

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

CHERYL D. JIMERSON
(CRD No. 1379935),

Respondent.

Disciplinary Proceeding
No. E102004089201

DEFAULT DECISION

Hearing Officer – SW

Date: February 4, 2008

Respondent was barred from associating with any FINRA member firm in any capacity for: (i) engaging in seven unauthorized trades in two customer accounts, in violation of NASD Conduct Rule 2110; (ii) recommending and executing unsuitable excessive trading and short-term mutual fund trading in a customer's IRA account, in violation of NASD Conduct Rules 2310 and 2110; and (iii) failing to appear for on-the-record interviews requested pursuant to Rule 8210, in violation of NASD Procedural Rule 8210 and Conduct Rule 2110. In addition, Respondent is ordered to pay \$453 in restitution to customer GS and \$33,776 in restitution to customer JV.

Appearances

Frank M. Weber, Esq., Regional Counsel, New York, NY, for the Department of Enforcement.

No appearance for Cheryl D. Jimerson.

DECISION

I. Introduction

On August 24, 2007, the FINRA Department of Enforcement ("Enforcement") filed the attached five-count Complaint against Respondent Cheryl Diane Jimerson ("Respondent") alleging that Respondent: (1) executed four unauthorized trades in the account of customer GS, in violation of NASD Conduct Rule 2110; (2) executed three

unauthorized trades in the securities account of customer JV, in violation of NASD Conduct Rule 2110; (3) recommended and executed unsuitable excessive trades in the IRA account of customer JV, in violation of NASD Conduct Rules 2310 and 2110; (4) recommended and executed unsuitable short-term trades in mutual funds in the IRA account of customer JV, in violation of NASD Conduct Rules 2310 and 2110; and (5) failed to appear for two on-the-record interviews, in violation of NASD Procedural Rule 8210 and Conduct Rule 2110.

On November 14, 2007, Enforcement filed a Motion for Entry of a Default Decision ("Motion"), supported by the declaration of Frank M. Weber, Esq., Regional Counsel in FINRA's New York, NY office, and by 40 exhibits.¹ For the reasons set forth below, Enforcement's Motion is granted.

II. Respondent's Default

On August 23, 2007, Enforcement served the Complaint and Notice of Complaint on Respondent, via certified and first class mail, at her most current residential address as reflected in FINRA's Central Registration Depository ("CRD address") and at four alternative addresses that the FINRA staff obtained through an address search.² (CX-1, p. 1; CX-2, p. 16; DECL at ¶¶ 11-12). Respondent did not answer the Complaint. (DECL at ¶ 14).

Thereafter, on September 21, 2007, Enforcement served the Complaint and the Second Notice of Complaint, via certified and first class mail, at Respondent's CRD

¹ Hereinafter, the statements in the Weber Declaration will be designated as "DECL at ¶" and Enforcement's exhibits will be designated as "CX-" with the appropriate page number.

² Respondent's CRD address is [REDACTED] (CX-1, p. 1). The four alternative addresses were: (1) [REDACTED]; (2) [REDACTED]; (3) [REDACTED]; and (4) Prudential Douglas Elliman Real Estate, 301 West Main Street, Sayville, New York 11782. (DECL at ¶ 12).

address and the four alternative addresses.³ (CX-9, p. 19; DECL at ¶ 15). Respondent has not filed an answer to date. (DECL at ¶ 17).

The Hearing Officer finds that Enforcement complied with Rule 9134(b)(1) by sending the mailings to Respondent's CRD address and the alternative addresses. Accordingly, the Hearing Officer finds that Respondent received effective constructive notice of this proceeding and defaulted by failing to answer the Complaint.⁴

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

Respondent was registered as a general securities representative with FINRA member Investprivate, Inc. from April 12, 2001 to October 10, 2002. (Complaint at ¶ 3; CX-1, p. 6; DECL at ¶ 6). From December 4, 2002 to October 5, 2005, Respondent was registered as a general securities representative with FINRA member Westrock Advisors, Inc. ("Westrock"). (Complaint at ¶ 4; CX-1, p. 5; DECL at ¶ 7). Respondent is not currently associated with any FINRA member firm.⁵ (Complaint at ¶ 5; CX-1, p. 5; DECL at ¶ 10).

Nevertheless, Respondent remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of the NASD By-Laws, because (1) the Complaint was filed within two years after her association with Westrock was terminated, and (2) the Complaint charges her with misconduct while she was associated

³ See *Dep't of Enforcement v. Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at * 5 n.1 (NAC Dec. 9, 2003) (finding that respondent received constructive notice when the complaint was mailed to respondent's CRD address).

⁴ The following Findings of Fact and Conclusions of Law incorporate the allegations in the attached Complaint, pursuant to Procedural Rules 9215(f) and 9269, and NASD Notice to Members 99-77.

⁵ On August 2, 2006, Respondent's registration was suspended for failing to pay an arbitration award or satisfactorily responding to a FINRA request for information concerning her compliance with the arbitration award. (Complaint at ¶ 7; DECL at ¶ 8). On December 28, 2006, Respondent's registration was suspended for failing to pay another arbitration award or satisfactorily responding to a FINRA request for information concerning her compliance with the second arbitration award. (*Id.*).

with a FINRA member, and failures to appear for on-the-record interviews requested pursuant to Rule 8210 during the period of retained jurisdiction.⁶

B. Background

FINRA began its investigation of Respondent as the result of a customer complaint filed with FINRA's investor complaint center. (DECL at ¶ 18). During the course of its investigation, the FINRA staff became aware of complaints filed against Respondent by several additional customers. (*Id.*). The Complaint contains allegations regarding Respondent's conduct with respect to two customers, GS and JV. (Complaint at ¶¶ 10-33).

1. Customer GS

Customer GS maintained an account with Respondent at Westrock.⁷ (DECL at ¶ 20). On February 5, 2004, Respondent effected the following four transactions in customer GS's Westrock securities account, without the prior knowledge, authorization, or consent of GS: (i) purchase of 194.357 shares of FT-Franklin Rising Dividends Fund Class A; (ii) sale of 46.111 shares of Smith Barney Shearson Aggressive Growth Fund Class A; (iii) sale of 150 shares of Provident Capital Trust IV 9.45% Preferred Callable; and (iv) sale of 145 shares of Royal Bank of Scotland Group Non Cumulative Series E 9.00% Preferred. (Complaint at ¶ 10; CX-16; CX-17, CX-18, p. 3; DECL at ¶ 21).

⁶ Article V, Section 4(a) of the NASD By-Laws also provides that the running of the two year period of retained jurisdiction recommences from the date of the filing of an amended Form U-5, if the amended Form U-5 (i) is filed within two years of the original Form U-5 filing, and (ii) discloses that such person may have engaged in conduct actionable under any applicable statute, rule, or regulation. On March 14, 2007, Westrock filed an amendment to the Form U-5 for Respondent, disclosing a customer complaint alleging churning. (CX-1, p. 11; DECL at ¶ 9). Accordingly, the two year period of retained jurisdiction extends to March 14, 2009.

⁷ Customer GS had an account with Respondent in September 2001, when Respondent was associated with Investprivate. (CX-16).

2. Customer JV

Customer JV opened three accounts at Westrock in October 2002 with Respondent: (i) an Individual Retirement Account ("IRA account"); (ii) a Roth IRA account; and (iii) a regular securities account. (Complaint at ¶ 16; DECL at ¶ 28). At the time that JV opened the accounts, he was 46 years old and had an annual income of approximately \$100,000, liquid assets of \$200,000, and a net worth of \$1,000,000.⁸ (Complaint at ¶¶ 17-18; CX-24). JV's investment objective was current income and capital appreciation, and his risk profile was moderate. (Complaint at ¶ 17; CX-24).

During the period from October 2002 through May 2004, Respondent recommended a number of purchase and sale transactions in JV's IRA account. (Complaint at ¶ 19). JV relied upon and followed Respondent's recommendations. (*Id.*). Additionally, Respondent exercised discretionary authority with respect to some transactions in JV's IRA account. (Complaint at ¶ 20).

The trading in JV's IRA account followed a pattern whereby Respondent sold mutual funds after holding the funds for a short period of time then utilized the proceeds of the mutual funds to purchase securities of another asset class, such as preferred stock. (Complaint at ¶¶ 28-29). Then, Respondent sold the securities of the other asset classes and again purchased mutual funds.⁹

⁸ Respondent had serviced JV's accounts at Investprivate from April 2001 to October 2002. (Complaint at ¶ 14).

⁹ For example, at the end of November 2002, 100% of the assets of JV's IRA account were invested in preferred stock. (CX-25, p. 4). The following month, at the end of December 2002, 62.47% of the IRA's assets were invested in mutual funds and 37.06% of the assets were invested in preferred stock. (CX-25, p. 7). At the end of January 2003, 99.57% of the IRA's assets were invested in mutual funds. (CX-25, p. 10). At the end of February 2003, 99.48% of the IRA's assets were invested in preferred stock. (CX-25, p. 13). At the end of March 2003, 77.69% of the IRA's assets were invested in mutual funds. (CX-25, p. 17).

On April 12, 2004, Respondent effected three trades in customer JV's regular securities account, without JV's prior knowledge, authorization, or consent: (i) sale of 60 shares of Forest Pharmaceutical stock; (ii) sale of 300 shares of General Electric stock; and (iii) purchase of 477.223 shares of JP Morgan Small Cap Equity Fund Class A.¹⁰ (Complaint at ¶ 12; CX-21; CX-22, p. 3; DECL at ¶ 26). JV had granted Respondent some discretionary authority in his IRA account, but he had explicitly not granted discretionary authority in his regular securities account. (CX-21 at ¶ 6).

C. Counts One and Two: Respondent Executed Unauthorized Trades

Count one of the Complaint alleges that Respondent executed four unauthorized trades in the account of customer GS, in violation of NASD Conduct Rule 2110. (Complaint at ¶ 10). Enforcement provided the additional information that Respondent generated commissions of \$970 on the unauthorized trades in GS's account, and that GS incurred \$453 in losses as a result of the unauthorized trades. (DECL at ¶¶ 22-23; CX-19; CX-20).

Count two of the Complaint alleges that Respondent executed three unauthorized trades in the regular securities account of customer JV, in violation of NASD Conduct Rule 2110. (Complaint at ¶ 12).

Under Procedural Rule 9215(f) and NASD Notice to Members 99-77, the allegations of counts one and two of the Complaint are deemed admitted, and they are hereby incorporated in this Default Decision as findings of fact.

According to IM-2310-2, unauthorized trading is "[c]ausing the execution of transactions which are unauthorized by customers or the sending of confirmations in

¹⁰ The FINRA staff was unable to determine whether JV incurred out of pocket losses as a result of the unauthorized purchase. (DECL at ¶ 27).

order to cause customers to accept transactions not actually agreed upon.”¹¹ The Securities and Exchange Commission has affirmed that unauthorized trading in a customer’s account is a violation of NASD Conduct Rule 2110’s requirement to observe just and equitable principles of trade.¹²

Based on the allegations deemed admitted in the Complaint, the Hearing Officer finds that Respondent violated NASD Conduct Rule 2110 by executing seven unauthorized transactions in the accounts of customers GS and JV, as alleged in counts one and two of the Complaint.

D. Counts Three and Four: Respondent Recommended and Executed Unsuitable Trades, Which Were Excessive and Involved Short-Term Mutual Fund Trading

Count three of Complaint alleges that Respondent engaged in a pattern of unsuitable excessive trading activity in JV’s IRA account in light of JV’s objectives and financial situation, in violation of NASD Conduct Rules 2310 and 2110. (Complaint at ¶¶ 14-25; DECL at ¶¶ 28-35).

Count four of the Complaint alleges that Respondent engaged in a pattern of unsuitable short-term trading of mutual funds in JV’s IRA account, in view of JV’s financial situation and needs, in violation of NASD Conduct Rules 2310 and 2110. (Complaint at ¶¶ 27-33; DECL at ¶¶ 36-43).

JV incurred total losses of \$33,776 as a result of the unsuitable trading (\$11,212 of the losses resulted from the mutual fund transactions and \$22,564 in losses resulted

¹¹ IM-2310-2(b)(4)(A)(iii).

¹² See *Robert Lester Gardner*, Exch. Act Rel. No. 35,899, 1995 SEC LEXIS 1532, at*1, n.1 (June 27, 1995).

from the transactions in other asset classes).¹³ (DECL at ¶ 33(e)). The average monthly equity during the period was \$54,724. (Complaint at ¶ 21; CX-26).

NASD Conduct Rule 2310 requires that a registered representative have a “reasonable basis” for believing that a recommendation made to a customer regarding the purchase, sale, or exchange of any security is suitable for that individual. A violation of Conduct Rule 2310 is also a violation of Rule 2110, in contravention of “just and equitable principles of trade.”¹⁴

A broker’s recommendations must be consistent with his customer’s best interests.¹⁵ Rule 2310’s suitability requirement can be violated when the representative’s recommendations are quantitatively unsuitable, *i.e.*, generate excessive trading in the account.¹⁶ There is no single test for determining if there has been excessive trading, rather a number of factors are considered, including turnover ratio and cost-to-equity ratio. An annual turnover ratio in excess of six is generally presumed to reflect excessive trades.¹⁷ The annual turnover rate for JV’s IRA account was 7.967. (Complaint at ¶ 23). An annualized cost-to-equity ratio of 20% generally indicates excessive trading.¹⁸ The annualized cost-to-equity ratio for JV’s IRA account was 42.16%. (Complaint at ¶ 22).

¹³ During the period of October 2002 to May 2004, trading in JV’s IRA account generated total commissions and fees of \$38,639. (Complaint at ¶ 21). JV incurred approximately \$19,314 in sales charges for mutual fund transactions. (Complaint at ¶ 31; DECL at ¶ 40).

¹⁴ *Dep’t of Enforcement v. Daniel Richard Howard*, 2000 NASD Discip. LEXIS 16 (NAC Nov. 16, 2000).

¹⁵ *Wendell D. Belden*, Exch. Act Rel. No. 47,859, 2003 SEC LEXIS 1154, at *11 (May 14, 2003).

¹⁶ *Jack H. Stein*, Exch. Act Rel. No. 47335 (Feb. 10, 2003), available at <http://www.sec.gov/litigation/opinions/34-47335.htm>.

¹⁷ *David Wong*, Exch. Act Rel. No. 45,426, 2002 SEC LEXIS 339, *14 n.18 (Feb. 8, 2002) (turnover rate of 7.3 held to be excessive).

¹⁸ *Thomas F. Bandyk*, Exch. Act Rel. No. 35,415, 1995 SEC LEXIS 481 (Feb. 24, 1995).

Rule 2310's suitability requirement also can be violated when a representative's mutual fund recommendations result in short-term trading. IM-2310-2(b)(3) states that "[t]rading in mutual fund shares, particularly on a short-term basis," is a violation of the registered representative's responsibility for fair dealing with customers. The SEC has found that "mutual fund shares generally are suitable only as long-term investments and cannot be regarded as a proper vehicle for short-term trading, especially where such trading involves new sales loads."¹⁹ Neither FINRA nor the SEC has defined "short term," but SEC decisions focus on a period of less than one year as short term.²⁰ None of the mutual funds in JV's IRA account was held longer than 114 days. (Complaint at ¶ 30). In most instances, the funds were held 60 days or less. (*Id.*).

There are two instances where mutual funds (the American Funds Balanced Fund Class A and the FT Franklin Rising Dividends Fund Class A) were purchased and sold twice in JV's IRA account.²¹ (DECL at ¶ 42). JV paid a sales charge of an upfront load to purchase the two funds, and sold each fund a month after it was purchased. (*Id.*). Several months later, the two funds were purchased again, resulting in an upfront load fee for a second time. (*Id.*).

Under Rule 9215(f) and Notice to Members 99-77, the allegations of counts three and four of the Complaint are deemed admitted and they are hereby incorporated in this Default Decision as findings of fact.

¹⁹ *Kenneth C. Krull*, 53 S.E.C. 1101, 1998 SEC LEXIS 2664, citing *Winston H. Kinderdick*, 46 S.E.C. 636, 639 (1976).

²⁰ See *NAC Redacted Decision*, Complaint No. C07010037, 2003 NASD Discip. LEXIS 16, *22, n. 9 (May 13, 2003), citing *Krull v. SEC*, 248 F.3d 907, 912 n.6 (9th Cir. 2001).

²¹ Shares of the American Funds Balanced Fund Class A were purchased on January 27, 2003 and sold on February 24, 2003, then purchased again on July 7, 2003 and sold on August 19, 2003. (Complaint at ¶ 27). Shares of FT Franklin Rising Dividends Fund Class A were purchased on June 23, 2003 and sold on July 31, 2003, then purchased again on December 4, 2003 and sold on January 30, 2004. (*Id.*).

Enforcement provided the additional information that by switching from mutual funds to securities of another asset class, and then back to mutual funds, Respondent may have been attempting to avoid the issuance of "switch letters" and other tools designed to detect and prevent improper mutual fund switching. (DECL at ¶ 38).

Based on the allegations deemed admitted, the Hearing Officer finds that Respondent violated NASD Conduct Rules 2310 and 2110 by engaging in unsuitable excessive trading and unsuitable short-term trading in mutual funds in JV's IRA account, as alleged in counts three and four of the Complaint.

E. Count Five: Respondent Failed to Appear for Two On-the-Record Interviews

At the outset of the investigation, Respondent cooperated with the FINRA staff and appeared for an on-the-record interview. (Complaint at ¶ 35; DECL at ¶ 44).

Count five of the Complaint alleges that, in connection with the continuing investigation, the FINRA staff sent Respondent two additional requests that she appear for on-the-record interviews, pursuant to NASD Procedural Rule 8210, by letters dated April 5, 2007 and April 18, 2007. (Complaint at ¶¶ 36, 40). The requests to appear were sent to Respondent at her CRD address and the four alternative addresses. (Complaint at ¶¶ 37, 41). Respondent failed to appear for the interviews scheduled on April 18, 2007, and May 1, 2007. (Complaint at ¶¶ 39, 43).

Respondent is deemed to have received the two requests that were sent to her CRD address and the alternative addresses pursuant to NASD Procedural Rule 8210(d).

Failure to comply with Rule 8210 requests for on-the-record interviews is a serious violation because it subverts FINRA's ability to perform its regulatory responsibilities.²²

Based on the allegations deemed admitted, the Hearing Officer finds that Respondent violated NASD Conduct Rule 2110 and Procedural Rule 8210 by failing to appear for two requested on-the-record interviews, as alleged in count five of the Complaint.

IV. Sanctions

A. Counts One and Two: Unauthorized Trades

For violations of Conduct Rule 2110 based on unauthorized trades as alleged in counts one and two of the Complaint, the FINRA Sanction Guidelines ("Guidelines") recommend a fine of \$5,000 to \$75,000.²³ The Guidelines also recommend considering a suspension in any or all capacities for a period of ten business days to one year, and in egregious cases, a longer suspension of up to two years, or a bar.²⁴ In addition, there are two specific considerations to determine sanctions in unauthorized transaction cases, (i) whether the respondent misunderstood his authority or the terms of the customers' orders, and (ii) whether the unauthorized trading was egregious.

FINRA has identified three categories of egregious unauthorized trading:

(1) quantitatively egregious unauthorized trading (i.e., unauthorized trading that is egregious because of the sheer number of unauthorized trades executed); (2) unauthorized trading accompanied by aggravating factors, such as efforts to conceal the

²² See, e.g., *Richard J. Rouse*, Exch. Act Rel. No. 32,685, 1993 SEC LEXIS 1831, at *7 (1993); *Joseph G. Chiulli*, Exch. Act Rel. No. 42,359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for FINRA to conduct its investigations effectively, and emphasizing that FINRA members and associated persons must fully cooperate with requests for information).

²³ *FINRA Sanction Guidelines*, p. 103 (2007), available at <http://www.finra.org/web/groups/enforcement/documents/enforcement/p011038.pdf>.

²⁴ *Id.*

unauthorized trading, attempts to evade regulatory investigative efforts, customer loss, or a history of similar misconduct; and (3) qualitatively egregious unauthorized trading, which is measured by the strength of the evidence and the respondent's motives in effecting the trades (i.e., whether the respondent acted in bad faith or as a result of a reasonable misunderstanding).²⁵

The evidence here demonstrates that Respondent's unauthorized trading was qualitatively egregious because the trading appeared to be part of a wider scheme involving excessive trading to generate improper fees and commissions.

Based on the egregious nature of the unauthorized trading, Enforcement recommended that Respondent be barred and ordered to pay restitution to customer GS of \$453 for GS's losses from the unauthorized trades,²⁶ and ordered to disgorge \$2,205 in commissions and fees earned from the unauthorized trades (\$970 from GS's account and \$1,235 from JV's account).

The Hearing Officer agrees that the conduct was egregious. The Hearing Officer bars Respondent from associating with any FINRA member firm in any capacity and orders that she pay restitution to GS in the amount of \$453, for violating NASD Conduct Rule 2110, as alleged in counts one and two of the Complaint. In light of the bar, the Hearing Officer does not impose a fine based on disgorgement of commissions.

²⁵ See *District Bus. Conduct Comm. v. Hellen*, No. C3A970031, 1999 NASD Discip. LEXIS 22, at *15-24 (NAC June 15, 1999).

²⁶ There was no quantifiable loss suffered by customer JV as a result of Respondent's unauthorized purchase in JV's regular securities account. (DECL at ¶ 27).

B. Counts Three and Four: Excessive Trading and Short-Term Mutual Fund Trading

For excessive trading, the Guidelines recommend a fine of \$5,000 to \$75,000, along with a suspension in any and all capacities for ten business days to one year.²⁷ In egregious cases, the Hearing Officer may consider a longer suspension of up to two years or a bar.²⁸

The Guideline for excessive trading states that it is an appropriate guideline for violations involving mutual fund related transactions.²⁹

Enforcement has suggested that Respondent's conduct was egregious and that the appropriate sanction should be a bar. Based on the specific information available to Respondent regarding JV's investment objective, risk profile, and the status of the account as an IRA account, the Hearing Officer finds that Respondent engaged in a pattern of wrongdoing, motivated by pecuniary gain, which resulted in customer harm.

Accordingly, the Hearing Officer agrees with Enforcement that Respondent's actions were egregious and orders that Respondent be barred from association with any FINRA member firm in any capacity for violating NASD Conduct Rules 2310 and 2110 by recommending and executing unsuitable excessive trading and short-term mutual trading in JV's IRA account, as alleged in counts three and four of the Complaint. The Hearing Officer also orders that Respondent provide restitution to customer JV for \$33,776 in net losses to his account caused by Respondent's misconduct. In light of the bar, the Hearing Officer does not impose a fine based on disgorgement of commissions.

²⁷ *Guidelines* at 82.

²⁸ *Id.*

²⁹ *Id.*

C. Count Five: Failure to Appear for Two On-the-Record Interviews

For failing to appear for two on-the-record interviews as alleged in count five of the Complaint, Enforcement recommended that Respondent be barred. The FINRA Sanction Guidelines provide that a bar should be standard when an individual respondent does not respond in any manner to a request issued pursuant to Rule 8210.³⁰ The record does not indicate the existence of any mitigating factors that would warrant a lesser sanction.

Accordingly, the Hearing Officer accepts Enforcement's recommendation and bars Respondent from associating with any FINRA member firm in any capacity for violating NASD Conduct Rule 2110 and Procedural Rule 8210 by failing to appear for two on-the-record interviews scheduled pursuant to Rule 8210, as alleged in count five of the Complaint.

V. Order

Respondent Cheryl D. Jimerson is barred from association with any FINRA member firm in any capacity for (i) executing authorized trades in the accounts of two customers, (ii) recommending and executing unsuitable excessive trading and short-term mutual trading in the account of customer JV; and (iii) failing to appear for two on-the-record interviews.

In addition to barring Respondent, the Hearing Officer also orders that Respondent pay \$453 in restitution to customer GS, and \$33,776 in restitution to customer JV. These sanctions shall become effective on a date set by FINRA, but not sooner than 30 days after this Decision becomes the final disciplinary action of FINRA,

³⁰ *Guidelines* at 35.

except the bars will become effective immediately upon this Default Decision becoming the final disciplinary action of FINRA.


Sharon Witherspoon
Hearing Officer

Dated: Washington, DC
February 4, 2008

Copies to:

Cheryl D. Jimerson (via FedEx and first class mail)
Frank M. Weber, Esq. (via electronic and first class mail)
Mark P. Dauer, Esq. (via electronic and first class mail)
David R. Sonnenberg, Esq. (via electronic and first class mail)

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

CHERYL JIMERSON
(CRD No. 1379935),

Respondent.

Disciplinary Proceeding
No. E102004089201

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Respondent Cheryl Jimerson effected unauthorized transactions in the accounts of two unrelated customers, GS and JV. Jimerson also engaged in a pattern of unsuitable excessive trading and unsuitable short term trading of mutual funds in one of JV's accounts. Finally, Jimerson also failed to appear for an on-the-record interview ("OTR").

JURISDICTION

2. Jimerson first became registered with FINRA, formerly known as National Association of Securities Dealers or NASD, as a General Securities Representative ("GSR") through an association with a member firm on or about July 23, 1985.
3. From April 12, 2001, through October 10, 2002, Jimerson was registered with FINRA as a GSR through an association with member firm Investprivate, Inc. (BD No. 103737) ("Investprivate").

4. From December 4, 2002 through October 5, 2005, Jimerson was registered with FINRA as a GSR through an association with member firm Westrock Advisors, Inc. (BD No. 114338) ("Westrock"). Jimerson was associated with Westrock beginning on or about October 8, 2002.
5. Jimerson is currently not registered through or associated with any FINRA member firm.
6. On March 14, 2007, Westrock filed a Form U-5 amendment with respect to Jimerson. The Form U-5 amendment set forth an initial disclosure of a customer complaint received by Westrock.
7. Pursuant to Article VI, Section 3 of FINRA's By-Laws and the 9510 series of NASD's Procedural Rules, Jimerson's registration was suspended:
 - a. on August 2, 2006, for failing to pay an arbitration award in NASD Arbitration Case No. 05-05162 or to satisfactorily respond to an NASD request to provide information concerning the status of compliance with the award; and
 - b. on December 28, 2006, for failing to pay an arbitration award in NASD Arbitration Case No. 05-05146 or to satisfactorily respond to an NASD request to provide information concerning the status of compliance with the award.
8. Pursuant to Article V, Section 4 of FINRA's By-Laws, Jimerson remains subject to FINRA's jurisdiction.

FIRST CAUSE OF COMPLAINT
Unauthorized Transactions – Customer GS
(Violation of NASD Conduct Rule 2110)

9. Paragraphs 1 through 7 are re-alleged and incorporated herein by reference.
10. On or about February 5, 2004, while registered through Westrock, Jimerson effected the following transactions without the prior knowledge, authorization or consent from GS:

- a. the purchase of 194.357 shares of FT-Franklin Rising Dividends Class A fund,
- b. the sale of 46.111 shares of Smith Barney Shearson Aggressive Growth Fund class A,
- c. the sale of 150 shares of Provident Capital Trust IV 9.45% Preferred Callable, and
- d. the sale of 145 shares of Royal Bank of Scotland Group Non Cumulative Series E 9.00% Preferred Spon ADR.

By reason of the foregoing, Jimerson violated NASD Conduct Rule 2110.

SECOND CAUSE OF COMPLAINT
Unauthorized Transactions – Customer JV
(Violation of NASD Conduct Rule 2110)

- 11. Paragraphs 1 through 9 are re-alleged and incorporated herein by reference.
- 12. On or about April 12, 2004, while registered through Westrock, Jimerson effected the following transactions without the prior knowledge, authorization or consent of customer JV:
 - a. the sale of 60 shares of Forest Pharmaceutical stock,
 - b. the sale of 300 shares of General Electric stock, and
 - c. the purchase of JP Morgan Small Cap Equity Fund Class A.

By reason of the foregoing, Jimerson violated NASD Conduct Rule 2110.

THIRD CAUSE OF COMPLAINT
Excessive Trading – Customer JV
(Violation of NASD Conduct Rules 2310 and 2110)

- 13. Paragraphs 1 through 11 are re-alleged and incorporated herein by reference.
- 14. Jimerson was the primary broker servicing JV's accounts at Investprivate (from April 2001 through October 2002) and Westrock (from October 2002 through June 2004). In or about October 2002, when Jimerson changed firms from Investprivate to Westrock, customer JV transferred his accounts from Investprivate to Westrock.

15. Prior to April 2001, Jimerson had serviced JV's accounts at another broker-dealer where Jimerson was registered.
16. Customer JV opened three accounts at Westrock: an Individual Retirement Account ("IRA") account, a Roth IRA account and a securities account.
17. As set forth on Westrock new account documentation, JV's:
 - a. stated investment objectives were: Return Objective – Current Income and Capital Appreciation, Primary Risk Profile – Moderate.
 - b. annual income was approximately \$100,000, his liquid assets \$200,000 and his net worth (exclusive of residence) \$1 million.
18. At the time the accounts were opened, JV was 46 years old.
19. During the period from in or about October 2002 through May 2004, Jimerson recommended purchase and sale transactions in JV's IRA account. JV relied upon and followed Jimerson's recommendations.
20. Additionally, Jimerson exercised discretionary authority with respect to some transactions in the account even though JV had not executed any document permitting such discretion.
21. During the period from in or about October 2002 through May 2004, the trading in JV's IRA account generated total commissions and fees of \$38,639. The average monthly equity during that period was \$54,724.
22. For the period of approximately October 2002 through May 2004, the cost-to-equity ratio for JV's IRA account, which is calculated by dividing the total of all transaction costs incurred in an account by the average equity in the account, was 42.16 percent annualized.
23. The turnover rate in an account measures the number of times during a given period that the securities in the account are replaced by new securities, and is calculated by dividing the total

cost of purchases by the average equity in the account. During the period of approximately October 2002 through May 2004, the annualized turnover rate for JV's IRA account was 7.967.

24. The level of activity in JV's IRA account was inconsistent with JV's objectives and financial situation.
25. Jimerson engaged in a pattern of unsuitable excessive trading activity in JV's IRA account in light of JV's objectives, financial situation and needs.

By reason of the foregoing, Jimerson violated NASD Conduct Rules 2310 and 2110.

FOURTH CAUSE OF COMPLAINT
Unsuitable Mutual Fund Transactions – Customer JV
(Violation of NASD Conduct Rules 2310 and 2110)

26. Paragraphs 1 through 25 are re-alleged and incorporated herein by reference.
27. During the period from in or around October 2002 through May 2004, Jimerson recommended the following short-term mutual fund trades in JV's IRA account at Westrock:
- American Funds Amcap Fund Class A (purchased February 12, 2004 and sold March 11, 2004);
 - American Funds Balanced Fund Class A (purchased January 27, 2003 and sold on February 24, 2003, purchased again on July 7, 2003 and sold on August 19, 2003);
 - Delaware Small Cap Value Fund Class A (purchased January 30, 2004 and sold on March 4, 2004);
 - Dreyfus Premier Emerging Markets Fund (purchased May 30 and June 4, 2003, sold on September 25, 2003);
 - Eaton Vance Income Fund Class A (purchased March 19, 2003 and sold on April 10, 2003);
 - Eaton Vance WW Health Science Fund Class A (purchased December 5, 2003 and sold on December 22 2003 and January 12, 2004);
 - Evergreen Special Value Fund Class A (purchased February 3, 2004 and sold on March 4, 2004);
 - FT Mutual Beacon Class A (purchased October 14, 2003 and sold on November 17, 2003);
 - FT Franklin Rising Dividends Class A (purchased June 23, 2003 and sold on July 31, 2003, purchased again on December 4, 2003 and sold on January 30, 2004);

- Goldman Sachs High Yield Income Fund Class A (purchased December 22, 2002 and sold on February 13, 2003);
- Goldman Sachs Small Corp. Class A (purchased on September 25, 2003 and sold on October 31, 2003);
- JP Morgan Capital Growth Fund Class A (purchased on October 14, 2003 and sold on December 19, 2003 and January 30, 2004);
- Liberty Small Cap. Fund Class A (purchased September 5, 2003 and sold on September 18, 2003);
- Lord Abbett Bond Debenture Fund (purchased December 9, 2002 and sold on February 13, 2003);
- Mutual Series Mutual Beacon Class A (purchased April 30, 2004 and sold on May 18, 2004);
- Pioneer Fund Class A (purchased May 8, 2003 and sold on July 7, 2003); and
- Putnam High Yield Tr Class A (purchased March 27, 2003 and sold on April 24, 2003).

28. In her handling of JV's IRA account, Jimerson employed a pattern of short-term trading of mutual funds.
29. The short-term mutual fund trading in JV's IRA account often followed a pattern whereby Jimerson sold mutual fund(s) after holding the fund(s) for a short period of time. The proceeds from the sale were then utilized to purchase securities of another asset class, such as preferred stock. Then, Jimerson sold the securities of the other asset class and again purchased mutual funds.
30. None of the funds in JV's IRA account was held longer than 114 days. In most instances, the funds were held 60 days or less.
31. As a result of Jimerson's short term trading of mutual funds, customer JV incurred excessive sales charges. During the period of October 2002 to May 2004, JV incurred approximately \$19,314 in sales charges for mutual fund transactions.
32. A schedule of the transactions in JV's account is annexed hereto as Exhibit A.
33. Jimerson effected these transactions without having reasonable grounds for believing that the transactions were suitable for JV on the basis of JV's financial situation and needs.

By reason of the foregoing, Jimerson violated NASD Conduct Rules 2310 and 2110.

FIFTH CAUSE OF COMPLAINT

Failure to Appear

(Violations of NASD Procedural Rule 8210 and NASD Conduct Rule 2110)

34. Paragraphs 1 through 40 are re-alleged and incorporated by reference.
35. By letters dated June 10, 2004 and March 7, 2005, the staff of FINRA's District No. 10 office (the "Staff") requested, respectively, that Jimerson provide information and appear for an OTR. Both of the requests were sent to Jimerson's then current work address (at Westrock) and to the last current residential address as reflected on the Central Registration Depository, [REDACTED] (the "CRD Address").

Jimerson responded to the request for information and appeared for an OTR.

The First Request

36. By letter dated April 5, 2007, the Staff requested, pursuant to Rule 8210, that Jimerson appear on Wednesday, April 18, 2007, for an OTR. The letter further requested that Jimerson contact the Staff by April 13, 2007 to either confirm Jimerson's appearance on April 18, 2007 or to reschedule if Jimerson was unable to appear on the scheduled date.
37. The request was sent by certified and first class mail to the CRD Address and four additional addresses that the Staff obtained from searching Lexis and internet sources. The additional addresses are: (i) [REDACTED] (the "P.O. Box 425 Address"); (ii) [REDACTED] (the "P.O. Box 598 Address"); (iii) [REDACTED] (the "New York Address") and (iv) Prudential Douglas Elliman Real Estate, 301 West Main Street, Sayville, New York, 11782 (the "PDERE Address").

38. The certified mailing to the CRD Address was returned marked "Return to Sender, Unclaimed, Unable to Forward." The first class mailing to the CRD Address was not returned. The certified and first class mailings to the P.O. Box 425 Address were not returned. The certified mailing to the P.O. Box 598 Address was returned marked "Return to Sender, Unclaimed, Unable to Forward." The first class mailing to the P.O. Box 598 Address was returned marked "Return to Sender, Attempted – Not Known, Unable to Forward." The certified mailing to the New York Address was returned marked "Return to Sender." The first class mailing to the New York Address was returned marked "Return to Sender, Not Deliverable as Addressed, Unable to Forward." The return receipt card for the certified mailing to the PDERE Address was returned having been signed for by a "Pat Harris." The first class mailing to the PDERE address was not returned.
39. Jimerson never contacted the Staff as requested by April 13, 2007. Jimerson failed to appear on April 18, 2007.

The Second Request

40. By letter dated April 18, 2007, the Staff requested, pursuant to Rule 8210, that Jimerson appear on Tuesday, May 1, 2007 for an OTR (the "Second Request").
41. The Second Request was forwarded by certified and first class mail to: (i) the CRD Address, (ii) the P.O. Box 425 Address, (iii) the P.O. Box 598 Address; (iv) the New York Address; and (v) the PDERE Address.
42. The certified mailing to the CRD Address was returned marked "Return to Sender, Unclaimed, Unable to Forward." The first class mailing to the CRD Address was not returned. The certified mailing to the P.O. Box 425 Address was not returned marked "Return to Sender, Unclaimed, Unable to Forward." The certified mailing to the P.O. Box

598 Address was returned marked "Return to Sender, Unclaimed, Unable to Forward." The first class mailing to the P.O. Box 598 Address was not returned. The certified mailing to the New York Address was returned marked "Return to Sender, Addressee Unknown." The first class mailing to the New York Address was not returned. The return receipt card for the certified mailing to the PDERE Address was returned having been signed for on April 21, 2007 by an "Annalisa Strada." The first class mailing to the PDERE address was not returned.

43. Jimerson never contacted the Staff as requested by April 26, 2007. Jimerson failed to appear on May 1, 2007.

By reason of the foregoing, Jimerson violated NASD Procedural Rule 8210 and Conduct Rule 2110.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more sanctions provided under NASD Procedural Rule 8310(a), including monetary sanctions, be imposed.
- B. order that Jimerson, pursuant to NASD Procedural Rule 8310(a), disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest.
- C. order that the Jimerson bear such costs of the proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330.

Dated: August 23, 2007

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