

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

HILDA ASECIO
(CRD No. 4209245),

Respondent.

Disciplinary Proceeding
No. 20080145731-01

Hearing Officer – RSH

DEFAULT DECISION

November 5, 2009

For conversion of customer funds, in violation of Rules 2330 and 2110, and for failure to provide requested information, in violation of Rules 8210 and 2110, the Respondent was barred from associating with any FINRA member in any capacity. She was also ordered to pay restitution to the customer.

Appearances

Vaishali S. Shetty, Senior Regional Counsel; David Jaffe, Regional Chief Counsel; Jon S. Batterman, Deputy Regional Counsel, Jericho, NY for the 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 Hilda Asencio after Asencio's member firm filed a Form 3070 disclosure indicating that the firm had terminated Asencio's employment. The firm stated that Asencio had confessed to withdrawing funds from a customer's annuity account without authorization. FINRA staff investigated Asencio's conduct to

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determine if she had violated any FINRA rules or regulations. As a result of the investigation, Enforcement filed the Complaint.¹

In its Complaint, Enforcement charged Asencio with conversion of customer funds, in violation of Conduct Rules 2330 and 2110, and with failing to respond to requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2110.²

Enforcement filed the Complaint with the Office of Hearing Officers on April 16, 2009. Asencio did not answer or otherwise respond to the Complaint. Consequently, on September 8, 2009, Enforcement filed a Motion for Entry of Default Decision, supported by the Declaration of Vaishali S. Shetty and 13 exhibits. Asencio did not reply to the motion.³

II. Jurisdiction

From September 2002 through September 15, 2006, Asencio was unregistered but associated with FINRA member firm Walnut Street Securities, Inc., a subsidiary of MetLife Securities, Inc.⁴ On September 15, 2006, Asencio became a fingerprinted person of Walnut Street but remained unregistered.⁵ On August 14, 2008, Walnut Street discharged Asencio for withdrawing funds from a customer's annuity account without authorization. She has not been associated with a FINRA member firm since then.⁶

Although Asencio is not currently associated with a FINRA member firm or registered with FINRA, FINRA has jurisdiction over this disciplinary proceeding,

¹ Declaration of Vaishali S. Shetty ("Shetty Decl."), ¶¶ 9-10.

² 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.

³ 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.

⁴ Shetty Decl., ¶ 6.

⁵ CX-1; Shetty Decl., ¶ 6.

⁶ CX-1; Shetty Decl., ¶¶ 7-9.

pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years following the termination of her association with a FINRA member firm and (2) the Complaint charges her with misconduct that occurred while she was associated with a FINRA member firm, and with failing to respond to FINRA's requests for information made during the two-year period following the termination of her association with a FINRA member firm.⁷

III. Respondent's Default

On June 2, 2009, Enforcement sent the Third Notice⁸ of Complaint and Complaint to Asencio by first-class and certified mail (return receipt requested) at her residential address as recorded on her Uniform Application for Securities Industry Registration or Transfer ("Residential Address").⁹ The first-class mailing was not returned; however, the certified mailing was returned marked "unclaimed." Asencio did not respond to the Complaint by June 19, 2009, the deadline specified in the Third Notice of Complaint.¹⁰

On July 31, 2009, Enforcement sent the Fourth Notice of Complaint and Complaint to Asencio by first-class and certified mail (return receipt requested) at her Residential Address. Neither of the mailings was returned. The Fourth Notice of Complaint required Asencio to file an answer to the Complaint by August 17, 2009. To date, Asencio has not filed an Answer with the Office of Hearing Officers or otherwise responded to the Complaint.¹¹

⁷ 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").

⁸ Enforcement had sent a Complaint and First and Second Notices of Complaint on April 16, 2009, and May 15, 2009, respectively. Enforcement later learned that it had incorrectly addressed the mailings, and so sent out two mailings to the corrected address. CX-2, 3, 6; Shetty Decl., ¶ 18.

⁹ Asencio's home address is not listed on the Composite Information page in the Central Registration Depository. Shetty Decl., ¶ 11.

¹⁰ CX-9, 10; Shetty Decl., ¶¶ 19-21.

¹¹ CX-11; Shetty Decl., ¶¶ 22-25.

By failing to answer the Complaint, Asencio defaulted.¹² 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.

IV. Violations

A. Conversion of Customer Funds

The Complaint's First Cause of Action alleges that Asencio violated Conduct Rules 2330(a) and 2110 by converting \$335,250 from Walnut Street customer, LB. According to the Complaint, Asencio was an assistant to two Walnut Street brokers, and LB was the brokers' customer. Between October 13, 2005 and April 3, 2008, Asencio, according to Walnut Street records and her own written admission, made thirteen withdrawals from LB's variable annuity without his knowledge or consent. Asencio arranged to have the funds sent to her friend, GW, who cashed the checks and forwarded the proceeds to Asencio. Asencio deposited the funds from LB's account into her own bank account and used the money to pay personal expenses, including the mortgage on her home.¹³

FINRA Conduct Rule 2330(a) prohibits any person associated with a member from making improper use of a customer's securities or funds. A violation of one conduct rule is a violation of Conduct Rule 2110.¹⁴ Furthermore, FINRA Sanction Guidelines ("Guidelines") specifically recognize conversion as a violation of Rule 2110.

¹² *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)).

¹³ Shetty Decl., ¶¶ 26-29; CX-12, 13.

¹⁴ *Charles C. Fawcett, IV*, Exchange Act Rel. No. 56770, 2007 SEC LEXIS 2598, at *11 - *12 (Nov. 8, 2007) (stating that violations of FINRA rules are inconsistent with just and equitable principles of trade and constitute a violation of Rule 2110.).

The 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.”¹⁵

The facts alleged in the Complaint establish that Asencio converted \$335,250 from a customer, and thereby violated Conduct Rules 2330(a) and 2110.

B. Failure to Respond to Requests for Information

The Complaint’s Second Cause of Action alleges that Asencio violated Procedural Rule 8210 and Conduct Rule 2110 by failing to respond to two written requests, made pursuant to Procedural Rule 8210, for information concerning the funds removed from LB’s account.

On October 8, 2008, FINRA Staff sent the first request for information by first-class and certified mail to Asencio at her Residential Address. The certified mailing was returned marked “return to send,” “unclaimed” and “unable to forward.” The first-class mailing was not returned. Asencio did not respond to the October 8 request.¹⁶

On October 21, 2008, FINRA Staff sent a second request to Asencio at her Residential Address by first-class and certified mail. The certified mailing was returned marked “return to sender, unclaimed, unable to forward.” The first-class mailing was not returned. Asencio did not respond to the October 21 request.¹⁷

The facts alleged in the Complaint establish that Asencio 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 2110.¹⁸

¹⁵ *FINRA Sanction Guidelines* 38 (2007), <http://www.finra.org/RegulatoryEnforcement/index.htm> (then follow “FINRA Sanction Guidelines” hyperlink).

¹⁶ Shetty Decl., ¶¶ 30-33.

¹⁷ Shetty Decl., ¶¶ 34-36.

¹⁸ *Department of Enforcement v. Hoeper*, No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (N.A.C. Nov. 2, 2001).

V. Sanctions

A. Conversion

Asencio's misuse of funds in this case amounts to conversion, inasmuch as she used customer funds for her own purposes without authorization. For conversion, the Guidelines recommend a bar, regardless of the amount converted.¹⁹ Asencio will therefore be barred from associating with any FINRA member firm in any capacity. Asencio is also ordered to pay restitution to LB in the amount of \$335,250, plus 8% interest from October 13, 2005 until the full amount is paid.

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.²⁰ When an individual fails to provide information, FINRA's ability to perform its regulatory functions is subverted.²¹ 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 8210.²² Asencio 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 Asencio should be barred from associating with any FINRA member in any capacity for violating Rules 8210 and 2110.

VI. Order

For converting customer funds, in violation of Conduct Rules 2330(a) and 2110, and for failing to provide information, in violation of Procedural Rule 8210 and Conduct

¹⁹ *FINRA Sanction Guidelines* 38 (2007).

²⁰ *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).

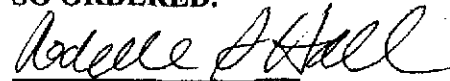
²¹ *Joseph P. Hannan*, Exchange Act Rel. No. 40,438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998).

²² *FINRA Sanction Guidelines* 35 (2007).

Rule 2110, Asencio is barred from associating with any FINRA member in any capacity.

The bar shall become effective immediately if this Decision becomes the final disciplinary action of FINRA. In addition, she is ordered to pay restitution to LB in the amount of \$335,250, plus 8% interest, from October 13, 2005 until the full amount is paid.

SO ORDERED.



Rochelle S. Hall
Hearing Officer

Copies to: Hilda Asencio (*via overnight courier and first-class mail*)
Vaishali S. Shetty, Esq. (*via electronic and first-class mail*)
Mark P. Dauer, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

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

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

HILDA ASENSIO
(CRD No. 4209245),

RESPONDENT.

DISCIPLINARY PROCEEDING
No. 2008014573101

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Between October 2005 and April 2008, Hilda Asencio ("Asencio"), while associated with a FINRA member firm, made unauthorized withdrawals, totaling approximately \$335,250, from customer LB's variable annuity and used the funds for personal benefit. By reason of the foregoing, Asencio violated NASD Conduct Rules 2330(a) and 2110.
2. Pursuant to NASD Procedural Rule 8210, FINRA staff sent Asencio two letters requesting information regarding the unauthorized withdrawal allegations. To date, she has failed to respond to the requests. By reason of the foregoing, Asencio violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

RESPONDENT AND JURISDICTION

3. From September 2002 through August 2008, Asencio was associated with member firm, Walnut Street Securities, Inc. (BD No. 15840)("Walnut Street"), a subsidiary of

MetLife Securities, Inc. ("MetLife"). She was hired as support staff and her duties were primarily clerical, consisting of filing, processing forms, and answering telephones. On September 15, 2006, Asencio became a fingerprint person of Walnut Street but remained unregistered. From July 19, 1999 through September 7, 2001, she was a non-registered, associated person of another member firm.

4. On or about August 25, 2008, Walnut Street filed a Non-Registered Fingerprint Amendment (NRF Amendment) disclosing the termination.
5. Asencio is not currently associated with a FINRA member firm or registered in any capacity.

**FIRST CAUSE OF ACTION
CONVERSION
(NASD CONDUCT RULES 2330(a) AND 2110)**

6. The Department realleges and incorporates by reference paragraphs 1 through 5 above.
7. Asencio was an assistant to two brokers at the member firm and LB was the brokers' customer.
8. Between October 2005 and April 2008, there were thirteen withdrawals made in LB's name from his account, but without LB's knowledge and consent. By her own written admission, Asencio used the funds in LB's account because she was in financial distress. Asencio arranged to have the funds sent to her friend, GW, who, in turn, would cash the checks and forward the proceeds to Asencio. In this way, Asencio withdrew \$335,250, in total, from LB's variable annuity.

9. Asencio deposited these withdrawals from LB's account into her bank account from which she paid, among other personal expenses, the mortgage on her home.

By reason of the foregoing, Asencio violated NASD Rule 2330(a) and 2110.

**SECOND CAUSE OF ACTION
FAILURE TO RESPOND
(NASD PROCEDURAL RULE 8210 AND NASD CONDUCT RULE 2110)**

10. The Department realleges and incorporates by reference paragraphs 1 through 9 above.

The First Request

11. In connection with the allegations listed above in paragraphs 1 through 10, the staff of FINRA's District No. 10 office (the "Staff") made a written request for information and documents from Asencio, pursuant to NASD Procedural Rule 8210 ("First Request").
12. The Staff sent the First Request to Asencio on October 8, 2008 via certified mail, return receipt requested and via first-class mail to Asencio's residential address as listed on her Uniform Application for Securities Industry Registration or Transfer (Form U4), [REDACTED] ("Residential Address"). There is no address listed on her Composite Information page in the Central Registration Depository ("CRD").
13. The certified mailing to the Residential Address was returned to the Staff by the United States Postal Service ("USPS"), marked "return to sender, unclaimed, unable to forward". The first class mailing was not returned.
14. Asencio failed to respond to the First Request.

The Second Request

15. The Staff sent a second request to Asencio on October 21, 2008 via certified mail, return receipt requested and via first-class mail to the Residential Address, requesting that Asencio produce documents and information, pursuant to NASD Procedural Rule 8210 ("Second Request") .
16. The certified mailing was returned by USPS, marked "return to sender, unclaimed, unable to forward". The first-class mailing was not returned.
17. Asencio failed to respond to the Second Request.

By reason of the foregoing, Asencio violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

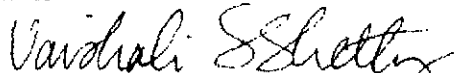
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

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

Date: April 16, 2009

FINRA DEPARTMENT OF ENFORCEMENT


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