

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JOHN CARL WILS
(CRD No. 2786354),

Respondent.

Disciplinary Proceeding
No. 2006005281301

Hearing Officer – AWH

DEFAULT DECISION

December 4, 2008

Respondent is barred from associating with any FINRA member in any capacity for improper use of customer funds, in violation of NASD Conduct Rules 2330 and 2110, and failing to respond to requests for information, in violation of NASD Rules 8210 and 2110.

Appearances:

Pamela Shu, Esq., for the Department of Enforcement.

No appearance by or for John Carl Wils.

DECISION

I. Background

On July 15, 2008, the Department of Enforcement filed the Complaint in this proceeding, alleging that Respondent John Carl Wils (1) obtained checks from more than 15 customers which he endorsed and deposited in his personal bank account and used the funds for his personal benefit, and (2) failed to respond to requests for information sent by FINRA staff pursuant to Rule 8210. Wils did not file an Answer to the Complaint. On October 29, 2008, Enforcement filed a Motion for Entry of Default Decision. Wils did not respond to that motion.

000070110 2011

II. Respondent's Default

On July 15, 2008, Enforcement sent the Complaint and Notice of Complaint to Respondent by first class and certified mail to his residential address listed in the Central Registration Depository (the "CRD address") and to the Metropolitan Correctional Center in Chicago, Illinois (the "Correctional Center address") where Wils was incarcerated. The first class mailings were not returned to Enforcement. The certified mailing to the CRD address was returned as undeliverable. The return receipt for the certified mailing to the Correctional Center address was returned, signed by "J. Smith." Wils did not file an Answer to the Complaint.

~~On August 27, 2008, Enforcement sent the Complaint and Second Notice of~~
Complaint to Wils by first class and certified mail to Wils' CRD address and to his court appointed attorney in Chicago.¹ The mailings to the CRD address were returned, marked "Moved Left No Address Unable to Forward Return to Sender." The first class mailing to the attorney was not returned. The return receipt for the certified mailing to the attorney was returned with the signature of an assistant to the attorney. Wils did not file an Answer to the Complaint.

Enforcement served the Complaint and Notices of Complaint on Wils in accordance with Rule 9134, giving him constructive notice of this proceeding. The return receipt signed by the assistant to Wils' court appointed attorney shows that he more probably than not received actual notice of the Complaint. By failing to respond, he defaulted. Pursuant to NASD Procedural Rules 9215(f) and 9269, Enforcement's

¹ There is no explanation why the Second Notice of Complaint was not sent to the Correctional Center address; however, none is required in light of service on the CRD address.

motion for a default decision will be granted, and the allegations in the Complaint, which is attached to this decision, will be deemed admitted.²

III. Jurisdiction

Wils entered the securities industry in December 1998. As pertinent to the Complaint, he was registered through Country Capital Management Company as an Investment Company and Variable Contracts Products Representative from November 19, 2001 through December 14, 2005, when Country Capital terminated his registration. On September 13, 2006, Country Capital filed an amendment to Wils' Form U5 upon receipt of a customer complaint for misuse of funds. He is not currently associated with a FINRA member firm.

~~Because the Complaint charges him with misconduct while he was associated~~
with a member firm and with failing to respond to FINRA staff requests for information during the two-year period following termination of his registration, and the Complaint was filed within two years of the amendment to his Form U5 termination of registration, he remains subject to FINRA jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of the FINRA By-Laws.

IV. Violations

Improper Use of Customer Funds

The first cause of the Complaint alleges that from October 1, 2004 to November 2, 2005, Wils obtained a total of \$13,129 in the form of checks from more than 15 customers which were intended for investments and insurance coverage payments. He

² The factual determinations in this decision are based on the admitted allegations in the Complaint, the Declaration Supporting a Motion for the Entry of a Default Decision, and the exhibits attached thereto.

endorsed and deposited the checks into his personal bank account for his own use and benefit, without the knowledge and consent of the customers.

Wils' improper use of his customers' funds is the equivalent of conversion, which is "an intentional and unauthorized taking of and/or exercise of ownership over property by one who neither owns the property nor is entitled to possess it."³ Conversion is misconduct that constitutes a violation of NASD Conduct Rules 2330 and 2110.⁴

Failure to Respond to Requests for Information

The second cause of the Complaint alleges that, in connection with its investigation of Wils' alleged misuse of customer funds and pursuant to NASD Procedural Rule 8210, FINRA staff sent Wils two requests that he provide documents and information concerning the subject matter of the investigation. The first request, dated August 6, 2006, was sent by first class and certified mail to Wils at his CRD address. Both mailings were not returned. The second request, dated August 22, 2006, was sent by first class and certified mail to Wils at his CRD address. The first class mailing was not returned. The certified mailing to the CRD address was returned, signed by "J. Wils." Wils failed to respond to the requests for documents and information. By failing to respond to the requests, Wils violated NASD Rules 8210 and 2110.⁵

³ FINRA SANCTION GUIDELINES, at 38 n. 2.

⁴ See, e.g. *District Business Conduct Comm. for Dist. No. 25 v. Frank Bernard Varites*, No. LA-4293, 1991 NASD Discip. LEXIS 16 (Jan. 22, 1991) (conversion of funds to a representative's own use is an intentional disregard of the "high standards of commercial honor and just and equitable principles of trade" mandated by NASD Conduct Rule 2110).

⁵ The Complaint also alleges that on October 3, 2006, the staff sent Wils a request, pursuant to Rule 8210, that he appear for an OTR on October 26, 2006. On October 23, 2006, the staff responded to his telephone request to reschedule the OTR. The staff notified Wils that he must respond by October 30, 2006 regarding his request to reschedule. Wils did not respond by October 30, and the Complaint alleges that he violated Rules 2110 and 8210 by failing to appear at the OTR or to respond to the staff by October 30. However, Wils was apparently successful in postponing the October 26 OTR, because the staff gave him until October 30 to reschedule it. There is no evidence that a date was rescheduled. In light of the bar for his failure to respond to the prior 8210 requests, and considering the somewhat confusing communications between Wils and the staff, there is no need to address the alleged OTR violation.

V. Sanctions

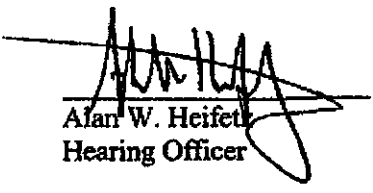
For improper use of funds that amounts to conversion, the FINRA Sanction Guidelines call for a bar, regardless of the amount converted.⁶ Wils' misconduct was intentional and fraudulent. There are no mitigating factors that would warrant a sanction less than a bar.

For failure to respond in any manner to requests for information, the Sanction Guidelines provide that a bar should be standard.⁷ Wils failed completely to respond to the requests for documents and information. Again, there are no mitigating factors that would warrant a sanction less than a bar.

VI. Conclusion

~~John C. Wils is barred from associating with any FINRA member in any capacity~~
for improper use of customer funds, in violation of NASD Conduct Rules 2330 and 2110,
and failing to respond to requests for information, in violation of NASD Rules 8210 and
2110. The bars shall become effective immediately if this Decision becomes the final
disciplinary action of FINRA.

SO ORDERED.


Alan W. Heifetz
Hearing Officer

Copies to:

John C. Wils (*via first class mail & overnight courier*)
Pamela Shu, Esq. (*via first class mail & electronic mail*)
Mark P. Dauer, Esq. (*via first class mail & electronic mail*)
David R. Sonnenberg, Esq. (*via first class mail & electronic mail*)

⁶ FINRA SANCTION GUIDELINES, 38.

⁷ *Id.*, 35.

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

DEPARTMENT OF ENFORCEMENT,

Complainant

vs.

**John Carl Wils,
Registered Representative
(CRD No.) 2786354**

Respondent

**Disciplinary Proceeding
No. 2006005281301**

Hearing Officer

COMPLAINT

Upon information and belief, Complainant alleges as follows:

SUMMARY

1. From approximately October 1, 2004 to November 2, 2005, John Carl Wils ("Wils" or "Respondent") obtained in excess of \$13,000 from more than 15 customers for investments and insurance coverage payments in the form of checks that he endorsed and deposited in his personal bank account, for his benefit and not for the benefit of the customers.

FINRA JURISDICTION OVER RESPONDENT

2. Wils became registered as an Investment Company/Variable Contracts Representative (Series 6) in December 1998 and was employed in that capacity by Country Capital Management Company ("Member"), a member of FINRA, from November 19, 2001 until December 7, 2005, when he was terminated. On September 13, 2006, the Member filed an amendment to Wils' Form U-5 to report a customer complaint of forgery and conversion of customer funds. He is not currently registered with a FINRA Member. This Complaint is filed

against Wils within two years of his termination and within two years of the amendment to Wils' Form U5. Therefore, Wils is subject to the jurisdiction of FINRA, pursuant to Article 5, Section 4 of FINRA's By-Laws.

FIRST CAUSE FOR COMPLAINT
Improper Use of Funds
NASD Conduct Rule 2110 and 2330

3. From approximately October 1, 2004 to November 2, 2005, Wils obtained in excess of \$13,000 in the form of checks from more than 15 customers and intended for investments and insurance coverage payments. Wils endorsed and deposited these checks into his personal bank account for his benefit and not for the benefit of the customers.

4. On or about September 27, 2004, Wils submitted a written request to the Member's insurance affiliate with the forged signature of his customer, JS, for the change of her address from her residence to a post office box that was opened in Wils' name.

5. On or about October 1, 2004, a \$5,000 check was issued by the Member's insurance affiliate that was payable to JS as a loan on her insurance policy and sent to the post office box that was held in Wils' name.

6. The \$5,000 check that was payable to JS was endorsed with JS's and Wils' names and deposited into an account in Wils' name at Blackhawk State Bank, without the knowledge and consent of JS. The funds were not used for the benefit of JS.

7. On or about March 22, 2005, Wils' customers JK and DV, who were business partners, gave Wils two \$1,000 checks, for a total of \$2,000, drawn on a corporate checking account to pay the premiums on their respective life insurance policies not offered by the Member.

8. Both checks were endorsed with Wils' name and deposited into an account in Wils' name at Blackhawk State Bank, without the knowledge and consent of JK and DV. The funds were not used as directed by JK and DV.

9. On or about May 18, 2005, Wils' customer GB gave Wils a check in the amount of \$3,822 payable to Trafalgar Marine Insurance for insurance on GB's yacht, which payment was not made.

10. Wils' name was added as a payee on GB's check that was payable to Trafalgar Marine Insurance. The check was endorsed with Wils' name and deposited into an account in Wils' name at Blackhawk State Bank, without the knowledge and consent of GB. The funds were not used for the benefit of GB.

II. On or about September 30, 2005, employees of WCJI sent a check to Wils in the amount of \$2,307, payable to the Member, which represented IRA contributions of 11 employees.

12. On November 2, 2005, a check for \$2,307 from WCJI was endorsed with Wils' name and deposited into an account in Wils' name at Blackhawk State Bank, without the knowledge and consent of the customers. The funds were not used for the customers' benefit.

13. The acts, practices and conduct described above constitute separate and distinct violations of NASD Conduct Rules 2110 and 2330 by Wils.

SECOND CAUSE FOR COMPLAINT
Failure to Respond to Requests for Information
and Failure to Appear to Testify
NASD Conduct Rules 8210 and 2110

14. Paragraphs 1 through 13 above are re-alleged and incorporated herein by reference.

15. Pursuant to NASD Procedural Rule 8210, FINRA sent Wils written requests for information and documentation relating to, among other things, his involvement in the use of funds obtained through endorsements of his name on five customer checks and the deposit of those checks into an account in his name at Blackhawk State Bank as described in Paragraphs 3 through 12.

16. On or about August 6, 2006, FINRA staff sent Wils a request that he provide documents and information pursuant to and in accordance with the provisions of NASD Procedural rule 8210. That request for information was sent by first class mail and by certified mail, return receipt requested, to Wils' address of record as contained in the records of the Central Registration Depository ("CRD address"). The first class and certified mailings were not returned to FINRA staff.

17. On or about August 22, 2006, FINRA staff sent Wils the same request that he provide documents and information, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210. That request for information was sent by first class mail and by certified mail, return receipt requested, to Wils' CRD address of record. The first class mailing was not returned to FINRA staff. The certified delivery receipt was returned, signed, signed by "J. Wils."

18. On or about October 3, 2006, FINRA staff sent Wils a request that he appear for an OTR and provide documents and information at FINRA's Chicago District Office on October 26, 2006, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210. That request was sent by first class mail and by certified mail, return receipt requested, to Wils' CRD address. The first class mailing was not returned to FINRA staff. The receipt for the certified mailing to Respondent was returned, signed by "Rena A. Wils".

19. On or about October 23, 2006, FINRA staff responded to Wils telephone request to re-schedule his OTR. FINRA staff notified Wils that he must respond by October 30, 2006 regarding his request to re-schedule his OTR. FINRA's notification was sent by first class mail and by certified mail, return receipt requested to Wils' CRD address. The first class mailing was not returned to FINRA staff. The certified delivery receipt was returned, signed by "J. Wils".

20. Wils failed to respond to the written requests for documents and information described in Paragraphs 14 through 19, and the time in which to respond has expired.

21. Wils failed to appear for his OTR and failed to contact FINRA regarding the scheduling of his OTR.

22. The acts, practices and conduct described above constitute separate and distinct violations of NASD Conduct Rule 2110 and Procedure Rule 8210 by Wils.

PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests that the Panel:

- A. Findings of fact and conclusions of law that Wils committed the violations charged and alleged herein;
- B. An order imposing one or more sanctions upon Wils provided under NASD Procedural Rule 8310(a), including monetary sanctions;

- C. An order imposing such costs of any proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Procedural Rule 8330; and
- D. An order imposing any other fitting sanction.

FINRA DEPARTMENT OF ENFORCEMENT

Date: July 15, 2008



Pamela Shu, Senior Regional Counsel
Mark A. Koerner, Associate Vice President
Regional Chief Counsel
FINRA Department of Enforcement
55 W. Monroe Street, Suite 2700
Chicago, IL 60603-5052
(312) 899-4353; Fax No. (312) 899-4600
e-mail: Pamela.Shu@finra.org