

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

Department of Enforcement,

Complainant,

v.

Michael John Ahearn
(CRD No. 2661001),

Respondent.

Disciplinary Proceeding
No. 2016051389101

Hearing Officer MJD

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: April 29, 2019

INTRODUCTION

Disciplinary Proceeding No. 2016051389101 was filed on September 12, 2018, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent Michael John Ahearn submitted an Offer of Settlement (Offer) to Complainant dated April 22, 2019. 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 (as amended by the Offer of Settlement), 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 (as amended by the Offer of Settlement), 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

Ahearn first became registered with FINRA in February 1996. Between October 2004 and May 2011, Ahearn was registered with FINRA as a general securities representative and as a general securities sales supervisor through an association with Wells Fargo Clearing Services, LLC (BD No. 19616) ("Wells Fargo"). Further, between May 2011 and September 2016, Ahearn was registered with FINRA as a general securities representative and as a general securities sales supervisor through an association with Merrill Lynch, Pierce, Fenner & Smith Incorporated (BD No. 7691) ("Merrill Lynch").

According to the Form U5 filed by Merrill Lynch on September 16, 2016, Merrill Lynch discharged Ahearn effective August 26, 2016 for "[c]onduct inconsistent with regulatory requirements related to an account listing a registered representative as trustee and failure to be forthcoming during the review of the matter."

Although Ahearn 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 after the effective date of termination of his registration with a FINRA member firm, namely, September 16, 2018; and (2) the Complaint charges him with misconduct he committed while he was registered or associated with a FINRA member.

FINDINGS AND CONCLUSIONS

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

SUMMARY

1. Respondent Michael John Ahearn provided false information in a written response to a FINRA Rule 8210 request and false testimony during an on-the-record-interview, in violation of FINRA Rules 8210 and 2010.
2. FINRA staff made the requests for information and testimony in connection with an investigation into Ahearn and another registered representative, GW, regarding allegations that GW failed to disclose to his member firm that he was the trustee of an individual named MBM's assets and that he had been named as the executor of her estate. MBM inherited a large sum of money when her mother passed away.
3. On multiple account-opening documents for MBM's trust, Ahearn represented that GW, the trustee for MBM's trust and the authorized person on the accounts, was not employed by a FINRA member or other financial services company. When FINRA sent Ahearn a Rule 8210 request asking about these account-opening documents, he stated that GW had told him he was unemployed and had never told him that he was a registered representative at another broker-dealer. Ahearn repeated this story in a later on-the-record interview when he testified, under oath, that GW had told him he was unemployed and that Ahearn did not learn that GW worked for another broker-dealer until after opening MBM's accounts.
4. As Ahearn has since admitted, these statements were false. Ahearn knew at the time he opened MBM's accounts that GW was employed by another broker-dealer and he misled FINRA about that fact. As a result, Ahearn violated FINRA Rules 8210 and 2010.

FACTS

Ahearn Has Known GW as a Broker with FINRA Firms for Nearly Two Decades

5. Ahearn met GW in the early 1990s, when they periodically commuted together daily on an Amtrak train from New Jersey to New York City for work. Ahearn and GW remained friends through 2016.

6. Through most of their association with one another, both Ahearn and GW worked in the securities industry at different broker-dealers. For almost the entire period from July 1999 through September 2016, both Ahearn and GW worked full-time for broker-dealers.¹

Ahearn Tries to Recruit GW to Join Wells Fargo and Merrill Lynch

7. On at least two occasions, Ahearn attempted to recruit GW to leave his employer member firm and join him at his broker-dealer—first at Wells Fargo and later at Merrill Lynch. In March 2009, Ahearn and his manager attempted to recruit GW to join Wells Fargo, including by meeting with GW in person. GW advised Ahearn that he was not prepared to leave his firm at that time. GW reported his decision not to leave his current firm and join Wells Fargo to Ahearn in an email, in which GW stated, in part, that “I have 3 years invested in [his broker-dealer] and some of the business we created . . . is not legally portable.”

8. In addition, sometime after Ahearn joined Merrill Lynch in 2010, at Ahearn’s suggestion, an executive at Merrill Lynch also tried to recruit GW to leave his firm and join Merrill Lynch. GW again responded that he was not prepared to make a move.

¹ GW first became registered with FINRA in December 1998. GW was registered as a general securities representative through an association with various FINRA member firms from December 1998 through May 2006. From May 2006 through the present, GW has been registered as a general securities representative through an association with a FINRA member firm.

Ahearn Opens Trust Accounts for GW at Wells Fargo under False Pretenses

9. In about 2009, MBM, a person who lived alone and struggled with health issues, inherited approximately \$700,000 upon the death of her mother.

10. In or around the summer of 2010, GW was appointed by MBM as trustee for the MBM Revocable Trust (the “MBM Trust”). In his capacity as trustee of the MBM Trust, from 2010 through 2012, GW opened several brokerage accounts with FINRA member firms, including certain trust accounts for which Ahearn served as registered representative (the “MBM Trust Accounts”).

11. In October 2010, GW opened two of the MBM Trust Accounts with Ahearn at Wells Fargo. Ahearn was the registered representative on the accounts. The account opening documentation—which Ahearn prepared or had prepared at his direction—listed MBM as the primary owner and GW as trustee, but stated falsely that GW was not employed by a “FINRA member or any other financial services company.” The documents also falsely listed GW’s occupation as “Retired.”

12. At the time GW opened two of the MBM Trust Accounts with Wells Fargo, Ahearn knew GW was employed by a FINRA member firm.

Ahearn Opens Trust Accounts for GW at Merrill Lynch under False Pretenses

13. From June 2011 through June 2012, following Ahearn’s move from Wells Fargo to Merrill Lynch, GW opened the other three MBM Trust Accounts with Ahearn at Merrill Lynch, transferring assets from the Wells Fargo accounts to the Merrill Lynch accounts. Ahearn served as the registered representative for these accounts, and the account opening documentation pertaining to them was prepared by him or at his direction. The account opening documentation listed MBM as the beneficial owner and GW as trustee.

14. The electronic Account Set Up form to open the MBM Accounts with Merrill Lynch falsely represented that GW was “NOT EMPLOYED.” The adjacent field, which asked “Is the account holder employed by,” was left blank, even though there was a specific option to select “Other Financial Institution.”

15. On a series of branch office registration questionnaires at Merrill Lynch between 2012 and 2015, Ahearn falsely represented that none of his clients were employed by a brokerage firm that was a FINRA member.

16. At the time GW opened the MBM Trust Accounts with Merrill Lynch and completed the branch office registration questionnaires, Ahearn knew that GW was employed by a broker-dealer.

Ahearn Submits a False Written Response to FINRA

17. FINRA staff investigated whether there were improprieties related to the handling of the MBM Trust Accounts. Among other issues, FINRA staff investigated whether Ahearn knew about GW’s affiliation with a broker-dealer in order to determine whether he or other individuals had violated FINRA rules.

18. On August 12, 2016, FINRA staff sent a request for information, pursuant to FINRA Rule 8210, to Ahearn, seeking information about the MBM Trust Accounts, GW and the account opening documentation.

19. On August 17, 2016, in response to the August 12, 2016 request, Ahearn produced to FINRA a written statement signed by him that addressed the questions posed in the request.

20. In his response to FINRA, Ahearn wrote, “[GW] said he was unemployed at the time the account was transferred. I knew his last place of employment to be [an investment bank] in NYC.”

21. Ahearn also wrote that, “[GW] did not tell me he was a registered representative at another broker dealer.”

22. The foregoing statements in Ahearn’s August 17, 2016 response to FINRA were false or misleading. Ahearn knew that GW was employed at a broker-dealer, both at the time when Ahearn opened the MBM Trust Accounts and when Ahearn responded to FINRA’s requests for information.

Ahearn Initially Denies, but then Admits, to Merrill Lynch That He Knew GW Worked for a FINRA Member Firm When He Opened the MBM Trust Accounts

23. On or about August 16, 2016, after receiving a copy of FINRA’s August 12, 2016 letter, Ahearn’s supervisor at Merrill Lynch interviewed him. During the interview, Ahearn admitted that GW was a registered representative at a particular FINRA member firm and had been for many years, and that he (Ahearn) knew GW was a registered representative at the time he opened the MBM Trust Accounts. Ahearn also told his supervisor that GW, who was trustee for the accounts, opened accounts with Ahearn as broker of record because he “obviously” could not serve as the registered representative for the MBM Trust Accounts at his own broker-dealer.

24. On or about August 17, 2016, Ahearn shared a draft of his response to FINRA’s August 12, 2016 requests with his supervisor. The supervisor noted that, contrary to their discussion the day before, Ahearn represented in his written response that he did not know that GW was a registered representative at another broker-dealer. The supervisor asked Ahearn if he wished to make any changes to the response, but Ahearn declined to do so. Ahearn submitted his false and misleading response to FINRA later that day.

25. Shortly thereafter, Ahearn's supervisor escalated the issue to Merrill Lynch's upper-level management. Merrill Lynch's internal investigations group interviewed Ahearn on or about August 19, 2016. During the initial part of this interview, Ahearn falsely maintained that GW was unemployed at the time he opened the MBM Trust Accounts. Upon being confronted with the statements he had previously made to his supervisor on or about August 16, 2016, however, Ahearn admitted that he knew GW was a registered representative at the time he opened the accounts. Ahearn also admitted that GW had asked him to open the accounts because GW himself was prohibited from serving as an adviser on the accounts at his employer member firm. Ahearn stated that he listed GW's employment status in account records as "NOT EMPLOYED" at GW's direction.

26. On or about August 26, 2016, Merrill Lynch terminated Ahearn's employment.

Ahearn Provides False Testimony to FINRA

27. On or about March 2, 2017, FINRA staff sent a letter to Ahearn requesting, pursuant to FINRA Rule 8210, that he appear for on-the-record testimony on March 30, 2017.

28. Included with the March 2, 2017 letter was an addendum advising Ahearn that he could be subject to a disciplinary action and the imposition of disciplinary sanctions, including a bar from the securities industry, should he fail to answer truthfully all questions asked by FINRA staff.

29. On March 30, 2017, Ahearn provided the following false and/or misleading on-the-record testimony to FINRA staff:

- a. Ahearn testified that he did not know GW was a registered representative when he opened the MBM Trust Accounts at Wells Fargo and Merrill Lynch.

- b. Ahearn testified that from the time he met GW in the early 1990s through 2012, GW never told Ahearn that he was a registered representative.
- c. Ahearn testified that when GW opened the MBM Trust Accounts at Wells Fargo, GW told him that he was unemployed, and that Ahearn continued to believe GW was unemployed when he opened the MBM Trust Accounts at Merrill Lynch.
- d. Ahearn testified that he did not learn that GW was a registered representative until 2011 or 2012, *after* he opened the MBM Trust Accounts at Merrill Lynch.

30. Ahearn has subsequently admitted that the foregoing testimony was false and/or misleading. In a July 27, 2018 response to a Rule 8210 request from FINRA dated July 23, 2018, Ahearn admitted that he knew GW was currently employed at a FINRA member firm before opening the MBM Trust Accounts at Wells Fargo and Merrill Lynch.

**FIRST CAUSE OF ACTION
False Statements to FINRA
(FINRA Rules 8210 and 2010)**

31. FINRA Rule 8210(a)(1) authorizes FINRA, in the course of an investigation, to require persons subject to its jurisdiction to “provide information orally [or] in writing . . . with respect to any matter involved in the investigation” FINRA Rule 8210(c) requires those persons to provide information when requested by FINRA.

32. Providing false or misleading information to FINRA in the course of an investigation violates FINRA Rules 8210 and 2010.

33. At all relevant times, Ahearn was subject to FINRA’s jurisdiction.

34. The following written statements in Ahearn's August 17, 2016 written response to FINRA staff's August 12, 2016 requests pursuant to FINRA Rule 8210 were false and/or misleading:

- a. "[GW] said he was unemployed at the time the account was transferred."
- b. "I knew his last place of employment to be [an investment bank] in NYC."
- c. "[GW] did not tell me he was a registered representative at another broker dealer."

As Ahearn has since admitted, he knew GW was employed by a broker-dealer as a registered representative at the time he opened the MBM Trust Accounts.

35. Ahearn was obligated to make a complete and truthful written statement in response to FINRA's Rule 8210 request, but failed to do so.

36. By reason of the foregoing, Ahearn violated FINRA Rules 8210 and 2010.

**SECOND CAUSE OF ACTION
False Testimony to FINRA
(FINRA Rules 8210 and 2010)**

37. FINRA Rule 8210(a)(1) authorizes FINRA, in the course of an investigation, to require persons subject to its jurisdiction to "testify at a location specified by FINRA staff, under oath. . . with respect to any matter involved in the investigation" FINRA Rule 8210(c) requires those persons to provide testimony when requested by FINRA.

38. Providing false or misleading testimony to FINRA in the course of an investigation violates FINRA Rules 8210 and 2010.

39. At all relevant times, Ahearn was subject to FINRA's jurisdiction.

40. Ahearn provided sworn, on the record testimony to FINRA on March 30, 2017, pursuant to FINRA Rule 8210, which was false or misleading. In particular, the following testimony by Ahearn was false or misleading:

- a. Ahearn testified that he did not know GW was a registered representative when he opened the MBM Trust Accounts at Wells Fargo and Merrill Lynch.
- b. Ahearn testified that from the time he met GW in the early 1990s through 2012, GW never told Ahearn that he was a registered representative.
- c. Ahearn testified that when GW opened the MBM Trust Accounts at Wells Fargo, GW told him that he was unemployed, and that Ahearn continued to believe GW was unemployed when he opened the MBM Trust Accounts at Merrill Lynch.
- d. Ahearn testified that he did not learn that GW was a registered representative until 2011 or 2012, *after* he opened the MBM Trust Accounts at Merrill Lynch.

Ahearn knew GW was employed by a FINRA member firm as a registered representative at the time he opened the MBM Trust Accounts.

41. Ahearn was obligated to provide complete and truthful testimony to FINRA, but failed to do so.

42. Ahearn's false or misleading testimony to FINRA 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 any capacity.

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