

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

CHRISTOPHER D. O'CONNOR
(CRD No. 2887894),

Respondent.

Disciplinary Proceeding
No. 20070094401

Hearing Officer – LBB

DEFAULT DECISION

October 1, 2008

Respondent is barred for conversion of customer funds in violation of Conduct Rules 2330(a) and 2110. No additional sanction is imposed for his falsification of account documents or signing a customer's name without authorization in violation of Rule 2110.

Appearances

Jessica A. Poropat, Attorney, FINRA, New York, NY, for the Department of Enforcement

No appearance by or for Respondent

DECISION

The Department of Enforcement filed the Complaint in this action on May 15, 2008. The Complaint asserts three causes of action against Respondent: conversion of customer funds, in violation of NASD Conduct Rules 2330(a) and 2110; falsifying, or causing to be falsified, customer account records, in violation of Rule 2110; and signing his wife's name, without her knowledge or consent, on a letter authorizing the transfer of securities, in violation of 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 August 17, 2008, Enforcement filed a Motion for Entry of Default Decision, to which Respondent did not respond.

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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 May 15, 2008, Enforcement served Respondent with the Complaint and Notice of Complaint by certified and regular first-class mail to his CRD address as well as another address that Respondent had provided to Enforcement during on-the-record testimony. A Second Notice of Complaint was served on Respondent by first-class regular and certified mail at both addresses on June 13, 2008. Respondent has not answered or otherwise responded to the Complaint.²

Enforcement served the Complaint and the Notices of Complaint on Respondent in accordance with Procedural Rule 9134, giving him constructive notice of this proceeding. He has actual notice as well, as evidenced by e-mails and telephone discussions with the Office of Hearing Officers. By failing to respond, he defaulted.

II. Jurisdiction

Respondent entered the securities industry in April 1997 when he was registered with FINRA member firm Morgan Stanley & Co., Inc., formerly known as Dean Witter Reynolds, Inc., and Morgan Stanley DW, Inc. He was with Morgan Stanley until September 2003, when he became registered with member firm UBS Financial Services, Inc. He was registered with UBS until he resigned on June 23, 2006, and has not been associated with any member firm since he left UBS.

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.

² Respondent has suggested in e-mails and telephone calls to the Office of Hearing Officers that he intended to respond to the Complaint, but to date has not filed anything.

The Complaint charges Respondent with violations that occurred while he was associated with member firms. While Respondent is not currently registered with a FINRA member firm, he remains subject to FINRA's jurisdiction pursuant to Article V, Section 4 of FINRA's By-Laws.

III. Origin of the Investigation

UBS filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") on July 21, 2006, reporting that Respondent had resigned while under internal review for the conduct that is the subject of the Complaint. Enforcement commenced its investigation of Respondent's conduct based upon the allegations in the Form U5.

IV. Violations

A. Conversion

While at Morgan Stanley, Respondent opened several accounts, including an IRA rollover account for his father-in-law, customer FP. From April 2001 to February 2003, Respondent made four unauthorized withdrawals from FP's IRA account, transferring a total of \$59,590.41 to accounts that belonged to Respondent and his wife (from whom Respondent is now divorced).

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." *Sanction Guidelines* at 38 (2007). By withdrawing FP's funds from FP's account and depositing the funds into his own account, Respondent converted his customer's funds.

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 misused his customer’s funds when he withdrew FP’s funds from FP’s IRA account and deposited the funds into his own account.

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 account of FP, his customer.

B. Falsifying, or Causing to Be Falsified, Customer Account Records

When Respondent left Morgan Stanley for UBS, he transferred FP’s IRA to UBS. On several occasions, FP requested account statements for the account. To conceal his conversion of FP’s funds, in April 2005, Respondent created a false UBS account statement by altering the account statement of another customer so it appeared to be FP’s account statement.

As discussed below, Respondent withdrew almost all of the funds from his daughter’s trust account in April 2004. During divorce negotiations in 2005, Respondent delivered a falsified Client Inquiry Page for their daughter’s trust account to his wife. The document that Respondent delivered to his wife was not the statement for the trust account, but an altered Client Inquiry Page for another customer’s account, altered to appear to be the statement for the

daughter's trust account. Respondent delivered this falsified document to his wife to conceal his withdrawal of funds from his daughter's trust account.

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent violated Conduct Rule 2110 by falsifying account statements for FP's account and Respondent's daughter's trust account.

C. Signing a Customer's Name on a Letter of Authorization

In October 2003, Respondent and his wife created a trust account for their one-year-old daughter. Respondent and his wife were co-trustees on the account, and Respondent was the broker of record. As a co-trustee, his wife was a customer. In April 2004, Respondent executed a Letter of Authorization, authorizing the transfer of securities from his daughter's account to Respondent's account, withdrawing almost all the funds from the account. Although the funds could have been withdrawn with authorization from Respondent alone, Respondent signed both his name and his wife's name to the Letter of Authorization without his wife's knowledge or consent.

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent violated Conduct Rule 2110 by signing his wife's name on a Letter of Authorization without her knowledge or consent.

V. Sanctions

The FINRA Sanction Guidelines recommend the consideration of a bar as the sanction for the improper use of customer funds unless the improper use resulted from a respondent's misunderstanding of his customer's intended use of the funds or other mitigation exists.

Sanction Guidelines at 38 (2007). There is no evidence of any misunderstanding or mitigating factors that would make a sanction of anything less than a bar appropriate.

There are aggravating factors. Respondent engaged in a pattern of misconduct, converting funds from FP's account on four occasions, over a period of almost two years. See Principal Considerations 8 and 9. Respondent concealed his misconduct. See Principal Consideration 10. As discussed above, Respondent created a false account statement for FP's IRA account. When Respondent left Morgan Stanley for UBS, he transferred FP's account to UBS and opened additional accounts there in FP's name. Respondent changed the mailing address for the account statements, having them sent to himself rather than to FP. When FP received a notice from the IRS that taxes were payable for the IRA withdrawals, Respondent told FP that the notice was a mistake, but covertly paid the income taxes to conceal his conversion of funds from the account.³ FP requested the return of his funds in July 2005. In order to conceal his conversion of funds from FP's account, Respondent caused a check from a third party to be placed in FP's account, and the funds were distributed to FP.⁴ The amount converted, \$59,590.41, was substantial, although it appears that FP might have been made whole when Respondent used the third-party check to restore funds to FP's account.

A bar is the appropriate sanction for Respondent's conversion of funds.

The Department of Enforcement has not sought sanctions for the falsification of records or for signing a customer's name without authorization. In light of the imposition of a bar for conversion, no additional sanctions are necessary for these violations.

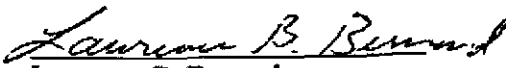
³ FP paid taxes of \$1,563 on one of the distributions. It is not clear that FP was injured, and the net result of the transactions might have benefited him because Respondent paid the \$7,544 in taxes that were due pursuant to the first IRS notice.

⁴ Neither the Complaint nor the default motion provides any other information about the circumstances surrounding the check, such as whether the funds were converted from a customer or a non-customer, or perhaps obtained legitimately, or whether the funds have been repaid to the third party if repayment was appropriate. The Complaint does not charge any misconduct with respect to this third party, so restitution to the third party would be beyond the scope of this matter even if there were sufficient facts to determine if the third party has been injured.

VI. Conclusion

Respondent is barred for conversion of customer funds, in violation of NASD Conduct Rules 2330(a) and 2110. No additional sanction is imposed for falsification of account documents or signing a customer's name without authorization, in violation of Rule 2110.

SO ORDERED.


Lawrence B. Bernard
Hearing Officer

Copies to: Christopher D. O'Connor (*via overnight courier and first-class mail*)
Jessica A. Poropat, Esq. (*via e-mail and first-class mail*)
Mark P. Dauer, Esq. (*via e-mail and first-class mail*)
David R. Sonnenberg, Esq. (*via e-mail and first-class mail*)

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

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

V.

**CHRISTOPHER D. O'CONNOR
CRD No. 2887894,**

RESPONDENT.

**DISCIPLINARY PROCEEDING
No. 20070094401**

COMPLAINT

The Department of Enforcement alleges:

RESPONDENT & JURISDICTION

1. Respondent Christopher D. O'Connor first entered the securities industry in April 1997 when he became registered with Morgan Stanley & Co., Inc. ("Morgan Stanley"), a FINRA member organization. Respondent remained employed at Morgan Stanley holding the positions of registered representative and assistant branch manager until September 2003, when he voluntarily resigned. In September 2003, Respondent became registered with UBS Financial Service, Inc. ("UBS" or the "Firm"), where he remained employed as a registered representative until he was permitted to resign on June 23, 2006. Since that time, Respondent has not been associated with any other FINRA member.
2. Although Respondent is not currently associated with a FINRA member, he remains subject to the jurisdiction of FINRA pursuant to Article V, Section 4, of

the FINRA By-Laws in that the misconduct alleged occurred while Respondent was associated with a member and a complaint was filed within two years following Respondent's registration termination.

OVERVIEW

3. From 2001 through 2003, Respondent wrongfully converted funds from a customer who maintained accounts at Morgan Stanley and then UBS. Additionally, while employed at UBS in 2004, Respondent signed another customer's name on a Letter of Authorization ("LOA"), without that customer's consent, to withdraw funds from a minor's trust account. Respondent also falsified, or caused to be falsified, UBS account records, which concealed both the conversion and the withdrawal of funds from a minor's trust account.

The Wrongful Conversion of Customer Funds

4. When Respondent began working at Morgan Stanley in 1997, his father-in-law, FP¹, who was 61 years old and nearing retirement, began opening accounts at the firm. FP over the next several years opened five accounts with Morgan Stanley, including an IRA Rollover Account, numbered [REDACTED] (the "Morgan Stanley IRA"), which was opened in March 2001.
5. Respondent was the broker of record for each of FP's accounts during the time the accounts were opened at Morgan Stanley.
6. On or about April 17, 2001, Respondent, without permission or authority, caused \$20,000 to be transferred from FP's Morgan Stanley IRA to an account at Morgan

¹ Full names of the customers are listed on Schedule B attached to this Complaint.

Stanley jointly held by Respondent and his wife, GO, who was FP's daughter.

Neither FP nor GO was aware of this transfer.

7. On or about May 6, 2002 FP's address of record at Morgan Stanley was changed, without FP's knowledge, request or consent, to Respondent's residential address where Respondent and FP's daughter GO began residing in or about July 2002. Prior to residing at this location, the Respondent and his wife GO were living with FP while renovating the Respondent's and GO's residential property.
8. On or about May 7, 2002, Respondent, without permission or authority, caused \$29,500 to be transferred from FP's Morgan Stanley IRA to the Respondent and GO's joint account at Morgan Stanley. Neither FP nor GO was aware of this transfer.
9. On or about February 14, 2003, Respondent, without permission or authority, caused \$8,624.73 to be transferred from FP's Morgan Stanley IRA to the Respondent and GO's joint account at Morgan Stanley. Neither FP nor GO was aware of this transfer.
10. On or about February 18, 2003, Respondent, without permission or authority, caused \$1,465.68 to be transferred from FP's Morgan Stanley IRA to the Respondent and GO's joint account at Morgan Stanley. Neither FP nor GO was aware of this transfer.
11. Respondent improperly transferred a total of \$59,590.41 out of FP's Morgan Stanley IRA during the time period April 17, 2001 to February 18, 2003, as identified in Schedule A attached to this Complaint.

12. The Morgan Stanley account statements that would have alerted FP to the unauthorized distributions from his Morgan Stanley IRA were not received by FP. During 2001, the address on the Morgan Stanley FP accounts was a residence shared by FP and the Respondent. For 2002 and 2003, the address on the accounts was the residence of the Respondent.
13. In or about September 2003, Respondent joined UBS as a registered representative. After joining UBS, Respondent transferred to UBS the Morgan Stanley accounts of Respondent, GO and FP, including FP's Morgan Stanley IRA.
14. On or about October 16, 2003, the assets of FP's Morgan Stanley IRA, worth approximately \$10,447.50, were transferred from Morgan Stanley into FP's UBS IRA Account numbered [REDACTED] ("First UBS IRA ").
15. In October 2003, two additional accounts were opened at UBS in FP's name: another IRA Account, numbered [REDACTED] ("Second UBS IRA "), which held no assets and was never funded; and a joint trust account numbered [REDACTED] ("FP's UBS Trust Account"), which held no assets, was jointly held with FP's wife, and remained unfunded until July 2005.
16. In March 2004, FP received a notice from the IRS that he had not paid taxes of \$7,544 on a distribution from his Morgan Stanley IRA in 2002 (the "2004 IRS Notice"). The Respondent told FP that it was a mistake that he would clear up. Unbeknownst to FP and GO, the Respondent paid the full amount of the tax from his and GO's joint checking account at Chase Manhattan Bank in April 2004.

17. Respondent paid the full amount of the taxes due pursuant to the 2004 IRS Notice, which concealed his misconduct, the conversion of funds from FP's Morgan Stanley IRA.
18. In or about April 2005, Respondent, after receiving several demands from FP for account statements, hand-delivered to FP a March 2005 UBS account statement indicating that FP's Second UBS IRA had an account balance of \$52,797.34 (the "March 2005 UBS Account Statement") as of March 31, 2005.
19. The March 2005 UBS Account Statement was falsified as the Second UBS IRA had no funds or assets as of March 31, 2005.
20. The March 2005 UBS Account Statement was an altered account statement of another customer of the Respondent where, among other things, the account name and account number were falsified so it appeared to be FP's Second UBS IRA.
21. The Respondent falsified, or caused to be falsified, the March 2005 UBS Account Statement to conceal his misconduct, the conversion of funds from FP's Morgan Stanley IRA.
22. In July 2005, after FP had requested a return of his funds, Respondent caused a check from a third party, in the amount of \$51,250, to be placed in FP's UBS Trust Account. The \$51,250 was thereafter distributed to FP by UBS check dated July 22, 2005.
23. The Respondent caused money to be placed into FP's UBS Trust Account, which concealed his misconduct, the conversion of funds from FP's Morgan Stanley IRA.

24. In September 2005, FP received a notice from the IRS that he had not paid taxes of \$1,563 on distributions from his Morgan Stanley IRA in 2003 (the "2005 IRS Notice"). The taxes were owed on two distributions made without FP's knowledge or authorization described in Paragraphs 9 and 10 above, totaling \$10,090.41. FP paid \$1,563 owed in taxes pursuant to the 2005 IRS Notice.

Transfer from Daughter's Trust Account

25. On or about October 2003, while Respondent was employed at UBS, the Respondent and GO opened a trust account for their one-year old daughter, SO (the "SO Trust").
26. Respondent and GO were each named as a co-trustee for SO's Trust, and Respondent was the broker of record during the time the SO Trust account was maintained at UBS.
27. On or about April 16, 2004, the SO Trust account held assets, including securities, with a value of approximately \$26,068.64.
28. On or about April 16, 2004, a Letter of Authorization ("LOA") was executed authorizing the transfer of securities from the SO Trust account, valued at \$26,018.63, to Respondent's individual account at UBS. After this transfer, the SO Trust account had a balance of \$50.21 as of April 30, 2004.
29. The LOA authorizing the transfer purportedly contained signatures of both Respondent and GO as joint trustees of the SO Trust, however, the Respondent signed both his and GO's name to the LOA.

30. The SO Trust was revocable and therefore the Respondent could make withdrawals from the SO Trust at his discretion. However, the Respondent did not have permission or authority to sign GO's name on the LOA. GO had no knowledge of Respondent's withdrawal of the bulk of the SO Trust assets.
31. Early in 2005, while Respondent and GO were undergoing divorce mediation proceedings, Respondent, after several requests, hand-delivered to GO a UBS Client Inquiry Page for the SO Trust account dated June 28, 2005 (the "June Client Inquiry Page").
32. The June Client Inquiry Page showed a total balance in the SO Trust Account of \$32,105.66 as of June 28, 2005.
33. The June Client Inquiry Page was falsified as the SO Trust account at the time actually had a balance of \$168.98 on May 31, 2005 and \$167.03 on June 30, 2005, and there were no deposits made into the SO Trust account during June 2005.
34. The June Client Inquiry Page was an altered inquiry page of another customer of the Respondent at his member employer. Among other things, the account name and account number were falsified to indicate the SO Trust account.
35. The Respondent falsified, or caused to be falsified, the June Client Inquiry Page, which concealed, the secret withdrawal of the bulk of the SO Trust assets pursuant to his forgery of the co-trustee's signature.

FIRST CAUSE OF ACTION
Wrongful Conversion of Customer Funds
[NASD Rules 2110 and 2330(a)]

- 36. The Department re-alleges and incorporates by reference paragraphs 1-35 above.
- 37. NASD Rule 2330(a) prohibits members and associated persons from making an improper use of customer funds.
- 38. NASD Rule 2110 requires that members and associated persons observe "high standards of commercial honor and just and equitable principles of trade."
- 39. Respondent wrongfully converted funds from a customer of his member employer.
- 40. As a result of this conduct, Respondent's conduct constitutes separate and distinct violations of NASD Rules 2110 and 2330(a).

SECOND CAUSE OF ACTION
Falsifying, or Causing to be Falsified, Customer Account Records
[NASD Rule 2110]

- 41. The Department realleges and incorporates by reference paragraphs 1-40 above.
- 42. Respondent falsified, or caused to be falsified, account records for two customers of his member employer, in an effort to conceal his misconduct.
- 43. As a result of this conduct, Respondent's conduct constitutes separate and distinct violations of NASD Rule 2110.

THIRD CAUSE OF ACTION
Signing a Customer's Name on LOA
[NASD Rule 2110]

- 44. The Department realleges and incorporates by reference paragraphs 1-43 above.
- 45. Respondent signed a customer's name on a LOA without permission or authority to do so.
- 46. As a result of this conduct, Respondent violated NASD Rule 2110.

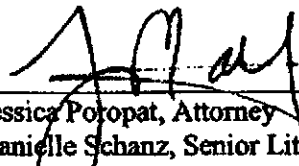
RELIEF REQUESTED

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 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; and
- C. order that the Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330.

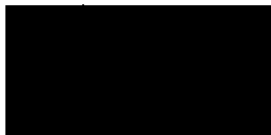
FINRA DEPARTMENT OF ENFORCEMENT

Dated: 5/15/08

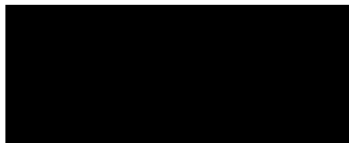


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To: Christopher D. O'Connor



Christopher D. O'Connor



Disciplinary Proceeding No. 20070094401

Department of Enforcement v. Christopher D. O'Connor

SCHEDULE A

<u>Date of Conversion</u>	<u>Amount of Conversion</u>
April 17, 2001	\$20,000
May 7, 2002	\$29,500
February 14, 2003	\$8,624.73
February 18, 2003	\$1,465.68
Total:	\$59,590.41