

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Warren C. Buterbaugh
(CRD No. 1096581),

Respondent.

DISCIPLINARY PROCEEDING
No. 2012034294301

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. On December 27, 2011, Respondent Warren C. Buterbaugh (“Buterbaugh”) met with an elderly customer EJ at her home. EJ recently lost a close friend who was the primary beneficiary on her Prudential variable annuity and because of her passing wished to change the beneficiary on her annuity. Rather than change the beneficiary, however, following the meeting Buterbaugh submitted an annuity withdrawal request form to Prudential that resulted in EJ’s variable annuity being surrendered without her authorization. To effectuate the unauthorized withdrawal of EJ’s variable annuity, Buterbaugh forged her signature on a Prudential annuity withdrawal request form and dated the form December 27, 2011. Based on the foregoing, Buterbaugh violated FINRA Rule 2010.

2. Buterbaugh willfully failed to update his Uniform Application for Securities Industry Registration (Form U4) to disclose material information concerning three unsatisfied tax liens filed against him, one by the Internal Revenue Service and two by the State of Pennsylvania, and failed to disclose a regulatory action filed against him by the Pennsylvania Insurance Commission. Based on the foregoing, Buterbaugh violated Article V, Section 2(c) of FINRA's By-Laws, NASD IM-1000-1 (for conduct before August 17, 2009), NASD Conduct Rule 2110 (for conduct before December 15, 2008), and FINRA Rules 1122 (for conduct after August 16, 2009) and 2010 (for conduct after December 14, 2008).

RESPONDENT AND JURISDICTION

3. On March 24, 1983, Buterbaugh first became registered with FINRA as an Investment Company Products/Variable Contracts Representative. From March 11, 2003 to May 14, 2010, Buterbaugh was registered in that capacity with Investors Capital Corp. (BD No. 30613)("Investors Capital"). From August 16, 2010 to October 3, 2012, Buterbaugh was registered with Harvest Financial Corporation (BD No. 8733) ("Harvest").
4. On or about October 3, 2012, Harvest filed a Uniform Termination Notice for Securities Industry Registration (Form U5) stating that Buterbaugh was terminated for failing to follow firm policies and procedures.
5. Although Buterbaugh 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 Buterbaugh's termination with Harvest, namely October 3, 2012, and (2) the Complaint charges him with misconduct

committed while he was a registered or associated with a FINRA member.

FIRST CAUSE OF ACTION
(UNAUTHORIZED TRANSACTION)
(FINRA RULE 2010)

6. The Department realleges and incorporates by reference paragraphs 1 through 5 above.
7. In October 1994, while Buterbaugh was registered with Investors Capital, he sold a variable annuity issued by Prudential in the amount of \$7,998.94 to customer EJ.
8. In December 2011, EJ, a 70 year old single customer, contacted Buterbaugh and told him that she wished to change the primary beneficiary on her Prudential variable annuity because the beneficiary who was her close friend had recently passed away.
9. On December 27, 2011, Buterbaugh visited EJ at her home and during this visit EJ again told Buterbaugh that she wished to change the beneficiary on her Prudential variable annuity.
10. On or about December 29, 2011, and contrary to EJ's request, Buterbaugh submitted a form called "Prudential Annuity Withdrawal Request for Partial & Full Surrenders" to Prudential, for the purpose of liquidating or "surrendering" EJ's annuity.
11. As a result of Buterbaugh's submission of the form to Prudential, EJ's variable annuity was surrendered on or about January 2, 2012.
12. EJ did not authorize Buterbaugh to surrender her annuity.
13. Based on the foregoing, Buterbaugh violated FINRA Rule 2010.

SECOND CAUSE OF ACTION
(FORGERY)
(FINRA RULE 2010)

14. The Department realleges and incorporates by reference paragraphs 1 through 13 above.
15. Buterbaugh forged EJ's signature on the Prudential annuity withdrawal request form and

dated the form December 27, 2011 to effectuate the unauthorized surrender of EJ's variable annuity.

16. Based on the foregoing, Buterbaugh violated FINRA Rule 2010.

THIRD CAUSE OF ACTION

(Willful Failure to Update Form U4 to Disclose Material Information)
(Article V, Section 2(c) of the FINRA By-Laws, NASD IM-1000-1, NASD Conduct Rule 2110 and FINRA Rules 1122 and 2010)

17. The Department realleges and incorporates by reference paragraphs 1 through 16 above.
18. Article V, Section 2(c) of the FINRA By-Laws requires that registrations filed with FINRA be kept current at all times and that amendments must be filed with FINRA "not later than 30 days after learning of the facts or circumstances giving rise to the amendment."
19. 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."
20. Question 14M of the Form U4 asks: "Do you have any unsatisfied judgments or liens against you?" If an affirmative answer is given to Question 14M, the registered person is required to provide details about the lien or judgment.
21. Question 14D of the Form U4 asks: "Has any state regulatory agency ... ever: ...

(b) *found* you to have been involved in a violation of investment-related regulations or statutes? If an affirmative answer is given to Question 14D, the registered person is required to provide details about the regulatory action."

22. On or about June 4, 2008, the State of Pennsylvania filed a tax lien against Buterbaugh in the amount of \$2,346. On or about February 19, 2009, the State of Pennsylvania filed a tax lien against Buterbaugh in the amount of \$8,794. Both liens were satisfied on May 7, 2010. From June 4, 2008 to May 6, 2010, Buterbaugh wilfully failed to amend his Form U4 to disclose the two tax liens while they remained unsatisfied.
23. On or about May 1, 2009, the IRS filed a lien against Buterbaugh in the amount of \$33,431. That lien remains unsatisfied and was not disclosed on Buterbaugh's Form U4 until May 7, 2010. From May 1, 2009 to May 6, 2010, Buterbaugh willfully failed to amend his Form U4 to disclose the IRS lien.
24. On or about November 19, 2010, the Pennsylvania Insurance Commission issued a Consent Order against Buterbaugh in which the Commission found that Buterbaugh violated a Pennsylvania investment-related statute, 40 P.S. Section 310.11(13). This statute prohibits an insurance licensee from failing to pay state income tax. The Consent Order found that Buterbaugh violated this statute because he owed personal income taxes of \$2,864.74 to Pennsylvania. Buterbaugh was ordered to cease and desist from engaging in the activities described in the Consent Order. Buterbaugh wilfully failed to amend his Form U4 to disclose this regulatory action.
25. Based on the foregoing, Buterbaugh violated Article V, Section 2(c) of FINRA's By-Laws, NASD IM-1000-1 (for conduct before August 17, 2009), NASD Conduct Rule 2110 (for conduct before December 15, 2008), and FINRA Rules 1122 (for conduct after August 16, 2009) and 2010 (for conduct after December 14, 2008).

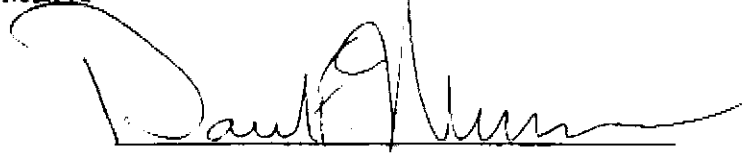
RELIEF REQUESTED

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), including monetary sanctions, be imposed;
- C. order that Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330; and
- D. make specific findings that Respondent's conduct, as alleged in the Third Cause of Action, was willful; the omitted information was material; and, the omission to state material facts was on a Form U4 application.

FINRA DEPARTMENT OF ENFORCEMENT

Date: September 12, 2014



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