

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

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REGISTRATION & DISCLOSURE

Department of Enforcement,

Complainant,

V.

Esther E. Garcia (CRD No. 4579816),

Respondents.

DISCIPLINARY PROCEEDING
No. 20080146154

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

Respondent wrongfully converted funds from three customers for her own use and benefit.

Respondent also failed to appear and testify at her on-the-record interview as requested by

FINRA pursuant to FINRA Rules during such time as she was subject to FINRA's jurisdiction.

RESPONDENT

1. Respondent Esther E. Garcia ("Garcia") entered the securities industry in 2002 as a registered representative with Equitrust Marketing Services, LLC (the "Firm" or "Equitrust").

2. On August 18, 2008, Equitrust filed a Uniform Termination Notice for Securities Industry Registration (the "Form U-5") reporting that Garcia's employment was terminated by its affiliate insurance company, Farm Bureau Financial Services ("FBFS"), on August 6, 2008 because "Garcia deposited client funds [property casualty insurance premium checks] into an

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account that she controls.” Since her termination, Garcia has not associated with another member firm.

3. Garcia is subject to FINRA’s jurisdiction pursuant to Article V, § 4 of NASD’s By-Laws because:

- a. this Complaint is being filed within two years after the effective date of termination of Respondent’s association with Equitrust; and
- b. the misconduct alleged occurred while Respondent was associated with a member firm.

FIRST CAUSE OF ACTION
(Conversion of Customer Funds)
NASD Conduct Rules 2330 and 2110

The Department realleges and incorporates by reference paragraphs 1-3 above.

4. During the period between December 2007 and August 2008, Garcia converted to her own benefit and use, the property casualty insurance premium payments of three customers totaling \$2531.91 by depositing these funds into a checking account that she controlled.

Customer LM:

5. On or about May 16, 2008, LM personally handed Garcia a casualty insurance premium check in the amount of \$696.96 made payable to “Farm Bureau Financial” in order to obtain property casualty insurance coverage pursuant to a policy issued by Farm Bureau Mutual Insurance Company. Instead of remitting the premium payments to Farm Bureau Mutual Insurance Company, Garcia converted the funds to her own use and benefit by depositing the funds into a checking account at Citizens Bank that she controlled listed as “Esther Garcia DBA

FBFS” without LM’s permission or authority. As a result of this conduct, FBFS, on August 6, 2008, terminated Garcia’s employment.

Customers EP and MO:

6. Garcia also converted the property casualty insurance premium checks of two additional customers: EP and MO. Specifically, on or about January 29, 2008, EP gave a check to Garcia in the amount of \$1620.35 made payable to “Farm Bureau” for property casualty insurance under a policy issued by Farm Bureau Mutual Insurance Company. Garcia did not remit the check to Farm Bureau Mutual Insurance Company and, instead, converted the check for her own use and benefit by depositing the check into a checking account Garcia controlled at Citizens Bank (Esther Garcia DBA FBFS) without EP’s permission or authority.

7. DAT Company sent a check to Garcia in the amount of \$593.37 made payable to “Farm Bureau Financial Services” for property casualty insurance for customer MO under a policy issued by Farm Bureau Mutual Insurance Company. Garcia did not remit the check to Farm Bureau Mutual Insurance Company and, instead, converted the check for her own use and benefit by depositing the check into a checking account that she controlled at Citizens Bank (Esther Garcia DBA FBFS) without MO’s permission or authority. Subsequently, anonymous money orders totaling \$378.77 were submitted to FBFS and credited to MO’s property casualty insurance policy account.

8. In Garcia’s response to a request sent to her by FINRA pursuant to Rule 8210 asking about the circumstances described in the Form U-5, Garcia asserts that she “accept[s] responsibility for the allegations listed in the U-5 Filing... with regard to monies being mishandled.” Garcia also states that she is “willing to pay back any monies owed as soon as she is gainfully employed.”

9. The above acts, practices and conduct set forth in paragraphs 4-7, constitute separate and distinct violations of NASD Conduct Rules 2330 and 2110 by Garcia.

**SECOND CAUSE OF ACTION
(Failure to Appear and Testify)
FINRA RULE 8210 AND FINRA CONDUCT RULE 2010**

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

11. On April 30, 2009 (the "April 30th Letter"), Enforcement, by certified mail return receipt requested and first class mail, sent Respondent a letter pursuant to FINRA Rule 8210 to her residential address as reflected in CRD: [REDACTED].

The April 30th Letter requested that Garcia appear for an on-the-record interview on June 3, 2009 at FINRA's 14 Wall Street, New York, N.Y. office. The April 30th Letter instructed Respondent that the failure to appear for the on-the-record interview could expose her to disciplinary sanctions, including a permanent bar from the securities industry. In May 2009, Enforcement received from the U.S. Postal Service an undated return receipt for the certified mailing that was mailed on April 30, 2009. The return receipt contains Garcia's signature below the signature line and under the section that reads "Received by (*Print Name*)" Esther Garcia's name is written in print form. The April 30th Letter sent by first class mail to her CRD address was never returned.

12. On June 3, 2009, Respondent failed to appear for her on-the-record testimony and her absence was duly noted on the record by the court reporter. The April 30th Letter and the signed undated return receipt were marked as exhibits and made part of the record by the court reporter.

13. On September 11, 2009 (the "September 11th Letter"), Enforcement, by certified mail return receipt requested and first class mail,¹ sent Respondent a letter pursuant to FINRA Rule 8210 to her residential address as reflected in CRD: [REDACTED]

¹ The first class mailing containing a copy of the September 11th Letter was mailed on September 14, 2009.

██████. The September 11th Letter requested that Garcia appear for an on-the-record interview on September 18, 2009 at FINRA's 14 Wall Street, New York, N.Y. office. The September 11th Letter instructed Respondent, as did the April 30th Letter, that the failure to appear for the on-the-record interview could expose her to disciplinary sanctions, including a permanent bar from the securities industry. On September 15, 2009 at 2:03 p.m.,² the U.S. Postal Service, after attempting to serve Respondent with the September 11th Letter, left a notice which provided Respondent with the Post Office address of where Respondent could go to retrieve the September 11th Letter.

14. On September 18, 2009, Respondent failed, for the second time, to appear for her on-the-record testimony and her absence was duly noted on the record by the court reporter. The September 11th Letter was marked as an exhibit and made part of the record by the court reporter.

15. To date, Respondent has never picked up the September 11th Letter from the U.S. Postal Service. On October 26, 2009, the U.S. Postal Service returned the September 11th Letter to Enforcement marked as "Return to Sender – Unclaimed." The September 11th Letter sent by first class mail to her CRD address was never returned.

16. Respondent's failure to appear and testify as requested by the September 11th Letter constitutes a violation of FINRA Rule 8210 and FINRA Conduct Rule 2010.

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.

² U.S. Postal Service website contains a "Track & Confirm" feature which details the progress of each of the parcels sent by certified mail.

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: 11/16/09



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