customer became dissatisfied with the variable annuity. However, the fact that the customer authorized Respondent to sign the customer's name is a mitigating factor.

Enforcement recommends a \$5,000 fine and a suspension of one month. The recommendation is reasonable, and the Hearing Officer fines Respondent \$5,000 and suspends Respondent for 30 days for signing a customer's name to documents that were submitted to his firm, in contravention of his firm's policies and without written authorization from the customer. The suspension shall run consecutively with the suspension imposed for the violation charged in the First Cause of Action.

⁹ Sanction Guidelines at 37.

¹⁰ *Id.*

C. Sanction for Violation of FINRA Rules 1122 and 2010, and FINRA's By-Laws, by Failing to Update Respondent's Form U4

For failing to update a Form U4, the Sanction Guidelines recommend consideration of a fine from \$2,500 to \$25,000, and suspension in any or all capacities for 5 to 30 business days.¹¹ In egregious cases, the Sanction Guidelines recommend a longer suspension or a bar. The Principal Considerations are the nature and significance of information at issue, and whether failure resulted in a statutorily disqualified individual becoming or remaining associated with a firm.¹²

The information Respondent did not disclose was significant. Potential employers and customers would want to consider the imposition of a fine by a state regulatory authority for failure to disclose administrative actions by other states. Respondent's failure to disclose information to the Indiana Commissioner of Insurance would raise question about Respondent's honesty and integrity. The Respondent's failure to update his Form U4 did not result in a statutorily disqualified individual becoming or remaining associated with a member firm.

Enforcement recommends a fine of \$2,500 and a one-month suspension. Enforcement's recommendation is reasonable. For failing to submit timely updates to his FormU4, Respondent is fined \$2,500 and suspended for one month from associating with any member firm in any capacity. The suspension shall run consecutively with the suspension for the violations charged in the first two causes of action.

VII. Conclusion

Respondent is suspended for four months, fined \$15,000, and ordered to disgorge \$114,030 in commissions, for engaging in outside business activities without submitting prior

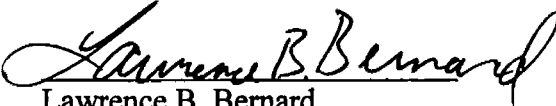
¹¹ Sanction Guidelines at 69-70.

¹² *Id.*

written notice to his firm, in violation of FINRA Rules 3270 and 2010. He is suspended an additional month and fined an additional \$5,000, for signing a customer's name to documents that he submitted to his member firm without obtaining written authorization from the customer and in contravention of his firm's policies, in violation of FINRA Rule 2010. Additionally, Respondent is suspended for one month and fined \$2,500 for failing to update his Form U4, in violation of FINRA Rules 1122 and 2010 and Article V, Section 2 of FINRA's By-Laws. The suspensions shall run consecutively.

In total, Respondent is suspended for six consecutive months from associating with any member firm in any capacity, fined \$22,500, and ordered to disgorge \$114,030.

If this decision becomes FINRA's final disciplinary action, the suspension shall begin at the opening of business on January 20, 2014, and end on July 20, 2014. The fines and disgorgement shall be due and payable if Respondent should reenter the securities industry.


Lawrence B. Bernard
Hearing Officer

Copies to: Allen Wayne St. Amour (*via overnight courier and first-class mail*)
Dale A. Glanzman, Esq. (*via first-class mail and email*)
Mark A. Koerner, Esq. (*via email*)
Mark P. Dauer, Esq. (*via email*)
Jeffrey D. Pariser, Esq. (*via email*)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Allen W. St. Amour
(CRD No. 4188891),

Respondents.

DISCIPLINARY PROCEEDING
No. 2011028324101

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Between March 2011 and October 2011, Respondent Allen W. St. Amour ("St. Amour" or "Respondent") engaged in outside business activities by selling equity index annuities (EIAs) without providing prior written notice of his engagement in such activities to his employing broker-dealers, in violation of FINRA Rules 3270 and 2010. In addition, between July 2011 and November 2011, St. Amour failed to update his Form U4 to disclose that the Indiana Commissioner of Insurance fined him \$500 for not disclosing actions taken by the States of South Dakota and Arizona in 1992 and 2004, respectively, in violation of FINRA Rule 2010. Lastly, on or about March 2, 2011, St. Amour signed the name of a customer to various documents required by his broker-dealer for the purchase of a variable annuity, in violation of FINRA Rule 2010.

RESPONDENT AND JURISDICTION

2. St. Amour was registered with NYLife Securities LLC ("NYLife"), a FINRA-registered firm, as an Investment Company/Variable Contracts Products Representative between September 2001 and June 2011, and as a General Securities Representative between May 2004 and June 2011. On July 12, 2011, St. Amour signed a Form U4 to become registered with MML Investor Services, LLC ("MML"), and between August 2011 and November 2011, St. Amour was registered as a General Securities Representative with MML. Although Respondent 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 Respondent's registration with MML, namely, November 14, 2011.

FIRST CAUSE OF ACTION Outside Business Activities Violations of FINRA Rules 3270 and 2010

3. The Department realleges and incorporates by reference paragraphs 1 and 2 above.

4. During approximately March 2011 and April 2011, St. Amour engaged in outside business activities by selling Equity Indexed Annuities ("EIAs") totaling approximately \$711,688 to four individuals who were customers of NYLife, for which he received approximately \$53,004 in compensation.

5. In connection therewith, St. Amour failed to give prior written notice of his sales of EIAs to NYLife.

6. In addition, between approximately July 18, 2011 and October 2 2011, St. Amour engaged in outside business activities by selling Equity Indexed Annuities ("EIAs") totaling

approximately \$840,025 to seven individuals who were customers of MML, for which he received approximately \$61,026 in compensation.

7. In connection therewith, St. Amour failed to give prior written notice of his sales of EIAs to MML.

8. Based on the foregoing, St. Amour violated FINRA Rules 3270 and 2010.

SECOND CAUSE OF ACTION
Accommodation Forgery
Violation of FINRA Rule 2010

9. The Department realleges and incorporates by reference paragraphs 1 through 6 above.

10. On or about on March 2, 2011, St. Amour signed customer J.T.'s name to documents related to the purchase of variable annuities, including a "Policy Receipt" form, an "Application for Deferred Variable Annuities" form, a "Disclosure Regarding Suitability of Variable Annuity" form, and a "Qualified Transfer/Direct Rollover" form. None of the documents signed by St. Amour contained any notation evidencing that they had been signed by someone other than J.T., whose name appeared on the document.

11. At the time St. Amour signed customer J.T.'s name on the documents, he had oral authorization from J.T. to do so. However, at that time, NYLife's policies prohibited its representatives from signing a document on behalf of a client, even if the client gave his or her consent to do so.

12. St. Amour submitted the documents to NYLife, while failing to inform anyone at the firm that he had signed the customer's name to them.

13. Based on the foregoing, St. Amour violated FINRA Rule 2010.

THIRD CAUSE OF ACTION
Failure to Update Form U4
Violation of FINRA Rules 1122 and 2010 and Article V, Section 2(c) of FINRA's By-Laws

14. The Department realleges and incorporates by reference paragraphs 1 through 13 above.

15. On or about May 31, 2011, St. Amour signed an "Agreed Entry" with the Indiana Commissioner of Insurance. Pursuant to the terms of the Agreed Entry, and the ensuing Final Order, both of which were filed on July 21, 2011, the Indiana Commissioner of Insurance fined St. Amour \$500 for the nondisclosure of administrative actions filed against him by the states of South Dakota and Arizona. St. Amour thereafter paid the fine and was reinstated in Indiana.

16. St. Amour, although registered with MML between July 2011 and November 2011, failed to file an amended Uniform Application for Securities Industry Registration or Transfer ("Form U4") to disclose the fine by the Indiana Commissioner of Insurance.

17. Based on the foregoing, St. Amour violated FINRA Rules 1122, 2010 and Article V, Section 2(c) of FINRA's By-Laws.

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, together with interest;
- 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: September 5, 2013

A handwritten signature in dark ink, appearing to read "Dale A. Glanzman", is written over a horizontal line.

Dale A. Glanzman Senior Regional Counsel
Mark A. Koerner, Associate Vice-President and
Regional Chief Counsel

FINRA Department of Enforcement

55 W. Monroe Street, Suite 2700

Chicago, IL 60603-5052

(312) 899-4312; Fax No. (312) 899-4600