

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

RANDALL C. BARKER .
(CRD No. 2474154),

Respondent.

Disciplinary Proceeding
No. 2008013441601

Hearing Officer – LBB

DEFAULT DECISION

October 23, 2009

Respondent is barred from associating with any member firm for conversion of funds in violation of NASD Conduct Rule 2110. He is also barred for failure to respond to requests for information, in violation of NASD Procedural Rule 8210 and Conduct Rule 2110, and FINRA Procedural Rule 8210 and Conduct Rule 2010.

Appearances

Brian D. Craig, 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 June 9, 2009. The Complaint asserts two causes of action against Respondent Randall C. Barker ("Respondent"): conversion 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, and FINRA

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Procedural Rule 8210 and Conduct Rule 2010.¹ 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 August 31, 2009, Enforcement filed a Motion for Entry of 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 June 9, 2009, Enforcement served Respondent with the Complaint and Notice of Complaint by certified mail at his residential address as reflected in the Central Registration Depository ("CRD"). In addition, Enforcement served Respondent with the Complaint and Notice of Complaint by certified mail at an alternative address that Enforcement believed to be a more current address. The certified mailing to Respondent's CRD address was returned as "undeliverable," and the certified mailing to the alternative address was returned as "unclaimed." CX-2; Aff. of Brian D. Craig, ¶6.

Enforcement served Respondent with a Second Notice of Complaint, and copies of the original Notice of Complaint and Complaint, on July 8, 2009, at his CRD address and the alternative address by certified and regular first-class mail. The return receipt for the certified mailing to the alternative address was returned bearing the signature "Suzi Barker." The first-

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, except for his failure to respond to a request for information issued on April 29, 2009, which was issued pursuant to FINRA Rule 8210. This decision refers to and relies on FINRA Procedural Rule 8210 and Conduct Rule 2010 for the failure to respond to the request for information issued on April 29, 2009. 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.

class mailing to the CRD address was returned, but the first-class mailing to the alternative address was not returned. Aff. of Brian D. Craig, ¶8; CX-3.

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

II. Jurisdiction

Respondent was a registered representative with FINRA member firm Farmers Financial Solutions, LLC ("Farmers Financial") from August 10, 2006, through May 8, 2008. CX-1; Aff. of Brian D. Craig, ¶5. Farmers Financial filed a Form U5, reporting to FINRA that Respondent's employment had been terminated because he had been involved in conversion of insurance premiums for personal use.³ Although Respondent has not been registered with any FINRA member firm since the termination of his employment with Farmers Financial, he 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 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. Violations

A. Conversion of Funds in Violation of Rule 2110

During the period April 2007 through April 2008, Respondent used his office address or a Post Office box in his name as the billing address for insurance policies issued by Farmers Insurance Group, an affiliate of Farmers Financial. During this period, certain policyholders sent

³ FINRA's investigation began as a result of the filing of the Form U5. Aff. of Brian D. Craig, ¶3.

their premium payments to Respondent, rather than directly to Farmers Insurance Group. Respondent deposited insurance premiums he received from customers into his personal bank account. All told, Respondent misappropriated \$16,261.18 by depositing insurance premium payments from 19 customers into his personal account, and using the funds for his personal expenses.

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 NASD Conduct Rule 2110 by converting the insurance premium payments.

B. Failure to Provide Information in Violation of NASD Rules 8210 and 2110, and FINRA Rules 8210 and 2010

NASD Procedural Rule 8210, and FINRA Procedural Rule 8210, authorize FINRA to require any person subject to its jurisdiction to provide information related to any matter under its investigation. On May 20, 2008, Enforcement issued a request for documents and information to Respondent, requesting a signed statement regarding the allegations of misappropriation of insurance premiums set forth in his Form U5, copies of all correspondence and memoranda related to the matter, and information regarding any customer complaints. The request letter was sent by certified mail and regular first-class mail to Respondent’s CRD address. Both letters were returned as undeliverable.

On April 29, 2009, FINRA staff sent requests for information to Respondent at his CRD address and his alternative address, pursuant to Rule 8210. The return receipt for the certified mailing to the more current address was returned, signed “S. K. Barker.”

Respondent did not respond to either of the requests.⁴ 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 NASD Rules 8210 and 2110, and FINRA Rules 8210 and 2010.⁵

IV. 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 the customers have been “made whole” by Farmers Insurance Group, 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 FINRA or NASD 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 for information. 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 NASD Rules 8210 and 2110, and FINRA Rules 8210 and 2010.

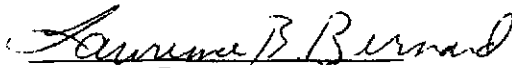
⁴In addition to the mailings to Respondent at his CRD address, Enforcement sent two mailings to the alternative address that it believed to be more current. On August 1, 2008, Enforcement sent the request letter by first-class regular and certified mail to Respondent at the alternative address. The certified letter was returned by the Postal Service marked “unclaimed.” The first-class mailing was not returned. On September 8, 2008, Enforcement sent the request letter to Respondent at the alternative address by first-class and certified mail. The certified mailing was again returned marked “unclaimed,” and the first-class mailing was not returned. Respondent did not respond to the requests sent to his alternative address.

⁵ 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. Conclusion

Respondent Randall C. Barker is barred from associating with any member firm for misappropriation of funds, in violation of NASD Conduct Rule 2110. He is also barred for failure to respond to requests for information, in violation of NASD Procedural Rule 8210 and Conduct Rule 2110, and FINRA Procedural Rule 8210 and Conduct Rule 2010. 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: Randall C. Barker (*via overnight courier and first-class mail*)
 Brian D. Craig, Esq. (*via e-mail and first-class mail*)
 David R. Sonnenberg, Esq. (*via e-mail*)

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

**RANDALL C. BARKER,
CRD No. 2474154**

Respondent.

**Disciplinary Proceeding
No. 20080134416**

Hearing Officer: _____

COMPLAINT

The Department of Enforcement alleges as follows:

SUMMARY

1. Between April 2007 and April 2008, Respondent, Randall C. Barker, misappropriated over \$16,000 from Farmer's Insurance Group by intercepting insurance premium payments of customers and depositing the payments into his personal bank account. Respondent then used the money to pay his personal expenses. By misappropriating insurance premiums and using the funds to pay personal expenses, Barker failed to observe high standards of commercial honor and just and equitable principles of trade. As a result, Barker violated NASD Rule 2110.

2. Enforcement initiated an investigation into this matter based on Barker's Form U-5, which stated that Barker had been terminated for misappropriating insurance premium payments. In connection with its investigation, beginning on or about May 20, 2008, Enforcement issued, pursuant to NASD Rule 8210, several requests for information to Barker. Barker failed to respond to those requests. By failing to provide documents

and information requested by Enforcement pursuant to Rule 8210, Barker violated NASD and FINRA Rule 8210.

RESPONDENT

3. Randall C. Barker, CRD 2474154, was a registered representative with Farmers Financial Solutions, LLC ("Farmers Financial"), from August 10, 2006 through May 8, 2008. Since May 2008, Barker has not been associated with any FINRA member. FINRA retains jurisdiction over Barker pursuant to Art. 5, § 4, of the FINRA By-Laws as the conduct that serves as the basis for this action commenced prior to his termination from a member firm and this action is filed within two years after the effective date of his termination from Farmers Financial.

STATEMENT OF FACTS

A. Barker misappropriated over \$16,000 in insurance premiums that belonged to Farmers Insurance Group

4. Farmers Financial is a limited purpose broker-dealer and the distributor for Farmers New World Life Insurance Company's variable universal life insurance and variable annuity contracts. Farmers Financial also is affiliated with Farmers Insurance Group, an insurance company through which Barker sold property and casualty insurance policies.

5. During the period April 2007 through April 2008, while associated with Farmers Financial, Barker used his office address or a post office box in his name as the billing address for Farmers Insurance policies owned by several of his clients. Barker set up the accounts to be billed to his address so that he could control the payments. During this time, the policy holders, rather than sending their payments directly to the insurance company, sent their premium payments to Barker. In many instances involving

homeowners insurance, the premium payments were made by the policy holder's mortgage company.

6. On numerous occasions, Barker deposited insurance premium payments he received from customers into his personal bank account. He then used the funds to pay personal expenses. Barker used subsequent premium payments of other policy holders to pay the premiums on some, but not all, of the policies for which he had failed to remit the insurance payments.

7. From April 2007 through April 2008, through the conduct described above, Barker misappropriated \$16,261.18 by depositing into his personal account insurance premium payments from 19 customers and using the funds for personal expenses. At least one customer's policy was cancelled by Farmers Insurance Group for non-payment. A list identifying the customers affected and the amount misappropriated is attached as Exhibit A.

8. In a signed statement submitted to Farmers Insurance Group in connection with its internal investigation of Barker, Barker admitted that he misappropriated insurance premiums that belonged to Farmers Insurance Group.

9. On or about May 8, 2008, Farmers Financial Solutions terminated Barker's employment as a result of his misappropriation of insurance premiums.

B. Barker Failed to Respond to Enforcement's Requests for Information Issued Pursuant to NASD and FINRA Rule 8210

10. On or about May 20, 2008, Enforcement issued, pursuant to Rule 8210, a request to Barker for: (1) a signed statement regarding the allegations of misappropriation of insurance premiums set forth in his Form U5; (2) copies of all correspondence and memoranda relating to the matter; and (3) information regarding any

other customer complaints in the previous three years. The request letter was sent by certified mail and first class mail to Barker's home address listed in the Central Registration Depository ("CRD") System maintained by FINRA. Both letters, however, were returned by the U.S. Postal Service as "undeliverable."

11. Enforcement then obtained a more current address for Barker. On August 1, 2008, Enforcement re-sent the request letter by certified mail and first class mail to the address. The certified letter was returned by the U.S. Postal Service marked "unclaimed," but the copy sent by first class mail was not returned. On September 8, 2008, Enforcement again sent the request letter to Barker at the more current address. For a second time, the copy sent by certified mail was returned marked "unclaimed," but the copy sent by regular mail was not returned. Finally, on April 29, 2009, Enforcement sent the request letter to the more current address and Barker's residential address listed in CRD. This time, according to the return receipt, the certified letter was received by "S.K. Barker" on May 4, 2009.

12. Barker has not responded in any way to any of Enforcement's requests for documents and information.

**FIRST CAUSE OF ACTION
VIOLATION OF RULE 2110**

13. The allegations set forth above in paragraphs 1 through 12 are realleged and incorporated herein by reference.

14. NASD Rule 2110 provides that a "member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade." A registered person's conversion of funds constitutes a violation of NASD Conduct Rule 2110, even if the conversion does not involve securities.

15. From April 2007 through April 2008, Barker misappropriated \$16,261.18 from Farmer's Insurance Group by intercepting the insurance premium payments of 19 customers, depositing the payments into his personal bank account, and using the money to pay his personal expenses.

16. Barker admitted to Farmers Insurance Group that he misappropriated insurance premiums for his personal use.

17. By misappropriating \$16,261.18 in insurance premiums that belonged to Farmers Insurance Group, Barker failed to observe high standards of commercial honor and just and equitable principles of trade. As a result, Barker violated NASD Rule 2110.

SECOND CAUSE OF ACTION
VIOLATION OF NASD RULES 8210 AND 2110 and FINRA Rules 8210 and 2010

18. The allegations set forth above in paragraphs 1 through 17 are realleged and incorporated herein by reference.

19. NASD Rule 8210 requires that members and persons associated with members provide documents and information requested by FINRA in connection with an examination or investigation.

20. On or about May 20, 2008, Enforcement issued, pursuant to Rule 8210, a request to Barker for documents and information relating to his misappropriation of insurance premium payments. The request letter was sent by certified mail and first class mail to Barker's home address listed in the CRD. Both letters were returned as undeliverable.

21. Enforcement subsequently obtained a more current address for Barker. On August 1, 2008, Enforcement re-sent the request letter by certified mail and first class mail to the address. The certified letter was returned by the U.S. Postal Service marked

"unclaimed," but the copy sent by first class mail was not returned. Enforcement sent the request letter to Barker at the more current address again on September 8, 2008. For a second time, the copy sent by certified mail was returned marked "unclaimed," but the copy sent by regular mail was not returned. Finally, on April 29, 2009, Enforcement sent the request letter to the more current address and the address listed in CRD. This time, according to the return receipt, the certified letter sent to the more current address was accepted by "S.K. Barker" on May 4, 2009. Thus, the request letter issued by Enforcement pursuant to Rule 8210 was sent to both the address listed for Barker in CRD, as well as the more current address obtained by Enforcement.

22. Barker failed to respond to any of Enforcement's requests. By failing to provide documents and information requested by Enforcement pursuant to Rule 8210, Barker violated NASD and FINRA Rule 8210. By virtue of these violations, Barker also violated NASD Rule 2110 and FINRA Rule 2010.

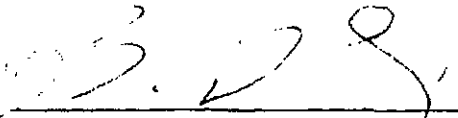
PRAYER

WHEREFORE, the Department of Enforcement respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed;
- B. order that Barker bear such costs of the proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330; and
- C. impose any other fitting sanction.

Dated: June 9, 2009

Respectfully submitted,



Thomas B. Lawson, Vice President and
Chief Counsel

Brian D. Craig, Senior Counsel
Department of Enforcement
FINRA

1801 K Street, NW, Suite 800

Washington, DC 20006

Telephone: (202) 974-2717

Fax: (202) 721-8374

Email: brian.craig@finra.org

Rory Flynn, Of Counsel
Department of Enforcement
FINRA
1801 K Street, NW, Suite 800
Washington, DC 20006
(202) 974-2874