

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

RUBEN MARIANO SILVA
(CRD No. 1272907),

Respondent.

Disciplinary Proceeding
No. 20060071098-01

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

October 14, 2008

**Respondent is barred for misuse of customer funds, in violation of
Conduct Rule 2110.**

Appearances

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

No appearance by or for Ruben Mariano Silva.

DECISION

I. Introduction

The Department of Enforcement (“Enforcement”) charged Ruben Mariano Silva (“Silva” or the “Respondent”) with misusing customer funds, in violation of NASD Conduct Rule 2110.¹

Enforcement filed the Complaint with the Office of Hearing Officers on June 17, 2008. Silva did not answer or otherwise respond to the Complaint. Consequently, on September 10, 2008, Enforcement filed a Motion for Entry of Default Decision, supported by

¹ The FINRA Rules, which include NASD Procedural and Conduct Rules, are at www.finra.org/Rules.

the Declaration of Mark A. Graves ("Graves Decl.") and seven exhibits. Silva did not reply to the motion.

II. Findings of Fact and Conclusions of Law

A. Respondent's Default

The Hearing Officer finds that Enforcement properly served the Respondent with the Complaint by mailing the Complaint and the First and Second Notices of Complaint to his most current residential address shown in the Central Registration Depository (the "CRD Address"). Enforcement mailed the First Notice of Complaint by first-class certified mail on June 17, 2008. "Marinete Silva" accepted delivery of the mailing on June 26, 2008.² Nonetheless, Silva did not answer the Complaint.

Enforcement served the Second Notice of Complaint on Silva by first-class certified mail on July 17, 2008. On July 28, 2008, FINRA staff received the receipt for the mailing signed by "Erick Silva." To date, Silva has not filed an Answer with the Office of Hearing Officers or otherwise responded to the Complaint.³

Silva defaulted by failing to answer the Complaint.⁴ Accordingly, pursuant to Procedural Rules 9215(f) and 9269(a)(2), the Hearing Officer deems the allegations in the attached Complaint admitted and grants Enforcement's motion for entry of a default decision.

B. Jurisdiction

Silva entered the securities industry in November 1983 and registered as an Investment Company and Variable Contracts Products Representative in June 1984. Between

² Graves Decl. ¶ 9.

³ *Id.* ¶ 11.

⁴ *Department of Enforcement v. Reynolds Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at *5 (N.A.C. Dec. 9, 2003) (NASD Procedural Rule 9134(b)(1) allows for constructive notice by mailing a complaint to the respondent's most recent CRD address) (quoting *Lubeck v. SEC*, 1998 U.S. App. LEXIS 18849, at *20 (9th Cir. Aug. 12, 1998)).

September 1988 and December 1999, Silva was intermittently associated with a FINRA member firm. On December 28, 1999, he associated with Investors Brokerage Services, Inc. (“Investors Brokerage”). He became registered as an Investment Company and Variable Contracts Products Representative through Investors Brokerage in April 2000.

In September 2000, Silva was transferred in a mass transfer of registered representatives from Investors Brokerage to Farmers Financial Solutions, LLC (“Farmers Financial”), a FINRA member firm. On November 14, 2006, Farmers Financial filed a Uniform Termination Notice for Securities Industry Registration (Form U5) on Silva’s behalf, which indicated that he had failed to follow company policy regarding the handling of insurance premiums.⁵

Silva’s registrations with FINRA terminated effective November 14, 2006, and he has not been registered or associated with a FINRA member firm since that date.⁶ Nonetheless, he remains subject to FINRA’s jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA’s Bylaws, because (1) the Complaint was filed within two years following the termination of his registration with FINRA and (2) the Complaint charges him with misconduct committed while he was associated with a FINRA member firm.⁷

C. Misuse of Funds

The Complaint alleges that Silva received \$5,302.40 from 40 customers of Farmers Insurance Group (“Farmers Insurance”) between May 22, 2006, and August 30, 2006, which he deposited into his general business account. Silva then wrote checks on his account to make the insurance premium payments for his customers. However, Silva did not maintain sufficient funds in his account to cover the checks he forwarded to Farmers Insurance. Many

⁵ Ex. 2.

⁶ Ex. 1, at 6.

⁷ See Article V, Sec. 4(a), FINRA By-Laws, available at www.finra.org/Rules (then follow “NASD Manual” hyperlink to “Corporate Organization: Bylaws”).

checks were returned for insufficient funds during the relevant period. Silva did not complete payment of the insurance premiums on behalf of those customers until on or about September 5, 2006.

The Hearing Officer finds that the allegations in the Complaint and the additional evidence submitted by Enforcement show that Silva violated Conduct Rule 2110. Silva did not apply the customers' insurance premium payments in a timely and proper manner. In fact, he used customers' funds to pay his own expenses by commingling his customers' funds with his own.

III. Sanctions

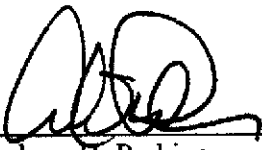
The FINRA Sanction Guidelines for improper use of customer funds recommend a fine of \$2,500 to \$50,000 and consideration of a bar.⁸ Where the improper use resulted from the respondent's misunderstanding of his customer's intended use of the funds or other mitigating factors exist, the Sanction Guidelines recommend consideration of a suspension of six months to two years. Here, there is no evidence of any mitigating factors. Silva failed to observe the fundamental prohibition against the misuse of customer funds. Indeed, the record supports the conclusion that Silva intentionally used his customers' insurance premium payments to cover his own expenses. Accordingly, the Hearing Officer finds that a bar is the appropriate sanction.

IV. Order

Ruben Mariano Silva is barred from association with any member firm in any capacity for misuse of customers' funds, in violation of NASD Conduct Rule 2110. The bar

⁸ FINRA Sanction Guidelines 38 (2007), available at <http://www.finra.org/RegulatoryEnforcement/index.htm> (then follow "FINRA Sanction Guidelines" hyperlink)..

will become effective immediately if this Default Decision becomes FINRA's final disciplinary action in this proceeding.



Andrew H. Perkins
Hearing Officer

Copies to:

Ruben Mariano Silva (by FedEx, next-day delivery, and first-class mail)
Mark A. Graves, Esq. (by e-mail and first-class mail)
Mark P. Dauer, Esq. (by e-mail)
David R. Sonnenberg, Esq. (by e-mail)