

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

CHRISTOPHER J. MARTINEZ
(CRD No. 4072355)

Respondent.

Disciplinary Proceeding
No. 2007010851901

Hearing Officer – MC

DEFAULT DECISION

July 21, 2009

The Respondent is barred from associating with any FINRA member firm in any capacity for (i) misusing customer funds, in violation of Conduct Rules 2110 and 2330(a), and (ii) failing to respond to requests for information made by FINRA staff, in violation of Conduct Rule 2110 and Procedural Rule 8210.

Appearances

Helen G. Barnhill, Senior Regional Counsel, Denver, CO, for the Department of Enforcement.

No appearance by or for Respondent Christopher J. Martinez.

DECISION

I. Introduction

On February 17, 2009, the Department of Enforcement (“Enforcement”) for the Financial Industry Regulatory Authority (“FINRA”) filed the attached Complaint in this disciplinary proceeding. The First Cause of Action of the Complaint alleges that from April 2007 through September 2007, Respondent Christopher J. Martinez (“Martinez”), while registered as a General Securities Representative through Legend Equities Corporation (“Legend”), misused funds of two customers, in violation of Conduct Rules 2110 and 2330(a). The Second Cause of Action of the Complaint alleges that Martinez

failed to respond to requests for information issued to him by FINRA staff, pursuant to Procedural Rule 8210, in violation of Conduct Rule 2110 and Procedural Rule 8210.¹

Enforcement served Martinez with the Complaint and Notice of Complaint at his last known residential address recorded in FINRA's Central Registration Depository ("CRD address"). Respondent did not answer or otherwise respond to the Complaint. FINRA staff therefore served Martinez with the Complaint and Second Notice of Complaint at his CRD address. Respondent again failed to answer or respond to the Complaint. Consequently, on May 20, 2009, Enforcement filed a Motion for Entry of Default Decision ("Default Motion") supported by the Declaration of Helen G. Barnhill and five exhibits.² Respondent did not respond to the Default Motion.³

For the reasons set forth below, the Default Motion is granted.

II. Findings of Fact and Conclusions of Law

A. Jurisdiction

Martinez became registered with FINRA as a General Securities Representative through Legend on February 6, 2007,⁴ where he remained until his employment was

¹ On December 15, 2008, the first phase of the new consolidated FINRA Rules, resulting from the consolidation of NASD with the member regulation and enforcement functions of NYSE Regulation, went into effect. *See* Regulatory Notice 08-57 (Oct. 2008). This Default Decision refers to and relies on the NASD Conduct Rules that were in effect at the time of Respondent's alleged misconduct. The applicable rules are available at www.finra.org/rules.

² Enforcement's exhibits will be referred to as "CX-__" with the appropriate exhibit and page numbers; the Declaration of Helen G. Barnhill will be referred to as "Decl." or "Barnhill Declaration" with citation to specific paragraphs therein.

³ The factual determinations in this Default Decision are based on the allegations of the attached Complaint, which are deemed admitted, as well as the Default Motion, the Barnhill Declaration, and the exhibits filed by Enforcement.

⁴ Decl. ¶ 5; CX-1.

terminated by Legend on September 25, 2007.⁵ On October 10, 2007, Legend filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") stating that Martinez was terminated for misusing customer funds.⁶

Even though Martinez has not been registered with FINRA since October 10, 2007, the Complaint was filed and served less than two years after FINRA terminated his registration. The misconduct alleged in the Complaint occurred while he was associated with a FINRA member firm, and within two years following his termination. Pursuant to Article V, Section 4 of FINRA's By-Laws, therefore, Martinez remains subject to FINRA's jurisdiction for the purposes of this proceeding.⁷

B. Respondent's Default

Enforcement served the Complaint and Notice of Complaint by mailing them by first-class and certified mail to Respondent's CRD address on February 11, 2009.⁸ The first-class mailing was not returned. The receipt for the certified mailing was returned with markings indicating that repeated attempts to deliver it were made and that it was "unclaimed."⁹

Enforcement served the Complaint and Second Notice of Complaint by first-class and certified mail sent to Respondent's CRD address on March 12, 2009. The receipt for the certified mailing was returned signed by "Edgar Samaniego," but the certified mailing was subsequently returned to Enforcement marked "return to sender, not at this

⁵ *Id.*

⁶ CX-2.

⁷ Article V, Sec. 4, FINRA By-Laws, *available at* www.finra.org/rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: By-Laws").

⁸ Decl. ¶ 11.

⁹ *Id.*; CX-4.

address.”¹⁰ The first-class mailing was also returned, marked “return to sender” and “not at this address.”¹¹ Martinez did not file an Answer or otherwise respond to the Complaint.

By serving Martinez with the Complaint and Notice of Complaint at his CRD address, Enforcement properly complied with the requirements of Procedural Rule 9134(b)(1). By failing to respond, Martinez defaulted.¹² Accordingly, the allegations in the First Cause of the Complaint are deemed admitted, pursuant to Rules 9215(f) and 9269(a)(2).

C. Violations

1. Martinez Misused Customer Funds in Violation of Conduct Rules 2110 and 2330(a)

The First Cause of Action of the Complaint alleges that between April 17, 2007, and September 10, 2007, Martinez withdrew a total of \$51,300 from the variable annuity accounts of two Legend customers, without their consent or authorization, and used the money to pay his mortgage, family debts, and other personal expenses. The unauthorized withdrawals are reflected in a number of withdrawal request forms for the two customer accounts, the first dated April 17, 2007, and the last dated September 10, 2007. Martinez submitted two signed, notarized statements to Legend admitting he made the withdrawals to pay his debts and for “other frivolous spending.”¹³

¹⁰ Decl. ¶ 12; CX-5.

¹¹ *Id.*

¹² *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)).

¹³ Decl. ¶ 15.

These facts, as alleged in the First Cause of Action of the Complaint and supported by the Barnhill Declaration and accompanying exhibits, are sufficient to establish, for the purposes of this Default Decision, that Martinez violated Conduct Rules 2110 and 2330(a) by misusing customer funds.

2. Martinez Failed to Respond to FINRA Staff Requests for Information in Violation of Conduct Rule 2110 and Procedural Rule 8210

The Second Cause of Action of the Complaint alleges that, pursuant to Procedural Rule 8210, FINRA staff made two written requests of Martinez for information and documents relating to its investigation of Martinez's misuse of customer funds. Both requests were sent to Martinez's CRD address by first-class and certified mail. FINRA staff sent the first request on January 18, 2008, and sent the second request on February 20, 2008.¹⁴ The certified mailings were returned marked "unclaimed." The first-class mailings were not returned.¹⁵ Martinez failed to respond to both requests.¹⁶

These facts, as alleged in the Second Cause of Action of the Complaint and supported by the Barnhill Declaration and accompanying exhibits are sufficient to establish, for the purposes of this Default Decision, that Martinez violated Conduct Rule 2110 and Procedural Rule 8210 by failing to respond in any manner to FINRA staff requests for information issued to him pursuant to Procedural Rule 8210.

III. Sanctions

Enforcement requests the imposition of a bar upon Martinez for each violation.

¹⁴ Decl. ¶ 16.

¹⁵ Decl. ¶ 17.

¹⁶ Decl. ¶ 16.

A. Misuse of Customer Funds

For misuse of customer funds, the FINRA Sanction Guidelines recommend that adjudicators consider imposing a bar or, if mitigating circumstances are present, suspension in any or all capacities for six months to two years.¹⁷ Here, there are no mitigating circumstances. As noted above, Martinez has acknowledged his misuse of customer funds to pay his debts and engage in other “frivolous spending.” A bar, therefore is the appropriate sanction. Because Legend made Martinez’s customers whole after the firm discovered his misconduct,¹⁸ restitution is not required.

B. Failure to Respond to FINRA Staff Requests for Information Issued Pursuant to Procedural Rule 8210

The FINRA Sanction Guidelines recommend a bar when a respondent fails to respond in any manner to a request for information issued pursuant to Procedural Rule 8210.¹⁹ Where mitigation exists, the Guidelines recommend consideration of a suspension in any capacity for up to two years.

In this case, FINRA staff properly served Martinez with two requests at his CRD address pursuant to Procedural Rule 8210 for information the staff needed in order to investigate the serious allegation that Martinez had misused customer funds. Martinez failed to respond to the requests. The record of this case is devoid of any circumstances that could be deemed mitigating.

As has often been observed, “Conduct Rule 2110 and Procedural Rule 8210 are crucial components of [FINRA’s] examinations and investigations Procedural Rule

¹⁷ *FINRA Sanction Guidelines*, at 38 (2007).

¹⁸ Default Motion, p. 6; Complaint, ¶ 6.

¹⁹ *FINRA Sanction Guidelines*, at 35 (2007).

8210 gives [FINRA] the right to require a member or person associated with a member to provide information, orally or in writing, in connection with an examination or investigation. The Rule further states that no member or person shall fail to provide such information.”²⁰ Concerning sanctions for violating Rule 8210, “[t]he Guidelines treat a failure to respond ... as egregious.”²¹

A bar, therefore, is the appropriate sanction for Martinez’s violations of Conduct Rule 2110 and Procedural Rule 8210, by failing to respond in any manner to the two requests for information issued to him in this case by FINRA staff pursuant to Rule 8210, as alleged in the Second Cause of Action of the Complaint.

IV. Order

Respondent Christopher J. Martinez is barred from association with any FINRA member firm in all capacities for (i) misusing customer funds, in violation of Conduct Rules 2110 and 2330(a), and (ii) failing to respond to requests for information from FINRA staff pursuant to Rule 8210, in violation of Conduct Rule 2110 and Procedural Rule 8210. In light of the bars, no fine is ordered.

The bars will become effective immediately if this Default Decision becomes FINRA’s final disciplinary action in this proceeding.


Matthew Campbell
Hearing Officer

²⁰ *Dep’t of Enforcement v. Gregory R. Masceri*, No. C8A040079, 2006 NASD Discip. LEXIS 29, at *35 - *36 (N.A.C. Dec. 18, 2006).

²¹ *Id.* at *41.

Copies to:

Christopher J. Martinez (via FedEx and first-class mail)
Helen G. Barnhill, Esq. (via electronic and first-class mail)
Mark P. Dauer, Esq. (via electronic mail)
David R. Sonnenberg, Esq. (via electronic mail)

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

Department of Enforcement,

Complainant,

v.

Christopher J. Martinez
(CRD No. 4072355),

Respondent.

DISCIPLINARY PROCEEDING
No. 2007010851901

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Respondent Christopher J. Martinez misused funds belonging to two customers, by withdrawing funds from their variable annuity accounts without their consent or authorization. Martinez did not give the customers the funds that he withdrew from their variable annuity accounts. Rather, the funds were deposited into two bank accounts that did not belong to the customers and with which the customers had no relationship. This conduct violated NASD Conduct Rule 2330(a). In addition, Martinez failed to respond to NASD Procedural Rule 8210 requests for information and documents, in violation of NASD Procedural Rule 8210 and Conduct Rule 2110.

RESPONDENT AND JURISDICTION

2. Respondent Martinez entered the securities industry in October 1999 when he associated with a FINRA member firm. He later became registered with FINRA through Legend Equities Corporation ("Legend"), a member of FINRA, on February 6, 2007, as a General

Securities Representative. Legend submitted a Uniform Termination Notice for Securities Industry Registration on October 10, 2007 reflecting that Martinez's association with Legend terminated on September 25, 2007. Martinez is not currently registered through or associated with any member firm. However, pursuant to Article V, Section 4 of the FINRA By-Laws, FINRA retains jurisdiction over him for purposes of this Complaint.

FIRST CAUSE OF ACTION
(NASD Conduct Rules 2330(a) and 2110, Misuse of Customer Funds,
by Respondent Martinez

3. The Department realleges and incorporates by reference paragraphs 1 and 2 above.
4. On four occasions between approximately July 2, 2007 and September 10, 2007, Respondent Martinez withdrew funds from customer JM's annuity account maintained with SB. In total he withdrew approximately \$38,300.00 from this annuity account. JM had not requested or authorized such withdrawals. The funds were sent to a bank account that did not belong to JM and of which JM was unaware. These funds were not returned to JM. Martinez used the funds to assist his family with a balloon mortgage payment and other debt payments.
5. On three occasions between approximately April 17, 2007 and June 15, 2007, Martinez withdrew funds from customer WK Revocable Trust's annuity account maintained with SB. In total he withdrew \$13,000.00 from WK's account. Neither WK, nor any other person with authority or control over the Trust, requested or authorized such withdrawals. The funds were sent to a Bank account that did not belong to WK or the Trust and which was unknown to WK and the Trust. The funds were not returned to WK or the Trust. Martinez used the funds to pay his debts and for other personal expenses.
6. Legend repaid \$13,000.00 to WK and \$38,300.00 to JM.

7. By virtue of the conduct described in paragraphs 4 and 5 above, Martinez violated NASD Conduct Rules 2330(a) and 2110.

SECOND CAUSE OF ACTION

NASD Procedural Rule 8210 and NASD Conduct Rule 2110, Failure to Provide Information and Documents, by Respondent Martinez

8. The allegations of paragraphs 1, 2, and 4 through 7 above, are realleged and incorporated herein by reference.
9. On January 18, 2008, FINRA staff sent to Martinez, by first class and certified mail, a written request for information and documents pursuant to NASD Procedural Rule 8210. The request pertained to the allegations of misuse that are the subject of Cause One of this Complaint. The request was sent to Martinez's most current residential address according to Central Registration Depository ("CRD") records, which was [REDACTED] [REDACTED] (the "CRD address"). The requested information and documents were to be provided on or before February 1, 2008. The certified mailing was returned to the staff marked "unclaimed" and the first-class mailing was not returned. Staff did not receive any response to the January 18, 2008 request.
10. On February 20, 2008, FINRA staff sent Martinez a second letter by first class and certified mail, seeking information pursuant to NASD Procedural Rule 8210. The letter requested the same information contained in the first 8210 request letter dated January 18, 2008. The request was sent to Martinez's CRD address. The requested information was to be provided on or before March 5, 2008. The certified mailing was returned to the staff marked "unclaimed" and the first-class mailing was not returned. Staff did not receive any response to the February 20, 2008 request.

11. By failing to provide information requested by the staff, as described above, Martinez violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

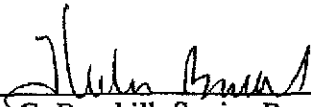
RELIEF REQUESTED

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 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: February 11, 2009


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