

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

CHING AUL
(CRD No. 4608307),

Respondent.

Disciplinary Proceeding
No. 2007009347901

Hearing Officer – LBB

DEFAULT DECISION

November 6, 2008

Respondent is barred for falsification of letters of authorization and submission of the falsified documents to his firm in violation of Conduct Rule 2110, conversion of customer funds in violation of Conduct Rules 2330(a) and 2110, and failure to respond to requests for information in violation of Procedural Rule 8210 and Conduct Rule 2110.

Appearances

John S. Han, Attorney, Principal Regional Counsel, FINRA, Los Angeles, CA, for the Department of Enforcement

No appearance by or for Respondent

DECISION

The Department of Enforcement filed the Complaint in this action on July 11, 2008. The Complaint asserts three causes of action against Respondent Ching Aul ("Respondent"): submission of falsified letters of authorization in violation of NASD Conduct Rule 2110; conversion of customer funds in violation of NASD Conduct Rules 2330(a) and 2110; and failure to provide information in violation of NASD Procedural Rule 8210 and Conduct Rule 2110. Despite being properly served with the Complaint, Notice of Complaint, and Second Notice of Complaint, Respondent has not filed an answer to the Complaint. On September 30, 2008, Enforcement filed a Motion for Entry of Default Decision, to which Respondent did not

respond. Accordingly, pursuant to NASD Procedural Rules 9215(f) and 9269, the allegations in the Complaint will be deemed admitted and Enforcement's motion will be granted.¹

I. Respondent's Default

On July 8, 2008, Enforcement served Respondent with the Complaint and Notice of Complaint by first-class regular and certified mail to his residential address as reflected in the Central Registration Depository ("CRD"). A Second Notice of Complaint and Complaint were served on Respondent by first-class regular and certified mail at his CRD address on August 6, 2008. Respondent has not answered or otherwise responded to the Complaint.

Enforcement served the Complaint and the Notices of Complaint on Respondent in accordance with Procedural Rule 9134, giving him constructive notice of this proceeding. By failing to respond, he defaulted.

II. Jurisdiction

Respondent was registered as a General Securities Representative on March 13, 2003, with FINRA member firm Merrill Lynch, Pierce, Fenner & Smith Incorporated. He remained registered with Merrill Lynch until May 25, 2007, when Respondent's employment was terminated.

The Complaint charges Respondent with violations that occurred while he was associated with a member firm, and with failure to respond to a request for information issued within two years after his association with a member firm. While Respondent is not currently registered with a FINRA member firm, he was subject to FINRA's jurisdiction at the time the Complaint was filed because the Complaint was filed within two years after the termination of his

¹ The factual determinations in this decision are based on the allegations of the attached Complaint and the materials filed by Enforcement with its motion.

registration, and he remains subject to FINRA's jurisdiction, pursuant to Article V, Section 4 of FINRA's By-Laws.

III. Origin of the Investigation

FINRA's investigation began on June 21, 2007, when Merrill Lynch filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") indicating it had terminated Respondent's employment. The Form U5 stated that Respondent had transferred funds from client accounts to various outside bank accounts using falsified letters of authorization ("LOAs").

IV. Violations

A. Submission of Falsified Letters of Authorization in Violation of Rule 2110

NASD Conduct Rule 2110 requires that members "shall observe high standards of commercial honor and just and equitable principles of trade." A respondent violates the rule when he engages in unethical conduct. *Dep't of Enforcement v. Ortiz*, No. E0220030425-01, 2007 NASD Discip. LEXIS 28, at *15 (N.A.C. Oct. 10, 2007), *aff'd*, *Geoffrey Ortiz*, Exchange Act Rel. No. 58416, ___ SEC LEXIS ___ (Aug. 22, 2008). Falsification of documents is unethical conduct that violates Rule 2110. *Id.* at *16. "Falsifying documents is a prime example of misconduct that adversely reflects on a person's ability to comply with regulatory requirements and has been held to be a practice inconsistent with just and equitable principles of trade." *Dep't of Enforcement v. Taylor*, No. C8A050027, 2007 NASD Discip. LEXIS 11, at *22 – *23 (N.A.C. Feb. 27, 2007).

From November 1, 2006, through April 24, 2007, Respondent created and submitted thirteen falsified LOAs to Merrill Lynch. The LOAs requested that the firm transfer funds from customers' accounts to the accounts of people unknown to the customers, but known to

Respondent. Each of the LOAs bore a forged signature of the customer from whose account the funds were being transferred.

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent violated Conduct Rule 2110 by falsifying thirteen letters of authorization and submitting them to his firm.

B. Conversion in Violation of Rules 2330(a) and 2110

FINRA's Sanction Guidelines define conversion as "an intentional and unauthorized taking of and/or exercise of ownership over property by one who neither owns the property nor is entitled to possess it." *FINRA Sanction Guidelines* at 38 (2007). NASD Conduct Rule 2330(a) provides that "[n]o member or person associated with a member shall make improper use of a customer's securities or funds." Conduct Rule 2110 requires members and persons associated with members to "observe high standards of commercial honor and just and equitable principles of trade." The misuse of customer funds in violation of Rule 2330(a) also violates Rule 2110. *Dep't of Enforcement v. Thomas*, No. C10030082, 2004 NASD Discip. LEXIS 49, at *6 n.10 (O.H.O. June 30, 2004); *Dep't of Enforcement v. Patel*, No. C02990052, 2001 NASD Discip. LEXIS 42, at *24 – *25 (N.A.C. May 23, 2001) (affirming the decision of a Hearing Panel barring a representative for misuse of customer funds by depositing customer funds into his own account rather than investing them as directed by the customers). "An associated person makes improper use of customer funds where he or she fails to apply the funds (or uses them for some purpose other than) as directed by the customer." *Id.*

Respondent used the falsified LOAs in furtherance of a scheme to convert customer funds. After Respondent submitted the falsified LOAs to cause the transfer of customer funds to the bank accounts of Respondent's acquaintances, those people transferred the funds to

Respondent. Respondent used the funds for personal expenses, including paying off large gambling debts. In total, Respondent converted more than \$1.5 million of customer funds.

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent violated Conduct Rules 2330(a) and 2110 by converting funds from the accounts of his customers.

C. Failure to Provide Information in Violation of Rules 8210 and 2110

NASD Procedural Rule 8210 authorizes FINRA to require any person subject to its jurisdiction to provide information related to any matter under investigation. On August 31, 2007, FINRA staff sent a letter by first-class regular and certified mail to Respondent's CRD address, pursuant to Rule 8210. The letter requested information concerning the allegations of the creation and submission of falsified letters of authorization and the conversion of customer funds. Respondent failed to respond to this request. On September 17, 2007, Enforcement sent a letter to Respondent by first-class regular and certified mail, enclosing the first request for information and asking Respondent to respond to those questions. Respondent again failed to respond.

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent violated Procedural Rule 8210 and Conduct Rule 2110 by failing to respond to FINRA's requests for information.

V. Sanctions

A bar is the appropriate sanction for all three of the violations alleged in the Complaint.

For forgery and falsification of records, the Sanction Guidelines recommend a fine of \$5,000 to \$100,000 and, in cases in which mitigating factors exist, a suspension for up to two years. In egregious cases, the Sanction Guidelines recommend consideration of a bar. The principal considerations are the nature of the documents forged and whether the respondent had a

good-faith, but mistaken, belief of authority to make a writing on behalf of another. *Sanction Guidelines* at 39. The nature of the documents here is an aggravating factor, and Respondent clearly did not have a good-faith belief that the customers had granted him the authority to create the documents on their behalf. This is an egregious case, and a bar is appropriate for Respondent's forgery and falsification of records.

The Sanction Guidelines recommend a bar as the sanction for conversion and the improper use of customer funds in violation of Rules 2330(a) and 2110. *Sanction Guidelines* at 38. There is no evidence of any mitigating factors that would make a sanction of anything less than a bar appropriate. There are numerous aggravating factors, such as the large amount of money taken, the number of instances of conversion, and the planning and organization required to implement Respondent's scheme. A bar is the appropriate sanction for Respondent's conversion of funds.²

The Sanction Guidelines recommend a bar where a respondent fails to respond in any manner to a request for information issued pursuant to Rule 8210. *Sanction Guidelines* at 35. Where mitigation exists, the Guidelines recommend consideration of a suspension in all capacities of up to two years. A bar is the appropriate sanction under the facts and circumstances of this case. The record reflects that Respondent failed to respond in any manner, and there are no mitigating factors that would justify imposition of a lesser sanction.

VI. Conclusion

Respondent is barred for falsifying letters of authorization and submitting them to his firm in violation of Conduct Rule 2110, converting customer funds in violation of Conduct Rules

² Because Respondent's former firm has reimbursed the customers whose funds were converted, Enforcement is not seeking restitution.

2330(a) and 2110, and failing to respond to requests for information in violation of Procedural Rule 8210 and Conduct Rule 2110.

SO ORDERED.


Lawrence B. Bernard
Hearing Officer

Copies to: Ching Aul (*via overnight courier and first-class mail*)
John S. Han, Esq. (*via email and first-class mail*)
Mark P. Dauer, Esq. (*via email*)
David R. Sonnenberg, Esq. (*via email*)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Ching Aul (CRD No. 4608307),

Respondent.

DISCIPLINARY PROCEEDING
No. 2007009347901

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. From November 2006 through April 2007, Ching Aul falsified 13 letters of authorization (LOAs) and used them to convert over \$1.5 million from four customer accounts.
2. As part of its investigation into these activities, and pursuant to NASD Rule 8210, FINRA (f/k/a the National Association of Securities Dealers or NASD) sent requests for information to Aul on August 31, 2007, and September 17, 2007. Aul failed to provide any information in response to these requests.

RESPONDENT AND JURISDICTION

3. On or about November 15, 2002, Respondent Ching Aul entered the securities industry as an associated person of FINRA member Merrill Lynch, Pierce, Fenner & Smith Incorporated (Merrill Lynch).

4. From on or about March 13, 2003 through May 25, 2007, Aul was registered through Merrill Lynch as a General Securities Representative.
5. Although Aul is not currently associated with a member firm, he remains subject to FINRA's jurisdiction through May 24, 2009, pursuant to Article V, Section 4 of FINRA's By-Laws, which provides for a two-year period of retained jurisdiction over formerly registered persons.

FIRST CAUSE OF ACTION
(Submission of Falsified LOAs, Rule 2110)

6. The Department realleges and incorporates by reference paragraphs 1-5 above.
7. From on or about November 1, 2006, through April 24, 2007, Aul created and faxed to Merrill Lynch 13 falsified LOAs.
8. Each LOA requested that the firm transfer funds from the customer's Merrill Lynch account to the bank account of an unregistered person unknown to the customer but known to Aul.
9. Although each LOA bore what appeared to be the customer's signature, none of the LOAs was actually signed by the customer.
10. The following table summarizes the LOAs falsified by Aul:

Date Faxed	Owner(s) of Merrill Lynch Account	Signature(s) on LOA	Amount	Owner of Receiving Bank Account
11/01/06	DC & AC (joint)	DC	\$25,000.00	CC
11/13/06	DC & AC (joint)	DC	\$49,700.00	KC
11/21/06	DC & AC (joint)	DC	\$49,700.00	KC
11/28/06	DC & AC (joint)	DC & AC	\$170,000.00	KC
02/15/07	IL	IL	\$77,825.00	CL
03/01/07	DC & AC (joint)	DC & AC	\$200,000.00	KC
03/07/07	DC & AC (joint)	DC & AC	\$300,000.00	KC
03/13/07	DC & AC (joint)	DC & AC	\$300,000.00	KC

Date Faxed	Owner(s) of Merrill Lynch Account	Signature(s) on LOA	Amount	Owner of Receiving Bank Account
03/19/07	IL	IL	\$50,000.00	CF
04/11/07	DC & AC (joint)	DC & AC	\$100,000.00	KC
04/18/07	AK	AK	\$80,000.00	KC
04/20/07	AK	AK	\$70,000.00	KC
04/24/07	MK	MK	\$90,000.00	PY

11. Aul falsified each of the LOAs referenced in paragraphs 6-10 in that none of them was actually requested, authorized or signed by the Merrill Lynch account owner.
12. The foregoing acts, practices and conduct constitute separate and distinct violations of NASD Rule 2110 by Aul.

SECOND CAUSE OF ACTION
(Conversion, Rules 2330(a) and 2110)

13. The Department realleges and incorporates by reference paragraphs 1-12 above.
14. From on or about November 1, 2006, through April 24, 2007, Aul engaged in a course of conduct, using the falsified LOAs, more fully described in paragraphs 6-12 above, causing Merrill Lynch to transfer over \$1.5 million from the accounts of customers DC and AC, IL, AK, and MK to the bank accounts of unregistered persons known to Aul.
15. After receiving each transfer, the unregistered persons owning each of the receiving bank accounts transferred the converted customer funds to Aul.
16. Aul improperly used customer funds, as more fully set forth below, for personal expenses, including gambling debts incurred at casinos in Las Vegas, Nevada and Macau.
 - a. From on or about November 1, 2006, through April 11, 2007, Aul obtained and used for his personal benefit a total of \$1,194,400.00 from

the account of customers DC and AC, without the knowledge, authorization or consent of either DC or AC.

- b. From on or about February 15, 2007, through March 19, 2007, Aul obtained and used for his personal benefit a total of \$127,825.00 from customer IL's account without IL's knowledge, authorization or consent.
 - c. From on or about April 18, 2007, through April 20, 2007, Aul obtained and used for his personal benefit a total of \$150,000.00 from customer AK's account without AK's knowledge, authorization or consent.
 - d. From on or about April 24, 2007, through April 25, 2007, Aul obtained and used for his personal benefit a total of \$90,000.00 from customer MK's account without MK's knowledge, authorization or consent.
17. The foregoing acts, practices and conduct constitute separate and distinct violations of NASD Rule 2330(a) and 2110 by Aul.

THIRD CAUSE OF ACTION
(Failure to Provide Information, Rules 8210 and 2110)

18. The Department realleges and incorporates by reference paragraphs 1-17 above.
19. On or about August 31, 2007, FINRA staff sent a letter (First 8210 Request) by First Class and Certified Mail to Aul at his most recent address as reflected in CRD, [REDACTED] (CRD Address). The letter requested information pursuant to NASD Procedural Rule 8210 concerning the matters alleged in paragraphs 1-17 above. The due date for Aul's response to the First 8210 Request was September 14, 2007.
20. Aul failed to provide the information requested in the First 8210 Request.

21. On or about September 17, 2007, FINRA staff sent a letter (Second 8210 Request) by First Class Mail to Aul at the CRD address. The letter included a copy of the First 8210 Request and, again pursuant to Procedural Rule 8210, requested that Aul respond to the questions in the First 8210 Request by October 1, 2007.
22. Aul failed to provide the information requested in the Second 8210 Request.
23. The foregoing acts, practices and conduct constitute separate and distinct violations of NASD Rules 8210 and 2110 by Aul.

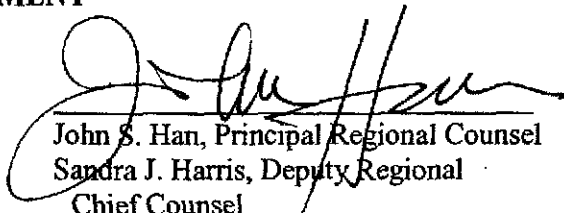
RELIEF REQUESTED

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
- 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: July 8, 2008



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