

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ESTHER E. GARCIA
(CRD No. 4579816),

Respondent.

Disciplinary Proceeding
No. 20080146154

DEFAULT DECISION

Hearing Officer – Sara Nelson Bloom

May 26, 2010

For conversion of customer funds, in violation of Rule 2110, and for failing to appear for testimony, in violation of Rules 8210 and 2010, Respondent is barred from associating with any FINRA member in any capacity.

Appearances

David Camuzo, Esq., New York, NY, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

I. Background

On November 17, 2009, the Department of Enforcement (“Enforcement”) filed a two-cause Complaint in this proceeding, attached to this Decision as Exhibit A. The first cause alleges that Esther E. Garcia (“Respondent”) violated Rules 2330 and 2110 by converting over \$2,500 in customer funds. The second cause alleges that Respondent violated Rules 8210 and 2010 by failing to appear for testimony as requested by FINRA Staff.¹

¹ Following the consolidation of NASD and the member regulation, enforcement, and arbitration functions of NYSE Regulation into FINRA, FINRA began developing a new “Consolidated Rulebook” of FINRA Rules. The first phase of the new consolidated rules became effective on December 15, 2008. See FINRA Regulatory Notice 08-57 (Oct. 2008). In that process, FINRA renumbered NASD Rule 2110 as FINRA Rule 2010. Because the Complaint in this case was filed after December 15, 2008, the procedural rules that apply are the current FINRA Rules. The conduct rules that apply are the NASD Rules that existed at the time of the conduct at issue.

DECISION

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Respondent did not file an Answer to the Complaint. Accordingly, on March 31, 2010, Enforcement filed a Motion for Entry of Default Decision, supported by the Declaration of David Camuzo, Esq. ("Camuzo Decl.") and 15 exhibits. Respondent did not file a response to the Motion.

For the reasons set forth below, Enforcement's motion is granted.²

II. Respondent's Default

On November 16, 2009, Enforcement sent the Complaint and Notice of Complaint by certified mail to Respondent's last known residential address according to the Central Registration Depository (the "CRD Address"). This mailing was returned "unclaimed." Camuzo Decl. ¶ 26; CX-13. Respondent did not file an Answer. In the same manner, on December 21, 2009, Enforcement sent the Complaint and Second Notice of Complaint to Respondent at her CRD Address. Camuzo Decl. ¶ 27. The return receipt for this certified mailing reflected Respondent's signature and printed name. Camuzo Decl. ¶ 29; CX-15. Respondent again did not file an Answer.

Enforcement complied with Rule 9134(b)(1) by mailing the Complaint and Notices of Complaint to Respondent's CRD Address, thereby giving her constructive notice of this proceeding. Moreover, based upon her signature on a certified mail return receipt, it appears that Respondent received actual notice of this proceeding. By failing to file an Answer, Respondent defaulted. Accordingly, pursuant to Rules 9215(f) and 9269(a)(2), the allegations in the Complaint are deemed admitted.

² The factual determinations in this Decision are based on the allegations of the attached Complaint, which are deemed admitted, and the declarations and exhibits filed by Enforcement with its motion.

III. Jurisdiction

Respondent first became registered as a General Securities Representative with FINRA member Equitrust Marketing Services, LLC (the "Firm") in 2002. CX-1. On August 6, 2008, the Firm terminated Respondent based upon the conduct alleged in cause one of the Complaint. CX-2. She has not been associated with a member firm since then. Although Respondent is not currently associated with a member firm, FINRA has jurisdiction to bring this proceeding, pursuant to Art. V, § 4 of FINRA's By-Laws, because (1) the Complaint charges Respondent with misconduct while she was an associated person and with failing to comply with requests for information made during the two-year period following termination of her last registration, and (2) the Complaint was filed within that two-year period.

IV. Violations

A. Conversion

The first cause of the Complaint alleges that during the period between December 2007 and August 2008, Respondent converted customer funds to her own benefit and use. Specifically, Respondent received property casualty insurance premium checks from three customers totaling \$2,531.91. Instead of remitting these funds to the insurance company, she deposited them into a checking account that she controlled.

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 Rule 2110 by converting the insurance premium payments.³

B. Failure to Respond

Rule 8210 authorizes FINRA to require any person subject to its jurisdiction to provide information related to any matter under investigation.⁴ The second cause of the Complaint alleges that on April 30, 2009, FINRA Staff sent a request to Respondent at her CRD address by first-class and certified mail, pursuant to Rule 8210, directing her to appear and testify at an on-the-record interview on June 3, 2009. In May 2009, the certified mailing was returned with Respondent's signature and printed name. Nonetheless, Respondent did not appear for testimony.

Again, on September 11, 2009, FINRA Staff sent a request to Respondent at her CRD address by first-class and certified mail, pursuant to Rule 8210, directing her to appear and testify at an on-the-record interview on September 18, 2009. The certified mail receipt was not returned. Respondent did not appear for testimony.

³ The Complaint also charges that Respondent's conversion of funds violated Rule 2330, which applies to "improper use of a customer's securities or funds." It is unclear from the record whether that Rule is applicable to this case, given that the payments were not related to securities transactions and there is no evidence that the customers had securities accounts with Respondent. Accordingly, the Hearing Officer's decision rests on Respondent's violation of Rule 2110. Cf., Dep't of Enforcement v. Grimes, No. C05010033, 2002 NASD Discip. LEXIS 45, at *11 n. 24 (OHO March 25, 2002)(finding that the conversion of funds paid to purchase a variable life insurance policy violated Rule 2110, and declining to reach the issue of whether the misconduct also violated Rule 2330).

⁴ Rule 8210 serves as a key element in FINRA's oversight function and allows FINRA to carry out its regulatory functions without subpoena power. See, e.g., Dep't of Enforcement v. Valentino, No. FPI010004, 2003 NASD Discip. LEXIS 15, at *12 (NAC May 21, 2003), aff'd, 2004 SEC LEXIS 330 (Feb. 13, 2004) ("It is well established that because NASD lacks subpoena power over its members, a failure to provide information fully and promptly undermines NASD's ability to carry out its regulatory mandate.") (citation omitted); Joseph G. Chiulli, Exchange Act Rel. No. 42,359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for FINRA to effectively conduct its investigations, and emphasizing that NASD members and associated persons must fully cooperate with requests for information).

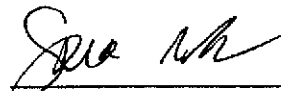
These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent failed to appear for testimony, in violation of Rules 8210 and 2010.⁵

V. Sanctions

For conversion, the Guidelines recommend a bar, regardless of the amount converted. Guidelines at 38. A bar is also standard for a failure to provide requested information in any manner. Guidelines at 35. There is no evidence of any mitigating circumstances that would justify a lesser sanction for these violations. Therefore, the Hearing Officer imposes a bar.⁶

VI. Conclusion

For conversion of customer funds, in violation of Rule 2110, and failing to appear for testimony, in violation of Rules 8210 and 2010, Respondent is barred from associating with any FINRA member in any capacity. These bars shall become effective immediately if this Decision becomes the final disciplinary action of FINRA.



Sara Nelson Bloom
Hearing Officer

Copies to: Esther E. Garcia (*via overnight courier and first-class mail*)
David Camuzo, Esq. (*via first-class and electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

with any FINRA member in any capacity. These bars shall become effective

⁵ A violation of Rule 8210 is also a violation of Rule 2010. Dep't of Enforcement v. Hoeper, No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (NAC Nov. 2, 2001) (applying former Rule 2110).

⁶ Enforcement did not seek restitution because the Firm reimbursed the customers.

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

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

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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