FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. STUART G. DICKINSON (CRD No. 1047824), Respondent.	Disciplinary Proceeding No. 2012033286901 Hearing Officer–LOM **DEFAULT DECISION** October 21, 2016

Respondent is barred in all capacities for selling securities without reasonable grounds for believing that the investment was suitable for any investor. He is also ordered to pay restitution to six customers.

Appearances

For the Complainant: Albert A. Starkus III, Esq., and Penelope Brobst Blackwell, Esq., Michael P. Manly, Esq., and David B. Klafter, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: No appearance.

DECISION

I. Introduction

Respondent Stuart G. Dickinson sold more than $1 million of limited partnership interests in ATM Alliance, LP ("ATMA") to seven customers while he was associated with FINRA member firm WFG Investments, Inc. ("WFG" or the "Firm"). Dickenson recommended the securities without first conducting adequate and reasonable due diligence on ATMA. He failed to verify or confirm information he obtained from interested parties and failed to detect multiple "red flag" warnings that ATMA was a fraudulent Ponzi scheme. As a result, the customers lost their entire investments.

The Complaint alleges that Dickinson violated NASD Rules 2310 and 2110. NASD Rule 2310 requires that, in making a recommendation to a customer, a member or associated person have "reasonable grounds" for believing that the recommendation is suitable. NASD Rule 2110,

like its successor, FINRA Rule 2010, requires that a member or associated person "observe high standards of commercial honor and just and equitable principles of trade."[1]

Dickinson did not answer or otherwise respond to the Complaint.[2] Thus, the Hearing Officer initially assigned to this matter found Dickinson in default and directed Enforcement to file a motion for entry of default decision.

Enforcement filed a motion for entry of default decision ("Default Motion"), together with a memorandum of law and counsel's declaration ("Decl.") in support of the motion, and supporting exhibits. Dickinson did not respond to the Default Motion.

For the reasons set forth below, I grant Enforcement's Default Motion, bar Dickinson from associating with any FINRA member firm in any capacity, and order that he pay $924,000 in restitution to his customers, along with interest.

II. Findings of Fact and Conclusions of Law

A. Respondent's Background

Dickinson entered the securities industry in 1982, and he first registered with FINRA as a general securities representative in 1987. In October 2005, Dickinson joined WFG where he worked as a registered broker until September 25, 2013, when WFG terminated his employment and FINRA registration. WFG reported to the Central Registration Depository ("CRD") that it had discharged Dickinson after the Firm received an inquiry relating to a private securities transaction.[3]

B. FINRA's Jurisdiction

FINRA has jurisdiction over Dickinson pursuant to Article V, Section 4(a) of FINRA's By-Laws. The Complaint charges him with misconduct committed while he was associated with WFG, and Enforcement filed the Complaint within two years after the effective date of termination of his FINRA registration.[4]

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[1] NASD Rules 2310 and 2110 were in effect at the time of the conduct that is the subject of this proceeding. NASD Rule 2310 has been superseded by FINRA 2111, and NASD Rule 2110 has been superseded by FINRA Rule 2010.

[2] The Complaint also contained charges against Trent W. Schneiter, a supervisor and compliance officer in charge of alternative investments at WFG who worked with Dickinson on the sales of the ATMA securities. Schneiter settled the claims against him, leaving Dickinson as the only respondent in the case.

[3] Complaint ("Compl.") ¶ 4; Complainant's Exhibit ("CX-") 1.

[4] CX-1; Decl. ¶ 8.

C. Origin of the Investigation

FINRA initiated the investigation that led to this disciplinary proceeding after it learned of an arbitration claim against Dickinson related to his sales of ATMA.[5]

D. Respondent's Default

The Complaint was served in accordance with FINRA's rules. Enforcement served Dickinson with copies of the Complaint, First Notice of Complaint, and Second Notice of Complaint by certified mail addressed to Dickinson's last known residential address as recorded in CRD. Dickinson did not file an Answer or otherwise respond to the Complaint.[6] Accordingly, I find that Dickinson defaulted by not filing an Answer or otherwise responding to the Complaint.[7]

E. Reasonable Basis Suitability

"[A] recommendation may lack 'reasonable-basis' suitability if the broker: (1) fails to understand the transaction, which can result from, among other things, a failure to conduct a reasonable investigation concerning the security; or (2) recommends a security that is not suitable for any investors."[8] "Reasonable basis" suitability focuses only on the investment recommendation, not the customer's financial circumstances and investment objectives.[9]

Here, Dickinson failed to conduct an adequate and reasonable investigation of ATMA, and he recommended a security that was not suitable for any investors. If he had conducted a reasonable investigation, he would have recognized red flags indicating that the offering was fraudulent and thus unsuitable for any investors regardless of their wealth, risk tolerance, age, or other individual characteristics.[10]

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[5] Decl. ¶ 5.

[6] Enforcement represents in its Memorandum in support of the Default Motion that it is unaware of a current address for Dickinson and that it does not know of any business entity with which he is currently employed or affiliated. That representation does not appear in the accompanying Declaration. However, the Memorandum also mentions a second address and indicates that Enforcement served Dickinson with the Complaint and Second Notice at his CRD address and at "the DC Address." It is unclear to what this refers; the exhibits only include the returned envelopes sent to the CRD address.

[7] Dickinson is notified that he may move to set aside the default pursuant to FINRA Rule 9269(c) upon a showing of good cause.

[8] *Dep't of Enforcement v. Siegel*, No. C05020055, 2007 NASD Discip. LEXIS 20, at *38 (NAC May 11, 2007), *aff'd*, Exchange Act Release No. 58737, 2008 SEC LEXIS 2459 (Oct. 6, 2008), *aff'd in relevant part*, 592 F.3d 147 (D.C. Cir. 2010), *cert. denied*, 560 U.S. 926 (2010). *See also Terry Wayne White*, 50 S.E.C. 211, 212 & n.4 (1990); *F.J. Kaufman and Co.*, 50 S.E.C. 164, 168, 172 (1989).

[9] *Dep't of Enforcement v. McGee*, No. 2012034389202, 2016 FINRA Discip. LEXIS 33, at *59-60 (NAC July 18, 2016).

[10] *F.J. Kaufman*, 50 S.E.C. at 169-71.

F. Respondent Lacked a Reasonable Basis for Recommending ATMA

ATMA's purported business was to acquire and operate automated teller machines ("ATMs"). In fact, it did not own any ATMs.

Dickinson first learned about ATMA in 2006 when he received a tip from a golf acquaintance. Dickinson invested approximately $200,000 to buy 10 ATMs from RK to generate revenue from their usage fees. At the time he invested, Dickinson knew very little about RK's background, and nothing about the entity that he operated. Dickinson did very limited due diligence before he invested.[11]

In early 2007, Dickinson approached Schneiter, a supervising principal and WFG's principal compliance officer in charge of alternative investments, and proposed creating a private placement to offer an income stream to investors based on the acquisition and operation of ATMs, similar to his personal investment. Under Schneiter's supervision, Dickinson formed ATMA and assisted with drafting the required private placement memorandum.[12] Dickinson intended to sell the securities to WFG's customers.[13] Dickinson and Schneiter formed the general partner of ATMA, with Schneiter becoming a 5% owner and the Chief Compliance Officer of the general partner,[14] and Dickinson becoming a 90% owner.[15] The two of them were to be compensated through a 20% fee to be paid to the general partner from revenues generated from the ATMs. WFG permitted Dickinson to sell interests in ATMA as private securities transactions.[16]

Dickinson told investors that ATMA was to purchase ATMs and contract with an entity called ATM Financial Services ("ATMFS") to manage and service the ATMs at various locations, such as convenience stores and supermarkets. ATMFS would hold a lease with the owner of the property where an ATM was located. Revenue generated from the use of the ATMs would go to investors, as well as to pay for servicing and the lease costs.[17]

For his due diligence, Dickinson took several steps, but they were inadequate and incomplete. He spoke with RK and others interested in the ATMA transactions. He spoke with several purported investors who had purchased ATMs through ATMA, but he did not verify their actual ownership. Dickinson also called an ATM service entity the purported investors referred him to and spoke to someone working there, but he never confirmed any details of their

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[11] Compl. ¶ 8.

[12] Compl. ¶¶ 11, 19-21.

[13] Compl. 11.

[14] Compl. ¶ 3.

[15] Compl. ¶ 22.

[16] Decl. ¶ 17.

[17] Decl. ¶ 17.

conversation. Dickinson spoke to several other individuals he considered generally knowledgeable on investments, including clients and an acquaintance he met at a golf club, but none had specific knowledge of ATMFS or the business of managing ATMs. Dickinson also spoke with two attorneys RK knew who claimed to be setting up similar offerings. Dickinson reviewed documents provided by persons interested in the ATMA transactions, but he did not conduct adequate and reasonable due diligence in this review and missed key red flags that signaled fraud.[18]

Had Dickinson conducted adequate and reasonable due diligence, he would have detected multiple red flags in the materials he reviewed, including the following:

- most of the ATM retail space lease agreements were at least partially handwritten, and in some cases the signatures did not match the printed names, information was partially blank, or the handwriting of the merchant signatories was strikingly similar to that of one of the purported investors;

- the Offering Memorandum required a minimum five-year term for ATM retail lease agreements, but six of the 25 lease agreements had lease terms shorter than five years;

- the Offering Memorandum required a minimum of six months verifiable performance history, but the performance history for the ATMs was stale, sometimes dating back as far as 2005, and did not contain the performance history for the six months prior to their purchase by ATMA;

- the Offering Memorandum required each ATM to have a minimum average of 400 transactions per month in the six months prior to purchase by ATMA, but, in addition to being stale, the performance history provided by ATMFS showed that 10 of the 45 ATMs purchased averaged fewer than 400 transactions per month;

- six of the retail space lease agreements were with an entity known as ATMU, whose relationship to ATMFS Dickinson and Schneiter never questioned;

- the average transaction performance history for the ATMs included on a processing report spreadsheet provided by ATMFS was inconsistent with the underlying processing reports in 43 out of 45 cases, and in 38 of those 43 cases, the average performance history was overstated on the spreadsheet; and

[18] Compl. ¶¶ 12-18.

- several of the ATM surcharges reflected on the processing report Schneiter provided by ATMFS were handwritten and inconsistent with the surcharges set forth in the lease agreements.[19]

Between October and December 2007, Dickinson sold limited partnership interests in ATMA to seven WFG customers for $1,024,000.[20]

G. The Enterprise Underlying ATMA Was Fraudulent and Unsuitable for any Investor

In fact, ATMFS, the entity that was supposedly servicing the fictitious ATMs, was a "Ponzi" scheme.[21] By January 2008, Dickinson learned that ATMFS had not used ATMA funds to purchase ATM machines and that earlier investors were paid fictitious returns with money obtained from later investors. Two individuals among the purported earlier investors with whom Dickinson spoke in conducting his due diligence were convicted of conspiracy to commit wire fraud and wire fraud and received prison sentences.[22] The seven investors to whom Dickinson sold interests in ATMA suffered a total loss.[23]

In sum, Dickinson failed to conduct adequate and reasonable due diligence regarding ATMA and, thus, failed to recognize that ATMA was a fraudulent enterprise and not a suitable investment for any investor. Dickinson thus violated NASD Rules 2310 and 2110.[24]

III. Sanctions

A. Rule 2310

For unsuitable recommendations, FINRA's Sanction Guidelines ("Guidelines") recommend a fine of $2,500 to $110,000. They also recommend that adjudicators suspend an individual respondent in all capacities for ten business days to two years. In aggravating circumstances, adjudicators may consider a bar. If aggravating factors predominate, the Guidelines suggest that adjudicators "strongly consider" a bar.[25]

Aggravating factors predominate here. First, Dickinson's violations resulted in significant financial lost to investors.[26] The seven investors lost their entire investment, over $1 million

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[19] Decl. ¶ 19.

[20] Compl. ¶¶ 1, 27; Decl. ¶ 21.

[21] Decl. ¶ 18.

[22] Compl. ¶¶ 30-31.

[23] Decl. ¶ 22.

[24] A violation of any other NASD Rule is a violation of Rule 2110.

[25] FINRA Sanction Guidelines at 94 (2015), http://www.finra.org/Industry/Sanction-Guidelines.

[26] Principal Consideration 11, Guidelines at 6.

total. Second, Dickinson's actions were reckless.[27] He relied on statements by parties interested in the transactions and failed to verify information independently. He ignored red flags such as the partially handwritten documents where the printed names did not match the corresponding signatures. Third, Dickinson had a financial interest in selling the securities to the seven customers that was beyond an ordinary commission or fee—he was to share in 20% of the revenue stream generated by ATMA in the form of a fee to the general partner of ATMA, which he and Schneiter owned. That was a conflict of interest.[28] Fourth, by treating the sale of interests in ATMA as an outside business activity, Dickinson and Schneiter shielded their activity from the Firm's supervision, thereby depriving their customers of the full benefit of supervision and oversight by WFG's compliance department. This is akin to concealing information from the Firm or misleading it.[29] I therefore conclude that a bar in all capacities is appropriately remedial.

The Guidelines further provide that adjudicators may order a respondent to pay restitution "when an identifiable person, member firm or other party has suffered a quantifiable loss proximately caused by a respondent's misconduct." In this case, the Firm has provided a list of the customers and the specific amount each lost. I therefore conclude that restitution is appropriate. Dickinson is ordered to pay restitution to the customers and in the principal amounts specified in Addendum A attached to this Decision, plus interest at the rate established for the underpayment of income taxes in Section 6621(a) of the Internal Revenue Code, 26 U.S.C. § 6621(a), from September 25, 2013, until paid.[30] The customers are identified by name in the Addendum B to this Decision, which is served only on the Parties.[31]

IV. Order

Stuart G. Dickinson is barred from associating with any FINRA member firm in any capacity for selling securities without reasonable grounds for thinking them suitable for any investor, in violation of NASD Rules 2310 and 2110. He also is ordered to pay $924,000 in restitution to the customers identified on the attached schedule, plus interest at the rate established for the underpayment of income taxes in Section 6621(a) of the Internal Revenue Code, 26 U.S.C. § 6621(a), from September 25, 2013, until paid.

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[27] Principal Consideration 13, Guidelines at 7.

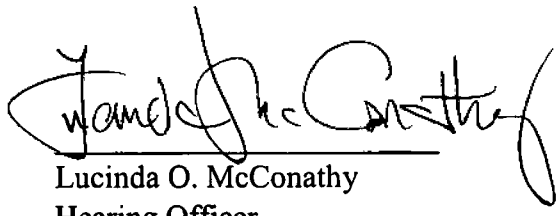
[28] Principal Consideration 17, Guidelines at 7.

[29] Principal Consideration 10, Guidelines at 6.

[30] Enforcement's calculations do not include pre-judgment interest. The date for the commencement of interest is the date on which WFG terminated Dickinson.

[31] In its Default Motion, Enforcement explained that customer PC settled an arbitration claim with WFG and therefore Enforcement does not request restitution for that customer. Enforcement does not indicate if the settlement covered PC's entire $100,000 loss. And, although Dickinson could be ordered to pay the difference between the $100,000 loss and the settlement payment, the record provides no basis for determining that difference, if any. Accordingly, the restitution ordered here does not cover any of PC's loss.

The bar shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA. The restitution shall be due on a date set by FINRA, but not sooner than 30 days after this decision becomes FINRA's final disciplinary action in this proceeding.



Lucinda O. McConathy
Hearing Officer

Copies to:

Stuart G. Dickinson (via first-class mail)
Albert A. Starkus III, Esq. (via email and first-class mail)
Michael P. Manly, Esq. (via email)
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FINANCIAL INDUSTRY REGULATORY AUTHORITY
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Department of Enforcement v. Stuart G. Dickinson
Disciplinary Proceeding No. 2012033286901

Default Decision
ADDENDUM A

Restitution to Customers

CUSTOMER(S)	RESTITUTION AMOUNT
AT	$124,000
CK	$400,000
SDK Partnership Attention: KK	$50,000
Jackpot ATM, LLC	$200,000
SF	$50,000
KK & MK	$100,000
TOTAL	**$924,000**