

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

TRACI RENAE FAULKS
(CRD No. 5142663),

Respondent.

Disciplinary Proceeding
No. 20080128975

DEFAULT DECISION

Hearing Officer – Sara Nelson Bloom

June 25, 2010

Respondent is barred from associating with any FINRA member in any capacity for misappropriating funds, in violation of Rule 2110, and failing to appear for testimony, in violation of Rules 8210 and 2010.

Appearances

Eugene Allan Schlanger, Esq., New York, NY, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

I. Background

On December 1, 2009, the Department of Enforcement (“Enforcement”) served a two-cause Complaint on Respondent, attached to this Decision as Exhibit A. Enforcement filed the Complaint with the Office of Hearing Officers on March 16, 2010.

The first cause alleges that Traci Renae Faulks (“Respondent”) violated Rule 2110 by misappropriating over \$9,600 in customer insurance premium payments from her employer. The

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second cause alleges that Respondent violated Rules 8210 and 2110 by failing to respond to requests for information and failing to appear for testimony as requested by FINRA Staff.¹

Respondent did not file an Answer to the Complaint. Accordingly, on April 15, 2010, Enforcement filed a Motion for Entry of Default Decision, supported by the Declaration of Eugene Allan Schlanger, Esq. ("Schlanger Decl.") and 24 exhibits. Respondent did not file a response to the Motion.

For the reasons set forth below, Enforcement's motion is granted.²

II. Respondent's Default

On December 1, 2009, Enforcement served Respondent with the Complaint and Notice of Complaint by first-class and certified mail at her last known residential address according to the Central Registration Depository (the "CRD" address) and three alternative addresses obtained by Enforcement (the "Alternative" addresses). Schlanger Decl. ¶ 23; CX-19. The certified mailings to the CRD address and two of the Alternative addresses were returned, marked, "Return to Sender" or "Unclaimed."³ Schlanger Decl. ¶ 26. The first-class mailings to the CRD address and two of the Alternative addresses were returned, marked, "Return to Sender." The

¹ Following the consolidation of NASD and the member regulation, enforcement, and arbitration functions of NYSE Regulation into FINRA, FINRA began developing a new "Consolidated Rulebook" of FINRA Rules. The first phase of the new consolidated rules became effective on December 15, 2008. In that process, Rule 2110 was renumbered as Rule 2010 without substantive change. See Reg. Notice 08-57; Exchange Act Rel. No. 58643 (Sept. 25, 2008), 73 FR 57174 (Oct. 1, 2008) (Order Approving Proposed Rule Change; File No. SR-FINRA-2008-028).

Nonetheless, the second cause of the Complaint incorrectly refers to a violation of Rule 2110 for failing to respond to requests to appear for testimony issued in 2009, after Rule 2110 had been renumbered as Rule 2010. Despite this incorrect reference, the Hearing Officer finds that Respondent received adequate notice of the nature of the charge. The second cause of the Complaint properly charged that she violated Rule 8210, and the reference to former Rule 2110 gave her adequate notice that a violation of Rule 8210 was also a violation of her obligation to observe high standards of commercial honor and just and equitable principles of trade, terminology that is identical in former Rule 2110 and current Rule 2010.

² 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.

³ Enforcement does not provide any information as to the return of the certified mailing to one of the Alternative addresses.

first-class mailing to the remaining Alternative address was not returned. Schlanger Decl. ¶ 27; CX-21. Respondent did not file an Answer. Schlanger Decl. ¶ 28.

In the same manner, on January 15, 2010, Enforcement served Respondent with the Complaint and Second Notice of Complaint at her CRD and Alternative addresses. Schlanger Decl. ¶ 29; CX-22. The certified mailings to the CRD address and the Alternative addresses were returned, marked, "Return to Sender" or "Unclaimed." Schlanger Decl. ¶ 31. The first-class mailings to the CRD address and two of the Alternative addresses were returned, marked, "Return to Sender." The first-class mailing to the remaining Alternative address was not returned. Schlanger Decl. ¶ 32. Respondent again did not file an Answer. Schlanger Decl. ¶ 33.

Enforcement complied with Rule 9134(b)(1) by mailing the Complaint and Notices of Complaint to Respondent's CRD and Alternative addresses, 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

From August 2006 through March 2008, Respondent was registered as an Investment Company Products/Variable Contracts Limited Representative with FINRA member Allstate Financial Services, LLC (the "Firm"), an affiliate of Allstate Insurance Company ("Allstate Insurance"). CX-1. On March 20, 2008, both firms terminated Respondent for misappropriating funds. Schlanger Decl. ¶ 13; CX-2. She has not been associated with a member firm since then.

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 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. Misappropriation

The first cause of the Complaint alleges that in January and February 2008, Respondent misappropriated customer insurance premium checks totaling over \$9,600 from Allstate Insurance. When Allstate Insurance detected shortages in the insurance premium account, it confronted Respondent, who admitted that she may have comingled her personal cash with cash premium payments and used the funds for her own purposes. Schlanger Decl. ¶¶ 11-12. In addition, she indicated that she paid earlier cash premiums with premium checks received at later dates; something Allstate Insurance had cautioned her about in the past. Schlanger Decl. ¶¶ 9-12. Allstate Insurance discovered a shortfall of more than \$9,600 in the amount Respondent deposited for customer premium payments. Schlanger Decl. ¶ 14. Allstate Insurance terminated Respondent and credited her customers for the insurance premium payments that Respondent failed to deposit on their behalf. Schlanger Decl. ¶¶ 13-14.

The allegations of the Complaint, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent violated Rule 2110 by misappropriating customer insurance premium payments from her employer.

B. Failure to Respond

Rule 8210 authorizes FINRA to require any person subject to its jurisdiction to provide information related to any matter under investigation.⁴ The second cause of the Complaint alleges that Respondent failed to respond to requests for information.

Specifically, on March 31, 2008, FINRA Staff sent Respondent a Rule 8210 request for a detailed written explanation of the Firm's allegation that it terminated her employment because she misappropriated company funds. Schlanger Decl. ¶ 15; CX-4. FINRA Staff sent the request by first-class and certified mail to her CRD address. The certified mailing was returned unclaimed and the first-class mailing was not returned.⁵ Schlanger Decl. ¶ 15; CX-5. Respondent did not respond to the request. Schlanger Decl. ¶ 15.

On September 8, 2008, Enforcement sent Respondent another Rule 8210 request, which sought specific information regarding her employment with the Firm and her alleged misappropriation of customer insurance premium payments for her personal use. Schlanger Decl. ¶ 17; CX-8. Enforcement sent this request by first-class and certified mail to Respondent's CRD address. Schlanger Decl. ¶ 17; CX-8. The certified mailing was returned unclaimed and the first-class mailing was not returned. Schlanger Decl. ¶ 17; CX-9. Respondent did not respond to the request. Schlanger Decl. ¶ 17.

⁴Rule 8210 serves as a key element in FINRA's oversight function and allows FINRA to carry out its regulatory functions without subpoena power. *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*, Exchange Act Rel. No. 42359, 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).

⁵ On April 15, 2008, FINRA Staff sent the same request to Respondent at an alternate address the Staff obtained from a database search. Schlanger Decl. ¶ 16; CX-6. There is no evidence Respondent received this request, and she did not respond. Schlanger Decl. ¶ 16.

On September 19, 2008, Enforcement sent the same request by first-class and certified mail to a new address Enforcement obtained from an Internet search (the "Internet" address). Schlanger Decl. ¶ 18; CX-10. Respondent's signature on the certified mailing return receipt indicates that she received the request on September 23, 2008. Schlanger Decl. ¶ 18; CX-11. On October 10, 2008, Enforcement received a written response from Respondent dated September 27, 2008. Schlanger Decl. ¶ 18; CX-12.

On April 14, 2009, following its review of Respondent's written response, Enforcement sent a request pursuant to Rule 8210 that Respondent appear for testimony on May 15, 2009. The request was sent by first-class and certified mail to the Internet address, which address also appeared on the letter Enforcement received from Respondent dated September 27, 2008. Schlanger Decl. ¶ 19; CX-13. The certified mailing was returned unclaimed, and the first-class mailing was not returned. Schlanger Decl. ¶ 19; CX-14. Respondent did not appear to testify or otherwise respond to the request. Schlanger Decl. ¶ 20; CX-15.

On July 14, 2009, Enforcement sent a second request that Respondent appear for testimony on August 13, 2009, pursuant to Rule 8210. Enforcement sent the request to the Internet address. Schlanger Decl. ¶ 21; CX-16. Respondent signed the certified mailing receipt on July 31, 2009.⁶ Schlanger Decl. ¶ 21; CX-17. Although Respondent received actual notice of Enforcement's request, she did not appear to testify or otherwise respond to the request. Schlanger Decl. ¶ 22, CX-18.

As reflected above, FINRA Staff, and later Enforcement, were required to make numerous requests for information and testimony in an attempt to investigate Respondent's alleged misappropriation of customer insurance premium payments from her employer. While Respondent belatedly provided a response to the request for written information, she completely

⁶ The first-class mailing was not returned. Schlanger Decl. ¶ 21.

disregarded Enforcement's request that she appear for testimony. Accordingly, Respondent's violation of Rules 8210 and 2010 by failing to appear for testimony is clear. Given the Hearing Officer's finding with respect to this violation, it is unnecessary to resolve the issue of whether Respondent's belated response to the requests for written information constituted a late response, rather than a failure to respond, as charged in the Complaint.

V. Sanctions

Since Respondent's misappropriation essentially constituted conversion, the Hearing Officer applied the FINRA Sanction Guidelines ("Guidelines") for conversion in determining the appropriate sanction for this violation. The Guidelines for conversion recommend a bar regardless of the amount converted.⁷ Here, there is no evidence of any mitigating factors. Accordingly, the Hearing Officer finds that a bar is the appropriate sanction for this violation.

A bar is also standard for the failure to respond to a request for information in any manner. *Guidelines* at 35. Here, Respondent completely disregarded Enforcement's request that she appear for testimony. There is no evidence of any mitigating factors. Therefore, the Hearing Officer also will bar Respondent for this violation.⁸

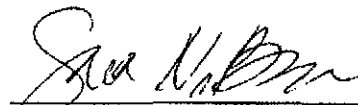
VI. Conclusion

Respondent is barred from associating with any FINRA member in any capacity for misappropriating customer insurance premium payments from her employer, in violation of Rule

⁷ FINRA Sanction Guidelines 38 (2007), available at <http://www.finra.org/web/groups/enforcement/documents/enforcement/p011038.pdf>.

⁸ Enforcement did not seek restitution because Allstate Insurance reimbursed the customers.

2110, and failing to appear for testimony, in violation of Rules 8210 and 2010. These bars shall become effective immediately if this Decision becomes the final disciplinary action of FINRA.



Sara Nelson Bloom
Hearing Officer

Copies to:

Traci Renae Faulks (*via overnight courier and first-class mail*)

Eugene Allan Schlanger, Sr., Esq. (*via electronic and first-class mail*)

David R. Sonnenberg, Esq. (*via electronic mail*)

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

Department of Enforcement,

Complainant,

v.

TRACI RENAE FAULKS
(CRD No. 5142663),

Respondent.

DISCIPLINARY PROCEEDING
No. 20080128975

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. In or about January and February 2008, Traci Renae Faulks ("Faulks"), while employed at Allstate Insurance Company ("Allstate Insurance") as an independent contractor insurance agent and registered as a Series 6 with its affiliate, Allstate Financial Services, LLC ("Allstate Financial"), a FINRA¹ member firm, misappropriated from Allstate Insurance \$9,613.84 of customer insurance premium payments made to Allstate Insurance.
2. Faulks failed to respond to the Department of Enforcement of FINRA's ("Enforcement's") three requests for information between March 2008 and September 2008 and two requests for testimony between May and August 2009.

RESPONDENT AND JURISDICTION

¹ References to FINRA in this Complaint also include NASD.

3. Faulks was employed as an independent contractor insurance agent with Allstate Insurance from in or about March 2005 until March 2008. For part of this time, Faulks had been registered with FINRA. Faulks is not currently employed in the financial industry.
4. From May 8, 2006 through March 20, 2008, Faulks was Series 6 licensed. Faulks's securities license was held by Allstate Financial, a FINRA broker-dealer associated with Allstate Insurance.
5. A Form U-5 ("Uniform Termination Notice for Securities Industry Registration") was filed on March 20, 2008 reporting the termination of her employment from Allstate Financial.
6. Faulks is subject to FINRA's jurisdiction pursuant to Article V, § 4 of FINRA's By-Laws because this Complaint is being filed within two years after the effective date of termination of her association with Allstate Financial.

FACTS

Faulks's Misappropriation

7. As an insurance agent, Faulks was required to make bank deposits in a timely manner to ensure each day's remittance was reflected in the bank's transactions by the following day.
8. In or about January and February 2008, Faulks misappropriated insurance premium payments made by customers of Allstate Insurance at her sales office.
9. In or about January 2008, Allstate Insurance became aware of these shortages and instituted an investigation. Faulks was previously warned by Allstate Insurance in a July

2007 letter that her relationship with the company was at risk for replacing premium payments from earlier dates with premium payments she collected on later dates.

10. In or about January 2008, after being questioned by the Corporate Security Department of Allstate Insurance, Faulks admitted that she may have accidentally commingled her personal cash with cash premium payments made at her sales office and used the cash premium payments for personal use. To replace the cash premium payments that she used for personal use, Faulks stated that she may have used the cash premium payments made at her sales office from a later date. Faulks subsequently stated that she continued to replace the cash premium payments from earlier dates with cash premium payments made at her sales office on later dates.

11. On or about March 20, 2008, Allstate Insurance terminated Faulks's contractual relationship with Allstate Insurance.

12. As of November 6, 2009, there was still a shortage of \$9,613.84 in the amount deposited for customer insurance premiums, which premiums the customers were credited for.

Failure to Provide Written Statements and to Appear and Testify

13. On or about March 31, 2008, the Central Review Group of FINRA Enforcement ("CRG") sent a letter to Faulks 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 Faulks's last known address as reflected in the Central Registration Depository ("CRD Address"). The letter sent via certified mail was returned unclaimed by Faulks. The letter sent via first class mail was never returned to Enforcement. Faulks did not respond to CRG.

14. On or about April 15, 2008, CRG sent a second request to Faulks for a written statement. The request was sent via first class mail and certified mail, return receipt requested to a second address ascertained by CRG after searching another database. The letter sent via certified mail was returned unclaimed by Faulks. The letter sent via first class mail was never returned to Enforcement. Faulks again did not respond to CRG.

15. On or about September 8, 2008, Enforcement sent a letter to Faulks pursuant to NASD Rule 8210 requesting a written statement concerning the circumstances of her termination and the alleged misappropriation of customer insurance premium payments. The request was sent via first class mail and certified mail, return receipt requested to the CRD Address. The letter sent via certified mail was returned unclaimed by Faulks. The letter sent via first class mail was never returned to Enforcement. Faulks did not respond to Enforcement.

16. On or about September 19, 2008, Enforcement sent a second letter to Faulks pursuant to NASD Rule 8210 requesting a written statement concerning the circumstances of her termination and the alleged misappropriation of customer insurance premium payments. The request was sent via first class mail and certified mail, return receipt requested to a second address ascertained by Enforcement after an internet search. Faulks signed for delivery on September 23, 2008 and replied in a letter dated September 27, 2008 that was received by Enforcement via ordinary mail on October 10, 2008.

17. On or about April 14, 2009, Enforcement sent a letter pursuant to NASD Rule 8210 requiring Faulks to appear and provide testimony before Enforcement on May 15, 2009. The letter was sent to the address that Faulks listed in her reply to Enforcement dated September 27, 2008, 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.

18. Faulks did not appear to testify on May 15, 2009, as requested or otherwise respond to the letter.

19. On or about July 14, 2009, Enforcement sent a second letter pursuant to NASD Rule 8210 requiring Faulks to appear and provide testimony before Enforcement on August 13, 2009. The letter was sent to the address that Faulks listed in her reply to Enforcement dated September 27, 2008, via first class mail and certified mail, return receipt requested. The return receipt for the certified copy came back indicating that "Traci Faulks" received the letter on July 31, 2009 and indicated a delivery address of

[REDACTED] The postal authorities did not return the first class letter.

20. Faulks did not appear to testify on August 13, 2009, as requested or otherwise respond to the letter.

21. All correspondence sent by FINRA contained language warning Faulks of the consequences of her failure to respond to FINRA's requests for information, or to appear and provide testimony, required by NASD Rule 8210.

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, Faulks violated NASD Rule 2110.

SECOND CAUSE OF ACTION

Failure to Provide Written Statement and 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, Faulks 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, including that the Respondent be required to disgorge fully any and all ill-gotten gains and/or make and complete restitution, together with interest;
- 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

DATED: Dec. 1, 2009


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