

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

HEATHER D. PEPO
(CRD No. 4858338),

Respondent.

Disciplinary Proceeding
No. 2008014734701.

Hearing Officer – MC

DEFAULT DECISION

September 27, 2010

Respondent violated NASD Conduct Rule 2110 by converting funds of her employer. Respondent also violated FINRA Conduct Rule 2010 and Procedural Rule 8210 by failing to appear and testify as requested by the Department of Enforcement pursuant to Rule 8210. For these violations, Respondent is barred from associating with any FINRA member firm in any capacity.

Appearances:

Stephanie Glenn-Palmer, Senior Counsel, New York, NY, for the Department of Enforcement.

No appearance by or on behalf of Respondent Heather D. Pepo

DECISION

I. Introduction

The Department of Enforcement filed the attached two-cause Complaint on May 3, 2010.

The First Cause of Action charges Respondent Heather D. Pepo with converting funds of her employer in violation of NASD Conduct Rule 2110.¹ The Second Cause of Action alleges that

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). Pepo's conversions as alleged in the First Cause of Action began in November 2004 and continued through

000065271 2010

000105110 2011

Pepo failed to appear and testify when requested to do so pursuant to FINRA Procedural Rule 8210, in violation of FINRA Rules 2010 and 8210.

Enforcement served the Complaint, Notice of Complaint, and Second Notice of Complaint upon Pepo at her last known residential address listed in the Central Registration Depository ("CRD address"). Pepo failed to file an Answer to the Complaint. Consequently, on August 6, 2010, Enforcement filed a Motion for Entry of Default Decision and Request for Sanctions ("Default Motion"), supported by the Declaration of Stephanie Glenn-Palmer and 15 exhibits.²

II. Findings of Fact and Conclusions of Law

A. Jurisdiction

Pepo first registered with FINRA through member firm M&T Securities, Inc. ("M&T") in September 2004.³ Pepo was an employee of both M&T and its affiliated bank, M&T Bank (the "Bank"). On August 27, 2008, the Firm filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") with FINRA indicating that the Bank terminated Pepo's dual employment on August 8, 2008, for violating the Bank's policies relating to service charges on her personal bank accounts.⁴ Since then, Pepo has not been associated with any FINRA member

June 2006, prior to the adoption of the new rules. The FINRA investigation of Pepo's misconduct led to the issuance of requests to Pepo to testify in December 2009 and February 2010, after NASD Conduct Rule 2110 became FINRA Conduct Rule 2010. Thus, the First Cause of Action alleges that Pepo's misconduct violated NASD Conduct Rule 2110, and the Second Cause of Action alleges that she violated FINRA Conduct Rule 2010, which is identical to former Rule 2110, and Procedural Rule 8210. The rules are available at www.finra.org/rules.

² Enforcement's exhibits will be referred to as "CX-__" with the appropriate exhibit and page numbers; the Declaration of Stephanie Glenn-Palmer will be referred to as "Decl." or "Glenn-Palmer Declaration" with citation to specific paragraphs therein.

³ Pepo was registered as an Investment Company and Variable Annuities Representative. Decl. ¶ 4; CX-1.

⁴ Decl. ¶ 6; CX-2.

firm in any capacity.⁵ Because the misconduct alleged in the Complaint occurred while Pepo was registered with FINRA, and because the Complaint was filed less than two years after she was last registered, FINRA retains jurisdiction over Pepo for the purposes of this proceeding.⁶

B. Default

Enforcement served Pepo with the Complaint and First Notice of Complaint by certified mail at her CRD address on May 3, 2010.⁷ Enforcement received the return receipt for the certified mailing, which was signed illegibly but indicated that the mailing had been delivered at Pepo's CRD address.⁸ Pepo did not file an Answer to the Complaint.⁹

As a result, Enforcement served Pepo with the Complaint and Second Notice of Complaint by both certified and first-class mail at her CRD address on June 14, 2010.¹⁰ The return receipt for the certified mailing, showing delivery was attempted on two dates, was returned to Enforcement marked, "unclaimed" and "return to sender."¹¹ Pepo has not filed an Answer to the Complaint.¹²

Enforcement complied with the requirements of Rule 9134 by making these efforts to serve Pepo with the Complaint, and in doing so provided Pepo with constructive notice that the

⁵ Decl. ¶ 7; CX-1.

⁶ Article V, Section 4, FINRA By-Laws.

⁷ Decl. ¶ 21; CX-12.

⁸ Decl. ¶ 23; CX-13.

⁹ Decl. ¶ 24.

¹⁰ Decl. ¶ 25; CX-14.

¹¹ Decl. ¶ 27; CX-15.

¹² Decl. ¶ 28.

Complaint had been filed.¹³ By failing to file an Answer, Pepo has defaulted. Accordingly, pursuant to Rules 9215(f) and 9269(a)(2) and, for the reasons given below, the Default Motion is granted.¹⁴

C. Pepo Converted Her Employer's Funds

Between November 2004 and June 2006, Pepo converted the Bank's funds by crediting approximately \$12,198 to her personal checking and savings accounts. This was the amount of fees that the Bank had charged Pepo for servicing her accounts. Pepo did this without the knowledge or consent of the Bank or M&T.¹⁵ In August 2008, after the Bank discovered the conversion and confronted her, Pepo admitted that she had granted herself "fee waivers" of the Bank fees.¹⁶ Subsequently, Pepo responded to a FINRA request for information with a brief letter admitting that she violated Bank policy by "refunding" fees charged to her accounts at the Bank. Pepo also wrote that the police had filed criminal charges of theft and receiving stolen property against her and the case had been accepted into a diversion program for resolution that may not result in a conviction.¹⁷ Pepo noted, and M&T confirmed, that restitution to the Bank had been made in full.¹⁸

¹³ *Dep't of Enforcement v. Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at *5 (NAC Dec. 9, 2003) (Rule 9134(b)(1) allows for constructive notice by mailing a complaint to the respondent's most recent CRD address) (citing *Lubeck v. SEC*, 1998 U.S. App. LEXIS 18849, at *20 (9th Cir. Aug. 12, 1998)).

¹⁴ The factual determinations in this Default Decision are based on the allegations of the attached Complaint, which are deemed admitted, as well as the Glenn-Palmer Declaration, and the exhibits filed by Enforcement.

¹⁵ Decl. ¶ 9.

¹⁶ Decl. ¶ 10; CX-3.

¹⁷ Decl. ¶ 11; CX-4.

¹⁸ Decl. ¶¶ 11-12; CX-5.

These facts, as alleged in the Complaint and supported by the Glenn-Palmer Declaration and exhibits, are sufficient to establish, for the purposes of this Default Decision, that Pepo converted Bank funds for her own use, in violation of NASD Conduct Rule 2110.

D. Pepo Failed to Appear and Testify as Requested Pursuant to Procedural Rule 8210

To investigate the matter further, Enforcement issued a request, pursuant to FINRA Rule 8210, on December 1, 2009, by certified and first-class mail, and FedEx, to Pepo's CRD address for her to appear to provide testimony in an on-the-record interview on December 7, 2009.¹⁹ The receipt for the certified mailing was returned to Enforcement marked "return to sender – unclaimed – unable to forward" with indications that delivery was attempted on two dates.²⁰ Pepo failed to appear.²¹

Enforcement attempted once more to obtain Pepo's testimony by issuing a second request on February 2, 2010, by certified and first-class mail, and FedEx, to Pepo's CRD address for her to appear to provide testimony on February 8, 2010.²² The receipt for the certified mailing was returned to Enforcement, indicating that it had been delivered and signed by a "Linda Lehman" on February 5, 2010; neither the first-class nor the FedEx mailing was returned.²³ Both requests, issued under the authority of FINRA Procedural Rule 8210, warned Pepo that a failure to appear

¹⁹ Decl. ¶ 14; CX-6.

²⁰ Decl. ¶ 15; CX-7.

²¹ Decl. ¶ 16; CX-8.

²² Decl. ¶ 17; CX-9.

²³ Decl. ¶ 18; CX-10.

could result in disciplinary action. Nonetheless, Pepo failed to appear for the second scheduled interview.²⁴

These facts, as alleged in the Complaint and supported by the Glenn-Palmer Declaration and exhibits, are sufficient to establish, for the purposes of this Default Decision, that Pepo failed to appear and testify as requested by Enforcement, in violation of FINRA Conduct Rule 2110 and Procedural Rule 8210.

III. Sanctions

Enforcement requests imposition of a bar in this case for each count of the Complaint.

For conversion, FINRA Sanction Guidelines recommend a bar regardless of the amount converted.²⁵ In this case, the amount of funds converted by Pepo and the period of more than 18 months during which she engaged in this misconduct are aggravating factors. There are no apparent mitigating factors. For these reasons, the appropriate sanction to impose upon Pepo for the First Cause of the Complaint is a bar. Because restitution was made in full, no restitution order is required.

The Sanction Guidelines recommend a bar when a respondent fails to respond in any manner to a request for information issued pursuant to Procedural Rule 8210.²⁶ If there are mitigating factors, the Guidelines recommend consideration of a suspension in any or all capacities for up to two years.

Here, the Staff made two efforts to obtain information from Pepo in an on-the-record interview pursuant to Rule 8210 to investigate serious allegations that she converted funds of her

²⁴ Decl. ¶ 19; CX-11.

²⁵ *FINRA Sanction Guidelines*, p. 38 (2007).

²⁶ *Id.* at 35.

employers. Even though Pepo had provided a brief written response to an earlier request for information issued to her CRD address,²⁷ it did not mitigate her failure to respond to Enforcement's two interview requests sent to the same address and to appear at the designated times.

As has often been observed, "Conduct Rule 2110 and Procedural Rule 8210 are crucial components of [FINRA's] examinations and investigations ... Procedural Rule 8210 gives [FINRA] the right to require a member or person associated with a member to provide information, orally or in writing, in connection with an examination or investigation. The Rule further states that no member or person shall fail to provide such information."²⁸ Concerning sanctions for violating Rule 8210, "[t]he Guidelines treat a failure to respond ... as egregious."²⁹

A bar, therefore, is appropriate for Pepo's violations of Conduct Rule 2010 and Procedural Rule 8210 by failing to appear and testify in response to requests issued by Enforcement pursuant to Rule 8210, as alleged in the Second Cause of the Complaint.

IV. Order

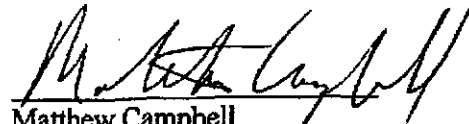
Respondent Heather D. Pepo is barred from associating in any capacity with any FINRA member firm for converting funds of her employer in violation of NASD Conduct Rule 2110, and for failing to appear and testify as Enforcement requested pursuant to Procedural Rule 8210, in violation of FINRA Conduct Rule 2010 and Procedural Rule 8210.

²⁷ Decl. ¶¶ 11, 14, n. 4.

²⁸ *Dep't of Enforcement v. Gregory R. Masceri*, No. C8A040079, 2006 NASD Discip. LEXIS 29, at *35-36 (NAC Dec. 18, 2006).

²⁹ *Id.* at *41.

If this Default Decision becomes FINRA's final disciplinary action, the bars shall be effective immediately.


Matthew Campbell
Hearing Officer

Copies to:

Heather D. Pepo (via FedEx and first-class mail)
Stephanie Glenn-Palmer, Esq. (via electronic and first-class mail)
David R. Sonnenberg, Esq. (via electronic mail)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

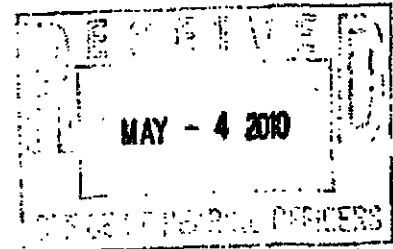
Department of Enforcement,

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.

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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