

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

Department of Enforcement,

Complainant,

v.

David Woods Unsworth, Jr.
(CRD No. 1609040),

Respondent.

Disciplinary Proceeding
No. 2012032370501

Hearing Officer: 2012032370501

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: May 28, 2015

INTRODUCTION

Disciplinary Proceeding No. 2012032370501 was filed on August 27, 2014, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent David W. Unsworth, Jr. submitted an Offer of Settlement (Offer) to Complainant dated May 22, 2015. 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

Unsworth first became registered with FINRA through a member firm as a General Securities Representative ("GSR") in January 1987. Between January 1987 and December 2001, Unsworth was registered as a GSR through several FINRA member firms.

Unsworth became registered with FINRA through LMG on December 20, 2001. Through LMG, Unsworth was registered in the following capacities as of the following dates: GSR on December 20, 2001, General Securities Principal ("GSP") on March 17, 2003, Limited Representative-Investment Banking ("IB") on April 15, 2010, and Operations Professional ("OS") on October 25, 2011.

From in or around January 2008 through April 30, 2012, Unsworth was Chairman, CEO, and majority owner of LMG. Unsworth was majority owner of LEC, which in turn owned a majority interest in LMG. LMG operated as a broker-dealer until the afternoon of April 16, 2012. The Firm's business included investment banking and trading equity securities and options, primarily on an agency basis, for retail and institutional customers. In May 2012, the Firm filed a Form BDW requesting withdrawal from FINRA membership. FINRA expelled LMG as a member, effective August 28, 2012, for failure to pay fines and/or costs associated with a FINRA disciplinary action against the Firm.

Since April 30, 2012, Unsworth has been registered with FINRA through NSC as a GSR, GSP, IB and OS. FINRA has jurisdiction over Unsworth because he is registered through a member firm.

FINDINGS AND CONCLUSIONS

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

As alleged in the Complaint, as amended herein, Respondent engaged in the following acts, or failed to act as follows:

SUMMARY

1. During a four year period, April 2008 through April 2012, David Woods Unsworth, Jr. ("Unsworth"), while Chairman, Chief Executive Officer ("CEO"), and majority owner of former member firm Legend Merchant Group, Inc. (BD No. 5155) ("LMG" or the "Firm") engaged in a pattern of disregarding regulatory requirements and unethical conduct in violation of NASD/FINRA rules and FINRA's by-laws.
2. During the period April 22, 2008 through December 15, 2008, while Chairman and CEO of LMG, Unsworth engaged in unethical communications with a customer, regarding that customer's complaint against a former LMG broker, in an effort to conceal from FINRA information about the complaint to avoid regulatory scrutiny of LMG, in violation of NASD Rule 2110 (for conduct before December 15, 2008) and FINRA Rule 2010 (for conduct on or after December 15, 2008).
3. On or about November 30, 2009, Unsworth failed to timely update his Uniform Application for Securities Industry Registration or Transfer ("Form U4") with LMG to disclose unsatisfied federal tax liens totaling \$266,910.94, in violation of Article 5, Section 2(c) of FINRA's By-laws and FINRA Rules 1122 and 2010. On or about

April 25, 2012, while the liens remained unsatisfied, Unsworth, on an application for employment with member firm National Securities Corporation (BD No. 7569) (“NSC”), his next broker-dealer employer, inaccurately indicated he had no unsatisfied liens against him, in violation of FINRA Rule 2010.

4. On or about March 15, 2012, while Chairman and CEO of LMG, Unsworth received notice of FINRA’s suspension of LMG, effective April 9, 2012, for failing to file annual audited financials for the prior calendar year, yet allowed LMG to continue to conduct a securities business during the period April 9, 2012 through the afternoon of April 16, 2012, while the Firm was suspended, in violation of FINRA Rule 2010.
5. On April 12 and 13, 2012, Unsworth caused LMG to prepay a subordinated loan to LMG’s parent company, of which Unsworth was a majority owner, before the loan maturity date, without obtaining the required written pre-approval of FINRA, in contravention of Appendix D to SEC Rule 15c3-1. In so doing, Unsworth violated FINRA Rule 2010.

RESPONDENT AND JURISDICTION

6. Unsworth first became registered with FINRA through a member firm as a General Securities Representative (“GSR”) in January 1987.
7. Between January 1987 and December 2001, Unsworth was registered as a GSR through several FINRA member firms.
8. Unsworth became registered with FINRA through LMG on December 20, 2001.
9. Through LMG, Unsworth was registered in the following capacities as of the following dates: GSR on December 20, 2001, General Securities Principal (“GSP”)

on March 17, 2003, Limited Representative-Investment Banking (“IB”) on April 15, 2010, and Operations Professional (“OS”) on October 25, 2011.

10. From in or around January 2008 through April 30, 2012, Unsworth was Chairman, CEO, and majority owner of LMG. Unsworth was majority owner of LEC, which in turn owned a majority interest in LMG.
11. LMG operated as a broker-dealer until the afternoon of April 16, 2012. The Firm's business included investment banking and trading equity securities and options, primarily on an agency basis, for retail and institutional customers. In May 2012, the Firm filed a Form BDW requesting withdrawal from FINRA membership. FINRA expelled LMG as a member, effective August 28, 2012, for failure to pay fines and/or costs associated with a FINRA disciplinary action against the Firm.
12. Since April 30, 2012, Unsworth has been registered with FINRA through NSC as a GSR, GSP, IB and OS.
13. FINRA has jurisdiction over Unsworth because he is registered through a member firm.

**Failure to Timely Amend Form U4 to Disclose Material Information
(Article V, Section 2(c) of FINRA By-Laws and FINRA Rules 1122 and 2010)**

14. A person registering with FINRA must comply with FINRA’s by-laws by filing a Form U4 to provide information that FINRA requires. Article V, Section 2(c) of FINRA’s By-Laws requires every application for registration filed with FINRA be kept “current at all times by supplementary amendments” to be filed, in most instances, “not later than 30 days after learning of the facts or circumstances giving rise to the amendment.”

15. FINRA Rule 1122 provides, “No member or person associated with a member 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.”
16. At all times relevant to this Complaint, Question 14M of the Form U4, asked: “Do you have any unsatisfied judgments or liens against you?”
17. The Form U4 contained disclosure questions with instructions that “yes” answers required complete details of all events or proceedings on appropriate Disclosure Reporting Pages (“DRPs”).
18. On December 19, 2001, Unsworth submitted, or caused to be submitted, a Form U4 in connection with his FINRA registration through LMG. In response to Question 14M (then, Question 23M), Unsworth accurately answered that he had “no” unsatisfied judgments or liens.
19. On or before October 31, 2009, Unsworth received two virtually identical Internal Revenue Service (“IRS”) Notices of Levy on Wages, Salary, and Other Income (“Notices of Levy”), dated October 13, 2009, advising him that the “Internal Revenue Code provides that there is a lien” against him for \$266,910.96 in unpaid tax assessments and “statutory additions.”
20. The Notices of Levy advised that the liens related to three different tax periods: 2000, 2005 and 2006. The IRS had previously recorded three separate liens against Unsworth for the three tax periods on the following days and in the following amounts: (1) August 24, 2006 (\$54,999.74); (2) September 21, 2009 (\$95,244.72); and (3) September 24, 2009 (\$72,934.35).

21. By October 31, 2009, if not before, Unsworth was on notice, and therefore knew or should have known, that he was subject to, at least one IRS lien, that the lien was unsatisfied, and that he was required to amend his Form U4 to disclose the lien within 30 days of learning that information. Accordingly, Unsworth was required to amend his Form U4 to disclose the IRS lien(s) by no later than November 30, 2009.
22. However, Unsworth did not file or cause to be filed a supplementary amendment to his Form U4 within 30 days after learning of the above-described liens.
23. The existence of multiple unsatisfied federal tax liens totaling in excess of \$266,000 in unpaid tax assessments and “statutory additions” constituted a material fact.
24. It was not until April 30, 2012, after his new employer, NSC, had learned of the liens through a credit check, that Unsworth’s Form U4 was amended to disclose the IRS liens for the three different tax years.
25. At all times relevant to this Complaint, and up to present date, the IRS liens remained unsatisfied. In January 2015 the IRS notified Unsworth that the outstanding balance of the liens was \$102, 646.
26. Based on the foregoing, Unsworth violated Article V, Section 2(c) of FINRA’s By-Laws and FINRA Rules 1122 and 2010.

**Providing False Information on an Employment Application
(FINRA Rule 2010)**

27. On or about April 25, 2012, Unsworth completed, signed and submitted, or caused to be submitted, an employment application for association with member firm NSC.
28. Similar to the Form U4, one of the disclosure questions on the NSC employment application asked: “Do you currently have any unsatisfied judgments or liens against you?” Unsworth inaccurately responded “no.”

29. On the employment application, Unsworth certified above his signature that his answers were true and complete to the best of his knowledge. However, his answer regarding not having any unsatisfied liens was inaccurate.
30. When Unsworth completed the employment application to become associated with a member firm NSC, Unsworth was on notice, and therefore knew or should have known, that the IRS had at least one lien against him, that the lien was unsatisfied, and that his answer that he did not currently have any unsatisfied liens against him was false and misleading.
31. NSC learned of the three IRS liens against Unsworth on April 30, 2012, through a background credit check that NSC conducted.
32. By falsely representing to NSC on his employment application that he had no unsatisfied liens, Unsworth acted unethically and failed to observe high standards of commercial honor and just and equitable principles of trade.
33. By reason of the foregoing, Unsworth violated FINRA Rule 2010.

**Engaging in Unethical Communications with a Customer to
Conceal from FINRA Information about the Customer's Complaint
(NASD Rule 2110 and FINRA Rule 2010)**

34. Article V, Section 3(a) of FINRA's By-Laws requires a member firm to provide FINRA with written notice of the termination of the association of any person with the firm within 30 days of such termination. The required notice is in the form of a Uniform Termination Notice for Securities Registration (Form U5). Article V, Section 3(b) of FINRA's By-Laws requires that a member amend a Form U5 with respect to a terminated registered person not later than 30 days after learning of the

facts or circumstances causing any information on the Form U5 to be inaccurate or incomplete.

35. Question 7E (3) of the Form U5 asks, in relevant part, the following about customer complaints in connection with the person terminated:

“In connection with events that occurred while the individual was employed or associated with your *firm*, was the individual the subject of an *investment-related*, consumer-initiated, written complaint, not otherwise reported under questions 7E(1) or 7E(2) above, which:

- (a) Would be reportable under question 14I(3)(a) on Form U4, if the individual were still employed by your *firm*, but which has not previously been reported on the individual’s Form U4 by your *firm*[.]”

36. Question 14I(3)(a) on the Form U4 asks, in relevant part:

“Within the past twenty four (24) months, have you been the subject of an *investment-related*, consumer-initiated, written complaint, not otherwise reported under question 14I(2) above, which:

- (a) Alleged that you were involved in one or more *sales practice violations* and contained a claim for compensatory damages of \$5,000 or more (if no damage amount is alleged, the complaint must be reported unless the *firm* has made a good faith determination that the damages from the alleged conduct would be less than \$5,000)[.]”

37. The Form U5 instructs that "yes" answers require complete details of all events or proceedings on appropriate DRPs.

38. On December 6, 2007, LMG filed a Form U5 terminating the registration of broker KLW, who had been registered through LMG as a GSR and GSP. On the Form U5, in response to Question 7E (3)(a), LMG indicated KLW had no reportable customer complaints.

Customer Complaint Against KLW

39. On December 7, 2007, DC, a customer of KLW ("Customer DC"), emailed JS, LMG's president until December 10, 2007, and asked for an immediate response regarding what compensation LMG would consider giving him for alleged losses incurred by Customer DC due to KLW's failure, while KLW was associated with LMG, to follow Customer DC's instructions relating to two different securities positions. In his email, Customer DC advised that he awaited a response "before I decide on my next step or an approach to the Financial Regulator."
40. Customer DC's email constituted an investment-related, consumer-initiated, written complaint of a sales practice violation against KLW, which needed to be reported in response to Question 7E (3) of the Form U5.
41. On December 10, 2007, JS forwarded Customer DC's December 7 email to LMG's compliance officer and to Unsworth, and asked them both how they wanted to handle "this."
42. On January 3, 2008, LMG's compliance officer filed a Rule 3070 (now Rule 4530) disclosure regarding the complaint. In that disclosure, LMG reported that Customer DC had complained that KLW had failed to follow his instructions regarding two private placements. LMG noted that KLW may have misrepresented Customer DC's account activity and that the Firm was communicating with Customer DC to resolve the matter. Notwithstanding those disclosures, the Firm was required to disclose Customer DC's complaint on KLW's Form U-5.
43. By at least April 22, 2008, Unsworth knew or should have known that no one at LMG had amended KLW's Form U5 to report Customer DC's complaint and the required

details, and knew or should have known that K LW's Form U5 needed to be amended to report the complaint.

44. From April 2008 through at least December 2008, Unsworth engaged in a series of settlement communications with Customer DC that were designed to conceal from FINRA information about the complaint to avoid regulatory scrutiny of LMG.

Unsworth told the Customer DC that he wanted to settle the customer's grievance in a way to avoid or minimize regulatory scrutiny. Additionally, Unsworth tried to persuade the customer to mischaracterize his grievance to (i) minimize the regulatory consequences of LMG's failing to amend K LW's Form U5 earlier to disclose details about the complaint, and (ii) avoid FINRA insisting that there be a negative impact on the Firm's net capital from any settlement. Specifically:

- a. On April 22, 2008, when Customer DC asked Unsworth for approximately \$170,000 in compensation for account losses, Unsworth told the customer that he wanted to build back the customer's account over time and "avoid making it an official thing."
- b. On September 11, 2008, Unsworth told Customer DC, "FINRA is asking me questions" about the customer's emails, and "I actually have to possibly have to go back and actually do amendments to K LW's license" Unsworth told Customer DC that he had the money and securities to give the customer, but can't do it now because "I'm answering all the FINRA [bull] right now."
- c. On September 15, 2008, Unsworth asked for Customer DC's agreement on how Unsworth would describe the customer's situation to FINRA. Unsworth advised that while he tried to avoid involvement of the regulators, "once

certain things get to certain dollar levels certain things have to be disclosed.

So I'll probably get whacked for non-disclosure of something, at least I can keep it to a minimum."

- d. On September 16, 2008, Unsworth told Customer DC that he would write to the customer about providing price improvement as fair compensation in connection with the customer's claim, and was avoiding the use of the word "complaint," as he wanted to avoid FINRA insisting that there be a negative impact on the Firm's net capital.
- e. On December 15, 2008, Unsworth told Customer DC that LMG had given a price improvement to the customer's account and that he wanted to protect his own clear record.

45. On January 8, 2009, only after LMG learned that FINRA Staff had cited LMG, in connection with a cycle exam for failing to update KIW's Form U5 to report the complaint, did LMG update the Form U5 to reflect Customer DC's complaint. The amendment listed the date of Customer DC's complaint as September 14, 2007.

46. By reason of Unsworth's foregoing communications, Unsworth failed to observe high standards of commercial honor and just and equitable principles of trade and thereby violated NASD Conduct Rule 2110 (for the conduct before December 15, 2008) and FINRA Rule 2010 (for the conduct on or after December 15, 2008).

**Allowing a Member Firm to Conduct a Securities Business While Suspended
(FINRA Rule 2010)**

47. Rule 17a-5 of the Securities Exchange Act of 1934 (the "Exchange Act") required LMG to file the Firm's annual audited financials for calendar year 2011 by February 29, 2012.

48. LMG did not file annual audited financials for calendar year 2011 by February 29, 2012 or at any time thereafter.
49. By letter dated March 15, 2012, FINRA gave notice to LMG, pursuant to FINRA Rule 9552, that LMG would be suspended effective April 9, 2012 if the Firm failed to submit the required annual audited financials by that date. Specifically, FINRA advised:
- [Y]our firm's membership with FINRA will be suspended for failure to timely file its annual audit. The suspension will be effective on April 09, 2012 (the "effective Date") unless, before that date, your firm submits the required annual audit. *If your firm does not submit the required annual audit, then your firm's suspension will take effect on the Effective Date without further notice. This notice serves as your firm's notice of suspension.***
50. Unsworth knew of FINRA's suspension notice on or about March 15, 2012.
51. Under Rule 9552(d), a suspension is effective 21 days after service of the notice "unless stayed by a request for a hearing pursuant to Rule 9559." At no time was there a request for a hearing.
52. On April 9, 2012, consistent with the March 15 notice of suspension letter, LMG was suspended from FINRA membership pursuant to FINRA Rule 9552.
53. As Chairman and CEO of LMG, Unsworth was responsible for taking steps to ensure that LMG did not conduct a securities business while suspended.
54. Between April 9, 2012 and the afternoon of April 16, 2012, Unsworth allowed LMG to conduct a securities business while LMG was suspended. During that time period, LMG permitted 30 separate buy transactions through LMG customer accounts, generating approximately \$7,306 in commissions. Six of the transactions were in accounts on which Unsworth was listed as the representative.

55. At 1:00 p.m. E.S.T. on April 16, 2012, LMG's compliance officer advised LMG's clearing firm that LMG fell under its net capital requirement and understood that LMG could only effect unsolicited liquidating transactions. On that same day, LMG's Financial and Operations Principal ("FINOP") filed an SEC Rule 17a-11(b) notice of LMG's net capital deficiency and stated, in relevant part, "[t]he firm has ceased conducting securities business as of today."

56. Only after LMG's compliance officer advised LMG's clearing firm on April 16, 2012 to only allow liquidating transactions, did Unsworth email LMG personnel about the Firm's suspension and advise against soliciting any securities or investment banking business and against unsolicited orders to buy securities.

57. LMG, under Unsworth's direction and with his involvement, failed to file the required annual audited financials on time, failed to request an extension of the filing deadline or request a hearing upon receipt of the March 15 notice of suspension, and, once suspended by FINRA, until the afternoon of April 16, 2012, failed to advise everyone at LMG that they could not continue to conduct business while under suspension.

58. By reason of the foregoing conduct, Unsworth violated FINRA Rule 2010.

**Causing a Member Firm to Prepay a Subordinated Loan Without FINRA Approval
(Appendix D to SEC Rule 15c3-1 and FINRA Rule 2010)**

59. Appendix D of 17 C.F.R. 240.15c3-1 sets forth minimum requirements for subordination agreements to allow borrowed funds or securities to be treated as part of a firm's net capital under the SEC Rule 15c3-1.¹

¹ 17 C.F.R. 240.15c3-1d(a)(1).

60. Importantly, Appendix D provides that “a subordination agreement” is “a valid and binding obligation enforceable in accordance with its terms . . . against the broker or dealer and the lender,”² and “shall effectively subordinate any right of the lender” to receive payments under the subordination agreement “to the prior payment or provision for payment in full of all claims of all present and future creditors of the broker or dealer”³

61. Appendix D provides, in relevant part, the following with respect to “permissive payments” under subordination agreements:

- a. “No prepayment shall be made, if . . . [the broker-dealer’s] net capital would be less than 120 percent of the minimum dollar amount required by §240.15c3-1”⁴
- b. “Notwithstanding the above, no Prepayment shall occur without the prior written approval of the Examining Authority for such broker or dealer.”⁵

62. In December 2010, Unsworth, on behalf of LMG, entered a subordinated loan agreement to borrow \$1.6 million from LEC, LMG’s parent company, which Unsworth predominately owned. Unsworth executed this agreement on behalf of both lender and borrower. The subordinated loan agreement listed the scheduled maturity date as at least three years from the date FINRA approved of the subordinated loan agreement and contained the above-referenced language from Appendix D.

² 17 C.F.R. 240.15c3-1d(b)(1).

³ 17 C.F.R. 240.15c3-1d(b)(3).

⁴ 17 C.F.R. 240.15c3-1d(b)(7).

⁵ *Id.*

63. By letter dated April 12, 2011, FINRA staff advised LMG that it approved LMG's subordinated loan agreement, effective as of January 31, 2011. Accordingly, by the terms of the subordinated loan agreement, the maturity date was January 31, 2014, three years from the date FINRA approved of the subordinated loan agreement.
64. FINRA's letter of April 12, 2011 also advised LMG that:
- "Appendix D of SEC Rule 15c3-1 requires the prior written approval of FINRA before any prepayment of a subordinated agreement can be made All unauthorized repayment matters are considered by staff for possible disciplinary action."
65. Unsworth, by attestation dated January 28, 2011, confirmed that he had "received and reviewed a reprint of Appendix D of 17 CFR 240.15c3-1" and was "familiar with its provisions."
66. In April 2012, Unsworth caused LMG to prepay the subordinated loan, paying back LEC, the company he predominately owned. Specifically, on April 12 and 13, 2012, LMG, pursuant to Unsworth's written authorization, transferred to LEC funds and collateral underlying the subordinated loan agreement.
67. Unsworth did not obtain prior written approval from FINRA to prepay the subordinated loan.
68. Unsworth knew that he was causing LMG to pay the loan before it was due and was on notice, and therefore knew or should have known, that doing so violated the terms of the subordinated loan agreement and contravened Appendix D to SEC Rule 15c3-1.
69. Unsworth made the decision to prepay the subordinated loan on his own. He did not consult with anyone beforehand, including FINRA or LMG's FINOP.

70. Unsworth knew that paying back the loan with money and collateral would result in LMG, which continued to conduct a securities business, to fall out of net capital compliance.

71. LMG, which had a minimum net capital requirement of \$125,000, as of April 13, 2012, after paying back the loan, had a \$1,525,000 net capital deficiency, according to LMG's SEC Rule 17a-11(b) notice filed on April 16, 2012.

72. By reason of the foregoing, Unsworth acted in contravention of Appendix D to SEC Rule 15c3-1 and violated FINRA Rule 2010.

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 pay a fine of \$25,000, be suspended from association with any FINRA member in any capacity for three months, and thereafter be suspended in all principal capacities for three months, with these two suspension periods to run consecutively.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

SO ORDERED.

FINRA

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


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