FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. JAMES VAN DOREN (CRD No. 5048067), Respondent.	Disciplinary Proceeding No. 20130367071 Hearing Officer—LOM **DEFAULT DECISION** April 19, 2016

Respondent is barred from associating with any FINRA member firm in any capacity for his unethical conduct by assisting a friend and business associate with concealing assets from the friend's creditors, facilitating his friend's violations of law, and engaging in money laundering.

For the Complainant: Aaron Mendelsohn, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: Jeremy Bartell, Esq.

DECISION

I. Introduction

In its Amended Complaint, FINRA's Department of Enforcement charges Respondent James Van Doren with unethical conduct in violation of FINRA Rule 2010.[1] Respondent was registered as a general securities representative with a FINRA member Firm during the time period relevant to the charges in this disciplinary proceeding.

Enforcement charges that Respondent participated in a scheme to defraud his friend and business associate's creditors by assisting his friend with concealing assets from them. Enforcement alleges that Respondent not only assisted his friend but also retained some of his friend's funds to cover losses that Respondent suffered by investing in the friend's business ventures. In connection with the scheme, Respondent pleaded guilty in federal district court to

[1] The original Complaint was filed on October 3, 2015. The Complaint was amended to flesh out the scope of the charges but not to change the theory of the case or to add any new charges. The Amended Complaint ("Am. Compl.") was permitted and deemed filed on May 18, 2016.

money laundering, and the friend pleaded guilty to money laundering, conspiracy to commit bank fraud, and conspiracy to commit bankruptcy fraud.

Initially, Respondent obtained representation, filed an Answer, and participated in this disciplinary proceeding. However, he later chose to default, as briefly described below.

Enforcement filed and served on Respondent's counsel a motion for entry of default decision ("Default Motion") and counsel's declaration ("Decl.") in support, with exhibits. Respondent did not respond to the Default Motion.

For the reasons set forth below, I find Respondent in default and **GRANT** Enforcement's Default Motion.

II. Findings of Fact and Conclusions of Law

A. Respondent's Background

Respondent entered the securities industry in October 2005 as a registered representative at a FINRA-regulated firm. He worked in the industry until the FINRA member firm that last employed him permitted him to resign on April 19, 2013. The same day that he resigned, the firm filed a Uniform Termination Notice for Securities Industry Registration ("Form U5"), reporting that the firm had a "loss of confidence" in Respondent because of criminal charges against him. Respondent has not been associated with a FINRA member firm or registered with FINRA since then.[2]

B. FINRA's Jurisdiction

FINRA retains jurisdiction over Respondent pursuant to Article V, Section 4(a) of FINRA's By-Laws. Enforcement filed its initial Complaint on October 3, 2014, within two years of the effective date of the termination of Respondent's FINRA registration, and the Amended Complaint charges him with misconduct while he was a registered person.[3]

C. Background of Proceeding and Respondent's Default

Prior to the commencement of this disciplinary proceeding, federal prosecutors indicted Respondent, charging him with bankruptcy fraud and other crimes. Respondent settled the criminal charges by pleading guilty to a charge of money laundering. Shortly after the filing of the initial Complaint in this proceeding, Respondent was sentenced to prison for 15 months. After he began serving his term, it became apparent that Respondent could not participate in a

[2] Am. Compl. ¶¶ 4-5.

[3] Both as originally filed and as amended, the Complaint charges Respondent with the same misconduct. The Amended Complaint alleges that an additional $150,000 was part of the alleged scheme to defraud that is the subject of this proceeding.

hearing in this disciplinary proceeding while he was in prison. The hearing was rescheduled to occur after Respondent's release from prison.

At a pre-hearing conference in preparation for a hearing after Respondent was released from prison, his counsel announced that Respondent had decided to default. At the Hearing Officer's request, Respondent's counsel subsequently filed a statement confirming that Respondent would not appear or participate any further in the proceeding and that Respondent understood that he might be held in default as a result.

The Hearing Officer issued an Order Governing Motion for Entry of Default Decision, stating, "Respondent will be deemed in default and a decision against him will be entered upon motion of the Department of Enforcement." That Order was served on Respondent's counsel.

At no time has the Office of Hearing Officers received any filing or communication from Respondent or his counsel objecting to the entry of a default decision against him.

D. Respondent Engaged in Unethical Conduct in Violation of FINRA Rule 2010

The Amended Complaint alleges facts that, pursuant to FINRA Rule 9269(a)(2), are deemed to be true.

1. Facts

Respondent and BB were friends and business associates who grew up together in Arkansas. BB owned a general contracting business that built homes in Arkansas on speculation. BB solicited Respondent to invest in some of his real estate deals.

Respondent formed a company to invest in real estate development in Arkansas, which he disclosed to his member firms as an outside business activity. He was a 50 percent owner with one other person. In May 2007, Respondent, through his company, invested in one of BB's real estate deals for the first time.[4]

Within a few months of Respondent's first investment, in August 2007, the real estate deal was in trouble and Respondent knew it. BB admitted to Respondent that he had not been paying the subcontractors who worked on the project and that he did not have the money to pay them. BB had been drawing funds from construction loans for the project and using the funds to keep his business afloat. As matters deteriorated, Respondent lent money to BB and Respondent paid off some subcontractor loans that BB owed.[5]

In April 2008, BB persuaded Respondent to invest in two more real estate deals with BB as a way to recoup some of the money that BB owed Respondent on the first deal. The additional

[4] Am. Compl. ¶¶ 8-9.

[5] Am. Compl. ¶¶ 14-22.

investments with BB were not successful, and Respondent's company suffered additional losses.[6]

On three separate occasions, Respondent accepted monies from BB for the purpose of deceiving BB's creditors and concealing BB's assets from them. As discussed below, on the third occasion, Respondent also made knowing false representations to his own bank in an effort to obtain additional funds for BB. The circumstances lead to an inference that BB was evading legal obligations. In fact, BB later pleaded guilty to money laundering, conspiracy to commit bank fraud, and conspiracy to commit bankruptcy fraud; Respondent pleaded guilty to one count of money laundering. Respondent was sentenced to 15 months in prison, and the district court's findings in connection with sentencing reflected the sums involved on all three occasions, totaling $244,000.[7]

(i)

On September 29, 2008, BB requested that Respondent deposit a third-party check for $64,000 in an account controlled by Respondent. BB asked Respondent to transfer funds to individuals and an account controlled by BB. He explained to Respondent that BB's banks had seized his funds and closed his personal accounts. Respondent complied with BB's request, depositing the check into his account and making three wire transfers at BB's instruction. At the time, Respondent knew that BB was broke, that BB's business enterprise had become insolvent and had been dissolved, that banks had seized and closed BB's bank accounts and foreclosed on properties owned by BB's business, and that unpaid creditors were trying to recover BB's assets.[8]

(ii)

In October 2008, BB gave Respondent a briefcase containing approximately $30,000. Respondent placed the briefcase and its contents in a safety deposit box in his name. Periodically, BB contacted Respondent and asked for money from the briefcase. Between October 2008 and January 2009, they met six to eight times so that Respondent could give BB cash from the briefcase. Respondent continued to be aware of BB's financial difficulties.[9]

(iii)

On November 12, 2008, Respondent received a wire transfer of $150,000 of BB's funds to Respondent's real estate investment company's account.

[6] Am. Compl. ¶¶ 27-28.

[7] Am. Compl. ¶¶ 54-56.

[8] Am. Compl. ¶¶ 31-38.

[9] Am. Compl. ¶¶ 40-42.

> Respondent understood and agreed that the money would be used to engage in business transactions for BB and for BB's personal use and benefit. Respondent falsely represented to his bank that the funds were a capital infusion into his company and attempted to obtain a loan for BB's benefit by that false representation. Respondent sent some of the $150,000 to a company controlled by BB, which Respondent knew BB had formed to conceal assets from his creditors. Respondent retained some of the money in his own company to offset losses suffered on the real estate investments with BB.[10]

By these actions, Respondent participated in a scheme to deceive and defraud the creditors of BB and BB's business. Respondent helped BB conceal assets and allowed BB to use money for BB's personal benefit. He facilitated BB's violations of law. In connection with the scheme, Respondent also made false representations to his bank and has pleaded guilty to money laundering.

2. Law

FINRA Rule 2010 requires FINRA members and their associated persons to "observe high standards of commercial honor and just and equitable principles of trade" in the conduct of their business.[11] Participants in the securities industry must not only conform to legal and regulatory requirements but must conduct themselves with integrity, fairness, and honesty.[12] The Rule encompasses any unethical business-related misconduct, even where the activity does not involve a security.[13] Dishonest acts reflect negatively on a person's ability to comply with regulatory requirements.[14]

---

[10] Am. Compl. ¶¶ 46-53.

[11] FINRA Rule 2010 is used here to refer not only to the current Rule regarding ethical conduct, but also to its predecessor rules at NASD and NYSE Regulation. The Securities and Exchange Commission ("SEC") applies the same analysis and precedents whichever particular rule is discussed. *Blair Alexander West*, Exchange Act Release No. 74030, 2015 SEC LEXIS 102, at *20 n.13 (Jan. 9, 2015).

[12] *Robert Marcus Lane*, Exchange Act Release No. 74269, Slip Op. 10 n.20 (Feb. 13, 2015) ("[T]his general ethical standard . . . is broader and provides more flexibility than prescriptive regulations and legal requirements. [FINRA Rule 2010] protects investors and the securities industry from dishonest practices that are unfair to investors or hinder the functioning of a free and open market, even though those practices may not be illegal or violate a specific rule or regulation. [FINRA Rule 2010] has proven effective through nearly 70 years of regulatory experience.").

[13] *Dep't of Enforcement v. Gallagher*, No. 2008011701203, 2011 FINRA Discip. LEXIS 40, at *17-18 & n.46 (OHO June 13, 2011) ("Rule 2110 is an ethical rule …. FINRA's authority to pursue disciplinary action for violations of Rule 2110 is sufficiently broad to encompass any unethical business-related misconduct, regardless of whether it involves a security."), *aff'd*, 2012 FINRA Discip. LEXIS 61 (NAC Dec. 12, 2012) (respondent barred for acting as unregistered principal); *Dep't of Enforcement v. Mullins*, Nos. 20070094345, 20070111775, 2011 FINRA Discip. LEXIS 61, at *22 (NAC Feb. 24, 2011) ("FINRA's disciplinary authority under NASD Rule 2110 is also broad enough to encompass business-related conduct that is inconsistent with just and equitable principles of trade, even if that activity does not involve a security.") (internal citations and quotations omitted), *aff'd in part, John Edward Mullins*, Exchange Act Release No. 66373, 2012 SEC LEXIS 464 (Feb. 10, 2012).

[14] *Dep't of Enforcement v. Simbric*, No. 2011026168901, 2012 FINRA Discip. LEXIS 29, at *9-10 (OHO Apr. 23, 2012) (respondent violated ethical conduct Rule by falsifying correspondence).

Respondent violated the high standard of ethical conduct required in the securities industry. He knowingly assisted BB to conceal his assets from creditors in circumstances that suggested that BB was evading legal obligations. Respondent's actions facilitated BB's violations of law. Additionally, Respondent engaged in dishonest acts by making false representations to his bank and engaging in money laundering. Respondent failed to comply with ethical business norms.[15]

E. Sanctions

FINRA's Sanction Guidelines do not have a provision covering the specific type of unethical conduct in which the Respondent engaged. However, Respondent's misconduct involved knowing false statements to his bank, money laundering, and activities to assist another to violate the law. These are serious breaches of the ethical norms required in the securities industry and reflect adversely on Respondent's ability to comply with legal and regulatory requirements in the future. As the SEC has noted, "The public interest demands honesty from associated persons of NASD members; anything less is unacceptable."[16] Dishonest and unfair practices can be seriously damaging to free and fair markets and detract from public confidence in the industry.[17]

Respondent's misconduct signifies that he is a grave risk to customers, firms, and other participants in the industry. He is unfit to be in the securities industry and should be barred.

F. Order

Respondent is barred from associating with any FINRA member firm in any capacity for his unethical conduct in violation of FINRA Rule 2010. The bar shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.

Lucinda O. McConathy
Hearing Officer

---

[15] *Dep't of Enforcement v. Springsteen-Abbott*, No. 2011025675501, 2015 FINRA Discip. LEXIS 15, at *118-19 (OHO March 30, 2015), *appeal docketed*, (Apr. 23, 2015). A FINRA Rule 2010 violation may be found where there is *either* intentional or conscious bad conduct *or* a failure to meet ethical norms, regardless of intention. The SEC has defined bad faith as a dishonest belief or purpose, and unethical conduct as conduct inconsistent with the moral norms or standards of professional conduct. *Edward S. Brokaw*, Exchange Act Release No. 70883, 2013 SEC LEXIS 3583, at *33 (Nov. 15, 2013).

[16] *Geoffrey Ortiz*, Exchange Act Release No. 58416, 2008 SEC LEXIS 2401, at *29 (Aug. 22, 2008) (bar imposed for forgery and submission of falsified documents).

[17] *Heath v. SEC*, 586 F.3d 122 (2d Cir. 2009), *aff'g*, Exchange Act Release No. 59223, 2009 SEC LEXIS 14, *117-18 (Jan. 9, 2009) (FINRA Rule 2010 is a broad prohibition against unethical conduct that fills potential gaps in the law and regulations that apply to specific misconduct).

Copies to:

James Van Doren (via first class mail)
Jeremy Bartell, Esq. (via first-class and electronic mail)
Aaron Mendelsohn, Esq. (via first-class and electronic mail)
Jeffrey D. Pariser, Esq. (via electronic mail)