

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

BART JAMES ELLIS
(CRD No. 4348559),

Respondent.

Disciplinary Proceeding
No. 2012034573001

Hearing Officer—MAD

DEFAULT DECISION

March 10, 2015

Respondent is barred from associating with any FINRA registered firm in any capacity for (1) falsifying customer account documents, in violation of FINRA Conduct Rule 2010; and (2) failing to appear and provide testimony, in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010. In addition, Respondent exercised discretion in a customer's account without written acceptance of the account as discretionary by his firm, in violation of NASD Conduct Rule 2510 and FINRA Conduct Rule 2010; however, no additional sanctions are imposed for this violation in light of the bars imposed for his violations of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010.

Appearances

Jonathan Golomb, Esq. for the Department of Enforcement.

No appearance by or on behalf of Respondent Bart James Ellis.

DECISION

Respondent Bart James Ellis was a registered representative with Ameriprise Financial Services, Inc. Ameriprise discharged Ellis for violating its policies and procedures relating to discretionary trading in a client's account and filed a Uniform Termination Notice for Securities Industry Registration ("Form U5"). Later, when Ameriprise received a complaint from one of Ellis' customers alleging unauthorized activity in the customer's account, it amended Ellis' Form U5. Thereafter, FINRA staff began an investigation that led the Department of Enforcement to initiate this disciplinary proceeding. FINRA staff determined from its investigation that Ellis repeatedly placed trades in the customer's account without discussing the trades with her before they were executed. The staff also learned that Ellis falsified customer account records to make it appear as though he had obtained her authorization before he traded in her account. In the course

of the investigation, FINRA staff requested Ellis to appear and provide testimony about his discretionary trading. Ellis did not comply with the requests.

Enforcement filed a Complaint with the Office of Hearing Officers on November 18, 2014. The Complaint charges Ellis with (1) exercising discretion in a customer's account at Ameriprise without written authorization, in violation of NASD Conduct Rule 2510 and FINRA Conduct Rule 2010; (2) falsifying customer account documents, in violation of Conduct Rule 2010; and (3) failing to appear and provide testimony, in violation of FINRA Rules 8210 and 2010. When Ellis did not answer or otherwise respond to the Complaint, Enforcement filed a motion for entry of a default decision.¹ For the reasons discussed below, the Hearing Officer grants Enforcement's motion and bars Ellis from associating with any FINRA member firm in any capacity.

I. Enforcement's Motion For Entry Of A Default Decision Is Granted

Enforcement filed the attached Complaint with the Office of Hearing Officers on November 18, 2014, and the same day served Ellis with a copy of the Complaint and First Notice of Complaint by first-class certified mail (return receipt requested) at three addresses obtained through CRD: two current CRD addresses and one prior CRD address ("CRD Address No. 1", "CRD Address No. 2", and "Prior CRD Address").² The United States Post Service ("USPS") attempted to deliver the certified mailing sent to CRD Address No. 1 by leaving a notice; however, Ellis did not claim the certified mailing.³ The USPS returned the certified mailing sent to CRD Address No. 2 to Enforcement as undeliverable.⁴ USPS sent the certified mailing addressed to the Prior CRD Address for delivery on November 21, 2014, and there is no indication of any further action on that delivery.⁵ Ellis did not answer the Complaint by December 16, 2014, the deadline set in the Notice of Complaint.⁶

On December 18, 2014, Enforcement served the Complaint and Second Notice of Complaint in the same manner as the First Notice of Complaint.⁷ USPS attempted to deliver the certified mailing to CRD Address No. 1 by leaving a notice, but the certified mailing was not claimed.⁸ USPS sent the certified mailing to CRD Address No. 2; however, there is no indication of any further action on that delivery.⁹ The USPS's tracking website reflects that the certified

¹ The motion is supported by the declaration of Jonathan Golomb, Esq. ("Decl."), and seven attached exhibits.

² Decl. ¶¶ 7- 9, 12; CX-4. Enforcement also sent a copy of the Complaint to an address it found for Ellis through an internet search. Decl ¶ 10. The first mailing to the internet address was returned to Enforcement. Decl ¶ 14; CX-5, at 2. USPS sent the second certified mailing to the internet address for delivery on December 25, 2014, but there is no indication of any further action on that delivery. Decl ¶ 20; CX-7, at 4.

³ Decl. ¶ 15; CX-5, at 3.

⁴ Decl. ¶ 13; CX-5, at 1.

⁵ Decl. ¶ 16; CX-5, at 4.

⁶ Decl. ¶ 17.

⁷ Decl. ¶ 18; CX-6.

⁸ Decl. ¶¶ 11, 21; CX-7, at 3.

⁹ Decl. ¶ 19.

mailing sent to the Prior CRD Address was undeliverable.¹⁰ To date, Ellis has not answered or otherwise responded to the Complaint.¹¹

The Hearing Officer concludes that Ellis received valid constructive service of this proceeding in accordance with the provisions of FINRA Rules 9134(a)(2) and (b)(1), and he therefore defaulted by failing to answer the Complaint. Accordingly, the Hearing Officer grants Enforcement's motion for entry of a default decision.¹²

II. Findings Of Fact And Conclusions Of Law

A. FINRA Has Jurisdiction Over Ellis

Ellis entered the securities industry in January 2001.¹³ He worked at two firms before joining H&R Block Financial Advisors, Inc. in November 2007.¹⁴ H&R Block became Ameriprise Advisor Services, Inc. in November 2008, and merged into Ameriprise in October 2009.¹⁵ Ellis was registered as a General Securities Representative while he was associated with Ameriprise and its predecessors. Ellis remained at Ameriprise until it filed a Form U5 on October 26, 2012, terminating his registration and citing "company policy violations related to accepting transaction requests and the use of discretion."¹⁶ On February 20, 2013, Ameriprise filed a Form U5 amendment to disclose a complaint by a customer against Ellis.¹⁷

FINRA has jurisdiction over Ellis pursuant to Article V, Section 4 of FINRA's By-Laws because (1) the Complaint was filed within two years after the filing of the Amended U5, which Ameriprise filed within two years of the original notice of termination, disclosing that Ellis may have engaged in actionable misconduct in connection with customer KC; (2) the Complaint charges him with misconduct committed while he was registered with a FINRA member; and (3) the Complaint charges him with failure to provide testimony requested while he was subject to FINRA's jurisdiction.

B. Ellis Exercised Discretion Without Written Authority

The First Cause of Action alleges that Ellis exercised discretion in customer KC's account at Ameriprise without written authorization.

¹⁰ Decl. ¶ 22; CX-7, at 4.

¹¹ Decl. ¶¶ 17, 23.

¹² The Hearing Officer treated the allegations in the attached Complaint as admitted, pursuant to FINRA Rules 9215(f) and 9269(a).

¹³ Compl. ¶ 3.

¹⁴ Compl. ¶ 3.

¹⁵ Compl. ¶ 3.

¹⁶ Decl. ¶ 2; CX-1.

¹⁷ Compl. ¶ 4; Decl. ¶ 3.

Between June 2009 and August 2012, Ellis routinely placed trades in KC's account without first discussing the trades with her.¹⁸ KC allowed him to do so because she trusted him.¹⁹ The customer never authorized Ellis to exercise discretion in her account in writing.²⁰

The Hearing Officer finds the foregoing allegations sufficient to establish that Ellis violated NASD Rule 2510, which prohibits a registered representative from exercising any discretionary power in a customer's account without prior written authorization from the customer and written acceptance from the member firm.²¹ Ellis also thereby violated FINRA Rule 2010, which requires member firms and their associated persons to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business.²²

C. Ellis Falsified Customer Documents

The Second Cause of Action alleges that Ellis falsified customer documents. In October 2010, a representative of Ameriprise contacted KC with questions about the handling of her account.²³ KC told the representative that Ellis traded in her account and later told her about the trades.²⁴ KC never authorized these transactions in her account.²⁵

A few months later when Ellis learned that his customer had told Ameriprise that he entered trades for her without prior discussion, he created entries in a computerized log of telephone conversations.²⁶ The entries falsely reflected approximately 20 telephone calls with his customer, reflecting that she authorized transactions in her account from March 2010 through December 2010.²⁷

Ellis' falsification was unethical and contrary to Conduct Rule 2010.²⁸ Accordingly, the Hearing Officer finds that Ellis violated Conduct Rule 2010.

D. Ellis Failed To Appear And Provide Testimony To FINRA

The Third Cause of Action alleges that Ellis failed to appear at FINRA's office to provide testimony about his trading in KC's account. Pursuant to Rule 8210, Enforcement sent Ellis the requests at four different addresses (three addresses reflected in CRD and one address that

¹⁸ Compl. ¶ 7.

¹⁹ Compl. ¶ 7.

²⁰ Compl. ¶ 8.

²¹ Rule 2510(b). *See also, e.g., Paul F. Wickswat*, 50 S.E.C. 785 (1991).

²² *See, e.g., Guang Lu*, Exchange Act Release No. 51047, 2005 SEC LEXIS 117, at *19 n.22 (Jan. 14, 2005) (finding that, by violating NASD Rule 2510(b), respondent also violated NASD Rule 2110 (now FINRA Rule 2010)) (citation omitted).

²³ Compl. ¶ 11.

²⁴ Compl. ¶ 11.

²⁵ Compl. ¶¶ 7, 8.

²⁶ Compl. ¶¶ 12-13.

²⁷ Compl. ¶ 13.

²⁸ *Dep't of Enforcement v. Vines*, Complaint No. 2006005565401, 2009 FINRA Discip. LEXIS 16, at *9 (N.A.C. Aug. 25, 2009) (holding that respondent violated NASD Rule 2110 by approving the falsification of IRA adoption agreements).

Enforcement located through an internet search) by first-class certified mail and regular mail on May 7 and May 27, 2014.²⁹ Ellis did not appear or otherwise respond to the requests.³⁰

The facts alleged in the Complaint establish that Ellis violated FINRA Rules 8210 and 2010 by failing to appear and provide testimony regarding his trading in KC's account at Ameriprise.

III. Sanctions

A. Failure To Provide Testimony

The FINRA Sanction Guidelines (Sanction Guidelines) provide that a bar should be "standard" where there is a complete failure to respond to a Rule 8210 request for information.³¹ In addition, the Sanction Guidelines instruct adjudicators to consider the importance of the information requested as viewed from FINRA's perspective when assessing sanctions.³²

The Hearing Officer finds that a bar from associating with any FINRA member firm in all capacities is an appropriate remedial sanction given the facts and circumstances of this case. The information Enforcement sought was important. In addition, there are no mitigating factors in the record that would warrant a lesser sanction. Accordingly, the Hearing Officer will bar Ellis from associating with any FINRA member firm in all capacities for this violation.

B. Falsification Of Documents

For forgery and falsification of records, the Sanction Guidelines recommend a fine of \$5,000 to \$100,000, and a suspension in any or all capacities for up to two years in cases where mitigating factors exist. In egregious cases, the Sanction Guidelines recommend a bar.³³ The Guidelines instruct adjudicators to consider, in addition to the principal considerations and general principals applicable to all violations, the nature of the falsified documents and whether respondent had a good faith, but mistaken, belief of express or implied authority.³⁴

Applying the applicable Sanction Guidelines, the Hearing Officer finds that Ellis' violation was egregious. Ellis failed to accept responsibility for his misconduct. After Ellis learned that KC informed Ameriprise that he made trades for her without prior discussion, he falsified documents to create the appearance that he had spoken to her prior to placing the trades in her account. There are no mitigating factors. The Hearing Officer determines that a bar is the appropriate remedial sanction.

²⁹ Compl. ¶¶ 16-23.

³⁰ Compl. ¶¶ 19, 23.

³¹ *FINRA Sanction Guidelines* 33 (2013), www.finra.org/sanctionguidelines.

³² *Guidelines* at 33.

³³ *Guidelines* at 37.

³⁴ *Guidelines* at 37.

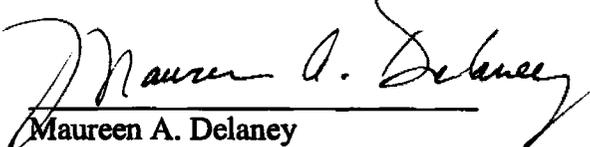
C. Use Of Discretion Without Written Authority

The Sanction Guidelines for the exercise of discretion in violation of Rule 2510 recommend a fine of \$2,500 to \$10,000.³⁵ In egregious cases, the Sanction Guidelines further recommend consideration of a suspension in any or all capacities for 10 to 30 business days. In assessing the appropriate sanction, the Sanction Guidelines direct adjudicators to consider two specific factors. First, in cases where there is evidence that the customer granted discretionary authority to the respondent, adjudicators are directed to take into account whether the customer's grant of discretion was express or implied. Second, adjudicators are to consider whether the firm's policies or procedures prohibited discretionary trading and whether the firm prohibited the respondent from exercising discretion in customer accounts.

In this case, KC went along with Ellis' misconduct without actually authorizing him to trade at his own discretion. In addition, as reflected in Ellis' Form U5, Ameriprise terminated him for failing to comply with firm policies regarding discretionary trading. Accordingly, the Hearing Officer concludes that the appropriate sanction for Ellis's misconduct in exercising discretion in his customer's account without his firm's approval would be a \$10,000 fine and a 30-day suspension in all capacities. However, no additional sanctions are imposed for this violation because Ellis is barred for his violations of FINRA Rules 8210 and 2010.³⁶

IV. Order

Respondent Bart James Ellis is barred from associating with any member firm in any capacity for (1) falsifying customer documents, in violation of FINRA Conduct Rule 2010; and (2) failing to appear and provide testimony, in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010. The bars shall become effective immediately if this Default Decision becomes FINRA's final action in this disciplinary proceeding. In light of the bars, no additional sanction is imposed for his exercise of discretion in a customer's account without written acceptance of the account as discretionary by his firm, in violation of NASD Conduct Rule 2510 and FINRA Conduct Rule 2010.


Maureen A. Delaney
Hearing Officer

Copies to:

Bart James Ellis (*via overnight courier and first-class mail*)
Jonathan Golomb, Esq. (*via electronic and first-class mail*)
Jeffrey Pariser, Esq. (*via electronic mail*)

³⁵ Guidelines at 85.

³⁶ See, e.g., *Dep't of Enforcement v. Hodde*, No. C10010005, 2002 NASD Discip. LEXIS 4, at *17 (NAC Mar. 27, 2002).

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OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

BART JAMES ELLIS (CRD No. 4348559),

Respondent.

DISCIPLINARY PROCEEDING
No. 2012034573001

HEARING OFFICER:

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. During the period June 2008 until August 2012, Respondent Bart James Ellis engaged in misconduct in connection with the account of one of his customers, K.C.¹ Ellis placed discretionary trades in her account without her authorization, and later falsified records to make it appear that he had spoken with the customer prior to making the trades. By virtue of this conduct, Ellis violated NASD Rule 2510 and FINRA Rule 2010.

2. Ellis also twice failed to appear for testimony after being required to do so pursuant to FINRA Rule 8210.

RESPONDENT

3. Ellis entered the securities industry in January 2001. He worked at two firms before joining H&R Block Financial Advisors, Inc. in November 2007. That firm became Ameriprise Advisor Services, Inc. in November 2008, and was merged into Ameriprise Financial Services, Inc. in or about October 2009. Ellis remained at Ameriprise Financial Services until it

¹ The Department of Enforcement is filing a document identifying the customer along with this Complaint.

terminated his registration on October 26, 2012, citing “company policy violations related to accepting transaction requests and the use of discretion.” He has held Series 6 (Investment Company/Variable Contracts), Series 7 (General Securities), Series 9 (General Securities Sales Supervisor — Options), Series 10 (General Securities Sales Supervisor — General), Series 31 (Futures Managed Funds), Series 63 (State Law), and Series 65 (Investment Advisor Law) licenses.

4. Ameriprise Financial Services filed a Form U5 amendment on February 20, 2013 to disclose a complaint by customer K.C. against Ellis.

5. Although Respondent is no longer registered or associated with a FINRA member, he remains subject to FINRA’s jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA’s By-Laws, because (1) the Complaint was filed within two years of the February 20, 2013 filing of an amended notice of termination which was filed within two years of the original notification of termination (filed on October 26, 2012) and which disclosed that Ellis may have engaged in actionable misconduct, and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member and with failing to respond to FINRA requests for failing to appear for on-the-record testimony during the two-year period after the date upon which he ceased to be registered or associated with a FINRA member.

FIRST CAUSE OF ACTION

Use of Discretion Without Written Authorization
(Violation of NASD Rule 2510(b) and FINRA Rule 2010)

6. The Department of Enforcement realleges and incorporates by reference paragraphs 1–5 above.

7. Between in or about June 2009 and August 2012, Ellis routinely placed trades in K.C.'s account without first discussing the trades with her. She allowed him to do so because she trusted him.

8. K.C. never authorized Ellis to exercise discretion in her account in writing.

9. By exercising discretion in K.C.'s account without written authorization, Ellis violated NASD Rule 2510(b), which prohibits a registered representative from exercising discretionary power in a customer's account unless such customer has given prior written authorization to the representative, and the discretionary account has been accepted by the firm. By so doing, he also violated FINRA Rule 2010.

SECOND CAUSE OF ACTION
Falsification of Documents
(Violation of FINRA Rule 2010)

10. The Department of Enforcement realleges and incorporates by reference paragraphs 1–9 above.

11. In October 2010, a representative of Ameriprise Financial Services contacted K.C. with questions about the handling of her account. In the course of the conversation, K.C. told the caller that Ellis makes the trades in her account for her and later tells her about the trades.

12. By January 2011, Ellis learned that K.C. had told the firm that Ellis made trades for her without prior discussion.

13. On January 20, 2011, Ellis created entries in a computerized log of telephone conversations which falsely reflected seventeen telephone calls with K.C. in which K.C. was represented to have authorized transactions in her account between March 2010 and December 2010. He made three additional false entries in the log over the following fifteen days. These

entries bore the dates on which he placed trades in K.C.'s account. K.C. did not have any telephone conversations with Ellis on any of those dates.

14. By creating false documents to create the appearance that he had spoken to K.C. prior to placing trades in her account, Ellis engaged in conduct inconsistent with just and equitable principles of trade and high standards of commercial honor, thereby violating FINRA Rule 2010.

THIRD CAUSE OF ACTION
Failure to Testify
(Violation of FINRA Rules 8210 and 2010)

15. The Department of Enforcement realleges and incorporates by reference paragraphs 1–14 above.

First request for testimony

16. On May 7, 2014, the Department of Enforcement sent Ellis a letter requiring him to appear for testimony pursuant to FINRA Rule 8210 on May 27, 2014. The letter was sent to four different addresses by certified mail and by regular mail. Two of the addresses, in Chicago, Illinois – one on Sheridan Avenue and one on Prairie Avenue – were both identified as Ellis's current address on the Central Registration Depository (CRD) system. Another address, in Paradise Valley, Arizona, was his prior CRD address (as of late 2012 and the beginning of 2013), which also appeared in a public records search of his name. The last address, in Scottsdale, Arizona, was a prior address identified through the public records search.

17. All four of the certified mailings were returned to FINRA as undelivered:

- a. The certified letter sent to the Sheridan Avenue CRD address was returned marked "Attempted – Not Known, Unable To Forward."

- b. The certified letter sent to the Prairie Avenue CRD address was returned marked "Unclaimed, Unable To Forward."
- c. The certified letter sent to the Scottsdale address was returned marked "Not Deliverable As Addressed, Unable To Forward."
- d. The certified letter sent to the Paradise Valley address was returned with the notation "Attempted – Not Known, Unable To Forward."

18. Two of the letters sent by regular mail on May 7, 2014 were also returned to FINRA; the other two were not returned:

- a. The letter sent to the Sheridan Avenue CRD addresses was returned marked "Attempted – Not Known, Unable To Forward."
- b. The letter sent to the Scottsdale address by regular mail was returned marked "Refused, Unable To Forward."
- c. The regular letters sent to the Prairie Avenue CRD address and to the Paradise Valley address were not returned to FINRA, indicating that they were delivered.

19. Ellis failed to appear for testimony on May 27, 2014.

Second request for testimony

20. On May 27, 2014, after Ellis's failure to appear, Enforcement sent him a second notice requiring him to appear for testimony pursuant to FINA Rule 8210 on June 12, 2014. The second notices were sent to the two CRD addresses and the two Arizona addresses set forth above by certified mail and regular mail.

21. Three of the four certified mailings were returned to FINRA; the fourth has not been delivered or returned:

- a. The certified letter sent to the Sheridan Avenue CRD address was returned with the notation "Attempted – Not Known, Unable To Forward, Return To Sender."
- b. The certified letter sent to the Prairie Avenue CRD address is still listed on the U.S. Postal Service's website as "out for delivery."
- c. The certified letters sent to the two Arizona addresses have been returned to FINRA with the notation "Unable To Forward, Unable To Forward, Return To Sender."

22. Two of the regular mailings were returned to FINRA, and two have not been returned:

- a. The letter sent to the Sheridan Avenue CRD address was returned with the notation "Attempted – Not Known, Unable To Forward, Return To Sender."
- b. The letter sent to the Paradise Valley address was returned with the notation "Unable To Forward, Unable To Forward, Return To Sender."
- c. The letters sent to the Prairie Avenue CRD address and the Scottsdale address were not returned to FINRA, indicating that they were delivered.

23. Ellis failed to appear for testimony on June 12, 2014.

24. By failing to appear for testimony on May 27 and June 12, 2014, Ellis violated FINRA Rules 8210 and 2010.

RELIEF REQUESTED

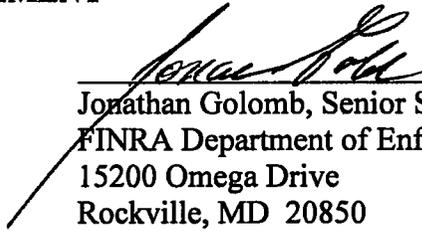
WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;

- B. order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed; and
- C. order that Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date: November 18, 2014


Jonathan Golomb, Senior Special Counsel
FINRA Department of Enforcement
15200 Omega Drive
Rockville, MD 20850
(301) 258-8532/FAX (202) 728-8320
jonathan.golomb@finra.org