

BEFORE THE
DIVISION OF SECURITIES
DEPARTMENT OF FINANCIAL INSTITUTIONS
STATE OF WISCONSIN

In the Matter of
MARK B. SIRIANNI

Respondent.

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND ORDER

File No. S-00230 (LX)

On August 12, 2002, pursuant to a Notice of Hearing issued July 15, 2002 under sec. 551.61, Wis. Stats., I, Randall E. Schumann as Designated Hearing Officer, held a prehearing conference in this proceeding. Staff members of the Licensing & Compliance Section and of the Enforcement Unit, Registration & Enforcement Section, of the Division of Securities, Department of Financial Institutions, State of Wisconsin, were present. The Respondent failed to appear, either in person or by telephone.

The staff, represented by Division Attorney Leslie Van Buskirk, made a Motion at the prehearing for a finding of default and default judgement pursuant to DFI-Sec 8.03, Wis. Adm. Code, and the Designated Hearing Officer granted such Motion on the record, subject to the following. The Designated Hearing Officer thereupon requested the Staff to submit an Offer of Proof to both substantiate the allegations in the Staff's July 3, 2002 Petition accompanying the July 15, 2002 Notice of Hearing and to provide a complete record and basis to issue an Order upon the Staff's Motion.

Based upon the Staff's Offer of Proof filed on August 13, 2002, including documents provided and the affidavit of Division Licensing Examiner Nancy Jackson, all of which I have made part of the record in this matter, I make the following Findings of Fact and Conclusions of Law for purposes of this proceeding as prescribed under sec. 227.47(1), Wis. Stats., and to provide the basis for issuance of the following Decision and Order in this proceeding.

FINDINGS OF FACT

1. Mark B. Sirianni ("Sirianni") is an individual who, at all times material hereto, was employed as a sales agent (CRD #1185083) with David A. Noyes & Co. ("Noyes"), and whose last-known residence address is at 4408 Kelly Land Street, Schofield, Wisconsin 54476. Sirianni is considered to be a party for purposes of judicial review of this Order under sec. 227.53, Wis. Stats.

2. On October 29, 1998, Sirianni applied for a securities agent license in Wisconsin.
3. On December 15, 1998, because of a staff investigation alleging violations by Sirianni of sec. 551.34(1)(g) of the Wisconsin Uniform Securities Law and section DFI-Sec 4.06(2)(i), Wis. Adm. Code thereunder (relating to executing securities transactions for a customer without authority to do so) which provide a basis for issuing sanctions against a securities agent license, Sirianni entered into a consent order dated Dec. 15, 1998 which did the following: (i) granted Sirianni a Wisconsin securities agent license conditional upon his employing broker-dealer, Noyes, providing extra supervision over Sirianni's activities for a two-year period until December, 2000; and (ii) suspended for a period of 30 days, Sirianni's newly-issued Wisconsin securities agent license.
4. On July 20, 2000, the Division received a letter from counsel for Respondent's broker-dealer employer, Noyes, stating that pursuant to the Division's Order imposing conditions on Respondent's securities agent license, notice was being provided to the Division that counsel had received a copy of a complaint from one of Respondent Sirianni's customers alleging unauthorized transactions by Sirianni in the customer's account, and informing the Division both that Noyes had suspended Respondent Sirianni, and that Noyes was determining whether Respondent Sirianni would be allowed to continue his employment with Noyes.
5. On August 7, 2000, the Division received a copy of a letter from counsel for the customer referred to in paragraph 4 above that had been sent to counsel for Respondent's broker-dealer employer, Noyes, which letter was accompanied by copies of checks totaling \$61,217 from Respondent Sirianni to the customer in payment of the customer's trading losses from earlier in the year 2000, together with an advance of credit from Respondent Sirianni to the customer in the amount of \$90,500 made in November 1989. The subject letter also contained the customer's records of alleged unauthorized transactions by Respondent in the customer's account.
6. On August 17, 2000, the Division received a letter from Respondent Sirianni's counsel in which counsel for Sirianni stated "There is no disagreement that Mr. Sirianni paid money to Mr. Gustafson [the customer referred to in paragraph 4 above] and that the payment of money was in compensation for certain losses. Those payments may constitute a violation of the administrative code."
7. Separately, in March, 1999, the Enforcement Division of the New York Stock Exchange commenced a disciplinary proceeding against Respondent Sirianni resulting in an Order issued October 25, 2000 in which Sirianni, without admitting or denying guilt, consented to the Exchange Panel's findings that: (i) Sirianni engaged in conduct inconsistent with just and equitable principles of trade in that Sirianni effected unauthorized transactions in one customer's account; and (ii) Sirianni violated Exchange Rule 352 (c)(ii) by agreeing to share in a loss in a customer's account. The Exchange Panel censured Respondent Sirianni and suspended him for six weeks.

8. During the Division staff's investigation of this matter, information was obtained from the Central Registration Depository regarding other customer complaints against Respondent Sirianni.
9. On July 3, 2002, the staffs of the Licensing & Compliance Section and the Enforcement Unit, Registration & Enforcement Section, of the Division of Securities, Department of Financial Institutions, State of Wisconsin, filed a Petition for Hearing with the Administrator of the Division of Securities in this matter.
10. On July 15, 2002, the Administrator of the Division of Securities caused a Notice of Hearing in this matter to be sent by certified mail, return receipt requested, to the Respondent at his residence address.
11. On July 22, 2002, the Designated Hearing Officer, Randall E. Schumann, received the green return receipt containing evidence thereon that the certified mailing containing the Notice of Hearing had been received on July 18, 2002.
12. Pursuant to the Notice of Hearing, a prehearing conference was scheduled for Monday, August 12, 2002 at 10:00 am (Central) at the offices of the Division of Securities, which prehearing conference was to be attended in person or by telephone by the Respondent and representatives of the Division of Securities.
13. The Notice of Hearing provided that failure to appear at the prehearing conference may be deemed a default, and that upon such a default the Designated Hearing Office may make a decision, enter an Order, or otherwise dispose of the case pursuant to DFI-Sec 8.03, Wis. Adm. Code.
14. Respondent failed to appear at the prehearing conference scheduled for August 12, 2002, and was therefore in default pursuant to DFI-Sec 8.03, Wis. Adm. Code.
15. Respondent Sirianni paid money to a securities customer as compensation for certain losses by the customer without the approval of Respondent Sirianni's employing broker-dealer, Noyes, as evidenced by the letters referenced in paragraphs 4, 5 and 6 above, and the October 25, 2000 Consent Order naming Sirianni issued by a panel of the New York Stock Exchange as referenced in paragraph 7 above.

CONCLUSIONS OF LAW

1. Based on Respondent Sirianni's failure without good cause to appear at the prehearing conference scheduled for August 12, 2002 in this proceeding, I find him in default as defined in DFI-Sec 8.03, Wis. Adm. Code.

2. Based on the evidence presented by the staff, I find that Sirianni's actions in sharing in losses in the account of a securities customer without authorization by Sirianni's employing

broker-dealer as described in numbered paragraphs 5 and 6 above constitute a "dishonest or unethical business practice" or "taking unfair advantage of a customer" pursuant to DFI-Sec 4.06(2)(e), Wis. Adm. Code, by Sirianni and provide a basis, pursuant to sec. 551.34(1)(g), Wis. Stats., for the revocation of Sirianni's Wisconsin securities agent license.

DECISION AND ORDER

On the basis of the above-recited Findings of Fact and Conclusions of Law relating to Respondent Sirianni's default in failing to appear at the August 12, 2002 prehearing in this proceeding and the violations of the securities agent licensing provisions of the Wisconsin Uniform Securities Law providing a basis for denial, suspension or revocation of a securities agent's license under sec. 551.34(1)(g), Wis. Stats., I hereby determine and find under sec. 551.63(2), Wis. Stats., that it is appropriate in the public interest and for the protection of investors that an Order be issued revoking the Wisconsin securities agent license of Mark B. Sirianni.

NOW THEREFORE, IT IS ORDERED pursuant to sec. 551.34(1)(g), and 551.61(1), Wis. Stats., that Mark B. Sirianni's Wisconsin securities agent's license be revoked as of October 10, 2000, the day he was last licensed as a securities agent in Wisconsin.

DATED this 19th day of September, 2002.

(SEAL)


 Randall E. Schumann
 Designated Hearing Officer

NOTICE OF APPEAL INFORMATION

(Notice of rights for rehearing and judicial review,
 the times allowed for each, and the identification
 of the party to be named as Respondent)

The following notice is served on you as part of this Decision: (with copies of the statutes cited)

1. Rehearing. Any person aggrieved by this Decision may petition for a rehearing within 20 days

after the service of the Decision, as provided in sec. 227.49, Wis. Stats. A petition for rehearing is not a prerequisite for appeal directly to Circuit Court through a petition for judicial review.

A petition for rehearing must be filed with the Department of Financial Institutions-Division of Securities at the address below.

2. Judicial review. Any person aggrieved by this Decision has a right to petition for judicial review of the Decision as provided in sec. 227.53, Wis. Stats. The petition must be filed in Circuit Court within thirty days after service of this Decision if there has been no petition for rehearing, or within thirty days after service of the Order finally disposing of the Petition for Rehearing, or within thirty days after the final disposition by operation of law of any Petition for Rehearing.

A petition for judicial review must be served on, and name as the Respondent:

Wisconsin Department of Financial Institutions-Division of Securities
345 West Washington Avenue, 4th Floor, Post Office Box 1768
Madison, Wisconsin 53701

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