

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JUSTIN C. SIDAWAY
(CRD No. 5001842),

Respondent.

Disciplinary Proceeding
No. 2008013305801

Hearing Officer – MAD

DEFAULT DECISION

October 28, 2009

Respondent is barred from associating with any FINRA member firm in any capacity for (i) converting customer funds, in violation of Conduct Rule 2110; (ii) forging a customer's signature, in violation of Conduct Rule 2110; and (iii) failing to respond to requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2110.

Appearances

Audra A. Acquavella, Senior Counsel, New York, NY, for the Department of Enforcement.

No appearance by or for Justin C. Sidaway.

DECISION

I. Introduction

The Department of Enforcement ("Enforcement") for the Financial Industry Regulatory Authority ("FINRA") filed the attached Complaint on June 10, 2009. The Complaint charges that Respondent Justin C. Sidaway ("Sidaway"): (1) converted customer funds for his personal use, in violation of Conduct Rule 2110; (2) forged a customer's signature on three withdrawal forms, in violation of Conduct Rule 2110; and

(3) failed to respond to information requests from FINRA staff, in violation of Procedural Rule 8210 and Conduct Rule 2110.¹

Sidaway did not answer or otherwise respond to the Complaint. Consequently, on September 10, 2009, Enforcement filed a Motion for Entry of Default Decision (“Default Motion”), supported by the Affidavit of Audra A. Acquavella (“Acquavella Aff.”) and seven exhibits. Sidaway did not reply to the motion.²

II. Findings of Fact and Conclusions of Law

A. Jurisdiction

Sidaway entered the securities industry in June 2005 with Chase Investment Services Corporation (“Chase”), a FINRA member firm. He registered as an Investment Company and Variable Contracts Products Representative in July 2005. Sidaway was employed as a personal banker in a Chase retail bank branch office. In April 2008, Chase filed a Uniform Termination Notice for Securities Industry Registration (“Form U5”), indicating that Sidaway’s employment had been terminated on April 2, 2008.³ Chase discharged him for misappropriating customer funds totaling \$11,500.⁴ Sidaway has not been associated with a FINRA member firm since his termination from Chase.

Although Sidaway has not been associated with a FINRA member since April 2008, he remains subject to FINRA’s jurisdiction for purposes of this proceeding,

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 Complainant’s Exhibit (CX)-1, at 2.

⁴ *Id.*; Acquavella Aff. ¶ 5.

pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years following the termination of his last registration with a FINRA member and (2) the Complaint charges him with misconduct committed while he was associated with a FINRA member firm and with failing to respond to FINRA requests for information made during the two-year period following the termination of his registration.⁵

B. Origin of Underlying Investigation

FINRA commenced the investigation that led to the Complaint in this proceeding in April 2008 after Chase filed the Form U5, which disclosed that it had terminated Sidaway's employment on April 2, 2008, after he "admit[ted] to misappropriating a bank client's funds totaling \$11,500."⁶

C. Respondent's Default

On June 10, 2009, Enforcement sent the Notice of Complaint and Complaint to Sidaway by first-class and certified mail, return receipt requested, at his residential address recorded in the Central Registration Depository ("CRD Address").⁷ His CRD Address provided a street name, but it did not reflect the word "Street" after the street name.⁸ Accordingly, on June 10, 2009, Enforcement also sent copies of the Complaint and Notice by first-class and certified mail to his CRD Address with the addition of the word "Street" in the address.⁹ Neither of the first-class mailings was returned. Both certified mailings were returned marked "return to sender, vacant, unable to forward,

⁵ See Article V, Sec. 4(a), FINRA By-Laws, available at www.finra.org/rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: Bylaws").

⁶ Acquavella Aff. ¶ 5; CX-1, at 2.

⁷ Acquavella Aff. ¶ 8.

⁸ *Id.* ¶ 9.

⁹ *Id.*

Sidaway defaulted by failing to answer the Complaint.¹⁸ 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 Default Motion.

D. Conversion of Funds

The First Cause of the Complaint alleges that Sidaway violated Conduct Rule 2110 by converting funds from a Chase bank customer. According to the Complaint, in January 2008, Sidaway accessed the bank's systems to obtain information regarding this customer and his retail bank account. Without the customer's knowledge or authorization, Sidaway used the customer's personal account information to complete three withdrawals on January 28, 2008, February 9, 2008, and February 19, 2008, for his personal use.¹⁹ During Chase's investigation, Sidaway admitted to Chase that he misappropriated customer funds, totaling \$11,500.²⁰

The facts alleged in the Complaint establish that Sidaway converted \$11,500 from a bank customer, in violation of Conduct Rule 2110, which requires members to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business.

E. Forgery

The Second Cause of the Complaint alleges that Sidaway forged a customer's signature on three withdrawal forms in connection with the unauthorized withdrawal of funds from the customer's bank account. Sidaway forged the customer's signature on

¹⁸ *Dep't of Enforcement v. Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at *5 (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) (quoting *Lubeck v. SEC*, 1998 U.S. App. LEXIS 18849, at *20 (9th Cir. Aug. 12, 1998)).

¹⁹ *Acquavella Aff.* ¶ 18.

²⁰ *Id.* ¶ 19; CX-1, at 2.

January 28, 2008, February 9, 2008, and February 19, 2008.²¹ He did not have the customer's authorization or consent to complete the bank withdrawal forms.²²

The Hearing Officer finds that the evidence is sufficient to establish that Sidaway forged his customer's signature and thereby violated Conduct Rule 2110.²³

F. Failure to Respond to Information Requests

The Third Cause of the Complaint alleges that Sidaway failed to respond to five written requests that he provide information about his alleged conversion of customer funds. The requests were dated May 9, 2008, June 12, 2008, September 2, 2008, September 25, 2008, and October 30, 2008.²⁴ FINRA staff sent each request to Sidaway at his CRD Address by regular and certified first-class mail pursuant to Procedural Rule 8210.²⁵ Sidaway signed for receipt of the requests dated May 9 and September 25, 2008.²⁶ Nonetheless, Sidaway did not respond to either request.²⁷

The Hearing Officer finds that the allegations in the Third Cause of the Complaint are sufficient to establish, for purposes of this default decision, that Sidaway violated Procedural Rule 8210 and Conduct Rule 2110.

²¹ Acquavella Aff. ¶ 22.

²² *Id.* ¶ 24.

²³ *Dep't of Enforcement v. Kirlin Secs., Inc.*, No. EAF0400300001, 2009 FINRA Discip. LEXIS 2, at *57 (N.A.C. Feb. 25, 2009) ("It is well established that signing a customer's name to documents, without authority, is forgery and is inconsistent with just and equitable principles of trade and violates the high standards of commercial honor set forth in NASD Rule 2110.").

²⁴ Acquavella Aff. ¶¶ 27, 29, 31, 33, 35.

²⁵ *Id.*

²⁶ *Id.* ¶¶ 28, 34.

²⁷ *Id.* ¶ 38.

III. Sanctions

A. Conversion

The FINRA Sanctions Guidelines (“Guidelines”) for conversion of customer funds recommend a bar, regardless of the amount converted.²⁸ Here, there is no evidence of any mitigating factors that would justify a lesser sanction. Accordingly, the Hearing Officer will bar Sidaway from associating with any member firm in any capacity.

B. Forgery

For forgery and falsification of records, the Guidelines recommend a fine of \$5,000 to \$100,000, and a suspension in any or all capacities for up to two years in cases where mitigating factors exist. In egregious cases, the Guidelines recommend a bar.²⁹ The Guidelines instruct adjudicators to consider, in addition to the principal considerations and general principles applicable to all violations, the nature of the document forged and whether respondent had a good-faith, but mistaken, belief of express or implied authority.³⁰

Applying the Guidelines, the Hearing Officer finds that Sidaway’s violation was egregious. He obtained a bank customer’s personal bank account information without authorization, and then forged the customer’s signature on three occasions in order to withdraw \$11,500 for his personal use. The Hearing Officer finds that a bar is appropriate for this violation as well.³¹

²⁸ FINRA Sanction Guidelines 38 (2007), available at www.finra.org/sanctionguidelines.

²⁹ Sanction Guidelines at 39.

³⁰ *Id.*

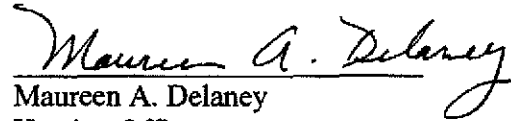
³¹ *Cf., e.g., Dep’t of Enforcement v. Trigillo*, No. C8A040082, 2005 NASD Discip. LEXIS 61, at *29 (O.H.O. June 8, 2005) (barring respondent and finding that his multiple acts of forgery constituted an egregious pattern of misconduct).

C. Failure to Respond to Information Requests

The Guidelines also recommend a bar where a respondent fails to respond in any manner to a request for information issued pursuant to Procedural Rule 8210.³² Here, Sidaway failed to respond in any manner to several written requests that he provide information in connection with the staff's investigation into the allegations that he converted customer funds. Sidaway signed the certified return receipt cards for two of the requests. There are no mitigating factors that would justify a less severe sanction. Accordingly, the Hearing Officer will bar Sidaway from associating with any FINRA member in any capacity for violating Procedural Rule 8210 and Conduct Rule 2110.

IV. Order

Sidaway is barred from associating with any member firm in any capacity for (i) converting customer funds, in violation of Conduct Rule 2110; (ii) forging a customer's signature on three bank account withdrawal forms, in violation of Conduct Rule 2110; and (iii) failing to respond to requests for information by FINRA staff, in violation of Procedural Rule 8210 and Conduct Rule 2110.³³ The bars shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.


Maureen A. Delaney
Hearing Officer

Copies to: Justin C. Sidaway (*via overnight courier and first-class mail*)
Audra A. Acquavella, Esq. (*via electronic and first-class mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

³² Sanction Guidelines at 35.

³³ Chase reimbursed the customer for his loss. Accordingly, the Hearing Officer did not order restitution.