

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ERICA LATISHA TOLBERT
(CRD No. 5109478),

Respondent.

Disciplinary Proceeding
No. 2007007580501

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

May 30, 2008

Respondent is barred from associating with any member firm for conversion of customer funds, in violation of Conduct Rules 2330(a) and 2110, and for failure to respond to requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2110.

Appearances

William Brice La Hue, Senior Regional Counsel, Atlanta, GA (Mark P. Dauer, Deputy Chief Litigation Counsel, Of Counsel) for the Department of Enforcement.

No appearance by or on behalf of Erica Latisha Tolbert.

DECISION

I. Introduction

On January 29, 2008, the Department of Enforcement (“Enforcement”) filed the attached Complaint against Erica Latisha Tolbert (“Tolbert” or the “Respondent”). The Complaint charges that Tolbert converted \$12,200 from a customer account, in violation of NASD Conduct Rules 2330(a) and 2110, and failed to respond to requests for information issued pursuant to Procedural Rule 8210 in the course of the investigation of her handling of that customer account, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110. Tolbert did not answer or otherwise respond to the Complaint. Accordingly, Enforcement filed a Motion for

Entry of Default Decision on April 17, 2008, which is supported by the Affidavit of William Brice La Hue, Esq., and four attached exhibits. The Respondent did not reply to the motion.

II. Findings of Fact and Conclusions of Law

A. Jurisdiction

Tolbert entered the securities industry in March 2006 when she became associated with E*Trade Securities, LLC ("E*Trade"), a FINRA member. In October 2006, Tolbert filed a Uniform Application for Securities Industry Registration or Transfer (Form U4) to become registered with FINRA.¹ However, she did not complete the registration process before E*Trade terminated her employment on December 5, 2006.² E*Trade discharged Tolbert because it determined that she had converted \$1,200 from a customer account.³

FINRA has jurisdiction of this disciplinary proceeding. Although Tolbert never became registered with FINRA, she nonetheless subjected herself to FINRA's jurisdiction by signing and submitting a Form U4.⁴ In addition, Enforcement filed the Complaint within two years after her association with E*Trade terminated, and the Complaint charges her with misconduct committed while she was associated with E*Trade and with failing to respond to FINRA's requests for information made during the two-year period after her association with E*Trade ceased.⁵

B. Respondent's Default

The Hearing Officer finds that Enforcement properly served the Respondent with the Complaint. Enforcement mailed the Complaint and the First and Second Notice of Complaint to

¹ CX-2, at 6.

² CX-1.

³ *Id.*

⁴ See, e.g., *Department of Enforcement v. Respondent*, No. C10010146, 2003 NASD Discip. LEXIS 1, at *9 n.4 (N.A.C. Jan. 3, 2003).

⁵ Article V, Sec. 4(a), FINRA By-Laws, available at www.finra.org/Rules (then follow "NASD Manual" hyperlink to "Corporate Organization: Bylaws").

the Respondent at her most current residential address shown in the Central Registration Depository System (the "CRD Address"). Enforcement sent each mailing by first-class certified mail.⁶ Tolbert did not respond to either of the notices, and to date she has not filed an Answer with the Office of Hearing Officers. Accordingly, the Hearing Officer finds Tolbert in default and, pursuant to Procedural Rules 9215(f) and 9269(a)(2), deems the allegations in the attached Complaint admitted.⁷

C. Conversion

The First Cause of Action alleges that, on September 21, 2006, and while Tolbert was associated with E*Trade, she ordered checks for customers HZ and AZ's securities account. Tolbert had the checks sent to her residence. On September 27, 2006, Tolbert cashed a check she made payable to herself in the amount of \$6,100. And on November 26, 2006, she wrote a check for \$6,100 made payable to a friend who cashed it and gave Tolbert the proceeds.⁸ Neither HZ nor AZ authorized Tolbert to order the checks and withdraw funds from their securities account at E*Trade. On or about November 29, 2006, HZ contacted E*Trade and represented that he was not responsible for writing the two checks against his account. E*Trade then credited HZ and AZ's account the full \$12,200.⁹

The Hearing Officer finds that the evidence is sufficient to establish that Tolbert converted \$12,200 from her customers' account at E*Trade and that she thereby violated NASD Conduct Rules 2330(a) and 2110.

⁶ Enforcement mailed the First Notice of Complaint on January 24, 2008, and the Second Notice of Complaint on February 25, 2008.

⁷ *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)).

⁸ Compl. ¶¶ 5-7; La Hue Aff. ¶¶ 13-14.

⁹ La Hue Aff. ¶ 16.

D. Failure to Respond to Requests for Information

The Second Cause of Action alleges that Tolbert failed to respond in any manner to two requests for information FINRA sent her in connection with its investigation of Tolbert's conversion of funds from HZ and AZ's account. The Complaint alleges that FINRA issued the requests dated January 24 and February 14, 2007, pursuant to, and in accordance with, Procedural Rule 8210. Each request was sent to Tolbert's CRD Address by first-class certified mail.¹⁰ Tolbert did not respond to either request.

The Hearing Officer finds that the evidence is sufficient to establish that Tolbert violated Procedural Rule 8210 is also a violation of Conduct Rule 2110 by failing to respond in any manner to FINRA's information requests.

III. Sanctions

The FINRA Sanction Guidelines recommend a bar as the standard sanction for conversion of customer funds, regardless of the amount converted.¹¹ The Hearing Officer finds no evidence of mitigating factors that would justify permitting Tolbert to remain in the securities industry. Accordingly, the Hearing Officer will bar Tolbert from associating with any member firm.

The Hearing Officer also finds that a bar is the appropriate sanction for the second violation. The FINRA Sanction Guidelines recommend a bar where an associated person *fails to* respond in any manner to a request for information.¹² Again, there is no evidence of any mitigating factors that would justify a lesser sanction in this case.

¹⁰ *Id.* ¶¶ 18, 20.

¹¹ FINRA Sanction Guidelines 38 (2007), available at <http://www.finra.org/RegulatoryEnforcement/index.htm> (then follow "FINRA Sanction Guidelines" hyperlink).

¹² *Id.* at 35.

IV. Order

Erica Latisha Tolbert violated NASD Conduct Rules 2330(a) and 2110 by converting customer funds, and Procedural Rule 8210 and Conduct Rule 2110 by failing to respond to requests for information issued in connection with the investigation of her misconduct. For each violation, she is barred from associating with any member firm in any capacity.¹³ The bars will become effective immediately if this decision becomes FINRA's final disciplinary action in this proceeding.



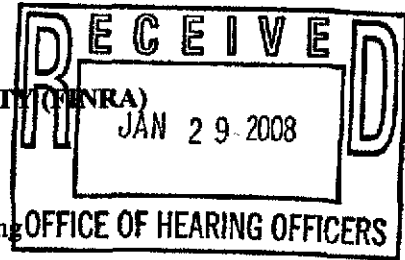
Andrew H. Perkins
Hearing Officer

Copies to:

Erica Latisha Tolbert (by FedEx, next day delivery, and first-class mail)
William Brice La Hue, Esq. (by e-mail and first-class mail)
Mark P. Dauer, Esq. (by e-mail and first-class mail)
David R. Sonnenberg, Esq. (by e-mail and first-class mail)

¹³ Restitution has not been ordered because the record shows that E*Trade compensated the customers for their loss, and there is no evidence to determine if E*Trade recovered payment from Tolbert.

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



DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ERICA LATISHA TOLBERT,
(CRD No. 5109478)

Respondent.

Disciplinary Proceeding
No. 2007007580501

COMPLAINT

The Department of Enforcement alleges:

RESPONDENT

1. Erica Latisha Tolbert ("Tolbert") was associated with FINRA (f/k/a NASD) member E*Trade Securities, LLC ("E*Trade") from March 2006 until December 2006 as a customer service representative. Tolbert further filed a Form U4 in October 2006 but never became registered with FINRA. Tolbert is not currently employed by a FINRA member. However, Tolbert remains subject to the jurisdiction of FINRA, pursuant to Article V, Section 4 of FINRA's By-Laws.

SUMMARY

2. Tolbert, a customer service representative associated with E*Trade, caused the issuance of a checkbook for a customers' account, changed the delivery address to her personal address and then negotiated two checks drawn on the customer's account, without the customer's knowledge or authorization. Tolbert further failed to respond two requests, issued pursuant to NASD Procedural Rule 8210, for information made by FINRA staff in connection with its investigation of her conversion of customer funds.

FIRST CAUSE OF ACTION

NASD Conduct Rules 2110 and 2330(a)

(Conversion of Customer Funds)

3. The Department re-alleges and incorporates by reference paragraphs 1 and 2 above.
4. In or about May 2006, customers H.Z. and his wife, A.Z. transferred their securities account to E*Trade. H.Z. and A.Z. resided in Vero Beach, Florida.
5. On or about September 21, 2006, Respondent Tolbert ordered checks for customers H.Z. and A.Z.'s securities account. On the order, Respondent Tolbert listed her personal address in Atlanta, Georgia as the delivery address for the checks.
6. On or about September 27, 2006, Tolbert drafted and negotiated check number 1076 (the initial check in the checkbook she requested) made payable to herself in the amount of \$6,100.
7. On or about November 26, 2006, Tolbert drafted check number 1077, also in the amount of \$6,100, but made it payable to a third party. Tolbert has identified the third party as a friend who negotiated the check and gave her the proceeds.
8. Respondent Tolbert drafted both checks, either negotiated them or caused them to be negotiated, and converted the total proceeds of \$12,200, without customers H.Z. or A.Z.'s authorization, knowledge or consent.
9. Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rules 2110 and 2330(a) by Respondent Tolbert.

SECOND CAUSE OF ACTION

NASD Conduct Rule 2110 and NASD Procedural Rule 8210

(Failure to Respond)

10. The Department realleges and incorporates by reference paragraphs 1 through 9 above.
11. By letter dated January 24, 2007, FINRA requested, pursuant to Rule 8210, that Tolbert provide information regarding her handling of customers H.Z. and A.Z.'s account. This request letter was

mailed to Tolbert, via first class and certified mail, at her CRD residential address. According to the terms of the letter, Tolbert was requested to provide the information to the FINRA staff no later than February 7, 2007.

12. The January 24, 2007 letter sent by first class mail was not returned to FINRA. However, a receipt for the January 24, 2007 letter sent by certified mail was returned on February 1, 2007, bearing Tolbert's signature. Tolbert did not provide the requested information by the February 7, 2007, deadline.
13. FINRA sent a second letter to Tolbert on February 14, 2007, requesting once again, pursuant to Rule 8210, that Tolbert provide information regarding her handling of customers H.Z. and A.Z.'s account. This request letter was mailed to Tolbert, via first class and certified mail, at her CRD residential address. According to the terms of the letter, Tolbert was requested to provide the information to the FINRA staff no later than February 28, 2007.
14. The February 14, 2007 letter sent by first class mail was not returned to FINRA. The February 14, 2007 letter sent by certified mail was returned as undeliverable. Tolbert failed to provide the requested information by the February 28, 2007, deadline. To date, Tolbert has not responded to FINRA's requests for information.
15. Such acts, practices and conduct constitute separate and distinct violations of NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by Respondent Tolbert.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

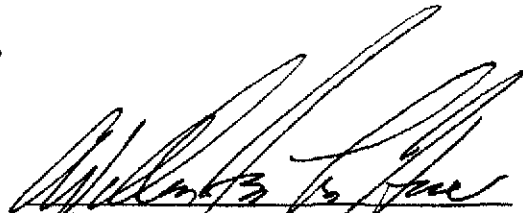
- A. Order that one or more of the sanctions provided under NASD Rule 8310(a) be imposed, including that the Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest.

- 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:

1/24/2008



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