

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DRUMOND RICARDO ROBY
(CRD No. 4078255),

Respondent.

Disciplinary Proceeding
No. 2007010784301

DEFAULT DECISION

Hearing Officer – SNB

February 17, 2010

For misuse of customer funds, in violation of Rules 2330(a) and 2110, and for failure to respond to requests for information, in violation of Rules 8210 and 2010, Respondent is barred from associating with any FINRA member in any capacity.

Appearances

Pamela Shu, Esq., Chicago, IL, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

I. Background

On August 6, 2009, the Department of Enforcement (“Enforcement”) filed a two-cause Complaint in this proceeding, attached to this Decision as Exhibit A. The first cause alleges that Drumond Ricardo Roby (“Respondent”) violated Rules 2330(a) and 2110 by misusing customer funds. The second cause alleges that Respondent violated

Rules 8210 and 2110 by failing to respond to requests for information by FINRA Staff.¹

Respondent did not file an Answer to the Complaint. Accordingly, on October 30, 2009, Enforcement filed a Motion for Entry of Default Decision, supported by the Declaration of Pamela Shu, Esq. ("Shu Decl.") and ten exhibits. Respondent did not file a response to the Motion.

For the reasons set forth below, Enforcement's motion is granted.²

II. Respondent's Default

On August 6, 2009, Enforcement sent the Complaint and Notice of Complaint by first-class and certified mail to Respondent's last known residential address according to the Central Registration Depository (the "CRD Address"). Shu Decl. ¶ 7; CX-2. The certified mailing was returned by the Postal Service stamped "unclaimed." The first-class mailing was not returned. Shu Decl. ¶ 7; CX-3. Respondent did not file an Answer. In the same manner, on September 4, 2009, Enforcement sent the Complaint and Second Notice of Complaint to Respondent at his CRD Address. Shu Decl. ¶ 8; CX-4. The online tracing and confirmation service for this certified mailing indicated that delivery was attempted and a notice was left. Shu Decl. ¶ 8; CX-5. The first-class mailing was not returned. Shu Decl. ¶ 8. Respondent again did not file an Answer.

¹ NASD consolidated with the member regulation and enforcement functions of NYSE Regulation in July 2007 and began operating under a new corporate name, the Financial Industry Regulatory Authority (FINRA). References in this decision to FINRA include, where appropriate, NASD. Following consolidation, FINRA began developing a new FINRA Consolidated Rulebook. The first phase of the new consolidated rules became effective on December 15, 2008. See Regulatory Notice 08-57 (Oct. 2008). In that process, FINRA renumbered NASD Rule 2110 as FINRA Rule 2010. This decision refers to and relies on the Rules that were in effect at the time of Respondent's alleged misconduct. In addition, because Enforcement filed the Complaint after December 15, 2008, FINRA's procedural rules govern this proceeding. The applicable rules are available at www.finra.org/rules.

² 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.

Enforcement complied with Rule 9134(b)(1) by mailing the Complaint and Notices of Complaint to Respondent's CRD Address, thereby giving him 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 first became registered as a General Securities Representative with a FINRA member in 2001. From October 2002 until October 3, 2007, Respondent was registered in that same capacity with H&R Block Financial Advisors, Inc. (the "Firm"). He has not been associated with a member firm since then. Shu Decl. ¶ 5; CX-1. 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 (1) the Complaint charges Respondent with misconduct while he was an associated person and with failing to comply with requests for information made during the two-year period following termination of his last registration, and (2) the Complaint was filed within that two-year period.

IV. Violations

A. Misuse of Funds

The first cause of the Complaint alleges that Respondent misused funds belonging to customers whose accounts were inactive. Specifically, Respondent changed the names and addresses on seven customer accounts without their knowledge or approval, and issued \$17,900 in checks from these accounts payable to himself at his address. Respondent endorsed the checks and received the funds.

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

B. Failure to Respond

Rule 8210 authorizes FINRA to require any person subject to its jurisdiction to provide information related to any matter under investigation.³ The second cause of the Complaint alleges that on January 17, 2008, FINRA Staff sent a Rule 8210 request for information to Respondent at his CRD address by first-class and certified mail. The certified mail receipt was returned, marked “unclaimed.” The first-class mailing was not returned. Respondent did not respond. In the same manner, on February 4, 2008, Staff sent a second request for the same information. The certified mail receipt was returned, marked “unclaimed,” and the first-class mailing was not returned. Again, Respondent did not respond.

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent failed to respond to requests for information, in violation of Rules 8210 and 2010.⁴

V. Sanctions

For misuse of funds amounting to conversion, which is the case here, the FINRA Sanctions Guidelines (“Guidelines”) recommend a bar, regardless of the amount

³Rule 8210 serves as a key element in FINRA’s oversight function and allows FINRA to carry out its regulatory functions without subpoena power. See, e.g., Dep’t of Enforcement v. Valentino, No. FPI010004, 2003 NASD Discip. LEXIS 15, at *12 (NAC May 21, 2003), aff’d, 2004 SEC LEXIS 330 (Feb. 13, 2004) (“It is well established that because NASD lacks subpoena power over its members, a failure to provide information fully and promptly undermines NASD’s ability to carry out its regulatory mandate.”) (citation omitted); 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 effectively conduct its investigations, and emphasizing that NASD members and associated persons must fully cooperate with requests for information).

⁴ A violation of Rule 8210 is also a violation of Rule 2110. Dep’t of Enforcement v. Hoeper, No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (NAC Nov. 2, 2001).

converted. Guidelines at 38 (2007 ed.). A bar is also standard for failure to provide requested information. Guidelines at 35. There is no evidence of any mitigating circumstances that would justify a lesser sanction for these violations. Therefore, Respondent is barred from associating with any FINRA member in any capacity.⁵

VI. Conclusion

For misuse of funds, in violation of Rules 2330(a) and 2110, and for failure to provide requested information, in violation of Rules 8210 and 2010, Respondent is barred from associating with any FINRA member in any capacity. These bars shall become effective immediately if this Decision becomes the final disciplinary action of FINRA.


Sara Nelson Bloom
Hearing Officer

Copies to: Drumond Ricardo Roby (*via first-class mail & overnight courier*)
Pamela Shu, Esq. (*via first-class & electronic mail*)
Mark P. Dauer, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

⁵ Enforcement did not seek restitution of the misused funds because the customer was reimbursed by Respondent's firm.

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Drumond Ricardo Roby,
CRD No. 4078255,

Respondent.

DISCIPLINARY PROCEEDING
No. 2007010784301

COMPLAINT

The Department of Enforcement alleges:

RESPONDENT AND JURISDICTION

1. Drumond Ricardo Roby became registered as a general securities representative (Series 7) in August 2001. Roby was registered with H&R Block Financial Advisors, Inc. (n/k/a Ameriprise Advisor Services, Inc.) from October 2002 until he was terminated on September 18, 2007 arising out of his activities in this disciplinary matter. FINRA retains jurisdiction over Roby as the Complaint is being filed within two years of Roby's termination.

SUMMARY

2. For approximately six weeks during July and August 2007, while working in the back office of H & R Block Financial Advisors (H&RBFA), Roby engaged in a course of wrongful conduct that included processing changes to the names and addresses of seven

inactive customer accounts at H&RBFA, to Roby's name and address. Roby then directed that checks be written from those accounts to him in the total amount of approximately \$17,900. When he received the checks, Roby cashed them and later misused the customers' funds.

3. Roby failed to respond to FINRA's requests for information in an investigation into Roby's activities, pursuant to NASD Rule 8210.

FIRST CAUSE OF ACTION

NASD Conduct Rules 2110 and 2330(a): Misuse of Customer Funds

4. The Department realleges and incorporates by reference paragraphs 1 through 3 above.
5. From on or about July 6, 2007 through August 22, 2007, Roby changed the names and addresses belonging to seven customers¹ of H&RBFA, whose accounts were inactive at the time, to Roby's name and his home address, without the knowledge and approval of the customers.
6. From on or about July 6, 2007 through August 22, 2007, Roby caused and/or directed the funds in the seven customer accounts, totaling approximately \$17,900 to be disbursed to him by causing checks made payable to Roby to be issued from these accounts and sent to Roby's home.
7. From on or about July 6, 2007 through August 22, 2007, Roby misused the funds of these seven customers by cashing the checks and using the funds totaling approximately \$17,900 for some purpose other than for the benefit of the seven customers.

¹ The accounts included three held in the names of deceased customers, (GA, CH, and ER); and four inactive accounts held in the names of VH, JB, SM and TT.

8. Roby's acts and conduct as described in Paragraphs 4 through 7 constitute separate distinct violations of NASD Rules 2110 and 2330(a).

SECOND CAUSE OF ACTION

NASD Rules 2110 and 8210: Failure to Respond to FINRA's Requests for Information

9. The Department realleges and incorporates by reference paragraphs 1 through 8 above.
10. In connection with FINRA's investigation into Roby's activities, FINRA sent requests for information to Roby pursuant to NASD Rule 8210.
11. On or about January 17, 2008, FINRA sent to Roby a written request for information and documentation regarding his activities as described in Paragraphs 4 through 8 above. The written request for information was sent by first class mail and by certified mail, return receipt requested, to Roby's address of record as contained in the records of the Central Registration Depository ("CRD address"). The first class mailing to the CRD address was not returned to FINRA staff. The certified mailing to the CRD address was returned to FINRA marked "unclaimed".
12. On or about February 4, 2008, FINRA sent to Roby a second written request for information and documentation regarding his activities as described in Paragraphs 4 through 8 above. The written request for information was sent by first class mail and by certified mail, return receipt requested, to Roby's address of record as contained in the records of the Central Registration Depository ("CRD address"). The first class mailing to the CRD address was not returned to FINRA staff. The certified mailing to the CRD address was returned to FINRA marked "unclaimed".
13. The time has expired for Roby to respond to FINRA'S requests for information and Roby has failed to respond at all to FINRA.

14. Roby's failure to respond at all to NASD'S Rule 8210 requests for information constitutes separate and distinct violations of NASD Rules 2110 and 8210.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed;
- B. order that one or more of the sanctions provided under FINRA 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 FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date: August 6, 2009



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