

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

KAYEL G. DEANGELIS
(CRD No. 3259050),

Respondent.

Disciplinary Proceeding
No. ELI2004032101

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

April 20, 2007

The Respondent is barred from associating with any member firm in any capacity for failing to respond to requests for information, in violation of NASD Conduct Rule 2110 and NASD Procedural Rule 8210. In light of the bar, no additional sanctions were imposed for the Respondent's private securities transactions, in violation of NASD Conduct Rules 3040 and 2110; or for maintaining an outside securities account, in violation of NASD Conduct Rules 3050 and 2110.

Appearances

Julie K. Glynn, Regional Counsel, New York, NY (Rory C. Flynn, Chief Litigation Counsel, Washington, D.C., and Mark P. Dauer, New Orleans, LA, Of Counsel) for the Department of Enforcement.

No appearance by or for the Respondent.

DECISION

I. Introduction

On December 8, 2006, the Department of Enforcement ("Enforcement") filed a three-count Complaint against Kayel G. DeAngelis ("DeAngelis" or the "Respondent") alleging that the Respondent: (1) engaged in private securities transactions without providing his employer prior written notice, in violation of NASD Conduct Rules 2110 and 3040; (2) maintained an outside securities account without providing his employer

written notice, in violation of NASD Conduct Rules 2110 and 3050; and (3) failed to respond to requests for information issued by NASD staff, in violation of Procedural Rule 8210 and NASD Conduct Rule 2110. DeAngelis did not file an Answer to the Complaint.

On February 28, 2007, Enforcement filed a Motion for Entry of Default Decision, which is supported by the Declaration of Julie K. Glynn ("Glynn Decl.") and 18 exhibits. DeAngelis did not respond to the Motion. Thus, pursuant to NASD Procedural Rules 9215 and 9269, the Hearing Officer finds the Respondent in default, deems the allegations in the attached Complaint admitted, and grants Enforcement's Motion for Entry of Default Decision.

II. Respondent's Default

On December 8, 2006, Enforcement served the Complaint and Notice of Complaint on the Respondent by certified and first-class mail sent to his residential address shown in the Central Registration Depository (the "CRD address") and four alternate addresses.¹ The Respondent appears to have signed a receipt for one of the certified mailings sent to one of the alternate addresses.² Nonetheless, the Respondent did not file an Answer.

On January 9, 2007, Enforcement served the Complaint and Second Notice of Complaint on the Respondent by certified and first-class mail sent to the same five addresses.³ Again, the Respondent appears to have signed the receipt for at least one of

¹ Glynn Decl. ¶¶ 10, 11; CX-4 through CX-8.

² CX-6.

³ CX-9 through CX-12.

these certified mailings.⁴ The Respondent did not answer or otherwise respond to the Complaint.

The Hearing Officer finds that Enforcement properly served the Respondent with the Complaint and Notices of Complaint.⁵ There is substantial evidence in the record that the Respondent received actual notice of this proceeding. However, even if the signatures on the receipts for the certified mailings are not those of the Respondent, he nevertheless received valid constructive notice of this proceeding and defaulted by failing to answer the Complaint.

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

NASD has jurisdiction of this proceeding. Article V, Section 4 of NASD's By-Laws provides that NASD may bring a disciplinary proceeding against, and may request information from, a formerly registered person for two years after the timely filing of any amendment to a notice of termination (Form U-5) when the amendment reveals that the person may have engaged in "conduct actionable under any statute, rule, or regulation."

DeAngelis was last registered with J.P. Turner, Inc. ("J.P. Turner") until September 1, 2004.⁶ On July 27, 2005, J.P. Turner filed an amendment to the Respondent's Form U-5 that disclosed that he might have engaged in actionable conduct while he was associated with J.P. Turner. Enforcement filed the Complaint within two years of the date the amendment was filed, and the Complaint alleges misconduct that

⁴ CX-12.

⁵ *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).

⁶ Glynn Decl. ¶ 7.

occurred while DeAngelis was associated with J.P. Turner and failures to respond to information requests that NASD staff timely issued during the period of retained jurisdiction.

B. Private Securities Transactions

The first cause of the Complaint charges that the Respondent violated NASD Conduct Rules 3040 and 2110 by failing to provide written notice to J.P. Turner before he engaged in private securities transactions involving an investment club he started along with nine other individuals.

Before participating in a private securities transaction, an associated person must provide prior written notice to his or her member firm, describing in detail the proposed transaction and the person's proposed role in it. Furthermore, the written notice must state whether the person has received, or may receive, selling compensation in connection with the transaction.⁷

Conduct Rule 3040 defines a "private securities transaction" as "any securities transaction outside the regular course or scope of an associated person's employment with a member, including, though not limited to, new offerings of securities [that] are not registered with the Commission." Under Rule 3040, "selling compensation" is defined as "any compensation paid directly or indirectly from whatever source in connection with or as a result of the purchase or sale of a security, including, though not limited to,

⁷ NASD Conduct Rule 3040. The purpose of Rule 3040 is to ensure that member firms adequately supervise the suitability and due diligence responsibilities of their registered persons. *See Department of Enforcement v. Carcaterra*, No. C10000165, 2001 NASD Discip. LEXIS 39 (N.A.C. Dec. 13, 2001). The Rule also serves to "protect employers against investor claims arising from an associated person's private transactions and to prevent customers from being misled as to the employing firms' sponsorship of the transactions." *Id.* at *8-9.

commissions; finder's fees; securities ...; rights of participation in profits ... as a general partner or otherwise; or expense reimbursements."

In or around January 2003, the Respondent and nine others raised \$110,000 to start an investment club, which was known as Brightwaters Equity, Inc. ("Brightwaters"). DeAngelis was designated one of the club's managing partners with authority to conduct securities transactions on its behalf.⁸ Some of the investors in Brightwaters were J. P. Turner customers and one also was a J.P. Turner broker.

DeAngelis established a securities account for the club with Salomon Smith Barney and then used the account to invest \$110,000 in an offshore fund offered by a Bahamian company, Turning International Limited ("Turning International"), which was called a "Private Consolidated Deposit Fund."⁹

Brightwater's investment in Turning International constituted a "security" for purposes of Conduct Rule 3040. The securities laws were designed to "regulate investments, in whatever form they are made and by whatever name they are called."¹⁰ As such, the definition of "security," has been read to include "virtually any instrument that might be sold as an investment."¹¹ A security is "any note, stock, treasury stock, bond ... investment contract, ... or in general, any instrument commonly known as a 'security.'"¹² Further, in determining whether an investment is a security, it is appropriate to consider whether the investor was led to believe that he was purchasing a security. In *SEC v. C.M.*

⁸ Glynn Decl. ¶ 36; CX-13.

⁹ Glynn Decl. ¶ 37; CX-16. The evidence further shows that while Brightwaters investors did not lose their investments, other investors in Turning International lost over \$50 million due to fraud. The individual who orchestrated the fraud is currently serving a 20-year federal prison sentence. Glynn Decl. ¶ 38; CX-17.

¹⁰ *Reeves v. Ernst & Young*, 494 U.S. 56, 61 (1990).

¹¹ *Id.*

¹² *Id.* 60-61.

Joiner Leasing Corp., the Supreme Court held that offerings can “be judged as being what they were represented to be.”¹³ Under this rationale, federal courts have held that, when a customer transmits funds based on a representation that the customer’s funds will be used to purchase a security, the customer’s investment is considered a security, even if the funds ultimately are not used to purchase an instrument.¹⁴

Here, DeAngelis started Brightwaters and solicited funds for the purpose of investing those funds. In addition, the account documents reflect that as a managing partner he had authority to conduct securities transactions on the club’s behalf. Moreover, the evidence shows that DeAngelis invested those funds with Turning International.

Accordingly, the allegations in the first cause of the Complaint are sufficient to establish, for purposes of this default decision, that the Respondent violated NASD Conduct Rules 3040 and 2110.¹⁵ Though it is unclear whether Respondent received any selling compensation, “receipt of a benefit or compensation is not a required element of a Conduct Rule 3040 violation.”¹⁶

C. Outside Securities Account

NASD Conduct Rule 3050(c) provides, in relevant part, that “[a] person associated with a member, prior to opening an account or placing an initial order for the purchase or sale of securities with another member, shall notify both the employer member and the executing member, in writing, of his or her association with the other member.” Paragraph (e) of Rule 3050 specifies that the requirements of paragraph (c)

¹³ 320 U.S. 344, 353 (1943).

¹⁴ *SEC v. Lauer*, 52 F.3d 667, 670 (7th Cir. 1995) (“it is the representations made by the promoters, not their actual conduct, that determine whether an interest is an investment contract (or other security)”).

¹⁵ See *Steven J. Gluckman*, Exchange Act Release No. 41,628, 1999 LEXIS 1395, at *22 (July 20, 1999).

¹⁶ *Department of Enforcement v. Kapara*, No. C10030110, 2005 NASD Discip. LEXIS 41, at *16 (N.A.C. May 25, 2005) (citing *Keith L. Mohn*, 54 S.E.C. 457, 464 (1999)).

apply to accounts in which the associated person has either a financial interest or discretionary trading authority. The record makes clear that DeAngelis had both.

In January 2002, DeAngelis and Mitchell Sloane, who also was associated with J.P. Turner, opened a securities account at SmithBarney for GDG Equity, Inc. ("GDG Equity"), a financial services firm they jointly owned.¹⁷ DeAngelis was authorized to conduct transactions in the corporate account.

Despite being a joint owner of GDG Equity, and therefore having a financial interest in the company's SmithBarney account, and having authority over the transactions in the account, DeAngelis failed for two years to notify J.P. Turner in writing about the account.¹⁸ Accordingly, the Hearing Officer finds that the allegations in the second cause of the Complaint are sufficient to establish, for purposes of this default decision, that DeAngelis violated NASD Conduct Rules 3050 and 2110.¹⁹

D. Failure to Provide Information

The third cause of the Complaint charges that DeAngelis failed to respond to four written requests that he provide information pursuant to NASD Procedural Rule 8210 concerning the allegations in the first two causes of the Complaint. The staff mailed each request to DeAngelis by certified mail to his CRD Address. The requests were dated September 9, 2004, September 15, 2004, October 4, 2004, and November 1, 2006. DeAngelis did not respond to any of the requests.²⁰

¹⁷ Glynn Decl. ¶ 41; CX-18.

¹⁸ Glynn Decl. ¶ 43. According to the Complaint, DeAngelis provided written notice to J.P. Turner in December 2003.

¹⁹ See *Department of Enforcement v. Timothy J. Duma*, No. CA8030099, 2005 NASD Discip. LEXIS 46, at *17 (N.A.C. Oct. 27, 2005).

²⁰ Glynn Decl. ¶ 61.

In addition to DeAngelis's CRD Address, the staff also sent the last three requests to several additional addresses the staff discovered in the course of its efforts to serve him with the requests. The record reflects that some of those mailings were delivered to the Respondent or a member of his family. Elizabeth DeAngelis signed receipts for the copies of the requests dated September 15, 2004, and November 1, 2006; and Lisa DeAngelis signed for another delivery of the November 1, 2006, request.²¹

The Hearing Officer finds that the allegations in the third cause of the Complaint are sufficient to establish that DeAngelis violated Procedural Rule 8210 and NASD Conduct Rule 2110 by failing to respond to the staff's requests for information.

IV. Sanctions

The NASD Sanction Guidelines recommend imposition of a bar where an individual has failed to respond in any manner to requests for information issued by NASD staff pursuant to NASD Procedural Rule 8210 and there are no mitigating circumstances.²² Here, the record discloses no mitigating factors. Accordingly, the Hearing Officer will bar the Respondent from associating with any member firm in any capacity for this violation.

For engaging in private securities transactions valued at \$100,000 to \$500,000, the Sanction Guidelines recommend a fine of \$5,000 to \$50,000 and consideration of a suspension for three to six months.²³ The Sanction Guidelines also direct consideration of the number of factors, including the following: (1) the number of investors involved; (2) the length of the time over which the activity occurred; (3) the respondent's proprietary

²¹ Glynn Decl. ¶¶ 50, 58, 60.

²² NASD Sanction Guidelines at 35 (2006).

²³ *Id.* at 15.

or beneficial interest in the selling or issuing institution; and (4) whether the investors were customers of the respondent's firm. Based on these factors, the Hearing Officer concludes that the Respondent's misconduct warrants imposition of a six-month suspension and a \$10,000 fine.

The applicable Sanction Guidelines for violations of Conduct Rule 3050 recommend, in egregious cases, a suspension of up to two years or a bar, as well as a fine.²⁴ The specific considerations listed in the Sanction Guidelines focus on whether the transactions in the undisclosed account presented real or perceived conflicts of interest or involved "hot issues" (there is no evidence of either circumstance in this case) or whether the respondent provided oral notice to the employing firm or the executing firm. Enforcement argues that this is not an egregious case. Enforcement notes that there is no evidence of any trading activity in the outside account.

Based on the evidence in the record, the Hearing Officer agrees with Enforcement's assessment. Accordingly, the Hearing Officer accepts Enforcement's recommendation that the appropriate sanction for this violation is a \$5,000 fine.

V. Order

Kayel G. DeAngelis is barred from association with any member firm in any capacity for his failure to respond to requests for information, in violation of NASD Conduct Rule 2110 and NASD Procedural Rule 8210. The bar will become effective

²⁴ NASD Sanction Guidelines at 17.

immediately if this Default Decision becomes NASD's final disciplinary action in this proceeding.²⁵


Andrew H. Perkins
Hearing Officer

Copies to:

Kayel G. DeAngelis (by FedEx, next-day delivery, and first-class mail)
Julie K. Glynn, Esq. (by first-class and electronic mail)
Rory C. Flynn, Esq. (by first-class and electronic mail)
Mark P. Dauer, Esq. (by first-class and electronic mail)

²⁵ The Hearing Officer did not impose additional sanctions for the remaining violations because additional sanctions are unnecessary in light of the bar imposed for the Respondent's violations of NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

ATTACHMENT

**NASD
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,	Disciplinary Proceeding
Complainant,	No. ELI2004032101
v.	COMPLAINT
KAYEL G. DEANGELIS (CRD No. 3259050),	
Respondent.	

The Department of Enforcement alleges as follows:

JURISDICTION

1. From in or about June 1999 to August 30, 2004, Respondent Kayel G. DeAngelis was registered with NASD as a General Securities Representative (GSR) through his association with various NASD member firms.
2. On or about June 23, 2000, DeAngelis became registered as a GSR through his association with NASD member firm J.P. Turner, Inc. (BD No. 43177). On or about August 14, 2000, he also became registered at J.P. Turner as an Options Principal (OP).
3. On September 1, 2004, J.P. Turner filed a Uniform Termination Notice for Securities Industry Registration (Form U-5) stating that DeAngelis was voluntarily terminated on August 30, 2004.
4. On July 27, 2005, J.P. Turner filed amendments to DeAngelis's Form U-5 disclosing, for the first time, potentially actionable conduct.
5. Although DeAngelis is not currently registered with NASD, he remains subject to the jurisdiction of NASD pursuant to Article V, Section 4, of the Association's By-Laws.

**FIRST CAUSE OF ACTION
Private Securities Transaction
NASD Conduct Rules 3040 and 2110**

6. Paragraphs one through five are re-alleged and incorporated herein by reference.
7. In or around January 2003, while registered as a GSR and OP through an association with member firm J.P. Turner, DeAngelis participated in a private securities transaction away from J.P. Turner.
8. DeAngelis started an investment club, along with another person associated with J.P. Turner, for the purpose of engaging in a securities transaction away from J.P. Turner.
9. One-hundred and ten thousand dollars was raised for the investment club.
10. DeAngelis (i) contacted an offshore company to invest the funds obtained through the investment club and (ii) established a securities account for gathering and dispersing the money obtained for the investment club.
11. Participants in the investments club included customers of J.P. Turner, as well as individuals who were not customers of J.P. Turner.
12. The one-hundred and ten thousand dollars were used by DeAngelis to engage the investment club in a securities transaction. The money was invested with a Bahamian company, Turning International Limited, in what that company called a "Private Consolidated Deposit Fund." Turning International Limited claimed to have \$245 million under management and boasted a 39.33% average yearly return since its July 1997 inception.
13. Although the investment club's funds were successfully withdrawn, Turning International Limited was later shown to be a fraud in which other investors lost over \$50 million. The individual who orchestrated the fraud is currently serving a 20-year federal sentence.

14. DeAngelis failed to provide written notice to the firm of this private securities transaction. Through this conduct, DeAngelis violated NASD Conduct Rules 3040 and 2110.

**SECOND CAUSE OF ACTION
Outside Securities Account
NASD Conduct Rule 3050 and 2110**

15. Paragraphs one through fourteen are re-alleged and incorporated herein by reference.
16. DeAngelis and another person associated with J.P. Turner formed a corporation for purposes of paying certain business expenses.
17. In connection with the operation of this corporation, in January 2002, DeAngelis and the other individual opened a securities account at another member firm in the name of the corporation.
18. DeAngelis and the other individual were each signatories on the account.
19. From in or around January 2002 through December 2003, while registered through and associated with J.P. Turner, DeAngelis had a financial interest in a securities account maintained at another member firm. DeAngelis did not provide written notice to J.P. Turner of this securities account.
20. JP Turner was not informed in writing of the account's existence until December 2003. Through this conduct, DeAngelis violated NASD Conduct Rules 3050 and 2110.

**THIRD CAUSE OF ACTION
Failure to Respond
NASD Procedural Rule 8210 and Conduct Rule 2110**

21. Paragraphs one through twenty are re-alleged and incorporated herein by reference.

First Request

22. On September 9, 2004, the Staff sent DeAngelis a letter (the September 9 Letter) requesting that he provide, among other things, information relating to potential outside business activities and his participation in a private securities transaction.

23. This request was made pursuant to, and in accordance with, Rule 8210 and required a response by September 22, 2004. The letter was sent by first class and certified mail to DeAngelis's residential address as then reflected in the records of the Central Registration Depository, [REDACTED] (the CRD Address).
24. Both mailings of the September 9 Letter were returned to NASD by the United States Postal Service (USPS). The September 9 Letter sent by first class mail was marked as "Attempted Not Known," and the copy sent by certified mail was returned as "Not Deliverable As Addressed."

Second Request

25. On September 15, 2004, the Staff again requested that DeAngelis provide the same information requested in the September 9 Letter (the September 15 Letter). This request was made pursuant to, and in accordance with, Rule 8210 and required a response by September 29, 2004. This letter was sent by certified mail and regular mail to DeAngelis's CRD Address and two additional potential addresses identified for DeAngelis through an Equifax search: [REDACTED] (the E 95th Street Address); and [REDACTED] (the Clarke Drive Address).
26. The September 15 Letters sent to the CRD Address were both returned by the USPS. The copy sent first class mail was returned marked as "Attempted Not Known." The certified mailing was returned stamped "Unclaimed." However, someone handwrote the address [REDACTED] on the certified envelope.

27. The September 15 Letters sent to the Clarke Drive Address were not returned by the USPS. The return receipt card that accompanied the letter sent to that address by certified mail was signed for by Elizabeth DeAngelis on September 22, 2004.
28. The September 15 Letters sent to the E 95th Street Address were not returned. The return receipt card that accompanied the letter sent to that address by certified mail was signed for by an unidentifiable signature.

Third Request

29. On October 4, 2004, the Staff again requested that DeAngelis provide the same information requested in the September 9 Letter (the October 4 Letter). This request was made pursuant to, and in accordance with, Rule 8210 and required a response by October 22, 2004. This letter was sent by certified mail and regular mail to DeAngelis's CRD Address, the E 95th Street Address, and the Clarke Drive Address.
30. The October 4 Letters sent to the CRD Address were returned to the Staff by the USPS. The October 4 Letter sent by first class mail was marked as "Attempted Not Known," and the copy sent by certified mail was returned as "Not Deliverable As Addressed."
31. The October 4 Letter sent to the Clarke Drive Address by first class mail was not returned to the Staff. The October 4 Letter sent to the Clarke Drive Address by certified mail was returned by the USPS and stamped "Unclaimed."
32. The October 4 Letters sent to the E 95th Street Address were not returned to the Staff. The return receipt card that accompanied the letter sent to that address by certified mail was signed for by the same unidentifiable signature that accompanied the card returned for the September 15 Letter sent to that address.

Fourth Request

33. On November 1, 2006, the Staff again requested that DeAngelis provide the same information requested in the original September 9 Letter (the November 1 Letter). This request was made pursuant to, and in accordance with, Rule 8210 and required a response by November 10, 2006. This letter was sent by certified mail and regular mail to DeAngelis's CRD Address, the E 95th Street Address, the Clarke Drive Address and to [REDACTED] (the Shelburne Falls Address), an additional address uncovered by the Staff.

34. The November 1 Letters sent to the CRD Address were returned to the Staff by the USPS. The copies of the November 1 Letters sent by first class mail and certified mail were marked "Attempted Not Known."

35. The November 1 Letters sent to the Clarke Drive Address were not returned to the Staff. The mailing of the October 1 Letter sent to the Clarke Drive Address by certified mail was signed for by Elizabeth DeAngelis.

36. The November 1 Letters sent to the E 95th Street Address were not returned to the Staff. The return receipt card that accompanied the letter sent to that address by certified mail was signed for by "DEANGLIS."

37. The November 1 Letters sent to the Shelburne Falls Address were not returned to the Staff. The return receipt card that accompanied the letter sent to that address by certified mail was signed for by Lisa DeAngelis.

38. The Staff did not receive a response from DeAngelis to any of the letter requests.

Through this conduct, DeAngelis violated NASD Procedural Rule 8210 and 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.

NASD DEPARTMENT OF ENFORCEMENT

Date: December 7, 2006


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