

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

Department of Enforcement,

Complainant,

v.

Dion R. Padilla
(CRD No. 4432230),

Respondent.

DISCIPLINARY PROCEEDING
No. 2014040362001

Hearing Officer: MJD

**ORDER ACCEPTING
OFFER OF SETTLEMENT**

Date: February 7, 2017

INTRODUCTION

Disciplinary Proceeding No. 2014040362001 was filed on June 9, 2016, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent Dion R. Padilla (Padilla or Respondent) submitted an Offer of Settlement (Offer) to Complainant dated January 20, 2017. Pursuant to FINRA Rule 9270(e), the Complainant and the National Adjudicatory Council (NAC), a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA) have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to FINRA Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.

Under the terms of the Offer, Respondent has consented, without admitting or denying the allegations of the Complaint (as amended by the Offer of Settlement), and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, to the entry of findings and violations consistent with the allegations of

the Complaint (as amended by the Offer of Settlement), and to the imposition of the sanctions set forth below, and fully understands that this Order will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA.

BACKGROUND

1. Padilla entered the securities industry in August 2001, as a General Securities Representative of a member of FINRA. Padilla, during all periods mentioned herein, was associated with NEXT Financial Group, Inc., and was registered with FINRA under Article V of the By-Laws as a General Securities Representative. Padilla is currently associated with NEXT Financial Group, Inc. (the "Firm") and registered with FINRA, and thus remains subject to FINRA's jurisdiction. Padilla has no prior disciplinary history.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:

2. Padilla effected an unauthorized purchase of a variable annuity for a firm customer and, in connection with the variable annuity purchase, misrepresented that the investment was not a variable annuity.
3. As a result of the foregoing misconduct, Padilla violated FINRA Rule 2010.
4. Customer RS and his wife JS met with Padilla on October 3, 2011 to discuss the transfer of their accounts to Padilla. RS and JS stressed to Padilla that they did not want any of their funds invested in a variable annuity due to the high fees associated with variable annuities and because of their desire for liquidity.
5. In January of 2012, JS transferred her account (in excess of \$70,000) to Padilla. Following the transfer of JS's account, Padilla acknowledged JS's objections to

variable annuities in an email he sent to her on January 25, 2012. The subject of the email was "No Annuity in your investment portfolio." In order to further reassure JS that he had not invested her account into a variable annuity, Padilla wrote:

I simply want to provide you an e-mail to simply confirm that we are NOT investing any of your funds that were transferred over to our institution and for me to manage into a Variable Annuity – of any sort . . .we will be utilizing mutual funds and ETFs as your investment vehicles. Please be advised that we are NOT using or purchasing any sort of annuity "type" product.

I hope this email clarifies and identifies your investment vehicle within the WE2 platform and eases your concerns that I was NOT and will NOT be investing your funds into an annuity product.

6. Regarding JS's account, Padilla complied with the wishes of JS that the account be invested in products other than a variable annuity.
7. At the initial meeting on October 3, 2011, RS and JS also discussed with Padilla investment options for a lump-sum distribution that RS would receive from his 401(k) plan upon his retirement. At the time of the meeting, RS was 59 years old and working as a technician for AT&T, his employer for over 39 years.
8. Over the next 18 months, Padilla met with RS and JS on approximately six occasions to discuss RS's retirement income needs and the rollover of approximately \$780,000 from RS's 401(k) plan.
9. During these meetings, Padilla repeatedly pitched the idea of a variable annuity investment to RS. RS, however, was steadfast in his refusal to purchase a variable annuity.
10. In April of 2013, RS retired from his employer.

11. On a new account form dated April 19, 2013, RS stated that he had a moderate risk tolerance and a liquid net worth of \$886,000. RS specified that his investment objectives were growth and income and that he planned to start immediate withdrawals of \$4,000 in monthly income.
12. On the same date, RS signed documents to complete the purchase of a Jackson National Life Perspective L Series Variable Annuity with contract number xxxxxx7776 ("Variable Annuity"). RS funded the Variable Annuity with an initial amount of \$220,787. At the meeting with RS on April 19, 2013, Padilla represented to RS that the investment was a type of managed money investment and specifically stated that it was not a variable annuity. Due to the oral misrepresentations made by Padilla, RS was unaware that the documents pertained to the purchase of a variable annuity.
13. On April 23, 2013, RS's variable annuity contract was issued by Jackson National Life Insurance Company ("Jackson Life"), and Jackson Life sent RS a letter thanking him for his "recent purchase of a Jackson National Life Insurance Company annuity product!"
14. Upon receipt of the letter, RS became alarmed that Padilla had invested his retirement funds in a variable annuity contract.
15. On April 29, 2013, as a result of the Jackson Life letter, RS called Padilla to verify that the product he had purchased was not a variable annuity. Over the telephone, Padilla again made the misrepresentation that the investment was not a variable annuity. At the conclusion of the phone call, Padilla sent an email to RS confirming that RS's investment was not in a variable annuity, but rather, "structured . . . into an

investment vehicle with Jackson National Life.” Padilla specifically affirmed “First and foremost, we will not and have not invested your funds into a variable annuity product as you have previously mentioned to me in past meetings.”

16. Significantly, at the time Padilla wrote the email to RS, the only Jackson Life products that Padilla sold were variable annuities.
17. On the date of this misrepresentation, RS was still within the parameters of the Right to Examine provision (20 days from the date of the contract issuance), which would have allowed him to surrender the variable annuity without incurring a surrender charge.
18. If Padilla had informed RS on April 29, 2013, that RS was invested in a variable annuity, RS could have surrendered the Variable Annuity under the Right to Examine provision without incurring a penalty.
19. In reliance on Padilla’s representations that the investment was not a variable annuity, approximately three weeks after the initial purchase, on May 14, 2013, RS contributed an additional \$558,889 to the same variable annuity, resulting in a total principal investment of \$789,676 – a rollover of RS’s entire 401(k).
20. Padilla earned a net commission on the total Variable Annuity investment of approximately \$42,000.
21. Following the second contribution, RS withdrew funds on May 24, 2013 and noticed that the confirmation had a heading entitled “Perspective L Series Fixed & Variable Annuity Holdings Summary” and showed a portfolio invested 100% in “JNL Disc Mod Growth.” The reference on the confirmation to a variable annuity renewed RS’s

concern, and he again called Padilla to inquire about the nature of the investment.

Padilla reassured RS that the investment vehicle was not a variable annuity, explaining that the confirmation stated “annuity” because RS was receiving monthly disbursements. RS continued to make monthly withdrawals of approximately \$4,000.

22. In November of 2013, Jackson Life notified RS by letter that he had exceeded the withdrawal limitation for the year (approximately \$30,000) and that the excessive withdrawals could affect the values of the endorsements and riders associated with the Variable Annuity. RS had been unaware of any withdrawal limitation on his account, and based upon the wording of the letter, RS was convinced that Padilla had misrepresented the product.

23. After receipt of the Jackson Life letter, RS immediately tried to reach Padilla, but Padilla was unavailable. As a result, RS called Jackson Life and spoke to one of their representatives. RS expressed his concern that his account was invested in a variable annuity and asked what the letter meant. The Jackson Life representative confirmed that RS was invested in a variable annuity and told RS that he needed to contact Padilla.

24. When RS confronted him by telephone, Padilla initially denied that the account was invested in a variable annuity and stated that he would straighten out the paperwork with Jackson Life. Over the course of the next month, Padilla failed to meet with RS.

25. Finally, on January 2, 2014, Padilla met with RS and JS to discuss RS’s account. Padilla admitted, for the first time, that RS’s account was invested in a variable annuity. During the first 30 minutes of the meeting Padilla attempted to convince RS that the Variable Annuity was a great investment and that RS should retain the

annuity. When RS rejected Padilla's recommendation that he stay in the Variable Annuity, Padilla stated that there would be a surrender charge of approximately \$62,000 to exit the product.

26. Because RS did not want his funds invested in a variable annuity, RS decided to surrender the Variable Annuity.

27. Padilla's representation in the April 29, 2013 email that the investment was not a variable annuity caused RS to remain invested in the Variable Annuity beyond the expiration of the Right to Examine provision and caused RS to incur surrender charges in excess of \$60,000, which were ultimately paid by Padilla through the Firm.

FIRST CAUSE OF ACTION

Misrepresentations and Omissions of Material Fact - (FINRA Rule 2010)

28. FINRA Rule 2010 requires members and associated persons, in the conduct of their business, to "observe high standards of commercial honor and just and equitable principles of trade."

29. In April and May of 2013, Padilla made misrepresentations of material fact in connection with the sale of the Variable Annuity to RS. In particular the misrepresentations consisted of the following: (a) at the time Padilla presented the Variable Annuity application to RS on April 19, 2013, Padilla assured RS that the application was not for a variable annuity; (b) on April 29, 2013, Padilla convinced RS to keep the Variable Annuity beyond the Right to Examine period by reassuring him orally and in writing that the investment RS had purchased was not a variable annuity; and (c) between April 19, 2013 and May 14, 2013, Padilla caused RS to

invest an additional \$558,889 into the Variable Annuity by falsely claiming that the investment purchased was not a variable annuity.

30. The representations in Paragraph 29 were false because the product that Padilla sold to RS was a variable annuity.
31. Padilla's aforementioned misrepresentations were all false and misleading.
32. In reliance upon Padilla's material misrepresentations, customer RS initially invested \$220,787 in the Variable Annuity and, in further reliance on the material misrepresentations, made an additional investment in the Variable Annuity of \$558,889.
33. As a result of the foregoing conduct, Padilla violated FINRA Rule 2010.

SECOND CAUSE OF ACTION

Unauthorized Transactions - (FINRA Rule 2010)

34. On April 23 and May 14, 2013, Padilla made unauthorized purchases of the Variable Annuity in RS's account.
35. RS signed an application for the purchase of the Variable Annuity; however, the application did not provide Padilla purchase authorization due to misrepresentations that Padilla made about the investment at the time the document was signed and due to misrepresentations that Padilla made about the nature of the investment during the Right to Examine period.
36. Furthermore, RS repeatedly told Padilla that he did not wish to purchase a variable annuity.

37. By making unauthorized purchases of the variable annuity in RS's account, Padilla engaged in conduct inconsistent with just and equitable principles of trade and high standards of commercial honor, and thereby violated FINRA Rule 2010.

Based on the foregoing, Respondent violated FINRA Rule 2010.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondent from any future misconduct, and represent a proper discharge by FINRA, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

It is ordered that Respondent be fined \$10,000 and suspended for 15 months from association with any FINRA member firm in all capacities.

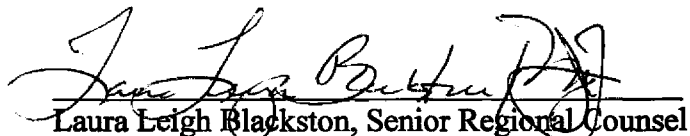
Respondent agrees to pay the monetary sanction upon notice that this Offer has been accepted and that such payment is due and payable. Respondent has submitted an Election of Payment form showing the method by which he proposes to pay the fine imposed.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

SO ORDERED.

FINRA

Signed on behalf of the
Director of ODA, by delegated authority



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