

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

David Manor (CRD No. 6033220),

Respondent.

DISCIPLINARY PROCEEDING
No. 2017056648801

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Between February and November 2017 (“Relevant Period”), while associated with FINRA member firm, Wells Fargo Clearing Services, LLC (“Wells Fargo” or “Firm”), Respondent David Manor participated in an unapproved outside business activity with his Wells Fargo customer (“Customer A”), a then 75-year-old retiree. Specifically, Manor assisted Customer A in selling mineral rights on a property the customer owned. In return for his assistance, Customer A paid Manor \$107,000. Manor never disclosed this activity to Wells Fargo, in violation of FINRA Rules 3270 and 2010.
2. During this same time period, Manor then convinced Customer A to use proceeds from the same mineral rights transaction in which Manor participated to open and fund an on-line brokerage account away from Wells Fargo, at Charles Schwab & Co., Inc. (“Schwab”). Manor and Customer A agreed that Manor would trade the account on

Customer A's behalf and the two would split any profits. Manor never disclosed the Charles Schwab account, or his agreement to share in the profits from the account, to Wells Fargo, in violation of FINRA Rules 2150, 3280 and 2010.

3. Once the Schwab account was opened, Manor used Customer A's login credentials to access the account and then effect risky uncovered options trading. This trading was unsuitable for Customer A, who had an investment objective of moderate growth, a moderate risk tolerance, and no options trading experience. As a result of Manor's unsuitable options trading, Customer A lost approximately \$224,000 in less than three months, in violation of FINRA Rules 2111, 2360(b)(19), and 2010.

RESPONDENT AND JURISDICTION

4. Manor first registered with FINRA in June 2012, as a General Securities Representative of a member of FINRA. During all relevant periods, Manor was associated with Wells Fargo and registered as a General Securities Representative.
5. On February 6, 2018, Wells Fargo filed a Uniform Termination Notice for Securities Industry Registration terminating Manor's association as of January 9, 2018.
6. Although Manor 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 Manor's registration with Wells Fargo, namely, February 6, 2018; and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member.

FACTS

7. On October 26, 2016, Customer A opened a brokerage account at Wells Fargo with Manor as his registered representative. At the time, Customer A was 74 years old and retired.
8. Customer A's new account form at Wells Fargo listed annual income of \$0 to \$49,999, and net worth and liquid net worth of \$500,000 to \$999,999. Customer A indicated that his investment objective was moderate growth, with moderate liquidity needs, and his investment time horizon was ten years.

Manor Engages in an Undisclosed Outside Business Activity

9. At the time he opened his account with Wells Fargo, Customer A owned the mineral rights for 50 acres of property in La Salle County, Texas, which generated income of \$2,000 to \$3,000 per month.
10. In late 2016 to early 2017, Customer A asked for Manor's assistance in selling those mineral rights.
11. Customer A and Manor verbally agreed that Manor would assist Customer A in selling his mineral rights and that Manor would be compensated for his assistance.
12. To assist Customer A in selling his mineral rights, Manor conducted research regarding the value of the mineral rights, contacted potential buyers, and handled the negotiations of the sale on Customer A's behalf.
13. On March 31, 2017, with Manor's assistance, Customer A sold the mineral rights for \$300,000.

14. The purchaser of the mineral rights wired \$300,000 to Customer A's bank account on the date of the closing.
15. On the same day as the closing, Customer A issued a check for \$100,000 from his same bank account. In accordance with Manor's instructions, Customer A issued the check to Manor's wife and wrote the word "Gift" in the memo line of the check.
16. When Customer A provided the check to Manor, Manor insisted on an additional payment of \$7,000 in cash. Customer A withdrew \$7,000 from his same bank account and delivered the cash to Manor as additional compensation for the work Manor conducted on the sale of the mineral rights.
17. Wells Fargo's written supervisory procedures in effect during the Relevant Period stated:

Associates must obtain Qualified Supervisor approval and Employee Activities Group (EAG) acknowledgement before participating in any outside activity. Outside activities include, but are not limited to: [b]eing employed or compensated by any person or entity other than the Firm; or [a]ny activities outside the scope of the Associate's relationship with the Firm.... Associates must not deliberately take any action to circumvent firm policy. This includes, but is not limited to placing a family member in a Firm prohibited outside activity or outside investment in order to circumvent Firm policy.
18. Manor did not obtain approval from a Qualified Supervisor or EAG acknowledgment at Wells Fargo prior to his participation in the sale of Customer A's mineral rights, or his compensation therefrom. His participation in the sale of Customer A's mineral rights and his receipt of compensation from this participation took place outside of Wells Fargo.
19. Manor never disclosed his participation in this outside business activity or his compensation therefrom to anyone at Wells Fargo.

20. Instead of using his Wells Fargo email address, Manor used his personal email address to communicate with Customer A about the sale of the mineral rights.
21. By using his personal email address for these communications, Manor avoided detection of his conduct by Wells Fargo.

Manor Convinces Customer A to Open the Schwab Account

22. Shortly after the sale of the mineral rights closed in March 2017, Customer A transferred some of the proceeds of the mineral rights sale to his brokerage account at Wells Fargo. Customer A told Manor that he wished to use these proceeds to make additional contributions to two variable annuities that he already owned.
23. Manor discouraged Customer A from using the proceeds to make additional contributions to his two variable annuities.
24. Instead, Manor recommended that Customer A use these proceeds to open and fund a separate brokerage account at Charles Schwab (the “Schwab Account”).
25. Manor proposed to Customer A that Manor would trade the Schwab Account, and that he and Customer A would share any profits equally.
26. On or about August 11, 2017, Manor went to Customer A’s apartment where Manor completed account-opening documents on Customer A’s behalf to open the Schwab Account.
27. On the new account documents for the Schwab Account, Manor represented that Customer A had annual income of \$100,000 – twice the top range of income that Customer A disclosed in his 2016 Wells Fargo new account documents. In fact,

Customer A's income had *decreased* in the intervening year due to the loss of the mineral rights income.

28. On the same new account documents for the Schwab Account, Manor listed the source of the money used to fund the account as "salary/wages/savings."
29. This statement was false. The primary source of the funding for the account was not salary, wages, or savings, but rather, proceeds from the sale of the mineral rights.
30. Manor also completed an option-trading form on Customer A's behalf in which he represented that Customer A had "GOOD" knowledge of options trading, 20 years of experience trading options, an average number of 10 options trades per year, and that the options trades averaged \$50,000 each.
31. Each of these representations was false. Customer A had never before traded options.
32. In fact, Manor had Customer A open his options-trading account away from Wells Fargo because Manor believed that Wells Fargo would not approve Customer A for options trading.
33. Manor arranged for a check for \$250,000 to be issued from Customer A's Wells Fargo account and express-mailed to Customer A for the purpose of funding the Schwab Account.
34. On or about August 18, 2017, Manor accompanied Customer A to a Charles Schwab office to deposit the \$250,000 check to fund the Schwab Account.
35. Customer A and Manor ultimately agreed to share profits in the Schwab Account 65/35, with 35% going to Manor. Manor did not invest any of his own funds in the Schwab Account and did not agree to share in any losses in the account.

36. Following the funding of the Schwab Account, Manor conducted all trading in the account using Customer A's login credentials.
37. Manor never disclosed the Schwab Account, his agreement to share profits from the Schwab Account, or his trading in the Schwab Account to Wells Fargo.

Manor Uses Customer A's Funds to Engage in Risky Options Trading

38. From on or about August 18, 2017 to on or about October 30, 2017, Manor used funds in Customer A's Schwab Account to purchase 94 put options on the S&P 500 Index at various strike prices.
39. Because the S&P 500 rose in value above the strike prices, the puts expired, causing Customer A to lose all of the money paid for the options. Customer A lost approximately \$224,837 in the options transactions that Manor made in the Schwab Account.
40. Manor did not contact Customer A before making any of the put option purchases.
41. On or about October 27, 2017, Customer A accessed the Schwab Account online and discovered the losses and contacted Manor.
42. Manor asked Customer A not to complain to FINRA or to Wells Fargo for fear of losing his job.

FIRST CAUSE OF ACTION
Undisclosed Outside Business Activity
(FINRA Rules 3270 and 2010)

43. The Department of Enforcement realleges and incorporates by reference paragraphs 1-42 above.
44. FINRA Rule 3270 states:

No registered person ... may ... 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....

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

46. A violation of FINRA Rule 3270 is also a violation of FINRA Rule 2010.

47. In February and March 2017, while associated with Wells Fargo, Manor assisted Customer A in selling mineral rights he owned in connection with a property in Texas. This conduct was outside of the scope of Manor’s association with Wells Fargo.

48. As compensation for Manor’s assistance with the sale of the mineral rights, Customer A wrote a check for \$100,000 made payable to Manor’s spouse disguised as a gift. Customer A also paid Manor \$7,000 in cash. These payments were made outside of Wells Fargo and as compensation for Manor’s outside business activities.

49. Manor failed to disclose his participation in the mineral rights sale, or his compensation from this participation, to Wells Fargo.

50. As a result of the foregoing conduct, Manor violated FINRA Rules 3270 and 2010.

SECOND CAUSE OF ACTION

Unsuitable Options Trading (FINRA Rules 2111, 2360(b)(19)(A) & (B) and 2010)

51. The Department of Enforcement realleges and incorporates by reference paragraphs 1-50 above.

52. FINRA Rule 2111 states:

A member or an associated person must have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer, based on the information obtained through reasonable diligence of the member or associated person to ascertain the customer's investment profile. A customer's investment profile includes, but is not limited to, the customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the customer may disclose to the member or associated person in connection with such recommendation.

53. FINRA Rule 2360(b)(19)(A) states:

No member or person associated with a member shall recommend to any customer any transaction for the purchase or sale (writing) of an option contract unless such member or person associated therewith has reasonable grounds to believe upon the basis of the information furnished by such customer after reasonable inquiry by the member or person associated therewith concerning the customer's investment objectives, financial situation and needs, and any other information known by such member or associated person, that the recommended transaction is not unsuitable for such customer.

54. FINRA Rule 2360(b)(19)(B) states:

No member or person associated with a member shall recommend to a customer an opening transaction in any option contract unless the person making the recommendation has a reasonable basis for believing, at the time of making the recommendation, that the customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating the risk of the recommended transaction, and is financially able to bear the risks of the recommended position in the option contract.

55. A violation of FINRA Rules 2111 or 2360 is also a violation of FINRA Rule 2010.

56. Between August 2017 and October 2017, Manor recommended and purchased 94 S&P

500 Index put options totaling \$224,985.37 in Customer A's Schwab Account. These

transactions resulted in losses to Customer A of approximately \$224,837 in less than three months.

57. At the time Manor recommended and effected these options transactions, Customer A was 75 years old and retired with limited income.

58. Customer A had no experience in options and had an investment objective of moderate growth.

59. Given Customer A's investment objective of moderate growth, his limited income, his limited investment experience and knowledge, and his complete lack of experience in options trading, Manor's recommendations that Customer A invest \$250,000 (representing 25-50% of Customer A's net worth) in put options was not suitable.

60. In addition, Manor's recommendation was unsuitable because Customer A lacked the financial knowledge and experience to evaluate the risks of the recommended transactions.

61. As a result of the foregoing conduct, Manor violated FINRA Rules 2111, 2360(b)(19)(A) & (B), and 2010.

THIRD CAUSE OF ACTION

Private Securities Transactions (FINRA Rules 3280 and 2010)

62. The Department of Enforcement realleges and incorporates by reference paragraphs 1-61 above.

63. FINRA Rule 3280 states:

Prior to participating in any private securities transaction, an associated person shall provide written notice to the member with which he is associated describing in detail the proposed transaction and the person's proposed role therein

and stating whether he has received or may receive selling compensation in connection with the transaction

64. FINRA Rule 3280(e)(1) defines a private securities transaction as “any securities transaction outside the regular course or scope of the associated person’s employment with a member”
65. A violation of FINRA Rule 3280 is also a violation of FINRA Rule 2010.
66. During the Relevant Period, Manor participated in securities transactions outside the regular scope of his employment at Wells Fargo by helping to open Customer A’s Schwab Account and then by recommending and executing numerous transactions within the Schwab Account.
67. Manor understood that he would receive a share (35%) of any profits from the trading in the Schwab Account. In fact, he and Customer A agreed to this arrangement.
68. Manor did not provide written notice to Wells Fargo of the Schwab Account, his trading of securities within the Schwab Account, or his agreement with Customer A to receive compensation from any trading profits in the Schwab Account.
69. As a result of the foregoing conduct, Manor violated FINRA Rules 3280 and 2010.

FOURTH CAUSE OF ACTION

Sharing in Proceeds with a Customer (FINRA Rules 2150(c) and 2010)

70. The Department of Enforcement realleges and incorporates by reference paragraphs 1-69 above.
71. FINRA Rule 2150(c) provides: “[N]o member or person associated with a member shall share directly or indirectly in the profits or losses in any account of a customer carried by the member,” unless the associated person obtains prior written authorization from both the member firm and the customer, and the associated person “shares in the profits or

losses ... in direct proportion to the financial contributions made to such account by” the associated person.

72. A violation of FINRA Rule 2150 is also a violation of FINRA Rule 2010.

73. Prior to establishing the Schwab Account, Manor and Customer A agreed that Manor would receive 35% of any profits from the Schwab Account. However, Manor made no financial contribution to the Schwab Account – it was funded entirely by Customer A.

74. Moreover, Manor did not receive prior written authorization from Wells Fargo to share in the profits of the Schwab Account.

75. As a result of the foregoing conduct, Manor violated FINRA Rules 2150(c) and 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) be imposed, including that Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest; 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: April 16, 2019



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