

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

RICHARD McGARRAH
(CRD No. 1892189),

Respondent.

Disciplinary Proceeding _____
No. 2007009387601

DEFAULT DECISION

Hearing Officer – SNB

December 5, 2008

For conversion of customer funds, in violation of Rules 2330 and 2110, forgery and falsification of documents, in violation of Rule 2110, and failure to appear for testimony, in violation of Rules 8210 and 2110, Respondent is barred from associating with any FINRA member in any capacity.

Appearances

Stephanie B. Fine, Esq., New York, NY, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

I. Background

On July 8, 2008, the Department of Enforcement ("Enforcement") filed a three-cause Complaint in this proceeding, attached to this Decision as Exhibit A. The first cause alleges that Richard McGarrah ("Respondent") violated Rules 2110 and 2330 by converting customer funds. The second cause alleges that Respondent violated Rule 2110 by forging customer signatures and falsifying correspondence. The third cause alleges that Respondent violated Rules 8210 and 2110 by failing to appear for testimony as requested by FINRA Staff.

Respondent did not file an Answer to the Complaint. Accordingly, on October 2, 2008, Enforcement filed a motion for entry of default decision, supported by the Declaration of Stephanie B. Fine and 39 exhibits. Respondent did not file a response to the motion.

For the reasons set forth below, Enforcement's motion is granted.¹

II. Respondent's Default

On July 8, 2008, Enforcement served the Complaint and Notice of Complaint on Respondent by first class and certified mail, sent to Respondent's last known residential address according to the Central Registration Depository (the "CRD Address") as well as an alternative address (the "Alternative Address"). Respondent did not file an Answer. In the same manner, on August 5, 2008, Enforcement served the Complaint and Second Notice of Complaint. Respondent again did not file an Answer.

Enforcement complied with Rule 9134(b)(1) by mailing the Complaint and Notices of Complaint to Respondent's CRD Address and the Alternative Address, thereby giving Respondent constructive notice of this proceeding. By failing to file an Answer, Respondent defaulted. Accordingly, pursuant to Rules 9215(f) and 9269(a)(2), the allegations in the Complaint are deemed admitted.

III. Jurisdiction

Respondent entered the securities industry in 1988. He was registered with Citigroup Global Markets Inc. ("Citigroup") from May 1998 to June 2007, when he was terminated for the conduct alleged in Counts One and Two of the Complaint. Respondent is not currently associated with a member firm.

¹ The factual determinations in this Decision are based on the allegations of the attached Complaint, which are deemed admitted, and the declaration and exhibits filed by Enforcement with its motion.

Although Respondent is not currently associated with a member firm, FINRA has jurisdiction to bring this proceeding, pursuant to Art. V, § 4 of FINRA's By-Laws, because the Complaint charges Respondent with misconduct while he was a registered person and with failing to comply with requests for information made during the two-year period following termination of his last registration, and the Complaint was filed within two years of the termination of his registration.

IV. Violations

A. Conversion

The first cause of the Complaint alleges that on February 12, 2007, Respondent instructed his assistant to withdraw \$60,000 from the joint account of customers DM and JM, Respondent's Aunt and Uncle. The withdrawal was in the form of a check made payable to the customers. Respondent took the check from an envelope addressed to the customers, forged their signatures, and deposited the check into his personal account. The customers did not consent to this and were unaware of it.

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent converted customer funds, in violation of Rules 2330 and 2110.

B. Forgery and Falsification of Documents

The second cause of the Complaint alleges that on February 12, 2007, Respondent forged the signatures of the customers as noted above. The Complaint also alleges that when the customers complained, Respondent prepared a letter on firm letterhead purportedly signed by the branch manager, informing the customers that the withdrawal was an error and was being rectified. In fact, the letter was written by Respondent, who forged the signature of a supervisor who was no longer employed at the firm.

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent forged customer signatures and falsified a letter in order to conceal his conversion of the customers' funds, in violation of Rule 2110.

C. Failure to Appear

The third cause of the Complaint alleges that, on February 29, 2008, after several unsuccessful attempt to arrange Respondent's On-the-Record testimony ("OTR"), FINRA Staff ("Staff") sent Respondent a request pursuant to Rule 8210 for an OTR on March 7, 2008. That request was sent by first class and certified mail to a new address Respondent provided to Staff in July 2007, when Respondent informed the Staff that he no longer lived at his CRD address.²

In the same manner, on March 12, 2008, Staff sent a second request for Respondent to appear for an OTR on March 26, 2008 in New York, New York. In the request, Staff advised Respondent that if he wished to testify in Atlanta, Georgia, instead, he must contact Staff before March 19, 2008. On March 18, 2008, Respondent left Staff a telephone message acknowledging that he received actual notice of the request and asking that testimony take place in Atlanta, Georgia. Respondent left another message after business hours on March 21, 2008, but offered no alternate date for the OTR.

In the same manner, on April 2, 2008, Enforcement sent Respondent a third request, this time requiring him to appear for an OTR on April 16, 2008 in Atlanta, Georgia. On April 14, 2008, Respondent left Staff a telephone message acknowledging

² Because the Staff did not also send the request to Respondent's CRD address and there was insufficient evidence to establish that Respondent received actual notice of the request, the Hearing Officer determined that Staff did not meet the notice requirements of Rule 8210(d) with respect to this first request. However, as discussed below, because Respondent had actual notice of the second and third requests, and the third request was also sent to Respondent's CRD address, Staff met the notice requirements for those requests.

that he received actual notice of the request and stating that he would be out of town for the next two weeks. He left no further information or means for Staff to contact him, and the telephone number that he previously provided to Staff was out of service. He did not appear for the OTR April 16, 2008 as required.

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent violated Rules 8210 and 2110.

V. Sanctions

For conversion, the Guidelines recommend a bar, regardless of the amount converted. FINRA Sanction Guidelines ("Guidelines") at 38 (2007 ed.). A bar is also standard for failure to provide requested information. Id. at p. 35. For forgery and falsification of documents, the Guidelines recommend a bar in egregious cases such as this, where Respondent falsified correspondence and forged a supervisor's signature in order to conceal his conversion of customer funds. Id. at 39. Enforcement seeks a bar for these violations.³ There is no evidence of any mitigating circumstances that would justify a lesser sanction. Therefore, Respondent is barred from associating with any FINRA member in any capacity.

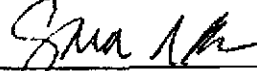
VI. Conclusion

For conversion of customer funds, in violation of Rules 2330 and 2110, for falsification of documents, in violation of Rule 2110, and for failure to appear for testimony, in violation of Rules 8210 and 2110, Respondent is barred from associating

³ The customers received reimbursement for the converted funds, so Enforcement does not seek restitution.

with any FINRA member in any capacity. These bars shall become effective immediately if this Decision becomes the final disciplinary action of FINRA.

SO ORDERED.



Sara Nelson Bloom
Hearing Officer

Copies to: Richard McGarrah (*via Overnight Courier and first-class mail*)
Stephanie B. Fine Esq. (*via electronic and first-class mail*)
Steven F. Korostoff, Esq. (*via electronic mail*)
Susan Light, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

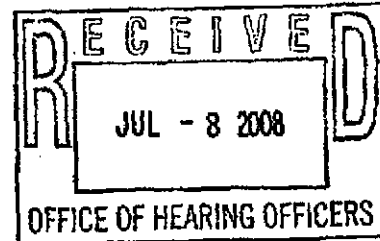
Department of Enforcement,

Complainant,

v.

Richard McGarrah
(CRD No.1892189),

Respondent.



DISCIPLINARY PROCEEDING
No. 200700938876

COMPLAINT

The Department of Enforcement alleges:

1. McGarrah was a person associated with Citigroup Global Markets Inc. ("the Firm"), a member of FINRA, between approximately April 22, 1998 and June 2, 2007. McGarrah therefore is subject to the jurisdiction of FINRA, pursuant to Article V, Section 4 of FINRA's By-Laws.¹

**FIRST CAUSE OF ACTION
Conversion
NASD Conduct Rules 2330 and 2110**

2. The Department realleges and incorporates by reference paragraph 1 above.

¹ On July 30, 2007, a portion of NYSE Regulation's Enforcement Division merged with the National Association of Securities Dealers, Inc. ("NASD") to form the Financial Industry Regulatory Authority ("FINRA").

3. On or about February 12, 2007 McGarrah, a registered representative, instructed his assistant to withdraw \$60,000 from the joint account of JM and DM, customers of the Firm, in the form of a check made payable to the customers.
4. JM and DM are McGarrah's aunt and uncle. On or about February 12, 2007, JM was hospitalized and undergoing treatment for an illness. McGarrah was aware that his uncle was hospitalized.
5. McGarrah took the check, which had been inserted into an envelope for overnight delivery bearing the customers' address, forged the signatures of the customer payees and deposited the check into his personal account, without the knowledge or consent of the customers, and used the funds for his own personal use.
6. When confronted by Firm personnel, including his manager, McGarrah admitted to taking the money from the account, for his own use, without permission.
7. The Firm made the customers whole, in June 2007, upon learning of the facts and circumstances of the withdrawal of the funds by McGarrah. McGarrah agreed to repay the Firm, but has failed to do so to date.
8. NASD Rule 2330(a) states that no person associated with a member shall make improper use of a customer's securities or funds. The acts, practices and conduct described above constitute violations of NASD Conduct Rules 2330 and 2110 by McGarrah.

**SECOND CAUSE OF ACTION
Forgery and falsification of documents
NASD Rule 2110**

9. The Department realleges and incorporates by reference paragraphs 1-8 above.

10. On or about February 12, 2007 McGarrah forged the signatures of customer payees on the back of a check he ordered to be issued.
11. On or about May 30, 2007 customer JM telephoned McGarrah to complain about a \$60,000 withdrawal he saw upon examining his account statements from February.
12. On or about May 31, 2008 customer JM received a letter, via facsimile, purporting to have come from Citigroup, on Firm letterhead, bearing the purported signature of a branch office manager, informing the customers that the "error" involving money missing from their account was being rectified and would be credited back to them, with interest.
13. In fact, the letter was written and sent by McGarrah, without Firm authorization, and the signature was made by McGarrah, using the name of a supervisor who was no longer employed at Citigroup.
14. Such acts, practices and conduct constitute a violation of NASD Conduct Rule 2110 by McGarrah.

THIRD CAUSE OF COMPLAINT
Failure to appear for an on-the-record interview
NASD Procedural Rule 8210 and Conduct Rule 2110

15. The allegation in paragraphs 1-14 are realleged and incorporated herein by reference.
16. By letter dated February 29, 2008, Enforcement requested that McGarrah contact it before March 7, 2008 to schedule a date certain for his testimony in Atlanta, where he resides, in connection with an on-going FINRA investigation. The letter

also stated that if McGarrah failed to contact Enforcement in a timely manner, a date certain would be set for his testimony in New York. McGarrah did not respond by March 7, 2008.

17. The February 29th letter was sent to McGarrah by certified mail and regular U.S. mail to an address he provided as his current residence. McGarrah provided the new address to Enforcement in July 2007 and advised that he moved from his last residence, the address provided by CRD, prior to July 2007. The certified mail receipt was returned, evidencing delivery.
18. By letter dated March 12, 2008, Enforcement informed McGarrah that he failed to contact Enforcement before March 7 as requested in the February 29 letter and that his testimony was accordingly scheduled for March 26, 2008 in New York; he was advised that if he wished to testify in Atlanta, because of the expense of traveling to New York, he must contact Enforcement on or before March 19, 2008.
19. McGarrah left a telephone message with Enforcement on March 18, which confirmed his receipt of the letter, requested that testimony take place in Atlanta, and said he was out of town and would call again by March 20. A telephone message was left by Enforcement for McGarrah on March 20 in the evening advising him he must contact Enforcement that day in order to confirm a date other than the scheduled March 26 date, for his testimony in Atlanta. On March 21 McGarrah left a telephone message with Enforcement in the evening stating that he was sorry he hadn't called as promised by March 20. He left no other message, and provided no alternative date or availability.

20. The March 12 letter was sent to McGarrah by certified mail and regular U.S. mail to the address he provided as his current residence. The certified mail receipt was returned, evidencing delivery.
21. By letter dated April 2, 2008, Enforcement advised McGarrah that his testimony was scheduled for April 16, 2008 in Atlanta at a designated time and location. McGarrah left a message with Enforcement on April 14 stating that he received the April 2 (overnight delivery) letter, was out of town and would be so for the next two weeks. He left no further information and no telephone number. A call to the telephone number previously provided and used by Enforcement and McGarrah revealed it to be out of service.
22. The letter dated April 2 was sent to both the new address provided by McGarrah and his CRD address, by certified mail, Federal Express and regular U.S. mail. Certified mail receipts evidencing delivery were received for both addresses (the CRD addressed letter was forwarded to the new address provided by McGarrah); the Federal Express letter was delivered as well. The letter sent U.S. mail to the CRD address was returned as undeliverable.
23. McGarrah did not appear for testimony at the designated location in Atlanta on April 16, 2008 and has not contacted Enforcement since that time. Accordingly, McGarrah has not complied with Enforcement's request for testimony.
24. Such acts, practices, and conduct constitute a violation of NASD Conduct Rule 2110 and NASD Procedural Rule 8210 by McGarrah.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests:

- A. Findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;
- B. An order imposing sanctions upon Respondent, including monetary sanctions, in accordance with NASD Rule 8310;
- C. An order requiring Respondent to (a) disgorge any and all ill-gotten gains, and/or (b) make full and complete restitution, together with interest;
- D. An order imposing such costs of any proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330, and
- E. An order imposing any other fitting sanction.

FINRA DEPARTMENT OF ENFORCEMENT

Date: June 30, 2008

Susan Light
Susan Light
Chief Counsel and Senior Vice President

Steven F. Korostoff
Director, Enforcement Center

Stephanie B. Fine
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