

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

DEPARTMENT OF ENFORCEMENT,

Complainant

v.

DALE R. MENENDEZ
(CRD No. 4880000),

Respondent.

Disciplinary Proceeding
No. 2007007400501

Hearing Officer – MC

DEFAULT DECISION

February 26, 2010

Respondent is barred from associating with any FINRA member firm in any capacity for: (i) engaging in unauthorized trading, in violation of Conduct Rule 2110; (ii) engaging in excessive trading, in violation of Conduct Rules 2110 and 2310, and IM-2310-2; and (iii) failing to appear for on-the-record testimony, in violation of Conduct Rule 2110 and Procedural Rule 8210. In addition, Respondent is ordered to pay restitution in the amount of \$110,528.73. In light of the bars, it is unnecessary to impose any further sanction upon Respondent for mischaracterizing customer transactions to his firm, resulting in inaccurate books and records, in violation of Conduct Rules 2110 and 3110.

Appearances

Joel T. Kornfeld, Senior Regional Counsel, Los Angeles, CA, and Robin W. Sardegna, Senior Litigation Counsel, Washington, DC, for the Department of Enforcement.

No appearance by or on behalf of Respondent Dale R. Menendez.

DECISION

I. Introduction

On October 7, 2009, the Department of Enforcement filed the attached four-cause Complaint in this disciplinary proceeding. The four Causes of Action allege that Respondent Dale R. Menendez (“Menendez”): (i) executed unauthorized trades, in violation of Conduct

Rule 2110; (ii) executed an excessive number of trades, in violation of Conduct Rules 2110 and 2310, and IM-2310-2; (iii) mischaracterized the nature of transactions to his firm, causing the firm's books and records to be inaccurate, in violation of Conduct Rules 3110 and 2110; and (iv) failed to appear for on-the-record testimony, in violation of Conduct Rule 2110 and Procedural Rule 8210.¹

Enforcement served the Complaint and Notice of Complaint on Menendez by certified and first-class mail at his last-known residential address appearing in FINRA's Central Registration Depository ("CRD address") and to two alternate addresses identified by FINRA staff. Because Menendez did not file an Answer or otherwise respond to the Complaint, Enforcement served the Complaint and a Second Notice of Complaint upon Menendez by certified and first-class mail at his CRD address and four alternate addresses identified by FINRA staff. Once again, Menendez failed to file an Answer or otherwise respond to the Complaint. Consequently, on December 29, 2009, Enforcement filed a Motion for Entry of Default Decision ("Default Motion") supported by a Memorandum of Points and Authorities, the Declaration of Joel T. Kornfeld and 15 exhibits.² For the reasons discussed below, the Default Motion is granted.³

¹ As of July 30, 2007, NASD consolidated with the member regulation and enforcement functions of NYSE Regulation and began operating under a new corporate name, the Financial Industry Regulatory Authority (FINRA). References in this decision to FINRA include, where appropriate, NASD. Following consolidation, FINRA began developing a new FINRA Consolidated Rulebook. The first phase of the new consolidated rules became effective on December 15, 2008, including certain conduct rules and procedural rules. *See* Regulatory Notice 08-57 (Oct. 2008). This decision refers to and relies on the NASD Conduct Rules that were in effect at the time of Menendez's alleged misconduct. The applicable rules are available at www.finra.org/rules.

² Enforcement's exhibits will be referred to as "CX- " with the appropriate exhibit number. References in this Default Decision to the Kornfeld Declaration will be referred to as "Decl." with citation to specific paragraphs.

³ The factual determinations in this Default Decision are based on the allegations of the attached Complaint, which are deemed admitted, as well as the Kornfeld Declaration, and the exhibits filed by Enforcement.

II. Findings of Fact and Conclusions of Law

A. Menendez is Subject to FINRA's Jurisdiction

Menendez was associated with Westpark Capital, Inc. ("Westpark") as a General Securities Representative from February 28, 2006, through January 29, 2007, and again from April 27, 2007, through September 14, 2007. From October 3, 2007, through October 18, 2007, Menendez was associated with another FINRA member firm in a non-registered capacity.⁴

Menendez allegedly engaged in the misconduct described in the first three Causes of Action of the Complaint when he was registered with FINRA through Westpark. FINRA staff conducted its investigation, and the Complaint was filed, within two years of the date of his last association with a FINRA member firm, while he remained subject to FINRA's jurisdiction. Thus, FINRA possessed jurisdiction to compel Menendez to provide information at an on-the-record interview during its investigation, and subsequently to institute this disciplinary proceeding against him, pursuant to Article V, § 4 of FINRA's By-Laws.

B. Menendez Defaulted

Enforcement initially served the Complaint and Notice of Complaint on October 7, 2009. Enforcement served Menendez by certified and first-class mail at his CRD address and two other addresses ("Alternate Address" and "Second Alternate Address") known to Enforcement.⁵ The mailings to all three addresses were returned with markings that indicated they were undeliverable and could not be forwarded.⁶

⁴ Decl. ¶ 3; CX-1.

⁵ *Id.*, ¶ 5.

⁶ *Id.*, ¶¶ 6-8; CX-3, CX-4, CX-5.

Receiving no response from Menendez from the first service of the Complaint,⁷ on November 4, 2009, Enforcement served the Complaint and Second Notice of Complaint at the same three addresses as before, and at two additional addresses Enforcement discovered (“Third Alternate Address” and “Fourth Alternate Address”).⁸ Both mailings of the Complaint and Second Notice of Complaint served at Menendez’s CRD address, Alternate Address, and Second Alternate Address were returned with markings indicating they were undeliverable.⁹ The receipts for the certified mailing served at the Third and Fourth Alternate Addresses were returned containing signatures, but not the signatures of Menendez. The first-class mailings served at the Third and Fourth Alternate Addresses were not returned.¹⁰ Menendez did not respond to the Second Notice of Complaint.¹¹

Menendez did not file an Answer or otherwise respond to the Complaint. By serving the Complaint at Menendez’s CRD address, Enforcement provided Menendez with constructive notice of the filing of the Complaint.¹² Enforcement, therefore, fully complied with the service requirements of Procedural Rule 9134. By failing to answer the Complaint, Menendez defaulted. Accordingly, pursuant to Rules 9215(f) and 9269(a) (2), the allegations in the Complaint are deemed admitted.

⁷ Decl. ¶ 9.

⁸ *Id.*, ¶ 10.

⁹ *Id.*, ¶¶ 11-13; CX-7, CX-8, CX-9.

¹⁰ *Id.*, ¶¶ 14-15; CX-10, CX-11.

¹¹ *Id.*, ¶ 16.

¹² *Dep’t of Enforcement v. 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)).

C. Menendez Engaged in Unauthorized Trading, in Violation of Conduct Rule 2110

In June 2006, customer T.M. opened an account at Westpark with Menendez. Menendez agreed not to charge T.M. in excess of \$750 for any single transaction in his account.¹³ In December 2006, just before departing on a foreign business trip, T.M. directed Menendez to cease trading in his account.¹⁴ Nonetheless, on December 29, 2006, while T.M. was abroad, Menendez executed three transactions in T.M.'s account, without T.M.'s knowledge or approval, for which Menendez charged T.M. a total of \$7,570 in markups or commissions.¹⁵ In doing so, Menendez violated Conduct Rule 2110, as alleged in the First Cause of Action of the Complaint.

D. Menendez Engaged in Unsuitably Excessive Trading, in Violation of Conduct Rules 2110 and 2310, and IM-2310-2

In or around June 2006, customer C.K. opened a brokerage account with Menendez.¹⁶ C.K. was nearly 79 years old at the time. He had retired and his income consisted of pensions amounting to approximately \$3,000 per month.¹⁷ C.K. had no experience with margin accounts. Furthermore, C.K. informed Menendez that he was not interested in aggressive investments because he anticipated he would need funds to pay for nursing home care in the future.¹⁸

Notwithstanding C.K.'s conservative goals and lack of sophistication, Menendez persuaded C.K. to sign a margin account agreement. Menendez, on whom C.K. relied

¹³ Complaint ¶ 4.

¹⁴ *Id.*, ¶¶ 5, 6.

¹⁵ Menendez charged T.M. a markup of \$6,570 for one of the three transactions. *Id.*, ¶ 6.

¹⁶ Complaint ¶ 9; CX-13.

¹⁷ Complaint ¶ 10.

¹⁸ *Id.*, ¶ 11.

completely, made all decisions about purchases and sales of securities on C.K.'s behalf¹⁹ and exercised *de facto* control over C.K.'s account.²⁰ C.K. did not understand the fees Menendez charged him, and when he called to inquire about his account, Menendez did not return his calls.²¹

From June 2006 through December 2006, Menendez executed 54 transactions, consisting of 26 purchases and 28 sales, in C.K.'s account, reflecting a turnover rate for the period of 14.44 and, on an annualized basis, 24.75.²² Menendez engaged extensively in short-term buying and selling, utilized large amounts of margin, and charged high commissions.²³ The costs to C.K., of commissions, markups, margin interest charges, and handling fees were \$123,285.85. The cost-to-equity ratio for the period was 69 percent; annualized, it was 119 percent.²⁴ C.K. had transferred into his account securities valued at \$256,889.06 when he opened the account in June 2006; by December 31, 2006, C.K. had sustained losses of \$110,528.73. The trading in which Menendez engaged in C.K.'s account was excessive and unsuitable considering C.K.'s age, financial situation and the conservative investment objectives he had expressed to

¹⁹ Complaint ¶¶ 11-13.

²⁰ A respondent exercises *de facto* control when, as here, the customer is unable to evaluate the respondent's recommendations and was unable to exercise independent judgment. *Dep't of Enforcement v. Medeck*, No. E9B2003033701, 2009 FINRA Discip. LEXIS 7, *34 (NAC July 30, 2009).

²¹ Complaint ¶ 12.

²² *Id.*, ¶ 14. Turnover measures the activity in an account. An annualized turnover rate of six or more creates a presumption of excessive trading and rates as low as 3.1 have been held to establish excessive trading. *Dep't of Enforcement v. Stein*, No. C070000003, 2001 FINRA Discip. LEXIS 38, *16 (NAC Dec. 3, 2001); *David Wong*, Exch. Act Rel. No. 45426, SEC LEXIS 339, *14 (Feb. 8, 2002); *Gerald E. Donnell*, 1996 SEC LEXIS 89, *6-*7 (1996).

²³ Complaint ¶ 13.

²⁴ *Id.*, ¶ 15. The cost-to-equity ratio reflects the percentage of return on the customer's average net equity required to pay commissions and other expenses and measures the appreciation required for an account to break even. *Rafael Pinchas*, Exch. Act Rel. No. 41816, 1999 SEC LEXIS 1754, *18 (Sept. 1, 1999). A ratio of more than 20 percent supports an inference of excessive trading. *Ralph Merhi*, No. E072004044201, 2007 NASD Discip. LEXIS 9, *25 (Feb. 16, 2007).

Menendez.²⁵ By his unsuitable, excessive trading in C.K.'s account, Menendez violated Conduct Rules 2110 and 2310, and IM-2310-2, as alleged in the Second Cause of Action of the Complaint.

E. Menendez Incorrectly Reported Trades to His Firm, Causing His Firm's Books and Records to be Inaccurate, in Violation of Conduct Rules 2110 and 3110

Menendez solicited each of the 54 trades he executed in customer C.K.'s account from June 2006 through December 2006. Nonetheless, he reported at least 13 of the trades as "unsolicited," causing Westpark's books and records to be inaccurate.²⁶ In doing so, Menendez violated Conduct Rules 2110 and 3110, as alleged in the Third Cause of Action of the Complaint.

F. Menendez Failed to Appear for On-the-Record Testimony in Violation of Conduct Rule 2110 and Procedural Rule 8210

In September 2007, FINRA staff sent requests to Menendez to provide testimony relating to the investigation into his unauthorized and excessive trading at Westpark at an on-the-record interview. The notices were sent, pursuant to Procedural Rule 8210, to Menendez at his CRD address and to the Alternate address; the notices were returned, marked as undeliverable.²⁷ After learning that Menendez had associated with another FINRA member firm, that firm confirmed that Menendez's CRD address was his correct residential address and that the notice had been provided to Menendez.²⁸ The staff succeeded in speaking with Menendez. Menendez informed

²⁵ Complaint ¶¶ 16-17.

²⁶ *Id.*, ¶¶ 20-21.

²⁷ Decl. ¶¶ 24-26.

²⁸ *Id.*, ¶ 27.

the staff he had a conflict with the scheduled date of the on-the-record interview, and the staff agreed to reschedule the interview for December 11, 2007.²⁹

In preparation for the interview, on November 9, 2007, the staff sent a second request, pursuant to Procedural Rule 8210, to Menendez at his CRD address and to the Alternate Address by certified and first-class mail, requesting him to appear and provide on-the-record testimony on December 11, 2007.³⁰ On November 12, 2007, Menendez left a telephone message with the staff acknowledging receipt of the second request.³¹ Subsequently, on December 10, 2007, Menendez informed the staff that he was under a physician's care and would be unable to appear to testify at the December 11, 2007, on-the-record interview. Menendez provided a document reflecting his recent admission to, and subsequent discharge from, a hospital detoxification unit. Based upon these representations, the staff agreed once again to reschedule Menendez's on-the-record interview.³²

On December 27, 2007, the staff issued a third request for Menendez to appear and provide on-the-record testimony on January 10, 2008, pursuant to Procedural Rule 8210. The staff sent this request by Federal Express to Menendez's CRD address and to the Second Alternate Address, which appeared as his address in the hospital discharge document Menendez had provided.³³ Menendez failed to appear as directed.³⁴ Over a week later, on January 21, 2008, Menendez contacted the staff and claimed that (i) he had made a mistake regarding the

²⁹ Decl. ¶ 28.

³⁰ *Id.*, ¶ 29.

³¹ *Id.*, ¶ 30.

³² *Id.*, ¶ 31.

³³ *Id.*, ¶ 32.

³⁴ *Id.*, ¶ 33.

date of the interview, (ii) he had been required to appear in court on the date the interview was scheduled, and (iii) he was attempting to retain counsel. The staff requested that Menendez provide a date on which he and his attorney could appear for the on-the-record interview.³⁵ On February 4, and again on February 5, 2008, Menendez contacted the staff and stated he needed additional time to retain counsel before he would be able to set a date for the interview.³⁶

Receiving no suggested date for the interview from Menendez, on March 13, 2008, the staff sent a request to Menendez for him to appear on May 14, 2008, to provide testimony pursuant to Procedural Rule 8210. The staff sent the request by Federal Express to Menendez's CRD address and to the Second Alternate Address.³⁷ On March 25, 2008, the staff sent this request to Menendez at his Alternate Address.³⁸ Menendez did not respond, and subsequently failed to appear for his on-the-record interview on May 14, 2008.³⁹ By his failure to appear, after repeated notifications and rescheduling by FINRA staff in an effort to accommodate his needs, Menendez violated Conduct Rule 2110 and Procedural Rule 8210, as alleged in the Fourth Cause of Action of the Complaint.

III. Sanctions

Enforcement requests the imposition of a bar from association in any capacity with any FINRA member firm as the appropriate sanction for each Cause of Action described in the Complaint.

³⁵ Decl. ¶ 34.

³⁶ *Id.*, ¶ 35.

³⁷ *Id.*, ¶ 36.

³⁸ *Id.*, ¶ 37.

³⁹ *Id.*, ¶ 38.

A. Unauthorized Trading

For executing unauthorized transactions, the FINRA Sanction Guidelines recommend a fine of \$5,000 to \$75,000, and a suspension from 10 business days to one year, or, in egregious cases, a suspension of two years or a bar.⁴⁰ The Principal Considerations direct the adjudicator to consider whether the respondent misunderstood his authority or whether the unauthorized trading was egregious.

In this case, Enforcement suggests Menendez's conduct was egregious. Menendez executed the three trades after the customer expressly directed him to cease trading, while the customer was out of the country, and charged the customer \$7,570 for executing the three trades.

Under these facts, Menendez's unauthorized trading was egregious and a bar is the appropriate sanction.

B. Unsuitable Recommendations - Excessive Trading

For making unsuitable recommendations, the Sanction Guidelines recommend a fine of \$2,500 to \$75,000, and a suspension for 10 business days to a year, and in egregious cases, a suspension of up to two years or a bar.⁴¹ The Principal Considerations applicable to all violations identify several aggravating factors applicable in this instance: (i) whether a respondent accepts responsibility for the misconduct; (ii) whether a respondent takes steps to pay restitution; (iii) whether the misconduct is isolated, or part of a pattern occurring over an extended period; (iv) whether the respondent attempted to conceal the misconduct; (v) whether

⁴⁰ *FINRA Sanction Guidelines*, p. 103 (2007).

⁴¹ *Sanction Guidelines*, p. 99.

the misconduct resulted in customer injury; (vi) whether the misconduct was intentional; and (vii) whether the misconduct resulted in monetary gain for the respondent.⁴²

Here, Menendez did not accept or acknowledge responsibility to Westpark or to FINRA before the investigation of his misconduct, and has not subsequently done so. Menendez's execution of the 54 unsuitable and excessive trades over six months constituted a pattern of misconduct over a lengthy period. Menendez's misconduct caused customer C.K. losses totaling \$110,528.73. In addition, C.K. is an elderly, inexperienced investor of limited means, who relied completely on Menendez. Furthermore, Menendez charged C.K. fees amounting to \$123,285.85. For all of these reasons, Menendez's conduct was egregious. The appropriate sanction is a bar. In addition, Menendez should pay restitution to C.K. in the amount of \$110,528.73.

C. Incorrectly Reporting Trades, Causing Firm Books and Records to be Inaccurate

For record-keeping violations, the Principal Consideration identified by the Sanction Guidelines focuses on the nature and materiality of the inaccurate information, and recommends imposing a suspension of up to 30 business days or, in an egregious case, a suspension of up to two years or a bar.⁴³

In this instance, Menendez incorrectly marked 13 of 54 of the solicited trades he executed in customer C.K.'s account. Enforcement argues that his conduct was intentional and egregious, because it was part of a scheme to engage in unauthorized and excessive trading that victimized an elderly and unsophisticated customer, and to conceal it from his firm.⁴⁴ Enforcement points out that intentional misconduct, as opposed to negligent conduct, resulting in inaccurate entries

⁴² Principal Considerations in Determining Sanctions, Nos. 2, 4, 8, 9, 11, 13, 17, pp. 6-7.

⁴³ *Sanction Guidelines*, p. 30.

⁴⁴ Memorandum of Points and Authorities to Default Motion, p. 19.

in a firm's books and records, implicates the Guidelines applicable to falsification of records.⁴⁵ For falsification of records, the Guidelines recommend a fine of \$5,000 to \$100,000, and a suspension of up to two years; in egregious cases, the Guidelines recommend consideration of a bar.⁴⁶

Menendez's incorrect reporting of 13 of 54 transactions, resulting in inaccurate firm books and records, may not qualify by itself as egregious conduct. However, in light of the bars imposed for his other violations, it is unnecessary to impose a separate sanction on Menendez for incorrectly reporting the trades.

D. Failure to Appear for On-the-Record Interview

The Guidelines call for a bar when a respondent fails to respond in any manner to a request for information issued pursuant to Procedural Rule 8210. Noting that there are no mitigating factors evident here, Enforcement recommends imposition of a bar in this case.

Here, Enforcement made repeated efforts to obtain Menendez's on-the-record testimony in order to investigate serious allegations of misconduct. Enforcement diligently sought to ensure Menendez was notified in a timely and appropriate fashion of the scheduled interview dates, and rescheduled the interview on more than one occasion to accommodate Menendez's schedule and allow him time to obtain counsel. Despite Enforcement's persistent efforts, Menendez ultimately simply refused to attend.

As has often been observed, "Conduct Rule 2110 and Procedural Rule 8210 are crucial components of [FINRA's] examinations and investigations... Procedural Rule 8210 gives [FINRA] the right to require a member or person associated with a member to provide

⁴⁵ *Dep't of Enforcement v. Winters*, No. E102004083704, 2009 FINRA Discip. LEXIS 5, *9-*10 (NAC July 30, 2009).

⁴⁶ *Sanction Guidelines*, p. 39.

information, orally or in writing, in connection with an examination or investigation. The Rule further states that no member or person shall fail to provide such information.”⁴⁷ Concerning sanctions for violating Rule 8210, “[t]he Guidelines treat a failure to respond ... as egregious.”⁴⁸

A bar, therefore, is the appropriate sanction for Menendez’s failure to respond in any manner to the series of requests for him to provide information essential to the investigation of this case.

IV. Order

Respondent Dale R. Menendez is barred from association with any FINRA member firm in any capacity for: (i) engaging in unauthorized trading, in violation of Conduct Rule 2110, as alleged in the First Cause of Action of the Complaint; (ii) making unsuitable recommendations by engaging in excessive trading, in violation of Conduct Rules 2110 and 2310, and IM-2310-2, as alleged in the Second Cause of Action of the Complaint; and (iii) failing to respond to requests to provide information at an on-the-record interview pursuant to Procedural Rule 8210, in violation of Conduct Rule 2110 and Procedural Rule 8210, as alleged in the Fourth Cause of Action of the Complaint. In addition, Menendez is ordered to pay restitution to customer C.K. in the amount of \$110,528.73, plus interest at the rate set forth in the Internal Revenue Code at 26 U.S.C. 6621(b) (2), from August 23, 2007, until paid.⁴⁹

In light of the imposition of the bars, it is unnecessary to impose a sanction upon Menendez for causing his firm’s books and records to be inaccurate by mischaracterizing the

⁴⁷ *Dep’t of Enforcement v. Gregory R. Masceri*, No. C8A040079, 2006 NASD Discip. LEXIS 29, at *35 - *36 (N.A.C. Dec. 18, 2006).

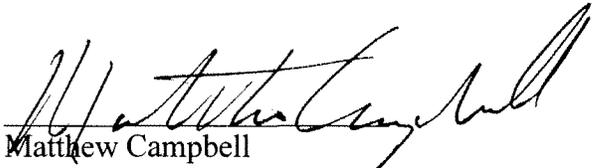
⁴⁸ *Id.* at *41.

⁴⁹ The interest rate, which is used by the Internal Revenue Service to determine interest due on underpaid taxes, is adjusted each quarter and reflects market conditions. Customer C.K. is identified in the Addendum to this decision. The Addendum is served only on the parties.

nature of trades in a customer account, in violation of Conduct Rules 2110 and 3110, as alleged in the Third Cause of Action of the Complaint.

The bars will become effective immediately if this Default Decision becomes FINRA's final disciplinary action in this proceeding.

SO ORDERED.


Matthew Campbell
Hearing Officer

Washington, D.C.

Copies to:

Dale R. Menendez (via FedEx and first-class mail)
Joel T. Kornfeld, Esq. (via electronic and first-class mail)
Mark P. Dauer, Esq. (via electronic mail)
David R. Sonnenberg, Esq. (via electronic mail)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DALE R. MENENDEZ
(CRD No. 4880000),

Respondent.

DISCIPLINARY PROCEEDING
No. 2007007400501

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. While associated with Westpark Capital, Inc. ("Westpark" or the "Firm") Dale R. Menendez ("Menendez") executed three unauthorized trades in one customer's account and excessively traded a second customer's account. In that second account, Menendez also repeatedly mischaracterized solicited trades as "unsolicited." Menendez later failed to appear for on-the-record testimony in connection with the staff's investigation of his misconduct. Menendez violated: (i) NASD Conduct Rule 2110 by executing unauthorized trades; (ii) NASD Conduct Rules 2310 and 2110 and IM-2310-2 by engaging in unsuitably excessive trading; (iii) NASD Conduct Rules 3110 and 2110 by causing his Firm's books and records to be inaccurate; and (iv) NASD Rule 8210 and NASD Conduct Rule 2110 by failing to appear for testimony.

RESPONDENT AND JURISDICTION

2. From February 28, 2006 through January 29, 2007 and from April 27, 2007 through September 14, 2007, Menendez was associated with Westpark Capital, Inc. (“Westpark” or the “Firm”) as a General Securities Representative. Subsequently, from October 3, 2007 through October 18, 2007, Menendez was associated with another member firm in a non-registered capacity. Pursuant to Article V, Section 4 of FINRA’s By-Laws, Menendez remains subject to FINRA’s jurisdiction.

FIRST CAUSE OF ACTION **(Unauthorized Trading in Customer T.M.’s Account)** **(NASD Conduct Rule 2110)**

3. The Department of Enforcement realleges and incorporates by reference paragraphs 1 and 2, above.

4. In early June 2006, Menendez telephoned customer T.M. and persuaded him to open an account at Westpark. At the time, T.M. and Menendez orally agreed that T.M. would not be charged more than \$750.00 for any transaction in his account.

5. In December 2006, after noticing that his account was diminishing in value, T.M. directed Menendez not to execute any further transactions.

6. Subsequently, on December 29, 2006, while T.M. was outside of the United States on a business trip, Menendez executed three transactions in his account without T.M.’s knowledge or consent. One of the three transactions included a purchase of 7,300 shares of Plantronics, Inc. (ticker symbol “PLT”) that Menendez caused to be executed on a riskless principal basis. Menendez charged a \$6,570.00 markup for this transaction, violating his agreement not to charge more than \$750.00 for any one transaction. The other two transactions

involved sales of BEA Systems, Inc. (ticker symbol "BEAS") and Encore Wire Corp. (ticker symbol "WIRE"). Those transactions each included \$500.00 in commissions. Menendez falsely reported to his firm that the Encore Wire Corp. sale was unsolicited. The following table describes these three unauthorized trades:

Date	Security	Net Amount of Transaction	Commission (c) or Markup (m)	Buy (B) or Sell (S)	Marked Unsolicited
12/29/06	BEAS	\$43,477.00	\$500.00 (c)	S	
12/29/06	PLT	\$162,256.00	\$6,570.00 (m)	B	
12/29/06	WIRE	\$109,445.00	\$500.00 (c)	S	√

7. By reason of the foregoing, Menendez violated NASD Conduct Rule 2110.

SECOND CAUSE OF ACTION
(Unsuitably Excessive Trading in Customer C.K.'s Account)
(NASD Conduct Rules 2310 and 2110 and IM-2310-2)

8. The Department of Enforcement realleges and incorporates by reference paragraphs 1 and 2, above.

9. In late May or early June 2006, Menendez cold-called customer C.K. and persuaded him to open a brokerage account at Westpark. C.K., who was born in 1927, was nearly 79 years old at the time he opened the account.

10. C.K.'s investment experience was limited to mutual funds that he had purchased through an investment club at work. C.K. was formerly employed as a commercial artist and lithographer. He has been retired since 1995. His income was about \$3,000.00 per month and primarily derived from pensions from several former employers. In June and July 2006, C.K.

funded the account primarily with stock that he inherited from his late wife as well as with mutual fund shares. These securities had a total value at the time the account was opened of \$256,889.06.

11. Although C.K. had no margin experience, Menendez persuaded him to sign a Margin Account Agreement. C.K. told Menendez that he did not want to be too aggressive because he was concerned that he would need money for future nursing home expenses.

12. C.K. relied completely on Menendez's recommendations. Menendez made all of the recommendations and decisions about what securities to buy and sell and when those transactions would occur. C.K. had little understanding of what was transpiring in his account. In particular, he did not understand what he was being charged. Although he attempted to telephone Menendez to discuss his account activity, his calls were not returned.

13. Menendez controlled C.K.'s account from the time that it opened until he terminated his association with Westpark in January 2007. From early June 2006 through December 31, 2006, Menendez engaged in short term buying and selling of securities, utilizing large amounts of margin, and charging high commissions. The charges on individual trades often exceeded \$5,000.00. In one instance involving a purchase of Microsoft shares, Menendez caused C.K. to be charged \$7,750.00. Menendez charged C.K. an additional \$1,000.00 when those shares were sold several weeks later.

14. From June 2006 through December 31, 2006, Menendez caused 54 transactions to be executed (26 purchases and 28 sales) in C.K.'s account. The turnover rate for this period was 14.44. On an annualized basis, the turnover rate was 24.75.

15. In that period, the total trading costs, including commissions, markups, margin interest charges, and handling fees amounted to \$123,285.85. The cost-to-equity ratio for that seven-month period was 69%. On an annualized basis, the cost-to-equity ratio was 119%. That is to say, C.K.'s account would have had to appreciate by 119 percent annually just to break even.

16. In June and July 2006, C.K. transferred securities into his account worth \$256,889.06. By December 31, 2006, he had sustained a loss of \$110,528.73.

17. The amount of activity in C.K.'s account was inconsistent with his objectives and financial situation.

18. By reason of the foregoing, Menendez violated NASD Conduct Rules 2310 and 2110 and IM-2310-2.

THIRD CAUSE OF ACTION
(Causing Westpark's Books and Records To Be Inaccurate by Falsely Characterizing Trades in Customer C.K.'s Account As "Unsolicited")
(NASD Conduct Rules 3110 and 2110)

19. The Department of Enforcement realleges and incorporates by reference paragraphs 1,2, and 8 through 18, above.

20. Menendez solicited all 54 trades in C.K.'s account from June 2006 through December 31, 2006. On at least 13 occasions, Menendez mischaracterized solicited trades as "unsolicited," thereby causing Westpark's books and records to be inaccurate.

21. The thirteen mismarked trades in C.K's account are as follows:

No.	Date	Security	Net Amount	Commission	Buy (B) or Sell (S)
1	6/29/06	MVL	\$18,984.91	600.00	B
2	7/14/06	ALL	\$9,677.21	350.00	S
3	7/14/06	JANSX	\$5,932.26	0.00	S
4	7/14/06	MFC	\$1,298.20	65.00	S
5	7/14/06	MS	\$7,657.48	65.00	S
6	7/14/06	PGRWX	\$202,348.24	0.00	S
7	7/18/06	MET	\$23,056.25	750.00	S
8	7/20/06	UARM	\$197,537.00	6,974.99	B
9	7/21/06	MSFT	\$246,802.00	7,750.00	B
10	8/31/06	ELNK	\$7,207.77	100.00	S
11	8/31/06	THOR	\$9,878.09	100.00	S
12	8/31/06	TYL	\$77,799.79	100.00	S
13	9/19/06	RNWK	\$131,903.92	100.00	S
Total				\$16,954.99	

22. By reason of the foregoing, Menendez violated NASD Conduct Rules 3110 and 2110.

FOURTH CAUSE OF ACTION
(Failure to Appear For On-The-Record Testimony)
(NASD Rule 8210 and Conduct Rule 2110)

23. The Department of Enforcement realleges and incorporates by reference paragraphs 1 through 22, above.

First Notice

24. In connection with its investigation into unauthorized and unsuitable trading in Westpark accounts that Menendez serviced, on September 7, 2007, FINRA staff requested,

pursuant to Rule 8210, that Menendez appear for on-the-record testimony (“OTR”) at FINRA’s New York office at One Liberty Plaza, on November 14, 2007.

25. The request was sent by first class and certified mail to Menendez’s CRD address, 6 Mirror Road, East Moriches, New York 11940. The request sent by first class mail was returned with the notation “Return to Sender No Such Street Unable to Forward.” The request sent by certified mail was returned with the notation, “Not Deliverable As Addressed, Unable to Forward.”

26. After these letters were returned, FINRA staff conducted a LEXIS search to find alternative addresses. The search identified a possible address (which CRD identified as a prior residential address from March 1998 through March 2002): 20 Timber Point Lane, East Moriches, New York 19940 (“Alternate Address”).

27. On September 17, 2007, the staff, pursuant to Rule 8210, sent requests by first class and certified mail to the Alternate Address directing Menendez to appear for an OTR on November 14, 2007, at FINRA’s One Liberty Plaza office. The letter sent by first class mail was returned with the notation, “Returned to Sender Not Deliverable As Addressed Unable to Forward.” The notice sent by certified mail was returned and marked, “Undeliverable as Addressed, Forwarding Order Expired.”

28. On October 5, 2007, after becoming apprised of Menendez’s recent association with another FINRA member firm, the staff sent the request to the firm’s Compliance Officer and requesting that she forward the notice to Menendez and ensure that his Form U4 included a valid and current residential address. On October 9, 2007, the Compliance Officer informed the staff that she had provided Menendez with the OTR request and that she believed that the 6 Mirror Road Address was a correct address.

29. On November 2, 2007, Menendez spoke with the staff and stated that he would be unable to appear for an OTR on November 14, 2007, but would be able to appear on December 11, 2007.

Second Notice

30. On November 9, 2007, the staff, pursuant to Rule 8210, sent notices via Federal Express to Menendez's CRD residential address and to the Alternate Address directing him to appear for an OTR on December 11, 2007 at FINRA's One Liberty Plaza office.

31. On November 12, 2007, Menendez left a telephone message with the staff stating that he had received notice of the December 11, 2007 OTR.

32. On December 5 and 6, 2007, the staff left messages with Menendez reminding him to appear for his December 11, 2007 OTR.

33. On December 10, 2007, Menendez telephoned the staff, stated that he had recently been discharged from a medical facility, was under a physician's care, and did not believe he would be able to testify on December 11, 2007. After that conversation, he forwarded a document entitled "Discharge/Transfer Summary" indicating that he had been discharged from the facility on December 5, 2007. The staff agreed to reschedule the OTR.

Third Notice

34. On December 27, 2007, the staff, pursuant to Rule 8210, sent a notice via Federal Express to Menendez's CRD residential address and to another address that was identified in the Discharge/Transfer Summary ("Second Alternate Address") directing that he appear for an OTR on January 10, 2008 at FINRA's One Liberty Plaza office. Menendez failed to appear for his OTR on January 10, 2008.

35. On January 21, 2008, Menendez telephoned the staff and stated that he had mistaken the date for his January 10, 2008 OTR, but that he would cooperate and was attempting to retain counsel. In turn, the staff asked Menendez to provide proposed dates that he and his prospective counsel would be available to appear for an OTR.

36. On February 4 and 5, 2008, Menendez telephoned the staff and stated that he needed additional time to retain counsel before he could offer any proposed OTR dates.

Fourth Notice

37. Menendez never offered any proposed OTR date. Accordingly, on March 13, 2008, the staff, pursuant to Rule 8210, sent notices via Federal Express to his CRD Address and to his Second Alternate Address directing that he appear for an OTR on May 14, 2008 at FINRA's Long Island Office located at Two Jericho Plaza, Jericho, New York. On March 25, 2008, the staff also sent notice of this May 14, 2008 OTR to Menendez's Alternate Address.

38. Menendez did not contact the staff in response to the notice of the May 14, 2008 OTR and then failed to appear on May 14, 2008.

39. By failing to appear for testimony, Menendez violated NASD Rule 8210 and NASD Conduct Rule 2110.

RELIEF REQUESTED

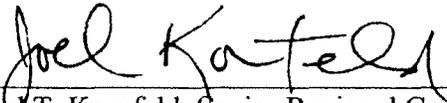
WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed including that the Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest; and

- B. order that the 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: October 7, 2009


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