

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

STEVEN E. BRYANT
(CRD No. 1620470),

Respondent.

Disciplinary Proceeding
No. E072005001101

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

April 3, 2008

Respondent is barred from associating with any member firm for operating an unregistered securities dealer, in violation of Section 15(a)(1) of the Securities Exchange Act of 1934 and NASD Conduct Rule 2110; and for failing to respond to requests for information, in violation of Procedural Rule 8210 and NASD Conduct Rule 2110.

Appearances

Helen G. Barnhill, Senior Regional Counsel, Denver, CO (Mark P. Dauer, of Counsel)
for the Department of Enforcement.

No appearance by or on behalf of Steven E. Bryant.

DECISION

I. Introduction

On December 10, 2007, the Department of Enforcement ("Enforcement") filed the attached Complaint against Steven E. Bryant ("Bryant" or the "Respondent"). The Complaint charges the Respondent with operating an unregistered securities dealer, in violation of Section 15(a) of Securities Exchange Act of 1934 ("Exchange Act") and NASD Conduct Rule 2110; and with failing to respond to a request for documents and information, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110. The Respondent did not answer or

otherwise respond to the Complaint. On February 25, 2008, Enforcement filed a motion for entry of a default decision. The Respondent did not reply to the motion.

II. Findings of Fact and Conclusions of Law

A. Jurisdiction

According to the records in the Central Registration Depository ("CRD"), Bryant was associated with Farrand Investment Bankers ("Farrand"), a FINRA member, from February 4, 2002, until December 31, 2005. In addition, he was registered with FINRA through Farrand as a General Securities Representative and a General Securities Principal from February 22, 2002, until he left Farrand. He also registered as a Limited Representative for Private Securities Offerings on June 17, 2002. Bryant has not been associated or registered with a member firm since he left Farrand.¹

Although Bryant has not been associated with any FINRA member since December 31, 2005, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because the Complaint, which was filed within two years after the termination of his last registration, charges him with misconduct while he was registered and with failure to comply with Rule 8210 requests for documents and information that FINRA staff issued on December 12, 2005,² which was within the two-year period of retained jurisdiction following the effective date of his termination of registration.

¹ See Ex. 1 (Bryant's CRD record) filed with Enforcement's Motion for Entry of Default Decision. According to his CRD record, he also was registered with two other member firms in 2004. The Complaint further alleges that Bryant purchased Farrand in or about February 2003 and that Farrand withdrew from FINRA membership on or about January 19, 2007. Compl. ¶ 2 & n. 1.

² Barnhill Decl. ¶ 16.

B. Respondent's Default

Enforcement served Bryant with a copy of the Complaint and Notice of Complaint by certified mail on December 5, 2007. Enforcement mailed the Complaint and Notice of Complaint to Bryant at his residential address shown in CRD (the "CRD address"). Bryant did not answer the Complaint or otherwise respond to the First Notice of Complaint. On January 4, 2008, Enforcement served Bryant with a copy of the Complaint and Second Notice of Complaint by certified mail. Enforcement mailed the Complaint and Second Notice of Complaint to him at his CRD address. Bryant did not answer the Complaint or otherwise respond to the Second Notice of Complaint.³

The Hearing Officer finds that Enforcement properly served the Respondent with the Complaint and Notices of Complaint. Bryant therefore defaulted by failing to answer the Complaint.⁴ Accordingly, pursuant to Procedural Rules 9215(f) and 9269(a)(2), the Hearing Officer finds Bryant in default and deems the allegations in the attached Complaint admitted.

C. Operating an Unregistered Dealer

The First Cause of Complaint alleges that Bryant operated an unregistered securities dealer in violation of Section 15(a) of the Exchange Act and Conduct Rule 2110. According to the Complaint, between February 2004 and April 2005, Bryant, acting through Innovative Ideas International Inc. ("Innovative"), solicited and sold \$1,522,815 worth of Efoora, Inc. ("Efoora") common stock to 76 investors. Innovative owned the common stock, and Bryant was the sole owner and officer of Innovative. Innovative is not a FINRA member, and it has never been registered as a dealer with the Securities and Exchange Commission.

³ Barnhill Decl. ¶¶ 10-11.

⁴ *Department of Enforcement v. Reynolds Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at *5 (N.A.C. Dec. 9, 2003) (NASD Procedural Rule 9134(b)(1) allows for constructive notice by mailing a complaint to the respondent's most recent CRD address) (quoting *Lubeck v. SEC*, 1998 U.S. App. LEXIS 18849, at *20 (9th Cir. Aug. 12, 1998)).

Efoora is a Delaware corporation with its principal place of business in Buffalo Grove, Illinois. According to the Complaint, Efoora designed, manufactured, and sold diagnostic tests, such as those used to detect HIV and Mad Cow Disease. In August 2003, Efoora granted Innovative exclusive distribution rights for its HIV test products. In addition, Innovative agreed to act as a “finder” of accredited investors who would purchase Efoora common stock. Innovative received shares of Efoora common stock and options to purchase Efoora common stock in return. After exercising the options, Innovative owned 1,830,366 shares of Efoora common stock.

Between February 2004 and April 2005, Bryant, acting individually and through Innovative, solicited investors to purchase the shares of Efoora common stock owned by Innovative. Through those efforts, Innovative sold at least 1,830,366 shares to 76 public investors in 87 transactions. The shares were sold at prices ranging from \$.30 to \$2.00 per share, for a total sales value of \$1,522,815. Bryant set the price at which Innovative sold the stock.

The Hearing Officer concludes that the foregoing facts show that Bryant was in control of Innovative during the relevant period and that he and Innovative engaged in the business of buying and selling securities without having registered as a dealer under Section 15(a)(1) of the Exchange Act.⁵

The primary indicia in determining whether a person has “engaged in the business of buying and selling securities” within the meaning of the term “dealer” is the level of the person’s participation in purchasing and selling securities. Where a person participates in more than a few

⁵ Section 15(a)(1) of the Exchange Act states in part that: “It shall be unlawful for any broker or dealer...to effect any transactions in, or induce or attempt to induce the purchase or sale of, any security...unless such broker or dealer is registered in accordance with subsection (b) of this section.” 15 U.S.C. § 78o(a)(1). In turn, Section 3(a)(5) of the Exchange Act defines a “dealer” as “any person engaged in the business of buying and selling securities for such person’s own account through a broker or otherwise.” However, “[t]he term ‘dealer’ does not include a person that buys or sells securities for such person’s own account, either individually or in a fiduciary capacity, but not as a part of a regular business.” 15 U.S.C. § 78c(a)(5).

isolated transactions, the person must register as a dealer.⁶ There is no requirement, however, that such activity be a person's principal business or principal source of income.⁷

In the present case, Innovative's participation in the purchases and sales of Efoora stock at the direction and control of Bryant exceeded the level at which Bryant was required to register Innovative as a securities dealer under the Exchange Act. The duration of the participation, the number of shares sold, the number of purchasers, and the amount of money raised were sufficient to establish that Innovative acting through Bryant engaged in the securities business as a dealer. Bryant caused Innovative and its agents to sell more than 1,830,366 shares of Efoora common stock to more than 76 investors, at a value of more than \$1,522,815, over the course of approximately 14 months. Moreover, the facts alleged in the Complaint show that Farrand did not participate in any of these transactions. Accordingly, Bryant cannot claim an exemption from registration under Section 15(a) of the Exchange Act.⁸ Bryant sought to profit from his buying and selling activities rather than through the appreciation in the value of his and Innovative's holdings of Efoora's common stock.

For the foregoing reasons, the Hearing Officer finds that Bryant violated Section 15(a)(1) of the Exchange Act by operating Innovative as an unregistered securities dealer, and he thereby also violated NASD Conduct Rule 2110.

⁶ See *Gordon Wesley Sodorff*, Exchange Act Release No. 31,134, 1992 SEC LEXIS 2190, at *15 (Sept. 2, 1992), citing *Massachusetts Fin. Services, Inc. v. Securities Investor Prot. Corp.* 411 F. Supp. 411, 415 (D. Mass.), *aff'd*, 545 F.2d 754 (1st Cir. 1976), *cert. denied*, 431 U.S. 904 (1977) (the definitions of broker and dealer "connote a certain regularity of participation in securities transactions at key points in the chain of distribution"). See also L. Loss, *FUNDAMENTALS OF SECURITIES REGULATION* at 604 (2d ed. 1988).

⁷ *Sodorff*, 1992 SEC LEXIS 2190, at *15.

⁸ See *Roth v. SEC*, 50 SEC 1147, 1152 (1992), *aff'd*, 22 F.3d 1108 (DC Cir.) (unpublished table decision), *cert. denied*, 513 U.S. 1015 (1994). See also *Sodorff*, 1992 SEC LEXIS 2190, at *15-16.

D. Failure to Respond to Requests for Information

The Second Cause of Action alleges that Bryant failed to respond to a request for information and documents issued by FINRA staff on December 12, 2005. The staff requested the documents and information in connection with its investigation into several possible violations of NASD's Conduct Rules, including the suitability of Bryant's recommendations of Efoora common stock.

According to the Complaint, the staff sent the Rule 8210 request to Bryant at his CRD address by certified and regular first-class mail. The staff also sent a copy of the request to Bryant's attorney at the time. To date, Bryant has not responded to the request.⁹

The allegations in the Second Cause of Complaint, which are deemed admitted, are sufficient to establish, for purposes of this decision, that Bryant violated Procedural Rule 8210 and Conduct Rule 2110, by failing to respond to the Rule 8210 request for information and documents.

III. Sanctions

Upon careful consideration of the egregious nature of Bryant's violations, the Hearing Officer concluded that a bar is the appropriate remedial sanction for each violation. The record reflects no mitigating factors that would warrant a lesser sanction.

While there are no specific published sanctions guidelines for violations of the dealer registration requirements of Section 15(a) of the Exchange Act, the Hearing Officer weighed a

⁹ The Hearing Officer notes however that Bryant did respond to an earlier Rule 8210 request that he appear for an on-the-record interview. Pursuant to that request, on June 9, 2005, Bryant provided testimony about his involvement in the purchases and sales of shares of a second stock issued by Vicor as well as his participation in the purchases and sales of shares of Efoora common stock.

number of considerations applicable to the imposition of sanctions in all cases.¹⁰ First, the Hearing Officer noted the critical importance broker-dealer registration plays in the protection of the investing public. As the federal court stated in *Roth v. SEC*, the registration requirement of Section 15(a) is

the “keystone of the entire system of broker-dealer regulation.” ... A broker that has registered with the Commission is bound to abide by numerous regulations designed to protect prospective purchasers of securities, including standards of professional conduct, financial responsibility requirements, recordkeeping requirements, and supervisory obligations over broker-dealer employees.... The interlocking requirements of registration and supervision act to ensure that “securities are [only] sold by a sales man [who] understands and appreciates both the nature of the securities he sells and his responsibilities to the investor to whom he sells.”¹¹

Bryant circumvented this regulatory framework by using Innovative as an unregistered dealer, exposing the investing public to unreasonable risk.

Second, the duration of misconduct, the number of transactions, the gross value of the transactions, and the character of the transactions all warrant very substantial sanctions.¹² As noted above, Bryant caused Innovative to sell 1,830,366 shares of low-priced stock to more than 76 investors over a period of approximately 14 months. In addition, the transactions all were effected for Bryant’s personal gain.

Finally, the Hearing Officer found that the potential for customer harm was high. The stock was a penny stock, and Bryant employed others to assist with the sales although they were not properly registered and supervised as securities brokers.

¹⁰ The guidelines for registration violations are analogous and provide for a bar in egregious cases. See FINRA Sanction Guidelines 48 (2007), available at <http://www.finra.org/web/groups/enforcement/documents/enforcement/p011038.pdf>.

¹¹ *Roth v. SEC*, 22 F.3d at 1109 (citations omitted).

¹² See Sanction Guidelines at 6-8 (Principal Considerations in Determining Sanctions, No. 8, 13, 17, and 18).

Upon consideration of all of the foregoing factors in conjunction with the lack of any mitigating factors, the Hearing Officer concluded that any sanction short of a bar would not sufficiently protect the investing public. Accordingly, the Hearing Officer will bar Bryant from the securities industry for this violation.

The Hearing Officer also concluded that a bar was warranted for the second violation. The applicable Sanction Guideline for *failing to respond to a request for information* made pursuant to NASD Procedural Rule 8210 suggests that a bar should be standard where no mitigating circumstances exist.¹³ Here, the record discloses no mitigating factors. The Hearing Officer specifically considered and rejected imposing a lesser sanction in light of the fact that Bryant had complied with an earlier Rule 8210 request that he provide testimony at an on-the-record interview. According to the papers filed by Enforcement in support of its Motion for Entry of a Default Decision, at the on-the-record interview on June 9, 2005, the staff learned of new possible violations. Because the staff did not have access to documents pertaining to these new potential violations, the staff sent Bryant the Rule 8210 request that is the subject of this proceeding. By not responding to that request, Bryant impeded FINRA's investigation of the newly discovered potential violations. Under these circumstances, and given the seriousness of Bryant's misconduct, the Hearing Officer declined to treat his earlier cooperation as a mitigating factor. Accordingly, the Hearing Officer will bar Bryant for this violation as well.

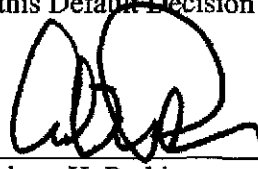
IV. Order

Steven E. Bryant is barred from associating with any member firm in any capacity for operating an unregistered securities dealer, in violation of Section 15(a)(1) of the Exchange Act

¹³ *Id.* at 35.

and NASD Conduct Rule 2110; and for his failure to respond to a request for information and documents, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

The bars shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.



Andrew H. Perkins
Hearing Officer

Copies to:

Steven E. Bryant (by FedEx, next day delivery, and first-class mail)
Helen G. Barnhill, Esq. (by electronic and first-class mail)
David R. Sonnenberg, Esq. (by electronic and first-class mail)
Mark P. Dauer, Esq. (by electronic and first-class mail)

**FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA)
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

**STEVEN E. BRYANT
(CRD No. 1620470),**

RESPONDENT.

COMPLAINT

**DISCIPLINARY PROCEEDING NO.
E072005001101**

The Department of Enforcement alleges:

SUMMARY

1. From in or about February 2004 through April 2005, Stephen E. Bryant operated a securities dealer without the benefit of registration with the United States Securities and Exchange Commission, in violation of Section 15(a) of the Securities Exchange Act of 1934 (Exchange Act) and NASD Conduct Rule 2110. In addition, Bryant failed to respond to an NASD Procedural Rule 8210 request for information and documents, in violation of Procedural Rule 8210 and Conduct Rule 2110.

RESPONDENT

2. Bryant first became registered as a General Securities Representative with a member firm on or about May 18, 1987. He was subsequently registered with a number of member firms before becoming registered with Farrand Investment Bankers

(Farrand), a member of FINRA¹ on or about February 22, 2002. Bryant purchased Farrand in or about February 2003. Bryant was associated with Farrand until on or about December 31, 2005, as a General Securities Representative, General Securities Principal, and a Limited Representative for Private Securities Offerings and served as Farrand's President from February 2003 until on or about December 31, 2005.

3. Bryant is not currently registered or associated with any member firm. However, pursuant to Article V, Section 4 of the FINRA By-Laws, FINRA retains jurisdiction over him for purposes of this Complaint.

FIRST CAUSE OF COMPLAINT

Operating an Unregistered Dealer (Section 15(a) of the Exchange Act and NASD Conduct Rule 2110)

4. Paragraphs 1 through 3 are realleged and incorporated herein by reference.
5. Innovative Ideas International, Inc. (Innovative) was incorporated in Florida in 2002. At all times relevant to this Complaint, Bryant controlled Innovative – he was its sole owner and officer. Innovative is not a member firm and it has never been registered with the Securities and Exchange Commission as a dealer pursuant to Section 15 of the Exchange Act.
6. At all times relevant to this Complaint, Innovative was located at the same address as Farrand in Pompano Beach, Florida.
7. Efoora, Inc., which incorporated in 1994, is a Delaware Corporation located in Buffalo Grove, Illinois. At all times relevant to the complaint, Efoora held itself out

¹ Farrand withdrew from membership on or about January 19, 2007. Effective July 30, 2007, the corporate successor to NASD is FINRA.

as a company that designs, manufactures and markets diagnostic tests, including a rapid HIV test, a Blood Glucose Monitoring System, and a test for Mad Cow Disease.

8. On or about August 8, 2003, in a letter signed by Efoora's Chief Executive Officer, Efoora granted Innovative exclusive distribution rights for its HIV test products. In addition, Innovative agreed to act as a "finder" for Efoora, by referring accredited investors to purchase shares of Efoora common stock. In return, Efoora granted common stock and options to purchase Efoora common stock to Innovative. By exercising certain of these options (at a cost) and through its receipt of common stock granted by Efoora, Innovative received at least 1,830,366 shares of both registered and unregistered Efoora common stock.
9. From at least February 2004 through April 2005, Bryant, acting individually and through Innovative, induced and caused others to induce the purchase of Efoora securities owned by Innovative. More specifically, Bryant and several agents of Innovative, acting at Bryant's direction, employed the means or instrumentalities of interstate commerce, including the telephone, to solicit members of the public to purchase Efoora common stock owned by Innovative.
10. Further, from at least February 2004 through April 2005, Bryant, acting individually and through Innovative, effected and caused others to effect transactions in Efoora common stock. More specifically, due to the solicitation efforts by Bryant and his agents, referenced above in paragraph 9, Innovative sold at least 1,830,366 shares of Efoora common stock to at least seventy-six members of the public in at least eighty-seven transactions. These shares had been obtained by Innovative in the transactions

described in paragraph 8, above. The shares were sold at prices ranging from \$.30 to \$2.00, for a total approximate value of \$1,522,815.

11. Bryant determined the price paid by the purchasers of Efoora stock. The purchasers did not pay commissions to Innovative or Bryant.
12. The conduct described in paragraphs 8-11 above constituted buying and selling securities for its own account by Innovative. By engaging in such conduct, Innovative acted as a "dealer" as that term is defined in Section 3(a)(5) of the Securities Exchange Act of 1934 and thereby conducted a securities business.
13. Bryant controlled Innovative and was responsible for its activities, including the acquisition and resale of Efoora stock. Therefore, Bryant caused Innovative and its agents to, directly or indirectly, by use of the mails or the means or instrumentalities of interstate commerce, while acting as a dealer, effect transactions in, and induce or attempt to induce the purchase or sale of Efoora securities without registering as a dealer in accordance with Section 15(b) of the Exchange Act.
14. Farrand, the broker-dealer with which Bryant was associated at the time of the activities described above, did not participate in any manner in the Efoora transactions.
15. By virtue of the foregoing, Bryant operated Innovative as an unregistered dealer, in violation of Section 15(a) of the Exchange Act and NASD Conduct Rule 2110.

SECOND CAUSE OF COMPLAINT

Failure to Provide Documents and Information (NASD Procedural Rule 8210 and NASD Conduct Rule 2110)

16. Paragraphs 1 through 3 and 5 through 15 are realleged and incorporated herein by reference.

17. In or about June 2005, FINRA began investigating Farrand and Bryant to determine whether they had violated federal securities laws and NASD Rules, including Section 15(a) of the Exchange Act, Section 5 of the Securities Act of 1933 and NASD Conduct Rules 3030, 3040 and 2110.
18. In connection with that investigation, FINRA staff sent a written request for information and documents to Bryant on December 12, 2005, pursuant to Procedural Rule 8210, via U.S. Postal Service first class mail and certified mail, return receipt requested. The request was sent to Bryant's residential address as reflected in CRD. The letter required a response no later than January 6, 2006.
19. A copy of the letter was also sent to Bryant's attorney.
20. The envelope sent to Bryant's CRD address via certified mail on December 12, 2005, was returned to the staff on January 4, 2006 marked "Unclaimed."
21. The envelope sent to Bryant's CRD address via first class mail on December 12, 2005, was not returned by the U.S. Postal Service.
22. To date Bryant has not responded to the December 12, 2005, request letter.
23. By virtue of the foregoing, Bryant violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

PRAYER

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under NASD Rule 8310(a), including monetary sanctions, be imposed.

- B. order that the Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date: December 5, 2007


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