

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

SANDRA FEXER
(CRD No. 1261368),

Respondent.

Disciplinary Proceeding
No. 2009017346704

Hearing Officer – CC

DEFAULT DECISION

May 14, 2014

Respondent is suspended for 18 months and fined \$20,000 for making unsuitable recommendations to three customers, in violation of NASD Rules 2310 and 2110, and submitting inaccurate information on six subscription agreements, in violation of NASD Rules 3110 and 2110. Respondent also is ordered to pay restitution, plus interest, to the affected customers.

Appearances

Marianne Paoli, Esq., for the Department of Enforcement, Complainant.

No appearance by or for Respondent Sandra Fexer.

DECISION

I. INTRODUCTION

FINRA's Department of Enforcement ("Enforcement") filed the two-cause Complaint in this disciplinary proceeding on December 23, 2013. The First Cause of Action alleges that, between July 2004 and March 2006, Sandra Fexer ("Fexer") violated NASD Rules 2310 and 2110 by recommending unsuitable securities investments to three customers.¹ The Second

¹ Effective July 9, 2012, FINRA Rule 2111 superseded NASD Rule 2310. Effective December 15, 2008, FINRA Rule 2010 superseded NASD Rule 2110. The misconduct alleged in Cause One of the Complaint occurred between July 2004 and March 2006. Thus, NASD Rules applied to the misconduct at issue. FINRA's Rules (and superseded NASD Rules) are available at www.finra.org/rules.

Cause of Action alleges that, during the same period, Fexer knowingly submitted inaccurate information on six subscription agreements to her firm, in violation of NASD Rules 3110(a) and 2110.² Specifically, Cause Two of the Complaint alleges that Fexer indicated on subscription agreements for six customer purchases that the investments were unsolicited when, in fact, Fexer solicited the trades, thereby causing her firm to maintain inaccurate books and records.

Enforcement served Fexer in accordance with FINRA's Code of Procedure, and Fexer failed to answer both the First and Second Notices of Complaint. Accordingly, on March 24, 2014, Enforcement filed a Motion for Entry of Default Decision ("Default Motion"), which is supported by the Declaration of Marianne Paoli ("Paoli Decl.") and six exhibits (hereafter referred to as "CX-1 – CX-6"). Fexer did not respond in any manner to the Default Motion.

For the reasons set forth below, the Hearing Officer finds Fexer in default, grants Enforcement's Default Motion, and deems the allegations in the attached Complaint to be admitted, pursuant to FINRA Rules 9215(f) and 9269(a).

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Fexer's Background

Fexer entered the securities industry in January 2004.³ Fexer was registered with FINRA member CM Securities, LLC ("CM Securities") as a general securities representative from January 5, 2004, to January 11, 2012, when CM Securities filed a Uniform Termination Notice for Securities Industry Registration ("Form U5"), indicating that CM Securities terminated Fexer on January 3, 2012, because the firm closed.⁴

² Effective December 5, 2011, FINRA Rule 4511 superseded NASD Rule 3110(a). Effective December 15, 2008, FINRA Rule 2010 superseded NASD Rule 2110. The misconduct alleged in Cause Two of the Complaint occurred between July 2004 and March 2006. Thus, NASD Rules applied to the misconduct at issue.

³ Paoli Decl. ¶ 5; CX-1.

⁴ Paoli Decl. ¶¶ 6, 7; CX-1; CX-2.

B. FINRA's Jurisdiction

FINRA has jurisdiction in this disciplinary proceeding pursuant to Article V, Section 4(a) of FINRA's By-Laws because (1) Enforcement filed the Complaint on December 23, 2013, which is within two years of FINRA's termination of Fexer's registration on January 11, 2012; and (2) Enforcement alleged violations based upon conduct that commenced prior to the termination of Fexer's registration and while she was associated with CM Securities.⁵

C. Origin of the Investigation

Enforcement commenced the investigation that led to the Complaint in this matter in 2010.⁶ At that time, Enforcement was investigating CM Securities' sales and marketing practices related to non-traded real estate investment trusts ("REITs"), including customer complaints regarding Fexer's sales of REITs.⁷

D. Fexer's Default

On December 23, 2013, Enforcement served Fexer with the Complaint and Notice of Complaint by certified mail, return receipt requested.⁸ Enforcement served Fexer at the residential address ("CRD Address") recorded in the Central Registration Depository ("CRD") and at a work address that Fexer provided to Enforcement after her termination by CM Securities ("Alternate Address").⁹ Enforcement also sent copies to both addresses by first-class mail.¹⁰

⁵ See Article V, Section 4(a), FINRA's By-Laws, available at www.finra.org/Rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: By-Laws").

⁶ Paoli Decl. ¶ 9.

⁷ *Id.*

⁸ Paoli Decl. ¶ 10.

⁹ Paoli Decl. ¶ 10; CX-3.

¹⁰ *Id.*

The United States Postal Service (“USPS”) returned the first-class and certified mailings that Enforcement sent to Fexer’s CRD Address, marked “Returned to Sender” and “Attempted Not Known.”¹¹ As of the date of the Default Motion, the USPS had not returned the first-class mailing that Enforcement sent to Fexer’s Alternate Address.¹² The USPS provided Enforcement with a certified mail delivery receipt indicating delivery of the certified mailing that Enforcement sent to Fexer’s Alternate Address on December 26, 2013.¹³ The certified mail delivery receipt contained an illegible signature.¹⁴ Fexer’s answer was due by January 20, 2014.¹⁵ Fexer did not file an answer or otherwise respond to the Complaint.¹⁶

On January 27, 2014, Enforcement served a Second Notice of Complaint and the Complaint on Fexer at her CRD Address and her Alternate Address via certified mail, return receipt requested.¹⁷ Enforcement sent copies to both addresses by first-class mail.¹⁸ The USPS returned the first-class and certified mailings that Enforcement sent to Fexer’s CRD Address, marked “Returned to Sender” and “Attempted Not Known.”¹⁹ As of the date of the Default Motion, the USPS had not returned the first-class mailing that Enforcement sent to Fexer’s Alternate Address.²⁰ The USPS provided Enforcement with a certified mail delivery receipt

¹¹ Paoli Decl. ¶ 11.

¹² Paoli Decl. ¶ 12.

¹³ Paoli Decl. ¶ 12; CX-4.

¹⁴ *Id.*

¹⁵ CX-3.

¹⁶ Paoli Decl. ¶ 14.

¹⁷ Paoli Decl. ¶ 15; CX-5.

¹⁸ *Id.*

¹⁹ Paoli Decl. ¶ 16.

²⁰ Paoli Decl. ¶ 17.

indicating delivery of the certified mailing that Enforcement sent to Fexer's Alternate Address on January 31, 2014.²¹ The certified mail delivery receipt contains a signature that reads "Melissa Harris."²² Fexer's answer to the Second Notice of Complaint was due by February 13, 2014.²³ Fexer did not file an answer or otherwise respond to the Complaint.²⁴

FINRA Rule 9134(b) provides for service on a natural person at the person's residential address as indicated in CRD. The Hearing Officer finds that Fexer received constructive notice of this proceeding.²⁵ Accordingly, the Hearing Officer finds that Fexer defaulted by failing to answer or otherwise respond to the Complaint.

E. Cause One – Unsuitable Recommendations

Between July 2004 and March 2006, Fexer recommended purchases of Desert Capital REIT ("DCR") to three CM Securities customers.²⁶ Todd Parriott ("Parriott") formed DCR and was the primary shareholder and Chief Executive Officer of CM Securities, which he established to act as dealer-manager for DCR.²⁷ At the time, DCR's prospectus described DCR as a speculative investment with a high degree of risk and indicated that DCR shares should be purchased only by investors who could afford a complete loss.²⁸ The DCR prospectus also stated

²¹ Paoli Decl. ¶ 17; CX-6.

²² *Id.*

²³ Paoli Decl. ¶ 18.

²⁴ *Id.*

²⁵ See *Dep't of Enforcement v. Moore*, Complaint No. 2008015105601, 2012 FINRA Discip. LEXIS 45, at *21 (FINRA NAC July 26, 2012) (finding constructive notice of a complaint served on respondent at his last known residential address, as indicated in CRD, by first-class and certified mail).

²⁶ Complaint ("Compl.") ¶ 1.

²⁷ Compl. ¶ 4.

²⁸ Paoli Decl. ¶ 20; Compl. ¶ 7.

that DCR common stock was not publicly traded and that there was no assurance that a market for the stock would develop.²⁹ It further stated that the issuer had limitations as to which investors qualified to purchase DCR.³⁰ Specifically, DCR established minimum financial suitability requirements for each investor of either \$45,000 in annual income and \$45,000 total net worth or \$150,000 total net worth.³¹

DCR held a portfolio of trust deeds.³² Unlike REITs that own real property, DCR invested in loans to developers and owners of real estate.³³ DCR's strategy was to acquire or fund mostly short-term loans to builders and developers to buy, develop, and build on commercial or residential land secured by liens on real estate.³⁴ All of the trust deeds in DCR's portfolio were originated and serviced through a DCR affiliated entity ("DCR Affiliate"), with which Fexer also was employed.³⁵

On February 22, 2008, DCR suspended sales of new DCR shares and, on March 8, 2008, reduced the dividend for existing shareholders.³⁶ In October 2008, DCR suspended all shareholder dividends.³⁷ In April 2011, DCR became the subject of an involuntary Chapter 11 petition for bankruptcy.³⁸ DCR's shares have no current value.³⁹

²⁹ Paoli Decl. ¶ 20.

³⁰ *Id.*

³¹ Compl. ¶ 8.

³² Compl. ¶ 5.

³³ *Id.*

³⁴ *Id.*

³⁵ Compl. ¶¶ 6, 13.

³⁶ Compl. ¶ 9.

³⁷ *Id.*

³⁸ *Id.*

1. Customer DP

In December 2004, when DP opened an account with Fexer at CM Securities, DP was 64 years old and retired.⁴⁰ DP received an annual income of \$25,000 from a pension and Social Security.⁴¹ DP's wife also received an annual income of \$25,000 from a pension and Social Security, but she died in 2005.⁴² DP earned additional income from his investments in trust deeds through the DCR Affiliate.⁴³ When DP opened his account at CM Securities in December 2004, he and his wife had investable assets of approximately \$1,156,000, of which \$1,000,000 already was invested in trust deeds held through the DCR Affiliate.⁴⁴ The subscription agreement for DP's DCR purchases and DP's new account forms at CM Securities listed DP's income as \$129,000, his net worth as greater than \$150,000, and his risk tolerance as moderate.⁴⁵

Fexer was dually employed by CM Securities and the DCR Affiliate, and she knew that DP held a significant portion of his investable assets in trust deeds.⁴⁶ As each of DP's trust deeds matured, Fexer recommended that he reinvest the money in DCR.⁴⁷ In 2005, Fexer

³⁹ *Id.*

⁴⁰ Compl. ¶ 15.

⁴¹ Paoli Decl. ¶ 21; Compl. ¶ 16.

⁴² Compl. ¶ 16.

⁴³ Paoli Decl. ¶ 21; Compl. ¶ 17.

⁴⁴ Compl. ¶ 17.

⁴⁵ Paoli Decl. ¶ 21; Compl. ¶ 19.

⁴⁶ Compl. ¶ 18.

⁴⁷ Compl. ¶ 20.

recommended and effected four purchases of DCR totaling \$492,400 in DP's accounts at CM Securities.⁴⁸

Fexer's recommendations of DCR continued through 2006 even though, at the start of 2006, more than 40% of DP's investable assets were concentrated in DCR.⁴⁹ Fexer recommended to DP the following four purchases of DCR without reasonable grounds to believe that the recommendations were suitable on the basis of DP's risk tolerance, financial situation, and needs: on January 9, 2006, a \$260,000 purchase; on January 11, 2006, a \$108,900 purchase; on February 1, 2006, a \$20,000 purchase; and on February 2, 2006, a \$100,000 purchase.⁵⁰ As of February 2006, based on Fexer's recommended transactions, DP held 84% of his investable assets in DCR.⁵¹ Furthermore, DP held the remainder of his investable assets in similar products. DP lost his entire investment in DCR due, in part, to DCR's involuntarily petition in bankruptcy.⁵²

2. Customer CRM

In September 2004, when CRM opened an account at CM Securities with Fexer, CRM was 49 years old, retired, and disabled.⁵³ CRM's only source of income was \$12,000 per year that he received from Social Security.⁵⁴ CRM's new account forms for CM Securities listed

⁴⁸ *Id.*

⁴⁹ Compl. ¶ 21.

⁵⁰ Compl. ¶ 22.

⁵¹ Paoli Decl. ¶ 21; Compl. ¶ 23.

⁵² Compl. ¶ 26.

⁵³ Paoli Decl. ¶ 21; Compl. ¶ 27.

⁵⁴ Paoli Decl. ¶ 21; Compl. ¶ 28.

CRM's annual income as \$12,000, his total net worth as \$200,000, his risk tolerance as moderate, and his investment objective as income.⁵⁵

On September 2, 2004, Fexer recommended and effected a \$200,000 purchase of DCR in CRM's account at CM Securities without having reasonable grounds to believe that the recommendation was suitable on the basis of CRM's risk tolerance, lack of investable assets, financial situation, and needs.⁵⁶ CRM's investment in DCR was all of CRM's investable assets at the time, with the exception of \$10,000 that he had invested at another broker-dealer.⁵⁷ Thus, 95% of CRM's investable assets were held in DCR.⁵⁸

CRM lost his entire investment in DCR due, in part, to DCR's involuntary bankruptcy petition.⁵⁹

3. Customer HSH

In January 2005, when HSH opened an individual retirement account with Fexer at CM Securities, HSH was 54 years old, semi-retired, and employed part-time.⁶⁰ HSH earned approximately \$24,000 per year as a hair dresser.⁶¹ HSH's new account forms listed HSH's total net worth as \$150,000 (including HSH's primary residence), her risk tolerance as moderate, and her investment objectives as growth and income.⁶²

⁵⁵ Compl. ¶ 29.

⁵⁶ Paoli Decl. ¶ 21; Compl. ¶ 30

⁵⁷ Compl. ¶ 30.

⁵⁸ Compl. ¶ 31.

⁵⁹ Compl. ¶ 33.

⁶⁰ Paoli Decl. ¶ 21; Compl. ¶¶ 34, 35.

⁶¹ Paoli Decl. ¶ 21; Compl. ¶ 35.

⁶² Compl. ¶¶ 37, 38.

HSH had investable assets of approximately \$80,000, which consisted mainly of trust deeds that HSH held through the DCR Affiliate and from which she earned some income.⁶³ As a dual employee of CM Securities and the DCR Affiliate, Fexer knew about HSH's trust deed holdings.⁶⁴ In January 2005, as HSH's trust deeds matured, Fexer recommended that HSH reinvest the proceeds in DCR.⁶⁵ On January 19, 2005, Fexer recommended and effected in HSH's account three purchases of DCR totaling \$62,950 without having reasonable grounds to believe that the recommendation was suitable on the basis of HSH's risk tolerance, lack of investable assets, financial situation, and needs.⁶⁶ As a result of Fexer's recommended investments, HSH held 79% of her investable assets in DCR.⁶⁷

HSH lost her entire investment in DCR due, in part, to DCR's involuntary bankruptcy petition.⁶⁸

4. Legal Analysis

NASD Rule 2310 required that, in recommending the purchase, sale or exchange of any security to a customer, registered persons must have reasonable grounds for believing that the recommendation is suitable based on the customer's disclosures as to his other security holdings and as to his financial situation and needs. DP, CRM, and HSH each had moderate risk tolerances.⁶⁹ Fexer nonetheless recommended investments to DP, CRM, and HSH that resulted

⁶³ Compl. ¶ 36.

⁶⁴ Compl. ¶ 39.

⁶⁵ Compl. ¶ 40.

⁶⁶ Compl. ¶¶ 41, 42. HSH's DCR purchases on January 19, 2005, were for \$53,520, \$5,030, and \$3,400. *Id.*

⁶⁷ Paoli Decl. ¶ 21; Compl. ¶ 43.

⁶⁸ Compl. ¶ 45.

⁶⁹ Paoli Decl. ¶ 21.

in the customers holding undue concentrations in DCR, a single, speculative security that carried a high degree of risk. As a result of Fexer's recommendations, DP held 84% of his investable assets, CRM held 95% of his investable assets, and HSH held 79% of her investable assets in DCR.⁷⁰ These concentrated positions in DCR exposed customers DP, CRM, and HSH to a risk of loss that was not consistent with their risk tolerance levels, lack of additional investable assets, and financial situation and needs. Such undue concentrations in a risky and speculative security were unsuitable for these customers.⁷¹ Accordingly, the Hearing Officer concludes that Fexer violated NASD Rules 2310 and 2110, as alleged in Cause One of the Complaint.⁷²

F. Cause Two – Causing Firm to Create False Books and Records

NASD Rule 3110(a) required member firms to make and preserve accurate books and records. NASD Rule 0115 applied Rule 3110, and all NASD Rules, equally to member firms and associated persons, such as Fexer.

Fexer submitted subscription agreements for six of customer DP's DCR purchases indicating they were unsolicited trades when in fact Fexer had solicited the trades.⁷³ By submitting inaccurate subscription agreements to CM Securities, Fexer caused incorrect information to be included in CM Securities' books and records.⁷⁴ Accordingly, the Hearing

⁷⁰ *Id.*

⁷¹ See *James B. Chase*, 56 S.E.C. 149, 157 (2003) (finding high concentration in speculative investments unsuitable); *Jack H. Stein*, 56 S.E.C. 108, 113 (2003) (finding unsuitable recommendation to place a significant portion of customer's portfolio in speculative securities); *Dep't of Enforcement v. Dunbar*, Complaint No. C07050050, 2008 FINRA Discip. LEXIS 18, at *26-27 (FINRA NAC May 20, 2008) (finding that undue concentration in one or a few stocks was not suitable for customers who sought to take moderate risk).

⁷² See *F.J. Kaufman & Co.*, 50 S.E.C. 164, 168-69 (1989) (finding that a violation of NASD Rule 2310 also constitutes a violation of NASD Rule 2110); *Dep't of Enforcement v. Evans*, Complaint No. 2006005977901, 2011 FINRA Discip. LEXIS 36, at *22 (FINRA NAC Oct. 3, 2011) (same).

⁷³ Paoli Decl. ¶ 29; Compl. ¶ 51.

⁷⁴ Cf. *James F. Novak*, 47 S.E.C. 892, 896 (1983) (finding that, by falsely stating on order tickets that solicited orders were unsolicited, Novak aided and abetted the firm's recordkeeping violations).

Officer concludes that Fexer violated NASD Rules 3110 and 2110, as alleged in the Second Cause of the Complaint.⁷⁵

III. SANCTIONS

The FINRA Sanction Guidelines (“Guidelines”) for suitability violations provide for fines ranging from \$2,500 to \$75,000, a suspension of ten business days to one year, and, in an egregious case, a longer suspension, or a bar.⁷⁶ For recordkeeping violations, the Guidelines recommend a fine of \$1,000 to \$10,000 and a suspension of up to 30 business days.⁷⁷ The Guidelines do not include specific principal considerations for suitability violations and, for recordkeeping violations, recommend that the adjudicator consider the nature and materiality of the inaccurate or missing information.⁷⁸ The Guidelines also direct the adjudicator’s attention to the general Principal Considerations for Determining Sanctions.⁷⁹

Here, many of the Principal Considerations are aggravating. The inaccurate information that Fexer included in CM Securities’ records misrepresented to the firm that she had not solicited DP to invest in DCR. By failing to provide accurate information regarding solicitation, Fexer deprived CM Securities of material information related to the firm’s suitability review and oversight of Fexer. Additionally, by misrepresenting that Fexer’s sales of DCR to DP were

⁷⁵ See *Dep’t of Enforcement v. Cohen*, Complaint No. EAF0400630001, 2010 FINRA Discip. LEXIS 12, at *36 (FINRA NAC Aug. 18, 2010) (“Entering inaccurate information into a member firm’s books or records violates both NASD Rule 2110’s requirement to comply with high standards of commercial honor and just and equitable principles of trade and NASD Rule 3110’s requirement to keep accurate books and records.”)

⁷⁶ FINRA Sanction Guidelines (“Guidelines”) at 94 (2013), available at <http://www.finra.org/web/groups/industry/@ip/@enf/@sg/documents/industry/p011038.pdf>.

⁷⁷ Guidelines at 29.

⁷⁸ *Id.*

⁷⁹ Guidelines at 29, 94.

unsolicited, Fexer concealed her suitability violations from CM Securities.⁸⁰ Fexer's unsuitable trading involved three customers and eight transactions and resulted in customer losses of approximately \$539,748.⁸¹ Additionally, Fexer's misconduct was intentional or, at the least, reckless and occurred over the course of nearly two years.⁸² All of these factors aggravate Fexer's misconduct under both Causes of Action.

As discussed above, there are numerous aggravating factors present and no mitigating factors. Accordingly, for recommending unsuitable securities transactions as alleged in Cause One, Fexer is suspended from associating with any FINRA member in any capacity for 18 months and fined \$10,000. In addition, Fexer is ordered to pay restitution to: (1) CRM in the amount of \$115,697; (2) HSH in the amount of \$59,437; and (3) DP in the amount of \$364,614.⁸³ All restitution payments shall be paid to the individuals with interest from the date of their investments, until paid in full. For causing CM Securities to maintain inaccurate books and records as alleged in Cause Two, Fexer is suspended for one month, to run concurrently with the 18-month suspension, and fined an additional \$10,000.

IV. ORDER

For recommending unsuitable investments to three customers, as alleged in Cause One, Respondent Sandra Fexer is suspended from associating with any FINRA member firm in any

⁸⁰ Guidelines at 6-7 (Principal Consideration No. 10), 29 (Violation-Specific Consideration No. 1).

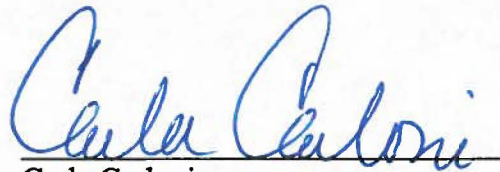
⁸¹ Guidelines at 6-7 (Principal Consideration Nos. 8, 11).

⁸² Guidelines at 6-7 (Principal Consideration Nos. 9, 13).

⁸³ To calculate the restitution awards, the Hearing Officer considered payments that the customers received from other sources. CRM invested \$200,000 in DCR based on Fexer's unsuitable recommendation and received \$81,785 in distributions from his investment and \$2,516 as a partial restitution payment from Parriott, leaving his loss at \$115,697. Paoli Decl. ¶ 23. HSH invested \$62,950 in DCR based on Fexer's unsuitable recommendation and received \$1,658 in distributions from her investment and \$1,854 as a partial restitution payment from Parriott, leaving her loss at \$59,437. Paoli Decl. ¶ 24. DP invested \$488,900 in DCR based on Fexer's unsuitable recommendation and received \$104,285 in distributions from his investment, a one-time redemption of \$6,000, and \$14,000 as a partial restitution payment from Parriott, leaving his loss at \$364,614. Paoli Decl. ¶ 25.

capacity for 18 months and fined \$10,000. In addition, Fexer is ordered to pay restitution to: (1) CRM in the amount of \$115,697, plus interest thereon at the rate established under Section 6621(a)(2) of the Internal Revenue Code from September 2, 2004, until paid; (2) HSH in the amount of \$59,437, plus interest thereon at the rate established under Section 6621(a)(2) of the Internal Revenue Code from January 19, 2005, until paid; and (3) DP in the amount of \$364,614, plus interest thereon at the rate established under Section 6621(a)(2) of the Internal Revenue Code from February 2, 2006, until paid.⁸⁴ For causing CM Securities to maintain inaccurate books and records as alleged in Cause Two, Fexer is suspended for one month, to run concurrently with the 18-month suspension, and fined \$10,000. Thus, in total, Fexer is suspended in all capacities for 18 months and fined \$20,000.

If this Default Decision becomes the final disciplinary action of FINRA, Fexer's suspension shall begin at the opening of business on Monday, June 16, 2014, and end at the close of business on Tuesday, December 15, 2015, and the fine shall be due and payable if and when she re-enters the securities industry.


Carla Carloni
Hearing Officer

Copies to: Sandra Fexer (*via overnight courier and first-class mail*)
Marianne Paoli, Esq. (*via electronic and first-class mail*)
Richard R. Best, Esq. (*via electronic mail*)
Jeffrey D. Pariser, Esq. (*via electronic mail*)

⁸⁴ 26 U.S.C. § 6621(a)(2). 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. CRM, HSH, and DP are identified in the addendum to this decision, which is served only on the parties. In the event that CRM, HSH, and DP cannot be located, unpaid restitution plus accrued interest should be paid to the appropriate escheat, unclaimed-property, or abandoned-property fund for the states in which CRM, HSH, and DP were last known to reside. Satisfactory proof of payment of the restitution, or of reasonable and documented efforts undertaken to effect restitution, shall be provided to staff of FINRA's Department of Enforcement no later than 90 days after the date when this decision becomes final.

EXHIBIT A

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

Department of Enforcement,

Complainant,

v.

Sandra Fexer (CRD No. 1261368),

Respondent.

**DISCIPLINARY PROCEEDING
No. 2009017346704**

COMPLAINT

The Department of Enforcement alleges:

I. SUMMARY

- 1. Between July 2004 through March 2006 ("relevant period") former CM Securities, LLC (the "Firm") registered representative Sandra Fexer made multiple unsuitable recommendations to three customers (the "Customers") for the purchase of a non-traded real estate investment trust ("REIT") - Desert Capital REIT ("DCR"), an illiquid and speculative security. The DCR prospectuses described DCR as a speculative investment with a high degree of risk and indicated that DCR shares should only be purchased if the investor could afford a complete loss. Some of the Customers were elderly and retired, some had limited incomes, and each had a risk tolerance of moderate. Nevertheless, without reasonable grounds, Fexer recommended and concentrated their portfolios in DCR. By virtue of this conduct**

Fexer violated, violated NASD Conduct Rule 2310 and 2110.

2. Additionally, Fexer knowingly submitted subscription agreements that inaccurately described purchases as unsolicited when they were, in fact, solicited. By virtue of this conduct Fexer violated NASD Rules 3110 and 2110.

II. RESPONDENT AND JURISDICTION

3. Sandra Fexer entered the securities industry when she became employed with the Firm in August 2003. She became registered as a General Securities Representative on January 5, 2004 while associated with CM and remained employed in that capacity at CM until she was terminated on January 3, 2012. Fexer has not been associated with a FINRA-regulated firm since her termination from CM. Although Fexer is no longer registered or associated with a FINRA member, she 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 Respondent's registration with CM, namely, January 3, 2012 and (2) the Complaint charges her with misconduct committed while she was registered or associated with a FINRA member.

III. FACTUAL BACKGROUND

DCR and the Firm

4. The Firm was established to be the dealer-manager for DCR. Todd Parriott ("Parriott") formed DCR and was the primary shareholder and Chief Executive Officer of the Firm.

5. DCR was a publically registered, non-traded REIT with a portfolio of trusts deeds. Unlike typical REITs that own properties such as own apartments, retail centers or other commercial properties, DCR invested in loans to owners and developers of real estate properties. DCR's strategy was to fund or acquire mostly short-term loans to builders and developers to buy, develop and build on commercial or residential land secured by liens on real estate.
6. All of the trust deeds in DCR's portfolio were originated and serviced through a DCR affiliated entity (the "Affiliate").
7. The DCR Prospectus indicated DCR was a speculative investment involving a high degree of risk and DCR shares should only be purchased if the investor could afford a complete loss.
8. DCR's minimum financial suitability requirements for each customer, as disclosed in the prospectus for each offering was either \$45,000 in income and \$45,000 total net worth or \$150,000 total net worth.
9. On February 22, 2008, DCR suspended sales of new DCR shares and on March 8, 2008 DCR reduced the dividend for existing shareholders. In or about October, 2008, DCR suspended all shareholder dividends. A Chapter 11 involuntary petition for bankruptcy was filed against DCR on or about April 29, 2011 and its shares have no current value.
10. On January 11, 2012, CM filed a Form BDW with FINRA to withdraw its registration from the Securities and Exchange Commission ("SEC"). The SEC terminated CM's registration on March 20, 2012.

FIRST CAUSE OF ACTION
Unsuitable Recommendations (NASD Rules 2310 and 2110)

11. The Department realleges and incorporates by reference paragraphs 1-10 above.
12. During the relevant period, the Customers maintained accounts at the Firm and Fexer was the registered representative for their accounts.
13. Fexer was dually employed as a salesperson at the Affiliate during the relevant period and sold both trust deeds and DCR.
14. Based on Fexer's unsuitable recommendations, the Customers purchased \$751,850 of DCR during the relevant period. However, since a Chapter 11 involuntary petition for bankruptcy was filed against DCR on or about April 29, 2011 and its shares have no current value, the Customers' lost their entire principal investment in DCR.

The Customers

Customer DP

15. DP was 64 years old and retired in December 2004 when he opened an account through Fexer at CM. Later, in August 2005, DP opened a joint account with his wife at CM.
16. During the relevant period, DP received an annual income of approximately \$25,000 from his pension and Social Security. In 2005, DP's wife also received an annual income of approximately \$25,000 from her pension and Social Security. DP's wife passed away in 2005.

17. When DP opened his accounts at CM, DP and his wife had investable assets of approximately \$1,156,000, which included his approximately \$1,000,000 investment in trust deeds held through the Affiliate from which he also received income.
18. As a dual employee of CM and the Affiliate, Fexer knew that DP and his wife had most of their investable assets, approximately \$1,000,000, held in the Affiliate's trust deeds.
19. The subscription agreements for DP's DCR purchases and the new account documents for DP's accounts listed his income as \$129,000 and his total net worth as \$150,000+.
20. During the relevant period as each of DP's trust deeds matured, Fexer, a dual employee of the Firm and the Affiliate, recommended that DP re-invest the money in DCR. In 2005, Fexer recommended and effected four purchases of DCR totaling \$492,400 in DP's accounts at the Firm.
21. In 2006, Fexer continued to recommend that DP re-invest the money from his trust deeds that had matured in DCR even though more than 40% of his investable assets were concentrated in DCR at the beginning of 2006.
22. Fexer recommended that DP make the following four DCR purchases without reasonable grounds to believe that the recommendations were suitable on the basis of DP's risk tolerance and financial situation and needs.
- January 9, 2006 for \$260,000;
 - January 11, 2006 for \$108,900;
 - February 1, 2006 for \$20,000;

- February 2, 2006 for \$100,000.

23. Based on Fexer's recommendations and sales of DCR to DP, 84% of DP's investable assets were invested in DCR as of February 2006.

24. At the time of his last DCR purchase, DP's only source of income was the \$25,000 he received from his pension and Social Security, and the distributions he received from his DCR and remaining trust deed investments.

25. DP's concentrated position in DCR exposed him to a risk of loss that was inconsistent with his risk tolerance, lack of investable assets and financial situation and needs.

26. DP lost his entire principal investment in DCR.

Customer CRM

27. Customer CRM was 49 years old, retired, and disabled in September 2004 when he opened an account through Fexer at the Firm.

28. During the relevant period, Fexer knew that CRM's only source of income was the approximately \$12,000 a year he receives from Social Security.

29. The new account documents for CRM listed his income as \$12,000, his total net worth as \$200,000, his risk tolerance as moderate, and his investment objective as Income (Return Emphasis).

30. On or about September 2, 2004, Fexer recommended and effected a \$200,000 purchase of DCR in CRM's account without reasonable grounds to believe that the recommendation was suitable on the basis of CRM's risk tolerance, lack of investable assets and financial situation and needs. This was all of CRM's investable assets at the time, with the exception of a \$10,000 investment at another broker dealer.

31. Based on Fexer's recommendation, CRM invested approximately 95% of his investable assets in DCR.
32. CRM's concentrated position in DCR exposed him to a risk of loss that was inconsistent with his risk tolerance, lack of additional investible assets, and his financial situation and needs.
33. CRM lost his entire principal investment in DCR.

Customer HSH

34. HSH was 54 years old and semi-retired in January 2005 when she opened three individual retirement accounts at the Firm.
35. At the time, HSH was employed part-time as a hairdresser earning approximately \$24,000 a year.
36. When HSH opened her accounts at CM, she had investable assets of approximately \$80,000 which consisted of her investment in trust deeds held through the Affiliate from which she also received income.
37. The new account documents for HSH listed her risk tolerance as moderate and her investment objective as Growth and Income (Return Emphasis).
38. The new account documents for HSH listed her total net worth as \$150,000. This amount included the value of HSH's primary residence.
39. As a dual employee of CM and the Affiliate, Fexer knew that HSH had investable assets of approximately \$80,000 which were held in the Affiliate's trust deeds.
40. When HSH's trust deeds matured, Fexer recommended that HSH re-invest the money in DCR.

41. On or about January 19, 2005, Fexer recommended and effected three purchases of DCR totaling \$62,950 in HSH's accounts without reasonable grounds to believe that the recommendations were suitable on the basis of HSH's risk tolerance, lack of investable assets and financial situation and needs.
42. HSH's DCR purchases on January 19, 2005 were for the following amounts:
- \$53,520, \$5,030 and \$3,400 for a total of approximately \$62,950.
43. Based on Fexer's recommendations, HSH invested approximately 79% of her investable assets in DCR.
44. HSH's concentrated position in DCR exposed her to a risk of loss that was inconsistent with her risk tolerance, lack of additional investible assets and her financial situation and needs.
45. HSH lost her entire principal investment in DCR.
46. NASD Rule 2310 requires that registered representatives only recommend sales and purchases of securities that they have reasonable grounds to believe are suitable for the customer, based upon the customer's disclosed financial situation and needs. Rule 2310 requires registered representatives to make a customer-specific determination of suitability and to tailor their recommendations to the customer's financial profile and investment objectives.
47. Fexer's recommendations to DP, CRM, and HSH to purchase DCR caused DP, CRM and HSH to have heavily concentrated positions in DCR, a speculative investment, which exposed them to a risk of loss that was inconsistent with their risk tolerance, lack of additional investible assets, financial situation and needs.

48. By virtue of this conduct, Fexer violated NASD Rules 2310 and 2110.

SECOND CAUSE OF ACTION

False Books and Records (NASD Rules 3110 and 2110)

49. The Department realleges and incorporates by reference paragraphs 1-48 above.

50. Fexer knowingly submitted inaccurate information on six subscription agreements for DCR purchases.

51. Specifically, Fexer submitted the subscription agreements for six of DP's DCR purchases as unsolicited when, in fact, Fexer solicited each of DP's purchases of DCR.

52. NASD Rule 3110 requires that each member make and preserve accurate books and records.

53. By submitting six DCR subscription agreements marked as solicited when, in fact, Fexer recommended each of the DCR purchases to DP, Fexer caused the Firm to maintain inaccurate books and records. By virtue of this conduct, Fexer violated NASD Rules 3110 and 2110.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

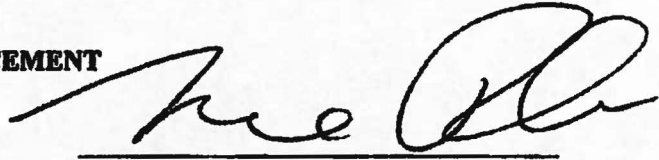
- A. make findings of fact and conclusions of law that Respondent(s) committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed, including that Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest,

- C. order that Respondent(s) 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:

12/23/13



Marianne Paoli, Director
Richard R. Best, Chief Counsel
FINRA Department of Enforcement
One World Financial Center
200 Liberty Street
Phone 646-315-7308; Fax: 202-689-3424
Richard.best@finra.org