

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DONNA M. SMITH
(CRD No. 4450528),

Respondent.

Disciplinary Proceeding
No. 2007010765801

Hearing Officer – RSH

DEFAULT DECISION

April 15, 2009

Respondent violated Conduct Rule 2110 by embezzling approximately \$82,975 from her employer, and Procedural Rule 8210 and Conduct Rule 2110 by failing to respond to requests for information. For these violations, Respondent was barred from associating with any member firm in any capacity.

Appearances

Richard S. Schultz, Senior Regional Counsel, Mark A. Koerner, Regional Chief Counsel, Chicago, IL, for the Department of Enforcement.

No appearance by or for the Respondent.

DECISION

I. Introduction

The Department of Enforcement (“Enforcement”) for the Financial Industry Regulatory Authority (“FINRA”) filed a Complaint (attached to this Decision as Exhibit A) on November 17, 2008. The Complaint alleges that Respondent Donna M. Smith (“Smith”) violated NASD Conduct Rule 2110 by embezzling approximately \$82,975 from her employer, JP Morgan Chase Bank (“Chase Bank”). The Complaint also alleges that Smith

subsequently violated Procedural Rule 8210 and Conduct Rule 2110 by failing to respond to FINRA requests for information about the embezzlement.

Smith did not answer or otherwise respond to the Complaint. Consequently, on February 20, 2009, Enforcement filed a Motion for Entry of Default Decision, supported by the Declaration of Richard S. Schultz ("Schultz Decl.") and 12 exhibits. Smith did not reply to the motion.¹

II. Findings of Fact and Conclusions of Law

A. Respondent's Default

The Hearing Officer finds that Enforcement properly served Smith with the Complaint by mailing the Complaint and the First and Second Notices of Complaint to her last known residential address as shown in FINRA's Central Registration Depository (the "CRD Address"), in accordance with FINRA Procedural Rule 9134(b)(1).

Enforcement mailed the Complaint and First Notice of Complaint to Smith's CRD Address by first-class and certified mail, on November 17, 2008. The first-class mailing was not returned; however, the certified mailing was returned unclaimed. On November 17, 2008, Enforcement also mailed the Complaint and First Notice of Complaint by first-class and certified mail to Walter Madison ("Madison"), the attorney who had represented Smith during Enforcement's investigation of this matter. The first-class mailing was not returned and the certified mailing was signed for by someone on Madison's behalf.²

Enforcement mailed the Complaint and Second Notice of Complaint to Smith's CRD Address by first-class and certified mail on December 22, 2008. As before, the first-class

¹ The factual determinations in this decision are based on the allegations of the attached Complaint, which are deemed admitted, as well as additional materials filed by Enforcement.

² Schultz Decl., ¶¶ 7, 8; Complainant's Exhibit ("CX") 2, 3, 4.

mailing was not returned; however, the certified mailing was returned unclaimed. On December 22, 2008, Enforcement also mailed the Complaint and Second Notice of Complaint to Madison by first-class and certified mail. The first-class mailing was not returned, and the certified mailing was signed for by someone on Madison's behalf.³ The Second Notice of Complaint sent to Smith stated that she was required to answer the Complaint by January 12, 2009. To date, Smith has not filed an answer with the Office of Hearing Officers or otherwise responded to the Complaint.⁴

Smith defaulted by failing to answer the Complaint.⁵ Accordingly, pursuant to Procedural Rules 9215(f) and 9269(a)(2), the Hearing Officer deems the allegations in the attached Complaint admitted and grants Enforcement's motion for entry of a default decision.⁶

B. Jurisdiction

On July 6, 2005, Smith became registered with NASD as an Investment Company and Variable Contracts Products Representative through member firm Chase Investment Services Corp. ("Chase Investment"). She remained continuously associated with Chase Investment until on or about October 16, 2007.⁷ Although Smith has not been registered with FINRA since October 16, 2007, she remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's Bylaws, because

³ Schultz Decl., ¶¶ 10, 11; CX-5, 6, 7.

⁴ Schultz Decl., ¶ 13; CX-5.

⁵ *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 (9th Cir. Aug. 12, 1998)).

⁶ On December 15, 2008, the first phase of new consolidated FINRA Rules went into effect. See, Regulatory Notice 08-57. Pursuant to the consolidation, NASD Rules 9210-9290 were superseded by FINRA Rules 9210-9290. With respect to this decision, unless otherwise noted, the relevant FINRA Rules are identical to the corresponding NASD Rules. The FINRA Rules are at www.finra.org/Rules.

⁷ Schultz Decl. ¶ 5; CX- 1.

(1) the Complaint was filed within two years following the termination of her registration with FINRA, and (2) the Complaint charges her with misconduct committed while she was associated with a FINRA member firm and with failing to respond to FINRA's requests for information made during the two-year period following her registration termination.⁸

C. Embezzlement of Funds

The first cause of action in the Complaint alleges that Smith violated NASD Conduct Rule 2110 by embezzling funds from her employer. The Complaint alleges that from on or about September 12, 2006, to on or about September 11, 2007, Smith, while working as a personal banker at Chase Bank, embezzled approximately \$82,975 from Chase Bank. The Complaint further alleges that Smith stole the money by making unauthorized withdrawals from the branch bank general ledger accounts and depositing the funds into her personal checking account. Smith then used the funds for her personal use.

On September 18, 2007, Smith signed a statement admitting to Chase Bank that she had embezzled at least \$20,000 from the bank and transferred the funds to her personal checking account. Subsequently, Smith was charged with bank embezzlement in the United States District Court of the Northern District of Ohio. On February 29, 2008, Smith pleaded guilty to the charge and admitted embezzling \$82,975 from Chase Bank.⁹

The Hearing Officer finds that the allegations in the first cause of action are sufficient to establish, for purposes of this default decision, that Smith violated NASD Conduct Rule 2110.

⁸ Article V, Sec. 4(a), FINRA By-Laws, available at www.finra.org/rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: Bylaws").

⁹ Schultz Decl., ¶ 15; CX-8, 9.

D. Failure to Respond to Information Requests

The second cause of action alleges that Smith failed to respond to two written requests that she provide information to FINRA Staff ("Staff") concerning allegations that she had embezzled funds from Chase Bank. The Staff sent each request by first-class and certified mail to the Respondent at her CRD Address pursuant to Procedural Rule 8210. The first request was sent on October 22, 2007. The first-class mailing was not returned and the certified return receipt was returned signed by Smith, indicating that she had received the request on October 25, 2007. After not receiving a response to its first request for information, on November 6, 2007, the Staff sent a second request, again by first-class and certified mail. The first-class mailing was not returned; however, the certified mailing was returned marked "unclaimed."¹⁰

On November 20, 2007, the Staff received a phone call from Smith's criminal attorney, Madison. Madison said that Smith had received the requests for information but, because of her criminal case, she would not be responding to them for fear of incriminating herself. The Staff explained that Smith could face disciplinary action for failing to respond. To date, Smith has not responded to any of the Staff's letters.¹¹

The Hearing Officer finds that the allegations in the second cause of action are sufficient to establish, for purposes of this default decision, that Smith violated Procedural Rule 8210 and Conduct Rule 2110.

¹⁰ Schultz Decl., ¶ 16.

¹¹ Schultz Decl., ¶ 17; CX-10.

III. Sanctions

A. Embezzlement of Funds

For conversion, defined 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 (“Guidelines”) provide that a bar is standard.¹² There is no question that Smith converted funds from Chase Bank; she pleaded guilty to embezzling funds and transferring them to her personal checking account.

For Smith’s conversion of funds, which violates Conduct Rule 2110, the Hearing Officer finds that Smith should be barred from associating with any member firm in any capacity.

B. Failure to Respond to Requests for Information

The Guidelines recommend a bar when a respondent fails to respond in any manner to a request for information issued pursuant to Procedural Rule 8210.¹³ Here, Smith failed to respond in any manner to two written requests that she provide information in connection with the staff’s investigation of allegations that she embezzled funds from Chase Bank. There are no mitigating factors that would justify a sanction less than a bar. Accordingly, the Hearing Officer finds that Smith should be barred from associating with any FINRA member in any capacity for violating Procedural Rule 8210 and Conduct Rule 2110.

IV. Order

Donna M. Smith is barred from association with any member firm in any capacity for converting funds, in violation of Conduct Rule 2110, and for failing to respond to requests

¹² *FINRA Sanction Guidelines* p. 38 (2007 ed.).

¹³ *Sanction Guidelines* at 35.

for information, in violation of Procedural Rule 8210 and Conduct Rule 2110. The bars will become effective immediately if this Default Decision becomes FINRA's final disciplinary action in this proceeding.

SO ORDERED.

A handwritten signature in cursive script, appearing to read "Rochelle Hall", written over a horizontal line.

Rochelle S. Hall
Hearing Officer

Copies to:

Donna M. Smith *(via overnight courier and first-class mail)*
Richard S. Schultz, Esq. *(via electronic and first-class mail)*
Mark A. Koerner, Esq. *(via electronic and first-class mail)*
Mark P. Dauer, Esq. *(via electronic and first-class mail)*
David R. Sonnenberg, Esq. *(via electronic mail)*

**FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA)
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant

vs.

**DONNA M. SMITH
Limited Registered Representative
(CRD No. 4450528)**

Respondent

**Disciplinary Proceeding
No. 2007010765801**

Hearing Officer

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. From on or about September 12, 2006, to on or about September 11, 2007, Donna M. Smith (Smith), while working as a personal banker at JP Morgan Chase Bank (Chase Bank), embezzled at least about \$82,900 from Chase Bank, in violation of NASD Conduct Rule 2110.

2. On October 22, 2007, and November 6, 2007, FINRA Staff (Staff) sent letters to Smith requesting information and documentation about her actions, but Smith failed to respond to the requests for information, in violation of NASD Rules 2110 and 8210.

RESPONDENT

3. From on or about July 6, 2005 to on or about October 16, 2007, Smith was registered as an Investment Company and Variable Contracts Products Representative with

**Complaint in
Disciplinary Proceeding No. 2007010765801**

Chase Investment Services Corp. (Member), a member of FINRA. Smith is not currently associated with any member of FINRA. Since this Complaint is filed within two years of the termination of Smith's registration with the Member, Smith is subject to the jurisdiction of FINRA, pursuant to Article V, Section 4 of the FINRA's By-Laws.

**FIRST CAUSE FOR COMPLAINT
NASD Conduct Rule 2110 – Misuse of Funds by Smith.**

4. Paragraphs number 1 through 3 above are re-alleged and incorporated herein by reference.
5. During all relevant times, Smith was employed as a personal banker by Chase Bank.
6. From in or about September 2006 to in or about September 2007, Smith embezzled a total of about \$82,975 from Chase Bank. Smith would make unauthorized withdrawals from the branch bank general ledger accounts and deposit the funds into her personal checking account. The funds were then used by Smith for her personal expenses.
7. The acts, practices and conduct set forth above constitute separate and distinct violations of NASD Conduct Rule 2110 by Smith.

**SECOND CAUSE FOR COMPLAINT
NASD Rules 2110 and 8210 - Failure to Respond to the Staff's
Requests for Information by Smith.**

8. Paragraph numbers 1 through 7 above are re-alleged and incorporated herein by reference.
9. On or about October 22, 2007, Staff sent Smith a request that she provide a written statement responding to the allegations that she embezzled up to \$80,000 from Chase Bank and used the funds for her own purposes without the knowledge and consent of Chase

**Complaint in
Disciplinary Proceeding No. 2007010765801**

Bank, as noted in paragraphs 4 through 6 above, and certain documentation relating to her bank account, pursuant to and in accordance with the provisions of NASD Rule 8210. The request for information was sent by first class mail and certified mail, return receipt requested, to Smith's address of record as contained in the records of the Central Registration Depository (CRD Address). The first class mailing was not returned to the Staff, and the certified return receipt was returned signed by Smith, showing that she received the letter on October 25, 2007.

10. Having not received a response to the initial request for information and documentation, on or about November 6, 2007, the Staff sent Smith a letter marked "second request," asking that she provide a written statement responding to the allegations that she embezzled up to \$80,000 from Chase Bank and used the funds for her own purposes without the knowledge and consent of Chase Bank, as noted in paragraphs 4 through 6 above, and certain documentation relating to her bank account, pursuant to and in accordance with the provisions of NASD Rule 8210. The Request for information was sent by first class mail, and by certified mail, return receipt requested, to Smith's CRD Address. The first class mailing was not returned to the Staff, and the certified mailing was returned marked "Unclaimed."

11. Smith failed to respond to each and all of the requests for documents and information described in paragraphs 9 and 10 above, and the time for Smith to respond has passed.

12. The aforementioned acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 and Rule 8210 by Smith.

**Complaint in
Disciplinary Proceeding No. 2007010765801**

PRAYER FOR RELIEF

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;
and,
- B. order that 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

November 17, 2008

Date


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and Regional Chief Counsel
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