

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Peter Orlando (CRD No. 1142715),

Respondent.

DISCIPLINARY PROCEEDING

No. 2014043863001

HEARING OFFICER:

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Beginning in August 2014 through September 2014, while associated with MetLife Securities, Inc. (“MetLife” or “the Firm”),¹ Respondent Peter Orlando improperly obtained control over the finances of MetLife customer DW, an 81-year-old widow.

2. Orlando obtained a durable power of attorney (“durable POA”) and a health power of attorney (“health POA”) over DW; was designated as the executor of DW’s will; and was named the beneficiary of DW’s bank account. Orlando was also named as the primary beneficiary of DW’s will, with his wife named as a contingent beneficiary.

¹ MetLife became known as MSI Financial Services, Inc. after Orlando’s registration was terminated from the firm and is now known as MML Investors Services, LLC.

3. Orlando failed to disclose these arrangements to MetLife, which prohibited its representatives from serving in a fiduciary capacity for, or being named the beneficiary of the account of, anyone other than a family member.

4. By using his position of trust to obtain control over DW's finances, Orlando failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of FINRA Rule 2010.

5. In August 2014, Orlando also advised DW to surrender a variable annuity she held with the Firm, claiming that she needed to do so in order for him to assist her with personal financial matters. That recommendation, which resulted in DW paying nearly \$4,000 in surrender fees and charges, was unsuitable. By making an unsuitable recommendation that DW surrender the variable annuity, Orlando violated FINRA Rules 2111 and 2010.

6. In or about August 2013, and also contrary to the Firm's policies, Orlando maintained two forms signed by DW that were, except for a date and/or contract number, blank and incomplete. By maintaining pre-signed customer forms, Orlando violated FINRA Rule 2010.

RESPONDENT AND JURISDICTION

7. Orlando was first associated with a FINRA member from May 1983 to September 1983.

8. He obtained his Series 6 and 63 licenses in June 1983, his Series 22 license in August 1983, his Series 7 license in June 1996, his Series 65 license in July 1996 (he requalified for his Series 65 in June 2008), his Series 24 license in April 2001, his Series 31 license in August 2008, and his Series 3 license in November 2009.

9. Between March 1988 and June 2010, Orlando was registered with six other FINRA members.

10. From July 2010 to December 2014, Orlando was registered with MetLife as a general securities representative.

11. Orlando is currently registered with another FINRA member firm and is therefore subject to FINRA's jurisdiction.

STATEMENT OF FACTS

12. DW became Orlando's customer in or about December 2008.

13. Over the next six years, Orlando visited DW and her husband in their home approximately 20 times to discuss their finances.

14. In October 2011, Orlando recommended to then 78-year-old DW that she invest in a MetLife Preference Premier Variable Annuity. The variable annuity included, at additional cost to DW, a Guaranteed Minimum Income Benefit ("GMIB") rider intended to meet her income needs as she aged.

15. In March 2014, DW's husband passed away.

16. On or about July 26 or 27, 2014, DW moved to an assisted living facility.

17. DW's house was sold on or about August 1, 2014 and the funds from the sale, approximately \$350,000, were deposited into DW's bank account.

18. Shortly thereafter, Orlando began taking control over DW's finances.

19. Orlando advised DW that, if she wanted his help with her financial affairs, she could not remain a client of the Firm.

20. Accordingly, with Orlando's assistance, on August 6 and 7, 2014, DW instructed MetLife to close her brokerage account at the Firm.

21. On August 11, 2014, Orlando, with DW on speakerphone, called the MetLife Call Center to surrender the variable annuity. During the call, Orlando stated the reason for the surrender was that DW's "circumstances have changed," and he proceeded to arrange the surrender.

22. As a result of the surrender, DW paid a sales charge of \$30, a GMIB charge of \$479, a withdrawal charge of \$3,440 and was deprived of the \$626.91 monthly automatic withdrawal payments she had been receiving, as well as the future income she would have received, as a result of purchasing the GMIB.

23. On the same day that he called to surrender DW's variable annuity, August 11, 2014, Orlando drove DW to her bank, where she revoked powers of attorney previously assigned to her sons WW and KW, closed her joint account with WW, and moved her bank account funds (over \$372,000) to a new account titled "[DW] TTEE for Peter Orlando."

24. The titling of the new account meant that Orlando became the beneficiary of DW's bank account and, upon DW's death, would receive all of the funds in the account.

25. Orlando also recommended to DW that she retain a lawyer, RH, to establish a conservatorship for her, with Orlando as conservator.

26. Orlando took these steps because he suspected, at that time, that DW was not competent to handle her own affairs.

27. Orlando later decided against attempting to become DW's conservator because, among other things, he was told by the Firm that he was not permitted to act as a conservator.

28. Orlando decided instead to pursue becoming DW's durable Power of Attorney ("POA").

29. Orlando did so because he believed that DW needed help with her financial affairs.

30. Orlando next recommended that DW retain a second lawyer, JKS, to advise DW with respect to providing Orlando with a durable POA and a health POA and to assist in revising DW's will.

31. On August 21, 2014, Orlando drove DW to JKS's office and was present while DW met with her.

32. That same day, August 21, 2014, DW appointed Orlando as "Durable Power of Attorney for Health Care." Pursuant to that appointment, Orlando was DW's attorney-in-fact to make health care decisions for her.

33. On August 28, 2014, DW appointed Orlando as executor of her revised will. DW's revised will also named Orlando (and if he passed, Orlando's wife) as the primary beneficiary of DW's estate.

34. On September 10, 2014, DW, in a durable POA, appointed Orlando to serve as her agent and attorney-in-fact. The durable POA specifically provided Orlando with the authority to acquire and sell DW's property and to make banking, investment, and insurance decisions for her.

35. MetLife's policies and procedures prohibited Orlando from being the beneficiary of DW's bank account; from serving in any fiduciary capacity, including as a durable or health POA for DW; and from serving as the executor of DW's will.

36. Additionally, MetLife's policies required Orlando to contact the Firm upon learning that he had been named to any of these roles and to advise DW and all other appropriate parties to remove him from these roles.

37. In late September 2014, DW's family members learned that Orlando was the beneficiary of DW's bank account, held both a durable and health POA for her, and had otherwise inserted himself into DW's affairs.

38. With the assistance of a new attorney, DW and her family took steps to remove Orlando's authority over DW's finances, including, by revoking Orlando's durable POA and health POA and removing him as executor and beneficiary of DW's will and beneficiary of DW's bank account.

39. In late 2014, during its internal investigation of Orlando's interactions with DW, MetLife discovered a Variable Annuity Withdrawal Form and a Request for Electronic Transfer of Funds in Orlando's office. The forms were incomplete and were pre-signed by DW.

40. The Firm's Prohibited and Restricted Business Practices policy forbade registered representatives from "[o]btaining and keeping on file blank forms that have been signed by the client" and from having clients sign blank forms "to be completed later by the representative."

41. Orlando resigned from MetLife in December 2014, while the Firm was conducting its investigation of his conduct.

FIRST CAUSE OF ACTION
(Unethical Conduct – Violation of FINRA Rule 2010)

42. The Department of Enforcement re-alleges and incorporates by reference paragraphs 1 through 41 above.

43. FINRA Rule 2010 requires registered representatives to, in the conduct of their business, “observe high standards of commercial honor and just and equitable principles of trade.”

44. Orlando used his position of trust to become the executor of DW’s will, DW’s durable and health POA, and the beneficiary of her bank account and her will.

45. By reason of the conduct described above, Orlando failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of FINRA Rule 2010.

SECOND CAUSE OF ACTION

(Unsuitable Recommendation – Violation of FINRA Rules 2111 and 2010)

46. The Department of Enforcement re-alleges and incorporates by reference paragraphs 1 through 45 above.

47. FINRA Rule 2111 requires that a registered representative have a reasonable basis to believe that a recommended transaction, like the surrender of a variable annuity, is suitable for the customer to whom the recommendation is made. The suitability requirement includes, among other things, a consideration of the loss of existing benefits, as well as the impact of surrender charges and any other related charges to the customer.

48. Orlando recommended that DW surrender the variable annuity without having a reasonable basis to believe that the transaction was suitable for DW, in view of the sales charge of \$30, a GMIB charge of \$497, a withdrawal charge of \$3,440, as well as the loss of the \$626.91 monthly automatic withdrawal payments she had been receiving and the future income she would have received as a result of purchasing the GMIB.

49. Orlando's reason for recommending the surrender of the variable annuity was that he was unwilling to assist DW with her finances if she remained a customer of MetLife.

50. When making the recommendation, Orlando failed to take into account the surrender and other charges, as well as DW's reliance on the variable annuity for income.

51. By making an unsuitable recommendation that DW surrender her variable annuity prior to its surrender date, Orlando violated FINRA Rule 2111 and, by virtue of violating FINRA Rule 2111, also violated FINRA Rule 2010.

THIRD CAUSE OF ACTION

(Maintaining Pre-Signed Customer Forms – Violation of FINRA Rule 2010)

52. The Department of Enforcement re-alleges and incorporates by reference paragraphs 1 through 51 above.

53. FINRA Rule 2010 requires registered representatives to, in the conduct of their business, "observe high standards of commercial honor and just and equitable principles of trade."

54. Maintaining pre-signed customer forms is a violation of FINRA Rule 2010.

55. Orlando had DW sign two customer forms that were incomplete and kept those forms in his customer file for DW.

56. By reason of the foregoing, Orlando failed to observe high standards of commercial honor and just and equitable principles of trade, thereby violating FINRA Rule 2010.

RELIEF REQUESTED

WHEREFORE, the Department of Enforcement 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; and
- C. order that Respondent bears such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date: 2-7-2018



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