

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 201409725001**

TO: Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

RE: David Diehl, Respondent
CRD No. 2604969

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I submit this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against me alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. I hereby accept and consent, without admitting or denying the findings, 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, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

BACKGROUND

David Diehl resides in St. Peters, Missouri. He has been registered with seven firms since entering the securities industry in 2004. During the time relevant to this matter, he was registered with First Liberties Financial (from July 2010 through March 2012). He joined another firm after leaving First Liberties Financial, but left that firm on April 26, 2012. Diehl was also registered with investment advisors intermittently. He established an RIA, Diehl Wealth Management Group, LLC, in October 2010, but terminated its registration in August 2011. Diehl has held general securities, investment company/variable contracts, state agent, and investment advisor licenses.

RELEVANT DISCIPLINARY HISTORY

Diehl was the subject of an AWC (2012031952301) issued on December 11, 2012. Pursuant to that AWC, Diehl was suspended in all capacities for four months and fined \$7,500 for indirectly borrowing money from a customer without his firm's approval as part of an arrangement to train the customer's son in the securities industry, and for failing to timely amend his Form U4 to disclose a tax lien. By virtue of this conduct, Diehl was found to have violated Art. V, Sec. 2(c)

of FINRA's By-Laws, FINRA Rule 2010, NASD Rules 2110 and 2370, and NASD IM-1000-1.

OVERVIEW

David Diehl engaged in private securities transactions and an outside business activity without disclosing these activities to his firm, First Liberties Financial, between 2010 and March 2012. He participated in raising approximately \$480,000 from seven investors for a business in which he was involved, which owned and operated three hamburger restaurants in the St. Louis, Missouri area. Most of these investors were his brokerage customers. By virtue of this conduct, Diehl violated NASD Rules 3030 and 3040, and FINRA Rules 2010 and 3270.

FACTS AND VIOLATIVE CONDUCT

While Diehl was registered with First Liberties Financial, he approached a client who was a well-known sports figure with the idea of opening local "high quality" burger restaurants under the client's name. During the latter half of 2010, Diehl participated in establishing the business, and the first of three restaurants opened in April 2011. The restaurants were managed on a day-to-day basis by another individual brought into the business by Diehl, although Diehl continued to be involved in the business.

The founders set up a corporate entity to own and operate the restaurants. The restaurant manager was designated as the president, and two of Diehl's close relatives were designated as corporate secretary and director, respectively. The address provided for the corporation on state filings was Diehl's home address, and the registration of a fictitious name for the restaurants identified Diehl's office location as the address for the corporation.

Diehl arranged for the client identified above to invest money in the business on March 11, 2011 and February 2012, and to allow the restaurants to use his name and likeness. In return for his investment, this client received a promissory note which was supposed to pay 10% per year.

Diehl also successfully solicited investments from at least six other investors, including five of his customers, and attempted to induce a former colleague to invest. The six additional investors also received promissory notes paying 8-10% per year for up to 10 years.

Diehl raised a total of \$480,000 from these seven investors. Due to the lack of success of the business, the corporation stopped paying interest on the notes during 2013.

Under NASD Rule 3040, an associated person may not participate in a private securities transaction without providing written notice to his or her firm, and

obtaining acknowledgement or permission from the firm. Diehl directly solicited at least eight investors, seven successfully, and sold securities in the form of promissory notes totaling \$480,000 while he was registered with First Liberties Securities, but did not provide written disclosure of these sales. Therefore, he violated NASD Rule 3040.

NASD Rule 3030 and FINRA Rule 3270 require registered persons to disclose outside business activities to their member firms.¹ A person subject to the rule must disclose an outside activity when any substantial steps are taken to commence the activity, even if the business is not expected to begin operating until sometime in the future. Diehl became subject to the requirements of Rule 3030 when he first began taking steps to create and finance the business. However, he failed to provide written disclosure of this outside business activity to his firm. Therefore, he violated NASD Rule 3030 and FINRA Rule 3270.

* * *

By virtue of the foregoing conduct, Respondent violated NASD Rules 3030 and 3040 and FINRA Rules 2010 and 3270.

B. I also consent to the imposition of the following sanctions:

1. a suspension from association with any FINRA member firm for nine months; and
2. a fine of \$10,000.

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

The fine shall be due and payable either immediately upon reassociation with a member firm following the nine month suspension noted above, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier. I have submitted an Election of Payment form showing the method by which I propose to pay the fine imposed.

I specifically and voluntarily waive any right to claim that I am unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

I understand that if I am suspended from associating with any FINRA member, I become subject to a statutory disqualification as that term is defined in Article III, Section 4 of FINRA's By-Laws, incorporating Section 3(a)(39) of the Securities Exchange Act of 1934. Accordingly, I may not be associated with any FINRA member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension (see FINRA Rules 8310 and 8311).

¹ FINRA Rule 3270 replaced NASD Rule 3030 as of December 15, 2010.

II.

WAIVER OF PROCEDURAL RIGHTS

I specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against me;
- B. To be notified of the Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, I specifically and voluntarily waive any right to claim bias or prejudgment of the General Counsel, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

I further specifically and voluntarily waive any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

III.

OTHER MATTERS

I understand that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against me; and
- C. If accepted:

1. this AWC will become part of my permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against me;
2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about my disciplinary record;
3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
4. I may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. I may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects my: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

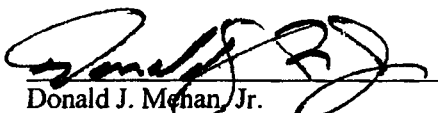
D. I may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. I understand that I may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I have agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce me to submit it.

4/9/14
Date


Respondent

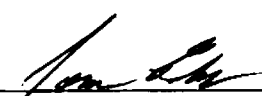
Reviewed by:


Donald J. Mehan Jr.
Moline & Mehan
9015 Forsyth Blvd.
St. Louis, MO 63105
Counsel for Respondent

Accepted by FINRA:

Apr. 15, 2014
Date

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



Jonathan Golomb
Senior Special Counsel
FINRA Department of Enforcement
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Rockville, MD 20850