

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

GINA SIMS
(CRD No. 4718520),

Respondent.

Disciplinary Proceeding
No. 2008012948801

Hearing Officer – MAD

DEFAULT DECISION

November 23, 2009

Respondent is barred from associating with any member firm in any capacity for (i) converting customer funds received as payment for an automobile insurance premium, in violation of Conduct Rule 2110; (ii) converting customer funds received as payment for variable life insurance premiums, in violation of Conduct Rules 2330(a) and 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

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

No appearance by or on behalf of Gina Sims.

DECISION

I. Introduction

On July 24, 2009, the Department of Enforcement (“Enforcement”) filed the attached Complaint against Respondent Gina Sims (“Sims”). The Complaint charges that Sims: (1) misappropriated customer funds she received in payment for an automobile insurance premium, in violation of Conduct Rule 2110; (2) misused or converted customer funds she received in payment for variable life insurance premiums, in violation of Conduct Rules 2330(a) and 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

Sims did not answer or otherwise respond to the Complaint. Consequently, on October 12, 2009, Enforcement filed a Motion for Entry of Default Decision, supported by the Declaration of Thomas G. Kay ("Kay Decl.") and 23 exhibits. Sims did not reply to the motion.²

II. Findings of Fact and Conclusions of Law

A. Jurisdiction

Sims was employed as an insurance agent at Allstate Financial Services, LLC ("Allstate") between August 1996 and March 2008. She became registered with FINRA as an Investment Company and Variable Contracts Products Representative in October 2003.³ On April 1, 2008, Allstate filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") on Sims' behalf with FINRA.⁴ The Form U5 reported that Allstate had discharged Sims for "violation[s] of agency standards relating to remittance of customer payments."⁵

Although Sims is not currently associated with a FINRA member firm, she 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 her registration with FINRA, and (2) the Complaint charges her 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.

⁴ Kay Decl. ¶ 5; CX-2, at 2.

⁵ *Id.*

committed while she 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 her registration.⁶

B. Respondent's Default

Enforcement served Sims with notice of the Complaint on July 23, 2009, by certified mail, return receipt requested, at her residential address recorded in the Central Registration Depository (the "CRD Address").⁷ The U.S. Postal Service returned the certified mailing receipt, dated July 28, 2009, signed by "Michael Sims."⁸

On August 19, 2009, Enforcement served the Second Notice of Complaint and the Complaint in the same manner.⁹ The certified mailing was returned to FINRA by the U.S. Postal Service stamped, "Unclaimed."¹⁰ To date, Sims 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 Sims with the Complaint by mailing the Complaint and the First and Second Notices of Complaint in accordance with FINRA Procedural Rule 9134(b)(1).¹¹ Accordingly, pursuant to Procedural Rules 9215(f) and 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.

⁶ Article V, Sec. 4(a), FINRA By-Laws, available at www.finra.org/rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: Bylaws").

⁷ Kay Decl. ¶ 32; CX-20.

⁸ Kay Decl. ¶ 34; CX-21.

⁹ Kay Decl. ¶ 35; CX-22.

¹⁰ Kay Decl. ¶ 36; CX-23.

¹¹ *Dep't of Enforcement v. Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at *5 n.1 (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.") citing *Lubeck v. SEC*, 1998 U.S. App. LEXIS 18849, at *20 (9th Cir. Aug. 12, 1998)).

C. Origin of the Underlying Investigation

FINRA began its investigation of Sims after reviewing the Form U5 filed by Allstate. As noted above, the Form U5 reported that Allstate discharged Sims for “violation[s] of agency standards relating to remittance of customer payments.”¹²

D. Conversion of Automobile Insurance Premium

The First Cause of Action alleges that on or about April 30, 2007, Sims misappropriated an automobile insurance policy check she had received from an Allstate customer in the amount of \$928.78. The check was payable to Allstate and endorsed “For Deposit.”¹³ Instead of forwarding the check to Allstate, she deposited it into her personal bank account.¹⁴ Sims provided a statement to Enforcement on August 15, 2008, admitting to the deposit but asserting that it was inadvertent.¹⁵ She reimbursed the funds to the customer.¹⁶

The Hearing Officer finds that these allegations are sufficient to establish, for purposes of this decision, that Sims converted customer funds, in violation of Conduct Rule 2110. The FINRA Sanction Guidelines (“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.”¹⁷ Sims’ misappropriation of funds in this case amounts to conversion, inasmuch as she used customer funds for her own purposes without authorization.

¹² CX-2, at 2.

¹³ Kay Decl. ¶ 9.

¹⁴ *Id.*

¹⁵ *Id.* ¶ 11; CX-5.

¹⁶ Kay Decl. ¶ 12.

¹⁷ FINRA Sanction Guidelines 38, n.2 (2007), available at www.finra.org/sanctionguidelines.

E. Conversion of Variable Life Insurance Premiums

The Second Cause of Action alleges that Sims misused or converted funds from two customers, NP and GP. In October 2006, NP and GP entered into a contract with Allstate for the purchase of two variable life insurance policies.¹⁸ They purchased the policies from Sims.¹⁹ On October 25, 2006, NP wrote five checks to Allstate, totaling \$1544.93, for insurance premiums.²⁰ On January 27, 2007, NP wrote another check to Allstate in the amount of \$636.00.²¹ Between January 2007 and February 2008, GP wrote four checks, totaling \$2967.58, to Allstate for insurance premiums.²² Both NP and GP provided each of their checks to Sims.²³ All of the checks were made payable to Allstate, and Sims deposited each check into her personal bank account.²⁴ Allstate reimbursed customers NP and GP for their losses.²⁵

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

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

The Third Cause of Action alleges that Sims failed to appear at an on-the-record interview, in violation of Procedural Rule 8210 and Conduct Rule 2110. Enforcement sent the first request dated November 4, 2008, to Sims at her CRD Address by regular and certified first-class mail pursuant to Procedural Rule 8210, requesting that she appear and provide sworn

¹⁸ Kay Decl. ¶ 13.

¹⁹ *Id.*

²⁰ Kay Decl. ¶¶ 14-18; CX-6.

²¹ Kay Decl. ¶ 21; CX-8.

²² Kay Decl. ¶¶ 20, 22-24; CX-7.

²³ Kay Decl. ¶¶ 14-24; CX-6-11.

²⁴ *Id.*

²⁵ Kay Decl. ¶ 27.

testimony on November 26, 2008.²⁶ Sims contacted Enforcement on November 24, 2008, requesting a postponement of the testimony.²⁷ At that time, she agreed to contact Enforcement by December 1, 2008, to reschedule the testimony.²⁸ Sims failed to contact Enforcement, and after several failed attempts to reach Sims, Enforcement sent a second request dated December 5, 2008.²⁹ The second request was sent to Sims at her CRD Address by regular and certified first-class mail pursuant to Procedural Rule 8210, requesting that she appear and provide sworn testimony on December 22, 2008.³⁰ The certified mailing receipt was returned to Enforcement, signed by "Gina Sims," dated December 9, 2008.³¹ Sims did not appear to provide the requested sworn testimony on December 22, 2008.³²

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.³³ Here, although Sims received actual notice of the two requests, she failed to appear for the interviews.

²⁶ Kay Decl. ¶ 28; CX-14.

²⁷ Kay Decl. ¶ 29.

²⁸ *Id.*

²⁹ Kay Decl. ¶¶ 29, 30; CX-16.

³⁰ Kay Decl. ¶ 30; CX-17.

³¹ Kay Decl. ¶ 30; CX-18.

³² Kay Decl. ¶ 31; CX-19.

³³ 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).

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

III. Sanctions

A. Conversion of Automobile Insurance Premium

The Guidelines for conversion recommend a bar regardless of the amount converted.³⁴

Here, there is no evidence of any mitigating factors. Accordingly, the Hearing Officer finds that a bar is the appropriate sanction for this violation.

B. Conversion of Variable Life Insurance Premiums

As noted above, under the Guidelines, a bar is the recommended sanction for conversion.

On numerous occasions, spanning over a year, Sims deposited the Allstate customers' checks, totaling \$5,148.51, into her personal bank account. There is no evidence of any mitigating factors. Accordingly, the Hearing Officer finds that a bar is the appropriate sanction for this violation.

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

The Guidelines recommend a bar where a respondent fails to respond in any manner to a request for information issued pursuant to Procedural Rule 8210.³⁵ Here, there is no evidence of any mitigating factors that would justify a lesser sanction. Accordingly, the Hearing Officer will bar Sims from associating with any FINRA member firm in any capacity for violating Procedural Rule 8210 and Conduct Rule 2110.

IV. Order

Sims is barred from associating with any member firm in any capacity for (i) converting customer funds received as payment for an automobile insurance premium, in

³⁴ Sanction Guidelines at 38.

³⁵ *Id.* at 35.

violation of Conduct Rule 2110; (ii) converting customer funds received as payment for variable life insurance premiums, in violation of Conduct Rules 2330(a) and 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.


Maureen A. Delaney
Hearing Officer

Copies to:

Gina Sims (*via overnight courier and first-class mail*)
Thomas G. Kay, 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.

GINA SIMS
(CRD No. 4718520),

Respondent.

DISCIPLINARY PROCEEDING
No. 2008012948801

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. In multiple transactions between October 2006 and February 2008, Gina Sims ("Sims"), while employed at Allstate Financial Services, LLC ("Allstate" or the "Firm"), deposited checks totaling \$6,000 that she obtained from three Firm customers ("WQ," "NP" and "GP"¹) for the purposes of paying their variable life and automobile insurance premiums, into her personal bank account.
2. Sims failed to respond to requests by the Department of Enforcement ("Enforcement") of FINRA made between November and December 2008 that she appear and testify.

¹ GP and NP were related individual who bought two separate variable life insurance policies from Sims on the same day in October 2006.

RESPONDENT AND JURISDICTION

3. Sims entered the financial industry at Allstate in August 1996. Sims has been registered with FINRA² since October 2003. Sims was employed as an insurance agent at Allstate between August 1996 and March 21, 2008. Sims is not currently employed in the financial industry.

4. From October 2003 through March 2008, Sims was Series 6 and 63 licensed.

5. Sims 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

Sims' Misappropriation in Connection with the Purchase of an Auto Insurance Policy

6. On or around April 30, 2007, WQ purchased an auto insurance policy from Sims, who was employed as an Allstate agent. At that time, WQ wrote a check payable to Allstate in the amount of \$928.78. Sims received the check from WQ. The check was endorsed "For Deposit." This check was deposited in Sims' personal bank account and not used to pay this premium.

Sims' Misappropriation and Conversion in Connection With the Purchase of Variable Life Insurance Policies

7. On or about October 25, 2006, customers NP and GP entered into a contract with Allstate for the purchase of two variable life insurance policies. NP and GP made their purchases from Sims, who was employed as an Allstate insurance agent.

8. On or around October 25, 2006, NP wrote a check payable to Allstate in the

² References to FINRA in this Complaint also include its predecessor firm, NASD.

amount of \$591.24. Sims received the check from NP. The check was endorsed "Deposit Only Allstate." This check was deposited in Sims' personal bank account.

9. On or around October 25, 2006, NP wrote a check payable to Allstate in the amount of \$159. Sims received the check from NP. This check was not endorsed upon deposit. This check was deposited in Sims' personal bank account.

10. On or around October 25, 2006, NP wrote a check payable to Allstate in the amount of \$319.94. Sims received the check from NP. The check was endorsed "For Deposit Allstate." The check was deposited in Sims' personal bank account.

11. On or around October 25, 2006, NP wrote a check payable to Allstate in the amount of \$426.25. Sims received the check from NP. This check was not endorsed upon deposit. This check was deposited in Sims' personal bank account.

12. On or around October 25, 2006, NP wrote a check payable to Allstate in the amount of \$48.50. Sims received the check from NP. This check was not endorsed upon deposit. This check was deposited in Sims' personal bank account.

13. None of the checks issued by NP on October 25, 2006 were used to pay any insurance premiums.

14. On or around January 15, 2007, GP wrote a check payable to Allstate in the amount of \$591.24. Sims received the check from GP. The check was endorsed "Dep Only." This check was deposited in Sims' personal bank account and never used to pay insurance premiums.

15. On or around January 27, 2007, NP wrote a check payable to Allstate in the amount of \$636.00. Sims received the check from NP. The check was endorsed "Allstate Dep Only." This check was deposited in Sims' personal bank account and never used to pay

insurance premiums.

16. On or around April 30, 2007, GP wrote a check payable to Allstate in the amount of \$591.24. Sims received the check from GP. The check was endorsed "For Deposit." This check was deposited in Sims' personal bank account and never used to pay insurance premiums.

17. On or around October 3, 2007, GP wrote a check payable to Allstate in the amount of \$1120. Sims received the check from GP. The check was endorsed "G Sims Allstate." This check was deposited in Sims' personal bank account and never used to pay insurance premiums.

18. On or around February 5, 2008, GP wrote a check payable to Allstate in the amount of \$665.10. Sims received the check from GP. The check was endorsed "Dep Allstate Gina Sims." This check was deposited in Sims' personal bank account and never used to pay insurance premiums.

19. On March 21, 2008, Allstate terminated Sims' employment.

20. On or around March 28, 2008, NP and GP reported Sims' misappropriation to the Firm.

21. The Firm reimbursed NP and GP.

Failure to Appear and Testify

22. On or about November 4, 2008, Enforcement sent a letter pursuant to NASD Procedural Rule 8210 requiring Sims to appear and testify before Enforcement on November 26, 2008. The letter was sent to Sims' 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.

23. On November 24, 2008, Sims contacted Enforcement and requested a postponement of the testimony. Sims claimed that she had just returned from traveling outside the country. Sims agreed to contact Enforcement no later than Monday December 1, 2008 to reschedule the testimony.
24. Sims did not contact Enforcement on or after Monday December 1, 2008.
25. On December 5, 2008, Enforcement sent a letter pursuant to NASD Procedural Rule 8210 requiring Sims to appear and testify before Enforcement on December 22, 2008. The letter was sent to Sims' CRD Address, via first class mail and certified mail, return receipt requested. The certified receipt was signed by "Gina Sims" on December 9, 2008. The postal authorities did not return the first class letter.
26. Sims did not appear to testify on December 22, 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 Conduct Rule 2110)

27. Enforcement repeats and re-alleges and incorporates by reference paragraphs 1 through 20 above.
28. By engaging in the foregoing conduct, Sims violated NASD Conduct Rule 2110.

SECOND CAUSE OF ACTION

Improper Use and Conversion of Customer Funds (NASD Conduct Rules 2330(a) and 2110)

29. Enforcement repeats and re-alleges and incorporates by reference paragraphs 1 through 5 and paragraph 7 through 20 above.
30. By engaging in the foregoing conduct, Sims violated NASD Conduct Rule 2330(a) and NASD Conduct Rule 2110.

THIRD CAUSE OF ACTION

Failure to Appear and Testify (NASD Procedural Rule 8210 and NASD Conduct Rule 2110)

31. Enforcement repeats and re-alleges and incorporates by reference paragraphs 1 through 25 above.
32. By engaging in the foregoing conduct, Sims 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.;
- B. order imposing sanctions upon the Respondent in accordance with FINRA Rule 8330;

FINRA DEPARTMENT OF ENFORCEMENT

DATED: 7/23/09 L. Riefberg

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