

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

BRYAN L. CROGER
(CRD No. 2829939),

Respondent.

Disciplinary Proceeding
No. 2006006397601

DEFAULT DECISION

Hearing Officer – SW

Dated: February 14, 2008

Respondent is barred from associating with any FINRA member firm in any capacity for: (1) misusing funds from the bank accounts of five of his elderly customers, in violation of NASD Conduct Rule 2110; (2) executing an unauthorized transaction in the securities account of customer JK, in violation of NASD Conduct Rule 2110; and (3) failing to respond to requests for information from the FINRA staff, in violation of NASD Conduct Rule 2110 and Procedural Rule 8210.

Appearances

Richard S. Schultz, Esq., Regional Counsel, Chicago, IL, for the
Department of Enforcement.

No appearance by or for Bryan L. Croger.

DECISION

I. Introduction

On August 22, 2007, the FINRA Department of Enforcement ("Enforcement") filed the attached three-count Complaint against Respondent Bryan L. Croger ("Respondent"). The first count of the Complaint alleges that, while associated with FINRA member firm Chase Investment Services Corp. ("Chase"), Respondent converted to his own use and benefit approximately \$18,000 from the bank accounts of five of his

elderly customers, without their knowledge or consent, in violation of NASD Conduct Rule 2110. The second count of the Complaint alleges that, in an attempt to conceal his withdrawal of \$2,000 from customer JK's bank account, Respondent executed an unauthorized sale in customer JK's securities account, in violation of NASD Conduct Rule 2110. The third count of the Complaint alleges that Respondent failed to respond to requests for information, issued by the FINRA staff, in violation of NASD Conduct Rule 2110 and Procedural Rule 8210.

On November 19, 2007, Enforcement filed a Motion for Entry of Default Decision ("Motion"), supported by the Declaration of Richard S. Schultz, Esq., Regional Counsel in FINRA's Chicago, IL office, and 11 exhibits.¹ For the reasons set forth below, the Hearing Officer grants Enforcement's Motion.

II. Respondent's Default

On August 20, 2007, Enforcement served the Complaint and Notice of Complaint on Respondent, via certified and first class mail, at his last known residential address shown in the Central Registration Depository ("CRD address").² (CX-1, p. 6; CX-2, p. 14; DECL at ¶ 7).

On September 24, 2007, Enforcement served the Complaint and Second Notice of Complaint on Respondent, via certified and first class mail, at his CRD address. (CX-4, p. 16; DECL at ¶ 9). Respondent did not file an Answer to the allegations of the Complaint. (DECL at ¶ 11).

¹ Hereinafter, the statements in the Motion will be designated as "Motion, p."; statements in the Schultz Declaration will be designated as "DECL at ¶"; and Enforcement's exhibits will be designated as "CX-" with the appropriate page or paragraph number.

² Respondent's CRD address is [REDACTED] (CX-1, p. 6).

The Hearing Officer finds that Enforcement complied with Procedural Rule 9134(b)(1) by sending the mailings to Respondent's CRD address.³ Accordingly, the Hearing Officer finds that Respondent received effective constructive notice of this proceeding and defaulted by failing to answer the Complaint.⁴

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

Respondent was registered with Chase as general securities representative from July 6, 2005 to September 20, 2006. (CX-1, p. 1; Complaint at ¶ 2; DECL at ¶ 5). Respondent is not currently associated with any FINRA member. (*Id.*). However, Respondent remains subject to FINRA jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of the NASD By-Laws, because (1) the Complaint was filed within two years after Respondent's association with Chase was terminated, and (2) the Complaint charges Respondent with misconduct while he was associated with Chase and with failures to provide information as requested pursuant to Rule 8210 during the two-year period of retained jurisdiction.

B. Respondent Misused the Funds of Five of his Elderly Customers

The first cause of the Complaint alleges that from November 4, 2005 to August 28, 2006, Respondent withdrew a total of \$18,398.29 from the JP Morgan Chase & Co. ("JP Morgan Chase") bank accounts of customers JK, IH, MB, ELD, and PD, who were all over 65 years old. (Complaint at ¶¶ 4-5; Schedule A to the Complaint). Each of the customers maintained securities accounts at Chase serviced by Respondent, and

³ See *Dep't of Enforcement v. Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at * 5 n.1 (NAC Dec. 9, 2003) (finding that respondent received constructive notice when complaint was mailed to respondent's CRD address).

⁴ The following Findings of Fact and Conclusions of Law incorporate the allegations in the attached Complaint, pursuant to Rule 9215(f) and *NASD Notice to Members* 99-77.

maintained a bank account at JP Morgan Chase, an affiliate of Chase. (Complaint at ¶¶ 4-5). Respondent used the funds for some purpose other than for the benefit of the customers, without their knowledge and consent. (Complaint at ¶ 5). Specifically, Respondent prepared JP Morgan Chase withdrawal slips for each customer's savings account listing (i) the customer's name, (ii) the account number, and (iii) the withdrawal amount. (Complaint at ¶ 6). In most instances, Respondent wrote "per cust. req.," "CISC," or "per Bryan Croger," on the withdrawal slips.⁵ (Id.). Respondent then submitted the withdrawal slips to a JP Morgan Chase bank teller and told the teller that the withdrawal was for his investment customer who needed the funds in cash. (Id.).

On August 28, 2006, when a customer inquired about a \$1,000 withdrawal from her bank account that she had not authorized, JP Morgan Chase began an investigation. (CX-7). When Respondent was interviewed about his actions by employees of JP Morgan Chase, Respondent confessed to the misconduct and stated that he needed the customers' funds to pay bills. (CX-7; Complaint at ¶ 7; DECL at ¶¶ 12-13). Respondent explained that he chose the customers because "they were elderly, vulnerable and did not have a clue [about] their financial status." (Id.).

Under Rule 9215(f) and Notice to Members 99-77, the allegations of the first cause of the Complaint are deemed admitted and they are hereby incorporated in this Default Decision as findings of fact.

In addition to the allegations of the Complaint, Enforcement provided the information that in reviewing the DVR digital photo of the bank withdrawal at the Hamilton Crossing branch, the staff of JP Morgan Chase confirmed that Respondent presented the withdrawal slip to the teller and left the branch with the cash. (CX-7).

⁵ "CISC" is the acronym that is used for Chase. (Complaint at ¶ 6).

Improper use of a customer's funds occurs when the funds are not used as intended by the customer.⁶ FINRA has held that the misuse of a customer's funds is a violation of Conduct Rule 2110's requirement to observe just and equitable principles of trade.⁷ It is well settled that FINRA's disciplinary authority is broad enough to encompass business-related activities that contravene the standards of Conduct Rule 2110, even if the activity at issue does not involve a security.⁸

The allegations in the first cause of the Complaint and the evidence submitted by Enforcement are sufficient to establish that Respondent converted to his own use and benefit \$18,398.29 belonging to five customers. Accordingly, the Hearing Officer finds that Respondent violated NASD Conduct Rule 2110 by withdrawing funds from the JP Morgan Chase bank accounts of customers JK, IH, MB, ELD, and PD, without the customers' knowledge and consent, as alleged in count one of the Complaint.

C. Respondent Executed an Unauthorized Sale in the Securities Account of Customer JK

The second cause of the Complaint alleges that on August 23, 2006, Respondent sold 143.266 shares of J.P. Morgan Investor Growth & Income Class B stock from the Chase securities account of customer JK for a sale price of \$1,983.43, without JK's knowledge and consent, and in the absence of any written or oral authorization to exercise discretion in JK's account. (Complaint at ¶ 10). The proceeds of the unauthorized sale were then automatically transferred from JK's Chase securities account to her JP Morgan Chase bank account. (*Id.*). Respondent sold the securities in JK's

⁶ *Bernard D. Gorniak*, Exch. Act Rel. No. 35996, 1995 SEC LEXIS 1820 (1995).

⁷ *Id.*

⁸ *District Bus Conduct Comm. Dist. 9 v. Brian L. Shegon*, Complaint No. C9A960030 (NBCC, Nov. 20, 1997) available at http://www.nasdr.com/pdf-text/nac1197_06.txt.

securities account in an attempt to conceal his \$2,000 withdrawal from JK's bank account. (Complaint at ¶ 11; DECL at ¶ 14).

Under Rule 9215(f) and Notice to Members 99-77, the allegations of the second cause of the Complaint are deemed admitted and they are hereby incorporated in this Default Decision as findings of fact.

According to IM-2310-2(b)(4)(A)(iii), unauthorized trading is "[c]ausing the execution of transactions which are unauthorized by customers or the sending of confirmations in order to cause customers to accept transactions not actually agreed upon." The Securities and Exchange Commission has affirmed that unauthorized trading in a customer's account is a violation of NASD Conduct Rule 2110's requirement to observe just and equitable principles of trade.⁹

Based on the allegations deemed admitted, the Hearing Officer finds that Respondent violated NASD Conduct Rule 2110, by executing an unauthorized sale in the securities account of customer JK, without her knowledge or prior authorization, as alleged in count two of the Complaint.

D. Respondent Failed to Respond to Rule 8210 Requests for Information from FINRA

The third cause of the Complaint alleges that Respondent failed to respond to written requests for information dated December 5, 2006, and December 27, 2006, which the FINRA staff issued to Respondent to obtain information concerning the allegations in counts one and two of the Complaint. (Complaint at ¶¶ 14-18). The two requests were sent to Respondent at his CRD address, via first class mail and certified mail, in accordance with Procedural Rule 8210. (Complaint at ¶¶ 14-15).

⁹ *Robert Lester Gardner*, Exch. Act Rel. No. 35899, 1995 SEC LEXIS 1532, at *1 n. 1 (1995).

On January 10, 2007, Respondent (i) called the FINRA staff, (ii) acknowledged receipt of the December 5, 2006 and December 27, 2006 letters, and (iii) requested an extension to January 24, 2007 to respond, which extension request the FINRA staff granted. (Complaint at ¶ 16; CX-8). Respondent confirmed his intention to respond by January 24, 2007, in an email sent to the FINRA staff on January 10, 2007. (Complaint at ¶ 17; CX-8, p. 2). However, Respondent failed to respond by the January 24, 2007 deadline, and the FINRA staff has not received any further email messages or telephone calls from Respondent. (Complaint at ¶ 18; DECL at ¶ 16).

Under Rule 9215(f) and Notice to Members 99-77, the allegations of the third cause of the Complaint are deemed admitted and they are hereby incorporated in this Default Decision as findings of fact.

Failure to comply with Rule 8210 requests for information is a serious violation because it subverts FINRA's ability to perform its regulatory responsibilities.¹⁰

Based on the allegations deemed admitted, the Hearing Officer finds that Respondent violated NASD Conduct Rule 2110 and Procedural Rule 8210 by failing to respond to the FINRA staff's requests for information, as alleged in count three of the Complaint.¹¹

¹⁰ See, e.g., *Richard J. Rouse*, Exch. Act Release No. 32,685, 1993 SEC LEXIS 1831, at *7 (1993); *Joseph G. Chiulli*, Exch. Act Release No. 42,359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for NASD to conduct its investigations effectively, and emphasizing that NASD members and associated persons must fully cooperate with requests for information).

¹¹ See *Dep't of Enforcement v. Baxter*, No. C07990016, 2000 NASD Discip. LEXIS 3, at **21, 25 (NAC Apr. 19, 2000).

IV. Sanctions

A. Misuse of Funds

For misuse of funds as alleged in count one of the Complaint, the FINRA Sanction Guidelines recommend a bar regardless of the amount.¹² Here, there is no evidence of any mitigating factors. Accordingly, a bar is the appropriate sanction for the Respondent's violation of NASD Conduct Rule 2110, by misusing the funds of five of his customers, as set forth in the first cause of the Complaint.¹³

B. Unauthorized Trade

The Sanction Guidelines for unauthorized transactions suggest a fine between \$5,000 and \$75,000, and a suspension of 10 business days to one year, in cases involving customer loss, and a longer suspension of up to two years or a bar, in egregious cases.¹⁴ The principal considerations are (i) whether the respondent misunderstood his or her authority or the terms of the customer's orders, and (ii) whether the unauthorized trading was egregious.¹⁵

FINRA has identified three categories of egregious unauthorized trading: (1) quantitatively egregious unauthorized trading (i.e., unauthorized trading that is egregious because of the sheer number of unauthorized trades executed); (2) unauthorized trading accompanied by aggravating factors, such as efforts to conceal the unauthorized trading, attempts to evade regulatory investigative efforts, customer loss, or a history of similar misconduct; and (3) qualitatively egregious unauthorized trading, which is measured by the strength of the evidence and the respondent's motives in

¹² *FINRA Sanction Guidelines*, p. 38 (2007), available at <http://www.finra.org/web/groups/enforcement/documents/enforcement/p011038.pdf>.

¹³ Enforcement did not request restitution for the customers.

¹⁴ *Guidelines* at 103.

¹⁵ *Id.*

effecting the trades (i.e., whether the respondent acted in bad faith or as a result of a reasonable misunderstanding).¹⁶ Arguing that Respondent's misconduct was egregious, Enforcement recommended a bar.

Although Respondent's action did not involve numerous trades, Respondent executed the unauthorized trade intentionally in an attempt to conceal his misuse of JK's funds.

The Hearing Officer agrees that Respondent's conduct was egregious, and therefore imposes a bar on Respondent for violating NASD Conduct Rule 2110, as alleged in count two of the Complaint.

C. Failure to Respond to Rule 8210 Requests for Information

For failing to respond to the two requests for information issued by the FINRA staff pursuant to Rule 8210 as alleged in count three of the Complaint, the Sanction Guidelines recommend the imposition of a bar unless mitigating circumstances exist warranting a lesser sanction.¹⁷ Here, the record discloses no mitigating factors. Accordingly, a bar is also appropriate for the violation set forth in the third cause of the Complaint.

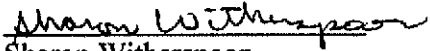
V. Order

Respondent Bryan L. Croger is barred from associating with any FINRA member firm in any capacity for: (1) misusing the funds of five elderly customers' bank accounts, in violation of NASD Conduct Rule 2110; (2) executing an unauthorized sale in the securities account of customer JK, in violation of NASD Conduct Rule 2110; and (3) failing to respond to requests for information issued by the FINRA staff, in violation of

¹⁶ See *District Bus. Conduct Comm. v. Hellen*, No. C3A970031, 1999 NASD Discip. LEXIS 22, at *15-24 (NAC June 15, 1999).

¹⁷ *Guidelines* at 35.

NASD Conduct Rule 2110 and Procedural Rule 8210. The bars will become effective immediately if this Default Decision becomes FINRA's final disciplinary action in this proceeding.


Sharon Witherspoon
Hearing Officer

Dated: Washington, DC
February 14, 2008

Copies to:

Bryan L. Croger (via FedEx and first class mail)
Richard S. Schultz, Esq. (via electronic and first class mail)
Mark P. Dauer, Esq. (via electronic and first class mail)
David R. Sonnenberg, Esq. (via electronic and first class mail)

**FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA)
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant

vs.

BRYAN L. CROGER
Registered Representative
(CRD No. 2829939)

Respondent

**Disciplinary Proceeding
No. 2006006397601**

Hearing Officer

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. From November 2005 to August 2006, Bryan L. Croger (Croger) withdrew a total of \$18,398.29 from bank accounts owned by five elderly members of the public, without the customers' knowledge and consent, in violation of NASD Conduct Rule 2110. On August 23, 2006, Croger sold a securities position from a brokerage account owned by an elderly customer, in violation of NASD Conduct Rule 2110. Croger also failed to respond to requests for information, in violation of NASD Conduct Rule 2110 and Procedural Rule 8210.

RESPONDENT

2. From on or about July 6, 2005 to on or about September 20, 2006, Croger was registered as a General Securities Representative with Chase Investment Services Corp. (Member), a member of FINRA (f/n/a NASD). Croger is not currently associated with any member of FINRA. Since this Complaint is filed within two years of the termination of Croger's

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registration with the Member, Croger is subject to the jurisdiction of FINRA, pursuant to Article V, Section 4 of the FINRA's By-Laws.

FIRST CAUSE OF ACTION

NASD Conduct Rules 2110 – Misuse of Elderly Customers' Funds by Croger

3. Paragraphs 1 and 2 above are re-alleged and incorporated herein by reference.

4. During the time in question, JK, IH, MB, ELD, and PD were members of the public who were all over 65 years old. JK, IH, MB, ELD, and PD all maintained securities accounts with the Member, which were serviced by Croger, and bank accounts with JPMorgan Chase & Co. ("Chase").

5. From November 4, 2005 to August 28, 2006, Croger withdrew a total of \$18,398.29 from JK's, IH's, DW's, MB's, ELD's, and PD's Chase bank accounts, as shown on Schedule A, attached hereto and incorporated by reference, and used the funds for some purpose other than for the benefit of the customers, without the customers' knowledge and consent.

6. In each instance, Croger would prepare a Chase withdrawal slip listing the customer's name, account number and the amount of the withdrawal from their savings account. In most instances, Croger would also write "per cust. req.," "CISC," or "per Bryan Croger," on the withdrawal slip, as shown on Schedule A. "CISC" is the acronym that is used for the name of the Member. In one instance, a portion of JK's name appears on the withdrawal slip. Croger would then submit the withdrawal slip to a Chase bank teller and inform the Chase teller that the withdrawal was for his investment customer who needed the funds in cash.

7. When he was interviewed about his actions by employees of the Member, Croger confessed to the misconduct described above and stated that he needed the funds which he withdrew to pay his bills. Croger was asked why he chose the customers involved in this matter,

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and he stated that "they were elderly, vulnerable and did not have a clue [about] their financial status."

8. The acts, practices and conduct set forth above constitute separate and distinct violations of NASD Conduct Rule 2110 by Croger.

**SECOND CAUSE OF ACTION
NASD Conduct Rule 2110 – Effecting an Unauthorized Sale in an Elderly Customer's
Securities Account by Croger**

9. Paragraphs 1 through 8 above are re-alleged and incorporated herein by reference.

10. On or about August 23, 2006, Croger sold 143.266 shares of J.P. Morgan Investor Growth & Income Class B stock from the securities account of JK for a sale price of \$1,983.43, without JK's knowledge and consent, and in the absence of any written or oral authorization to exercise discretion in JK's account. The proceeds of this transaction were then automatically transferred to JK's bank account.

11. Croger sold the securities in JK's account in an attempt to conceal his \$2,000 withdrawal from JK's account on August 23, 2006.

12. The acts, practices and conduct set forth above constitute separate and distinct violations of NASD Conduct Rule 2110 by Croger.

**THIRD CAUSE OF ACTION
NASD Conduct Rule 2110 and Procedural Rule 8210 - Failure to Respond to Requests for
Information by Croger**

13. Paragraphs 1 through 12 above are re-alleged and incorporated herein by reference.

14. On or about December 5, 2006, FINRA staff ("Staff") sent to Croger a request that he provide written responses to questions and provide documentation about the allegations

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that he misused customers' funds and effected an unauthorized sale, as noted in paragraphs 5 through 11 above, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210. The request for information was sent by first class mail and certified mail, return receipt requested, to Croger's address of record as contained in the records of the Central Registration Depository ("CRD Address"). The first class mailing was not returned to the Staff. In addition, the certified mailing and the certified return receipt were not returned to the Staff.

15. On or about December 27, 2006, having received no response from Croger, the Staff sent to Croger a letter marked "Second Request," that he provide written responses to questions and documentation about the allegations that he misused customers' funds and effected an unauthorized sale, as noted in paragraphs 5 through 11 above, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210. The request for information was sent by first class mail, and by certified mail, return receipt requested, to Croger's CRD Address. The first class mailing was not returned to the Staff. The certified mailing receipt was returned to the Staff and apparently signed by Croger, indicating that it was received on December 30, 2006.

16. On or about January 10, 2007, Croger called the Staff examiner and admitted that he received the requests for information and documentation contained in the letters dated December 5, and December 27, 2006. He told the examiner that there had been a death in his family, and he had not yet prepared a response. Croger requested a two-week extension, until January 24, 2007, to respond to the Staff's requests for information and documentation. The examiner agreed to give Croger until January 24, 2007 to respond to the requests for information and documentation. The examiner told Croger that he must either send an electronic mail message or a letter by facsimile, confirming the new date that a response was required.

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17. On or about January 10, 2007, at 12:53 p.m., Croger sent the examiner an electronic mail message. The message stated, "Per our conversation earlier today you agreed to an extension for my response now due 1/24/2007. Sincerely, Bryan Croger."

18. The Staff has not received any further electronic mail messages or telephone calls from Croger. Croger has failed to request any additional extensions or respond to each and all of the requests for documents and information described in paragraphs 14 and 15 above, and the extended time for Croger to respond has passed.

19. The aforementioned acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 and Procedural Rule 8210 by Croger.

PRAYER FOR RELIEF

WHEREFORE, the Department of Enforcement respectfully requests that the Panel:

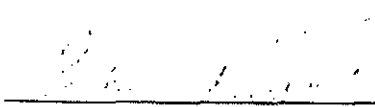
- A. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed.

- B. order that the Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

August 20, 2007

Date


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The Unauthorized Withdrawals That Were Made By Bryan Croger

Date of Withdrawal	Customer	Notation Made By Croger on Withdrawal Slip	Dollar Amount
11/4/2005	JK		\$621.12
11/7/2005	JK	"per cust. request"	\$500.00
2/3/2006	JK	"per cust. req."	\$260.23
2/22/2006	JK	"per cust. request"	\$108.69
3/15/2006	JK	"per cust. req."	\$110.13
3/20/2006	JK		\$66.09
5/9/2006	IH	"per cust. request"	\$1,000.00
5/6/2006	JK	"per Bryan Croger"	\$232.03
5/12/2006	IH	"per cust. req."	\$1,000.00
5/16/2006	IH	"per cust. req."	\$1,000.00
5/25/2006	IH	"per cust. req."	\$500.00
5/26/2006	JK	"per cust. by CISC"	\$1,000.00
6/12/2006	MB	CISC	\$1,000.00
6/14/2006	ELD	Per cust. at CISC	\$1,000.00
6/21/2006	ELD	Per CISC	\$1,000.00
6/27/2006	MB	CISC	\$1,000.00
7/11/2006	PD	CISC	\$2,000.00
8/4/2006	ELD	CISC	\$2,000.00
8/18/2006	JK	CISC	\$2,000.00
8/23/2006	PD	CISC	\$1,000.00
8/28/2006	JK	CISC	\$1,000.00

Total \$18,398.29