

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JOANNA KING CHEUNG  
(CRD No. 3058119),

Respondent.

Disciplinary Proceeding  
No. 20070082842-01

Hearing Officer—Andrew H. Perkins

**DEFAULT DECISION**

February 4, 2008

**Respondent is barred from associating with any member firm for misappropriating customer funds, in violation of Conduct Rule 2110, and failing to appear for her scheduled on-the-record interview, in violation of Procedural Rule 8210 and Conduct Rule 2110.**

**Appearances**

Jacqueline D. Whelan, Senior Counsel, San Francisco, CA (Mark P. Dauer, of Counsel)  
for the Department of Enforcement.

No appearance by or on behalf of Joanna King Cheung.

**DECISION**

**I. Introduction**

On November 6, 2007, the Department of Enforcement (“Enforcement”) filed the attached Complaint against Joanna King Cheung (“Cheung” or the “Respondent”). The Complaint charges the Respondent with misappropriating customer funds, in violation of NASD Conduct Rule 2110, and failing to appear for her on-the-record interview, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110. The Respondent did not answer or otherwise respond to the Complaint. On January 22, 2008, Enforcement filed a motion for a default decision. The Respondent did not reply to the motion.

## **II. Findings of Fact and Conclusions of Law**

### **A. Respondent's Default**

On November 2, 2007, Enforcement served the Complaint and Notice of Complaint on Cheung by certified and first-class mail sent to her residential address shown in the Central Registration Depository (the "CRD address") and an alternate address that Cheung had provided to FINRA staff in the course of its investigation. Cheung did not respond to the Notice of Complaint. Therefore, on December 3, 2007, Enforcement served Cheung with a copy of the Complaint and Second Notice of Complaint by certified and first-class mail sent to her at both her CRD address and the alternate address. Cheung did not respond to the Second Notice of Complaint.

The Hearing Officer finds that Enforcement properly served the Respondent with the Complaint and Notices of Complaint by mailing them to her by certified mail at her CRD address and an alternate address she provided to the staff.<sup>1</sup> She therefore defaulted by failing to answer the Complaint. Accordingly, pursuant to Procedural Rules 9215(f) and 9269(a)(2), the Hearing Officer finds Cheung in default and deems the allegations in the attached Complaint admitted.

### **B. Jurisdiction**

Cheung was most recently registered as an Investment Company and Variable Contracts Products Representative through FINRA member Farmers Financial Solutions, L.L.C. ("Farmers Financial") from October 2000 until March 2, 2007. Although Cheung has not been associated with any FINRA member since then, she remains subject to FINRA's jurisdiction for purposes of

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<sup>1</sup> *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 (9<sup>th</sup> Cir. Aug. 12, 1998)).

this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because the Complaint, which was filed within two years after the termination of her last registration, charges her with misconduct while she was registered and with failure to comply with requests pursuant to Procedural Rule 8210 that she appear for an on-the-record interview that the staff issued within the period of retained jurisdiction.

**C. Misappropriation of Customer Funds**

The First Cause of Action alleges that, between August 1 and December 31, 2006, while she was associated with Farmers Financial, the Respondent misappropriated 12 premium refund checks and a title insurance refund check totaling \$610.35. Instead of forwarding the checks to the insurance customers, she deposited them into an account she maintained for the benefit of Farmers Insurance Group and then applied the funds to the payment of her personal expenses. On March 30, 2007, Cheung reimbursed Farmers Insurance Group.

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this decision, that the Respondent misappropriated customer funds, in violation of Conduct Rule 2110.

**D. Failure to Respond to Requests for Information**

The Second Cause of Action alleges that Cheung failed to appear for her on-the-record interview, which FINRA staff had scheduled pursuant to Procedural Rule 8210. The staff requested her testimony in the course of its investigation into the facts and circumstances surrounding her discharge from Farmers Financial, which had reported that it terminated her employment because she had misappropriated the insurance refund checks referenced in the First Cause of the Complaint.

According to the Complaint, on July 19, 2007, the staff sent Cheung a letter requesting that she appear for an on-the-record interview August 10, 2007. The staff sent the request in

accordance with Rule 8210 to her CRD address and an alternate address she provided to the staff earlier in the investigation. Cheung did not respond to this request or appear for her scheduled on-the-record interview.

On August 10, 2007, the staff sent a second letter to Cheung, requesting her to appear at FINRA's offices on August 22, 2007, for an on-the-record interview. Once again, the staff sent the letter by certified mail to both her CRD address and the alternate address she had previously provided the staff. Cheung did not respond to the request or appear for her on-the-record interview.

The allegations in the Second Cause of Complaint, which are deemed admitted, are sufficient to establish, for purposes of this decision, that Cheung violated Procedural Rule 8210 and Conduct Rule 2110, by failing to appear for an on-the-record interview in connection with FINRA staff's investigation of the facts and circumstances regarding her misappropriation of customer funds while she was registered through Farmers Financial.

### **III. Sanctions**

#### **A. Misappropriation of Customer Funds**

Although Enforcement denoted Cheung's misconduct as misappropriation, her actions constituted conversion. Accordingly, the Hearing Officer applied the FINRA Sanction Guidelines ("Guidelines") for conversion in determining the appropriate sanction for this violation.

The Guidelines for conversion recommend a bar regardless of the amount converted.<sup>2</sup> Here, there is no evidence of any mitigating factors. Accordingly, the Hearing Officer finds that a bar is the appropriate sanction for this violation.

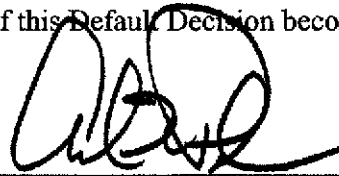
**B. Failure to Respond to Requests for Information**

The applicable Sanction Guideline for failing to respond to a request for information made pursuant to NASD Procedural Rule 8210 suggests that a bar should be standard where no mitigating circumstances exist.<sup>3</sup> Here, the record discloses no such mitigating factors. Accordingly, a bar also is appropriate for this violation.

**IV. Order**

Joanna King Cheung is barred from associating with any member firm in any capacity for misappropriation of customer funds, in violation of Conduct Rule 2110, and failure to appear for her on-the-record interview, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

The bars shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.



Andrew H. Perkins  
Hearing Officer

Copies to:

Joanna King Cheung (by FedEx, next day delivery, and first-class mail)  
Jacqueline D. Whelan, Esq. (by electronic and first-class mail)  
David R. Sonnenberg, Esq. (by electronic and first-class mail)  
Mark P. Dauer, Esq. (by electronic and first-class mail)

<sup>2</sup> FINRA Sanction Guidelines 38 (2007), available at <http://www.finra.org/web/groups/enforcement/documents/enforcement/p011038.pdf>.

<sup>3</sup> *Id.* at 35.

**FINANCIAL INDUSTRY REGULATORY AUTHORITY**

**OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

V.

Joanna King Cheung,  
(CRD No. 3058119),

Respondent.

**DISCIPLINARY PROCEEDING**  
No. 20070082842-01

**COMPLAINT**

The Department of Enforcement alleges:

1. Respondent Joanna King Cheung (Cheung or Respondent) entered the securities business as an Investment Company-Variable Contracts Products Representative of a member of FINRA (f/k/a National Association of Securities Dealers or NASD) in June 1998. In October 2000, Cheung became registered in that capacity with Farmers Financial Solutions, LLC (Farmers). Farmers terminated her registration in March 2007. Cheung has not been associated with a FINRA member since March 2007. FINRA has jurisdiction to bring this action against Cheung pursuant to Article V, Section 4 of its By-laws.

## **OVERVIEW**

2. Between on or about August 1, 2006 and on or about December 31, 2006, Cheung misappropriated funds intended for delivery to customers of Farmers Insurance Group, an affiliate of Farmers (the insurance affiliate) for which Cheung sold insurance products. Farmers learned of the misappropriation from the insurance affiliate after the insurance affiliate conducted an internal investigation of the misappropriation.
3. FINRA staff commenced an investigation of Cheung's misappropriation upon receipt of the Uniform Termination Notice for Securities Industry Registration filed by Farmers. On July 19, 2007, and August 10, 2007, the staff requested Cheung's appearance at an on-the-record interview to answer questions concerning the matters under investigation. Cheung failed to appear for testimony. The Complaint alleges violations related to the misappropriation and the failure to appear.

## **FIRST CAUSE OF ACTION**

(Misappropriation of Funds, Conduct Rule 2110)

4. The Department realleges and incorporates by reference paragraphs 1-3 above.
5. Between on or about August 1, 2006, and on or about December 31, 2006, the insurance affiliate sent approximately 12 premium refund checks (the Refund Checks) to Cheung for delivery to approximately 12 customers of the insurance affiliate. Prior to August 2, 2006, Cheung received a check issued by a title company for the benefit of another insurance customer (the Title Company Check). The amounts of the checks ranged from \$2.55 to \$184.20 and they totaled \$610.35.

6. Cheung did not deliver the Refund Checks or the Title Company Check to the insurance customers. Instead, on four occasions, she deposited one or more of the checks to a bank account she maintained for the benefit of the insurance affiliate. The purpose of the account was to facilitate the transmission of premium payments Cheung received from insurance customers to the insurance affiliate.
7. The insurance affiliate required Cheung to prepare and submit a record indicating the policies to which the deposited premium amounts should be applied. With respect to the Refund Checks and the Title Company Check, Cheung allocated the deposited amounts to a homeowner's policy or an automobile policy in her name. The insurance affiliate applied the checks as directed. Approximately \$152.97 was applied to Cheung's homeowner's policy and approximately \$457.38 was applied to Cheung's automobile policy. The dates upon which Cheung misappropriated funds, the customers and the amounts are set forth on Schedule A, attached hereto and incorporated herein by reference.
8. On or about March 30, 2007, Cheung provided funds to the insurance affiliate to reimburse each insurance customer whose funds were misappropriated.
9. Cheung's conduct, as described in paragraphs 5-7 above, constituted the misappropriation of funds for her personal benefit. Such conduct is inconsistent with high standards of commercial honor and just and equitable principles of trade. Each instance in which Cheung directed the insurance affiliate to apply a Refund Check or the Title Company Check to her homeowner's or automobile policy constituted a violation of Conduct Rule 2110.

## SECOND CAUSE OF ACTION

(Failure to Appear for Testimony, Procedural Rule 8210 and Conduct Rule 2110)

10. The Department realleges and incorporates by reference paragraphs 1-3 and 5-9 above.
11. On July 19, 2007, FINRA staff sent to Cheung a written request that Cheung appear at the offices of FINRA District No. 1 in San Francisco for an on-the-record interview on August 10, 2007. The written request was made pursuant to Procedural Rule 8210 and was sent by certified and first-class mail to Cheung at her most recent address of record with FINRA, [REDACTED] (the CRD Address). The written request was also sent by certified and first-class mail to an address that Cheung provided to the staff earlier in the investigation, [REDACTED] [REDACTED] (the Alternate Address).
12. The first-class and certified mailings to the CRD Address were returned marked "unable to forward." The first-class and certified mailings to the Alternate Address were returned with a handwritten notation "It's a business, no such person;" however, the staff also received a certified mail delivery receipt for the certified mailing to the Alternate Address that was signed by Cheung.
13. Cheung did not contact the staff prior to the scheduled interview and she failed to appear on August 10, 2007.
14. On August 10, 2007, FINRA staff sent a second written request to Cheung requesting her appearance at an on-the-record interview on August 22, 2007, at the San Francisco FINRA office. The request was made pursuant to Procedural Rule 8210

and was sent by first-class and certified mail to the CRD Address and to the Alternate Address.

15. The first-class and certified mailings to the CRD Address were returned to the staff marked return to sender. The certified mailing to the Alternate Address was returned marked attempted, not known. The first-class mailing was not returned.
16. Cheung did not contact the staff prior to the scheduled interview and she failed to appear on August 22, 2007.
17. Cheung's failures to appear for on-the-record interviews, as described in paragraphs 11-16 above, constituted violations of Procedural Rule 8210. Further, her failures to appear were inconsistent with high standards of commercial honor and just and equitable principles of trade and constituted violations of Conduct Rule 2110.

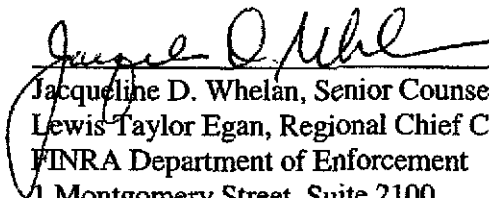
#### **RELIEF REQUESTED**

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: November 2, 2007

  
Jacqueline D. Whelan, Senior Counsel  
Lewis Taylor Egan, Regional Chief Counsel  
FINRA Department of Enforcement  
1 Montgomery Street, Suite 2100  
San Francisco, CA 94101  
Phone: 415-217-1121; Fax: 415-217-1201

**Of Counsel**

Rory C. Flynn  
Vice President & Chief Litigation Counsel  
FINRA Department of Enforcement  
1801 K Street, N.W., Suite 800  
Washington, D.C. 20006  
(202) 974-2974; Fax: (202) 721-8318

Mark P. Dauer  
Deputy Chief Litigation Counsel – Regions  
FINRA Department of Enforcement  
1100 Poydras Street  
Energy Centre, Suite 850  
New Orleans, LA 70163  
(504) 522-6527; Fax: (504) 522-4077

DISCIPLINARY PROCEEDING NO. 20070082842  
DEPARTMENT OF ENFORCEMENT v. JOANNA KING CHEUNG

SCHEDULE A

| <u>Date of<br/>Misappropriation</u> | <u>Customer/s</u> | <u>Amount</u>   |
|-------------------------------------|-------------------|-----------------|
| 8/2/06                              | HT/CL             | \$134.64        |
|                                     | JK                | \$17.87         |
| 10/25/06                            | ZC                | \$4.64          |
|                                     | MT/JA             | \$28.75         |
|                                     | BNL               | \$30.70         |
|                                     | QHH               | \$54.03         |
| 12/7/2006                           | MT/JW             | \$184.20        |
|                                     | CC/HCL            | \$2.55          |
| 12/30/2006                          | JL/JW             | \$6.80          |
|                                     | TH                | \$12.55         |
|                                     | JS                | \$30.21         |
|                                     | WL                | \$42.00         |
|                                     | SC                | <u>\$61.41</u>  |
|                                     | <b>Total</b>      | <b>\$610.35</b> |