

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JAMES BYONGMIN YIM
(CRD No. 3137645),

Respondent.

Disciplinary Proceeding
No. 20060063365-01

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

June 2, 2008

Respondent is barred from associating with any FINRA member firm in any capacity for effecting unauthorized transfers of funds, in violation of NASD Conduct Rule 2110, and for failing to respond to requests for information, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

Appearances

Mark A. Graves, Senior Regional Counsel, San Francisco, CA (Mark P. Dauer, Deputy Chief Litigation Counsel, New Orleans, LA, Of Counsel) for the Department of Enforcement.

No appearance by or for James Byongmin Yim.

DECISION

I. INTRODUCTION

The Department of Enforcement (“Enforcement”) for the Financial Industry Regulatory Authority (“FINRA”) initiated this disciplinary proceeding after it received an amended Uniform Termination Notice for Securities Industry Registration (Form U5) on February 6, 2007, filed by AIG Financial Advisors, Inc. (“AIG”) on behalf of Respondent James Byongmin Yim (“Yim” or the “Respondent”). The amended Form U5 disclosed that AIG had received notice that the State

of Nevada had charged Yim with a number of felonies, including embezzlement of customer funds and fraud in connection with the sale of securities while he was associated with AIG.

The Complaint Enforcement filed on January 24, 2008, contains two causes of action. The First Cause of Action alleges Yim transferred funds from customer accounts without the customers' knowledge or authorization on 11 occasions between February 2005 and May 2006, in violation of NASD Conduct Rule 2110. The Second Cause of Action alleges that Yim failed to respond to three written requests for documents and information and two written requests that he appear for an on-the-record interview, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110.¹ A copy of the Complaint is attached to this Decision as Exhibit A.

For the reasons discussed below, the Hearing Officer finds that the Respondent defaulted by failing to answer the Complaint and that the appropriate sanction for each violation is a permanent bar from the securities industry.

II. JURISDICTION

Yim began his career in the securities industry in 1998 as a registered representative with Morgan Stanley DW, Inc. Morgan Stanley discharged Yim in May 2004, following which he registered as a General Securities Representative with SunAmerica Securities, Inc., a firm that was a member of the AIG Advisor Group. On October 31, 2005, SunAmerica Securities transferred Yim to AIG as part of a mass transfer of registered representatives. Yim voluntarily left AIG on June 5, 2006. Yim's last registration with FINRA terminated on June 9, 2006.²

The Hearing Officer finds that FINRA has jurisdiction of this proceeding because Enforcement filed the Complaint within two years after his last registration terminated, and the Complaint charges Yim with violations of NASD Conduct Rules that commenced while he was associated with AIG and registered as a General Securities Representative. In addition, the

¹ The FINRA Rules, which include NASD Procedural and Conduct Rules, are available on FINRA's Internet site at www.finra.org/Rules.

² Graves Decl. Ex. 1.

Complaint charges Yim with failure to provide information pursuant to Procedural Rule 8210 while he was subject to FINRA's continuing jurisdiction. Enforcement sent each request within two years after AIG filed the amended Form U5 in February 2007, and AIG filed the amended Form U5 within two years after it filed the original.³

III. RESPONDENT'S DEFAULT

The Hearing Officer finds that Yim defaulted by failing to answer or otherwise respond to the Complaint within the time required by Procedural Rule 9215. Enforcement's Motion for Entry of Default Decision and supporting declaration, show that Enforcement properly served Yim with copies of the Complaint in accordance with Procedural Rule 9134(b)(1). Enforcement served the Respondent with the First Notice of Complaint on January 24, 2008, by first-class certified mail addressed to Yim's most current residential address shown in the Central Registration Depository System (the "CRD Address").⁴ When Yim did not respond, Enforcement served him with the Second Notice of Complaint on February 28, 2008. Enforcement sent copies of the Complaint and the Second Notice of Complaint to the CRD Address by first-class certified mail.⁵

To date, Yim has not filed an Answer to the Complaint. Accordingly, the Hearing Officer finds that Yim defaulted by failing to file an Answer or otherwise respond to the Complaint and grants Enforcement's Motion for Entry of Default Decision.⁶

³ See Article V, Section 4(a) of the FINRA By-Laws, available at www.finra.org/Rules (then follow "NASD Manual" hyperlink to "Corporate Organization: Bylaws").

⁴ Graves Decl. ¶ 6.

⁵ *Id.* ¶ 8.

⁶ The factual findings in this Default Decision are based on the attached Complaint, the factual allegations of which are deemed admitted pursuant to Procedural Rule 9215(f), and on the declaration and exhibits Enforcement filed with the Motion for Entry of Default Decision.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Unauthorized Transfers

The First Cause of Action alleges that Yim initiated the following 11 unauthorized transfers from 5 customer accounts totaling \$1,328,000:

1. On February 9, 2005, AIG wired \$50,000 from SYK's account to a title company's bank account at Nevada State Bank. SYK did not authorize or consent to this transaction.

2. On April 1, 2005, AIG transferred \$50,000 from JL and SL's joint account to a Bank of America account. Neither JL nor SL authorized or consented to this transaction.

3. On May 13, 2005, AIG transferred \$50,000 from WR's account to JL and SL's account at AIG. WR did not authorize or consent to this transaction.

4. On May 13, 2005, AIG transferred \$50,000 from WR's account to SYK's account. WR did not authorize or consent to this transaction.

5. On April 18, 2006, AIG transferred \$14,000 from MC and PC's joint account at AIG to their bank account. Neither MC nor PC authorized or consented to this transfer.

6. On April 26, 2006, AIG transferred \$214,000 from WR's account to MC and PC's account. WR did not authorize or consent to this transaction.

7. On April 27, 2006, AIG transferred \$100,000 from RJ and MJ's joint account to MC and PC's account. Neither RJ nor MJ authorized or consented to this transaction.

8. On April 28, 2006, AIG wired \$300,000 from MC and PC's account to their bank account. Neither MC nor PC authorized or consented to this transaction.

9. On May 17, 2006, AIG transferred \$150,000 from RJ and MJ's account to MC and PC's account. Neither RJ nor MJ authorized or consented to this transaction.

10. On May 18, 2006, AIG transferred \$100,000 from WR's account to MC and PC's account. Neither MC nor PC authorized or consented to this transaction.

11. On May 19, 2006, AIG wired \$250,000 from MC and PC's account to their bank account. Neither MC nor PC authorized or consented to this transaction.

WR lost \$414,000 as a result of Yim's unauthorized withdrawals.⁷ The other customers did not incur a loss.

The Hearing Officer finds that the allegations of the First Cause of Action are sufficient to establish for the purposes of this proceeding that Yim violated NASD Conduct Rule 2110 by effecting the foregoing unauthorized funds transfers.⁸

B. Failures to Respond to Information Requests

Procedural Rule 8210(a) grants FINRA the authority to "require a member, person associated with a member, or person subject to [FINRA's] jurisdiction to provide information ... if requested" and to "inspect and copy the books, records, and accounts of such member or person with respect to any matter involved in [a FINRA] investigation, complaint, examination, or proceeding." In this case, in August 2006, FINRA opened an investigation into Yim's unauthorized transfers at AIG. In connection with that investigation, FINRA sent Yim three requests for information pursuant to Procedural Rule 8210. Each request was sent to Yim's CRD Address. The requests were dated November 1 and November 29, 2006, and January 26, 2007.⁹ Yim did not respond in any manner to any of the requests.

FINRA then requested Yim to appear and provide testimony in connection with its ongoing investigation. FINRA sent Yim two requests pursuant to Procedural Rule 8210. The first was dated March 6, 2007, and the second was dated April 2, 2007.¹⁰ Yim did not respond in any manner to either request.

⁷ Graves Decl. ¶ 40.

⁸ See, e.g., *Department of Enforcement v. Sears*, No. C07050042, 2007 NASD Discip. LEXIS 26, at *9-10 (N.A.C. Sept. 24, 2007).

⁹ Graves Decl. ¶¶ 25, 27, 29.

¹⁰ *Id.* ¶¶ 31, 33.

The Hearing Officer finds the allegations of the Second Cause of Complaint sufficient to establish that Yim violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by failing to respond to the requests for information.

V. SANCTIONS

A. Unauthorized Transactions

For a violations of Conduct Rule 2110 based on unauthorized transactions, the FINRA Sanction Guidelines (“Guidelines”) begin by recommending a fine of \$5,000 to \$75,000. The Guidelines also recommend considering a suspension in any or all capacities for a period of ten business days to one year. In egregious cases, the Guidelines recommend a longer suspension of up to two years, or a bar. In addition, there are two specific considerations to determine sanctions in unauthorized transaction cases—whether the respondent misunderstood his authority, and whether the conduct was egregious.¹¹

The Hearing Officer finds that Yim’s conduct was egregious and that a bar is the appropriate sanction under the Guidelines. Yim signed customer names to 11 requests to transfer \$1,328,000 without the customers’ knowledge, consent, or authorization.¹² In some cases, he transferred funds between customer accounts in an apparent effort to conceal his unauthorized activities. Such conduct evidences Yim’s lack of a good-faith belief that he had his customers’ authorization to effect the transfers. There are no mitigating factors in the evidence submitted by Enforcement.

B. Failures to Respond to Requests for Information

The Guidelines recommend a bar where a respondent fails to respond in any manner to a request for information issue pursuant to Procedural Rule 8210.¹³ Here, Yim failed to respond at

¹¹ FINRA Sanction Guidelines 103 (2007), available at <http://www.finra.org/RegulatoryEnforcement/index.htm> (then follow “FINRA Sanction Guidelines” hyperlink).

¹² See *District Bus. Conduct Comm. v. Hellen*, No. C3A970031, 1999 NASD Discip. LEXIS 22, at *15-24 (N.A.C. June 15, 1999).

¹³ Guidelines 35.

all to five written requests for information relating to FINRA's investigation of his unauthorized activity at AIG. There are no mitigating factors. Accordingly, the Hearing Officer also will bar Yim for this violation.

VI. ORDER

James Byongmin Yim is barred from association with any member firm in any capacity for effecting unauthorized transactions, in violation of NASD Conduct Rule 2110, and for failing to respond in any manner to five requests for information issued in connection with FINRA's investigation into those unauthorized transaction, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110. The bars shall become effective once this Default Decision becomes the final disciplinary action of FINRA. In addition, Yim is ordered to pay \$414,000 in restitution to customer WR.



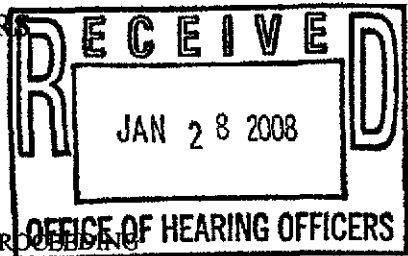
Andrew H. Perkins
Hearing Officer

Copies to:

James Byongmin Yim (by FedEx, overnight delivery, and first-class mail)
Mark A. Graves, Esq. (by first-class and electronic mail)
David R. Sonnenberg, Esq. (by first-class and electronic mail)
Mark P. Dauer, Esq. (by first-class and electronic mail)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS



DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

**JAMES BYONGMIN YIM
(CRD No. 3137645),**

RESPONDENT.

**DISCIPLINARY PROCEEDING
No. 20060063365-01**

HEARING OFFICER – _____

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. From on or about February 9, 2005, through on or about May 19, 2006, James Byongmin Yim submitted eleven (11) separate transfer requests on behalf of five (5) different customers of his FINRA member firm to effectuate the transmittal of approximately \$1,328,000 from the customers' accounts without their prior knowledge, authorization or consent.
2. In the course of investigating the purpose of the transfers, staff sent five (5) separate requests to Yim pursuant to NASD Procedural Rule 8210. Yim, however, failed to provide any information in response to those five requests.

JURISDICTION

3. James Byongmin Yim first entered the securities industry as an associated person of FINRA member firm Morgan Stanley DW, Inc. (CRD No. 7556) on or about September 14, 1998. Yim registered with the firm as a General Securities Representative (GS) on or about November 25, 1998.
4. Morgan Stanley discharged Yim on or about May 20, 2004, for "refusal to follow management instruction concerning a job related matter."
5. On or about June 9, 2004, Yim registered as a GS with FINRA member firm SunAmerica Securities, Inc. (CRD No. 20068), a firm that was part of the AIG Advisor Group.
6. On or about October 31, 2005, Yim, in his capacity as a GS, was transferred from SunAmerica to FINRA member firm AIG Financial Advisors, Inc. (CRD No. 133763) as part of a mass transfer.
7. On or about June 5, 2006, AIG filed a Uniform Termination Notice for Securities Industry Registration (Form U5) with FINRA, notifying FINRA that Yim had voluntarily terminated his registration with the firm.
8. On or about February 6, 2007, AIG filed an amended Form U5 with FINRA, disclosing that AIG had received notice from the State of Nevada that felony charges had been filed against Yim regarding the issues contained in the First Cause of Action.
9. FINRA retains jurisdiction over Yim through February 5, 2009, pursuant to Article V, Section 4 of its By-Laws.

FIRST CAUSE OF ACTION
UNAUTHORIZED TRANSFERS OF CUSTOMER FUNDS
(VIOLATION OF NASD CONDUCT RULE 2110)

10. The Department realleges and incorporates by reference paragraphs 3 through 9 above.

TRANSFER NUMBER ONE

11. On or about February 9, 2005, Yim submitted a wire request to AIG, purportedly signed by AIG customer SYK, requesting \$50,000 be removed from his AIG account and wired to a title company's bank account at Nevada State Bank.

12. The request was made without SYK's knowledge, authorization or consent.

13. AIG processed the request.

TRANSFER NUMBER TWO

14. On or about April 1, 2005, Yim submitted a request to AIG, purportedly signed by AIG customer JL, requesting \$50,000 be removed from the AIG account of JL and SL and a check issued to a Bank of America account.

15. The request was made without JL and SL's knowledge, authorization or consent.

16. AIG processed the request.

TRANSFER NUMBER THREE

17. On or about May 13, 2005, Yim submitted a request, purportedly signed by AIG customer WR, to AIG requesting \$50,000 be removed from his AIG account and transferred to the AIG account of JL and SL.

18. The request was made without WR's knowledge, authorization or consent.

19. AIG processed the request.

TRANSFER NUMBER FOUR

20. On or about May 13, 2005, Yim submitted a request, also purportedly signed by WR, to AIG requesting \$50,000 be removed from his AIG account and transferred to the AIG account of SYK.

21. The request was made without WR's knowledge, authorization or consent.

22. AIG processed the request.

TRANSFER NUMBER FIVE

23. On or about April 18, 2006, Yim submitted a wire request, purportedly signed by AIG clients MC and PC, to AIG requesting \$14,000 be removed from their AIG account and wired to their outside bank account.

24. The request was made without MC and PC's knowledge, authorization or consent.

25. AIG processed the request.

TRANSFER NUMBER SIX

26. On or about April 26, 2006, Yim submitted a request, purportedly signed by WR, to AIG requesting \$214,000 be removed from his AIG account and transferred to the AIG account of MC and PC.

27. The request was made without WR's knowledge, authorization or consent.

28. AIG processed the request.

TRANSFER NUMBER SEVEN

29. On or about April 27, 2006, Yim submitted a request, purportedly signed by AIG clients RJ and MJ, to AIG requesting \$100,000 be removed from their AIG account and transferred to the AIG account of MC and PC.
30. The request was made without RJ and MJ's knowledge, authorization or consent.
31. AIG processed the request.

TRANSFER NUMBER EIGHT

32. On or about April 28, 2006, Yim submitted a wire request, purportedly signed by AIG clients MC and PC, to AIG requesting \$300,000 be removed from their AIG account and wired to their outside bank account.
33. The request was made without MC and PC's knowledge, authorization or consent.
34. AIG processed the request.

TRANSFER NUMBER NINE

35. On or about May 17, 2006, Yim submitted a request, purportedly signed by AIG clients RJ and MJ, to AIG requesting \$150,000 be removed from their AIG account and transferred to the AIG account of MC and PC.
36. The request was made without RJ and MJ's knowledge, authorization or consent.
37. AIG processed the request.

TRANSFER NUMBER TEN

38. On or about May 18, 2006, Yim submitted a request, purportedly signed by WR, to AIG requesting \$100,000 be removed from his AIG account and transferred to the AIG account of MC and PC.
39. The request was made without WR's knowledge, authorization or consent.
40. AIG processed the request.

TRANSFER NUMBER ELEVEN

41. On or about May 19, 2006, Yim submitted a wire request, purportedly signed by AIG clients MC and PC, to AIG requesting \$250,000 be removed from their AIG account and wired to their outside bank account.
42. The request was made without MC and PC's knowledge, authorization or consent.
43. AIG processed the request.
44. The foregoing conduct constitutes separate and distinct violations of NASD Conduct Rule 2110 by Respondent Yim.

SECOND CAUSE OF ACTION

**FAILURE TO RESPOND TO NASD STAFF'S REQUESTS FOR INFORMATION
(VIOLATION OF NASD PROCEDURAL RULE 8210 AND CONDUCT RULE 2110)**

45. The Department realleges and incorporates by reference paragraphs 3 through 9 above.
46. In or about August 2006, FINRA initiated an investigation concerning Yim's unauthorized transfers of AIG customers' funds.
47. Yim's last known residential address, as reflected in the FINRA Central Registration Depository, is [REDACTED] (the CRD Address).

FIRST REQUEST FOR INFORMATION

48. On November 1, 2006, FINRA staff sent a request for information letter to Yim, pursuant to NASD Procedural Rule 8210, which related to the subject matter of the FINRA investigation. Specifically, staff was attempting to determine the purpose and parties involved in the transfer requests that Yim submitted to AIG, discussed above in Paragraphs 11 through 43. The request was sent by U.S. Postal Service first class mail and certified mail, return receipt requested, to the CRD Address. The first request letter required a response no later than November 15, 2006.
49. The U.S. Postal Service did not return the envelope sent to the CRD Address via first class mail. The U.S. Postal Service returned the return receipt sent to the CRD Address via certified mail signed by Summi Yim.
50. No response to the staff's first request was received from Yim.

SECOND REQUEST FOR INFORMATION

51. On November 29, 2006, FINRA staff sent a second request for information letter to Yim, pursuant to Rule 8210, which related to the subject matter of the FINRA investigation. The request was sent by U.S. Postal Service first class mail and certified mail, return receipt requested, to the CRD Address. The second request letter required a response no later than December 13, 2006.
52. The U.S. Postal Service did not return the envelope sent to the CRD Address by first class mail. The U.S. Postal Service returned the envelope sent to the CRD Address by certified mail, marked "Unclaimed."
53. No response to the staff's second request was received from Yim.

THIRD REQUEST FOR INFORMATION

54. On January 26, 2007, FINRA staff sent a third request for information letter to Yim, pursuant to Rule 8210, which related to the subject matter of the FINRA investigation. The request was sent by U.S. Postal Service first class mail and certified mail, return receipt requested, to the CRD Address. The second request letter required a response no later than February 9, 2007.
55. The U.S. Postal Service did not return the envelope sent to the CRD Address by first class mail. The U.S. Postal Service returned the return receipt sent to the CRD Address by certified mail signed by Summi Yim.
56. No response to the staff's third request was received from Yim.

FIRST REQUEST FOR ON-THE-RECORD INTERVIEW

57. On March 6, 2007, FINRA staff sent a letter to Yim at his CRD Address, pursuant to Rule 8210, requesting that he appear for an on-the-record (OTR) interview at 10:00 a.m. on Thursday, March 29, 2007, at FINRA's San Francisco, California, office. The purpose of the OTR interview was to have Yim provide information, under oath or affirmation administered by a court reporter, with respect staff's investigation of his unauthorized transfers of funds from AIG customers' accounts.
58. The request was sent via U.S. Postal Service first class mail and certified mail, return receipt requested. The U.S. Postal Service did not return the envelope sent to the CRD Address via first class mail. The U.S. Postal Service returned the return receipt sent to the CRD Address via certified mail signed by Summi Yim.
59. On March 29, 2007, Yim failed to appear at FINRA's San Francisco office at the appointed time to provide the necessary information.

SECOND REQUEST FOR ON-THE-RECORD INTERVIEW

60. On April 2, 2007, FINRA staff sent a letter to Yim at his CRD Address, pursuant to Rule 8210, requesting that he appear for an on-the-record (OTR) interview at 10:00 a.m. on Thursday, April 26, 2007, at FINRA's San Francisco, California, office. The purpose of the OTR interview was to have Yim provide information, under oath or affirmation administered by a court reporter, with respect to the staff's investigation of his unauthorized transfers of funds from AIG customers' accounts.
61. The request was sent via U.S. Postal Service first class mail and certified mail, return receipt requested. The U.S. Postal Service did not return the envelope sent to the CRD Address via first class mail. The U.S. Postal Service returned the return receipt sent to the CRD Address via certified mail signed by Chong Yim.
62. On April 26, 2007, Yim failed to appear at FINRA's San Francisco office at the appointed time to provide the necessary information.
63. To date, FINRA has not received any response to the foregoing requests for information.
64. Such acts, practices and conduct constitute separate and distinct violations of NASD Procedural Rule 8210. Such conduct is also inconsistent with high standards of commercial honor and just and equitable principles of trade and a violation of Conduct Rule 2110 by Yim.

RELIEF REQUESTED

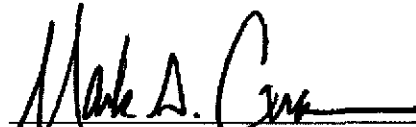
WHEREFORE, the Department respectfully requests that the Panel:

- A. Order that one or more of the sanctions provided under NASD Rule 8310(a), including monetary sanctions, be imposed.

- 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.

FINRA DEPARTMENT OF ENFORCEMENT

Date: January 24, 2008


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