

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

IVAN ARMAS
(CRD No. 4993347),

Respondent.

Disciplinary Proceeding
No. 2007010747201

DEFAULT DECISION

Hearing Officer – SW

Date: December 18, 2008

Respondent is barred from associating with any FINRA member firm in any capacity for: (1) converting \$19,721.34 of his customers' insurance premiums to his own benefit and use, in violation of Conduct Rule 2110; and (2) failing to appear for an on-the-record interview requested by FINRA staff, in violation of Conduct Rule 2110 and Procedural Rule 8210.

Appearances

William Brice La Hue, Esq., Senior Regional Counsel, Atlanta, GA, for
the Department of Enforcement.

No appearance by or for Ivan Armas.

DECISION

I. Introduction

On August 11, 2008, FINRA's Department of Enforcement ("Enforcement") filed the attached two-count Complaint against Respondent Ivan Armas ("Respondent"). The first count of the Complaint alleges that, while associated with FINRA member firm Farmers Financial Solutions, LLC. ("Farmers Financial"), Respondent converted to his own use and benefit \$19,721.34 of his customers' insurance premiums, without their knowledge or consent, in violation of Conduct Rule 2110. The second count of the

Complaint alleges that Respondent failed to appear for an on-the-record interview scheduled by FINRA staff pursuant to Rule 8210, in violation of Conduct Rule 2110 and Procedural Rule 8210.

On November 3, 2008, Enforcement filed a Motion for Entry of Default Decision ("Motion"), supported by the Declaration of William Brice La Hue, Esq., Senior Regional Counsel, in FINRA's Atlanta, GA office, and four exhibits. For the reasons set forth below, the Hearing Officer grants Enforcement's Motion.

II. Respondent's Default

On August 11, 2008, Enforcement served the Complaint and Notice of Complaint on Respondent, via certified and first-class mail, at his last known residential address shown in the Central Registration Depository ("CRD address") and at two alternative addresses obtained by FINRA staff via a computer-based search.

On September 9, 2008, Enforcement served the Complaint and Second Notice of Complaint on Respondent, via certified and first-class mail, at his CRD address and the two alternative addresses.¹ Respondent did not file an Answer to the allegations of the Complaint.

The Hearing Officer finds that Enforcement complied with Procedural Rule 9134(b)(1) by sending the mailings to Respondent's CRD address.² Accordingly, the Hearing Officer finds that Respondent received effective notice of this proceeding and defaulted by failing to answer the Complaint.³

¹ The U.S. Postal Service returned to FINRA a receipt signed by Respondent for the September 9, 2008 certified mailing sent to one of the alternate addresses.

² See *Dep't of Enforcement v. Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at * 5 n.1 (NAC Dec. 9, 2003) (finding that respondent received constructive notice when complaint was mailed to respondent's CRD address).

³ The following Findings of Fact and Conclusions of Law incorporate the allegations in the attached Complaint, pursuant to Rule 9215(f) and *NASD Notice to Members* 99-77.

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

Respondent was registered with Farmers Financial as an investment company and variable contracts products representative from February 17, 2006 to September 27, 2007. Respondent is not currently associated with any FINRA member.

Respondent remains subject to FINRA jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of the FINRA By-Laws, because (1) the Complaint was filed within two years after Respondent's registration with Farmers Financial was terminated, and (2) the Complaint charges Respondent with misconduct while he was associated with Farmers Financial and with the failure to appear for an on-the-record interview requested by FINRA staff pursuant to Rule 8210 during the two-year period of retained jurisdiction.

B. Respondent Converted His Customers' Insurance Premiums

The first cause of the Complaint alleges that from July 2, 2007 through September 4, 2007, Respondent converted to his own use and benefit at least \$19,721.34, which he received from insurance clients to pay their insurance policy premiums. Respondent logged the premium payments into the Agent Credit Advice electronic system of Farmers Financial's insurance affiliate, but instead of remitting the funds to the insurance affiliate as required, he applied the funds for his own use and benefit.

In addition to the allegations of the Complaint, Enforcement provided the information that Respondent submitted a written statement to Farmers Financial admitting his use of his customers' insurance premium payments.

Conversion is the wrongful exercise of dominion over the personal property of another.⁴ FINRA has held that the conversion of a customer's funds is a violation of Conduct Rule 2110's requirement to observe just and equitable principles of trade.⁵ Even where the conversion is not in connection with a securities transaction, it "constitute[s] unethical business-related conduct and calls into question [a respondent's] ability to fulfill his fiduciary duties in handling other people's money."⁶

Based on the allegations deemed admitted in the first cause of the Complaint and the evidence submitted by Enforcement, the Hearing Officer finds that Respondent violated Conduct Rule 2110 by converting to his own use and benefit \$19,721.34 in premium payments belonging to his insurance customers, without their knowledge and consent.

C. Respondent Failed to Appear for an On-the-Record Interview

In October 2007, FINRA initiated an investigation into the allegations that Respondent converted customer premium payments as set forth in the Form U5 filed by Farmers Financial on behalf of Respondent on September 27, 2007. Count two of the Complaint alleges that Respondent failed to appear on May 1, 2008, for an on-the-record interview as requested in a letter sent by FINRA staff to Respondent pursuant to Procedural Rule 8210. FINRA staff sent the request to appear to Respondent at his CRD address and the two alternative addresses on April 17, 2008, via first-class and certified

⁴ *Dep't of Enforcement v. Paratore*, No. 2005002570601, 2008 FINRA Discip. LEXIS 1, *10 (NAC Mar. 7, 2008); see also *FINRA Sanction Guidelines*, p. 38, n.2 (2007), available at <http://www.finra.org/Industry/index.htm> (Conversion is "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.").

⁵ *Bernard D. Gorniak*, Exch. Act Rel. No. 35,996, 1995 SEC LEXIS 1820 (1995).

⁶ *Daniel D. Manoff*, Exch. Act Rel. No. 46,708, 2002 SEC LEXIS 2684 (Oct. 23, 2002) (unauthorized use of co-worker's credit card numbers).

mail. The U.S. Postal Service returned to FINRA a receipt signed by Respondent for the April 17, 2008 certified mailing sent to Respondent's CRD address.

Based on the signed receipt, the Hearing Officer finds that Respondent received the request to appear for the May 1, 2008 scheduled FINRA on-the-record interview. In any event, the Hearing Officer finds that Respondent is deemed to have received the request to appear sent to his CRD address pursuant to Rule 8210(d). Failure to comply with a Rule 8210 request to appear is a serious violation because it subverts FINRA's ability to perform its regulatory responsibilities.⁷

Based on the allegations deemed admitted in the second cause of the Complaint and the evidence submitted by Enforcement, the Hearing Officer finds that Respondent violated Conduct Rule 2110 and Procedural Rule 8210 by failing to appear for a May 1, 2008 scheduled on-the-record interview.

IV. Sanctions

A. Respondent Converted His Customers' Funds

For conversion as alleged in count one of the Complaint, the *Guidelines* recommend a bar regardless of the amount converted.⁸ Here, there is no evidence of any mitigating factors. Accordingly, a bar is the appropriate sanction for Respondent's violation of Conduct Rule 2110 when he converted to his own use and benefit the funds of his insurance customers.⁹

⁷ See, e.g., *Richard J. Rouse*, Exch. Act Rel. No. 32,685, 1993 SEC LEXIS 1831, at *7 (1993); *Joseph G. Chiulli*, Exch. Act Rel. No. 42,359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for FINRA to conduct its investigations effectively, and emphasizing that FINRA members and associated persons must fully cooperate with requests for information).

⁸ *Guidelines* at 38 (2007).

⁹ Enforcement did not request restitution for the customers.

B. Respondent Failed to Appear for an On-the-Record Interview

The *Guidelines* for failure to appear in response to a Rule 8210 request state that a bar should be standard where the respondent failed to respond in any manner.¹⁰

In the instant case, where Enforcement has not identified any mitigating factors and a bar is standard for this type of violation, the Hearing Officer accepts Enforcement's recommended sanction and bars Respondent from association with any FINRA member firm in any capacity.

V. Order

Respondent Ivan Armas is barred from associating with any FINRA member firm in any capacity for: (1) converting the funds of his insurance customers, in violation of Conduct Rule 2110; and (2) failing to appear for a scheduled FINRA on-the-record interview, in violation of Conduct Rule 2110 and Procedural Rule 8210. The bars will become effective immediately if this Default Decision becomes FINRA's final disciplinary action in this proceeding.


Sharon Witherspoon
Hearing Officer

Dated: Washington, DC
December 18, 2008

Copies to:

Ivan Armas (via FedEx and first-class mail)
William Brice La Hue, Esq. (via electronic and first-class mail)
Mark P. Dauer, Esq. (via electronic and first-class mail)
David R. Sonnenberg, Esq. (via electronic and first-class mail)

¹⁰ *Guidelines* at 35 (2007).

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

IVAN ARMAS
(CRD No. 4993347)

Respondent.

Disciplinary Proceeding
No. 2007010747201

COMPLAINT

The Department of Enforcement alleges:

RESPONDENT AND JURISDICTION

1. Ivan Armas ("Armas") first became registered, as an investment company and variable contracts products representative in February 2006, with FINRA member Farmers Financial Solutions, Inc. ("FFS"). Armas was terminated by FFS on September 27, 2007. Armas currently is not associated with a FINRA member and has no disciplinary history. Armas remains subject to FINRA's jurisdiction pursuant to Article V, § 4 of FINRA By-laws.

SUMMARY

2. Armas converted approximately \$19,721.34 from insurance policyholders, which he had received for payment of insurance premiums, in violation of NASD Conduct Rule 2110. Armas also failed to appear for an on-the-record (OTR) sworn statement, in violation of NASD Procedural Rule 8210 and Conduct Rule 2110.

FIRST CAUSE OF ACTION

NASD Conduct Rule 2110

(Conversion)

3. The Department realleges and incorporates by reference paragraphs 1 and 2 above.
4. During the period from at least July 2, 2007 through September 4, 2007, Respondent Armas

converted to his own use and benefit at least \$19,721.34, which he had received from insurance clients to pay their policy premiums.

5. Armas logged the premium payments into FFS' Agent Credit Advice ("ACA") electronic system, but instead of remitting the funds to FFS as required, he applied the funds for his own use and benefit.
6. Such acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 by Respondent Armas.

SECOND CAUSE OF ACTION

NASD Procedural Rule 8210 and NASD Conduct Rule 2110

(Failure to Testify)

7. The Department realleges and incorporates by reference paragraphs 1 through 6 above.
8. On or about October 1, 2007, the FINRA Atlanta District office initiated an investigation into the allegations on a Uniform Termination Notice for Securities Industry Registration ("Form U5") filed by FFS on behalf of Respondent Armas.
9. On or about April 17, 2008, FINRA sent a letter via first class and certified mail to Armas at his CRD residential address in Houston, Texas, and at two additional addresses, one located in Houston, Texas, and one in Tomball, Texas. The April 17, 2008 letter requested that, pursuant to Procedural Rule 8210, Armas appear for an on-the-record ("OTR") sworn statement at the Atlanta District office of FINRA on May 1, 2008, at 9:00 a.m.
10. A receipt for the April 17, 2008 letter sent by certified mail to his CRD residential address was returned signed by "Ivan Armas." The April 17, 2008, letter sent by first class mail to Armas at his CRD residential address was not returned.
11. The April 17, 2008 letter sent to the Tomball address by certified mail was returned to FINRA marked "unclaimed." The April 17, 2008 letter sent by first class mail to the Tomball address was not returned. The April 17, 2008 letter sent by first class and certified mail to the other address were not returned.

12. FINRA attempted to contact Armas by telephone but was unsuccessful.
13. Armas failed to appear on May 1, 2008 as requested for the OTR sworn statement.
14. Such failure to appear and testify as requested by the April 17, 2008 letter constitutes separate and distinct violations of NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by Respondent Armas.

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: 8/11/08



William Brice La Hue, Sr. Regional Counsel
FINRA Department of Enforcement
Atlanta District Office
One Securities Centre, Suite 500
3490 Piedmont Road, N.E.
Atlanta, Georgia 30305
Phone: (404) 239-6111; Fax: (404) 264-1586
E-Mail: brice.lahue@finra.org

Andrew A. Favret, Assoc. VP/Reg'l Chief Counsel
FINRA Department of Enforcement
New Orleans District Office
1100 Poydras Street
Energy Centre, Suite 850
New Orleans, Louisiana 70163
Phone: (504) 412-2404; Fax: (202) 721-6527
E-Mail: andrew.favret@finra.org