

FINANCIAL INDUSTRY REGULATORY AUTHORITY¹
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

HITOMI TSUYUKI
(CRD No. 1550142),

Respondent.

Disciplinary Proceeding
No. 2005002253201

Hearing Officer – LBB

DEFAULT DECISION

September 25, 2007

For Respondent's conversion of customer funds in violation of Conduct Rules 2330 and 2110, Respondent is barred in all capacities and ordered to pay restitution to the customers. Respondent is also barred for failure to provide requested information, in violation of Rules 8210 and 2110.

Appearances

Karrin J. Feemster, Esq., Senior Regional Attorney, FINRA, Los Angeles, CA (Rory C. Flynn, Esq. and Mark P. Dauer, Esq., Of Counsel), for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

On June 1, 2007, the Department of Enforcement filed the Complaint in this proceeding, asserting three causes of action against Respondent Hitomi Tsuyuki ("Respondent"). The first cause of action alleges that Respondent converted \$124,000 from customers EI and KI, in violation of Conduct Rules 2330 and 2110. The second cause of action alleges that Respondent converted \$64,957.82 from customer RS, in violation of Conduct Rules 2330 and 2110. The

¹ Effective July 30, 2007, the corporate successor to NASD is the Financial Industry Regulatory Authority (FINRA).

third cause of action alleges that Respondent failed to respond to Rule 8210 requests for an on-the-record interview and documents, thereby violating Rules 8210 and 2110.

The Complaint and Second Notice of Complaint were served on Respondent by first-class and certified mail at his Central Registration Depository ("CRD") address. Respondent did not file an Answer to the Complaint or to a Second Notice of Complaint. Enforcement filed a Motion for Entry of Default Decision on August 20, 2007, and a Supplement to the motion on September 21, 2007, to which Respondent did not respond. Accordingly, pursuant to Procedural Rules 9215(f) and 9269, the allegations in the Complaint will be deemed admitted and Enforcement's motion will be granted.²

I. Respondent's Default

Enforcement sent the Complaint and Notice of Complaint to Respondent on May 31, 2007, by first-class and certified mail to Respondent's most current residential address listed in the CRD address. Enforcement sent the Complaint and Second Notice of Complaint to Respondent on June 29, 2007, by first-class and certified mail to the CRD address. Respondent did not file an Answer or otherwise respond to the Complaint.

Enforcement served the Complaint and the Notices of Complaint on Respondent in accordance with Rule 9134, giving him constructive notice of this proceeding. By failing to respond, he defaulted.

II. Jurisdiction

Respondent began his employment with New England Securities on June 11, 2004, and was registered from June 28, 2004, until his termination on October 5, 2005. Although Respondent has not been associated with any FINRA member since then, he remains subject to

² The factual determinations in this decision are based on the allegations of the attached Complaint and the additional materials filed by Enforcement with its motion.

FINRA jurisdiction for purposes of this proceeding, pursuant to Art. V, § 4 of FINRA's By-Laws, because the Complaint was filed within two years after the termination of his association with a member firm, and because it charges him with misconduct while he was associated with the firm, and with failing to provide information requested during that two-year period.

III. Origin of the Investigation

FINRA's investigation commenced after it received a complaint in August 2005 from customer RS concerning "lost or stolen funds/securities." The investigation expanded to include customers EI and KI after New England Securities filed a Form U-5 indicating that Respondent had been terminated for depositing a customer's funds into his personal money market fund.

IV. Violations

A. Conversion of Customer Funds

The first cause of action alleges that in February 2005, Respondent received three checks that totaled \$41,000 from EI, a customer of New England Securities. EI intended these funds to be deposited into a money market account for EI and his wife, KI. EI and KI gave Respondent four additional checks totaling \$83,000, intended by EI and KI to purchase municipal bonds. Respondent did not apply the funds as intended by KI and EI, but instead deposited the funds into his own accounts. Respondent concealed these acts of conversion by twice providing false account statements to his customers. None of the funds has been returned to the customers.

Respondent also converted the funds of customer RS. The second cause of action alleges that Respondent received checks from customer RS totaling \$64,957.82, which RS entrusted to Respondent for the purchase of municipal bonds. Respondent deposited these funds into his personal bank account. Respondent also concealed the conversion of customer RS's funds by providing false information to the customer.

Conduct Rule 2330(a) prohibits members and associated persons from making improper use of customer funds. Conversion is also a violation of Conduct Rule 2110. In re Joel Eugene Shaw, 51 S.E.C. 1224, 1226-27 (1994). These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent converted customer funds in violation of Conduct Rules 2330(a) and 2110.

B. Failure to Respond to Requests for Information

Rule 8210 authorizes FINRA to require any person subject to its jurisdiction to provide information related to any matter under its investigation. The third cause of the Complaint alleges that on January 10, 2007, FINRA sent Respondent a request for information by first-class mail to his CRD address. The request was also sent to Respondent by e-mail, and to his counsel. The letter requested that Respondent provide certain financial documents on or before January 22, 2007, and appear for an on-the-record interview ("OTR") on January 23, 2007. Respondent did not respond. His attorney appeared at the OTR on January 23, 2007, but Respondent did not.

FINRA sent a second request for information to the Respondent by letter dated January 24, 2007, requiring Respondent to appear at an OTR on February 8, 2007. The second request was served at Respondent's CRD address by first-class mail and certified mail, return receipt requested. The second 8210 request was also sent to Respondent by e-mail, and to his counsel. FINRA received a signed receipt, with an illegible signature, for the second 8210 request on January 31, 2007. FINRA has received no response to the second request.

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent failed to respond to requests for information, in violation of Rules 8210 and 2110.

V. Sanctions

For conversion of customer funds, the FINRA Sanction Guidelines recommend a bar. Respondent converted \$188,957.82 of customer funds that had been entrusted to him for investment purposes. FINRA Sanction Guidelines (2006 ed.) at 38. For failing to respond to requests for information, the Guidelines recommend a bar. FINRA Sanction Guidelines (2006 ed.) at 35. There is no evidence of any mitigating facts that would support a lesser sanction for any of the causes of action. There is evidence of aggravating factors, such as Respondent's concealment of his conversion by falsification of documents and the injury suffered by his customers. A bar in all capacities is the appropriate sanction for all three causes of action.

Additionally, Respondent will be ordered to pay restitution to customers EI and KI in the amount of \$124,000, plus interest calculated as follows: (1) interest on the sum of \$10,000 from February 3, 2005 until paid; (2) interest on the sum of \$7,000 from February 28, 2005 until paid; (3) interest on the sum of \$24,000 from February 28, 2005 until paid; (4) interest on the sum of \$25,000 from March 14, 2005 until paid; (5) interest on the sum of \$25,000 from March 14 until paid; (6) interest on the sum of \$8,000 from March 14, 2005 until paid; (7) interest on the sum of \$25,000 from March 23, 2005 until paid. Respondent will also be ordered to pay restitution to customer RS in the amount of \$64,957.82, plus interest calculated as follows: (1) interest on the sum of \$42,286.32 from August 11, 1999, until paid; (2) and interest on the sum of \$22,671.50 from August 20, 1999 until paid. Interest shall be calculated in accordance with Section 6621 of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2).

VI. Conclusion

Respondent Hitomi Tsuyuki is barred from associating with any FINRA member in any capacity for conversion of customer funds in violation of Rules 2330 and 2110. Respondent is

also barred for failing to respond to requests for information, in violation of Rules 8210 and 2110. Respondent is also ordered to pay restitution to customers EI and KI in the amount of \$124,000 plus interest, and to customer RS in the amount of 64,957.82 plus interest, as set forth above.

The bar will be effective immediately if this decision becomes FINRA's final disciplinary action. The restitution order will be effective on a date set by FINRA not less than 30 days after this decision becomes FINRA's final disciplinary action.

SO ORDERED.


Lawrence B. Bernard
Hearing Officer

Copies to: Hitomi Tsuyuki (*via overnight courier and first-class mail*)
Karrin J. Feemster, Esq. (*via electronic and first-class mail*)
Mark P. Dauer, Esq. (*via electronic and first-class mail*)
Rory C. Flynn, Esq. (*via electronic and first-class mail*)

**NASD
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

**Hitomi Tsuyuki,
(CRD No. 1550142)**

RESPONDENT.

**DISCIPLINARY PROCEEDING
No. 2005002253201**

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Between February 2005 and March 2005, Respondent Hitomi Tsuyuki deposited seven checks, totaling \$124,000 intended for investment from customers EI and KI, husband and wife, into his own personal accounts and converted the funds to his own use and benefit. To conceal the conversion of their funds, in or about February of 2006, Tsuyuki provided false account statements to EI purporting to reflect investments Tsuyuki made for EI and KI.

2. In addition, in August 1999, Tsuyuki deposited two checks intended for investment from customer RS totaling \$64,957.82 into his own bank account and converted the funds to his own use and benefit. Between August 1999 and February 2005, to conceal his conversion of RS' funds, Tsuyuki provided false account statements to RS purporting to reflect investments Tsuyuki made for RS.

3. In October 2005, NASD Staff commenced an investigation into Tsuyuki's conduct and noticed an on-the-record interview (OTR) in November 2006 for Tsuyuki. After several requests for a continuance by Tsuyuki, the OTR was re-scheduled for January 23, 2007.

Although his attorney appeared for the OTR, Tsuyuki did not. As a result, Staff again scheduled his appearance for an on the record interview. Tsuyuki failed to appear for that OTR, which had been scheduled for February 8, 2007. In addition, Staff sent to Tsuyuki a Procedural Rule 8210 request on January 10, 2007, which sought certain financial information including his tax returns and additional bank account information. Tsuyuki did not respond to that request. Staff again sent Tsuyuki a request pursuant to Rule 8210 on January 24, 2007 to which Tsuyuki did not respond.

RESPONDENT AND JURISDICTION

4. From on or about June 19, 1986 to May 31, 2004, Hitomi Tsuyuki was associated with NASD member W.S. Griffith Securities (WSG) as a General Securities Representative. From June 11, 2004, through October 5, 2005, Tsuyuki was registered with New England Securities (NES) as a General Securities Representative. From 1986 through December 2005, Tsuyuki used the d/b/a Tsuyuki Integrated Financial Resources (Tsuyuki Financial).

5. On or about October 5, 2005, NES filed a Uniform Termination Notice for Securities Industry Registration (Form U-5) on behalf of Tsuyuki. The U-5 disclosed that Tsuyuki was terminated for depositing customer funds into his money market account. Tsuyuki is not presently associated with a member.

6. Pursuant to Article V, Section 4 of NASD's By-Laws, Tsuyuki remains subject to NASD jurisdiction for purposes of this Complaint.

FIRST CAUSE OF ACTION
(NASD Rules 2330 and 2110-
Conversion of Customers EI and KI Funds)

7. Paragraph numbers 1 through 6 are re-alleged and incorporated herein by reference.

8. In February 2005, Tsuyuki received three checks that totaled \$41,000 from EI, a customer of NES. EI intended these funds to be deposited into a money market account for EI and KI, husband and wife:

- a. Check dated February 3, 2005, in the amount of \$10,000 payable to Tsuyuki's d/b/a, "Tsuyuki Int. Fin. Res." This check was deposited into Tsuyuki Financial's bank account on or about February 3, 2005;
- b. Check dated February 28, 2005, in the amount of \$7,000 payable to "Tsuyuki Int. Fin. Res." This check was deposited into Tsuyuki Financial's bank account on or about March 1, 2005; and
- c. Check dated February 28, 2005, in the amount of \$ 24,000 payable to "Calvert Fund." This check was deposited into Tsuyuki's personal money market account at Calvert Fund on or about March 11, 2005.

9. The foregoing funds, totaling \$41,000, were not deposited into a money market account to be opened for EI and KI as directed, nor were the funds returned to EI and KI.

Rather, Tsuyuki converted the funds to his own use and benefit.

10. In or about February 2006, to conceal his conversion of EI and KI's funds, as alleged in paragraphs 8 and 9, above, Tsuyuki met with EI and gave him an account statement dated December 2005 bearing the logo of WSG. This account statement reflected a purported WSG account for EI and KI holding "Calvert Tax Free Reserves Money Market" with a value of

\$41,742.24 as of December 31, 2005. In fact, WSG was not in business as of that date and there was no such money market account for EI and KI.

11. In March 2005, NES Customers EI and KI gave Tsuyuki four checks totaling \$83,000 intended by EI and KI to purchase municipal bonds:

- a. Check dated March 14, 2005, payable to "Calvert Fund" in the amount of \$25,000. This check was deposited on or about March 17, 2005, into Tsuyuki's personal money market account at Calvert;
- b. Check dated March 14, 2005, payable to "Calvert Fund" in the amount of \$25,000. This check was deposited on or about March 22, 2005, into Tsuyuki's personal money market account at Calvert;
- c. Check dated March 14, 2005, payable to "Calvert Fund" in the amount of \$8,000. This check was deposited on or about April 19, 2005, into Tsuyuki's personal money market account at Calvert; and
- d. Check dated March 23, 2005, payable to "Tsuyuki Int. Fin. Res." in the amount of \$25,000. This check was deposited on or about March 23, 2004, into Tsuyuki Financial's bank account.

12. The foregoing funds, totaling \$83,000, were not used to purchase municipal bonds for EI and KI as directed, nor were the funds returned to EI or KI. Rather, Tsuyuki converted these funds to his own use and benefit.

13. In or about February 2006, to conceal his conversion of EI and KI's funds as alleged in paragraphs 11 and 12, above, Tsuyuki met with EI and gave him an account statement dated December 2005 bearing the logo of WSG. This account statement reflected a purported WSG account for EI and KI and reflected the purchase of municipal bonds at a total cost of

\$83,000. In fact, WSG was no longer in business as of that date and no such securities had been purchased for EI and KI.

14. The foregoing conduct constitutes separate and distinct violations of NASD Conduct Rule 2330 by Tsuyuki. The foregoing conduct was further inconsistent with high standards of commercial honor and just and equitable principals of trade and a violation of Conduct Rule 2110.

SECOND CAUSE OF ACTION
(NASD Rules 2330 and 2110-
Conversion of Customer RS Funds)

15. Paragraph numbers 1 through 14 are re-alleged and incorporated herein by reference.

16. In August 1999, Tsuyuki received a check a payable to "Tsuyuki Int. Fin. Res." dated August 11, 1999, in the amount of \$42,286.32 from RS, a customer of WSG. RS intended the funds to be used for the purchase of municipal bonds. On or about August 12, 1999, the \$42,286.32 check was deposited into the Tsuyuki Financial bank account. Tsuyuki did not purchase any municipal bonds for RS with these funds, nor did he return these funds to RS.

17. In August 1999, Tsuyuki received a check a payable to "Tsuyuki Int. Fin. Resources" dated August 20, 1999, in the amount of \$22,671.50 from RS, a customer of WSG. RS intended the funds to be used for the purchase of municipal bonds. On or about August 25, 1999, the \$22,671.50 check was deposited into the Tsuyuki Financial bank account. Tsuyuki did not purchase municipal bonds for RS with these funds, nor did he return these funds to RS.

18. In August 1999 to conceal his conversion of RS's funds, as alleged in paragraphs 16 and 17, above, Tsuyuki provided RS an account statement bearing the logo of WSG. This account statement purported to reflect the purchase of municipal bonds on August 31, 1999 at a

total cost of \$64,957.82, in a new WSG account established for RS. In fact, no such municipal bonds had been purchased for RS and no such account was ever established.

19. To further conceal his conversion of RS's funds between 1999 and 2005, Tsuyuki provided to customer RS four additional fictitious WSG statements dated December 1999, December 2000, December 2001 and December 2004, which statements purported to reflect a value for purchased bonds in the non-existent account as of December 1999, December 2000, December 2001 and December 2004. In December 2004, WSG was not in business.

20. The foregoing acts, practices and conduct constitute separate and distinct violations of Rules 2330 by Tsuyuki. The foregoing conduct was further inconsistent with high standards of commercial honor and just and equitable principals of trade and a violation of Conduct Rule 2110.

THIRD CAUSE OF ACTION
NASD Conduct Rules 8210 and 2110
(Failure to Provide Testimony and Documents)

21. Paragraph numbers 1 through 20 are re-alleged and incorporated herein by reference.

22. On or about October 5, 2005, NES filed a Form U-5 on behalf of Tsuyuki. According to the Form U-5, Tsuyuki was terminated for depositing a customer's "funds into his personal money market fund." In addition, Staff had received a complaint from customer RS who complained of "lost or stolen funds/securities."

23. During the course of the Staff's investigation, Staff determined that an on-the-record interview of Tsuyuki was necessary to obtain additional information in order to complete its investigation. The OTR was intended, among other things, to elicit Tsuyuki's explanations about the customer checks deposited into his personal and business accounts. Staff also sought

to interview Tsuyuki to obtain his explanation regarding the false account statements that customer RS received from Tsuyuki.

24. On November 8, 2006, Staff served Tsuyuki with a request to appear at NASD's Los Angeles District Office and to provide his testimony at an on the record interview. Tsuyuki requested that the OTR be rescheduled to enable him to obtain counsel. Staff agreed several times to re-schedule the OTR to accommodate Tsuyuki. On December 28, 2006, Tsuyuki's OTR was confirmed with Tsuyuki's new counsel and scheduled for January 23, 2007.

First 8210 Request

25. On January 10, 2007, to confirm the finalized date, Staff served Tsuyuki with a request to appear for his OTR at NASD's Los Angeles District Office on January 23, 2007 (First 8210 Request). The request was sent pursuant to Procedural Rule 8210. The First 8210 Request was sent by regular first class mail to Tsuyuki's CRD address which is [REDACTED] (CRD Address). Staff also sent the First 8210 Request to Tsuyuki by e-mail to his e-mail address, [REDACTED]. The First 8210 Request was also sent to Tsuyuki's counsel. The U.S. Postal Service did not return the first class mailing sent to Tsuyuki's CRD Address.

26. In addition to taking his OTR, Staff determined that it was necessary to obtain certain financial documents from Tsuyuki. Included in the First 8210 Request was a request for Tsuyuki to provide his tax returns, additional bank statements, canceled checks and deposit information. Staff requested that Tsuyuki provide the information and documents on or before January 22, 2007.

27. Tsuyuki failed to respond in any manner to the First 8210 Request for documents on or before January 22, 2007, or, at any time thereafter. Tsuyuki also failed to appear at his OTR on January 23, 2007, as required by the First 8210 Request.

Second 8210 Request

28. Based upon his failure to provide documents or to appear as set forth in the First 8210 Request, on January 24, 2007, Staff served Tsuyuki with a second request for Tsuyuki to appear for his OTR on February 8, 2007 (Second 8210 Request). The Second 8210 Request was sent pursuant to Procedural Rule 8210.

29. The Second 8210 Request also requested the same information set forth in the First 8210 Request. Staff requested that Tsuyuki provide the information and documents on or before February 6, 2007. Staff also advised Tsuyuki that a failure to comply with the 8210 requests may subject Tsuyuki to disciplinary action.

30. The Second 8210 Request was sent to Tsuyuki at his CRD Address by regular first class mail and by certified mail, return receipt requested. The Second 8210 Request was also sent to Tsuyuki's counsel. The staff also sent the Second 8210 Request to Tsuyuki on January 24, 2007, via e-mail to Tsuyuki's e-mail address, [REDACTED]

31. On January 31, 2007, the Staff received a signed receipt for the certified mailing to Tsuyuki. The U.S. Postal Service did not return the first class mailing sent to Tsuyuki's CRD Address.

32. Tsuyuki failed to provide any information or documents in response the Second 8210 Request on or before February 6, 2007, or, at any time thereafter. Tsuyuki further failed to appear at his OTR on February 8, 2007.

33. Tsuyuki's failure to respond to each of the Rule 8210 Requests for information and documents as well as his failure to appear for an on-the-record interview constitutes separate and distinct violations of NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

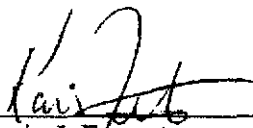
PRAYER

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under NASD Rule 8310(a) be imposed, including that the Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest; and
- B. order that the Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330.

NASD DEPARTMENT OF ENFORCEMENT

Date: May 31, 2007


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