

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant :

Disciplinary Proceeding
No. C07040088

v.

Hearing Officer – DM

JAMES JOSEPH ROVEZZI
(CRD No. 1341098)

DEFAULT DECISION

March 15, 2005

Respondent.

Respondent (1) failed to provide prompt written notice to his employer of outside business activities, in violation of Rules 3030 and 2110, and (2) sold certain investments in violation of his employer's policies and lied to his employer about his activities, in violation of Rule 2110. For failing to provide prompt written notice of his outside business activities, he is barred from associating with any NASD member in any capacity. In light of that bar, no additional sanctions are imposed for his violation of his employer's policies or for lying to his employer about his activities.

Appearances

George C. McGuigan, Jr., Esq., Dallas, TX (Andrew A. Favret, Esq., New Orleans, LA, and Rory C. Flynn, Esq., Washington, DC, Of Counsel), for Complainant
No appearance by or for Respondent.

DECISION

I. Introduction

The Department of Enforcement filed a Complaint (attached to this Decision as Exhibit A) on November 2, 2004, alleging that Respondent James Joseph Rovezzi failed to provide written notice of his outside business activities to his employer.

violation of Rules 3030 and 2110, and (2) violated certain policies of his employer and lied to his employer, in violation of Rule 2110. Respondent did not file an Answer to the Complaint. On January 31, 2005, Enforcement filed a motion for a default decision supported by the declaration of George C. McGuigan, Jr. and three exhibits. On February 1, 2005, the Hearing Officer issued an order requiring Enforcement to supplement its motion with a memorandum providing legal authority supporting the second charge in the Complaint. Enforcement filed its supplemental memorandum on February 10, 2005. Respondent did not reply to Enforcement's motion.¹

II. Respondent's Default

Enforcement sent the Complaint and Notice of Complaint to Respondent on November 1, 2004, by certified and first class mail to his most current residential address in the Central Registration Depository (the "CRD address"), as well as a variation of that address with a slightly different zip code that Respondent had provided to NASD. Enforcement sent the Complaint and Second Notice of Complaint to Respondent on December 6, 2004, by certified and first class mail to the same addresses.

Enforcement served the Complaint and the Notices of Complaint on Respondent in accordance with Rule 9134, giving him constructive notice of this proceeding. By failing to respond, he defaulted. Pursuant to Rule 9215(f), the Hearing Officer will find the allegations in the Complaint admitted.

III. Jurisdiction

Respondent was registered through NASD member Signator Investors, Inc., a

¹ The factual determinations in this decision are based on the allegations of the attached Complaint and are deemed admitted, and the additional materials filed by Enforcement with its motion.

investment company and variable contracts products limited representative until November 8, 2002. He has not been associated with any NASD member since that date but he remains subject to NASD jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of NASD's By-Laws, because (1) the Complaint was filed within two years after the termination of his registration with Signator, and (2) the Complaint charges him with misconduct while he was associated with Signator.

IV. Violations

A. Outside Business Activities

The first cause of the Complaint alleges that in or about November 2001, while Respondent was associated with Signator, Respondent became an agent for Midland National Insurance Company. From November 2001 through about October 2002, Respondent sold, as a Midland Agent, ten Midland equity indexed annuities, and earned commission of \$64,830. Respondent failed to give Signator any written notice of these activities.

Rule 3030 provides that no person associated with an NASD member may be employed by or accept compensation from any other person as a result of any business activity, other than a passive investment, outside the scope of his relationship with his employer firm, unless he has provided prompt written notice to the member. Thus, the allegations in the first cause of the Complaint, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent violated Rule 3030. A violation of Rule 3030 is also a violation of Rule 2110.

B. Violation of Employer's Policy and Lying to Employer

The second cause of the Complaint alleges that at the relevant time, Signator's written supervisory procedures prohibited the sale of equity indexed annuities. The

second cause further re-alleges that Respondent, while associated with Signator, became an agent for Midland and sold ten Midland equity indexed annuities. In or about July 2002, Signator asked Respondent to provide information about one customer who had allegedly purchased a Midland equity indexed annuity through Respondent. Respondent provided a written response to Signator in which he falsely represented that he had not sold equity indexed annuities offered by Midland, although in fact by that time he had sold at least eight such Midland annuities.

Enforcement argues that by violating Signator's policies through selling Midland equity indexed annuities and by lying to Signator about his sales activities on behalf of Midland, Respondent violated Rule 2110's requirement that NASD members and associated persons "observe high standards of commercial honor and just and equitable principles of trade."² In Department of Enforcement v. Davenport, No. C050100 (2003 NASD Discip. LEXIS 4, at *9-10 (N.A.C. May 7, 2003), the National Adjudicatory Council held that a respondent who violated his employer's policies regarding borrowing from customers and lied to his employer about his actions violated Rule 2110, *exp. post*.

The SEC has construed Conduct Rule 2110 broadly to apply to all business-related misconduct, regardless of whether the misconduct involved securities. ... The principal consideration is whether the misconduct reflects on an associated person's ability to comply with regulatory requirements necessary to the proper functioning of the securities industry and protection of the public. ...

... Applying the foregoing principles to this case, we find that [the respondent's] misconduct – misrepresenting to his firm that he had not borrowed from customers in violation of the firm's policy – occurred in the context of his business-relationship with his employer. We also find that [the respondent's] dishonesty to his firm reflects directly on his ability to abide by his firm's policies, many of which are designed to protect the

² Although Rule 2110 refers only to members, Rule 0115 provides: "Persons associated with a member shall have the same duties and obligations as a member under these Rules."

public and the firm, and to deal responsibly with the public. We therefore affirm the Hearing Panel's finding that [the respondent's] misrepresentations to his firm that he had not violated his firm's policy violated Conduct Rule 2110.

For essentially the same reasons, Respondent's conduct violated Rule 2110.

While there was nothing inherently improper in Respondent selling Midland equity indexed annuities, Signator, as an NASD member, has an obligation to establish supervisory policies and procedures to govern the activities of its associated persons in order "to protect the public and the firm, and to deal responsibly with the public." In doing so, Signator was entitled to define and limit the types of investment products its associated persons could sell, and Respondent was required to respect and abide by Signator's policies in that regard. His failure to do so "reflects on [his] ability to comply with regulatory requirements necessary to the proper functioning of the securities markets and protection of the public." Furthermore, Respondent was obliged to respond truthfully to his employer's questions regarding his business activities; any failure of a registered person to do so impedes a member firm's ability to fulfill its supervisory responsibilities.

The Hearing Officer, therefore, finds that Respondent's failure to abide by his firm's policies prohibiting the sale of equity indexed annuities and his misrepresentation to his employer in that regard violated Rule 2110.

V. Sanctions

The Sanction Guidelines for outside business activities recommend a fine of \$2,500 to \$50,000, plus the amount of Respondent's financial gain. In addition, the Guidelines recommend a suspension of up to 30 business days if the outside business

activities “do not involve aggravating conduct,” a longer suspension of up to one year if the activities involve aggravating misconduct, or a longer suspension or a bar in “egregious cases.” The Guidelines list as principal considerations in determining sanctions (1) whether the outside activities involved customers of the firm; (2) whether the activities resulted in injury to customers of the firm; (3) the duration of the outside activity, the number of customers and the dollar volume of sales; (4) whether Respondent could have created the impression that his employer had approved the activity; (5) whether Respondent misled his employer about the existence of the outside activity or otherwise concealed the activity from his employer. NASD Sanction Guidelines (2004 ed.).

Enforcement argues that Respondent’s violation was egregious and warranted a sanction. In that regard, Enforcement states that his outside activities involved three customers of John Hancock, which apparently is Signator’s parent company, and that “it appears that Respondent may have used his firm’s office, telephone number and employees in developing his business for Midland, which Enforcement hypothesizes could have given customers the impression that his employer approved of his activity. Enforcement also notes that Respondent concealed his activity from his employer; and that his employer’s policies expressly prohibited the sale of equity indexed annuities.

The Complaint does not allege that Respondent sold the annuities to three customers of his employer or that he used the firm’s office, telephone or employees to do so. Enforcement offered no evidence of this in support of its motion for a default decision. The Hearing Officer, therefore, cannot consider these alleged facts in determining sanctions.

The Complaint does, however, allege that Respondent's activities continued for approximately one year; that he sold 10 annuities for which he earned more than \$5,000 in commissions; that Signator's written supervisory procedures specifically prohibited sale of such annuities; and that when questioned by his employer, Respondent lied about his activities. In addition, the declaration filed by Enforcement in support of its motion represents that Respondent acknowledged in writing to NASD staff that he sold the annuities, and that he lied to his employer about his activities. Based on these circumstances, the Hearing Officer agrees that Respondent's violation of Rules 3030 and 2110 was egregious and warrants a bar. In light of the bar, no monetary sanctions will be imposed.

There are no Sanction Guidelines directly applicable to Respondent's violation of firm policies or his lying to the firm about his activities. Enforcement suggests that a bar is warranted, arguing that his activities violated express policies of the firm; that he deliberately lied about his activities and that his activities resulted in substantial economic gain. Although these circumstances are aggravating, they would not necessarily warrant a bar. In any event, in light of the bar imposed on Respondent for his violation of Rules 3030 and 2110, additional sanctions for this violation would be redundant and would serve no remedial purpose.

VI. Conclusion

Respondent James Joseph Rovezzi (1) failed to provide prompt written notice to his employer of outside business activities, in violation of Rules 3030 and 2110; he sold certain investments in violation of his employer's policies and lied to his employer about his activities, in violation of Rule 2110. For failing to provide prompt written

notice of his outside business activities, he is barred from associating with any NASD member in any capacity. In light of that bar, no additional sanctions are imposed for his violation of his employer's policies or for lying to his employer about his activities. The bar will become effective immediately if this decision becomes NASD's final disciplinary action in this proceeding.

SO ORDERED.


David M. FitzGerald
Hearing Officer

Copies to: James Joseph Rovezzi (*via overnight courier and first class mail*)
Andrew Favret, Esq. (*via electronic and first class mail*)
George C. McGuigan, Jr., Esq. (*via electronic and first class mail*)
Rory C. Flynn, Esq. (*via electronic and first class mail*)

EXHIBIT A

**NASD
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant

v.

James Joseph Rovezzi
CRD No. 1341098

Respondent

Disciplinary Proceeding
No. C07040088

Hearing Officer _____

COMPLAINT

Date: November 1, 2004

Upon information and belief the Department of Enforcement ("Complainant") alleges as follows:

1. Respondent James Joseph Rovezzi entered the securities industry on March 26, 1985 as an Investment Company Variable Contracts Products Representative with two members of NASD: John Hancock Mutual Life Insurance Company and Signator Investors, Inc. While Rovezzi's registration with John Hancock was terminated in May 1997, he remained employed by Signator Investors until November 2002. On November 3, 2002, Rovezzi's employment with Signator Investors was terminated. Since leaving Signator Investors, Rovezzi has not been employed by or registered with any member of NASD. NASD has jurisdiction to file this complaint against Rovezzi because it was filed within one year of his termination date from Signator Investors.

FIRST CAUSE OF COMPLAINT

Rovezzi Failed to Provide Notice Regarding His Outside Business Activities

(Violation of NASD Conduct Rules 2110 and 3030)

2. Paragraph number 1 above is realleged and incorporated herein by reference.
3. In or about November 2001, Rovezzi, while associated with Signator Investors, became an Agent for Midland National Life Insurance Company. From about November 2001 through about October 2002, Rovezzi sold, as Agent, ten equity indexed annuities to ten customers, all of which were issued through Midland National, and earned commissions of approximately \$64,830. Rovezzi failed to provide any written notice to Signator Investors of these activities.
4. The aforementioned acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rules 2110 and 3030 by Respondent James Joseph Rovezzi.

SECOND CAUSE OF COMPLAINT

Rovezzi Violated Firm Policy And Lied to His Member Firm

(NASD Conduct Rule 2110)

5. Paragraph numbers 1 – 4 above are realleged and incorporated herein by reference.
6. Since at least June 1999, Signator Investors's written supervisory procedures prohibited the sale of equity indexed annuities. In or about November 2001, Rovezzi, while associated Signator Investors, became an Agent for Midland National Life Insurance Company. From about November 2001 through about October 2002, in violation of Signator Investors's written supervisory procedures, he sold ten equity indexed annuities to ten customers, all of which were sold

through Midland National and earned commission of approximately \$64,330.

7. In or about July 2002, Rovezzi was asked by Signator Investors to provide information about customer V. R. and her alleged purchase of an equity indexed annuity offered by Midland National. Rovezzi provided a written response to the firm in which he falsely represented that he had not sold equity indexed annuities by Midland National. By July 2002, however, Rovezzi had sold at least eight equity indexed annuities offered by Midland National.
8. The aforementioned acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 by Respondent James Joseph Rovezzi.

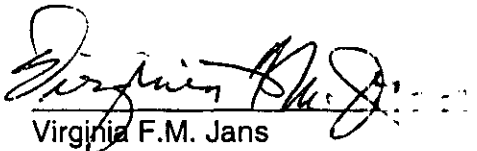
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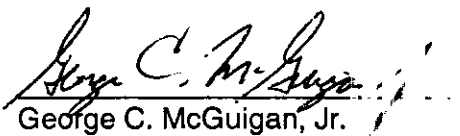
WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Rovezzi committed the violations charged and alleged herein;
- B. An order imposing sanctions upon Rovezzi in accordance with NASD Rule 8030;
- C. An order requiring Rovezzi to fully disgorge all commissions earned in connection with the sale of the equity indexed annuities from November 2001 through October 2002 as alleged in paragraphs 3 and 6 of the complaint;
- D. An order imposing such costs of any proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8030; and
- E. An order imposing any other fitting sanction.

Formal Complaint
C070400 /James Joseph Rovezzi

Date: November 1, 2004


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