

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

John Anthony Waszolek
(CRD No. 800403),

Respondent.

DISCIPLINARY PROCEEDING
No. 2012031181001

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. From at least late 2008, Respondent John Anthony Waszolek ("Waszolek") knew that JL, his 81 year-old customer, had been diagnosed with Alzheimer's disease and suffered from dementia and memory loss. Indeed, in December 2008, an estate planning attorney, informed Waszolek that she would not amend JL's trust to make Waszolek a beneficiary because a psychologist had concluded that JL lacked sufficient testamentary capacity. Despite this knowledge, in March 2009, Waszolek (through a separate attorney) procured an appointment as successor trustee and residual beneficiary of JL's trust. Following JL's death, Waszolek attempted to inherit more than \$1.8 million from JL's estate.
2. In 2008 and 2009, Waszolek was registered with FINRA first through UBS Financial Services, Inc. ("UBS") and then through Morgan Stanley Smith Barney ("Morgan Stanley"). Both UBS and Morgan Stanley had written procedures that required registered

representatives to disclose whether the representative had been appointed as a beneficiary of a customer's trust. UBS's and Morgan Stanley's written procedures also prohibited registered representatives from acting in a fiduciary capacity with respect to any firm customer without prior preapproval. Nevertheless, Waszolek did not disclose to either firm his role as beneficiary or successor trustee of JL's trust or that he had received a healthcare power of attorney over JL. Neither did Waszolek seek or obtain either UBS's or Morgan Stanley's approval to act in a fiduciary capacity as to JL. In fact, when Waszolek responded to a Morgan Stanley "Sales Practice Questionnaire" asking whether he had been named as beneficiary on any non-family member's account or whether he functioned as a fiduciary for any firm customer, he responded to both questions in the negative.

3. Waszolek engaged in unethical behavior by procuring an appointment as successor trustee and residual beneficiary of JL's trust when he knew that JL lacked the testamentary capacity to make such an appointment.
4. Waszolek also engaged in unethical behavior by concealing his roles as a fiduciary to JL and a beneficiary of JL's trust from UBS and Morgan Stanley, and by failing to adhere to UBS' and Morgan Stanley's written procedures, which required the disclosure of such activity.
5. Based on the foregoing, Waszolek violated FINRA Rule 2010.

RESPONDENT AND JURISDICTION

6. In January 1980, Waszolek first became registered with FINRA as a General Securities Representative ("GSR").
7. From January 1980 to March 25, 2009, Waszolek was registered as a GSR through UBS.

His last date of employment with UBS was March 6, 2009.

8. From March 6, 2009 through January 27, 2012, Waszolek was registered as a GSR through Morgan Stanley. His last date of employment with Morgan Stanley was December 29, 2011.
9. On January 27, 2012, Morgan Stanley filed a Form U5 stating that Waszolek was terminated due to “concerns regarding failure to follow policies and disclosures regarding a client’s testamentary bequest to the advisor, and lack of execution of a transaction relating to the client’s successor trustee.”
10. Since on or about February 9, 2012, Waszolek has been registered with FINRA through an association with another member firm.
11. The Complaint charges Waszolek with misconduct committed while he was registered with a FINRA member.
12. As Waszolek is currently registered, he is subject to FINRA’s disciplinary jurisdiction.

FACTUAL BACKGROUND

Waszolek’s Relationship with JL

13. JL was born in 1927.
14. In or about 1982, while Waszolek was associated with UBS, JL and her husband, WL, became Waszolek’s customers.
15. JL and WL had no children.
16. In or about March 1983, JL and WL retired and moved to a retirement community in Sun Lakes, Arizona.
17. On or about May 26, 1998, WL passed away.
18. After WL’s death, JL lived alone in the Arizona residence she once shared with WL.

19. After WL's death, JL maintained an individual, commission-based account at UBS. Waszolek was the representative on this account.

The JL Trust

20. On or about October 1, 2003, JL established a trust (the "JL Trust") and a Last Will and Testament (the "JL Will"). On or about November 3, 2003, JL's UBS individual account was retitled as a trust account in the name of the JL Trust with Waszolek remaining as the broker of record (the "UBS JL Trust Account").

21. Under the terms of the JL Will, JL's estate assets were to be distributed "according to the terms and provisions of the [JL Trust], including any amendments thereto in effect at [JL's] death."

22. In its original form, the JL Trust designated JL as Trustor and Trustee. Upon JL's death, incapacity or resignation, CB&T (a bank), was to serve as Successor Trustee.

23. Upon JL's death, the JL Trust called for the distribution of personal property to certain family members and the distribution of cash proceeds (derived from the UBS JL Trust Account) to a number of charities (collectively, the "Charitable Beneficiaries") as follows:

Distributions of Property

<u>Beneficiary</u>	<u>Relation to JL</u>	<u>Item</u>
PG	Niece	Diamond ring
LD	Niece	Diamond pendent and earrings
RD	Nephew	Diamond pin, pearls, ladies' and men's watches
Charity A	Church	Personal residence (together with furnishings)

Distributions of Cash Proceeds

<u>Distribution Amount</u>	<u>Beneficiary</u>	<u>Location</u>
40%	Charity A	Chandler, Arizona
25%	Charity B	Phoenix, Arizona
25%	Charity C	Tampa, Florida
10%	Charity D	Nevada Missouri

Deterioration of JL's Health

24. Until approximately 2007, Waszolek was not close with JL and would generally visit her once a quarter to review her portfolio and twice a year for lunch, consistent with the contact Waszolek had with most of his clients.
25. Due to JL's macular degeneration, a condition of the eyes which eventually caused her to become legally blind, in the fall of 2007, JL donated her vehicle to Charity A as she could no longer safely drive.
26. By the end of 2007, JL was frail, withdrawn, isolated and had no form of transportation.
27. By 2007, JL had a difficult time holding telephone conversations – often forgetting whom she was speaking with.
28. In or about December 2007, JL moved to an assisting living community, where she could receive regular medical care and observation.
29. Between 2007 and 2008, JL's physical and mental condition continued to decline.
30. In or about October 2008, Waszolek took JL to a doctor's appointment. The doctor diagnosed JL with Alzheimer's disease. Waszolek was informed of the diagnosis during the office visit.
31. In or about October 2008, due to the increasing decline in her medical condition, JL moved to another assisted living facility where she could receive more intensive medical care.

JL is Deemed to Lack Testamentary Capacity

32. On or about November 13, 2008, Waszolek drove JL to meet with PM, an estate planning attorney, for the purposes of having a healthcare power of attorney and living will prepared naming Waszolek as JL's agent and power of attorney, and to have the JL Trust amended to, among other things, appoint Waszolek as successor trustee and residual beneficiary of the Trust.
33. On or about November 13, 2008, a "Health Care Power of Attorney and Living Will" was prepared by PM appointing Waszolek as JL's "agent and attorney-in-fact."
34. PM, however, refused to prepare an amendment to the JL Trust until JL's testamentary capacity was evaluated.
35. On or about November 17, 2008, PM referred JL to PW, a clinical neuropsychologist, for an evaluation to determine JL's testamentary capacity.
36. On or about December 7, 2008, PW issued a report (the "PW Report") which states, in part, the following:

As to Testamentary Capacity, it's my opinion that [JL] falls short of meeting the usual criteria. She did not know the natural objects of her bounty without considerable direct cuing, and was mistaken about a relevant aspect of her relationship to a proposed primary beneficiary; she had no recollection of recently having drafted very specific plans to alter her estate plan to an attorney, insisting this was a lie. I question whether she would be able to appreciate the impact of any changes or retain the knowledge that she had made changes even a day or two later. In my opinion her 'ability to know' the necessary information is seriously limited, absent considerable coaching or cuing.

PW further opined that JL was "completely unable to protect herself from exploitation."

37. In or about December 2008, Waszolek received and reviewed a copy of the PW Report.

38. After PM reviewed the PW Report, she informed Waszolek that she would not draft the amendment to the JL Trust.
39. In sum, as of December 2008, Waszolek knew of JL's Alzheimer's diagnosis and the PW Report, which disclosed, among other things, that JL lacked testamentary capacity.

JL's Second Alzheimer's Diagnosis and the JL Trust Amendment

40. In or about March 2009, a physician at JL's assisted living facility once again diagnosed JL with Alzheimer's disease. Waszolek was present when the diagnosis was given.
41. Despite having knowledge of JL's Alzheimer's diagnosis and the PW Report, in or about March 2009, Waszolek referred JL to a second attorney, JP, for the purpose of amending the JL Trust.
42. JP met with JL at the assisted living facility on or about March 5, 2009. During JL's meeting with JP, JL purportedly signed an amendment to the JL Trust (the "JL Trust Amendment").
43. The JL Trust Amendment did not affect the Trust's distributions of personal property but did materially alter the distribution of cash proceeds. In particular, the JL Trust Amendment reduced the amount to be distributed to Charities A, B, C and D by \$1,321,082.45 and, instead, directed that that amount be distributed to Waszolek. Specifically the JL Trust Amendment provided for the following cash distributions:

<u>Original Distribution Amount</u>	<u>Approximate Value of Original Distribution Amount (as of March 2009)</u>	<u>New Distribution Amount under Amendment</u>	<u>Beneficiary</u>
40%	\$568,432.98	\$40,000	Charity A
25%	\$355,270.61	\$25,000	Charity B
25%	\$355,270.61	\$25,000	Charity C
10%	\$142,108.25	\$10,000	Charity D
0%	\$0	\$1,321,082.45	Waszolek

44. In addition to being added as a beneficiary, under the terms of the JL Trust Amendment, Waszolek was appointed successor trustee (and, upon JL's "death, incapacity or resignation," would serve as trustee).

Waszolek Leaves UBS and Registers with Morgan Stanley

45. On March 6, 2009, the day after the JL Trust Amendment was effected, Waszolek resigned from UBS. That same day, Waszolek registered with Morgan Stanley.
46. On or about March 8, 2009, the UBS JL Trust Account was transferred from UBS to Morgan Stanley (the "Morgan Stanley JL Trust Account"). Waszolek remained the broker of record on the account.
47. In connection with the transfer of the Trust Account from UBS to Morgan Stanley, Waszolek submitted to Morgan Stanley an "Active Assets Account Application," which was purportedly signed by JL on March 10, 2009. The Account Application failed to mention the JL Trust Amendment, and the "Successor Trustee" field on the form was left blank – notwithstanding the fact that Waszolek had been appointed Successor Trustee just five days prior.
48. On or about March 12, 2009, Waszolek provided Morgan Stanley with a copy of the JL Trust, but not the JL Trust Amendment purportedly signed by JL just a week earlier, even though the JL Trust Amendment was now the operating document relating to the trust.

JL Dies and Waszolek Attempts to Collect \$1.8 Million from Her Estate

49. On April 19, 2010, Waszolek executed a "Declination of Nominated Successor Trustee," which provided that, upon JL's death, instead of Waszolek; CB&T would serve as successor trustee.
50. On May 8, 2010, at the age of 83, JL passed away.

51. Following JL's death, Waszolek attempted to collect (as beneficiary to the JL Trust Amendment) the cash proceeds held within JL's Morgan Stanley Trust Account, which had increased in value to approximately \$1.8 million.
52. CB&T, the trustee of the JL Trust, refused to distribute this amount to Waszolek unless and until Morgan Stanley approved the distribution.
53. On or about August 3, 2010, Waszolek sought permission from Morgan Stanley to inherit the assets in JL's Morgan Stanley Trust Account.
54. Between August 2010 and January 2011, Morgan Stanley denied Waszolek's repeated requests for approval to collect as a beneficiary under the JL Trust.
55. On January 6, 2011, Morgan Stanley issued a letter of reprimand to Waszolek, which concluded that Waszolek had violated firm procedures by failing to disclose that he was a fiduciary for JL and a beneficiary of the JL Trust (the "Letter of Reprimand"). The Letter of Reprimand also reiterated the Firm's denial of Waszolek's request to inherit JL's assets under the JL Trust.
56. In or about September 2010, CB&T distributed the personal property to JL's nieces and nephew and cash proceeds to the Charitable Beneficiaries pursuant to the JL Trust Amendment. The remaining cash assets to which Waszolek was purportedly entitled pursuant to the JL Trust Amendment (obtained after JL had been determined to lack testamentary capacity) were not distributed by CB&T to Waszolek.
57. Despite being issued the Letter of Reprimand and having his request to receive a distribution of the JL Trust denied by Morgan Stanley, on August 2, 2011, Waszolek filed a "Petition for Trust Administration" in the Superior Court of the State of Arizona,

Maricopa County (the "Petition") seeking an order requiring CB&T to make a distribution to Waszolek.

58. Waszolek did not disclose the Petition to Morgan Stanley.
59. Ultimately, Waszolek entered into a settlement agreement with CB&T and the Charitable Beneficiaries. As part of the settlement agreement, Waszolek received \$50,000, although that amount did not come from JL's estate. Waszolek did not receive any distributions from JL's estate pursuant to the JL Trust Amendment. In fact, as part of the settlement agreement, Waszolek agreed that the JL Trust Amendment was "invalid by reason of [JL's] incapacity."

**FIRST CAUSE OF ACTION
Procurement of Invalid Trust Amendment
(FINRA Rule 2010)**

60. The Department realleges and incorporates by reference paragraphs 1 through 59 above.
61. By in or about March 2009, Waszolek was well aware of JL's declining medical condition and mental health. Waszolek knew that JL had (twice) been diagnosed with Alzheimer's disease. Moreover, Waszolek received and reviewed the PW Report, which concluded that JL lacked testamentary capacity and was "completely unable to protect herself from exploitation."
62. Nevertheless, in or about March 2009, Waszolek referred JL to JP for the purpose of amending the JL Trust to make Waszolek successor trustee and residual beneficiary.
63. Waszolek took unfair advantage of JL by having JL give Waszolek these roles and responsibilities when he knew of her declining mental condition and lack of testamentary capacity.
64. Based on the foregoing, Waszolek violated FINRA Rule 2010.

SECOND CAUSE OF ACTION
Concealment/Failure to Follow Firm Procedures
(FINRA Rule 2010)

65. The Department realleges and incorporates by reference paragraphs 1 through 64 above.

*Waszolek Concealed his Role as Trustee, Beneficiary, and
Healthcare Power of Attorney From UBS*

66. In March 2009, UBS maintained written procedures which required that “[i]f an employee becomes aware of being named as the beneficiary of any non-family bequest or inheritance from a client, the employee must immediately notify his or her BOM or Supervisor who should consult with Regional Management.”

67. Similarly, in March 2009, UBS maintained written procedures that prohibited representatives from serving as a trustee or in any other fiduciary position for non-family related accounts, “without prior written consent from [UBS].”

68. While at UBS, Waszolek signed annual certifications acknowledging that it was his responsibility to familiarize himself with UBS’ policies, and that he in fact (in each given year), adhered to the firm’s written procedures. In these certifications, Waszolek also represented that he had not “engaged in activities, interests, or relationships that might conflict, or appear to conflict, with [his] ability to act in the best interest of the Firm and its clients.”

69. Waszolek failed to disclose to UBS that he was named successor trustee and beneficiary of the JL Trust or that he had received a healthcare power of attorney for JL.

*Waszolek Concealed his Role as Trustee, Beneficiary, and
Healthcare Power of Attorney from Morgan Stanley*

70. In March 2009, Morgan Stanley’s written supervisory procedures governing fiduciary appointments and beneficiary designations stated the following:

A **fiduciary** is any person who holds, or controls, assets for the benefit of another person. Types of fiduciaries include **trustees**, executors, administrators, **attorneys-in-fact** (such as those holding a power of attorney), conservators, custodians and guardians.

In general, an FA/IR may not act as a fiduciary for any person. As described below, exceptions may sometimes be granted, particularly for immediate family members. In these cases, your approval and that of the Compliance Department is required prior to the FA/IR agreeing to serve in any fiduciary capacity. **In addition, an FA/IR may not knowingly be designated as a beneficiary under a client's will, trust, IRA, TOD or other account or instrument that would take effect at death, other than for family members.** [emphasis added]

71. While at Morgan Stanley from March 6, 2009 through at least August 3, 2010, Waszolek signed annual certifications acknowledging receipt of Morgan Stanley's written procedures, including the procedure prohibiting a representative from being designated as a beneficiary of a customer's trust.
72. From March 6, 2009 until at least August 3, 2010, Waszolek failed to disclose to Morgan Stanley that he functioned as successor trustee and beneficiary to the JL Trust or that he had received a healthcare power of attorney for JL.
73. In February 2010, Waszolek completed a Morgan Stanley Sales Practice Questionnaire in which he was asked, "Are you named as a beneficiary on any non-family account(s) which has been opened within the last 12 months?" Despite being named beneficiary of the JL Trust on or about March 5, 2009, Waszolek answered "No."
74. Also, in the February 2010 Morgan Stanley Sales Practice Questionnaire, Waszolek was asked, "Do you have any accounts (Morgan Stanley Smith Barney or NON-Morgan Stanley Smith Barney) for which you act in a fiduciary capacity?" Despite being named as successor trustee for the JL Trust and having healthcare power of attorney over JL, Waszolek answered "No."

75. Waszolek had dual roles with respect to the JL Trust's accounts at UBS and Morgan Stanley. He was the registered representative on the accounts and, at the same time, he was also the principle beneficiary of the JL Trust. These dual roles created a conflict of interest. For example, Waszolek could have recommended trades in the accounts suitable for his own investment objectives, and not those of JL. His concealment of these dual roles prevented either firm from addressing this inherent conflict of interest and preventing exploitation of Waszolek's relationship with JL.
76. In sum, Waszolek failed to disclose his fiduciary relationship to JL or his appointment as successor trustee and beneficiary of the JL Trust to either UBS or Morgan Stanley, as required, and, instead, concealed these facts from UBS and Morgan Stanley. While concealing his roles as a fiduciary and beneficiary from Morgan Stanley and UBS, Waszolek continued to function in those capacities. Waszolek's actions were inconsistent with high standards of commercial honor and just and equitable principles of trade, and therefore violated FINRA Rule 2010.

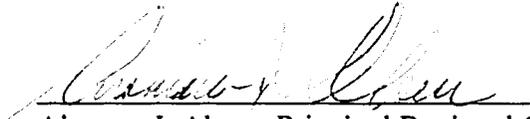
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed.
- C. order that 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: June 11, 2015



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