

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

CHRISTOPHER J. BRUNERT
(CRD No. 3055225),

Respondent.

Disciplinary Proceeding
No. 2008012476701

Hearing Officer – LBB

DEFAULT DECISION

February 19, 2009

Respondent is barred from association with any member firm for conversion of customer funds in violation of Conduct Rules 2330(a) and 2110. He is also barred for failure to respond to requests for information in violation of Procedural Rule 8210 and Conduct Rule 2110.

Appearances

Peter E. Schlossman, Senior Counsel, FINRA, Washington, D.C., for the Department of Enforcement

No appearance by or for Respondent

DECISION

The Department of Enforcement filed the Complaint in this action on October 15, 2008.

The Complaint asserts two causes of action against Respondent Christopher J. Brunert (“Respondent”): conversion of customer funds in violation of NASD Conduct Rules 2330(a) and 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

¹ Effective December 15, 2008, NASD Procedural Rule 8210 and NASD Conduct Rule 2110 were incorporated into the FINRA Consolidated Rules as FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010, respectively. See NTM 08-57. The text was not changed.

January 6, 2009, Enforcement filed a Motion for Entry of a Default Decision, 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 October 15, 2008, Enforcement served Respondent with the Complaint and Notice of Complaint by certified mail to his residential address as reflected in the Central Registration Depository ("CRD"). The receipt from the certified mailing was returned to FINRA signed by Respondent's grandmother, with whom he lived. A Second Notice of Complaint and Complaint were served on Respondent by certified mail at his CRD address on November 25, 2008. Respondent has not answered or otherwise responded to the Complaint.

Enforcement served the Complaint and the Notices of Complaint on Respondent in accordance with Procedural Rule 9134, giving him constructive notice of this proceeding. By failing to respond, he defaulted.

II. Jurisdiction

Respondent was registered as a General Securities Representative in June 2000 with FINRA member firm First Union Securities, Inc., which subsequently purchased Wachovia Securities, Inc., and retained Wachovia's corporate identity. He remained registered with Wachovia until January 29, 2008, when Wachovia terminated Respondent's employment.

Although Respondent has not been registered with any FINRA member firm since then, he remains subject to FINRA 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

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.

termination of his registration with a member firm, and it charges him with misconduct while he was registered with a member firm and with failing to respond to Rule 8210 requests issued within two years following the termination of his registration with a member firm.

III. Origin of the Investigation

FINRA's investigation began when Wachovia filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") indicating it had terminated Respondent's employment for an unauthorized transfer of customer funds.

IV. Violations

A. Conversion of Customer Funds in Violation of Rules 2330(a) and 2110

LMP, a 90-year-old recent widow, opened an account with Wachovia in March 2007. LMP authorized her nephew, an attorney, to be an agent on the account to assist her in managing her assets. LMP's nephew called Respondent in December 2007 and instructed Respondent to provide his aunt with a one-time disbursement of \$200,000. Respondent went to LMP's home, obtained her signature on the document authorizing the requested transfer, and used deception to have her sign a separate, blank transfer form. Respondent filled out the blank transfer form and used it to transfer \$100,000 from LMP's account to Respondent's grandmother's bank account. The funds were then transferred to a bank account controlled by Respondent and his father, and used to pay credit card debts and other expenses.

FINRA's Sanction Guidelines define conversion as "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 (2007). Conduct Rule 2330(a) provides that "[n]o member or person associated with a member shall make improper use of a customer's securities or funds." Conduct Rule 2110 requires members and persons associated with members to "observe high standards of commercial honor and just and equitable principles of trade." The

misuse of customer funds in violation of Rule 2330(a) also violates Rule 2110. *Dep't of Enforcement v. Thomas*, No. C10030082, 2004 NASD Discip. LEXIS 49, at *6 n.10 (O.H.O. June 30, 2004); *Dep't of Enforcement v. Patel*, No. C02990052, 2001 NASD Discip. LEXIS 42, at *24 – *25 (N.A.C. May 23, 2001) (affirming the decision of a hearing panel barring a representative for misuse of customer funds by depositing customer funds into his own account rather than investing them as directed by the customers). “An associated person makes improper use of customer funds where he or she fails to apply the funds (or uses them for some purpose other than) as directed by the customer.” *Id.* The allegations of the Complaint, which are deemed admitted, are sufficient to establish for purposes of this default decision that Respondent violated Conduct Rules 2330(a) and 2110 by converting funds from a customer’s account.

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

Procedural Rule 8210 authorizes FINRA to require any person subject to its jurisdiction to provide information related to any matter under its investigation. On February 25, 2008, FINRA staff sent a letter by first-class regular and certified mail to Respondent’s CRD address, pursuant to Rule 8210. The letter asked Respondent to provide a written explanation for the \$100,000 transfer from LMP’s account to Respondent’s grandmother’s account, and to provide information about his operation of the customer’s account. Respondent signed a return receipt for the certified letter on February 29, 2008, but he failed to respond to this request. On March 31, 2008, Enforcement sent a letter to Respondent by first-class regular and certified mail, again asking Respondent to provide information about his operation of the customer’s account and explain the \$100,000 transfer to his relative’s account. The Postal Service delivered the certified letter to Respondent’s CRD address, but no signature was provided on the return receipt. The regular first-class letter was returned unclaimed. Respondent again failed to respond.

By letter dated June 30, 2008, FINRA staff requested, pursuant to Rule 8210, that Respondent appear at FINRA's offices in Washington, D.C., and provide on-the-record testimony. The letter was sent via certified and regular first-class mail to Respondent's CRD address. Respondent signed the return receipt for the letter sent by certified mail, and the letter sent by regular first-class mail was not returned to FINRA. Respondent did not appear to testify on the date specified in the letter. By letter of July 30, 2008, sent to Respondent's CRD address by certified and regular first-class mail, FINRA staff again requested Respondent to appear and testify. Postal Service records show that the certified letter was delivered to Respondent on August 1, 2008, and the letter sent by regular first-class mail was not returned to FINRA. Respondent did not appear to testify on the date specified in the July 30 letter.

By failing to respond to requests for information, Respondent violated Procedural Rule 8210. 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).

V. Sanctions

The Sanction Guidelines recommend a bar as the sanction for conversion and the improper use of customer funds in violation of Conduct Rules 2330(a) and 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. The large amount of money converted and the customer's vulnerability are aggravating factors. A bar is the appropriate sanction for Respondent's conversion of funds.³

The Sanction 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*

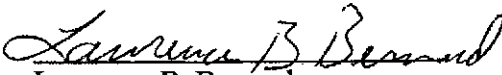
³ Because Respondent's grandmother has reimbursed the customer whose funds were converted, restitution is unnecessary, and Enforcement has not sought restitution.

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 for information, and 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 failing to respond to requests for information.

VI. Conclusion

Respondent Christopher J. Brunert is barred for converting customer funds in violation of Conduct Rules 2330(a) and 2110. He is also barred for failing to respond to requests for information 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.


Lawrence B. Bernard
Hearing Officer

Copies to: Christopher J. Brunert (*via overnight courier and first-class mail*)
Peter Schlossman, 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.

Christopher Brunert (CRD No. 3055225),

Respondent.

DISCIPLINARY PROCEEDING
No. 2008012476701

COMPLAINT

The Department of Enforcement alleges:

1. Respondent Christopher Brunert (Respondent Brunert) first became registered as a general securities representative in June 2000, at First Union Securities Inc. which subsequently purchased Wachovia Securities, LLC ("Wachovia") and retained Wachovia's corporate identity.

2. On January 29, 2008, Wachovia terminated Respondent Brunert for causing an unauthorized transfer of funds from a customer's account to Respondent Brunert's grandmother's bank account. Respondent Brunert has not been associated with any FINRA member or registered with FINRA in any capacity since that time.

3. Pursuant to Article V, Section 4 of the NASD By-Laws, FINRA retains jurisdiction over Respondent.

FIRST CAUSE OF ACTION

**CONVERSION OF CUSTOMER'S FUNDS VIOLATION OF NASD
CONDUCT RULES 2330(A) AND 2110**

4. The Department realleges and incorporates by reference paragraphs 1-3 above.

5. Customer LMP, a 90-year-old recent widower, opened a brokerage account at a retail branch office of Wachovia Securities, LLC in Huntington, New York, on March 24, 2007. Respondent Brunert was the registered representative assigned to the account. LMP authorized her nephew EM to have power of attorney over the account to assist in the management of her assets.

6. EM contacted Respondent Brunert in December 2007 and requested that he disburse \$200,000 from the account to his aunt. When Respondent Brunert told EM that he would travel to his aunt's home in Connecticut to obtain her signature on a transfer authorization form, EM told him that it was not necessary and that he could mail her the form. Respondent Brunert, however, insisted that he would be in the area of LMP's home on unrelated business and that it would not be a problem to stop by her house.

7. On December 20, 2007, Respondent Brunert went to LMP's home. In addition to having LMP sign the legitimate transfer form, Respondent Brunert also fraudulently obtained LMP's signature on a blank transfer form.

8. On December 20, 2007, Respondent Brunert obtained a supervisor's approval of the legitimate transfer form. A check in the amount of \$200,000 was issued to LMP the same day.

9. Respondent Brunert filled out the blank transfer form with LMP's fraudulently obtained signature with directions that \$100,000 be wired from LMP's Wachovia brokerage account to the bank account of Respondent's grandmother under an alias name. Respondent Brunert submitted this form to a different supervisor from the one who handled the December 20 transfer. It was approved on December 27, 2007. The money was wired to the grandmother's bank account the following day. Respondent's grandmother resided at the same address as Respondent.

10. While EM was reviewing his aunt's monthly account statement he noticed the improper wire transfer of \$100,000 out of the account. He contacted Respondent Brunert to resolve this discrepancy. Respondent Brunert initially denied seeing the transfer on his computer screen and later assured EM there was nothing wrong and that everything would be taken care of. However, Respondent Brunert failed to reverse the transfer.

11. Subsequently, EM contacted Respondent Brunert's supervisors at Wachovia to complain about the \$100,000 transfer. When Respondent Brunert's supervisors confronted Respondent Brunert with the information, he admitted that he caused the transfer to his grandmother's account. Later, during the firm's internal investigation of the matter, Respondent Brunert again admitted to causing the improper transfer.

12. The funds from LMP's brokerage account that were deposited in Respondent's grandmother's bank account were transferred to a bank account controlled by Respondent Brunert and his father. The money was utilized to pay credit card debts and other expenses.

13. On January 16, 2008, Respondent's grandmother wrote a check for \$100,000 to LMP, with the notation "return wire," which was deposited in LMP's brokerage account.

14. On January 29, 2008, Wachovia terminated Respondent Brunert's employment for the unauthorized transfer of customer LMP's funds to his grandmother's account.

15. By reason of the foregoing, Respondent Brunert violated NASD Conduct Rules 2330(a) and 2110.

SECOND CAUSE OF ACTION

FAILURE TO APPEAR FOR ON-THE-RECORD INTERVIEW VIOLATION OF NASD CONDUCT RULE 2110 AND NASD PROCEDURAL RULE 8210

16. The Department realleges and incorporates by reference paragraphs 1-15 above.

17. On February 25, 2008, the Department sent letters by certified and United States mail to Respondent Brunert at his Central Registration Depository System (CRD) address, pursuant to NASD Conduct Rule 8210, asking Respondent Brunert to provide a written explanation of the \$100,000 transfer to his grandmother's account.

18. Respondent Brunert received and signed a return receipt for the certified letter on February 29, but never responded. The first class letter was not returned.

19. The Department sent a second request letter to Respondent Brunert, pursuant to Rule 8210, dated March 31, 2008, again asking for an explanation. The second certified letter was returned unclaimed by the United States Postal Service. The first class letter was not returned.

20. In a letter dated June 30, 2008, sent by certified and United States mail to Respondent Brunert's CRD address pursuant to Rule 8210, the Department scheduled

Respondent Brunert's on-the-record (OTR) testimony pursuant to Rule 8210 for July 29, 2008, in FINRA's Washington, D.C. Enforcement office.

21. According to an undated return receipt form, Respondent Brunert received and signed for the letter. The letter requested Respondent Brunert to call Staff by July 14 to confirm his availability to appear for the OTR. Respondent Brunert never called Staff. The first class letter was not returned.

22. Respondent Brunert did not appear at the Washington, D.C. office on July 29, 2008 for his OTR, as requested.

23. The Department sent Respondent Brunert a second Rule 8210 request, dated July 30, 2008, by certified and United States mail pursuant to Rule 8210, scheduling his OTR testimony for September 3, 2008, in FINRA's Washington, D.C. Enforcement office.

24. The United States Postal Service delivered this letter to Respondent Brunert on August 1, 2008. The letter requested Respondent Brunert to call Staff by August 14 to confirm his availability to appear for the OTR. Respondent Brunert never called Staff. The first class letter was not returned.

25. Respondent Brunert did not appear at the Washington, D.C. office on September 3, 2008 for his OTR, as requested.

26. As Respondent Brunert failed to appear for his OTRs on both July 29, 2008 and September 3, 2008, and no adjournment was requested or granted, he violated NASD Conduct Rule 2110 and NASD Procedural Rule 8210.

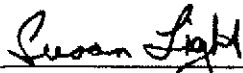
RELIEF REQUESTED

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: October 15, 2008



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