

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

RENE F. PALACIOS
(CRD No. 3188994),

Respondent.

Disciplinary Proceeding
No. 2007011375301

Hearing Officer – MAD

DEFAULT DECISION

DATE: October 9, 2009

Respondent is barred from associating with any member firm in any capacity for (i) misusing customer funds, in violation of Conduct Rules 2330(a) and 2110; (ii) forging a customer's signature, in violation of Conduct Rule 2110; and (iii) failing to appear for on-the-record interviews as requested by FINRA staff, in violation of Procedural Rule 8210 and Conduct Rule 2110.

Appearances

Brian D. Donnelly, Principal Regional Counsel, Boca Raton, FL, for the Department of Enforcement.

No appearance by or on behalf of Rene F. Palacios.

DECISION

I. Introduction

On June 2, 2009, the Department of Enforcement ("Enforcement") filed the attached Complaint against Respondent Rene F. Palacios ("Palacios"). The Complaint charges that Palacios: (1) misused customer funds, in violation of Conduct Rules 2330(a) and 2110; (2) forged a customer's signature, in violation of Conduct Rule 2110; and (3) failed to appear for on-

the-record testimony as requested by FINRA staff, in violation of Procedural Rule 8210 and Conduct Rule 2110.¹

Palacios did not answer or otherwise respond to the Complaint. Consequently, on August 24, 2009, Enforcement filed a Motion for Entry of Default Decision, supported by the Declaration of Brian D. Donnelly ("Donnelly Decl.") and three exhibits. Palacios did not reply to the motion.²

II. Findings of Fact and Conclusions of Law

A. Jurisdiction

Palacios started work in the securities industry in 1998. Between December 1998 and November 2007, he was associated with various FINRA member firms, the most recent being Oriental Financial Services Corporation ("Oriental"), where he was registered as a General Securities Representative. On November 30, 2007, Oriental filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") on Palacios' behalf with FINRA. The Form U5 reported that Oriental had discharged Palacios for fraud, forgery, and mail fraud.³

Although Palacios is not currently associated with a FINRA member firm, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's Bylaws, because (1) the Complaint was filed within two years following the termination of his registration with FINRA, and (2) the Complaint charges him with misconduct

¹ As of July 30, 2007, NASD consolidated with the member regulation and enforcement functions of NYSE Regulation 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, including certain conduct rules and procedural rules. *See* Regulatory Notice 08-57 (Oct. 2008). This 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 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.

³ CX-1, at 3.

committed while he was associated with a FINRA member firm and with failing to appear for on-the-record testimony requested by FINRA during the two-year period following the termination of his registration.⁴

B. Respondent's Default

Enforcement served Palacios with notice of the Complaint on June 2, 2009, by first-class and certified mail, return receipt requested, at his residential address recorded in the Central Registration Depository (the "CRD Address").⁵ The certified mailing was returned by the U.S. Postal Service marked, "Return to Sender;" the first class mailing was not returned.⁶

On July 1, 2009, Enforcement served the Second Notice of Complaint and the Complaint in the same manner.⁷ The certified mailing was returned to FINRA by the U.S. Postal Service stamped, "Return to Sender - Unclaimed."⁸ The U.S. Postal Service did not return the first-class mailing containing the Second Notice of Complaint.⁹ To date, Palacios has not filed an answer with the Office of Hearing Officers or otherwise responded to the Complaint.

The Hearing Officer finds that Enforcement properly served Palacios with the Complaint by mailing the Complaint and the First and Second Notices of Complaint in accordance with FINRA Procedural Rule 9134(b)(1).¹⁰ Accordingly, pursuant to Procedural Rules 9215(f) and

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

⁵ Donnelly Decl. ¶ 15; CX-2.

⁶ Donnelly Decl. ¶¶ 16-17; CX-2.

⁷ Donnelly Decl. ¶ 19; CX-3.

⁸ Donnelly Decl. ¶ 20; CX-3.

⁹ Donnelly Decl. ¶ 21.

¹⁰ *Dep't of Enforcement v. 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)).

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.

C. Origin of the Underlying Investigation

FINRA began its investigation of Palacios after reviewing the Form U5 filed by Oriental. As noted above, the Form U5 reported that Oriental discharged Palacios for fraud, forgery, and mail fraud.¹¹

D. Misuse of Customer Funds

The First Cause of Action alleges that Palacios misused customer JL's funds. On June 15, 2007, Palacios opened a bank account in JL's name without his authorization. Palacios forged JL's signature on the new account documents in connection with opening the account. Palacios funded the new account with a deposit of \$62,750 from a brokerage account maintained by JL at Oriental for which Palacios was the registered representative.¹² On four separate occasions between June and August 2007, Palacios forged JL's signature on checks drawn on the bank account in the amounts of \$51,033.25, \$2,751, \$8,000, and \$1,008. The check in the amount of \$51,033.25 was made payable to Palacios' brother-in-law. The checks for \$2,751 and \$1,008 were made payable to Palacios' wife. The \$8,000 check was payable to a credit card held by Palacios. Further, Palacios admitted to Oriental that he had misused JL's funds and forged JL's signature.¹³

The Hearing Officer finds that the allegations in the First Cause of Action are sufficient to establish that Palacios violated Conduct Rules 2330(a) and 2110 by misusing customer funds.

¹¹ CX-1, at 3.

¹² Donnelly Decl. ¶ 10.

¹³ Donnelly Decl. ¶¶ 10, 12.

E. Forgery

The Second Cause of Action alleges that Palacios forged the signature of customer JL. As discussed above, Palacios forged JL's signature in connection with opening the bank account, and then forged the customer's signature four more times in order to write checks for his and his family's benefit. Palacios admitted that he forged JL's signature.¹⁴

The Hearing Officer finds that the evidence is sufficient to establish that Palacios forged his customer's signature and thereby violated Conduct Rule 2110, which requires adherence to high standards of commercial honor and just and equitable principles of trade.¹⁵

G. Failure to Appear for On-the-Record Interviews

The Third Cause of Action alleges that Palacios failed to appear at an on-the-record interview on two separate occasions, in violation of Procedural Rule 8210 and Conduct Rule 2110. Enforcement sent the first request dated October 8, 2008, to Palacios at his CRD Address by regular and certified first-class mail pursuant to Procedural Rule 8210, requesting that he appear and provide sworn testimony on November 12, 2008. Palacios did not appear to provide the requested sworn testimony on November 12, 2008.¹⁶

Enforcement sent the second request, dated December 5, 2008, to Palacios at his CRD Address by regular and certified first-class mail pursuant to Procedural Rule 8210, requesting that he appear and provide sworn testimony on December 18, 2008. Palacios did not appear to provide the requested sworn testimony on December 18, 2008.¹⁷

¹⁴ Donnelly Decl. ¶¶ 10, 12.

¹⁵ *Dep't of Enforcement v. Kirlin Secs., Inc.*, No. EAF0400300001, 2009 FINRA Discip. LEXIS 2, at *57 (N.A.C. Feb. 25, 2009) ("It is well established that signing a customer's name to documents, without authority, is forgery and is inconsistent with just and equitable principles of trade and violates the high standards of commercial honor set forth in NASD Rule 2110.").

¹⁶ Donnelly Decl. ¶ 14.

¹⁷ Donnelly Decl. ¶ 14.

Procedural Rule 8210 authorizes FINRA to require any person subject to its jurisdiction to provide information and testimony related to any matter under investigation. The Rule serves as a key element in FINRA's oversight function and allows FINRA to carry out its regulatory functions without subpoena power.¹⁸ Here, Palacios received valid constructive notice of the two requests.¹⁹ He failed to appear for the interviews, as requested.

The Hearing Officer finds that the allegations in the Third Cause of Action are sufficient to establish that Palacios violated Procedural Rule 8210 and Conduct Rule 2110.

III. Sanctions

A. Misuse of Customer Funds

Under the FINRA Sanction Guidelines ("Guidelines"), if an associated person improperly uses customer funds, the maximum sanction is a bar and a fine of \$50,000.²⁰ Where the improper use resulted from the respondent's misunderstanding of his customer's intended use of the funds, or other mitigating factors exist, the applicable Guidelines recommend consideration of a suspension of six months to two years and thereafter until restitution is paid. Here, there is no evidence of any mitigating factors. Palacios opened the bank account in JL's name without JL's authorization and forged JL's signature on the new account documents. Palacios had been associated with FINRA member firms for over 10 years at the time he opened the bank account in JL's name and transferred JL's funds from his brokerage account. As such, Palacios most

¹⁸ See, e.g., *Dep't of Enforcement v. Valentino*, No. FPI010004, 2003 NASD Discip. LEXIS 15, at *12 (N.A.C. 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*, Exchange Act Release No. 42,359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for the NASD effectively to conduct its investigations, and emphasizing that NASD members and associated persons must fully cooperate with requests for information).

¹⁹ See *David I. Cassuto*, Exchange Act Release No. 48,087, 2003 SEC LEXIS 1496, at *9 (June 25, 2003).

²⁰ FINRA Sanction Guidelines 38 (2007), available at www.finra.org/sanctionguidelines.

certainly was aware that it would be a violation of his duty of fair dealing to open a fraudulent account and misuse over \$60,000 of customer funds. Accordingly, the Hearing Officer finds that a bar is the appropriate sanction for this violation.²¹

B. Forgery

For forgery and falsification of records, the Guidelines recommend a fine of \$5,000 to \$100,000, and a suspension in any or all capacities for up to two years in cases where mitigating factors exist. In egregious cases, the Guidelines recommend a bar.²² The Guidelines instruct adjudicators to consider, in addition to the principal considerations and general principles applicable to all violations, the nature of the document forged and whether respondent had a good-faith, but mistaken, belief of express or implied authority.²³

Applying the applicable Guidelines, the Hearing Officer finds that Palacios' violation was egregious. He initially forged his customer's signature in order to open the bank account. He then forged his customer's signature as he wrote checks to deplete the account, issuing checks for family members and personal credit card expenses. Accordingly, the Hearing Officer finds that a bar is appropriate for this violation as well.²⁴

C. Failure to Appear for On-the-Record Interviews

The Guidelines recommend a bar where a respondent fails to respond in any manner to a request for information issued pursuant to Procedural Rule 8210.²⁵ Here, there is no evidence of

²¹ Cf., e.g., *Bernard D. Gorniak*, Exchange Act Release No. 35,996, 1995 SEC LEXIS 1820, at *6-7 (July 20, 1995) (holding that a bar is appropriate where the respondent held, for a substantial period, customer funds that were intended for the purchase of mutual funds).

²² Sanction Guidelines at 39.

²³ *Id.*

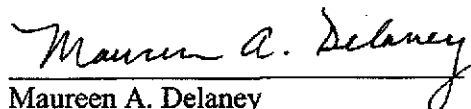
²⁴ Cf., e.g., *Dep't of Enforcement v. Trigillo*, No. C8A040082, 2005 NASD Discip. LEXIS 61, at *29 (O.H.O. June 8, 2005) (barring respondent and finding that his multiple acts of forgery constituted an egregious pattern of misconduct).

²⁵ Sanction Guidelines at 35.

any mitigating factors that would justify a lesser sanction. Accordingly, the Hearing Officer will bar Palacios from associating with any FINRA member firm in any capacity for violating Procedural Rule 8210 and Conduct Rule 2110.

IV. Order

Palacios is barred from associating with any member firm in any capacity for (i) misusing customer funds, in violation of Conduct Rules 2330(a) and 2110; (ii) forging a customer's signature, in violation of and Rule 2110; and (iii) failing to appear for on-the-record interviews as requested by FINRA staff, in violation of Procedural Rule 8210 and Conduct Rule 2110. The bars shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.²⁶


Maureen A. Delaney
Hearing Officer

Copies to:

Rene F. Palacios (*via overnight courier and first-class mail*)
Brian D. Donnelly, Esq. (*via electronic and first-class mail*)
Mark P. Dauer, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

²⁶ Restitution has not been ordered because there is insufficient evidence of the customer's loss, if any. The record does not address whether the customer recovered any of the funds the Respondent took from his account.

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FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Rene F. Palacios (CRD No. 3188994),

Respondent.

DISCIPLINARY PROCEEDING
No. 2007011375301

HEARING OFFICER-

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Rene Palacios ("Palacios" or "Respondent") was a registered representative associated with member firm Oriental Financial Services Corp. ("Oriental" or the "Firm") in Puerto Rico. Palacios was terminated by Oriental in November 2007 after Oriental discovered, and Palacios admitted, that Palacios had misused \$62,750 of customer funds when he transferred \$62,750 from that customer's brokerage account to a fraudulent bank account that he had opened in the name of that customer without authorization, and then repeatedly forged the customer's signature on, among other documents, checks issued from the fraudulent bank account, so as to misuse the customer's funds.

2. Palacios was sent two letters pursuant to NASD Rule 8210 requesting his appearance at an on-the-record interview ("OTR") to discuss the circumstances surrounding his termination from Oriental. Palacios failed to appear for the scheduled OTRs.
3. Palacios' conduct violates NASD Conduct Rules 2330(a) and 2110, and NASD Procedural Rule 8210.

Respondent and Jurisdiction

4. Between December 1998 and November 2007, Palacios was associated with various FINRA member firms, the most recent being Oriental. Palacios obtained his Series 7 license in September 2000. On November 30, 2007, Oriental filed a Form U5 on behalf of Palacios, terminating his association with Oriental as of that date. Palacios is not currently associated with any FINRA member firm but is still within the jurisdiction of FINRA pursuant to Article V, Section 4 of FINRA's By-Laws. Jurisdiction over Palacios expires on November 29, 2009, which is two years after the date that Palacios was last associated with a FINRA member firm.

FIRST CAUSE OF ACTION

Misuse of Customer Funds

Violation of NASD Conduct Rules 2330(a) and 2110

5. The Department realleges and incorporates by reference paragraphs 1-4, above.
6. In November 2007, Oriental customer JL complained to Oriental's banking affiliate (the "Affiliate"), where he was also a customer, that he had recently received a bank statement for a checking account he had never opened at the Affiliate.
7. The fraudulent bank account at issue was opened at an Affiliate branch in Puerto Rico on June 15, 2007. The fraudulent bank account was funded by a deposit of \$62,750.

8. The source of the funds deposited into the fraudulent bank account was a brokerage account maintained by JL at Oriental. Palacios was the registered representative for JL's brokerage account.
9. On June 19, 2007, Palacios forged JL's signature and issued a check in the amount of \$51,033.25 from the fraudulent bank account, payable to WR. The June 19 check was deposited into an account belonging to WR at the Affiliate. WR is Palacios' brother-in-law.
10. On July 1, 2007, Palacios forged JL's signature and issued another check from the fraudulent bank account in the amount of \$2,751. The July 1 check was payable to MR, Palacios' wife. The check was deposited into an account belonging to Palacios and his wife at the Affiliate.
11. On July 20, 2007, Palacios forged JL's signature and issued another check from the fraudulent bank account in the amount of \$8,000. The July 20 check was payable to another bank. The Affiliate was able to trace the check to the payment of a credit card issued by the other bank to Palacios.
12. On August 8, 2007, Palacios forged JL's signature and issued another check from the fraudulent bank account in the amount of \$1,008. The August 8 check was payable to MR, Palacios' wife, and was deposited into the account Palacios maintained with his wife at the Affiliate.
13. Palacios opened the fraudulent bank account in JL's name without JL's authorization and forged JL's signature on the new account documents in connection with opening the fraudulent account.

14. Palacios then transferred the \$62,750 in funds from JL's brokerage account into the fraudulent bank account.
15. Palacios forged JL's signature on the June 19, July 1, July 20 and August 8, 2007, checks in connection with his misuse of JL's funds.
16. As a result of the foregoing, Palacios violated NASD Conduct Rules 2330(a) and 2110.

SECOND CAUSE OF ACTION
Forgery
Violation of NASD Conduct Rule 2110

17. The Department realleges and incorporates by reference paragraphs 1-16, above.
18. On or about June 15, 2007, Palacios forged the signature of customer JL in connection with opening a fraudulent bank account at the Affiliate in the name of JL. Palacios subsequently caused the transfer of \$62,750 from JL's brokerage account to the fraudulent bank account.
19. On or about June 19, 2007, Palacios forged the signature of JL on a check drawn from the fraudulent bank account in the amount of \$51,033.25. The June 19 check was payable to WR and was deposited into an account belonging to WR at the Affiliate.
20. On July 1, 2007, Palacios forged the signature of JL on a check drawn from the fraudulent bank account in the amount of \$2,751. The July 1 check was payable to MR, Palacios' wife. The July 1 check was deposited into an account belonging to Palacios and his wife at the Affiliate.
21. On July 20, 2007, Palacios forged the signature of JL on a check drawn from the fraudulent bank account in the amount of \$8,000. The July 20 check was payable to

another bank. The Affiliate was able to trace the check to the payment of a credit card issue by the other bank to Palacios.

22. On August 8, 2007, Palacios forged the signature of JL on a check drawn from the fraudulent bank account in the amount of \$1,008. The August 8 check was payable to MR, Palacios' wife, and was deposited into an account belonging to Palacios and his wife at the Affiliate.

23. As a result of the foregoing, Palacios violated NASD Conduct Rule 2110.

THIRD CAUSE OF ACTION

Failure to Appear for an On-the-Record Interview

Violation of NASD Procedural Rule 8210

24. The Department realleges and incorporates by reference paragraphs 1-23, above.

25. On October 8, 2008, FINRA staff sent Palacios a letter, pursuant to NASD Rule 8210, requesting his appearance at an on-the-record interview ("OTR") scheduled for November 12, 2008. The October 8 letter was sent to Palacios at his CRD residential address via first class and certified mail. The letter sent via first class mail was returned stamped "Undeliverable as Addressed." The letter sent via certified mail was returned stamped "Unclaimed." Palacios failed to appear for the scheduled OTR and never contacted FINRA staff to request that the OTR be re-scheduled.

26. On December 5, 2008, FINRA staff sent Palacios a second letter pursuant to NASD Rule 8210 requesting his appearance at an OTR scheduled for December 18, 2008. The December 5 letter was sent to Palacios at his CRD residential address of record via first class and certified mail. The letter sent via first class mail was returned stamped "Undeliverable as Addressed." The letter sent via certified mail was

returned stamped "Unclaimed." Palacios failed to appear for the scheduled OTR and never contacted the staff to request that the OTR be re-scheduled.

27. FINRA staff has no actual knowledge of any address for Palacios other than his CRD residential address of record.

28. As a result of the foregoing, Palacios 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 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
- B. 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: June 2, 2009



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