

**NASD OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT

Complainant,

v.

DAVID ALLEN REGIS  
(CRD No. 868184),  
2206 Adams Court  
Arlington, Texas 76011

Respondent.

Disciplinary Proceeding  
No. C06040017

Hearing Officer – AWH

**Hearing Panel Decision**

October 8, 2004

**Formerly registered representative found liable for (1) effecting private securities transaction without giving prior written notice to his member firm, and without being appropriately registered to effect those securities transactions; and (2) failing to appear for on-the-record testimony requested pursuant to NASD Rule 8210. Respondent barred for failing to appear for on-the-record testimony. In light of the bar, no further sanctions imposed.**

Appearances:

George C. McGuigan, Jr., Esq., for the Department of Enforcement

No appearance for David Allen Regis

**DECISION**

**Introduction**

On May 28, 2004, the Department of Enforcement issued the Complaint in this proceeding, alleging that David Allen Regis (“Respondent” or “Regis”) (1) effected private securities transactions without giving prior written notice to his member firm; (2) was not registered appropriately to effect those securities transactions; and (3) failed to appear for on-the-record testimony requested pursuant to Procedural Rule 8210. On

June 16, 2004, Respondent filed a response to the Complaint, answering the allegations, but stating that he does not desire any further involvement in the securities industry and does not request a hearing in this matter. Because Respondent did not request a hearing, the Hearing Officer ordered the proceeding to be decided on the written record, as defined in Rule 9267, unless the Hearing Officer or the Hearing Panel ordered a hearing.

To further develop the record, Enforcement was required to file and serve a written submission in support of the Complaint, including such evidence as it wishes the Hearing Panel to consider, and an argument addressing both liability and sanctions. Respondent was given until August 10, 2004, to file and serve any opposition or other response to Enforcement's submission. Respondent failed to file any response to Enforcement's submission. Accordingly, this matter has been considered on the written record by a Hearing Panel composed of the Hearing Officer and two current members of the District 6 Committee.

### **Findings of Fact<sup>1</sup>**

David Allen Regis first entered the securities industry in 1979. He was last registered with First Western Securities, Inc., until that firm terminated his registration on April 14, 2004. He is not currently registered with any NASD member firm.

On December 13, 1999, and July 11, 2000, while registered with First Western Securities, Inc., as a Limited Representative – Investment Company Variable Contracts Products, Regis sold payphones to two customers under a sale-and-leaseback agreement with a fixed return. Regis received commissions of \$8,450 on the investment of \$60,000 by the two customers. Although the customers purchased payphones from different

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<sup>1</sup> All findings of fact are based on the Written Submission in Support of Department of Enforcement's Complaint, including the seven exhibits attached thereto.

suppliers, they all were eventually leased by ETS Payphones, Inc. (“ETS”) under a scheme that was very similar to the one in which the Supreme Court found ETS to have been a party to investment contracts that were “securities” subject to the federal securities laws.<sup>2</sup> In each case, the customers who purchased and leased-back the payphones expected fixed monthly returns on their investments, rather than profits generated by the payphones themselves.. The customers never possessed, operated, managed, or maintained any of the payphones they purchased.

Regis gave some information about the payphone purchases and leases to the president of his member firm. However, the president told Regis that he could not approve his participation in the transactions in the absence of a written request and further review of the proposal. Regis never submitted a written request for approval, nor was his participation in the transactions approved by the member firm.

By letter dated March 11, 2004, NASD Regional Counsel requested, pursuant to NASD Procedural Rule 8210, that Regis appear at the District Office on March 26, 2004, and provide testimony regarding his participation in the payphone transactions. Regis telephoned Regional Counsel to request a postponement of the on-the-record interview to April 9, 2004. Accordingly, Regional Counsel sent Regis a letter dated March 22, 2004, requesting Regis to appear for testimony on April 9, 2004. On March 31, 2004, Regis acknowledged receipt of that letter. However, on April 7, 2004, Regis wrote that he would not appear for testimony on April 9. Regis did not appear for testimony on April 9, 2004, or at any time thereafter.

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<sup>2</sup> *SEC v. Edwards*, 2004 U.S. LEXIS 659 (Jan. 13, 2004).

## Discussion and Conclusions

### Jurisdiction

Enforcement filed the Complaint within two years of the termination of Regis's registration. The Complaint alleges misconduct that occurred while he was registered with an NASD member firm. Therefore, NASD has jurisdiction over this proceeding. Article V, Section 4, NASD By-Laws.

### Private Securities Transactions and Lack of Registration

Under Conduct Rule 3040, an associated person who participates in a private securities transaction must provide prior written notice to the member firm with which he is associated, describing the proposed transaction and the person's proposed role in it, and stating whether the person has received, or may receive, compensation for it. The purpose of Conduct Rule 3040 is to ensure that member firms adequately supervise the suitability and due diligence responsibilities of their associated persons. *See Dep't of Enforcement v. Carcaterra*, No. C10000165, 2001 NASD Discip. LEXIS 39, at \*8 (NAC Dec. 13, 2001). The Rule also serves to "protect employers against investor claims arising from an associated person's private transactions and to prevent customers from being misled as to the employing firms' sponsorship of the transactions." *Id.* at \*\*8-9. A violation of Conduct Rule 3040 also constitutes a violation of Conduct Rule 2110's ethical obligation to observe "high standards of commercial honor and just and equitable principles of trade." *See Stephen J. Gluckman*, Exchange Act Release No. 41628, 1999 SEC LEXIS 1395, at \*22 (July 20, 1999).

Regis solicited two customers to invest in a security that was not approved or offered by his member firm. By failing to provide prior written notice to his firm,

describing the nature of, and his intent to engage in, those private securities transactions, Regis violated Conduct Rules 3040 and 2110. *See Gluckman*, 1999 SEC LEXIS 1395, at \*\*14-15.

Regis has never been registered as a General Securities Representative. Pursuant to NASD Membership and Registration Rule 1022(d), Regis's investment banking and securities business was limited to the solicitation, purchase, and sale of open- and/or closed-end mutual funds, variable contracts, and insurance premium funding programs. The payphone investment contracts that Regis sold to the two customers did not fall within any of the permissible categories of securities he was allowed to sell. Accordingly, his sale of those investment contracts violated NASD Registration Rules, as alleged in the Complaint.

#### Failure to Provide Information

Procedural Rule 8210 authorizes NASD to require any person subject to its jurisdiction to provide information and testimony related to any matter under investigation. The Rule serves as a key element in NASD's oversight function and allows NASD to carry out its regulatory functions without subpoena power. *See Joseph G. Chiulli*, Exchange Act Release No. 42359, 2000 SEC LEXIS 112, at \*16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for NASD effectively to conduct its investigations, and emphasizing that NASD members and associated persons must fully cooperate with requests for information); *Dep't of Enforcement v. Benz*, No. C01020014, 2003 NASD Discip. LEXIS 11, at \*18 (OHO Mar. 4, 2003) ("Because NASD has no subpoena power, timely and full compliance with information requests is essential to NASD's self-regulatory function."). When an individual fails to respond to information requests, NASD's ability to perform its regulatory responsibilities is

subverted. *Joseph P. Hannan*, Exchange Act Release No. 40438, 1998 SEC LEXIS 1955, at \*9 (Sept. 14, 1998). Further, a violation of Procedural Rule 8210 is also a violation of Conduct Rule 2110, contravening “high standards of commercial honor.” *Dep’t of Enforcement v. Baxter*, No. C07990016, 2000 NASD Discip. LEXIS 3, at \*25 (NAC, Apr. 19, 2000).

Here, Regis had actual notice of the requests for his testimony pursuant to Procedural Rule 8210(d). However, Regis failed to appear as requested, and notified Regional Counsel of his “intention to resign from the securities industry.” Letter from Regis to Office of Hearing Officers, June 16, 2004. Accordingly, Regis’s failure to appear for his requested testimony violated Procedural Rule 8210 and Conduct Rule 2110.

### **Sanctions**

When a respondent fails to respond in any manner to a request made pursuant to Procedural Rule 8210, the NASD Sanction Guidelines recommend a bar as the standard sanction. NASD SANCTION GUIDELINES, p. 37 (2004 ed.). There are no mitigating factors here that would justify a sanction less than a bar. In light of the bar, no further sanctions will be imposed for the private securities transactions or the failure to be properly registered to sell those securities.

### **Conclusion**

David Allen Regis is barred from association with any NASD member firm in any capacity for failing to respond to Staff information requests, in violation of Procedural Rule 8210 and Conduct Rule 2110. In light of the bar, no further sanctions are imposed as a result of his private securities transactions or failure to be registered to sell those

securities. The bar shall become effective immediately if this Decision becomes the final disciplinary action of NASD.

**SO ORDERED**

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Alan W. Heifetz  
Hearing Officer  
For the Hearing Panel

Copies to:

David Allen Regis (via first class mail and overnight courier)  
George C. McGuigan, Jr., Esq. (via electronic and first class mail)  
Rory C. Flynn, Esq. (via electronic and first class mail)