

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

Department of Enforcement,  
  
Complainant,

v.

Brian Simone,  
CRD No. 5357610,

Respondent.

Disciplinary Proceeding  
No. 2008016024701

Hearing Officer: Andrew H. Perkins

**ORDER ACCEPTING OFFER OF  
SETTLEMENT**

Date: October 6, 2011

**INTRODUCTION**

Disciplinary Proceeding No. 2008016024701 was filed on October 13, 2010, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent Brian Simone submitted an Offer of Settlement (Offer) to Complainant dated September 26, 2011. 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, 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, 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**

On August 8, 2007, Respondent was first registered with FINRA as a General Securities Representative through Morgan Stanley & Co. Incorporated (Firm 1). He remained registered in that capacity through Firm 1 until November 3, 2008. Thereafter, from November 24, 2008 through December 17, 2008, he was registered in the same capacity through member firm Banc of America Investment Services, Incorporated (Firm 2). Respondent was last associated with a member firm on August 15, 2011. Although Respondent has not been associated with a FINRA member firm since August 15, 2011, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws because (1) the Complaint was filed within two years after the date upon which he ceased to be associated with a FINRA member and (2) the Complaint charges him with misconduct committed while he was associated with a FINRA member.

### **FINDINGS AND CONCLUSIONS**

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

#### **SUMMARY**

1. On July 6, 2006, Respondent's authorization to act as an attorney in the Commonwealth of Massachusetts was suspended by the Supreme Judicial Court of Suffolk County in Massachusetts (Supreme Judicial Court) after the Board of Bar Overseers of the Supreme Judicial Court (Board of Bar Overseers) filed a petition alleging numerous violations, including forgery, fraud, misappropriation of funds, and misrepresentation. According to

the allegations, Respondent signed and notarized the signatures of sellers of real property to a deed transferring title, and caused the deed to be recorded, all without the sellers' knowledge, consent or authorization. Further, it was also alleged Respondent misappropriated approximately \$269,900 from the buyers of the property. On October 30, 2007, Respondent's authorization to act as an attorney was revoked by the Supreme Judicial Court. From June 21, 2007 through December 17, 2008, Respondent willfully failed to disclose material facts and provided false and misleading information on Forms U4 that he filed with two member firms regarding the suspension and/or revocation of his authorization to act as an attorney. In addition, while associated with a member firm, Respondent provided false information on an employment application for another member firm regarding his six-month period of unemployment following the suspension of his authorization to act as an attorney. Moreover, on December 15, 2008, Respondent created and submitted, through his employer member firm, a false written statement to the Massachusetts Securities Division concerning the Supreme Judicial Court's sanctions. This conduct violated NASD Conduct Rule 2110, IM-1000-1 and FINRA Rule 2010.

**Willful Failure to Disclose Material Information on a Form U4  
(NASD Conduct Rule 2110 and IM-1000-1)**

2. On July 6, 2006, Associate Justice Robert J. Cordy (Justice Cordy) of the Supreme Judicial Court entered an "Order of Immediate Temporary Suspension" (Order of Suspension) ordering the immediate suspension of Respondent from the practice of law in Massachusetts. The Order of Suspension was effected based upon a "Petition for Temporary Suspension" (Petition for Suspension) filed by the Board of Bar Overseers in a proceeding entitled: "In Re: Brian J. Respondent, BD – 2006 – 060." The Petition for Suspension alleged numerous violations, including forgery, fraud, misappropriation of

funds and misrepresentation. According to the Petition, Respondent signed and notarized the signatures of sellers of real property to a deed transferring title, and caused the deed to be recorded, all without the sellers' knowledge, consent or authorization. Further, it was also alleged Respondent misappropriated approximately \$269,900 from the buyers of the property.

3. On June 21, 2007, Respondent willfully failed to disclose a material fact on an initial Form U4 that he submitted or caused to be submitted with Firm 1. Specifically, on that Form U4, Respondent falsely answered "no" to Question 14F, which asks, "Have you ever had an authorization to act as an attorney, accountant, or federal contractor that was revoked or suspended?"
4. From June 21, 2007 through November 3, 2008, Respondent willfully failed to amend his Form U4 at Firm 1 to disclose the material fact that his authorization to act as an attorney had been suspended on July 6, 2006.
5. By failing to disclose on his Form U4 that his authorization to act as an attorney had been suspended, Respondent violated NASD Conduct Rule 2110 and IM-1000-1.

**Willful Filing of Misleading and Inaccurate Form U4  
(Violations of NASD Conduct Rule 2110 and IM-1000-1)**

6. On May 29, 2007, Respondent applied for a position as a registered representative at Firm 1 by completing the firm's employment application. On the employment application, Respondent provided false and misleading information regarding his employment history. Specifically, Respondent falsely indicated on the application that, from January 1, 1997 to December 31, 2006, he had worked as an attorney at

Respondent's Law Offices, and that, on January 2, 2007, he had begun his employment as a loan officer for a mortgage company.

7. In fact, Respondent's law practice had closed in July 2006 due to the suspension of his authorization to act as an attorney, and he had been unemployed from July 2006 to January 2007. Moreover, to further conceal his period of unemployment caused by his suspension, Respondent indicated on the Firm 1 employment application that he had closed his law office because the "volume of business slowed due to real estate markets."
8. Respondent intentionally withheld disclosing his six-month period of unemployment following the suspension of his authorization to practice law because he believed Firm 1 would not have otherwise hired him for the position.
9. On June 21, 2007, Respondent willfully disclosed false material information regarding his employment history on the initial Form U4 that he submitted or caused to be submitted with Firm 1. Specifically, under Section 12 of his initial Form U4, entitled "*Employment History*," the document provided the following instructions:

*Provide complete employment history for the past 10 years. [ ] Account for all time including full and part-time employments, self-employment, military service and homemaking. Also include status such as unemployment, [ ].*

Respondent, however, did not follow these instructions. Instead, Respondent willfully provided false and misleading information regarding his employment history on his initial Form U4 with Firm 1, claiming that he worked at Respondent's Law Offices from January 1997 through December 2006. He did not include his period of unemployment from July 2006 through January 2007 following the suspension of his authorization to act as an attorney.

10. From June 21, 2007 through November 3, 2008, Respondent willfully failed to amend his Form U4 at Firm 1 to correct this false material information.
11. By providing false and misleading information on a Form U4, Respondent violated NASD Conduct Rule 2110 and IM-1000-1.

**Willful Failure to Disclose Material Information on a Form U4  
(NASD Conduct Rule 2110 and IM-1000-1)**

12. Pursuant to Article V, Section 2(c), of the FINRA By-Laws, the information provided on a Form U4 must be kept current by means of amendments not later than 30 days after the registered representative learns of "the facts and circumstances giving rise to the amendment." This requirement was in effect during the relevant time period here.
13. On September 5, 2007, the Board of Bar Overseers issued a "Statement of Disciplinary Charges" against Respondent. The Statement of Disciplinary Charges realleged the same issues and violations as stated in the Petition for Suspension. In addition, the Statement of Disciplinary Charges added the following allegations against Respondent:
  - one of the sellers of real property was not competent to execute the deed;
  - Respondent intentionally misappropriated the funds from the property sale by transferring a portion of the funds from his business account into a personal savings account and thereafter intentionally misappropriating the funds for personal purposes; and
  - Respondent engaged in misconduct involving dishonesty, fraud, deceit, misrepresentation, and that he failed to account for fiduciary funds.
14. On September 6, 2007, Respondent resigned from the practice of law by signing a document entitled "Affidavit of Resignation Submitted by [Respondent] Pursuant to Supreme Judicial Court Rule 4:01, §15" (Affidavit of Resignation), which incorporated by reference the Statement of Disciplinary Charges. Additionally, Respondent acknowledged the following in his Affidavit of Resignation:

- he will not be eligible to apply for reinstatement before eight years have passed;
- he may never be reinstated to practice law in Massachusetts;
- he does not wish to contest any bar discipline now pending and that a judgment for his disbarment would likely result if the matters were litigated; and
- he agrees, without admitting to the material facts alleged, not to contest the material facts.

15. On October 30, 2007, Justice Cordy entered a "Judgment of Disbarment" against Respondent, in that the court accepted Respondent's Affidavit of Resignation from September 6, 2007 and ordered Respondent's disbarment from the practice of law in Massachusetts retroactive to July 6, 2006, the date of his original suspension. Since the disbarment was retroactive to July 2006, Respondent would not be eligible to apply for reinstatement before July 2014. From October 30, 2007 through November 3, 2008, however, Respondent willfully failed to amend his Form U4 at Firm 1 to disclose the material fact that he had been disbarred from the practice of law.
16. Indeed, from November 8, 2007 through July 3, 2008, Respondent submitted or caused to be submitted five amended Forms U4 to Firm 1, but failed to amend his answer to Question 14F as to whether his authorization to act as an attorney had been revoked.
17. By failing to amend his Form U4 to disclose that his authorization to act as an attorney had been revoked, Respondent violated NASD Conduct Rule 2110 and IM-1000-1.

**Falsification of Firm Document  
(NASD Conduct Rule 2110)**

18. On October 3, 2008, while associated with Firm 1, Respondent provided false information on an employment application for Firm 2 regarding his six-month period of unemployment following the suspension of his authorization to practice law.
19. Specifically, while associated with Firm 1, Respondent applied for a position as a registered representative at Firm 2 by completing the firm's employment application. The employment application instructed Respondent to provide a ten-year employment history, include periods of unemployment. Respondent, however, falsely indicated on the Firm 2 employment application that he worked at Respondent's Law Offices from January 1, 2000 through June 2007. Respondent did not disclose that he was actually unemployed from July 2006 to January 2007 following the suspension of his authorization to act as an attorney.
20. By providing false information on Firm 2's employment application, Respondent violated NASD Conduct Rule 2110.

**Willful Filing of Misleading and Inaccurate Form U4  
(Violations of NASD Conduct Rule 2110, IM-1000-1 and FINRA Rule 2010)**

21. On November 14, 2008, Respondent willfully disclosed false material information regarding his employment history on the initial Form U4 that he submitted or caused to be submitted with Firm 2. Specifically, Respondent willfully provided false and misleading information regarding his employment history on his initial Form U4 with Firm 2, claiming that he worked at Respondent's Law Offices from January 1997 through December 2006. He did not include his period of unemployment from July 2006 through January 2007 following the suspension of his authorization to act as an attorney.

22. In addition, on that Form U4, Respondent answered "yes" to the Question 14F, which asks, "Have you ever had an authorization to act as an attorney, accountant, or federal contractor that was revoked or suspended?" Respondent's answer of "yes" to this question was true. On the corresponding DRP, however, Respondent willfully provided false and misleading material information. Specifically, on the corresponding DRP, Respondent only disclosed that his authorization to act as an attorney had been suspended, but he willfully failed to disclose the material fact that such authorization had also been revoked. Moreover, Respondent willfully provided the following false and misleading material information on the DRP:

- Under the DRP section requesting a docket/case number, Respondent indicated "N/A" (not applicable). Respondent, however, was in possession of numerous documents from the Board of Bar Overseers bearing the docket number assigned to his proceeding.
- Under the DRP section requesting a description of allegations related to this regulatory action, Respondent merely indicated "Failure to obtain signature of quitclaim deed." Respondent failed to identify the allegations in the Statement of Disciplinary Charges, which included misappropriation of funds, misrepresentation, fraud, forgery and failure to deliver funds to a client.
- Under the DRP section requesting how the matter was resolved, Respondent merely indicated "settled" on "10/30/2007." Respondent failed to disclose on the DRP that, on October 30, 2007, the Court issued a Judgment of Disbarment against him.
- Under the resolution detail section of the DRP, which asks "Were any of the following sanctions ordered? (check all appropriate items)," Respondent properly checked the box next to "suspension" but failed to check the box next to "bar."
- Under the DRP sanction detail section, wherein the form indicated "If suspended, enjoined or barred, provide duration including start date and capacities affected," Respondent provided the following misleading statement: "My law license was temporarily suspended and I can apply for re-instatement, but have not yet done so." Respondent did not disclose that his authorization to act as an attorney had been revoked.

- Under the DRP comment section, Respondent falsely represented on his DRP that his client's husband forged the signatures on the deed. Respondent, however, actually forged and notarized the signatures to the deed and caused the deed to be recorded.

23. From November 14, 2008 through December 17, 2008, Respondent willfully failed to amend his Form U4 at Firm 2 to correct this false material information.

24. By providing false and misleading information on a Form U4, Respondent violated NASD Conduct Rule 2110 (for conduct before December 15, 2008), IM-1000-1 and FINRA Rule 2010 (for conduct after December 14, 2008).

**Submission of a False and Misleading Written Statement to the  
Massachusetts Securities Division  
(Violations of FINRA Rule 2010)**

25. On December 15, 2008, Respondent submitted or caused to be submitted a false written statement to the Massachusetts Securities Division through his employer member firm concerning the suspension and revocation of his authorization to act as an attorney.

26. Specifically, Respondent was asked by his supervisor at Firm 2 to submit a statement to the firm for the Massachusetts Securities Division regarding the allegations made in the Statement of Disciplinary Charges. Subsequently, Respondent falsely indicated in the written statement that his client's husband had provided Respondent with a forged quitclaim deed that was used to convey the property to the buyers at the closing and that Respondent later discovered the deed had been forged. Respondent, however, had actually forged the signatures to the deed, notarized the signatures, and caused the deed to be recorded.

27. In addition, Respondent provided misleading information in the written statement by indicating his law license would be reinstated when he filed an application to request reinstatement and proved why he is an asset to the citizens of Massachusetts who are in need of legal services. Respondent further indicated he planned on filing the application in 2009. Under the terms of the Judgment of Disbarment, however, Respondent would not be eligible to reapply for eight years. Moreover, it was not certain that his license would be reinstated even then. Therefore, Respondent's written statement to the Massachusetts Securities Division was inaccurate.

28. By providing a false and misleading written statement to the Massachusetts Securities Division through his employer member firm, Respondent violated FINRA Rule 2010.

Based on the foregoing, Respondent violated NASD Conduct Rule 2110, IM-1000-1 and 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 barred from association with any FINRA member in any capacity.

The sanction imposed herein shall be effective on a date set by FINRA staff. Pursuant to FINRA Rule 8313(e), a bar or expulsion shall become effective upon approval or acceptance of this Order.

SO ORDERED.

FINRA

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

A handwritten signature in black ink, appearing to read "Noel C. Downey", written over a horizontal line.

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