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

| | |
|---|---|
| DEPARTMENT OF ENFORCEMENT,<br><br>Complainant,<br><br>v.<br><br>RICHARD MICHAEL BOWERS,<br>(CRD No.1263206)<br><br>Respondent. | Disciplinary Proceeding<br>No. 2006003916901<br><br>Hearing Officer – SNB<br><br>**Hearing Panel Decision**<br><br>April 20, 2010 |

**For permitting an unregistered person to act as a principal, in violation of NASD Rules 1021 and 2110, Respondent is suspended for two months in all principal capacities, fined $5,000, and required to requalify in all principal capacities. For failing to establish, maintain, and enforce a reasonable supervisory system and written supervisory procedures, in violation of NASD Rules 3010 and 2110, this Decision shall serve as a Letter of Caution to Respondent.**

## Appearances

Paul D. Taberner, Esq., Boston, MA, and David Newman, Esq., Philadelphia, PA, for Complainant.

Neal Marshall Brown, Esq., Hingham, MA, for Respondent.

## DECISION

## I. Procedural History

On March 11, 2009, the Department of Enforcement ("Enforcement") filed a two-cause Complaint in this matter.[1] The first cause alleges that Richard Michael Bowers ("Respondent"), while serving as the Chief Compliance Officer of member firm

[1] The Complaint also named Gary Laskowski as a Respondent. However, because he failed to file an Answer to the Complaint, an Order Holding Respondent in Default was entered against him on May 6, 2009. Pursuant to Rule 9269, default matters are considered by the Hearing Officer only. Accordingly, the Hearing Officer will issue an Order following the issuance of this decision, which shall govern that Default proceeding.

First Dunbar Securities Corporation (the "Firm"), permitted Gary Laskowski ("Laskowski"), an unregistered person and agent of the Firm's owner, to act as a principal for the Firm. The second cause alleges that Respondent failed to establish, maintain, and enforce a supervisory system and written supervisory procedures ("WSPs") reasonably designed to achieve compliance with applicable rules and regulations.[2]

On April 30, 2009, Respondent filed an Answer requesting a hearing. A hearing was held in Boston, Massachusetts, on October 6 and 7, 2009, before a Hearing Panel that included a Hearing Officer, a member of the District 10 Committee, and a member of the District 8 Committee.[3]

## II. Origin of Investigation

The investigation that led to this disciplinary proceeding followed FINRA Staff's ("Staff") evaluation of whether the Firm had addressed deficiencies noted in a 2004 routine examination. Tr. 42, 219, 228.

## III. Respondent

Respondent began in the securities industry in 1984. CX-16 pp. 4-5, 9. In October 2002, Respondent registered with the Firm as an Investment Company Products and Variable Contracts Limited Representative. CX-16 p. 2; Tr. 271. From August 2003

[2] NASD consolidated with the member regulation and enforcement functions of NYSE Regulation in July 2007 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. See Regulatory Notice 08-57 (Oct. 2008). In that process, FINRA renumbered NASD Rule 2110 as FINRA Rule 2010. This decision refers to and relies on the Rules that were in effect at the time of Respondent's alleged misconduct. In addition, because Enforcement filed the Complaint after December 15, 2008, FINRA's procedural rules govern this proceeding. The applicable rules are available at www.finra.org/rules.

[3] Enforcement offered Complainant's Exhibits ("CX") 1-3, CX-4 pp. 2-29, CX-5-6, CX-7 pp. 1-7, 9-39, CX-8, CX-8A, CX-9-17, CX-19-21, and CX-23, which were admitted without objection. Respondents offered Respondent's Exhibits ("RX") 9-24, and RX-26 - 29, which were also admitted into the record. RX-14-17 were admitted over Enforcement's objection. The Panel admitted one Panel Exhibit into the record, "PX-1."

through January 2005, Respondent also was registered as a Private Securities Offerings Limited Representative, a General Securities Principal, and a General Securities Representative.[4] CX-16 p. 2.

Respondent became the Firm's Chief Compliance Officer in September 2005 and the Firm's President in February 2006. CX-17 p. 3; Tr. 274, 331, 430. Respondent continued in both capacities until the Firm withdrew its broker-dealer registration on October 1, 2008, except for four months in 2007, when he hired another person to fill the position of Chief Compliance Officer. CX-9 pp. 13-15, CX-11, CX-16 p. 2, CX-17 pp. 1-3; Tr. 72, 282-83, 430-31. Respondent is currently registered with another member firm. CX-16 pp. 1-2; Tr. 370.

## IV. Discussion

The focus of this case is whether Respondent, while he was the Firm's Compliance Officer, permitted Laskowski, the agent of the Firm's owner, to act as a principal of the Firm without being registered to do so. The case also raises the issue of whether Respondent failed to ensure the sufficiency of miscellaneous WSPs, and failed to enforce the Firm's requirement to document permission for outside business activities. After careful consideration of the evidence, the Panel makes the following findings of fact and conclusions of law.

### A. Respondent Permitted Laskowski to Act as an Unregistered Principal

The Complaint alleges that Respondent permitted Laskowski to engage in principal activity at the Firm without being registered, in violation of NASD Rules 1021(a) and 2110. Rule 1021(a) provides that "all persons engaged or to be engaged in

[4] Respondent obtained these additional registrations in August 2003, April 2004, and September 2005, respectively. CX-17 p. 3.

the investment banking or securities business of a member who are to function as principals shall be registered as such with FINRA."

It is important for registrants to comply with FINRA registration requirements. As FINRA has stated:

> The requirement that a person . . . must register as a principal when actively engaged in a firm's securities business is an important one. This requirement assists in the policing of the securities markets. It also ensures that a person in a position to exercise some degree of control over a firm has a comprehensive knowledge of the securities industry and its related rules and regulations. This, in turn, enhances investor protection. We deem it essential to the well-being of the investing public that persons engaged in a firm's securities business strictly adhere to the proper registration requirements.

DBCC v. Pecaro, No. C8A960029, 1998 NASD Discip. LEXIS 13, at *22 (NBCC Jan. 7, 1998)

Rule 1021(b) defines a "Principal" as a person [in listed categories] who is "actively engaged in the management of the [member firm's] investment banking or securities business, including supervision, solicitation, conduct of business or the training of persons associated with a member." [5]

The Securities and Exchange Commission has held that persons not falling within any of the listed categories are nonetheless principals "where … the requirement of active engagement in the management of the member's investment banking or securities business is satisfied." Dennis Todd Lloyd Gordon, Exchange Act Rel. No. 57655, 2008 SEC LEXIS 819, at *25 n. 31 (Apr. 11, 2008).

Activities such as providing financial support, directing and hiring employees, involvement in firm finances, participation in management decisions, frequent

[5] The listed categories in Rule 1021(b) are sole proprietors, officers, partners, managers of Offices of Supervisory Jurisdiction, and directors of corporations.

communications, and leadership of personnel indicate active engagement in a firm's securities business. Id. at **26, 30; See, e.g., Richard F. Kresge, Exchange Act Rel. No. 55988, 2007 SEC LEXIS 1407, **49-50 (June 29, 2007) (providing financial support, playing a substantial role in the finances of the office, and active involvement in hiring and meetings, and leadership of personnel constituted active engagement in the management of the firm's securities business), Kirk A. Knapp, 50 SEC 858, 860-61 (1992) (participating in firm meetings and hiring firm personnel constituted active engagement in the management of the firm's securities business).

As applied to this case, during the September 2005 through January 2007 period alleged in the Complaint, Respondent served as the Firm's Chief Compliance Officer, with responsibility for overall supervision of Firm activities, including the responsibility to ensure that Laskowski did not act as a principal of the Firm without being registered to do so. CX-17 p. 3; Tr. 274, 430. The Panel found that, in contravention of this responsibility, Respondent permitted Laskowski to actively engage in the Firm's securities business.

In reaching this finding, the Panel noted that Laskowski's active engagement in the Firm's securities business stemmed from his ownership of the Firm, and the financial support he provided. Specifically, the Firm was owned by VPC Holdings, LLC ("VPC"), an entity that Laskowski controlled.[6] CX-14 p. 1, CX-17 p. 3. CX-14 p. 1, CX-21 pp. 8, 11, 13-14, 17, 26-28, 30-31. Because the Firm had difficulty maintaining its net capital requirement, it relied upon Laskowski, through VPC, to provide infusions of capital. CX-1, RX-10 p. 3; CX- 21 p. 12; Tr. 138, 141.

[6] Laskowski was the sole manager of VPC, which was owned by Laskowski's wife, his partner Jon Betts' wife, and the wife of Sam Occhipinti ("Occhipinti"), a business associate who served as the Firm's Financial and Operations Principal during much of the relevant period. CX-14 p. 1, CX-21 pp. 8, 11, 13-14, 17, 26-28, 30-31.

With this ownership and financial dependency as a backdrop, Laskowski was in frequent contact with Firm personnel; he directed employees who readily responded to his direction. Moreover, using his financial clout, Laskowski was able to effectively assert his will, even when a Firm employee disagreed with his approach. Laskowski also attended Firm Board meetings and exchanged numerous e-mails with Firm personnel, including Respondent. Respondent was aware of Laskowski's activities and did nothing to stop him or require him to register.

For example, on September 29, 2005, just three weeks after Respondent became the Firm's Chief Compliance Officer, he witnessed Laskowski's active participation regarding a Firm employee's compensation. Specifically, John Feloni ("Feloni"), who had been hired to succeed Robert Clark ("Clark") as the Firm's CEO once he passed his Series 24 examination, sent Laskowski an e-mail expressing frustration at Laskowski's apparent change of heart and refusal to pay James McCarthy ("McCarthy"), a co-founder, former owner, and then Chief Compliance Officer of the Firm.[7] CX-7; Tr. 330-31, 387-88. Respondent received the e-mail and does not dispute its contents. Tr. 391. Laskowski made the final decision; McCarthy was not paid. Tr. 429.

When Respondent was asked whether he should have reacted to the e-mail from Feloni, he explained:

> Answer: The way I would take this letter is that, you know, John Feloni is trying to grow this organization. He's asking [Laskowski], you know, because he's again one of the ones who's very influential and putting funding into the firm, asking -- basically writing the checks. So John Feloni is saying, you know, if you want me -- if we need to build this organization, get it to a point where we are successful and profitable, you know, these are the steps that I need to do.

[7] The e-mail stated: "You cannot hire me for my reputation and then work on destroying it. . . . If you in Connecticut feel that you know better about these matters and desire to micromanage then perhaps you just ought to do the whole thing yourself." Laskowski responded: "Fine, let's stop now and not waste more time." CX-7.

Question: And that should have been addressed to [the Firm's president]?

Answer: Right.

Question: Not to Laskowski?

Answer: But again, I think he's sending it to [Laskowski] because [Laskowski] basically is the funding -- or provides basically the funding for or Venture Partner -- he represents the managers of Venture Partners.

Tr. 394-95.

Thus, Respondent acquiesced to Laskowski's control of this compensation decision, noting that Laskowski was "very influential" in Firm affairs because he was "writing the checks." Id.

Similarly, Respondent raised no questions when Laskowski issued directives to Firm personnel regarding broker recruitment. Specifically, on March 20, 2006, Laskowski sent an e-mail to Frank Spellman ("Spellman"), the Firm's President, bearing the subject line "Brokers" and asking "How are we doing on this process. This needs to move out ASAP! Please provide an update." CX-7 pp. 9-10. On March 22, 2006, Spellman responded to Laskowski, saying that he found a "couple of interesting prospects for you to consider regarding non sales activities." Laskowski responded: "Let's talk about tactics." Id. Respondent was copied on this e-mail exchange, but did not raise an issue.

On July 27, 2006, Laskowski sent a similar e-mail, this time, to Respondent, asking: "How are we doing on finding RIA's manager, brokers." CX-7 p. 20. Rather than dissuading Laskowski's involvement in day-to-day management, Respondent encouraged it, responding that he had interviewed two brokers, one of whom Laskowski might want to meet. Id. Again, Respondent believed this was appropriate because Laskowski was funding the Firm. Tr. 402-4.

In addition, Respondent forwarded new employee offers to Laskowski to review and revise. On August 4, 2006, Laskowski returned a draft employment letter with changes to various compensation terms. CX-7 pp. 30-32; Tr. 405-407. Similarly, beginning on September 25, 2006, Respondent exchanged a series of e-mails with Laskowski to obtain Laskowski's approval of the compensation to be paid to another prospective hire. CX-7 pp. 35-38. Again, Respondent encouraged Laskowski's involvement in setting specific compensation terms for prospective employees because Laskowski was providing cash infusions to the Firm.[8] Tr. 406.

Likewise, Respondent exchanged numerous e-mails with Laskowski on a wide range of topics, including chair purchases, securities, employee issues, and daily commission runs, among other things. CX-5 p. 22, CX-9 pp. 4, 9, 12; Tr. 412. In addition, Laskowski attended and prepared the minutes of the Firm's Board meetings, indicating Laskowski's continued involvement with the management of the Firm. CX- 9 p. 15, CX-11.

Respondent raised several defenses. First, he argued that it would be unfair to charge him with a violation, since Staff failed to note that Laskowski was engaged in principal activities in its 2006 examination.[9] However, FINRA's failure to take early action neither operates as an estoppel against later action nor cures a violation. See,

[8]Enforcement also argued that Respondent allowed Laskowski to negotiate the Firm's acquisition of another broker-dealer. The Panel found that Enforcement did not meet its burden of proof with respect to this allegation. The one document relied upon by Enforcement indicated that VPC *or a wholly owned subsidiary* would be the acquirer. However, this document was unsigned, and Laskowski commented that he had not reviewed or approved the document. Moreover, other documents indicated that VPC, and not the Firm, proposed to acquire the broker-dealer. CX-8A pp. 1-2, 6-8, CX-8 p. 23; Tr. 160-64, 283-284.

[9] On September 15, 2006, FINRA conducted an exit conference that made no reference to Laskowski's activities. RX-10. Staff acknowledged that it did not verify that deficiencies identified in the 2004 examination had been addressed. On March 31, 2008, Staff issued a letter referencing issues for discussion during an upcoming Compliance Conference regarding the 2006 examination. PX-1. This letter also did not reference Laskowski's unregistered principal activities. Tr. 39-42, 246-254.

W.N. Whelen & Co. 1990 SEC LEXIS 3029, at *3 (Aug. 28, 1990). See, e.g., Hans N. Beerbaum, Exchange Act Rel. No. 55731, 2007 SEC LEXIS 971, at *19 n. 22. (May 9, 2007) (a respondent cannot shift the burden of compliance to FINRA).

In addition, Respondent argued that Laskowski's involvement was appropriate because the Firm was dependent upon VPC for cash infusions. As Respondent states in his post-hearing brief, "because [VPC] fronted the money for the Firm, all issues regarding monies and expenditures between [VPC] and the Firm needed to be reviewed by [VPC]/Laskowski. Respondent's Post-Hearing Brief at 9. However, the reason for Laskowski's active involvement with the Firm is irrelevant to the issue of whether he was required to be registered.

Based on the foregoing, the Panel finds that Respondent allowed Laskowski to act as principal without being registered as such, in violation of NASD Rules 1021 and 2110.

**B. Respondent Failed to Establish, Maintain, and Enforce a Reasonable Supervisory System and WSPs**

As Chief Compliance Officer, Respondent was responsible for maintaining and enforcing the Firm's supervisory system and WSPs. The Complaint alleges that the WSPs were deficient in several areas. Specifically, the Complaint alleges that for the period from September 2005 through August 2006, the WSPs failed to adequately specify registration procedures, did not address the registration of principals, failed to identify the person responsible for internal inspections of branch office audits, did not identify all of the Firm's branch offices, did not address outsourcing of financial functions, and did not address approval for advertising materials. The Complaint also alleges that Respondent failed to enforce the WSP requirement that every registered representative who wished to engage in an outside business activity must make a written request and obtain written

approval from the Chief Compliance Officer prior to engaging in such activity. CX-10 p. 279; Tr. 131-33.

Rule 3010(a) requires that FINRA members "establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable [FINRA] Rules." Rule 3010(b) requires that a member "establish, maintain, and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of registered representatives, registered principals, and other associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable Rules of [FINRA]."

"Whether a particular supervisory system or set of written procedures is in fact 'reasonably designed to achieve compliance' depends on the facts and circumstances of each case." Kresge, 2007 SEC LEXIS 1407, *27.

There is little or no dispute that the relevant WSP provisions were deficient.[10] CX-10 pp. 57, 356, 338-49; Tr. 124-127, 130-31. As the Firm's Chief Compliance Officer, Respondent was responsible for establishing and maintaining WSPs relating to these areas, but he failed to do so. Although Respondent corrected the deficiencies prior to detection by FINRA, this is not a defense to the violation. RX-26; Tr. 287-291. The Panel therefore finds that Respondent violated Rules 3010 and 2110

[10] Respondent did dispute the charge that the registration provisions were deficient. The Panel found that, while there were provisions addressing the processes for filing, reviewing, and approving Uniform Applications for Securities Registration or Transfer ("Forms U4"), there were no specific provisions regarding who should be registered as a principal of the Firm, and, for this reason, the registration provisions were deficient. CX-10 pp. 338-49.

Regarding the failure to enforce WSPs regarding documentation of outside business activities, Enforcement alleged that three registered persons, Occhipinti, Andre Lopoukhine ("Lopoukhine"), and Spellman, engaged in outside business activities during the September 2005 through August 2006 time period, without obtaining written permission as required by the WSP's. CX-10 p. 279. The evidence establishes that all three employees applied for permission to engage in outside business activities prior to Respondent's tenure as Chief Compliance Officer. CX-12-13, CX-14 p. 2. There is no allegation that the employees did not receive permission from the Firm to engage in outside activities. Rather, Enforcement charges, and it is undisputed, that the permission was not documented in writing, as required.

Respondent argued that the outside activities did not begin while he was Chief Compliance Officer. While this is true, once he became Chief Compliance Officer, Respondent had the responsibility to ensure that proper documentation was in place, but he did not do so until FINRA brought it to his attention. Tr. 291-92. Respondent also argued that there was no evidence that the employees were engaged in outside business activities during the time that Respondent was the Chief Compliance Officer. However, the evidence establishes that at least two of these employees continued their outside business activities while Respondent was Chief Compliance Officer.[11] Therefore, the Panel found that Respondent failed to enforce the Firm's WSPs when he failed to ensure that permission to engage in outside business activities was documented, in violation of Rules 3010 and 2110.

[11] Occhipinti also was the Chief Financial Officer of a public company affiliated with Laskowski. CX-14 p. 2; Tr. 132, 291. Lopoukhine also received at least one e-mail from the outside business referenced in his disclosure form. CX-13. However, there was no evidence to establish that Spellman continued to be employed by the outside business that he had disclosed two years earlier. CX-12.

## V. Sanctions

### A. Permitting a Person to Act as Principal without Registration

The FINRA Sanction Guideline for Registration violations recommends a fine of $2,500 to $50,000 and consideration of a suspension up to six months, or, in egregious cases, a longer suspension or bar. FINRA Sanction Guidelines ("Guidelines") at 48. Enforcement requests a four-month suspension as principal, a $15,000 fine, and requalification as principal.

Respondent allowed Laskowski to actively engage in various aspects of the Firm's securities business. Rather than question or curtail Laskowski's role, Respondent readily responded to Laskowski and invited his participation in Firm activities. The Panel was particularly concerned with Respondent's failure to question Laskowski's involvement, or seek clarification from FINRA, given that FINRA had cautioned against Laskowski's unregistered activities in the past.[12] However, given Respondent's lack of experience as a supervisor, the Panel attributes his misconduct to a lack of understanding of the rules, rather than an intentional violation. After careful consideration, the Panel finds that the appropriate sanction is a two-month suspension in all principal capacities and a $5,000 fine. In addition, because Respondent does not appear to understand the registration requirements, Respondent is required to requalify in all principal capacities.

### B. Supervision

The Sanction Guideline for supervisory procedure violations recommends a fine of $1,000 to $25,000 and a suspension in all capacities for up to one year. Guidelines at 109. Enforcement requests a $7,500 fine.

[12] The Firm received a Letter of Caution in 2004 for permitting Laskowski to act as an unregistered principal, particularly with respect to underwriting activities. CX-1 p. 1; CX-2 p. 3. Although Respondent was not the Firm's Chief Compliance Officer at the time, he was aware of the issue, because he attended the Exit Conference, and typed the Firm's response to the Letter of Caution noting the issue. Id; Tr. 273.

Here, several mitigating factors are present. Respondent corrected the miscellaneous deficiencies in the Firm's WSPs without prompting by FINRA. In addition, the lack of documentation regarding the outside business activities pre-dated Respondent's tenure as Chief Compliance Officer, and there were no new developments or red flags that would have caused renewed concern, nor were there investor protection issues raised by the outside activities. Given these mitigating factors, and the fact that the Panel has already imposed a sanction on Respondent for supervisory misconduct, the Panel concludes that a Letter of Caution will satisfy FINRA's remedial goals under the particular circumstances of this case.

## VI. Conclusion

For permitting an unregistered person to act as a principal, in violation of NASD Rules 1021 and 2110, Respondent is suspended for two months in all principal capacities, fined $5,000, and required to requalify in all principal capacities before he resumes any principal activities. For failing to establish, maintain, and enforce a reasonable supervisory system and written supervisory procedures, in violation of NASD Rules 3010 and 2110, this Decision shall serve as a Letter of Caution to Respondent. In addition, Respondent is ordered to pay costs in the amount of $3607.25, which includes an administrative fee of $750 plus the cost of the hearing transcript.[13]

[13] The Hearing Panel has considered all of the arguments of the parties. They are rejected or sustained to the extent they are inconsistent or in accord with the views expressed herein.

If this Decision becomes the final disciplinary action of FINRA, the suspension shall become effective with the opening of business on June 21, 2010, and end with the close of business on August 20, 2010. The fine and costs shall become due and payable when Respondent returns to the industry.

**HEARING PANEL**

_____

By: Sara Nelson Bloom
Hearing Officer

Copies to:

Richard Michael Bowers *(via overnight & electronic mail)*
Neal M. Brown, Esq. *(via first-class & electronic mail)*
Paul D. Taberner, Esq. *(via first-class & electronic mail)*
David F. Newman, Esq. *(via first-class & electronic mail)*
Mark Dauer, Esq. *(via electronic mail)*
David R. Sonnenberg, Esq. *(via electronic mail)*