

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Barry Lee Engen (CRD No. 1613162),

Respondent.

DISCIPLINARY PROCEEDING
No. 2012033634301

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. From October 2005 through December 2011, Barry Lee Engen violated FINRA Rule 2010, and its predecessor, NASD Rule 2110, when he converted over \$200,000 in annuity proceeds paid in error to his deceased father by Kansas City Life Insurance Company ("Kansas City Life"). Additionally, Engen violated FINRA Rules 8210 and 2010 when he failed to respond to Staff's requests for information pursuant to FINRA Rule 8210.

RESPONDENT AND JURISDICTION

2. Engen entered the securities industry in December 1986. From April 2007 to August 2012, Engen was registered with Feltl & Company ("Feltl" or the "Firm") as a general securities representative. Feltl terminated Engen on August 10, 2012. He is not currently registered with a FINRA-registered firm.

3. Although Engen is no longer registered with a FINRA 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 Engen's registration with Feltl, namely August 10, 2012; and (2) the Complaint charges Engen with misconduct committed while he was registered with a FINRA firm, and with failing to respond to FINRA requests for information during the two-year period after he ceased to be registered with a FINRA member.

FIRST CAUSE OF ACTION

(Conversion – NASD Rule 2110 and FINRA Rule 2010)

4. The Department realleges and incorporates by reference paragraphs 1-3 above.
5. On October 6, 1986, Kansas City Life issued a single-premium immediate annuity (the "SPIA") to Engen's father, LEE. A SPIA is an annuity product for which an individual (the applicant or annuitant) makes a single, lump-sum payment in exchange for guaranteed monthly payments for a stated period of time, including the remainder of the individual's life.
6. In accordance with the terms of the SPIA, LEE made a single up-front payment of \$332,396.48 to Kansas City Life in exchange for monthly payments of \$3,183.40 for the remainder of his life or ten years, whichever period was longer. If LEE died within 10 years of the issuance of the SPIA, the remaining balance of the up-front payment would be made to his designated beneficiaries. If, however, LEE died on or after October 6, 1996 (ten years after the SPIA was issued), the payments would continue until his death, but no payments would be made to his beneficiaries after his death.

7. Kansas City Life agreed to deposit the monthly payments directly into the checking account of LEE and his wife, EME, at the Home Federal Savings and Loan Association of Sioux Falls, South Dakota n/k/a Home Federal Bank.
8. EME died on February 23, 2003. Approximately three months later, on May 15, 2003, LEE added his son, Engen, to the Home Federal Bank checking account. Kansas City Life continued to deposit monthly annuity payments into that checking account.
9. LEE passed away on September 21, 2005, at the age of 84. Kansas City Life was not notified of LEE's death and continued to make monthly deposits into the Home Federal Bank checking account. The payments stopped in December 2011 when Kansas City Life discovered that LEE had died through an internet search. Kansas City Life deposited \$238,755.00 (i.e., 75 payments of \$3,183.40 each) more than required by the terms of the SPIA into LEE and Engen's checking account.
10. Engen did not inform Kansas City Life at any time between September 2005 and December 2011 that LEE had died. Engen had no legal right to the funds deposited in the Home Federal Bank checking account, yet he wrote several checks following LEE's death to pay for funeral and related expenses, as well as income taxes attributable to LEE. On October 22, 2007, Engen wrote a check to the LEE Trust in the amount of \$24,480.00. From July 10, 2008 to November 8, 2011, Engen wrote 39 checks payable to "Barry L. Engen," totaling \$199,720.00.
11. To date, Engen has not repaid Kansas City Life for the funds he converted.
12. By converting the Kansas City Life annuity payments made to his father in error, Engen engaged in activity inconsistent with high standards of commercial honor, and

just and equitable principles of trade, in violation of NASD Rule 2110 and FINRA Rule 2010.

SECOND CAUSE OF ACTION

(Failure to Provide Information and Documents – FINRA Rules 8210 and 2010)

13. The Department realleges and incorporates by reference paragraphs 1-12 above.
14. On or about February 17, 2012, Kansas City Life filed a civil action against Engen to recover its overpayment of benefits under the SPIA. Engen failed to file an answer or other responsive pleading and, consequently, Kansas City Life obtained a default judgment against Engen on April 25, 2012.
15. On or about July 5, 2012, Kansas City Life filed a Garnishment Summons, which was then served on Feltl. The Firm investigated Engen's conduct and decided to terminate him.
16. Based upon a Form U5 filed by Feltl in which it disclosed that it had terminated Engen because he engaged in inappropriate conduct, FINRA initiated an examination regarding Engen's possible violations of securities laws and FINRA and NASD Rules in connection with the converted SPIA payments made following LEE's death.
17. On or about November 20, 2012, pursuant to FINRA Rule 8210, FINRA issued a written request to Engen to provide information and documents relating to its investigation of Engen's conversion of annuity proceeds ("First Rule 8210 Request"), via first class and certified mail, return receipt requested, to his residential address of record in the FINRA Central Registration Directory ("CRD Address"). The First Rule 8210 Request required a response by December 5, 2012. Neither the certified

mailing nor the first class mailing was returned. To date, FINRA has not received a response from Engen to the First Rule 8210 Request.

18. On or about December 10, 2012, pursuant to FINRA Rule 8210, FINRA issued a second written request to Engen to provide information and documents relating to its investigation of Engen's conversion of annuity proceeds, via first class and certified mail, return receipt requested, to his CRD Address ("Second Rule 8210 Request"). The Second Rule 8210 Request required a response by December 24, 2012. The certified mailing was returned as unclaimed; the first class mailing was not returned. To date, FINRA has not received a response from Engen to the Second Rule 8210 Request.
19. By failing to provide information and documents requested pursuant to FINRA Rule 8210, Engen violated both FINRA Rule 8210, as well as FINRA Rule 2010.

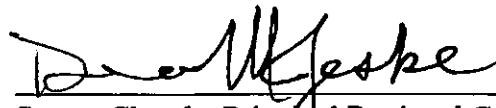
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent Engen committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed; and
- C. order that Respondent Engen 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: January 3, 2014



Seema Chawla, Principal Regional Counsel
Dean M. Jeske, Deputy Regional Chief Counsel
Mark A. Koerner, Associate Vice President
and Regional Chief Counsel
FINRA Department of Enforcement
120 West 12th Street, Suite 800
Kansas City, MO 64105
Telephone: (816) 802-4712
Facsimile: (816) 421-4519
E-mail: seema.chawla@finra.org