

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

VICTORIA ANN TOTH
(CRD No. 4667623),

Respondent.

Disciplinary Proceeding
No. 2008012343001

Hearing Officer – LBB

DEFAULT DECISION

June 29, 2009

Respondent is barred from associating with any member firm for misappropriation of funds in violation of Conduct Rule 2110. She is also barred for failure to respond to requests to submit a written statement and failure to appear for an on-the-record interview, in violation of Procedural Rule 8210 and Conduct Rule 2110.

Appearances

Thomas G. Kay, Principal Counsel, FINRA, New York, New York, for the Department of Enforcement

No appearance by or for Respondent

DECISION

The Department of Enforcement filed the Complaint in this action on February 13, 2009. The Complaint asserts two causes of action against Respondent Victoria Ann Toth ("Respondent"): misappropriation of customer funds, in violation of NASD Conduct Rule 2110; and failure to provide information, in violation of NASD Procedural Rule 8210 and Conduct

Rule 2110.¹ Despite being properly served with the Complaint, Notice of Complaint, and Second Notice of Complaint, Respondent has not filed an answer to the Complaint. On April 27, 2009, Enforcement filed a Motion for Entry of Default Decision and Request for Sanctions, to which Respondent did not respond. Accordingly, pursuant to Procedural Rules 9215(f) and 9269, the allegations in the Complaint will be deemed admitted and Enforcement's motion will be granted.²

I. Respondent's Default

On February 12, 2009, Enforcement served Respondent with the Complaint and Notice of Complaint by certified mail at her residential address as reflected in the Central Registration Depository ("CRD"). The certified mailing was returned to the FINA office marked "UNCLAIMED." A Second Notice of Complaint and Complaint were served on Respondent by certified mail at her CRD address on March 13, 2009. The second certified mailing was also returned to the FINRA office marked "UNCLAIMED." FINRA staff is not aware of a more current address for Respondent.

Enforcement served the Complaint and the Notices of Complaint on Respondent in accordance with Procedural Rule 9134, giving her constructive notice of this proceeding. Respondent has not answered or otherwise responded to the Complaint. By failing to respond, she defaulted.

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 and the materials filed by Enforcement with its motion.

II. Jurisdiction

Respondent was registered in April 2003 as a General Securities Representative with FINRA member firm BNY Investment Center, Inc. ("BNY"). Her registration was transferred to Chase Investment Services Corporation ("Chase") on October 4, 2006, as a result of the acquisition of certain BNY business units by J.P. Morgan Chase Bank, NA. Chase filed a Uniform Termination Notice for Securities Industry Registration (Form U5) on February 5, 2008, reporting that Respondent's employment had been terminated by Chase's affiliate bank on January 7, 2008, for Respondent's unauthorized withdrawal of funds from a bank customer's account.

Although Respondent has not been registered with any FINRA member firm since the termination of her employment with Chase, she remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because the Complaint was filed within two years after the termination of her registration with a member firm, and it charges her with misconduct while she was registered with a member firm and with failing to respond to Rule 8210 requests issued within two years following the termination of her registration with a member firm.

III. Origin of the Investigation

FINRA's investigation began when Chase filed the Form U5 concerning Respondent's unauthorized withdrawal from the account of a bank customer.

IV. Violations

A. Misappropriation of Funds in Violation of Rule 2110

Respondent was employed by BNY's affiliate bank as a Personal Banker. On June 7, 2006, Respondent asked a bank teller to process a bank check payable to PMH Mortgage Services in the amount of \$8,500, drawn on the account of bank customer E.F., without the

knowledge or consent of the customer. The check was forwarded to PMH Mortgage, and applied to Respondent's mortgage. On September 29, 2006, Respondent again asked a bank teller to process a bank check drawn on the account of bank customer E.F., this time in the amount of \$6,500, without the knowledge or consent of the customer. It is unclear whether Respondent was successful in this attempt to withdraw the customer's funds, but the determination of that issue is not necessary for purposes of this decision.

In November 2007, the bank became aware of an unauthorized withdrawal from E.F.'s account, and traced it to Respondent. When the bank questioned Respondent about the withdrawal, she admitted, in a handwritten and signed statement, that she had misappropriated the \$8,500, and that she had also asked a teller to process the check for \$6,500, although she claimed that she had asked the teller to void the second check when she saw that it had E.F.'s name in the "memo" section. Respondent's misappropriation was an act of conversion. Conversion is "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* at 38 n.2 (2007).

The allegations of the Complaint, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent violated Conduct Rule 2110 by misappropriating funds from a bank customer's account.

B. Failure to Provide Information in Violation of Rules 8210 and 2110

NASD Procedural Rule 8210 authorizes FINRA to require any person subject to its jurisdiction to provide information related to any matter under its investigation. The second cause of action of the Complaint alleges that FINRA staff sent four requests to Respondent at her CRD address, pursuant to Rule 8210, directing her to submit a written statement concerning the misappropriation of funds. Respondent did not respond to any of the requests. In addition,

FINRA staff sent Respondent a request to appear at an on-the-record interview, pursuant to Rule 8210, and Respondent failed to appear.

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 2110.³

V. Sanctions

The FINRA Sanction Guidelines (“Guidelines”) recommend a bar as the sanction for conversion in violation of Conduct Rule 2110, regardless of the amount converted. *Sanction Guidelines* at 38. There is no evidence of any mitigating factors that would make a sanction of anything less than a bar appropriate. A bar is the appropriate sanction for Respondent’s conversion of funds. Because Respondent reimbursed her firm, and the firm reimbursed the bank’s customer, Enforcement does not request restitution, and it will not be ordered.

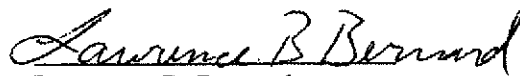
The Guidelines recommend a bar where a respondent fails to respond in any manner to a request for information issued pursuant to Procedural Rule 8210. *Sanction Guidelines* at 35. Where mitigation exists, the Guidelines recommend consideration of a suspension in all capacities of up to two years. The record reflects that Respondent failed to respond in any manner to requests to submit a written statement, and failed to appear at an on-the-record interview. There are no mitigating factors that would justify imposition of a lesser sanction. A bar is the appropriate sanction under the facts and circumstances of this case for Respondent’s violations of Rules 8210 and 2110.

³ A violation of Rule 8210 is also a violation of Conduct Rule 2110. *Dep’t of Enforcement v. Hoeper*, No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (N.A.C. Nov. 2, 2001).

VI. Conclusion

Respondent Victoria Ann Toth is barred from associating with any member firm for misappropriation of funds, in violation of Conduct Rule 2110. She is also barred for failure to respond to requests to submit a written statement and failure to appear for an on-the-record interview, in violation of Procedural Rule 8210 and Conduct Rule 2110. The bars will become effective immediately if this decision becomes FINRA's final disciplinary action in this proceeding.

SO ORDERED.

A handwritten signature in cursive script, reading "Lawrence B. Bernard".

Lawrence B. Bernard
Hearing Officer

Copies to: Victoria Ann Toth (*via overnight courier and first-class mail*)
Thomas G. Kay, Esq. (*via email and first-class mail*)
David R. Sonnenberg, Esq. (*via email*)

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

Department of Enforcement,

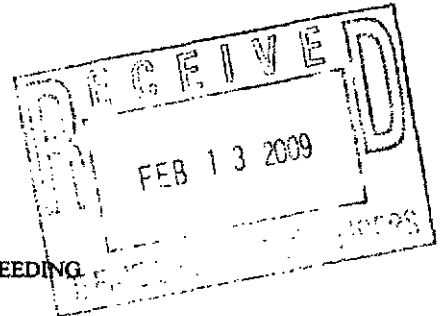
Complainant,

v.

VICTORIA ANN TOTH
(CRD No. 4667623),

Respondent.

DISCIPLINARY PROCEEDING
No. 2008012343001



COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. In two separate transactions on June 7, 2006 and September 29, 2006, Victoria Ann Toth ("Toth"), while employed at BNY Investment Center, Inc. ("BNY"), in a business unit which was acquired by J.P Morgan Chase Bank, NA (the "Firm" or "J.P Morgan") in 2006, withdrew \$15,000 from a Firm bank customer's ("EF") account without the customer's permission.
2. Toth failed to respond to the Department of Enforcement of FINRA's ("Enforcement") requests for information and testimony between April and November 2008.

RESPONDENT AND JURISDICTION

3. Toth entered the financial industry at BNY in April 1995. Toth has been registered

with FINRA¹ since 2003. Toth was employed as a personal banker at BNY and J.P. Morgan between May 2003 and January 7, 2008. Toth is not currently employed in the financial industry.

4. In October 2006, J. P. Morgan acquired a significant portion of BNY's businesses and employees, including the unit where Toth was employed.

5. From May 2003 through January 2008, Toth was Series 6 and 63 licensed. From October 2006 through January 2008, Toth's securities licenses were held by Chase Investment Services Corporation ("CISC"), a FINRA broker-dealer affiliated with J.P. Morgan.

6. The funds were misappropriated from EF, a customer of the Firm's retail bank and not the broker-dealer.

7. Toth is subject to FINRA's jurisdiction pursuant to Article V, § 4 of NASD's By-Laws because this Complaint is being filed within two years after the effective date of termination of her association with the Firm.

FACTS

Toth's Misappropriation

8. On or about June 7, 2006, Toth requested that a Firm bank teller process a bank check payable to PMH Mortgage Services in the amount of \$8,500 drawn on the account of EF. The customer did not authorize Toth to withdraw the funds from her account.

9. The bank check was forwarded to PMH Mortgage Services and applied as a mortgage payment for Toth.

10. On or about September 29, 2006, Toth requested that a Firm bank teller process a

¹ References to FINRA in this Complaint also include NASD.

bank check drawn on the account of EF, in the amount \$6,500. This check was processed by the Firm bank teller on behalf of Toth. The customer did not authorize Toth to withdraw the funds from her account.

11. In November 2007, the Firm became aware of these withdrawals. Shortly thereafter, the Firm traced the withdrawals to Toth.

12. On or about January 4, 2008, after being questioned by J.P. Morgan management staff, Toth signed a statement acknowledging that she had misappropriated funds from EF's account.

13. On or about January 7, 2008, J.P. Morgan terminated Toth's employment.

14. Toth made restitution of the misappropriated funds to the Firm. The Firm repaid the customer.

Failure to Provide Written Statement or to Appear and Testify

15. On or about February 12, 2008, the Central Review Group of FINRA ("CRG") sent a letter to Toth pursuant to NASD Rule 8210 requesting a written statement concerning the circumstances of her termination. The request was sent via first class mail and certified mail, return receipt requested to Toth's last known address as reflected in the Central Registration Depository ("CRD Address"). The letter sent via certified mail was returned unclaimed by Toth. The letter sent via first class mail was never returned to Enforcement. Toth did not respond to CRG.

16. On or about March 24, 2008, CRG sent a second request to Toth for a written statement. The request was sent via first class mail and certified mail, return receipt requested to the CRD Address. The return receipt for the certified copy bears a signature

indicating that "R. Toth" received the letter on March 26, 2008. The postal authorities did not return the first class copy. Toth did not respond to CRG.

17. On or about April 21, 2008, Enforcement issued a request pursuant to NASD Rule 8210 requiring Toth to provide a written statement regarding the circumstances of her termination. The request was sent via certified mail, return receipt requested to Toth's CRD Address. The return receipt for the certified copy bears a signature that indicates that "V. Toth" received the letter on April 29, 2008. Toth did not respond to Enforcement.

18. On or about May 13, 2008, Enforcement issued a request pursuant to NASD Rule 8210 requiring Toth to provide a written statement regarding the circumstances of her termination. The request was sent via first class mail to Toth's CRD Address. The postal authorities did not return the first class letter. Toth did not respond to Enforcement.

19. On or about May 30, 2008, Enforcement issued a request pursuant to NASD Rule 8210 requiring Toth to provide a written statement regarding the circumstances of her termination. The request was sent via certified mail, return receipt requested to Toth's last known address as reflected on CRD. The return receipt for the certified copy came back indicating that "V. Toth" received the letter on June 2, 2008. Toth did not respond to Enforcement.

20. On or about September 17, 2008, Enforcement sent a letter pursuant to NASD Rule 8210 requiring Toth to appear and provide testimony before Enforcement on October 9, 2008. The letter was sent to the CRD Address, via first class mail and certified mail, return receipt requested. The certified letter was returned "unclaimed" by the post office. The postal authorities did not return the first class letter.

21. Toth did not appear to testify on October 9, 2008, as requested or otherwise respond to the letter.

FIRST CAUSE OF ACTION

**Conduct Inconsistent with Just and Equitable Principles of Trade
Misappropriation of Customer Funds
(NASD Rule 2110)**

22. Enforcement repeats and re-alleges and incorporates by reference paragraphs 1 through 21 above.

23. By engaging in the foregoing conduct, Toth violated NASD Rule 2110.

SECOND CAUSE OF ACTION

**Failure to Provide Written Statement or to Appear and Testify
(NASD Rules 8210 and 2110)**

24. Enforcement repeats and re-alleges and incorporates by reference paragraphs 1 through 21 above.

25. By engaging in the foregoing conduct, Toth violated NASD Rule 8210 and NASD 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.;
- B. order that the Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule

FINRA DEPARTMENT OF ENFORCEMENT

DATED: 2/11/09


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