

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

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REGISTRATION & DISCLOSURE

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

MARIA D. PUMARIEGA
(CRD No. 2419535),

Respondent.

Disciplinary Proceeding
No. 20070118847

DEFAULT DECISION

Hearing Officer – Sara Nelson Bloom

July 15, 2009

For conversion of funds, in violation of Rule 2110, and for failure to provide requested information, in violation of Rules 8210 and 2110, Respondent is barred from associating with any FINRA member in any capacity.

Appearances

Robert Moreiro, Esq., New York, NY, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

I. Background

On February 3, 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 Maria D. Pumariaga (“Respondent”) violated Rule 2110 by converting customer funds. The second cause alleges that Respondent violated Rules 8210 and 2110 by failing to respond to FINRA Staff requests for information.

Respondent did not file an Answer to the Complaint. Accordingly, on April 29, 2009, Enforcement filed a Motion for Entry of Default Decision, supported by the Declaration of Robert Moreiro, Esq. and 17 exhibits. On June 17, 2009, Enforcement

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filed a Supplemental Declaration in support of the Motion. Respondent did not file a response to the Motion.

For the reasons set forth below, Enforcement's motion is granted.¹

II. Respondent's Default

On February 3, 2009, Enforcement sent the Complaint and Notice of Complaint to Respondent by first-class and certified mail, to Respondent's last known residential address according to the Central Registration Depository (the "CRD Address").

Respondent did not file an Answer. In the same manner, on March 4, 2009, Enforcement sent the Complaint and Second Notice of Complaint to Respondent at her CRD Address. Respondent again did not file an Answer.

Enforcement complied with Rule 9134(b)(1) by mailing the Complaint and Notices of Complaint to Respondent's CRD Address, thereby giving her 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 an Investment Company and Variable Contracts Products Representative with a FINRA member in 1993. From October 1, 2000, through December 20, 2007, Respondent was registered as an Investment Company and Variable Contracts Products Representative with Wachovia Securities, LLC ("Wachovia" or the "Firm"). She has not been associated with a member firm since December 20, 2007. 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

¹ The factual determinations in this Decision are based on the allegations of the attached Complaint, which are deemed admitted, and the declarations and exhibits filed by Enforcement with its motion.

By-Laws, because (1) the Complaint charges Respondent with misconduct while she was an associated person and with failing to comply with requests for information made during the two-year period following termination of her last registration, and (2) the Complaint was filed within that two-year period.

IV. Violations

A. Conversion

The first cause of the Complaint alleges that Respondent converted funds from a customer of her Firm's affiliate, Wachovia Bank, N.A. (the "Bank"), where she was also employed. Specifically, during the period September 8, 2007, through November 15, 2007, Respondent, without permission or authority, took approximately \$140,000 from Bank customer SW and used these funds for her own purposes.²

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent converted customer funds, in violation of Rule 2110.

B. Failure to Respond

On December 20, 2007, the Firm filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") reporting that, on December 3, 2007, Respondent was terminated from employment for withdrawing funds from multiple client accounts without their authorization. Accordingly, on December 28, 2007, FINRA Staff ("Staff") sent Respondent a request for information pursuant to Rule 8210, requesting a detailed written explanation regarding the circumstances surrounding Respondent's termination. The 8210 request was sent by first-class and certified mail to Respondent's CRD Address. In the same manner, on April 10, 2008, and again on April 28, 2008, Staff

² Respondent plead guilty to felony grand theft in connection with this conduct.

sent Respondent requests for information regarding her termination and “other matters.” Finally, on May 14, 2008, Staff sent a request attaching its April 10 and April 28, 2008 letters, and alerting Respondent that her failure to respond may result in the institution of formal disciplinary proceedings against Respondent for failure to comply with requests for information pursuant to Rule 8210. Staff served the requests in accordance with Rule 8210(d), and therefore Respondent is deemed to have received them. Respondent did not respond to any of the requests.

Rule 8210 authorizes FINRA to require any person subject to its jurisdiction to provide information 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.³ Here, although Respondent received valid constructive notice of Staff requests,⁴ she failed to respond to them. Respondent therefore violated Rules 8210 and 2110.

V. Sanctions

For conversion, the FINRA Sanctions Guidelines (“Guidelines”) recommend a bar, regardless of the amount 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

³ 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 See David I. Cassuto, Exch. Act Rel. No. 48,087, 2003 SEC LEXIS 1496, at *9 (June 25, 2003).

violations. Therefore, Respondent is barred from associating with any FINRA member in any capacity.⁵

VI. Conclusion

For conversion of funds, in violation of Rule 2110, and for failure to provide requested information, in violation of Rules 8210 and 2110, 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.

SO ORDERED.



Sara Nelson Bloom
Hearing Officer

Copies to:

Maria D. Pumariaga (*via overnight courier and first-class mail*)
Robert Moreiro, Esq. (*via electronic mail and first-class mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

⁵ Restitution is not ordered because Respondent repaid the customer.

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

DEPARTMENT OF ENFORCEMENT,

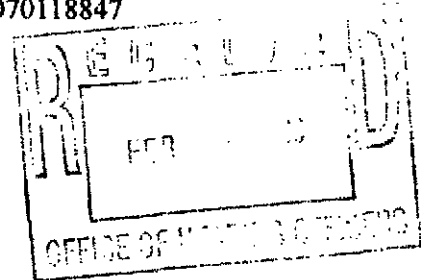
Complainant,

v.

MARIA D. PUMARIEGA
(CRD No. 2419535),

Respondent.

Disciplinary Proceeding
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COMPLAINT

The Department of Enforcement alleges:

JURISDICTION

1. Respondent first became registered with a FINRA member in 1993. From on or about October 1, 2000 through on or about December 3, 2007, Respondent was an associated person with Wachovia Securities, LLC ("Wachovia" or the "Firm"), a FINRA member, and her employment was terminated for purportedly withdrawing funds from multiple clients of Wachovia Bank, N.A. without their authorization. Respondent is no longer associated with a FINRA member.
2. FINRA retains jurisdiction over Respondent pursuant to Article V, Section 4 of FINRA's By-Laws.

FIRST CAUSE OF ACTION

(Conversion - NASD Rule 2110)

3. Enforcement realleges and incorporates by reference paragraphs 1-2 above.
4. During all relevant times, SW was a member of the public and maintained an account at the Firm's bank affiliate.
5. During all times relevant hereto, Respondent was also an employee of the Firm's bank affiliate, Wachovia Bank, N.A.
6. During the period September 8, 2007 through November 15, 2007, Respondent without permission or authority, wrongfully took approximately \$140,000 from SW and used these funds for Respondent's own uses and purposes.
7. On September 16, 2008, Respondent pled guilty in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida to 1st degree grand theft, a felony in violation of FL Statute No. 812.014(2)(a), and was sentenced to four years probation. The plea of guilty arose out of Respondent's unauthorized taking of SW's funds, as well as the unauthorized taking of funds from others.
8. The above acts, practices and conduct constitute a violation of NASD Rule 2110.

SECOND CAUSE OF ACTION

(Failure to Provide Information - NASD Rules 8210 and 2110)

9. Enforcement realleges and incorporates by reference paragraphs 1-8 above.
10. On or about December 24, 2007, FINRA initiated an investigation of whether Respondent violated NASD rules, specifically whether Respondent engaged in the unlawful conversion of customer funds.
11. On December 28, 2007, FINRA sent a letter to Respondent pursuant to NASD Rule 8210, requesting a detailed written explanation regarding Respondent's employment termination with Wachovia Bank, N.A. The letter was sent to Respondent's last known residential address, as reflected in the Central Registration Depository ("CRD"), by certified mail return receipt requested and first class mail. The letter required a response no later than January 28, 2008.
12. The return receipt was returned to FINRA indicating that the letter sent by certified mail was delivered to and signed by Respondent on December 31, 2007. The letter sent by first class mail was not returned to FINRA.
13. No response to FINRA's 8210 request was received from Respondent.
14. On April 10, 2008, FINRA sent a letter to Respondent requesting, among other items, a detailed written explanation regarding Respondent's employment termination from the Firm, and other matters, pursuant to NASD Rule 8210. The letter was sent to Respondent's last known residential address, as reflected in CRD, by certified mail return receipt requested, overnight mail and first class mail. The letter required a response no later than April 24, 2008.

15. The return receipt requested was returned to FINRA indicating that the letter sent by certified mail was delivered to and signed by Respondent on April 15, 2008. The letter sent by overnight mail was delivered on April 11, 2008. The letter sent by first class mail was not returned to FINRA.
16. No response to FINRA's 8210 request was received from Respondent.
17. On April 28, 2008, FINRA sent a letter to Respondent pursuant to NASD Rule 8210 requesting that Respondent provide the same information previously requested on April 10, 2008. The letter was sent to Respondent's last known residential address, as reflected in CRD, by certified mail return receipt requested, overnight mail, and first class mail. The letter required a response no later than May 5, 2008.
18. The return receipt requested was returned to FINRA indicating that the letter sent by certified mail was delivered to and signed by Respondent on May 2, 2008. The letter sent by overnight mail was delivered on April 29, 2008. The letter sent by first class mail was not returned to FINRA.
19. No response to FINRA's 8210 request was received from Respondent.
20. On May 14, 2008, FINRA sent a letter to Respondent pursuant to NASD Rule 8210, attaching the earlier letters dated April 10, 2008 and April 28, 2008 and alerting Respondent, among other things, that Respondent's failure to respond to FINRA's request letters may result in the institution of formal disciplinary proceedings against Respondent based upon Respondent's failure to comply with FINRA's requests for information. The letter was sent to Respondent's last

known residential address, as reflected in CRD, by certified mail return receipt requested and first class mail.

21. The letter sent by certified mail return receipt requested was returned to FINRA with a notation indicating that it was unclaimed. The letter sent by first class mail was not returned to FINRA.
22. No response to any of FINRA's 8210 requests have been received from Respondent.
23. By virtue of the foregoing, Respondent has violated, and is continuing to violate, NASD Rules 8210 and 2110.