

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

STANLEY CLAYTON NIEKRAS
(CRD No. 2417486),

RESPONDENT.

DISCIPLINARY PROCEEDING
No. 2013037401001

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Niekras misrepresented to his elderly customers, DP and VP, that he was entitled to more than \$70,000 for purported "estate planning" and "financial planning" services.

Although Niekras did not have a financial planning or investment advisory agreement with DP or VP, he presented DP and VP with bills claiming that he had spent hundreds of hours over a four-year period working on his customers' "financial future" and that he was entitled to retroactive compensation at a rate of \$250 per hour. At the time he presented these bills to DP and VP, Niekras believed that DP and VP, who were 90 and 91 years of age, respectively, were declining both physically and mentally. Niekras knew, too, that he was not entitled to "estate planning" or "financial planning" fees from them. By misrepresenting to DP and VP that he was owed these fees, Niekras violated FINRA Rule 2010.

RESPONDENT AND JURISDICTION

2. Niekras first became registered with FINRA in October 1993 as a General Securities Representative. From May 2005 through January 2014, Niekras was registered in that capacity through MML Investors Services, LLC (“MML” or the “Firm”). Thereafter, from May 2014 through October 1, 2015, Niekras was registered as a General Securities Representative and as an Operations Principal through another FINRA member firm.
3. Although Niekras 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 after the effective date of termination of his registration with the Firm, namely, October 1, 2015; and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member.

FACTS

4. DP and VP became Niekras’ customers in 2001, and they remained his customers until in or about July 2013.
5. By 2011, Niekras believed that DP and VP were deteriorating mentally and physically. In August 2012, for example, Niekras wrote a “memorandum to file” noting that DP “appears to have lessened comprehension of daily events.” Niekras also determined that VP, who is DP’s wife, lacked any understanding of the couple’s finances.
6. In December 2012, DP and VP gifted approximately \$500,000 in cash and securities to each of their three children. These gifted assets were transferred into brokerage accounts that Niekras opened for each of DP and VP’s children at MML.

Shortly after DP and VP's Children Opened Accounts, Niekras Recommended that they Purchase Variable Annuities, Which Would Have Generated about \$75,000 in Commissions to Niekras

7. In February 2013, Niekras recommended that DP and VP's children each purchase a particular variable annuity with the assets they had received from their parents.
8. Niekras misrepresented to DP and VP's children that they would not pay commissions if they purchased the variable annuities he recommended.
9. Niekras anticipated that the sales of variable annuities to DP and VP's children would result in about \$75,000 in commissions to Niekras.

In March 2013, the IRS Imposed a Tax Lien on Niekras, Making Him More Desperate to Sell Variable Annuities to DP and VP's Children

10. In early March 2013, the Internal Revenue Service filed a tax lien against Niekras. MML discovered the tax lien on March 18, 2013 and questioned Niekras about it. Niekras acknowledged his tax debt but assured MML that "I have business cooking that will more than settle the IRS debt." According to Niekras, he was referring to the sale of variable annuities to DP and VP's children.

DP and VP's Children Declined to Purchase Variable Annuities from Niekras. In response, Niekras Presented DP and VP with Bills for "Estate Planning" and "Financial Planning"

11. Ultimately, DP and VP's children declined to purchase the variable annuities (or any other products) that Niekras recommended.
12. On March 27, 2013, Niekras met with DP and presented him with a document he labeled the "[DP and VP] Preliminary Billing Estimate." The document purported that Niekras had provided "estate planning and record keeping" for DP and VP during the period 2010 through 2013 and that he was entitled to fees of \$69,330.17, including expenses.

According to Niekras, he had spent 264.11 hours working on DP and VP's estate planning, and was entitled to retroactive compensation at a rate of \$250 per hour.

13. In his "billing estimate," Niekras noted that "the parents and any child accepting my proposal [to invest in the variable annuities] or a version thereof will be relieved of any billing exposure."
14. Without informing DP, Niekras tape-recorded their March 27, 2013 meeting. Niekras told DP that Niekras' "company needs to be compensated for the time they keep [him] on the payroll." At the time, Niekras did not have a company that kept him on a payroll. Niekras admits that this statement is "a bit of a fabrication."
15. Niekras thereafter presented DP with an "updated" billing estimate, dated April 4, 2013, which increased Niekras' fee for "estate planning" services to \$72,636.18. Niekras noted on the April 4 bill that a "possible distribution of fees" would entail DP and VP paying the entire bill, and "reduc[ing] inheritances accordingly."
16. On April 29, 2013, Niekras additionally produced a "statement" for \$72,636.18 on MML letterhead, noting that his bill was for "financial planning." The statement indicated that the "balance" was "due upon receipt."

*Niekras Knew that He Was Not Entitled to
"Estate Planning" or "Financial Planning" Fees from DP or VP*

17. Niekras did not have an investment advisory or financial planning agreement with DP or VP and, as he knew, was not entitled to "estate planning" or "financial planning" fees from them.
18. Niekras admits that the bills he presented to DP and VP were intended to replace the commissions he would have received from the sale of variable annuities he recommended to DP and VP's children.

19. Niekras did not show his bills to anyone at MML or otherwise seek the Firm's approval to charge DP and VP for purported estate planning or financial planning services. The bills that Niekras created violated the Firm's procedures.

**CAUSE OF ACTION
Misrepresentations
(FINRA Rule 2010)**

20. The Department realleges and incorporates by reference paragraphs 1 through 19 above.
21. FINRA Rule 2010 requires members and associated persons, in the conduct of their business, to "observe high standards of commercial honor and just and equitable principles of trade."
22. By misrepresenting and omitting material facts, as described above, Respondent Niekras violated FINRA Rule 2010.

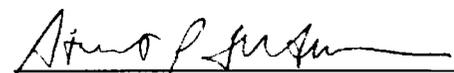
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent committed the violation 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 7, 2016


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