

NASD OFFICE OF HEARING OFFICERS

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DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JOHNNY P. FIGLIOLINI, Jr.

(CRD No. 1058617),

Respondent.

Disciplinary Proceeding
No. E9B2003039303

Hearing Officer – DRP

DEFAULT DECISION

April 6, 2006

Respondent is barred from associating with any member firm in any capacity for permitting a statutorily disqualified individual to be associated with an NASD member firm, in violation of Rule 2110.

Appearances

David B. Klafter, Regional Counsel, Woodbridge, NJ (Rory C. Flynn, Washington, DC, and Roger D. Hogoboom, Denver, CO, Of Counsel) for the Department of Enforcement.

No appearance by or for Johnny P. Figliolini, Jr.

DECISION

I. Procedural History

On October 13, 2005, the Department of Enforcement filed a one-count Complaint against Respondent Johnny P. Figliolini, Jr. (Figliolini or Respondent), attached to this Decision as Exhibit A. The Complaint alleges that Respondent permitted a statutorily disqualified individual to be associated with an NASD member firm, in violation of NASD Conduct Rule 2110. Respondent did not file an Answer to the Complaint.

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Accordingly, on December 19, 2005, Enforcement filed a motion for entry of default decision, supported by the declaration of David B. Klafter and three exhibits. Figliolini did not file a response to the motion. For the reasons set forth below, Enforcement's motion is granted.¹

II. Respondent's Default

On October 10, 2005, Enforcement served the Complaint and Notice of Complaint on Respondent by certified and first class mail, sent to Respondent's last known residential address, as reflected in the Central Registration Depository (the CRD address), and to an address Respondent had provided to the staff during its investigation (the Middletown address). All of the mailings were returned,² and Respondent did not file an Answer.

On November 8, 2005, Enforcement served the Complaint and Second Notice of Complaint on Respondent at the CRD, Middletown, Manalapan, and Englishtown addresses by certified and first class mail. Once again, all of the mailings were returned, and Respondent did not file an Answer.³

Enforcement complied with Procedural Rule 9134(b)(1) by mailing the Complaint and Notices of Complaint to Respondent's CRD address, thereby providing constructive notice of this proceeding. By failing to file an Answer or otherwise respond to the Complaint, Respondent

¹ The factual determinations in this Decision are based on the allegations of the attached Complaint, which are deemed admitted, and the declaration and exhibits filed by Enforcement with its motion.

² Both mailings to the CRD address were returned, marked "Return to Sender, Refused," and bearing a new, third address (the Manalapan address). The certified mailing to the Middletown address was returned, marked "Return to Sender, Refused," and showing a new, fourth address (the Englishtown address). The first class mailing to the Middletown address was returned, marked "Return to Sender, Not Deliverable as Addressed," also bearing the Englishtown address.

³ The certified mailings were all returned to the staff, marked "Return to Sender, Refused." The first class mailings were all returned to the staff, marked "Return to Sender, Not Deliverable as Addressed."

defaulted.⁴ Pursuant to Rules 9215(f) and 9269(a)(2), the allegations in the Complaint are deemed admitted.

III. Jurisdiction

Respondent was first registered as a Series 6 variable contracts representative in 1982. He continued to be registered through various firms, including acting as president and designated principal of Phillip Louis Trading, Inc. (Phillip Louis or the firm) from December 1996 through September 2003. Finally, Figliolini was associated with member firm Jersey Shore Trading Group Inc. (Jersey Shore) from March 2003 until May 17, 2004, when the firm filed a Form U-5 terminating his registration. Since that time, he has not been associated or registered with any NASD member.

Respondent is subject to NASD jurisdiction pursuant to Art. V, Section 4 of NASD's By-Laws, because the Complaint, which was filed within two years of the termination of Respondent's registration with Jersey Shore, alleges misconduct that occurred while he was registered.

IV. Findings of Fact and Conclusions of Law

On or about December 18, 2002, JH, a registered representative of Phillip Louis, entered a guilty plea in federal court to two felony counts of conspiracy to commit wire, mail and securities fraud. On or about December 19, 2002, Phillip Louis filed a Form U-5 on behalf of JH, terminating his registration with the firm.

⁴ On November 22, 2005, Respondent contacted the Office of Hearing Officers (OHO) by telephone. He said that he had received some mail from OHO, but had not received a copy of the Complaint. Respondent was presumably referring to a copy of NASD's Code of Procedure and the Notice of Assignment of Hearing Officer, which OHO mailed to Respondent at his CRD and Middletown addresses on October 17, 2005. Respondent told OHO that he lives out of the country, but refused to provide the address, saying he did not want to be reached and would probably not file an Answer to the Complaint in this matter.

Respondent, who was president of Phillip Louis and the designated principal responsible for ensuring that firm personnel were properly registered, was aware of JH's conviction and statutory disqualification.⁵ Nevertheless, Respondent allowed JH to remain associated with, and perform securities activities on behalf of, Phillip Louis.

Firm financial records reflect that JH received approximately \$5,000 a month during the period December 2002 through August 2003.⁶ During this period, JH assisted in the reconciliation of clearing firm reports; analyzed trading reports to determine commission payouts; updated the firm's written supervisory procedures, continuing education manual and Anti-Money Laundering manual and assisted with compliance in those areas. JH also had direct access to, and authority to control, funds in the firm's clearing account.

During investigative testimony, Respondent acknowledged that he hired JH as a "consultant" to the firm after his felony conviction. By permitting JH, whom he knew was subject to a statutory disqualification, to be associated with a member firm, Respondent violated NASD Conduct Rule 2110, as charged in the Complaint.⁷

V. Sanctions

Enforcement cites NASD Sanction Guidelines for Registration Violations, which recommend a fine of \$2,500 to \$50,000 and a suspension for up to six months, or in egregious cases, a longer suspension or a bar.⁸ The Hearing Officer also consulted the Guideline for Allowing Disqualified Person to Associate, which suggests a fine of \$5,000 to \$50,000 and a

⁵ JH was subject to a disqualification from association with a member firm pursuant to NASD By-Laws Article III, Sec. 4.

⁶ In August 2003, the firm filed a Form BDW, requesting withdrawal from broker-dealer registration.

⁷ Cf. IM-1000-3 (failure to register an employee who should be so registered may violate Conduct Rule 2110); *Dist. Bus. Conduct Comm. v. DeltaVest Financial, Inc.*, 1994 NASD Discip. LEXIS 221 (NBCC June 27, 1994) (permitting individual who had been barred to continue his association with member firm violates Art. III, Sec. 1 of Rules of Fair Practice, predecessor to Conduct Rule 2110).

⁸ *Guidelines* (2005 ed.) at 48.

suspension up to two years or a bar in egregious cases, “particularly when [the supervisory principal] knowingly allowed a disqualified person to become associated.”⁹

Enforcement contends that Respondent’s misconduct was egregious, and the Hearing Officer concurs. Though the firm filed a Form U-5 on JH’s behalf the day after his conviction, Respondent knowingly permitted JH to continue his association with Phillip Louis until the firm withdrew from NASD membership. Respondent, who was president of the firm and the principal responsible for ensuring compliance with registration requirements, demonstrated a complete disregard for regulatory requirements.

Furthermore, Respondent has a disciplinary history that includes: a \$10,000 fine and ten-day suspension in 2003 for failing to supervise the activities of an individual in the sales of unregistered securities; a censure and \$5,000 fine in 1993 for net capital violations; a censure and \$1,000 fine in 1992 for advertising violations;¹⁰ plus two disciplinary actions in 1988 and one in 1986.

The Hearing Officer concludes that any association by Respondent with a member firm would create an unacceptable risk of future violations of the securities laws and NASD Rules. Accordingly, Respondent is barred from association with any member firm in any capacity.

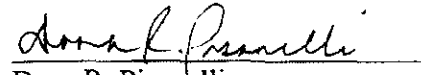
⁹ *Id.* at 46.

¹⁰ According to Enforcement, Respondent’s registration was revoked for failure to pay the fine.

VI. Conclusion

Respondent Johnny P. Figliolini, Jr. is barred from association with any member firm in any capacity for permitting a statutorily disqualified person to be associated with an NASD member firm, in violation of NASD Conduct Rule 2110. The bar shall become effective immediately if this Decision becomes the final disciplinary action of NASD.

SO ORDERED.


Dana R. Pisanelli
Hearing Officer

Dated: April 6, 2006
Washington, DC

Copies to: Johnny P. Figliolini, Jr. (*via overnight and first class mail*)
David B. Klafter, Esq. (*via electronic and first class mail*)
Roger D. Hogoboom, 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.

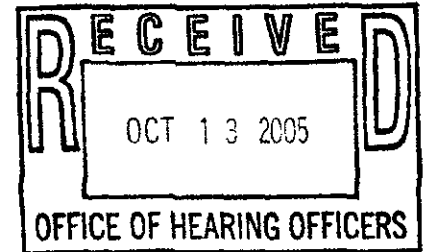
JOHNNY P. FIGLIOLINI, JR.,
(CRD No. 1058617)

Respondent.

Disciplinary Proceeding
No. E9B2003039303

Hearing Officer -

COMPLAINT



Upon information and belief, Complainant alleges the following:

1. Respondent Johnny P. Figliolini, Jr., ("Figliolini") became registered with NASD as a Series 6 variable contracts representative on or about July 29, 1982.
2. From in or about December 1996, through on or about September 15, 2003, Figliolini was registered with NASD and associated with Phillip Louis Trading Inc. ("Phillip Louis" or "the firm"), which was a NASD member firm until it was expelled from membership on or about February 26, 2004.¹
3. While associated with Philip Louis, Figliolini served as its President and was the principal of the firm responsible for ensuring that the firm's personnel were properly registered.
4. From in or about March 2003, through on or about May 17, 2004, Figliolini was registered with NASD and associated with Jersey Shore Trading Group, Inc. ("Jersey Shore"), an NASD member firm.

¹ Several months earlier, on or about August 20, 2003, Phillip Louis filed a Form BDW.

5. On or about May 17, 2004, Jersey Shore filed a Form U5 on behalf of Figliolini terminating his employment as of that date.

6. Figliolini is not currently registered with any NASD member firm, but is still within the jurisdiction of NASD pursuant to Article V, Section 4, of NASD's By-Laws. NASD retains jurisdiction over Figliolini until at least May 16, 2006, which is two years after the date that he was last associated with an NASD member firm.

CAUSE OF ACTION

FIGLIOLINI PERMITTED A STATUTORILY DISQUALIFIED INDIVIDUAL TO BE ASSOCIATED WITH AN NASD MEMBER FIRM Violation of NASD Conduct Rule 2110

7. Paragraphs 1 through 6 are realleged and are incorporated by reference herein.

8. On or about December 18, 2002, JH pleaded guilty in the United States District Court for the Southern District of Florida to two felony charges of Conspiracy to Commit Wire, Mail and Securities Fraud.

9. Pursuant to Article III, Section 4 of the NASD By-Laws, JH became subject to a disqualification as an associated person upon being convicted of the felony charges.

10. Prior to entering the guilty pleas, JH was employed by Phillip Louis as registered representative and serviced a few customer accounts. In addition, JH performed various administrative and clerical functions pertaining to Phillip Louis' branch office located in Illinois.

11. On December 19, 2002, Phillip Louis filed a Form U5 on behalf of JH voluntarily terminating his employment as of December 17, 2002.

12. At various times from on or about December 18, 2002 through in or about August 2003, Figliolini permitted JH to be associated with, and conduct activities on behalf of, Phillip

Louis. Figliolini, however, did not attempt to re-register JH or otherwise obtain permission from NASD for him to engage in such activities. During this time period, JH's engaged in the securities business of the firm by, among other things, assisting in the reconciliation of clearing firm reports; analyzing various trading reports to determine commission payouts; updating the firm's written supervisory procedures, updating the firm's continuing education manual, updating the firm's Anti-Money Laundering manual and providing assistance with compliance with those procedures. In addition, JH had direct access to the firm's clearing account and he had authority to control the funds in this account. Furthermore, JH issued wire instructions to the firm's bank to distribute commissions generated to registered representatives employed in the firm's Illinois branch office.

13. By permitting JH, a statutorily disqualified person, to be associated with and engage in the securities business of Phillip Louis, Figliolini violated NASD Conduct Rule 2110.

PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;
- B. An order imposing appropriate sanctions upon Respondent in accordance with NASD Procedural Rule 8310;
- C. An order imposing such costs of any proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Procedural Rule 8330; and

D. An order granting all further relief that is warranted under the circumstances.

NASD DEPARTMENT OF ENFORCEMENT

Date: October 10, 2005

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