

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2014039358003**

TO: Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

RE: Richard Gomez, Respondent
Former General Securities Representative
CRD No. 4727721

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, Respondent Richard Gomez, submit this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against me alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. I hereby accept and consent, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

BACKGROUND

Gomez entered the securities industry in 2003. Since then, he has been consecutively registered with FINRA as a General Securities Representative ("GSR") through associations with 19 different FINRA-regulated firms. He was registered through Avenir Financial Group ("Avenir" or the "Firm") in New York, New York, as a GSR from June 2013 until October 30, 2015.

On October 30, 2015, the Firm filed with FINRA a Uniform Termination Notice for Securities Industry Registration reporting that the Firm had permitted Gomez to resign for having "[n]o business for several months" and owing the Firm approximately \$2,700. Gomez is not currently associated with a FINRA member firm. He currently remains subject to FINRA's jurisdiction pursuant to Article V, Section 4 of FINRA's By-Laws.

RELEVANT DISCIPLINARY HISTORY

On June 10, 2016, a Hearing Panel found that Gomez made unsuitable recommendations and sold securities away from a firm he had been associated with prior to his employment with Avenir. The Hearing Panel barred Gomez for the violations.¹ On July 6, 2016, Gomez appealed the Hearing Panel's decision. The sanction is stayed pending the resolution of the appeal.

OVERVIEW

From January 2014 through February 2015, Gomez engaged in several types of misconduct in four separate Individual Retirement Accounts ("IRAs") of three Avenir customers: CW, DW and DK.

For the 11-month period from January 2014 to November 2014, in violation of FINRA Rules 2111 and 2010, Gomez excessively traded the three IRAs belonging to CW and DW and, during the same period, he exercised discretion without written authority for a total of 222 trades in the same three IRAs, in violation of NASD Rule 2510(b) and FINRA Rule 2010.

In February 2015, Gomez implemented a trading strategy in DK's IRA that was unsuitable in light of DK's stated goals, investment objectives and risk tolerance, in violation of FINRA Rules 2111 and 2010. Additionally, in the same month, Gomez effected five unauthorized transactions in DK's IRA, in violation of FINRA Rule 2010. After DK complained about the trading activity, Gomez acted unethically in violation of FINRA Rule 2010 when he executed a settlement agreement ("Agreement") that he never intended to honor; pursuant to the terms of the Agreement Gomez agreed to reimburse DK for the commissions generated by the trading but he repeatedly failed to do so, beginning almost immediately after signing the Agreement.

FACTS AND VIOLATIVE CONDUCT

Customer DW is a retired commercial airline pilot, and CW, his wife, is a self-employed small business owner; both are senior investors in their mid-'60s. CW and DW met Gomez through a family relationship. In December 2013, they were nearing retirement. At that time DW's annual income was approximately \$300,000. CW had no income because she had recently lost a major client for her business.

In December 2013, they discussed with Gomez the retirement accounts that they held at another brokerage firm. Gomez solicited them to transfer some of their retirement assets to accounts at Avenir, with Gomez as their registered

¹*DOE v. Gomez*, Discip. Proceeding No. 2011030293503, 2016 FINRA Discip. LEXIS 37 (OHO June 10, 2016).

representative. In January 2014, in response to Gomez's solicitation, DW transferred approximately \$300,000 in securities from another brokerage account to a new Avenir IRA. In the same month, CW transferred funds from her separate brokerage account to open a new Avenir IRA with approximately \$44,000. In February 2014, CW transferred additional cash from her separate brokerage account to open and fund a second Avenir IRA with approximately \$750,000. DW and CW each had an investment objective of "capital preservation," and a "moderate" to "moderately aggressive" risk tolerance for their Avenir IRAs.

Customer DK is a physician and senior investor in his mid-'60s. Gomez met DK in 2014 and solicited him to open an account at Avenir. During his solicitation of DK, Gomez recommended an investment strategy for DK in which Gomez would purchase 10 security positions in order to mitigate risk. DK agreed to this strategy and instructed Gomez to implement it in an Avenir IRA. DK opened his Avenir IRA on January 29, 2015 by transferring \$100,000 from another brokerage account. Consistent with the trading strategy, DK had an investment objective of "growth" and a moderately aggressive risk tolerance.

1. Exercise of Discretion in CW's and DW's Accounts

NASD Rule 2510(b) states that no registered representative shall exercise any discretionary power in a customer's account unless such customer has given prior written authorization and the account has been accepted in writing as a discretionary account by the member firm. A violation of NASD -Rule 2510(b) is also a violation of FINRA Rule 2010, which requires each FINRA member and its associated persons to observe high standards of commercial honor and just and equitable principles of trade.

Between January 2014 and November 2014, without obtaining prior written authorization from CW or DW and without Avenir's acceptance of CW's or DW's IRAs as discretionary accounts, Gomez effected 161 trades in CW's two IRAs. Gomez failed to discuss the 161 trades with CW on the dates of the transactions. Gomez also effected 61 trades in DW's IRA without discussing the 61 trades with DW on the dates of the transactions. In total, Gomez effected 222 discretionary trades without written authorization in the three Avenir IRAs of customers DW and CW.

Therefore, Gomez violated NASD Rule 2510(b) and FINRA Rule 2010.

2. Excessive Trading in CW's and DW's Accounts

Excessive trading occurs when a registered representative exercises control over a customer's account and the level of activity in that account is inconsistent with the customer's investment objectives, financial situation and needs. A broker may have *de facto* control over an account through the exercise of discretion. Excessive trading violates FINRA's suitability standards under FINRA Rule

2111. A violation of FINRA Rule 2111 is also a violation of FINRA Rule 2010.

Excessive trading is generally measured by the turnover rate and the cost-to-equity ratio. The turnover rate is the number of times the value of the account is turned over within a given period of time. The cost-to-equity ratio represents the percentage of return on the customer's average net equity needed to pay commissions and other account expenses over a given period of time. An annualized turnover ratio of six or more is presumptive evidence of excessive trading. An annualized cost-to-equity ratio in excess of 20 percent indicates excessive trading.

As described above, Gomez exercised discretion in CW's and DW's Avenir IRAs between January 2014 and November 2014. As such, Gomez had *de facto* control of the IRAs. The transactions that Gomez effected in CW's two IRAs and DW's IRA between January 2014 and November 2014 resulted in the following turnover rates and cost-to-equity ratios:

- One of CW's IRAs had an annualized turnover rate of 26.31 and an annualized cost-to-equity ratio of 45.37%. Gomez's trading in this IRA resulted in losses of approximately \$18,000, or nearly 36% of the IRA's opening balance. Gomez's trading in that IRA generated approximately \$4,400 in commissions.
- CW's other IRA had an annualized turnover rate of 23.44 and an annualized cost-to-equity ratio of 75.68%. Gomez's trading in this IRA resulted in losses of approximately \$75,000 or approximately 10% of the IRA's opening balance. Gomez's trading in that IRA generated approximately \$385,000 in commissions. In this IRA, from March to November 2014, Gomez engaged indiscriminate buying and selling of various securities. The trading did not benefit CW's IRA and was designed solely to generate commissions for Gomez and Avenir. For example, in April 2014, Gomez purchased 290 shares of stock G and, less than two weeks later, sold all of the shares of stock G for a loss of approximately \$7,000. This purchase and sale of stock G generated more than \$5,500 in commissions.
- DW's IRA had an annualized turnover rate of 20.77 and an annualized cost-to-equity ratio of 44.99%. Gomez's trading in DW's IRA resulted in losses of approximately \$120,000 or approximately 39% of the opening IRA balance. Gomez's trading in DW's IRA generated approximately \$94,000 in commissions. In this IRA, Gomez also engaged in frequent buys and sells of various securities. For example, on September 11, 2014, Gomez purchased 7,673 shares of stock JD and then, five days later, sold the 7,673 shares at a loss. Just three days later, Gomez purchased 7,110 shares of stock JD at a price of approximately \$2 more than the price at which he had just sold it. Four days after that purchase, Gomez sold all

7,110 shares of stock JD, again at a loss. In less than two weeks, Gomez bought and sold stock JD twice, resulting in losses in DW's IRA of more than \$43,000. The trading activity in stock JD generated more than \$15,000 in commissions.

The trading that Gomez directed in these accounts was excessive. The turnover and cost-to-equity ratios far exceeded the thresholds indicating excessive trading. Further, the strategy was inconsistent with the investment objective of capital preservation and a moderate to moderately aggressive risk tolerance that DW and CW expected for their respective IRAs.

As a result of the foregoing, Gomez violated FINRA Rules 2111 and 2010.

3. Qualitatively Unsuitable Trading Strategy in DK's Account

FINRA Rule 2111 provides that when recommending the purchase or sale of any security to a customer a registered representative "must have a reasonable basis to believe that a recommended transaction or investment strategy . . . is suitable for the customer, based on the information obtained through the reasonable diligence of the member or associated person to ascertain the customer's investment profile." Qualitative unsuitability occurs when the characteristics of investments are inconsistent with the customer's risk tolerance and investment objectives.

Between February 3, 2015 and February 12, 2015, Gomez executed seven transactions in DK's IRA – four purchases and three sales of securities. Those transactions began within a few days of DK opening his account with Gomez at Avenir. Gomez did not implement the 10 position strategy that he and DK had agreed upon for DK's IRA. Instead, for each purchase, Gomez used 97% or more of the IRA's assets to purchase shares in a single security. Gomez then sold the security within days and repeated the purchase of shares in a single security. As a result of Gomez's trading, DK's IRA held only a single security at a time, instead of 10 securities, as Gomez had promised DK. The transactions that Gomez effected in DK's IRA resulted in market losses and commissions and fees totaling nearly \$30,000.

On or about February 12, 2015, DK learned that Gomez was not implementing the trading strategy that they had agreed upon, when he began to receive trade confirmations in the mail. DK immediately complained to Gomez and Avenir. DK also instructed Gomez to stop effecting any transactions in DK's IRA.

Gomez's trading in DK's IRA was unsuitable for DK because the investment strategy in the IRA was inconsistent DK's expectations and his directions to Gomez regarding the strategy that Gomez promised to implement in the account. The investment strategy was also inconsistent with DK's moderately aggressive risk tolerance and growth investment objectives, which were reflected in DK's Avenir new account documents. Instead, the strategy concentrated DK's assets in

a single security at a time, so a negative performance in the security that DK held would have drastic effects on DK's IRA value.

By reason of the foregoing, Gomez violated FINRA Rules 2111 and 2010.

4. Unauthorized Transactions in DK's Account

A registered representative's execution of unauthorized trades in a customer account violates FINRA Rule 2010.

Gomez effected five of the seven transactions in DK's IRA in February 2015 without DK's authorization, knowledge or consent. As described above, DK first learned of the unauthorized transactions when he received trade confirmations in the mail at his home. At that time, he immediately complained to Gomez about the unauthorized transactions and directed Gomez to stop effecting any transactions in his IRA.

By reason of the foregoing conduct, Gomez violated FINRA Rule 2010.

5. Failure to Observe High Standards of Commercial Honor and Just and Equitable Principles of Trade Regarding DK's Account

An unethical or bad faith breach of an agreement is a failure to observe the just and equitable principles of trade, which violates FINRA Rule 2010.

In March 2015, as a result of DK's complaint regarding his trading activity in DK's IRA, Gomez executed the Agreement. In the Agreement, Gomez agreed to repay to DK, in an installment plan, the commissions of \$9,186 generated from Gomez's trading in DK's IRA. Gomez proposed the dates and amounts for repayment that were incorporated in the Agreement, including that the first payment was due in mid-April 2015, which was approximately three weeks after the execution of the Agreement.

However, Gomez never intended to honor the terms of the Agreement. Without providing any explanation, Gomez failed to make the first required payment. Gomez also failed to make subsequent payments, despite repeated promises to DK and Avenir's management that he would do so. On at least two occasions, Avenir withheld Gomez's commission payments in order to make partial payments to DK.

By the Agreement's deadline for Gomez to fulfill his obligations pursuant to the Agreement, DK had received approximately a third of the amount due to him under the Agreement, largely through Avenir's intervention. By that point, Gomez had resigned from Avenir, had ceased to make any payments under the Agreement, and had stopped responding in any way to DK's requests for payment.

Gomez had no reasonable justification or excuse for his failure to comply with the Agreement. The short amount of time between his execution of the Agreement and his initial breach of it indicates that Gomez acted unethically. That timeframe indicates that when Gomez executed the Agreement, he knew that he had no intention of honoring it. His unethical behavior continued as he repeatedly breached the Agreement and ignored his obligations to repay DK.

By reason of the foregoing, Gomez violated the just and equitable principles of trade and FINRA Rule 2010.

B. I also consent to the imposition of the following sanctions:

- A one year suspension from association with any FINRA member firm in any capacity.

Respondent has submitted a sworn financial statement and demonstrated an inability to pay. In light of the financial status of Respondent, no monetary sanctions have been imposed.

I understand that if I am barred or suspended from associating with any FINRA member, I become subject to a statutory disqualification as that term is defined in Article III, Section 4 of FINRA's By-Laws, incorporating Section 3(a)(39) of the Securities Exchange Act of 1934. Accordingly, I may not be associated with any FINRA member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension (see FINRA Rules 8310 and 8311).

The sanctions imposed herein shall be effective on a date set by FINRA staff.

II.

WAIVER OF PROCEDURAL RIGHTS

I specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against me;
- B. To be notified of the Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the National Adjudicatory Council ("NAC") and

then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, I specifically and voluntarily waive any right to claim bias or prejudice of the Chief Legal Officer, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

I further specifically and voluntarily waive any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

III.

OTHER MATTERS

I understand that:

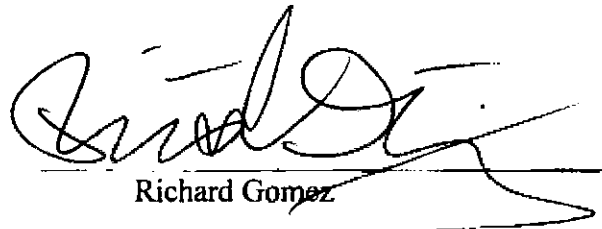
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against me; and
- C. If accepted:
 - 1. this AWC will become part of my permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against me;
 - 2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 - 4. I may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. I may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects

my: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

- D. I may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. I understand that I may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

I, Respondent Richard Gomez, certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I have agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce me to submit it.

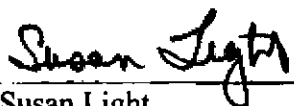
12/07/2016
Date (mm/dd/yyyy)


Richard Gomez

Accepted by FINRA:

January 18, 2017
Date

Signed on behalf of the
Director of ODA, by delegated authority


Susan Light
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