

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

BART JAMES ELLIS (CRD No. 4348559),

Respondent.

DISCIPLINARY PROCEEDING
No. 2012034573001

HEARING OFFICER:

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. During the period June 2008 until August 2012, Respondent Bart James Ellis engaged in misconduct in connection with the account of one of his customers, K.C.¹ Ellis placed discretionary trades in her account without her authorization, and later falsified records to make it appear that he had spoken with the customer prior to making the trades. By virtue of this conduct, Ellis violated NASD Rule 2510 and FINRA Rule 2010.

2. Ellis also twice failed to appear for testimony after being required to do so pursuant to FINRA Rule 8210.

RESPONDENT

3. Ellis entered the securities industry in January 2001. He worked at two firms before joining H&R Block Financial Advisors, Inc. in November 2007. That firm became Ameriprise Advisor Services, Inc. in November 2008, and was merged into Ameriprise Financial Services, Inc. in or about October 2009. Ellis remained at Ameriprise Financial Services until it

¹ The Department of Enforcement is filing a document identifying the customer along with this Complaint.

terminated his registration on October 26, 2012, citing “company policy violations related to accepting transaction requests and the use of discretion.” He has held Series 6 (Investment Company/Variable Contracts), Series 7 (General Securities), Series 9 (General Securities Sales Supervisor — Options), Series 10 (General Securities Sales Supervisor — General), Series 31 (Futures Managed Funds), Series 63 (State Law), and Series 65 (Investment Advisor Law) licenses.

4. Ameriprise Financial Services filed a Form U5 amendment on February 20, 2013 to disclose a complaint by customer K.C. against Ellis.

5. Although Respondent 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 of the February 20, 2013 filing of an amended notice of termination which was filed within two years of the original notification of termination (filed on October 26, 2012) and which disclosed that Ellis may have engaged in actionable misconduct, and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member and with failing to respond to FINRA requests for failing to appear for on-the-record testimony during the two-year period after the date upon which he ceased to be registered or associated with a FINRA member.

FIRST CAUSE OF ACTION

***Use of Discretion Without Written Authorization* (Violation of NASD Rule 2510(b) and FINRA Rule 2010)**

6. The Department of Enforcement realleges and incorporates by reference paragraphs 1–5 above.

7. Between in or about June 2009 and August 2012, Ellis routinely placed trades in K.C.'s account without first discussing the trades with her. She allowed him to do so because she trusted him.

8. K.C. never authorized Ellis to exercise discretion in her account in writing.

9. By exercising discretion in K.C.'s account without written authorization, Ellis violated NASD Rule 2510(b), which prohibits a registered representative from exercising discretionary power in a customer's account unless such customer has given prior written authorization to the representative, and the discretionary account has been accepted by the firm. By so doing, he also violated FINRA Rule 2010.

SECOND CAUSE OF ACTION
Falsification of Documents
(Violation of FINRA Rule 2010)

10. The Department of Enforcement realleges and incorporates by reference paragraphs 1–9 above.

11. In October 2010, a representative of Ameriprise Financial Services contacted K.C. with questions about the handling of her account. In the course of the conversation, K.C. told the caller that Ellis makes the trades in her account for her and later tells her about the trades.

12. By January 2011, Ellis learned that K.C. had told the firm that Ellis made trades for her without prior discussion.

13. On January 20, 2011, Ellis created entries in a computerized log of telephone conversations which falsely reflected seventeen telephone calls with K.C. in which K.C. was represented to have authorized transactions in her account between March 2010 and December 2010. He made three additional false entries in the log over the following fifteen days. These

entries bore the dates on which he placed trades in K.C.'s account. K.C. did not have any telephone conversations with Ellis on any of those dates.

14. By creating false documents to create the appearance that he had spoken to K.C. prior to placing trades in her account, Ellis engaged in conduct inconsistent with just and equitable principles of trade and high standards of commercial honor, thereby violating FINRA Rule 2010.

THIRD CAUSE OF ACTION

Failure to Testify

(Violation of FINRA Rules 8210 and 2010)

15. The Department of Enforcement realleges and incorporates by reference paragraphs 1–14 above.

First request for testimony

16. On May 7, 2014, the Department of Enforcement sent Ellis a letter requiring him to appear for testimony pursuant to FINRA Rule 8210 on May 27, 2014. The letter was sent to four different addresses by certified mail and by regular mail. Two of the addresses, in Chicago, Illinois – one on Sheridan Avenue and one on Prairie Avenue – were both identified as Ellis's current address on the Central Registration Depository (CRD) system. Another address, in Paradise Valley, Arizona, was his prior CRD address (as of late 2012 and the beginning of 2013), which also appeared in a public records search of his name. The last address, in Scottsdale, Arizona, was a prior address identified through the public records search.

17. All four of the certified mailings were returned to FINRA as undelivered:

- a. The certified letter sent to the Sheridan Avenue CRD address was returned marked "Attempted – Not Known, Unable To Forward."

- b. The certified letter sent to the Prairie Avenue CRD address was returned marked "Unclaimed, Unable To Forward."
- c. The certified letter sent to the Scottsdale address was returned marked "Not Deliverable As Addressed, Unable To Forward."
- d. The certified letter sent to the Paradise Valley address was returned with the notation "Attempted – Not Known, Unable To Forward."

18. Two of the letters sent by regular mail on May 7, 2014 were also returned to FINRA; the other two were not returned:

- a. The letter sent to the Sheridan Avenue CRD addresses was returned marked "Attempted – Not Known, Unable To Forward."
- b. The letter sent to the Scottsdale address by regular mail was returned marked "Refused, Unable To Forward."
- c. The regular letters sent to the Prairie Avenue CRD address and to the Paradise Valley address were not returned to FINRA, indicating that they were delivered.

19. Ellis failed to appear for testimony on May 27, 2014.

Second request for testimony

20. On May 27, 2014, after Ellis's failure to appear, Enforcement sent him a second notice requiring him to appear for testimony pursuant to FINA Rule 8210 on June 12, 2014. The second notices were sent to the two CRD addresses and the two Arizona addresses set forth above by certified mail and regular mail.

21. Three of the four certified mailings were returned to FINRA; the fourth has not been delivered or returned:

- a. The certified letter sent to the Sheridan Avenue CRD address was returned with the notation "Attempted – Not Known, Unable To Forward, Return To Sender."
- b. The certified letter sent to the Prairie Avenue CRD address is still listed on the U.S. Postal Service's website as "out for delivery."
- c. The certified letters sent to the two Arizona addresses have been returned to FINRA with the notation "Unable To Forward, Unable To Forward, Return To Sender."

22. Two of the regular mailings were returned to FINRA, and two have not been returned:

- a. The letter sent to the Sheridan Avenue CRD address was returned with the notation "Attempted – Not Known, Unable To Forward, Return To Sender."
- b. The letter sent to the Paradise Valley address was returned with the notation "Unable To Forward, Unable To Forward, Return To Sender."
- c. The letters sent to the Prairie Avenue CRD address and the Scottsdale address were not returned to FINRA, indicating that they were delivered.

23. Ellis failed to appear for testimony on June 12, 2014.

24. By failing to appear for testimony on May 27 and June 12, 2014, Ellis violated FINRA Rules 8210 and 2010.

RELIEF REQUESTED

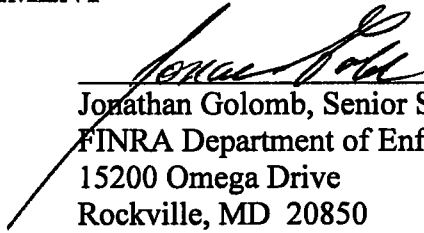
WHEREFORE, the Department respectfully requests that the Panel:

- 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) be imposed; and
- C. order that Respondent 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: November 18, 2014



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