

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Heather D. Pepo (CRD No. 4858338),

Respondent.

**DISCIPLINARY PROCEEDING
No. 20080147347**

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Between November 2004 and June 2006, Heather D. Pepo ("Pepo" or "Respondent") while dually employed at M & T Bank (the "Bank"), and its affiliate M & T Securities ("M & T" or the "Firm"), converted approximately \$12,198 from the Bank by crediting her personal accounts at the Bank for fees charged by the Bank for servicing her accounts. Pepo's conduct violated NASD Conduct Rule 2110.
2. FINRA staff sent Pepo two FINRA Procedural Rule 8210 requests to appear and testify in connection with her unauthorized crediting of fees to her accounts at the Bank. Pepo failed to appear and testify on the two scheduled dates in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010.

FINRA

June 2006, Heather D. Pepo

000068124 2010

RESPONDENT AND JURISDICTION

3. Pepo first became registered with the NASD as an Investment Company and Variable Annuities Representative ("IR") with FINRA member M & T in September 2004. From on or about August 18, 2004 through August 8, 2008, Pepo was an employee of the Bank. During the same time period, Pepo was also employed as an IR with M & T. Pepo was employed with the Bank and the Firm until her termination on August 8, 2008. On August 27, 2008, the Firm filed a Uniform Termination Notice for Securities Industry Registration (the "Form U-5") reporting that Pepo's employment was terminated by the Bank and the Firm for "refunding of service charges to employee's personal bank deposit accounts". On December 10, 2008, an information was filed in the Court of Common Pleas of York County in Pennsylvania against Pepo for theft by unlawful taking and receiving stolen property. On or about December 17, 2008, Pepo filed an Accelerated Rehabilitative Disposition Application. On June 30, 2009, the Court of Common Pleas of York County in Pennsylvania entered an order granting a motion to admit Pepo into the Accelerated Rehabilitative Disposition ("ADR") Program for 12 months.

4. Although Respondent has not been associated with a FINRA member firm since August 8, 2008, she remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years after the date upon which she ceased to be associated with a FINRA member and (2) the Complaint charges her with misconduct committed while she was associated with a FINRA member and with failing to appear for on-the-record testimony during the two-year period after the date upon which she ceased to be associated with a FINRA member.

FIRST CAUSE OF ACTION
(Conversion of Employer's Funds)
NASD Conduct Rule 2110

5. The Department realleges and incorporates by reference paragraphs 1 through 4 above.
6. From November 2004 through June 2006, Pepo, on numerous occasions, credited her Bank personal checking and savings accounts approximately \$12,148 for fees that the Bank charged to service her accounts.
7. The Bank never gave Pepo permission or authority to credit her personal savings and checking accounts at the Bank.
8. On August 8, 2008, the Firm terminated Pepo's employment.
9. NASD Conduct Rule 2110 requires that members and associated persons observe "high standards of commercial honor and just and equitable principles of trade."
10. Respondent wrongfully converted Bank funds by crediting her personal checking and savings accounts at the Bank without the knowledge or authorization of the Bank.
11. As a result of this conduct, Respondent violated NASD Conduct Rule 2110.

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

12. The Department realleges and incorporates by reference paragraphs 1 through 11 above.
13. On or about December 1, 2009 and pursuant to FINRA Procedural Rule 8210, FINRA staff sent a letter (the "December 1 Letter") to Pepo requesting that she appear for an on-the-record interview on December 7, 2009. The December 1 Letter informed Pepo that she was obligated to appear as requested and to answer all questions. The December 1 Letter also

instructed Pepo 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. The December 1 Letter was sent by certified mail, return receipt requested, first class mail and Federal Express to Pepo's last known home address, as reflected in the FINRA Central Registration Depository

("CRD"): [REDACTED] The first class copy of the December 1 Letter was not returned to FINRA. The certified copy of the December 1 Letter was returned to FINRA marked "unclaimed".

14. On December 7, 2009, Pepo did not appear and testify as required by the December 1 Letter.

15. On or about February 2, 2010 and pursuant to FINRA Procedural Rule 8210, FINRA staff sent a letter (the "February 2 Letter") to Pepo requesting that she appear for an on-the-record interview on February 8, 2010. The February 2 Letter informed Pepo that she was obligated to appear as requested and to answer all questions. The February 2 Letter instructed Pepo, as did the December 1 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. The February 2 Letter was sent by certified mail, first class mail and Federal Express to Pepo's last known home address as reflected on the CRD: [REDACTED]

[REDACTED] In February 2010, Enforcement received from the U.S. Postal Service a certified return receipt card dated February 5, 2010 for the February 2 Letter that was mailed on February 2, 2010. The return receipt was signed and contains a signature that appears to be Linda Lehman. The February 2 Letter sent by first class mail to her CRD Address was never returned.

16. On February 8, 2010, Pepo did not appear and testify as required by the February 2 Letter.
17. FINRA Procedural Rule 8210 FINRA authorizes FINRA to require any person subject to its jurisdiction to provide information related to any matter under its investigation.
18. Respondent failed to appear and testify as directed by FINRA in the December 1 Letter and the February 2 Letter.
19. As a result of this conduct, Respondent violated FINRA Procedural 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.
- 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: 5/3/10


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