

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Karl Herrmann (CRD No. 2706681),

Respondent.

Disciplinary Proceeding
No. 2011029017001

Hearing Officer: MC

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: June 17, 2014

INTRODUCTION

Disciplinary Proceeding No. 2011029017001 was filed on January 7, 2014, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent Karl Herrmann submitted an Offer of Settlement (Offer) to Complainant dated June 10, 2014. Pursuant to FINRA Rule 9270(e), the Complainant and the National Adjudicatory Council (NAC), a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA) have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to FINRA Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.

Under the terms of the Offer, Respondent has consented, without admitting or denying the allegations of the Complaint (as amended by the Offer of Settlement), and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, to the entry of findings and violations consistent with the allegations of the Complaint (as amended by the Offer of Settlement), and to the imposition of the sanctions set

forth below, and fully understands that this Order will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA.

BACKGROUND

Herrmann entered the securities industry in 1996. He joined Fidelity in November 2005 as a General Securities Representative and an Investment Company Shares and Variable Contracts Representative. Herrmann resigned from his position with Fidelity on or about July 21, 2011. Fidelity terminated Herrmann's registrations by filing a Uniform Termination Notice for Securities Industry Registration (Form U5) on August 18, 2011. Herrmann was registered with NFP Securities between November 2011 and January 2014.

Although Herrmann is not currently associated with a registered firm, 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 Herrmann's registration with a FINRA registered firm and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:

During his employment with Fidelity, Herrmann marketed corporate retirement products offered by Fidelity in Florida, Georgia, Alabama, Mississippi, and Tennessee.

During the period February 2010 through June 2011, Herrmann had an American Express Corporate Card that he used for travel and other expenses incurred in connection with his business for Fidelity. The card was issued to Herrmann by Fidelity for his use for business expenses.

During this same period, Fidelity's written travel and expense policies and corporate credit card policy required corporate cardholders to use their corporate credit cards exclusively for business purposes. Fidelity's written corporate credit card policy stated that Fidelity would not reimburse personal charges made on the corporate credit card.

Approximately once a month during the period February 2010 to June 2011, Herrmann prepared an expense report and submitted it to Fidelity. In preparing each expense report, Herrmann was required to identify the business-related transactions on his American Express Corporate Card and describe the business justification for each such transaction.

Herrmann knew that by identifying a transaction as a business-related transaction on an expense report, he would cause Fidelity to pay American Express for that transaction.

In addition, Herrmann was required to identify any personal charges made to his American Express Corporate Card, and he knew that Fidelity would not pay American Express for any charge that he identified as personal.

During the period February 2010 to June 2011, Herrmann charged between \$3,000 and \$10,000 to his American Express Corporate Card each month. He knew that on a monthly basis he would have to identify whether each transaction reflected business-related or personal expenses.

During the period February 2010 to June 2011, Herrmann used his American Express Corporate Card for numerous personal purchases. He falsely identified many personal purchases as business expenses in expense reports he submitted to Fidelity. He thus caused Fidelity to pay for those personal purchases. The personal purchases that Herrmann falsely identified as business expenses included the following:

- a. Herrmann falsely identified a \$121.43 purchase at Staples on April 16, 2010, as being of general office supplies when, in fact, the purchase included a “meat snack stick” and batteries for personal use costing approximately \$10. Fidelity paid American Express for this purchase.
- b. Herrmann falsely identified a \$125.67 purchase at Staples on December 12, 2010, as being of office supplies—which he described as “printing / copies for finals meeting” in his expense report—when, in fact, his purchase included high-end earphones that cost approximately \$100, glue, and a crayon sharpener. Fidelity paid American Express for this purchase.
- c. Herrmann falsely identified a \$241.84 purchase at Target on December 19, 2010, as being of general office supplies—which he described as “Literature Storage Bins / Shelf / Storage”—when, in fact, the purchase included video games, toys, and Christmas lights. Fidelity paid American Express for this purchase.
- d. Herrmann falsely identified a \$225.19 purchase at Staples on December 23, 2010, as being of office supplies—which he described as “Paper / Printer Cartridges / Binders / Binding material” in his expense report—when, in fact, the purchase included two Flip Ultra HD II digital video cameras that cost approximately \$200 (after coupons) that he purchased for his children. Fidelity paid American Express for this purchase.
- e. Herrmann falsely identified a \$132.67 purchase at Staples on January 8, 2011, as being of general office supplies—which he described as “paper / supplies / printer cartridges” in his expense report—when, in fact, he purchased only a Flip Ultra HD II digital video camera for personal use. Fidelity paid American Express for this purchase.

- f. Herrmann falsely identified a \$177.21 purchase at Target on February 13, 2011, as being of general office supplies—which he described as “printer cartridges / binders / paper / pens / etc.”—when, in fact, the purchase included stuffed animals, food, energy drinks, and Valentine’s Day cards. Fidelity paid American Express for this purchase.
- g. Herrmann falsely identified a \$85.66 purchase at CVS/pharmacy on February 20, 2011, as being of general office supplies—which he described as “printer cartridges / misc office” in his expense report—when, in fact, his purchase consisted entirely of personal hygiene products, medication, cleaning supplies, and candy. Fidelity paid American Express for this purchase.
- h. Herrmann falsely identified a \$63.80 purchase at CVS/pharmacy on February 24, 2011, as being of general office supplies—which he described as “misc office / copies” in his expense report—when, in fact, his purchase consisted entirely of personal hygiene products, one-hour photos for personal use, and candy. Fidelity paid American Express for this purchase.
- i. Herrmann falsely identified a \$111.71 purchase at Target on April 29, 2011, as being of general office supplies—which he described as “binders / printer cartridges / etc.”—when, in fact, the purchase included toys. Fidelity paid American Express for this purchase.
- j. Herrmann falsely identified a \$39.76 purchase at Staples on April 15, 2011, as being of general office supplies—which he described as “binding/copies” on his expense report—when, in fact, his purchase included children’s art supplies and candy. Fidelity paid American Express for this purchase.

- k. Herrmann falsely identified a \$113.22 purchase at Staples on May 15, 2011, as being of general office supplies—which he described as “Office Supplies” on his expense report—when, in fact, his purchase included a \$100 Visa gift card for personal use. Fidelity paid American Express for this purchase.
- l. Herrmann falsely identified a \$141.80 purchase at Staples on June 11, 2011, as being of general office supplies—which he described as “office supplies” in his expense report—when, in fact, his purchase included a \$100 Visa gift card. Fidelity paid American Express for this purchase.

Beginning in May 2011, Fidelity raised concerns with Herrmann about his expenses, including unusually high costs for office supplies. Fidelity opened an internal investigation regarding Herrmann’s use of his American Express Corporate Card in June 2011.

During its investigation, Fidelity reviewed 21 expense reports Herrmann submitted during the period February 2010 through June 2011. During that review, Fidelity identified 132 American Express Corporate Card purchases that Herrmann had reported as business expenses that appeared to be personal expenses. Fidelity also identified 35 mileage reimbursements Herrmann had requested as questionable.

The 132 American Express Corporate Card purchases Fidelity identified as questionable expenses included the purchases described above as well as three purchases at Best Buy, five purchases at Target (in addition to those identified above), one purchase at Wal-Mart, seven purchases at CVS/pharmacy (in addition to those above), and two purchases at Walgreens—all of which Herrmann had identified as purchases of general office supplies. Those 132 charges totaled approximately \$10,200.

Herrmann submitted his resignation to Fidelity on July 21, 2011.

Fidelity terminated Herrmann's registrations on August 18, 2011, by filing a Form U5.

The August 2011 Form U5 indicated that Herrmann had been under internal review and described the internal review as follows:

THE INTERNAL REVIEW WAS CONCLUDED BY INTERVIEWING THE EMPLOYEE WITH REGARD TO THE SPECIFIC FINDINGS OF THE PRE-INTERVIEW ANALYSIS. THE EMPLOYEE ACKNOWLEDGED THE FOLLOWING: 1) USING HIS CORPORATE CARD AS A "BRIDGE" TO HELP COVER PERSONAL EXPENSES AND FINANCIAL COMMITMENTS DURING A PERIOD WHERE HE WAS UNDER PERSONAL FINANCIAL STRAIN, AND 2) KNOWINGLY SUBMITTED PERSONAL CHARGES AS BUSINESS EXPENSES. THE EMPLOYEE RESIGNED AT SOME POINT AFTER THE COMPLETION OF THE INTERVIEW. THE EMPLOYEE AGREED TO REPAY \$10,000 THAT HE ATTRIBUTED TO PERSONAL EXPENSES CHARGED TO HIS CORPORATE CARD.

The August 2011 Form U5 also indicated that Herrmann had voluntarily resigned from Fidelity after allegations were made that accused him of "US[ING] HIS CORPORATE CREDIT CARD FOR PERSONAL EXPENSES BUT DID NOT INDICATE THAT THE CHARGES WERE PERSONAL WHEN SUBMITTING HIS EXPENSE REPORTS, AND SUBMITTED DUPLICATE 'MILEAGE' REIMBURSEMENT REQUESTS FOR BUSINESS TRAVEL."

Shortly after he resigned from Fidelity, Herrmann agreed to pay Fidelity \$10,000 relating to the transactions Fidelity had identified during its investigation. In October 2011, Herrmann wrote a personal check payable to Fidelity in the amount of \$11,712.58. That amount included the \$10,000 Herrmann had agreed to pay Fidelity as well as reimbursement for certain additional personal and other expenses Herrmann made in June and July 2011.

**FIRST CAUSE OF ACTION
Conversion
(Violation of FINRA Rule 2010)**

As alleged above, Herrmann knew that by identifying an American Express Corporate Card transaction as a business expense on an expense report, he would cause Fidelity to pay American Express for that transaction.

In total, Herrmann caused Fidelity to pay for personal items costing at least \$1,000 in at least 15 transactions during the period February 2010 through June 2011.

Herrmann converted Fidelity's funds when he obtained payment from Fidelity for personal expenses by falsely claiming those expenses were business expenses.

By converting Fidelity's funds to his own use, Herrmann acted inconsistent with high standards of commercial honor and just and equitable principles of trade.

As a result of the foregoing conduct, Herrmann violated FINRA Rule 2010.

**SECOND CAUSE OF ACTION
Falsification and Causing his Firm to Maintain False Books and Records
(FINRA Rule 2010 and NASD Rule 3110)**

A registered person's preparation of false firm documents is conduct inconsistent with FINRA Rule 2010's requirement that all individuals associated with FINRA member firms observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business.

In addition, NASD Rule 3110¹ required member firms to "make and preserve books and records as required under the FINRA rules, the Exchange Act and the applicable Exchange Act rules." Section 17(a) of the Exchange Act and SEC Rule 17a-3(a)(3) thereunder require broker-

¹ Effective December 5, 2011, the relevant portion of NASD Rule 3110 was replaced by FINRA Rule 4511. Because the conduct at issue took place before December 5, 2011, NASD Rule 3110 applies.

dealers to maintain current “[l]edger accounts (or other records) reflecting all assets and liabilities, income and expense and capital accounts.”

Herrmann’s preparation of false expense reports that he submitted to Fidelity during the period February 2010 through June 2011—falsely identifying numerous personal purchases on his American Express Corporate Card as business expenses and inaccurately describing them as office supplies—constituted falsification of records, and Herrmann acted inconsistent with high standards of commercial honor and just and equitable principles of trade by engaging in that activity. Herrmann’s submission of false expense reports also caused Fidelity to maintain inaccurate books and records.

As a result of the foregoing conduct, Herrmann violated FINRA Rule 2010. Also as a result of the foregoing conduct, Herrmann violated NASD Rule 3110. By virtue of his violation of NASD Rule 3110, Herrmann also violated FINRA Rule 2010.

Based on the foregoing, Respondent violated FINRA Rule 2010 and NASD Rule 3110.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondent from any future misconduct, and represent a proper discharge by FINRA, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

It is ordered that Respondent be permanently barred from associating with any FINRA member in any capacity.

The sanctions imposed herein shall be effective on a date set by FINRA staff. Pursuant to FINRA Rule 8313(e), a bar or expulsion shall become effective upon approval or acceptance of this Order.

SO ORDERED.

FINRA

Signed on behalf of the
Director of ODA, by delegated authority



Christopher Perrin

Director

FINRA Department of Enforcement

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