

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

CARLOS SUAZO
(CRD No. 5481182),

Respondent.

Disciplinary Proceeding
No. 2008013754101

Hearing Officer – RSH

DEFAULT DECISION

March 19, 2010

For misuse of funds, in violation of Rule 2110, and for failure to provide requested information, in violation of Rules 8210 and 2010, the Respondent was barred from associating with any FINRA member in any capacity.

Appearances

Helen G. Barnhill, Senior Regional Counsel, Denver, CO, for the FINRA Department of Enforcement.

No appearance by or for Respondent.

DECISION

I. Introduction

The FINRA Department of Enforcement commenced the investigation that led to the Complaint against Respondent Carlos Suazo after Suazo's member firm filed a Uniform Termination Notice for Industry Registration ("Form U5") indicating that the firm had terminated Suazo's employment. The firm stated that Suazo had failed to comply with company policy concerning the disclosure of outside business activity. FINRA staff investigated Suazo's conduct to determine if he had violated any FINRA rules or regulations. As a result of the investigation, Enforcement filed the Complaint.

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In its Complaint, Enforcement charged Suazo with misusing funds, in violation of Conduct Rule 2110, and with failing to respond to requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2010.¹

Enforcement filed the Complaint with the Office of Hearing Officers on October 29, 2009. Suazo did not answer or otherwise respond to the Complaint. Consequently, on January 29, 2010, Enforcement filed a Motion for Entry of Default Decision, supported by the Declaration of Helen G. Barnhill and four exhibits. Suazo did not reply to the motion.²

II. Jurisdiction

Suazo entered the securities industry on or about February 11, 2008, when he became registered as an Investment Company and Variable Contracts Products Representative through MetLife Securities, Inc. ("MetLife"). MetLife terminated Suazo's registration on May 21, 2008, and he has not been associated with a FINRA member firm since then.³

Although Suazo is not currently associated with a FINRA member firm or registered with FINRA, FINRA has jurisdiction over this disciplinary proceeding, 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 registration with a FINRA member firm and (2) the Complaint charges him with misconduct that occurred while he was registered with a FINRA member firm, and with failing to respond to FINRA's

¹ The FINRA Rules, which include NASD Procedural and Conduct Rules, are available at www.finra.org/Rules. On December 15, 2008, the first phase of new consolidated FINRA Rules went into effect. See, Regulatory Notice 08-57. With respect to this decision, unless otherwise noted, the relevant FINRA Rules are identical to the corresponding NASD 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, CX-2; Barnhill Decl., ¶ 5.

requests for information made during the two-year period following the termination of his registration with a FINRA member firm.⁴

III. Respondent's Default

On October 26, 2009, Enforcement sent the Notice of Complaint and Complaint to Suazo by first-class and certified mail (return receipt requested) at his residential address as recorded in FINRA's Central Registration Depository ("CRD Address"). Both mailings were undeliverable and were returned to FINRA.⁵

On November 27, 2009, Enforcement sent the Second Notice of Complaint and Complaint to Suazo by first-class and certified mail (return receipt requested) at his CRD Address. Both mailings were again returned to FINRA, marked "return to sender."⁶ FINRA does not have actual knowledge of a more current address for Suazo than the CRD Address.⁷ The Hearing Officer finds that FINRA served Suazo in accordance with Rule 9134.

To date, Suazo has not filed an Answer with the Office of Hearing Officers or otherwise responded to the Complaint.⁸ By failing to answer the Complaint, Suazo defaulted.⁹ 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.

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

⁵ CX-3; Barnhill Decl., ¶ 11.

⁶ CX-4; Barnhill Decl., ¶ 12.

⁷ Barnhill Decl., ¶ 13.

⁸ Barnhill Decl., ¶ 12.

⁹ *Department of Enforcement v. Reynolds 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)).

IV. Violations

A. Misuse of Funds

The Complaint's First Cause of Action alleges that in or about March 2008, GG's wife passed away and he redeemed her life insurance with MetLife. Suazo assisted GG with the redemption, and recommended that GG invest part of the proceeds in a variable annuity through MetLife. GG agreed to purchase a variable annuity, and on or about April 25, 2008, gave Suazo a check for \$12,000 to fund the variable annuity. At Suazo's instruction, GG made the check out to CJ, an entity with which Suazo was affiliated. Suazo never invested the \$12,000 in a MetLife variable annuity for GG and never returned the funds to GG. The Complaint alleges that Suazo's conduct violated Conduct Rule 2110.

FINRA staff records include a copy of GG's check and statements from MetLife and GG, all of which show that GG's check was cashed, the money was not used to purchase a variable annuity, and Suazo did not return any of the money to GG. MetLife repaid the \$12,000 to GG.¹⁰

Conduct Rule 2110 states that "[a] member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade." It is clearly a violation of just and equitable principles of trade to take money from an investor and not apply the funds as requested.¹¹

The facts alleged in the Complaint establish that Suazo misused GG's funds, and thereby violated Conduct Rule 2110.

¹⁰ Barnhill Decl., ¶ 15.

¹¹ *Department of Enforcement v. Shvarts*, 2000 NASD Discip. LEXIS 6, at *25 (N.A.C., June 2, 2000).

B. Failure to Respond to Requests for Information

The Complaint's Second Cause of Action alleges that Suazo violated Procedural Rule 8210 and Conduct Rule 2010 by failing to respond to two written requests, made pursuant to Procedural Rule 8210, for information concerning the misuse of GG's funds.

On April 13, 2009, FINRA Staff sent the first request for information by first-class and certified mail to Suazo at his CRD Address. The certified mailing was returned marked "unclaimed." The first-class mailing was not returned. Suazo did not respond to the April 13 request.¹²

On April 29, 2009, FINRA Staff sent a second request to Suazo at his CRD Address by first-class and certified mail. The certified mailing was returned marked "unclaimed." The first-class mailing was not returned. Suazo did not respond to the April 29 request.¹³

The facts alleged in the Complaint establish that Suazo failed to respond in any manner to two requests for information, thereby violating Procedural Rule 8210. A violation of Rule 8210 is also a violation of Rule 2010.¹⁴

V. Sanctions

A. Misuse of Funds

For misuse of funds, the FINRA Sanction Guidelines ("Guidelines") recommend a bar unless mitigation exists or the misconduct relates to a misunderstanding of the customer's intended use of the funds.¹⁵ In this case, there is no evidence of mitigation or that Suazo misunderstood GG's intent. Suazo will therefore be barred from associating with any FINRA member firm in any capacity.

¹² Barnhill Decl., ¶ 17.

¹³ *Id.*

¹⁴ *Department of Enforcement v. Hooper*, No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (N.A.C. Nov. 2, 2001).

¹⁵ *FINRA Sanction Guidelines* 38 (2007), www.finra.org/sanctionguidelines.

B. Failure to Respond to Requests for Information

A violation of Rule 8210 is serious because Rule 8210 is a key element in FINRA's oversight function and allows FINRA to carry out its regulatory functions without subpoena power.¹⁶ When an individual fails to provide information, FINRA's ability to perform its regulatory functions is subverted.¹⁷ For these reasons, the Guidelines recommend a bar when a respondent fails to respond in any manner to a request for information issued pursuant to Rule 8210.¹⁸ Suazo failed to respond in any manner to two requests for information. There is no evidence of any mitigating facts that would justify a sanction less than a bar.

Accordingly, the Hearing Officer finds that Suazo should be barred from associating with any FINRA member in any capacity for violating Rules 8210 and 2010.

VI. Order

For misusing funds, in violation of Conduct Rule 2110, and for failing to provide information, in violation of Procedural Rule 8210 and Conduct Rule 2010, Suazo is barred from associating with any FINRA member in any capacity. The bars shall become effective immediately if this Decision becomes the final disciplinary action of FINRA.

SO ORDERED.



Rochelle S. Hall
Hearing Officer

¹⁶ *Howard Brett Berger*, Exchange Act Rel. No. 58950, 2008 SEC LEXIS 3141 (Nov. 14, 2008); *Joseph G. Chiulli*, Exchange Act Rel. No. 42,359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000).

¹⁷ *Joseph P. Hannan*, Exchange Act Rel. No. 40,438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998).

¹⁸ *FINRA Sanction Guidelines* 35 (2007).

Copies to: Carlos Suazo (*via first-class mail and overnight courier*)
Helen Barnhill, Esq. (*via electronic and first-class mail*)
Mark Dauer, Esq. (*via electronic mail*)
David Sonnenberg, Esq. (*via electronic mail*)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Carlos Suazo (CRD No. 5481182),

Respondent.

DISCIPLINARY PROCEEDING
No. 2008013754101

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Respondent Carlos Suazo (Suazo) misused approximately \$57,240.00 received from two individuals for the purpose of investment in securities products. Suazo did not invest the funds as intended, in violation of NASD Conduct Rule 2110. In addition, Suazo failed to respond to a Rule 8210 request for information and documents, in violation of FINRA Procedural Rule 8210 and NASD Conduct Rule 2010.

RESPONDENT AND JURISDICTION

2. Suazo entered the securities industry on or about February 11, 2008, when he became registered as an Investment Company and Variable Contracts Products Representative through MetLife Securities, Inc. (MetLife). MetLife terminated Suazo's registration on May 21, 2008. Suazo has not registered or associated with a member firm since that time.

However, pursuant to Article V, Section 4 of the FINRA By-Laws, FINRA retains jurisdiction over him for purposes of this Complaint.

CAUSE ONE OF COMPLAINT

NASD Conduct Rule 2110, Misuse of Funds, by Respondent Suazo

3. Paragraph number 1 and 2 above, are realleged and incorporated herein by reference.
4. In or about March 2008, GG's wife passed away and he redeemed her life insurance with MetLife. Suazo assisted GG with the redemption of his wife's life insurance. GG asked Suazo for investment suggestions for part of the proceeds. Suazo recommended purchasing a variable annuity through MetLife. GG agreed to purchase a variable annuity and, on or about April 25, 2008, GG gave Suazo a check for \$12,000.00 to fund the intended variable annuity transaction. At Suazo's instruction the check was made out to CJ, a entity with which Suazo had an affiliation. Suazo never invested the \$12,000 in a MetLife variable annuity for GG and he never returned the funds to GG.
5. In or about May 2008, RO and her husband met with Suazo to purchase health insurance. At the end of their meeting, Suazo asked if they had any investments or retirement accounts that they wanted to transfer to MetLife. After discussing the matter, RO decided to transfer her retirement savings to MetLife. RO obtained a distribution of \$45,239.96 from her 401(k) on May 22, 2008. Then, on May 23, 2008, RO gave Suazo a check for the same amount in order to roll the funds into a MetLife IRA. At Suazo's instruction the check was made out to "CJ FBO RO". Suazo never invested the \$45,239.96 in a MetLife IRA and he never returned the funds to RO.
6. MetLife has reimbursed RO and GG the funds they intended that Suazo invest through MetLife.

7. By virtue of such conduct, Suazo violated NASD Conduct Rule 2110.

CAUSE TWO OF COMPLAINT

FINRA Rules 8210 and 2010, Failure to Provide Information and Documents, by Respondent Suazo

8. The allegations of paragraphs 1, 2, 3 through 7 above, are realleged and incorporated herein by reference.
9. On April 13, 2009, FINRA staff sent to Suazo, by first class and certified mail, a written request for information and documents pursuant to FINRA Rule 8210. The request pertained to the allegations of misuse set forth in Cause One of this Complaint and also to staff's investigation of a potential Rule 3030 violation. FINRA asked that the requested information be provided on or before April 27, 2009. The request was sent to Suazo's most current residential address according to Central Registration Depository (CRD) records, which was [REDACTED] (the CRD address). It was also sent to a P.O. Box in New York that Suazo identified as his current address in his response to FINRA dated October 8, 2008. Both certified letters were returned marked "unclaimed." In addition, the return envelope for the CRD mailing contained a forwarding address, which was the same New York P.O. Box that Suazo provided to FINRA staff. The first class letters were not returned. Suazo did not provide any information in response to the April 13, 2009 request.
10. Because it did not receive a response to the April 13, 2009 letter, FINRA resent the letter on April 29, 2009, to Suazo's CRD address and the New York P.O. Box by first class and certified mail. This request was made pursuant to FINRA Rule 8210. The requested information was to be provided on or before May 13, 2009. The certified mailings were both returned to the staff marked "unclaimed." In addition, the return envelope for the CRD

mailing contained a forwarding address, which was the same New York P.O. that Suazo provided to FINRA staff. The first class mailings were not returned. Suazo did not provide any information in response to the April 29, 2009 request.

11. By failing to provide the requested information, Suazo violated FINRA Rules 8210 and 2010.

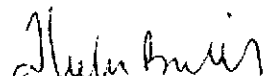
PRAYER

WHEREFORE, the Department 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 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

Date: October 26, 2009


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