

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 62324 / June 18, 2010

Admin. Proc. File No. 3-12659r

In the Matter of the Application of

MICHAEL FREDERICK SIEGEL
c/o George C. Freeman, III
Barrasso Usdin Kupperman Freeman & Sarver, LLC
909 Poydras Street, Suite 2400
New Orleans, Louisiana 70112

For Review of Disciplinary Action Taken by

NASD

ORDER SETTING ASIDE RESTITUTION

On October 6, 2008, we issued an opinion finding that Michael Frederick Siegel engaged in private securities transactions without providing prior written notice to his firm in violation of NASD Conduct Rules 3040 and 2110, and that Siegel made unsuitable recommendations to two couples in violation of NASD Conduct Rules 2310 and 2110.¹ The conduct at issue occurred in 1997. We fined Siegel a total of \$30,000, ordered him to serve consecutively two six-month suspensions in all capacities, ordered restitution to the customers at issue in the amount of \$400,300, and assessed costs of \$7,958.05. In analyzing whether an award of restitution was in the public interest, we, like NASD, applied Sanction Guidelines Principle Five, which states in relevant part that "[a]djudicators may order restitution when an identifiable person, member firm

¹ *Michael Frederick Siegel*, Securities Exchange Act Rel. No. 58737 (Oct. 6, 2008), 94 SEC Docket 10501.

On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD's Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority, Inc., or FINRA, in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. *See* Securities Exchange Act Rel. No. 56146 (July 26, 2007), 91 SEC Docket 517. Because NASD initiated the original disciplinary action, we will continue to use the designation NASD.

or other party has suffered a quantifiable loss as a result of a respondent's misconduct, particularly where a respondent has benefitted from the misconduct."²

Siegel appealed to the United States Court of Appeals for the District of Columbia Circuit challenging our findings that he made an unsuitable recommendation to one couple and with respect to the sanctions imposed. On January 12, 2010, the Court of Appeals rejected Siegel's challenges with respect to our findings of violations, upheld the fine, and found that the imposition of consecutive rather than concurrent suspensions was remedial and not punitive.³ However, the Court granted Siegel's petition for review regarding our finding that restitution was warranted. The Court concluded that we did not articulate the level of causation required by Principle Five.⁴ The Court vacated the restitution order and remanded the matter to the Commission.

Given the remedial sanctions sustained against Siegel and the age of the case, we have decided, in our discretion, to set aside the order of restitution imposed against him. We do not at this time express a view on the merits. In the future, we ask that NASD articulate the causation standard required by Principle Five when it orders restitution.

Accordingly, it is ORDERED that the imposition of restitution against Michael Frederick Siegel be, and it hereby is, SET ASIDE.

By the Commission.

Elizabeth M. Murphy
Secretary

² FINRA Sanction Guidelines at 4 (2007).

³ *Michael Frederick Siegel v. SEC*, 592 F.3d 147, 150, 158 (D.C. Cir. 2010).

⁴ *Id.* at 161.