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FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. JIM JINKOOK SEOL (CRD No. 2876279), Respondent.	Disciplinary Proceeding No. 2014039839101 Hearing Officer—DW

ORDER GRANTING ENFORCEMENT'S MOTION FOR PARTIAL SUMMARY DISPOSITION

I. Background

Respondent Jim Seol was a registered representative with FINRA member firm Ameriprise beginning in the summer of 1997. In September of 2011—while still associated with Ameriprise—Seol incorporated his own firm, Western Regional Center, Inc. ("WRCI") and appointed himself a senior officer of his corporation. Through WRCI, Seol raised $100 million from more than two dozen investors in China and South Korea in connection with a private placement in the United States. None of this was disclosed to Ameriprise. The firm fired Seol in May 2014, shortly after it discovered his previously undisclosed activities.

On May 31, 2016, the Department of Enforcement filed a three-cause Complaint alleging that by his activities—including soliciting investors—through WRCI, Seol (1) engaged in improper securities transactions away from his firm, in violation of NASD Rule 3040 and FINRA Rule 2010; (2) engaged in undisclosed outside business activities, in violation of FINRA Rules 3270 and 2010; and (3) concealed his outside business by completing false Annual Compliance Questionnaires with his Ameriprise, in violation of FINRA Rule 2010.

On August 26, 2016, Enforcement moved for summary disposition as to its claims that Seol engaged in undisclosed outside business activities and that he concealed those activities from his firm by submitting false Annual Compliance Questionnaires, contending that the undisputed facts entitle it to a determination of liability as a matter of law on these claims. As explained below, the Hearing Panel agrees and we will grant the motion.

II. Undisputed Facts

We find, pursuant to FINRA Rule 9264(c), that the following facts are without substantial controversy.

Seol began as a registered representative with Ameriprise in June 1997.[1] In September 2011, he incorporated WRCI, certifying that he was the company's Secretary, Chief Executive Officer, and Chief Financial Officer, as well as its sole director and president.[2] WRCI was formed to facilitate U.S. investments by foreign nationals through the EB-5 program, a government initiative designed to promote capital investment.[3] Under the program foreign investors can receive a permanent visa to live and work in the U.S. if they make a capital investment that satisfies certain conditions over a two-year period, including the creation of jobs.[4] Acting through WRCI, Seol discussed securing potential funding with the owners of a solar power plant under development in Riverside, California.[5] Seol subsequently formed a for-profit limited partnership to pool capital raised from foreign investors so that the funds could be loaned to the power plant development.[6] As general partner of the limited partnership, WRCI was entitled to receive management fees paid from the return on investment generated by the partnership.[7]

Between June 2012 and December 2013, Seol personally travelled to Korea and China to market partnership investments to foreign migration companies and attorneys, and also made 25 to 30 presentations directly to potential investors.[8] The Offering Memorandum provided to investors solicited the purchase of $100 million in limited partnership units.[9] By December 2013, the offering was fully subscribed with all partnership units sold to 200 different investors.[10]

Between March and December of 2014, the partnership transmitted the $100 million loan in tranches to the power plant development project.[11] Also in March 2014, Seol received a letter from FINRA advising him that it was conducting an investigation into WRCI.[12] Shortly

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[1] Complaint ("Compl.") ¶ 6; Answer ("Ans.") ¶ 1.

[2] Compl. ¶ 12; Ans. ¶ 12.

[3] Compl. ¶¶ 16-17; Ans. ¶¶ 16-17.

[4] Compl. ¶¶ 17-18; Ans. ¶¶ 17-18.

[5] Compl. ¶¶ 20-21; Ans. ¶¶ 20-21.

[6] Compl. ¶ 22; Ans. ¶ 22.

[7] Compl. ¶ 23; Ans. ¶ 23.

[8] Compl. ¶¶ 30-32; Ans. ¶¶ 30-32.

[9] Compl. ¶ 24; Ans. ¶ 24.

[10] Compl. ¶ 34; Ans. ¶ 34.

[11] Compl. ¶ 35; Ans. ¶ 35.

[12] Declaration of Jim Seol, ¶ 19.

thereafter, he met with his compliance manager at Ameriprise and disclosed, for the first time, his WRCI-related activities.[13] On Annual Compliance Questionnaires supplied to Ameriprise in February 2012, February 2013, and February 2014, Seol attested that he had not engaged in outside business activities and agreed to promptly notify his employer of any change in that regard.[14] Seol explained to his compliance manager that his failure to disclose his WRCI activities sooner was a result of his "original impression that, as long as [he] was not being compensated, [his] WRCI involvement was not considered an 'outside business activity.'"[15] Although by December 2013 Seol had "a notion" that he might receive compensation as a result of management fees to be paid to WRCI from the partnership, he expected to receive such fees only after the partnership received interest payments on the loan, and no such payments were made by the time of his March 2014 disclosure to Ameriprise.[16] Based on his subsequent research, Seol understands that his original view of what constituted an outside business activity "may have been incorrect."[17]

On May 28, 2014, Ameriprise fired Seol for violating the firm's policy regarding disclosure of outside business activities.[18] Shortly thereafter, in July of 2014, Seol began receiving a salary of $6,000 per month from WRCI from fees generated from business conducted by Seol while employed by Ameriprise, including the power plant development project and other projects.[19] Seol has received at least $144,000 in compensation from WRCI.[20] Seol has not been associated with another FINRA member firm since his termination from Ameriprise.[21]

III. Discussion

A. Legal Standard

FINRA Procedural Rule 9264(a) permits any party to file a motion for summary disposition prior to the hearing on the merits. A motion may seek disposition of any or all causes of action. If the decision on a summary disposition motion does not fully adjudicate the matter, a hearing may still be necessary. In that case, the hearing panel is authorized to take various steps pursuant to FINRA Procedural Rule 9264(c) to narrow the issues in dispute and direct further proceedings "as are just." Rule 9264(e) permits summary disposition where there is "no genuine issue with regard to any material fact" and, based on undisputed material facts, the moving party

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[13] *Id*.

[14] Compl. ¶¶ 63-64; Ans. ¶¶ 63-64

[15] Declaration of Jim Seol, ¶ 19.

[16] *Id*. at ¶ 16.

[17] *Id*. at ¶ 19.

[18] Enforcement's Statement of Undisputed Facts ¶ 2 and Exhibit 3; Respondent's Response ¶ 2.

[19] Compl. ¶ 36; Ans. ¶ 36.

[20] Compl. ¶ 37; Ans. ¶ 37.

[21] Compl. ¶ 9; Ans. ¶ 9.

is "entitled to summary disposition as a matter of law."[22] Facts alleged in the non-movant's pleadings are taken as true unless modified by stipulations or admissions, uncontested affidavits or declarations, or facts subject to official notice.[23] In this context, principles governing summary judgment under Rule 56 of the Federal Rule of Civil Procedure are instructive.[24] These principles dictate that evidence of the non-moving party must be believed as true, all doubts are resolved against the moving party, all evidence should be construed in the light most favorable to the non-moving party, and all reasonable inferences should be drawn in favor of the party opposing the motion.[25]

As the movant, Enforcement bears the burden of establishing the absence of a genuine issue of material fact.[26] It must present the basis for its motion and identify "those portions of 'the pleadings, depositions, … and admissions on file, together with the affidavits, if any, which it believes demonstrates the absence of a genuine issue of material fact.'"[27] Once it has done so, Seol must "come forward with 'specific facts showing that there exists a *genuine issue*' for hearing."[28] In assessing the motion, the issue is "whether the evidence presents a disagreement sufficient to require submission to fact finding."[29] If the record presents a factual question that could affect the outcome of the case, the motion must be denied.[30]

B. Seol Engaged in Outside Business Activities

FINRA Rule 3270 prohibits registered persons from acting as an employee, independent contractor, sole proprietor, officer, director, or partner of another person, or from being compensated or having the reasonable expectation of compensation from any other person as a result of any business activity outside the scope of the relationship with their member firm, unless they have provided prior written notice to the member, in the form specified by the member. The purpose of the Rule "is to ensure 'that firms receive prompt notification of all

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[22] FINRA Rule 9264(e).

[23] *Id*.

[24] OHO Order 16-09 (2014040501801) (Mar. 4, 2016) at 3, http://www.finra.org/sites/default/files/OHO-Order-16-09-2014040501801_0.pdf.

[25] *See, e.g.*, *Tolan v. Cotton*, 134 S. Ct. 1861, 1863, 1866 (2014); *Crawford v. Metropolitan Gov't of Nashville & Davidson County*, 555 U.S. 271, 274 n.1 (2009); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587-88 (1986) (citing *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962)).

[26] *Dep't of Enforcement v. Respondent*, No. C02050006, 2007 NASD Discip. LEXIS 13, at *12 (NAC Feb. 12, 2007).

[27] *Id.* (citing *Celotex Corp. v. Catrett*, 477 U.S. at 323).

[28] *Id.* (citing *Matsushita Elec. Indus.*, 475 U.S. at 587).

[29] *Id.* at *13.

[30] *Id.* at *13 (citing *Anderson*, 477 U.S. at 251-52). Even an uncontested summary disposition motion may be granted only upon a showing that the moving party should prevail as a matter of law. *See Edwards v. Aguillard*, 482 U.S. 578, 595 (1987).

outside business activities of their associated persons so that the member's objections, if any, to such activities could be raised at a meaningful time and so that appropriate supervision could be exercised as necessary under applicable law.'"[31] A registered representative must "disclose outside business activities at the time when steps are taken to commence a business activity unrelated to his relationship with his firm."[32] The sweep of the Rule is intentionally broad, requiring registered persons "to report *any* kind of business activity engaged in away from their firms,"[33] not only business activities related to securities.[34] A violation of FINRA Rule 3270 constitutes conduct inconsistent with just and equitable principles of trade and therefore violates FINRA Rule 2010.[35]

On this record, there is no material dispute that Seol engaged in outside business activities without providing the requisite advance notice to Ameriprise. Seol admits that he held "ownership and officer positions with WRCI, and engag[ed] in unpaid activities on behalf of WRCI prior to his departure from Ameriprise."[36] "[A]ssociated persons are required 'to report any kind of business activity engaged in away from their firm,'"[37] and Seol did not timely disclose his WRCI activities to his employer.

The only disputed fact Seol points to is whether he subjectively believed he needed to disclose his outside business in light of the fact that he received no compensation, and had no reasonable expectation of compensation, when conducting the business. He complains that Enforcement alleged in its Complaint that he had a "reasonable expectation of compensation" while engaging in his business and is now unfairly advancing a "new legal argument" that no such expectation is required.[38] But the legal argument is not new. The rule makes clear that

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[31] *Dep't of Enforcement v. Houston*, No. 2006005318801, 2013 FINRA Discip. LEXIS 3, at *32 (NAC Feb. 22, 2013), *aff'd*, Exchange Act Release No. 71589, 2014 SEC LEXIS 614 (Feb. 20, 2014) (quoting Proposed Rule Change by NASD Relating to Outside Business Activities of Associated Persons, Exchange Act Release No. 26063, 1988 SEC LEXIS 1841, at *3 (Sept. 6, 1988)); *see also* NASD Notice to Members 88-86 (Nov. 1988), 1988 NASD LEXIS 207 (introducing the predecessor to FINRA Rule 3270 and explaining that it is "intended to improve the supervision of registered personnel by providing information to member firms concerning outside business activities of their representatives").

[32] *Dep't of Enforcement v. Schneider*, No. C10030088, 2005 NASD Discip. LEXIS 6, at *13-14 (NAC Dec. 7, 2005) (citing *Dep't of Enforcement v. Abbondante*, No. C10020090, 2005 NASD Discip. LEXIS 43, at *30-31 (NAC Apr. 5, 2005)) (rejecting argument that representative was not required to disclose outside business activity that was formed to conduct future business).

[33] NASD Notice to Members 01-79 (Dec. 2001), http://www.finra.org/industry/notices/01-79 (emphasis in original).

[34] *Dist. Bus. Conduct Comm. v. Cruz*, No. C8A930048, 1997 NASD LEXIS 123, at *101 (NBCC Oct. 31, 1997).

[35] *See Dep't of Enforcement v. Moore*, No. 2008015105601, 2012 FINRA Discip. LEXIS 45, at *25 (NAC July 26, 2012).

[36] Ans. ¶ 58.

[37] *Wanda P. Sears*, Exchange Act Release No. 58075, 2008 SEC LEXIS 1521, at *16 (July 1, 2008) (citing NASD Notice to Members 01-79).

[38] *See Rodale Press, Inc. v. FTC*, 407 F.2d 1252, 1256 (D.C. Cir. 1968) ("[A]n agency may not change theories in midstream without giving respondents reasonable notice of the change.").

engaging in outside business "attaches potential liability to a respondent regardless of whether he received compensation."[39] Though the Complaint alleges that Seol expected to be compensated for his efforts, it *also* alleges that he conducted business as an officer of WRCI, a fact not in dispute. The disjunctive language of the Rule prohibits undisclosed service as an "employee, independent contractor, sole proprietor, officer, director, or partner of another person, ***or*** [from] be[ing] compensated or hav[ing] the reasonable expectation of compensation."[40] Even accepting Seol's contention that he maintained no reasonable expectation of compensation at the time when conducting his business,[41] his conduct violated the Rule.[42]

Seol maintains that "[w]hether there was such compensation or expectation of compensation is a determination that must be made by a Hearing Panel before assessing the degree of a respondent's violation under Rule 3270 and what sanctions, if any, are thus appropriate."[43] Although "intent is not required to demonstrate a violation of FINRA's rules concerning outside business activities,"[44] we agree that Seol's state of mind, his claimed lack of intentionality and claimed good faith may be of some relevance to our assessment of the degree of his violations and the appropriateness of any sanction.[45] And we agree that making these

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[39] *Schneider*, 2005 NASD Discip. LEXIS 6, at *15-16 (citing predecessor rule with substantially similar language).

[40] FINRA Rule 3270 (emphasis added).

[41] *See Anderson*, 477 U.S. at 248 ("Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.").

[42] Enforcement argues that summary disposition is not precluded by Seol's Sixth Affirmative Defense, which asserts that liability is precluded by doctrines of "waiver and/or estoppel." We agree that Seol's assertion that "prior regulatory and Ameriprise examinations which concluded that there were no regulatory issues," even if proven, provide no defense to his liability. *Kenny Akindemowo*, Exchange Act Release No. 79007, 2016 SEC LEXIS 3769, at *8 (Sept. 30, 2016) ("[E]ven assuming that his supervisors knew about his outside business activities, the obligation to disclose lies with the registered person, not his supervisors."); *Dep't of Enforcement v. Blum*, No. 20090209629-01, 2013 FINRA Discip. LEXIS 38, at *43 (OHO Dec. 12, 2013) ("As the SEC has repeatedly held, members of the securities industry cannot shift to FINRA or the SEC their responsibility to comply with applicable laws and regulations. For that reason, a 'regulatory authority's failure to take early action neither operates as an estoppel against later action nor cures a violation.'") (quoting *Don D. Anderson & Co*., 43 S.E.C. 989, 991 (1968)).

[43] Seol's Response in Opposition to Enforcement's Motion for Partial Summary Disposition ("Opp.") at 4.

[44] *Dep't of Enforcement v. McGuire*, No. 20110273503, 2015 FINRA Discip. LEXIS 53, at *39 (NAC Dec. 17, 2015).

[45] *See Dep't of Enforcement v. Respondent*, 2007 NASD Discip. LEXIS 13, at *25 (affirming grant of summary disposition as to liability but remanding for a hearing on sanctions to consider, among other things, whether respondent's misconduct was intentional). We note the limited reach of Seol's claims of good faith even in the context of sanctions, as "[i]gnorance of FINRA rules is not a basis for mitigation." *Dep't of Enforcement v. Eplboim*, No. 2011025674101, 2014 FINRA Discip. LEXIS 8, at *44 (NAC May 14, 2014).

determinations requires a hearing.[46] But Enforcement has not sought the imposition of any sanction at this time. It has sought only a determination that the facts not materially disputed establish a violation of Rule 3270. Because the undisputed facts establish such a violation,[47] and because summary disposition will narrow the issues to be addressed at the hearing, the motion is **GRANTED** as to the second claim.

C. Seol Failed to Disclose His Outside Business Activities on Ameriprise Compliance Questionnaires

The undisputed facts also establish that on three occasions Seol represented to Ameriprise in Compliance Questionnaires that he had no outside business activities. For the same reasons that we conclude as a matter of law that Seol did, in fact, have undisclosed outside business activities, his contrary responses on the questionnaires were necessarily false.

Enforcement claims in the third cause of action that Seol violated FINRA Rule 2010's proscription against conduct inconsistent with just and equitable principles of trade by submitting these false responses to Ameriprise. Seol maintains in his defense that his responses, even if false, do not necessarily violate FINRA Rule 2010—he contends that "[b]ecause any inaccuracies in [his] attestations to Ameriprise were inadvertent, rather than willful, and based on his good faith understanding of the law, his conduct was consistent with 'just and equitable principles of trade' under FINRA Rule 2010."[48]

An associated person violates FINRA Rule 2010 when he or she violates another SEC or FINRA rule, or engages in business-related conduct unethically or in bad faith.[49] Irrespective of Seol's claimed good-faith mistake of law, "an associated person who provides falsified documents to an employer engages in unethical conduct that violates [Rule 2010]."[50] All securities professionals have "a basic duty … to respond truthfully and accurately to their firm's requests for information, and … the failure to do so can be inconsistent with just and equitable

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[46] *See, e.g.*, OHO Order 15-07 (2013036217601) (Apr. 2, 2015), http://www.finra.org/sites/default/files/OHO-Order-15-07-ProceedingNo.2013036217601_0.pdf (granting summary disposition but deferring determination of appropriate sanction until the hearing); OHO Order 07-37 (2005001919501) (Oct. 16, 2007), http://www.finra.org/sites/default/files/OHODecision/p037809_0_0.pdf (same); OHO Order 07-16 (C11040006) (Apr. 18, 2007), http://www.finra.org/sites/default/files/OHODecision/p037020_0_0.pdf (same).

[47] A violation of FINRA Rule 3270 is also a violation of FINRA Rule 2010. *See Dep't of Enforcement v. Moore*, No. 2008015105601, 2012 FINRA Discip. LEXIS 45, at *24, n.19 (NAC July 26, 2012).

[48] Opp. at 9.

[49] *Calvin David Fox*, Exchange Act Release No. 48731, 2003 SEC LEXIS 2603, at *8 (Oct. 31, 2003).

[50] *Dep't of Enforcement v. Biney*, No. 20140425550-02, 2016 FINRA Discip. LEXIS 43, at *22 (OHO Aug. 31, 2016) (citing *Dep't of Enforcement v. Mielke*, No. 2009019837302, 2014 FINRA Discip. LEXIS 24, at *40 (NAC July 18, 2014), *aff'd*, Exchange Act Release No. 75981, 2015 SEC LEXIS 3927 (Sept. 24, 2015), *appeal dismissed*, No. 15-15199-EE (11th Cir. May 19, 2016) (misstatements on firm's compliance questionnaires violated predecessor to Rule 2010)).

principles of trade, especially when the purpose of the information request is to help ensure that the associated person is in compliance with applicable laws, rules, and policies."[51]

According to Seol, the disputed factual question of whether his mistaken understanding of FINRA rules caused his misrepresentations precludes summary disposition. He cites authorities that stand for the proposition that misrepresentations that result from inadvertence or mistake do not invariably give rise to liability under Rule 2010.[52] But while inadvertence or mistake may be excusable in certain contexts, the law is clear that "ignorance of FINRA rules does not excuse an associated person from compliance with such rules."[53] Conduct inconsistent with any FINRA rule falls short of Rule 2010's ethical mandate "without attention to the surrounding circumstances because members of the securities industry are expected and required to abide by the applicable rules and regulations."[54] In that regard, Seol is "assumed as a matter of law to have read and have knowledge of [pertinent] rules and requirements."[55] "Participants in the securities industry must take responsibility for compliance and cannot be excused for lack of knowledge, understanding or appreciation of these requirements."[56] Seol's claimed lack of familiarity with FINRA rules cannot excuse his misrepresentations to his firm. To the extent that his claimed good faith error of law has any bearing, it is to sanctions and not liability.[57] Summary disposition is warranted as to the third claim, and is **GRANTED**.

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[51] *John Edward Mullins*, Exchange Act Release No. 66373, 2012 SEC LEXIS 464, at *45 (Feb. 10, 2012); *Dep't of Enforcement v. Davenport*, No. C05010017, 2003 NASD Discip. LEXIS 4, at *9-10 (NAC May 7, 2003) (registered representative's misrepresentations to his firm constituted unethical conduct that reflected "on an associated person's ability to comply with regulatory requirements necessary to the proper functioning of the securities industry and protection of the public.").

[52] *Dep't of Enforcement v. Meyers Assocs., L.P.*, No. 20100020954501, 2016 FINRA Discip. LEXIS 29, at *31-32 (Apr. 27, 2016) (inadvertent misrepresentations on tax returns did not violate Rule 2010); *Dep't of Enforcement v. Geary*, No. 2011026788801, 2015 FINRA Discip. LEXIS 5, at *50-51 (Mar. 10, 2015) (representations based on respondent's erroneous but good-faith belief regarding the soundness of an investment do not, without more, amount to unethical conduct that violates Rule 2010).

[53] *Dep't of Enforcement v. Claggett*, No. 2005000631501, 2007 FINRA Discip. LEXIS 2, at *24 (NAC Sept. 28, 2007) (affirming grant of summary disposition against registered representative who failed to disclose outside brokerage account to member firm in compliance questionnaire).

[54] *Dep't of Enforcement v. Shvarts*, No. CAF980029, 2000 NASD Discip. LEXIS 6, at *12-13 (NAC June 2, 2000).

[55] *Gilbert M. Hair*, 51 S.E.C. 374, 378 n.12 (1993) (quoting *Carter v. SEC*, 726 F. 2d 472, 473-74 (9th Cir. 1983)).

[56] *Richard J. Lanigan*, 52 S.E.C. 375, 378 (1995).

[57] We reiterate our skepticism regarding the potential relevance of a claimed misunderstanding of pertinent requirements even in the context of sanctions. *Dep't of Enforcement v. Woodmere*, No. 2005000835801, 2010 FINRA Discip. LEXIS 10, at *31 (NAC July 26, 2010) ("It is well established, however, that a registered representative is not excused, for his lack of knowledge or appreciation of FINRA rule requirements. … And such ignorance of FINRA rules is not mitigating for purposes of sanctions.") (citation omitted).

IV. Order

Respondent Jim Seol violated FINRA Rules 3270 and 2010 by failing to disclose his outside business activities and FINRA Rule 2010 by making misrepresentations to his employer in compliance questionnaires.

The hearing shall be limited to a determination of liability as to the first cause of action and a determination of sanctions as to all three causes of action.

SO ORDERED.

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David Williams
Hearing Officer
For the Hearing Panel

Dated: November 4, 2016