

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

Department of Enforcement,

Complainant,

v.

Mark R. Talley (CRD No. 4969783),

Respondent.

Disciplinary Proceeding  
No. 2012032650301

Hearing Officer – DRS

**ORDER ACCEPTING OFFER OF  
SETTLEMENT**

Date: February 11, 2014

**INTRODUCTION**

Disciplinary Proceeding No. 2012032650301 was filed on December 30, 2013, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent Mark R. Talley submitted an Offer of Settlement (Offer) to Complainant dated February 4, 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, 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, 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**

Mark Talley (CRD No. 4969783) entered the securities industry in May 2005 and was associated with two FINRA member firms before September 2009, when he joined Fifth Third Securities, Inc. ("Fifth Third"). While in the securities industry, Talley held the following securities licenses: Series 7, Series 63, and Series 66. Talley was permitted to resign from Fifth Third on May 8, 2012, and his registrations with Fifth Third were terminated on May 21, 2012.

Although Talley is not currently 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 of the Corporation, because (1) this Complaint was filed within two years after the date upon which he ceased to be associated with a FINRA member, namely May 21, 2012, and (2) this Complaint charges him with misconduct while he was associated with a FINRA member.

### **FINDINGS AND CONCLUSIONS**

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

In July 2011, Talley recommended that his customer, JV, replace an existing variable annuity with a new variable annuity.

On July 25, 2011, Talley misrepresented to JV orally and in writing that his existing variable annuity was out of the surrender period and, therefore, could be sold without incurring a surrender fee.

In fact, the annuity was still in the surrender period and JV would incur a \$15,000 surrender fee if the annuity was sold.

JV considered Talley's representation that the sale of the variable annuity would not result in a surrender fee and, with that understanding, sold the annuity and purchased a new one.

On a form titled Request to Switch, Exchange, or Rollover Investments (the "switch form"), Talley falsely stated that, on July 22, 2011 at 3:00 p.m., he called a specific 1-800 phone number and verified that JV's existing annuity was out of the surrender period. Talley claimed on the switch form to have obtained this information by speaking with KP, who he claimed was an employee of the insurance company that underwrote and issued the annuity. In fact, Talley did not contact the insurance company to verify that JV's annuity was out of the surrender period. The information that Talley placed on the form about that supposed call was false.

Talley showed the switch form to JV, who then signed and dated it July 25, 2011.

On July 25, 2011, in connection with JV's proposed annuity switch, Talley submitted the switch form to Fifth Third.

On May 21, 2012, Fifth Third filed a Form U5 with FINRA on which the firm disclosed that Talley was permitted to resign after the firm determined that he had "provided inaccurate information on a client disclosure document."

In connection with an investigation into that disclosure, FINRA sent Talley an information request letter pursuant to FINRA Rule 8210 dated June 11, 2012.

On July 6, 2012, Talley submitted a letter to FINRA in response to FINRA's information request. In his letter to FINRA, Talley claimed that, on July 22, 2011, he confirmed JV's variable annuity was out of the surrender period by contacting KP, an employee of the insurance company that underwrote and issued the annuity.

As described above, this information was not true and Talley's response to FINRA was false.

On July 23, 2013, FINRA staff sent a letter requesting that Talley appear for testimony pursuant to FINRA Rule 8210.

As requested, on August 14, 2013, Talley appeared for testimony. Although Talley was represented by counsel, his counsel did not attend Talley's testimony.

During a break in the testimony for lunch and without prior notice, Talley told FINRA staff that he needed immediately to go to work and that he could not continue his testimony. FINRA staff informed Talley that they had additional questions for him and that they would contact his attorney to schedule another day on which to conclude his testimony.

On October 14, 2013, FINRA staff sent a letter to Talley's attorney and copied Talley at his attorney's request. The letter requested that Talley appear for testimony pursuant to FINRA Rule 8210. The letter was sent to Talley and his attorney via U.S. Postal Service Certified Mail, Return Receipt requested. The attorney's copy was sent to the attorney's business address. Talley's copy was sent to Talley's residential address in Ft. Mitchell, Kentucky, as listed in FINRA's Central Registration Depository (CRD) system. The electronic copies were sent to email addresses which the attorney and Talley had previously used to communicate with FINRA staff. The testimony was scheduled to take place on November 14, 2013.

The Return Receipt for the letter sent to the attorney's address was returned to FINRA staff with a signature indicating that the letter was received.

The Return Receipt for the letter sent to Talley was not returned but tracking information provided by the U.S. Postal Service's website indicates that the letter was delivered on October 23, 2013.

On November 11, 2013, Talley's attorney informed FINRA staff that he did not expect Talley to appear for testimony.

Talley did not appear for testimony on November 14, 2013.

**FIRST CAUSE OF ACTION  
PROVIDING FALSE INFORMATION TO A CUSTOMER  
VIOLATION OF FINRA RULE 2010**

FINRA Rule 2010 requires that "[a] member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade."

By misrepresenting to JV orally and in writing that his variable annuity was out of the surrender period and, therefore, could be sold without incurring a surrender fee, Talley violated FINRA Rule 2010.

**SECOND CAUSE OF ACTION  
PROVIDING FALSE ANSWERS TO FINRA AND FAILING TO APPEAR FOR TESTIMONY  
VIOLATIONS OF FINRA RULES 8210 AND 2010**

FINRA Rule 8210 requires persons subject to FINRA's jurisdiction "to testify at a location specified by FINRA staff, under oath or affirmation administered by a court reporter or a notary public if requested, with respect to any matter involved in the investigation. Providing false or misleading information to FINRA in response to a Rule 8210 request also violates Rule 8210.

By falsely stating in response to a request issued pursuant to Rule 8210 that he had contacted the insurer to confirm JV's annuity was out of the surrender period, Talley violated FINRA Rule 8210. By virtue of that violation, Talley also violated FINRA Rule 2010.

Talley also violated FINRA Rule 8210 by failing to appear for testimony on November 14, 2013, as requested pursuant to a FINRA Rule 8210 request. By virtue of that violation, Talley also violated FINRA Rule 2010.

Based on the foregoing, Respondent violated FINRA Rule 2010 and FINRA Rule 8210.

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

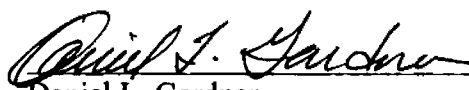
It is ordered that Respondent be barred from associating with any FINRA member in any capacity.

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

A handwritten signature in cursive script, appearing to read "Daniel L. Gardner", is written over a horizontal line.

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