

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

V.

DAVID JC BOLTON
(CRD No. 5038018),

Respondent.

Disciplinary Proceeding
No. 2016049775701

Hearing Officer—RES

DEFAULT DECISION

August 24, 2018

For unsuitable trading, Respondent is barred from associating with any FINRA member firm in any capacity. Respondent also caused a member firm to maintain inaccurate books and records and caused a member firm to fail to preserve books and records.

For the Complainant: Karen Cherrington, Esq. and Colleen O’Loughlin, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: No appearance.

DECISION

I. Introduction

The Department of Enforcement filed a Complaint alleging three causes of action against David Bolton, formerly a registered representative. The Complaint alleges, first, that Bolton engaged in unsuitable short-term trading of Class A mutual fund shares in the accounts of his two largest customers, and unsuitably split one of the customer’s mutual fund investments into 42 different funds across 11 fund families. As a result, the customers allegedly paid \$24,747 in unnecessary sales charges. Second—and in connection with the same two customers—Bolton allegedly caused his member firm employer to maintain inaccurate books and records by mismarking or causing others to mismark as “unsolicited” 120 electronic order tickets for trades that Bolton had, in fact, solicited. Third, Bolton allegedly caused his firm employer to fail to preserve accurate books and records by taking the files of his customers with him when he moved from that firm to another firm and later destroyed those files.

Enforcement served Bolton with the Complaint in accordance with FINRA Rules. Bolton did not file an Answer. Enforcement filed a motion for entry of default decision and the

imposition of sanctions (“Default Motion”), together with counsel’s declaration and supporting exhibits. Bolton did not file an opposition. For the reasons stated below, I find Bolton in default, grants the Default Motion, and issues this Default Decision.

II. Findings of Fact and Conclusions of Law

A. Bolton’s Background

David Bolton entered the securities industry in October 2005 through an association with a FINRA member firm.¹ From October 31, 2011 through November 10, 2014, Bolton was registered with FINRA as a General Securities Representative employed by Signator Investors, Inc. (“Signator”) in Bowling Green, Kentucky.² After voluntarily leaving Signator, Bolton was employed by Thurston, Springer, Miller, Herd & Titak, Inc. (“Thurston”) from November 10, 2014, to February 5, 2016.³ On February 5, 2016, Bolton voluntarily resigned from Thurston.⁴ On February 10, 2016, Thurston filed a Uniform Termination for Securities Industry Registration (“Form U5”) with respect to Bolton.⁵ Since leaving Thurston, Bolton has not been registered with FINRA or associated with a FINRA member firm.⁶

On April 15, 2016, Signator filed an amended Form U5 to disclose a customer complaint against Bolton.⁷ The amendment stated that Bolton recommended unsuitable investments for two customer accounts.⁸

B. Jurisdiction

The two essential prerequisites for FINRA’s jurisdiction in this disciplinary proceeding are met because Enforcement filed the Complaint on April 12, 2018—within two years after Signator filed the April 15, 2016 amendment to a Form U5 notice of termination⁹—and the Complaint charges Bolton with violations committed while he was registered.¹⁰

¹ Declaration of Karen Cherrington Supporting Enforcement’s Motion for Entry of Default Decision and Request for Sanctions (“Decl.”) ¶ 5.

² Decl. ¶ 5.

³ Decl. ¶ 5.

⁴ Decl. ¶ 5.

⁵ Complaint (“Compl.”) ¶ 4.

⁶ Decl. ¶ 5.

⁷ Decl. ¶ 6.

⁸ Decl. ¶ 6.

⁹ Decl. ¶ 8; FINRA By-Laws, Art. V, Sec. 4(a)(i).

¹⁰Decl. ¶ 8; FINRA By-Laws, Art. V, Sec. 4(a).

C. Origin of the Investigation

The investigation and this disciplinary proceeding originated from Signator's amended Form U5.¹¹

D. Bolton's Default

Enforcement served the Complaint, the First Notice of Complaint, and the Second Notice of Complaint by first class certified mail on Bolton's Bowling Green, Kentucky residential address reflected in FINRA's Central Registration Depository, in accordance with FINRA Rule 9134(a)(2).¹² Bolton did not file an Answer or otherwise respond to the Complaint.¹³ I find that Bolton defaulted.

E. Bolton's Default Warrants the Issuance of a Default Decision

FINRA Rule 9269 authorizes the Hearing Officer to issue a default decision against a respondent who does not file an Answer to the Complaint within the time afforded under Rule 9215.¹⁴ Bolton had the opportunity to file an Answer but did not. He was warned of the possible consequences of not answering the Complaint.¹⁵ I find a default decision against Bolton is warranted.¹⁶ Upon a default, FINRA Rules 9215(f) and 9269 authorize the Hearing Officer to treat the allegations in the Complaint as admitted by the respondent. As described below, I find that Bolton committed each of the violations charged, and impose appropriate sanctions.

F. Bolton Engages in Unsuitable Trading, Causes a Member Firm to Maintain Inaccurate Books and Records and Fails to Preserve Books and Records, in Violation of FINRA Rules

The Complaint alleges three causes of action against Bolton: unsuitable trading in violation of FINRA Rules 2111 and 2010; causing a member firm to maintain inaccurate books

¹¹ Decl. ¶ 9.

¹² Decl. ¶¶ 12, 16. The U.S. Postal Service provided Enforcement with a new zip code for Bolton, and Enforcement reissued and sent the Complaint, First Notice of Complaint, and Second Notice of Complaint by first class certified mail to Bolton's address using the new zip code. Decl. ¶¶ 12, 16. Enforcement also sent the Complaint, First Notice of Complaint, and Second Notice of Complaint by first class mail, overnight courier, and email. Decl. ¶¶ 12, 16. Bolton had actual notice of the Complaint and First Notice of Complaint, as he sent a reply email acknowledging receipt. In addition, Bolton confirmed receipt of the Complaint and Second Notice of Complaint in a telephone call with Enforcement. Decl. ¶ 17.

¹³ Decl. ¶¶ 14, 18.

¹⁴ FINRA Rule 9269(a).

¹⁵ Second Notice of Complaint.

¹⁶ Bolton is hereby notified that he may move to set aside this Default Decision under FINRA Rule 9269(c) if he can show good cause.

and records in violation of FINRA Rules 4511 and 2010; and causing a member firm to fail to preserve books and records in violation of FINRA Rules 4511 and 2010.

1. Unsuitable Trading in Violation of FINRA Rules 2111 and 2010

a. The Governing Rules

FINRA Rule 2111 requires that:

A member or an associated person must have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer, based on the information obtained through the reasonable diligence of the member or associated person to ascertain the customer's investment profile.¹⁷

A pattern of short-term mutual fund trading is presumptively unsuitable.¹⁸ Substantial sales charges and related fees also may make a recommended transaction unsuitable.¹⁹

FINRA Rule 2010 provides that “[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.”

b. Application to this Case

From July 2012 through June 2015, while working at Signator and then Thurston, Bolton engaged in unsuitable short-term mutual fund trading in the accounts of two customers, “JK” and “AK,” causing them to pay \$24,747 in unnecessary sales charges.²⁰ AK, 101 years old, was JK’s mother.²¹ Bolton engaged in 60 unsuitable short-term trades.²² He sold mutual funds in JK’s and

¹⁷ FINRA Rule 2111(a); *Dep’t of Enforcement v. Newport Coast Securities, Inc.*, No. 2012030564701, 2018 FINRA Discip. LEXIS 14, at *77 (NAC May 23, 2018); *Dep’t of Enforcement v. Escarcega*, No. 2012034936005, 2017 FINRA Discip. LEXIS 32, at *51-54 (NAC July 20, 2017).

¹⁸ *Dep’t of Enforcement v. Wilson*, No. 2007009403801, 2011 FINRA Discip. LEXIS 67, at *17 (NAC Dec. 28, 2011) (“The SEC and the NAC have held that a pattern of mutual fund switching ... creates a rebuttable presumption of unsuitability.”); *Winston H. Kinderdick*, 46 S.E.C. 636, 639 (1976) (“Mutual fund shares generally are suitable only as long-term investments and cannot be regarded as a proper vehicle for short-term trading, especially where such trading involves new sales loads.”).

¹⁹ *Dep’t of Enforcement v. McGee*, No. 2012034389202, 2016 FINRA Discip. LEXIS 33, at *58 (NAC July 18, 2016) (Respondent “implemented this investment strategy, knowing that [his customer]’s sale of the variable annuities would result in surrender fees of more than \$36,000”), *aff’d*, *Bernard G. McGee*, Exchange Act Release No. 80314, 2017 SEC LEXIS 987 (Mar. 27, 2017), *pet. for rev. denied*, *McGee v. SEC*, No. 17-1240-ag, 2018 U.S. App. LEXIS 12112 (May 9, 2018).

²⁰ Compl. ¶¶ 1, 9-10, 13-28.

²¹ Compl. ¶¶ 9, 20.

²² Compl. ¶ 45.

AK's accounts within 92 to 274 days of purchasing them.²³ In addition, Bolton unsuitably split \$731,265 in investment funds in JK's accounts between 42 different mutual funds in 11 fund families.²⁴

Bolton's mutual fund trading was unsuitable for a number of reasons. First, the short-term nature of the trades conflicted with JK's and AK's longer-term investment horizon and made the trades presumptively unsuitable. Second, the \$24,747 in sales charges outweighed any marginal benefit from the new mutual funds.²⁵ Third, the new mutual funds' objectives and risks were similar to the funds that were sold.²⁶ Fourth, splitting JK's investment funds into 42 different mutual funds in 11 fund families generated higher sales charges because JK was unable to take advantage of savings from breakpoints available for larger investments.²⁷

For these reasons, Bolton violated FINRA Rule 2111. A violation of FINRA Rule 2111 constitutes a violation of FINRA Rule 2010.²⁸

2. Causing a Member Firm to Maintain Inaccurate Books and Records in Violation of FINRA Rules 4511 and 2010

FINRA Rule 4511 provides that “[m]embers shall make and preserve books and records as required under the FINRA rules, the Exchange Act and the applicable Exchange Act rules.”²⁹ FINRA Rule 0140 provides that “[p]ersons associated with a member shall have the same duties and obligations as a member under the Rules.”³⁰

While working at Signator, Bolton engaged in a practice of falsely marking, or causing others to mark falsely, the electronic order tickets for solicited trades to make it appear that the trades were unsolicited.³¹ He caused all the trades in JK's accounts from July 2012 through October 2014, and all the trades in AK's account from May through October 2014, to be falsely

²³ Compl. ¶ 9.

²⁴ Compl. ¶¶ 9, 32.

²⁵ Compl. ¶¶ 9, 10.

²⁶ Compl. ¶¶ 17, 28.

²⁷ Compl. ¶¶ 9, 33.

²⁸ *Stephen J. Gluckman*, 54 S.E.C. 175, 185 (1999) (“The NASD’s determination that Gluckman violated Conduct Rule 2110 is in accord with our long-standing and judicially-recognized policy that a violation of another Commission or NASD rule or regulation ... constitutes a violation of Conduct Rule 2110.”). Conduct Rule 2110 was the predecessor of FINRA Rule 2010.

²⁹ FINRA Rule 4511(a); *Dep’t of Enforcement v. Meyers Associates, L.P.*, No. 2010020954501, 2018 FINRA Discip. LEXIS 1, at *14-15 (NAC Jan. 4, 2018) (applying FINRA Rule 4511).

³⁰ FINRA Rule 0140(a).

³¹ Compl. ¶ 55.

marked as unsolicited despite knowing he solicited them.³² This conduct caused Signator's books and records to be inaccurate and thereby violated FINRA Rule 4511. A violation of FINRA Rule 4511 is also a violation of FINRA Rule 2010.³³

3. Causing a Member Firm to Fail to Preserve Books and Records in Violation of FINRA Rules 4511 and 2010

Bolton violated FINRA Rules 4511 and 2010 by destroying books and records he had maintained on behalf of Signator. When Bolton resigned from Signator in 2014, he did not return customer files as required.³⁴ Then in 2016, as he prepared to resign from Thurston, he destroyed all his customer files.³⁵ As a result, Signator failed to preserve mutual fund switch letters, suitability documentation, and other books and records relating to Bolton's customers as FINRA rules required.³⁶

4. Summary

In sum, Bolton engaged in unsuitable trading, caused a member firm to maintain inaccurate books and records, and caused a member firm to fail to preserve books and records, in violation of FINRA Rules.

III. Sanctions

According to FINRA's Sanction Guidelines ("Guidelines"), the purpose of the disciplinary process is to protect the investing public, support and improve overall business standards in the securities industry, and decrease the likelihood of recurrence of misconduct by the disciplined respondent.³⁷ The Guidelines contain General Principles Applicable to All Sanction Determinations, Principal Considerations in Determining Sanctions, and Guidelines applicable to specific violations.

The Principal Considerations include aggravating factors that apply to this case. Bolton did not accept responsibility for or acknowledge his misconduct prior to detection.³⁸ Instead, upon being served with the Complaint, he defaulted. He engaged in numerous acts and a pattern

³² Compl. ¶¶ 35, 55-56.

³³ *Dist. Bus. Conduct Comm. v. Sickels*, No. C9A950036, 1997 NASD Discip. LEXIS 23, at *10 (NBCC Jan. 22, 1997) ("an associated person acts in contravention of just and equitable principles of trade by falsifying records submitted to the NASD or the member firm").

³⁴ Compl. ¶ 62.

³⁵ Compl. ¶ 62.

³⁶ Compl. ¶ 63.

³⁷ FINRA Sanction Guidelines at 2 (2018) (General Principle No. 1), <http://www.finra.org/industry/sanction-guidelines>.

³⁸ Guidelines at 7 (Principal Consideration No. 2: Whether the respondent accepted responsibility for and acknowledged the misconduct to his or her employer prior to detection and intervention by the firm).

of misconduct over an extended period.³⁹ His misconduct was the result of intentional acts, resulting in his monetary gain.⁴⁰ He injured customers JK and AK.⁴¹ One of the injured customers was 101 years old and was not a sophisticated investor.⁴² There are no mitigating factors.

A. Unsuitable Trading

The Sanction Guideline for Unsuitable Recommendations (first cause of action) recommends a fine of \$2,500 to \$110,000 and suspension for a period of 10 business days to two years.⁴³ Where aggravating factors predominate, the adjudicator should strongly consider a bar.⁴⁴ Because aggravating factors predominate in this case and there are no mitigating factors, I bar Bolton from associating with any FINRA member firm in any capacity.

B. Causing a Member Firm to Maintain Inaccurate Books and Records

According to the Sanction Guideline for Recordkeeping Violations (second cause of action), the adjudicator should consider a fine of \$1,000 to \$15,000 and suspension for 10 business days to three months. Where aggravating factors predominate, the adjudicator should consider a fine of \$10,000 to \$146,000 and suspension for up to two years, or a bar. There are five Principal Considerations specific to this Sanction Guideline. They are: the nature and materiality of the inaccurate or missing information; the nature, proportion, and size of the firm records at issue; whether inaccurate or missing information was entered or omitted intentionally, recklessly, or as the result of negligence; whether the violations occurred over two or more examination or review periods or over an extended period of time, or involved a pattern or patterns of misconduct; and whether the violations allowed other misconduct to occur or to escape detection.⁴⁵

In this case, Bolton caused electronic order tickets to be inaccurately marked as unsolicited. This designation is important to a firm's supervision of an associated person to

³⁹ Guidelines at 7 (Principal Consideration No. 8: Whether the respondent engaged in numerous acts and/or a pattern of misconduct); Principal Consideration No. 9: Whether the respondent engaged in the misconduct over an extended period of time).

⁴⁰ Guidelines at 8 (Principal Consideration No. 13: Whether the respondent's misconduct was the result of an intentional act, recklessness or negligence; Principal Consideration No. 16: Whether the respondent's misconduct resulted in the potential for the respondent's monetary or other gain).

⁴¹ Guidelines at 7 (Principal Consideration No. 11: With respect to other parties, including the investing public, (a) whether the respondent's misconduct resulted directly or indirectly in injury to such other parties, and (b) the nature and extent of the injury). Insofar as Bolton's former member firm employer reimbursed JK and AK for their losses, Bolton's misconduct resulted in injury to the former member firm employer.

⁴² Guidelines at 8 (Principal Consideration No. 18: The level of sophistication of the injured or affected customer).

⁴³ Guidelines at 95.

⁴⁴ Guidelines at 95.

⁴⁵ Guidelines at 29.

monitor whether he is exercising undue influence over customers. As a result of Bolton's misconduct, all 104 transactions in JK's accounts were falsely marked as unsolicited and, in a six-month period, all 26 transactions in AK's account were falsely marked as unsolicited. The large number of falsely marked transactions indicates that he acted intentionally. His violations involved a pattern of misconduct and occurred over an extended period—more than two years in the case of JK's accounts.⁴⁶ Bolton's mismarking made it easier for his unsuitable mutual fund trading to go undetected.

Therefore, for causing a member firm to maintain inaccurate books and records in violation of FINRA Rules 4511 and 2010, I would fine Bolton \$20,000 and suspend him from associating with any FINRA member firm in any capacity for one year.⁴⁷ However, in light of the bar already imposed in this Default Decision, I consider an additional sanction for the second cause of action to be unnecessary and do not impose it.⁴⁸

C. Causing a Member Firm to Fail to Preserve Books and Records

The Sanction Guideline for Recordkeeping Violations also applies to Bolton's destruction of Signator's books and records (third cause of action). Applying the five considerations specific to that Sanction Guideline, the missing information consisted of mutual fund switch letters, suitability documentation, and other customer records. Such information is important to a firm in supervising an associated person to determine whether customers actually consented to mutual fund trading and whether such trading was suitable. The proportion and size of the records at issue were significant in that Bolton's destruction involved all the files for all his customers. The destruction was intentional and made it difficult for Signator to determine whether Bolton's customers consented to the mutual fund trading and whether such trading was suitable.

Therefore, for causing a member firm to fail to preserve books and records in violation of FINRA Rules 4511 and 2010, I would fine Bolton \$20,000 and suspend him from associating with any FINRA member firm in any capacity for one year. However, in light of the bar already imposed in this Default Decision, I consider an additional sanction for the third cause of action to be unnecessary and do not impose it.

⁴⁶ Compl. ¶ 35.

⁴⁷ I decline Enforcement's request to aggregate the second and third causes of action for sanction purposes because the violations were intentional, resulted in injury to public investors, and did not result from a single systemic problem or cause that has been corrected. Guidelines at 4 (General Principle No. 4).

⁴⁸ Guidelines at 10 ("Adjudicators may exercise their discretion in applying FINRA's policy on the imposition and collection of monetary sanctions as necessary to achieve FINRA's regulatory purposes").

IV. Order

Respondent David Bolton engaged in unsuitable trading in violation of FINRA Rules 2111 and 2010. For this violation, he is barred from associating with any FINRA member firm in any capacity.

Bolton also caused a member firm to maintain inaccurate books and records and fail to preserve books and records, in violation of FINRA Rules 4511 and 2010. Because of the bar, however, it is unnecessary to impose additional sanctions for these violations.

The bar shall be effective immediately if this Default Decision becomes FINRA's final action in this disciplinary proceeding.



Richard E. Simpson
Richard E. Simpson
Hearing Officer

Copies to:

David JC Bolton (via email, first class mail, and overnight courier)

Karen Cherrington, Esq. (via email and first class mail)

Colleen O'Loughlin, Esq. (via email)

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