

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

Department of Enforcement,

Complainant,

v.

James Randall Clay (CRD No. 5748560),

Respondent.

DISCIPLINARY PROCEEDING
NO. 2014039775501

HEARING OFFICER:

COMPLAINT

The Department of Enforcement (“Enforcement”) alleges:

SUMMARY

1. Between November and December 2013 (the “Relevant Period”), while employed as a general securities representative with U.S. Bancorp Investments, Inc. (“Bancorp” or the “Firm”), a FINRA-regulated broker-dealer, James Randall Clay (“Clay”), engaged in an undisclosed and unapproved outside business activity involving the acquisition and management of 49 rental properties located in Clarksville, Tennessee (the “Rental Properties”).

2. Clay’s real estate venture was the byproduct of his relationship with DW, a then 86-year old customer of the Firm and Clay. DW and Clay entered into an agreement whereby DW would sell Clay the Rental Properties for \$1 million, finance Clay’s purchase, and make an additional \$500,000 loan to Clay for repairs and upgrades.

3. In furtherance of his undisclosed outside business, Clay established a company called Clay Enterprises, LLC (“Clay Enterprises”) and collected and deposited into his personal bank account nearly \$6,000 in rent proceeds from the Rental Properties’ tenants. In addition, in

order to fund the \$500,000 loan, Clay liquidated nearly \$500,000 worth of securities held in DW's Firm advisory account.

4. Ultimately, DW's son, JW, successfully prevented Clay from receiving the proposed loan and complained to the Firm about Clay's acquisition of the Rental Properties. During the Firm's investigation into JW's complaint, Clay repeatedly lied to a Firm supervisor claiming, among other things, that he was not personally involved in any outside business activity, but merely facilitating his sister's purchase of the Rental Properties.

5. Clay repeated these misrepresentations concerning his purchase of the Rental Properties to Enforcement in both written responses to requests for information sent pursuant to FINRA Rule 8210 and on-the-record interviews ("OTR" or "OTRs").

6. Clay's statements to the Firm and Enforcement were false as evidenced by the fact that he: (a) prepared and provided the customer with a handwritten term sheet for the property sale that he personally signed as the "buyer"; (b) established Clay Enterprises using his residence as its business address and identifying himself as the registered agent for the company; and (c) never transferred to his sister any of the rent receipts received from tenants of the Rental Properties, which receipts he deposited in his personal bank account.

7. As a result of the foregoing misconduct, Clay violated: (i) FINRA Rules 3270 and 2010 by engaging in an outside business activity without providing prior written notice to his FINRA-registered broker-dealer employer; (ii) FINRA Rule 2010 by making false statements to his FINRA-registered member firm employer regarding his outside business activities; and (iii) FINRA Rules 8210 and 2010 by providing false and misleading information to Enforcement.

RESPONDENT AND JURISDICTION

8. Clay entered the securities industry in January 2010 and has been associated with three FINRA-regulated broker-dealers during his approximately 7 years in the securities industry. Clay obtained his Series 7 (General Securities Representative or “GSR”) and Series 66 (NASAA Uniform Combined State Law Examination or “RA”) securities licenses in February and March 2010, respectively. From August 2012 to January 2014, Clay was associated with Bancorp as a GSR and RA.

9. In a Uniform Termination Notice of Securities Registration (Form U5) dated January 13, 2014, Bancorp reported that it terminated Clay’s employment on December 16, 2013, because Clay violated the Firm’s “Code of Ethics by entering into a personal transaction with a known ... [Firm] customer.”

10. On January 28, 2014, Clay became associated with another FINRA-regulated broker-dealer, as a GSR and RA, where he remained employed until his termination on June 29, 2017.

11. Although Clay is no longer registered or associated with a FINRA-regulated broker-dealer, he remains subject to FINRA’s jurisdiction for the purposes of this proceeding, pursuant to Article V, Section 4 of FINRA’s By-Laws, because: (i) the Complaint was filed within two years after the effective date of the termination of Clay’s registration with a FINRA-regulated broker-dealer, namely July 7, 2017; and (ii) the Complaint charges Clay with misconduct committed while he was registered or associated with a FINRA-registered broker-dealer.

FIRST CAUSE OF ACTION
Outside Business Activities
Violation of FINRA Rule 3270 and 2010

12. Enforcement realleges and incorporates by reference Paragraphs 1 through 11 above.

13. FINRA Rule 3270 prohibits registered persons from acting as an “employee, independent contractor, sole proprietor, officer, director or partner of another person, or be compensated, or have the reasonable expectation of compensation, from any other person as a result of any business activity outside the scope of the relationship with his or her member firm, unless he or she has provided prior written notice to the member, in such form as specified by the member.”

14. FINRA Rule 2010 states that “[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.”

15. A violation of FINRA Rule 3270 also constitutes a violation of FINRA Rule 2010.

16. On August 24, 2012, Clay joined the Firm as a GSR and financial advisor.

17. Bancorp’s written supervisory procedures (“WSPs”) in effect during the Relevant Period required its registered representatives to disclose, in writing, any outside business activities prior to engaging in such activities. Bancorp’s WSPs further required its registered representatives to provide a full description of the nature of the proposed activity and identify any conflicts of interest that may result from employment with Bancorp and the outside business entity.

18. On or about August 24, 2012, Clay signed a compliance attestation form acknowledging, among other things, that:

Prior to engaging in any outside business activity, I will obtain approval from my assigned Principal to do so...

DW's Customer Profile

19. On September 26, 2012, DW, a long-time customer of Clay, opened two accounts with Clay at the Firm – a brokerage account and an advisory account with a combined value of approximately \$900,000. At that time, DW was an 85-year-old retiree, who derived his monthly income from, among other sources, the nearly \$17,000 in rents that he collected from the Rental Properties.

Clay Enters into an Agreement to Purchase the Rental Properties from DW

20. On or about November 25, 2013, Clay went to DW's home to discuss his purchase of the Rental Properties. On a piece of lined paper (the "Term Sheet"), Clay wrote the terms of his purchase of the Rental Properties from DW.

21. The Term Sheet stated that DW would sell the Rental Properties to Clay for \$1 million and loan Clay an additional \$500,000 to make repairs and upgrades to the Rental Properties. The transaction would be seller-financed over a term of 20 years, with Clay making an initial down payment of \$250,000 and borrowing the remaining \$1,250,000 from DW at a 4.50 percent interest rate. Clay signed the Term Sheet as the "buyer," agreeing to make monthly loan payments to DW of \$7,908.12. There were no other parties to the agreement.

22. Around the same time, DW prepared a handwritten note addressed to the tenants of the Rental Properties which stated, in pertinent part:

The houses, apartments and cabins ... have been sold to Jimmy [C]lay, Vice President of the U.S. Bank in Clarksville, Tennessee this date. He now owns the property and give him your consideration.

23. In order to fund the \$500,000 loan for the repairs to the Rental Properties, on or about December 2, 2013, Clay entered a series of unsolicited sell orders in DW's advisory account, liquidating over \$490,000 worth of stocks and mutual fund positions. On December 3, 2013, and against on December 4, 2013, Clay caused the Firm to issue and mail to DW's home a check payable to DW in the amount of \$497,665.65 (the "\$497,000 check") and \$498,042.40 (the "\$498,000 check"), respectively.

Clay Begins Collecting Rent and Establishes Clay Enterprises

24. In early December 2013, Clay collected \$5,840 from tenants of the Rental Properties -- \$4,750 in cash, and \$1,090 in three money orders made payable to Clay. On December 4, 2013, Clay deposited the \$5,840 of rent proceeds into his personal checking account, which he held at a bank affiliated with the Firm.

25. Clay also established a limited liability company, Clay Enterprises, through which he was going to manage the Rental Properties, paying approximately \$416 to an on-line legal service company in connection with its creation. On December 11, 2013, Clay Enterprises' initial corporate documents were filed with the Division of Business Services for the Tennessee Secretary of State, designating Clay as its registered agent and using Clay's residential address as the company's principal business office and mailing address.

26. Although Clay was aware that he was required to provide prior written notice of outside business activities to Bancorp, Clay did not disclose his agreement with DW to purchase the Rental Properties, his receipt and deposit of rents therefrom, or his creation of Clay Enterprises to the Firm.

27. As a result of the foregoing conduct, Clay violated FINRA Rules 3270 and 2010.

SECOND CAUSE OF ACTION

**False Statements to FINRA-Registered Broker-Dealer Employer
Violation of FINRA Rule 2010**

28. Enforcement realleges and incorporates by reference Paragraphs 1 through 27 above.

29. FINRA Rule 2010 states that “[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.” Rule 2010(b) states that “[p]ersons associated with a member shall have the same duties and obligations as a member under ... [FINRA] Rules.”

30. On or about December 10, 2013, JW called GS, Clay’s supervisor and a regional manager at the Firm, and complained about Clay’s purchase of the Rental Properties.

31. While attempting to retrieve the \$498,000 check from DW, Clay learned that DW’s son had called GS. Clay then called GS and, during that call, told GS that his sister, CP, entered into the agreement to purchase the Rental Properties from DW.

32. During a subsequent discussion with GS later that same day, Clay again told his supervisor that the agreement to purchase the Rental Properties was between his sister and DW and not between DW and himself, and claimed that he only signed the Term Sheet on his sister’s behalf.

33. In an e-mail dated December 11, 2013 (the “December 11th Statement”), Clay again told the Firm that he prepared the Term Sheet and signed it on behalf of his sister.

34. Clay’s verbal and written statements to the Firm were false, as demonstrated by, among other things: (i) the Term Sheet, which identifies Clay as the sole “buyer” of the Rental Properties; (ii) DW’s handwritten note to the tenants of the Rental Properties which, consistent with the Term Sheet, identifies Clay as the purchaser and owner of the Rental Properties; (iii)

Clay's creation of his limited liability company, Clay Enterprises and naming himself as Clay Enterprises' registered agent in a filing with the Tennessee Secretary of State; and (iv) Clay's collecting and depositing \$5,840 in rent proceeds from the Rental Properties into his personal checking account -- \$4,500 in cash and three money orders made payable to Clay totaling \$1,090.

35. As a result of the foregoing conduct, Clay violated FINRA Rule 2010.

THIRD CAUSE OF ACTION

Providing False and Misleading Statements and Testimony to FINRA Violation of FINRA Rules 8210 and 2010

36. Enforcement realleges and incorporates by reference Paragraphs 1 through 35 above.

37. FINRA Rule 8210(a) requires a "person subject to FINRA's jurisdiction to provide information orally, in writing ...and to testify at a location specified by FINRA staff, under oath or affirmation ... with respect to any matter involved in ...[an] investigation." Rule 8210 prohibits a person subject to FINRA's jurisdiction from providing false or misleading information to FINRA in connection with an investigation.

38. A violation of FINRA Rule 8210 also constitutes a violation of FINRA Rule 2010.

39. On November 3, 2014 Enforcement sent Clay a written request for documents and information pursuant to FINRA Rule 8210. In his December 1, 2014 written response to that request (the December 8210 Response), Clay stated, among other things, that:

- a. he did not enter into an agreement to purchase the Rental Properties from DW;

- b. he was not a party to the proposed real estate transaction, and he did not receive or expect to receive any compensation in connection with the Rental Properties; and
- c. his sister purchased the Rental Properties from DW.

40. On September 18, 2015 and November 15, 2016, pursuant to FINRA Rule 8210, Clay provided sworn, on-the-record testimony (the “September OTR” and “November OTR”, respectively). At the outset of the September OTR, Enforcement instructed Clay concerning his obligation under Rule 8210 to answer FINRA’s questions completely and truthfully. Similarly, at the outset of his November OTR, Clay acknowledged that prior to his testimony he reviewed and fully understood a document entitled Supplemental Information for Testimony Requests Pursuant to FINRA Rule 8210, which again reminded Clay of his obligation to answer questions posed during the OTR completely and truthfully.

41. Clay testified during the September 2015 and November 2016 OTRs that he did not purchase the Rental Properties from DW, but merely facilitated a real estate transaction between his sister and DW.

42. Clay also testified during the September 2015 and November 2016 OTRs that he signed the Term Sheet, collected and deposited rent proceeds into his personal bank account, and established Clay Enterprises only to help his sister.

43. Clay also provided a sworn affidavit dated September 7, 2016 (the “Affidavit”) to Enforcement in which he stated that DW transferred rent checks for Clay “to hold until the deal could close and ... [Clay’s sister] could take over the business”, and that he “deposited ... [the] checks in ... [his] bank account and planned to transfer them to ... [his sister] once the deal was final.”

44. Clay's statements to Enforcement, as described in Paragraphs 39 through 43, were false, as demonstrated by, among other things:

d. Clay's admission during his OTR that he personally established Clay Enterprises, paid for the expenses associated with establishing the LLC, used his residential address as the place of business for Clay Enterprises, named himself as the company's registered agent, and did not name his sister as an agent for or holding any other title with Clay Enterprises until approximately two days after JW called the Firm to complain about Clay's purchase of the Rental Properties from DW;

e. Clay's testimony that he prepared the Term Sheet and, as the Term Sheet, states, DW would provide \$500,000 in financing for repairs and updates in connection with the purchase of the Rental Properties;

f. Clay's own actions, which included (i) two visits to DW's house to obtain the funds generated by his liquidation of DW's Firm account and (ii) his use of the rent proceeds he collected for his personal expenses such as his rent and child support; and

g. DW's handwritten note to the tenants of the Rental Properties which, consistent with the Term Sheet, indicates that Clay was the purchaser and owner of the Rental Properties.

45. As a result of the foregoing conduct, Clay violated FINRA Rules 8210 and 2010.

RELIEF REQUESTED

WHEREFORE, Enforcement respectfully requests that the Panel:

A. make findings of fact and conclusions of law that Respondent(s) 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 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: October 4th, 2017



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