

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

Department of Enforcement,

Complainant,

v.

Raymond Clark (CRD No. 3120696),

Respondent.

DISCIPLINARY PROCEEDING

No. 2014040349001

HEARING OFFICER - KWB

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: March 26, 2015

INTRODUCTION

Disciplinary Proceeding No. 2014040349001 was filed on November 24, 2014, by the Department of Enforcement of the Financial Industry Regulatory Authority ("FINRA") ("Complainant"). Respondent Raymond Clark ("Clark" or "Respondent") submitted an Offer of Settlement (Offer) to Complainant dated March 24, 2015. Pursuant to FINRA Rule 9270(e), the Complainant and the National Adjudicatory Council ("NAC"), a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA") have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to FINRA Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.

Under the terms of the Offer, Respondent has consented, without admitting or denying the allegations of the Complaint, 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, to the entry of findings and violations consistent with the allegations of the Complaint, and to the imposition of the sanctions set forth below, and fully understands that this Order will become part of

Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA.

BACKGROUND

Clark entered the securities industry in 1998, when he associated with a member firm. Thereafter, Clark was associated with several member firms and registered at various times as a Corporate Securities Representative ("CS"), General Securities Principal ("GSP"), a General Securities Representative ("GSR"), and an Investment Banking Representative ("IB"). Most recently, from July 2010 to August 2014, Clark was associated with FINRA member Dynasty Capital Partners, Inc. ("Dynasty" or the "Firm"), where he was registered as a CS, a GSP, a GSR, and an IB.

On August 7, 2014, Dynasty filed a Form U5 for Clark, terminating his association with the Firm the same day. Clark has not been registered or associated with a FINRA member firm since he was terminated on August 7, 2014. Although Clark is no longer registered or associated with a FINRA member 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 Clark's registration with Dynasty, namely, August 7, 2014; and (2) the Complaint charges him with 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.

In September 2012, Clark entered into an AWC (2008014383901) for violations of NASD Rules 3110 and 2110 for using his personal email account to communicate with customers. Clark was fined \$5,000.00 and suspended for two (2) months in all capacities.

In October 2013, FINRA initiated a regulatory action (2011027402201) against Clark for, among other things, violations of FINRA Rule 2010 for using his personal email account to communicate with customers, causing his firm to violate recordkeeping rules, and failing to report customer complaints to the firm about commission charges that culminated in a hearing. By decision dated August 5, 2014, the hearing panel fined Clark \$20,000.00 and suspended him for nine (9) months in all capacities and for three (3) months in a supervisory capacity. This decision is currently on appeal to the NAC.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:

**FIRST CAUSE OF ACTION
(Failure to Appear for On-The-Record Testimony)
(FINRA Rules 8210 and 2010)**

In or about April 2014, FINRA staff began investigating whether Clark executed excessive and/or unauthorized trades in customer accounts, exercised discretion without authority in customer accounts, and accepted trade instructions from an individual who was not authorized to exercise trading authority in a customer account.

As part of its investigation, FINRA staff requested Clark's on-the-record testimony on several occasions, as detailed below.

First Request for Testimony

On or about August 14, 2014, FINRA staff sent a letter to Clark, pursuant to FINRA Rule 8210, in connection with its investigation of the misconduct described above (the "First Request"). The First Request requested that Clark appear for on-the-record testimony on September 4 and 5, 2014 at FINRA's offices at 4600 S. Syracuse St., Suite 1400, Denver, Colorado at 9:00 a.m.

The First Request was sent by first class and certified mail to Clark's residential address in Buffalo, New York, as listed in the Central Registration Depository (the "CRD Address"). The First Request was also sent to two electronic mail ("email") addresses used by Clark:

██████████ and ██████████

The first class mailing of the First Request was not returned.

FINRA staff confirmed through the United States Postal Service ("USPS") Tracking and Information System that the certified mailing of the First Request was delivered to Clark's CRD Address on August 18, 2014, and signed by "Louise Clark."

On September 4, 2014, Clark informed FINRA staff telephonically that he would not appear for the OTR on September 4 and 5, 2014.

Clark did not appear for, or provide, on-the-record testimony on September 4 or 5, 2014.

Second Request for Testimony

On or about September 29, 2014, FINRA staff sent a second letter to Clark, pursuant to FINRA Rule 8210, that again requested Clark's appearance for on-the-record testimony in connection with the misconduct previously described (the "Second Request"). The Second Request requested that Clark appear for on-the-record testimony on October 16 and 17, 2014 at FINRA's offices at 4600 S. Syracuse St., Suite 1400, Denver, Colorado at 9:00 a.m.

The Second Request was sent by first class and certified mail to Clark's CRD Address and to Clark's business address also located in Buffalo, NY (the "Business Address"). The Second Request was also sent to Clark's email address, ██████████. The Second Request for Clark's testimony was not sent to the email address,

██████████ because he had terminated his association with Dynasty.

The first class mailing of the Second Request sent to the CRD Address was not returned.

The certified mailing of the Second Request sent to the CRD Address was returned to FINRA by the USPS on November 6, 2014. It was marked, "Return to Sender/Unclaimed/Unable to Forward."

The first class mailing of the Second Request sent to the Business Address was not returned.

FINRA staff confirmed through the USPS Tracking and Information System that the certified mailing of the Second Request sent to the Business Address was delivered on October 3, 2014, and signed by "Steven C. Pehta."

On October 14, 2014, Clark sent an email to FINRA staff, stating that he would not attend the on-the-record testimony scheduled for October 16 and 17, 2014, he was no longer registered with a FINRA member firm, and he did not wish to be registered with a broker-dealer.

By email dated October 15, 2014, FINRA staff acknowledged receipt of Clark's email and notified him that his failure to appear for testimony would be deemed a violation of FINRA Rule 8210.

Clark did not appear for, or provide, on-the-record testimony on October 16 or 17, 2014.

Subsequent Communications with Clark

Subsequently, Clark and FINRA staff exchanged several email communications wherein Clark reiterated that he did not wish to be associated with a member firm in the future. However, he also indicated that he was now willing to appear for testimony, but that it would have to be scheduled after January 2015.

In response, by letter dated October 23, 2014, FINRA staff advised Clark that: (1) he had already failed to appear for testimony on two prior occasions; (2) the staff had been seeking his testimony since August and therefore delaying his OTR until after January 2015 was

unacceptable; (3) the staff would allow him to choose among certain dates in November, including Saturdays, for his testimony, and that as a final accommodation, the testimony would be scheduled in FINRA's New York office; and (4) he had to advise the staff by October 28, of the dates of his choosing, and if he failed to do so, the staff would select dates in November for his testimony.

Clark did not respond to the October 23 letter and, consequently, FINRA staff requested his testimony for a third time, as described below.

Third Request for Testimony

On or about October 30, 2014, FINRA staff sent a third letter to Clark, pursuant to FINRA Rule 8210, that again requested Clark's appearance for on-the-record testimony in connection with the misconduct previously described (the "Third Request"). The Third Request requested that Clark appear for on-the-record testimony on November 13 and 14, 2014 at FINRA's offices at 200 Liberty Street, 12th Floor, New York, New York, at 9:00 a.m.

The Third Request was sent by first class and certified mail to Clark's CRD Address and Business Address. The Third Request was also sent to Clark's email address,

[REDACTED]

The first class mailing of the Third Request sent to the CRD Address was not returned.

The certified mailing of the Third Request sent to the CRD Address was not returned to the staff. FINRA staff confirmed through the USPS Tracking and Information System that a notice of the certified mailing was left on November 6, 2014.

The first class mailing of the Third Request sent to the Business Address was not returned.

FINRA staff confirmed through the USPS Tracking and Information System that the certified mailing of the Third Request sent to the Business Address was delivered on November 4, 2014. It was signed by an illegible signature.

On November 12, 2014, the day before his scheduled testimony, Clark emailed FINRA staff and stated that he wanted to reschedule his on-the-record testimony. By email dated the same day, FINRA staff acknowledged receipt of Clark's email and notified him that if he did not appear for his testimony on the scheduled date, it would be deemed a violation of FINRA Rule 8210.

Clark did not appear for, or provide, on-the-record testimony on November 13 or 14, 2014.

Clark received proper notice of the First Request, Second Request and Third Request.

Clark's failure to provide the requested testimony materially impeded FINRA staff's investigation of several critical matters, including whether Clark excessively traded and/or engaged in unauthorized transactions in multiple customer accounts, exercised discretion without authorization, and accepted trading instructions from an individual who was not authorized to exercise trading authority in a customer account.

By reason of the facts alleged above, Clark's failure to provide on-the-record testimony scheduled pursuant to FINRA Rule 8210 on three occasions, Clark violated FINRA Rules 8210 and 2010.

Based on the foregoing, Respondent violated FINRA Rules 8210 and 2010.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondent from any future

misconduct, and represent a proper discharge by FINRA, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

It is ordered that Respondent be barred from associating with any FINRA member in all capacities.

The sanctions imposed herein shall be effective on a date set by FINRA staff. Pursuant to FINRA Rule 8313(e), a bar or expulsion shall become effective upon approval or acceptance of this Order.

SO ORDERED.

FINRA

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



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