

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JOEL BARRETT
(CRD No. 5441006),

Respondent.

Disciplinary Proceeding
No. 2008014006701

Hearing Officer – LBB

DEFAULT DECISION

April 1, 2010

Respondent Joel Barrett is barred from associating with any member firm for misappropriation of funds and forgery, in violation of NASD Conduct Rule 2110. He is also barred for failure to provide information and failure to appear and testify at an on-the-record interview, in violation of NASD and FINRA Procedural Rules 8210, NASD Conduct Rule 2110, and FINRA Conduct Rule 2010.

Appearances

Howard A. Grinsberg, Esq., New York, New York, Senior Counsel, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

The Department of Enforcement filed the Complaint in this action on October 23, 2009, asserting four causes of action against Respondent Joel Barrett ("Respondent").¹ The First Cause

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 NASD Conduct Rule 2110 and Procedural Rule 8210, which were in effect at the time of the violations charged by the First and Second Causes of Action, and on FINRA Procedural Rule 8210 and Conduct Rule 2010 for the Third and Fourth Causes of Action. The applicable rules are available at www.finra.org/rules.

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of Action charges Respondent with misappropriation of the funds of a bank customer and forgery, in violation of NASD Conduct Rule 2110.² The Second, Third, and Fourth Causes of Action charge Respondent with failure to provide a written statement concerning the circumstances that led to the termination of his employment, and failure to appear and testify at an on-the-record interview (“OTR”), in violation of NASD Procedural Rule 8210 and Conduct Rule 2110, and FINRA Procedural Rule 8210 and Conduct Rule 2010.³ Despite being properly served with the Complaint, Notice of Complaint, Second Notice of Complaint, and Third Notice of Complaint, Respondent has not filed an answer or otherwise responded to the Complaint.

On February 2, 2010, Enforcement filed a Motion for Entry of Default Decision and Request for Sanctions, 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.⁴

I. Respondent’s Default

On October 23, 2009, Enforcement served the Complaint and Notice of Complaint on Respondent by certified and first-class mail at his CRD address and an alternative address that Enforcement obtained through a computer search. Grinsberg Aff. ¶¶ 17, 24. The return receipt for the certified mailing to Respondent’s CRD address was returned to FINRA, signed by “Joel

² The Complaint also charges Respondent with violation of NASD Conduct Rule 2330(a), which applies to misuse of customer funds, as well as a violation of Rule 2110. Because the customer whose funds were misappropriated was a bank customer, but not a securities customer, Enforcement has abandoned the charge under Rule 2330(a). See Motion for Entry of Default Decision and Request for Sanctions, at 4.

³ The request for information that is the subject of the Second Cause of Action was sent before NASD Rules 8210 and 2110 were transferred to FINRA Rules 8210 and 2010, respectively. Accordingly, the Second Cause of Action charges a violation of NASD Rules.

⁴ The factual determinations in this decision are based on the allegations of the attached Complaint and the materials Enforcement filed with its default motion, which included the Affidavit of Howard Alan Grinsberg in Support of Enforcement’s Motion for Entry of Default Decision, and supporting documentation that was attached to counsel’s affidavit. Counsel’s affidavit is cited herein as “Grinsberg Aff. ¶ __.” The supporting documentation is cited as “CX-__.”

Barrett.” The mailing sent to the alternative address was returned, marked “Unclaimed.” The first-class mailings were not returned by the Postal Service. Grinsberg Aff. ¶¶ 26, 27. The Notice of Complaint notified Respondent that his answer to the Complaint was required to be filed by November 20, 2009. Respondent did not answer or otherwise respond to the Complaint by November 20, 2009. Grinsberg Aff. ¶ 28.

On November 24, 2009, Enforcement served the Complaint, Second Notice of Complaint, and First Notice of Complaint on Respondent by certified and first-class mail at Respondent’s CRD address and the alternative address. The return receipt for the certified mailing sent to Respondent’s CRD address was returned to FINRA with a signature of someone other than Respondent. The certified mailing sent to the alternative address was returned to FINRA by the Postal Service. The first-class mailings were not returned to FINRA. Grinsberg Aff. ¶¶ 29 – 31. The Second Notice of Complaint notified Respondent that his answer to the Complaint was required to be filed by December 11, 2009. Respondent did not answer or otherwise respond to the Complaint by December 11, 2009. Grinsberg Aff. ¶ 33.

On December 9, 2009, Enforcement served the Complaint, Third Notice of Complaint, Second Notice of Complaint, and First Notice of Complaint on Respondent by certified and first-class mail at Respondent’s CRD address and the alternative address. None of the mailings was returned to FINRA by the Postal Service. Grinsberg Aff. ¶¶ 35 – 37. The Third Notice of Complaint notified Respondent that his answer to the Complaint was required to be filed by December 29, 2009. Respondent did not answer or otherwise respond to the Complaint by December 29, 2009. Grinsberg Aff. ¶ 38.

Enforcement served the Complaint and the Notices of Complaint on Respondent in accordance with Procedural Rule 9134, giving him actual and 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 employed by JP Morgan Chase Bank ("Chase") from October 10, 2007, through June 6, 2008. He was registered with FINRA through member firm Chase Investment Services Corp., an affiliate of Chase, from November 2007 until June 6, 2008. Grinsberg Aff. ¶ 4; CX-1. On June 27, 2008, Chase's affiliated member firm filed a Uniform Termination Notice of Securities Industry Registration (Form U5), reporting that Chase had terminated Respondent's employment on June 6, 2008. Grinsberg Aff. ¶ 5; CX-2. Respondent is not currently employed in the securities industry. Grinsberg Aff. ¶ 6; CX-1.

Although Respondent is not registered with a FINRA member firm, 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. Respondent Misappropriated Funds and Forged Documents, in Violation of NASD Conduct Rule 2110

Respondent was employed by Chase as a personal banker. In May 2008, Respondent signed the name of a Chase customer on a check withdrawal form without the customer's knowledge or authorization, requesting a \$25,000 check made payable to a friend of Respondent's. The check was later deposited into the friend's bank account. Respondent also

activated and linked an ATM card to the bank customer's savings account, and withdrew \$3,500 for his own personal use and benefit.

Misappropriation of funds violates Rule 2110. *Dist. Bus. Conduct Comm. v. Vail*, No. C06920051, 1994 NASD Discip. LEXIS 192, at *13 (N.B.C.C. Sept. 22, 1994), *aff'd*, 52 S.E.C. 339, 342 (1995), *aff'd*, 101 F.3d 37 (5th Cir. 1996) (barred for misappropriation of funds of private political club); *Daniel D. Manoff*, Exchange Act Rel. No. 46708, 2002 SEC LEXIS 2684 (Oct. 23, 2002) (barred for unauthorized use of co-worker's credit card numbers); *Dist. Bus. Conduct Comm. v. Kwikkel-Elliott*, No. C04960004, 1998 NASD Discip. LEXIS 4 (N.B.C.C. Jan. 16, 1998) (barred for converting funds from employer by submission of false expense reimbursement requests). By misappropriating the funds of the Chase customer, Respondent violated Rule 2110.

Respondent misappropriated the \$25,000 by forging a check withdrawal form. Forgery violates Rule 2110 even where the victim is not a securities customer. See, e.g., *Dep't of Enforcement v. Taylor*, No. C8A050027, 2007 NASD Discip. LEXIS 11, at *22 – *23 (N.A.C. Feb. 27, 2007); *Dep't of Enforcement v. Rogala*, No. C8A030089, 2005 NASD Discip. LEXIS 44 (N.A.C. Oct. 11, 2005). By forging the check withdrawal form, Respondent also violated Rule 2110.

The allegations of the Complaint, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent misappropriated a Chase customer's funds and forged a document to obtain the Chase customer's funds, in violation of NASD Conduct Rule 2110.

B. Respondent Failed to Provide Information, in Violation of NASD Procedural Rule 8210 and Conduct Rule 2110, and FINRA Procedural Rule 8210 and Conduct Rule 2010

The Complaint contains three causes of action for failure to respond to requests for information pursuant to NASD and FINRA Rules 8210. The Second and Third Causes of Action charge Respondent with failure to provide a written explanation of the termination of his employment, and the Fourth Cause of Action charges Respondent with failure to appear and testify at an OTR.

By letter of July 10, 2008, Enforcement sent Respondent a request for information, pursuant to NASD Rule 8210, by certified and first-class mail at his CRD address. The letter directed Respondent to provide a detailed written explanation of the termination of his employment by Chase. The certified mailing was returned to FINRA marked "unclaimed." The first-class mailing was not returned to FINRA. Respondent did not respond to the request.

By letter of February 2, 2009, Enforcement sent Respondent a second request for information, pursuant to FINRA Rule 8210, by certified and first-class mail at his CRD address. The letter directed Respondent to provide a detailed written explanation of the termination of his employment by Chase. The certified mailing was returned to FINRA marked "unclaimed – unable to forward." The first-class mailing was not returned to FINRA. Respondent did not respond to the second request.

On March 26, 2009, Enforcement sent a request to Respondent, pursuant to FINRA Rule 8210, again directing him to provide a written explanation of the termination of his employment by Chase. The third request was sent by certified and first-class mail to Respondent's CRD address and to the alternative address that Enforcement obtained by a computer search. Both certified mailings were returned to FINRA by the Postal Service marked "unclaimed – unable to

forward.” The first-class mailings were not returned. Respondent did not respond to the third request.

On June 10, 2009, pursuant to FINRA Rule 8210, Enforcement served Respondent with a request to appear and testify at an OTR on July 8, 2009. The request was served by certified and first-class mail at Respondent’s CRD address and the alternative address. Both certified mailings were returned to FINRA by the Postal Service marked “unclaimed – unable to forward.” The letters sent by regular mail were not returned. Respondent did not appear and testify at the OTR on July 8, 2009.

All of the requests were served within two years of the termination of Respondent’s registration with a member firm. Respondent was required to respond pursuant to NASD Rule 8210 and FINRA Rule 8210. 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 Procedural Rule 8210 and FINRA Procedural Rule 8210. A violation of NASD Rule 8210 or FINRA Rule 8210 is also a violation of NASD Conduct Rule 2110 or FINRA Conduct Rule 2010.⁵

IV. Sanctions

The FINRA Sanction Guidelines (“Sanction Guidelines”) recommend a bar as the sanction for misappropriation of funds in violation of Conduct Rule 2110, regardless of the amount converted. *Sanction Guidelines* at 38. The Sanction Guidelines also recommend a bar in egregious cases of forgery. *Sanction Guidelines* at 39. Because the document was forged to misappropriate a bank customer’s funds, Respondent’s forgery was egregious. There is no evidence of any mitigating factors that would make a sanction of anything less than a bar

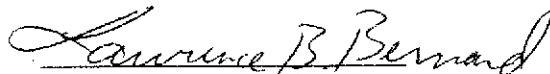
⁵ *Dep’t of Enforcement v. Hooper*, No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (N.A.C. Nov. 2, 2001) (violation of NASD Procedural Rule 8210 was a violation of NASD Conduct Rule 2110).

appropriate. Respondent is barred for misappropriation of funds and forgery. Because Chase reimbursed its customer for the funds that Respondent misappropriated, restitution is not ordered.

The Sanction Guidelines recommend a bar where a respondent fails to respond in any manner to a request for information issued pursuant to Procedural Rule 8210. *Sanction Guidelines* at 35. Where mitigation exists, the Sanction Guidelines recommend consideration of a suspension in all capacities of up to two years. The record reflects that Respondent failed to respond to three requests to provide a written statement, and failed to appear and testify at his OTR. 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 Procedural Rule 8210 and Conduct Rule 2110, and FINRA Procedural Rule 8210 and Conduct Rule 2010.

V. Conclusion

Respondent Joel Barrett is barred from associating with any member firm in any capacity for misappropriation of funds and forgery, in violation of NASD Conduct Rule 2110. He is also barred for failure to provide information and failure to appear and testify at an on-the-record interview, in violation of NASD and FINRA Procedural Rules 8210, NASD Conduct Rule 2110, and FINRA Conduct Rule 2010. The bars will become effective immediately if this decision becomes FINRA's final disciplinary action in this proceeding.


Lawrence B. Bernard
Hearing Officer

Copies to: Joel Barrett (*via overnight courier and first-class mail*)
Howard A. Grinsberg, Esq. (*via e-mail and first-class mail*)
David R. Sonnenberg, Esq. (*via e-mail*)