

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

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REGISTRATION & DISCLOSURE

Department of Enforcement,

Complainant,

v.

Dustin E. Polage (CRD No. 5310751),

Respondent.

DISCIPLINARY PROCEEDING
No. 20080147840

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. On various occasions from March 2008 through June 2008, while holding a Series 6 securities registration with Chase Investment Services Corp. ("Chase" or the "Firm") and employed as a Personal Banker at the Heath Branch office of a JP Morgan Chase, a Chase affiliated retail bank (the "Bank"), Dustin E. Polage ("Polage") generated and activated two ATM cards, which were linked to the accounts of two Bank customers without their knowledge or consent. Using the ATM cards that he generated, Polage withdrew for his own personal use a total of \$36,102.00 from the Bank customers' accounts, without their prior knowledge or authorization. To date, Polage has not returned the funds to the bank customers, nor has he repaid Chase, which reimbursed the customers. As a result of his actions, Polage violated NASD Conduct Rule 2110.

2. Polage also failed to respond to two written requests for information in this matter that were made pursuant to NASD Rule 8210 and two written requests for information that were made pursuant to FINRA Rule 8210. As a result, Polage violated NASD Rules 8210 and 2110 and FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

3. The Department realleges and incorporates by reference paragraphs 1 through 2 above.
4. Polage has been a Series 6 Registered person since March 2007, when he began his employment as a Personal Banker in the Bank's branch office in Heath, Ohio. Polage voluntarily resigned from the Bank on March 29, 2008.
5. Polage is not currently employed in the securities industry, and he has no prior disciplinary history. Polage remains subject to FINRA's jurisdiction pursuant to Article V, Section 4 of FINRA's By-Laws, which provides that a person who is no longer associated with a member is still subject to FINRA's rules for a period of two years after the effective date that the person ceases association with the member. FINRA loses jurisdiction over Polage on March 28, 2010.

FIRST CAUSE OF ACTION

Conversion of Funds from Bank Customers (Rule 2110)

CUSTOMER A

6. The Department realleges and incorporates by reference paragraphs 1 through 5 above.

7. From at least March 2008 through June 2008, Customer A maintained a retail deposit account at the Bank.
8. In March 2008, while holding a Series 6 registration with Chase and employed as a Personal Banker with the Bank, Polage accessed the Bank's systems to obtain information regarding customer A and his retail bank account.
9. Without Customer A's prior knowledge or authorization, Polage used Customer A's personal account information to generate and activate an ATM card linked to Customer A's Bank savings account. From March 10, 2008 through June 2, 2008, Polage, for his own personal benefit, used this ATM card to withdraw a total of \$24,638.50 from Customer A's retail Bank deposit account without Customer A's knowledge or consent.
10. To date, Polage has not returned any of the funds to Customer A or reimbursed the Bank after the Bank reimbursed funds to Customer A.

CUSTOMER B

11. In or around April 2008 through June 2008, Customer B maintained a Bank deposit account.
12. In March 2008, while holding a Series 6 registration with Chase and employed as a Personal Banker with the Bank, Polage accessed the Bank's systems to obtain information regarding Customer B and his retail bank account.
13. Without Customer B's knowledge or authorization, Polage used Customer B's personal account information, to generate and activate an ATM card linked to Customer B's

Bank savings account. From April 26, 2008 through June 2, 2008, Polage, for his own personal benefit, used this ATM card to withdraw funds from Customer B's account on approximately 37 occasions, for a total aggregate unauthorized withdrawal of \$11,463.50.

14. To date, Polage has not returned any of the funds to Customer B or reimbursed the Bank after the Bank reimbursed funds to Customer B.
15. Such acts, practices and conduct, as set forth in Paragraphs 7 through 14, constitute Polage's separate and distinct violations of NASD Conduct Rule 2110.

SECOND CAUSE OF ACTION

Failure to Respond (NASD Rules 8210 and 2110)

16. The Department realleges and incorporates by reference paragraphs 1 through 15 above.
17. By letter dated September 8, 2008, sent via certified mail, return receipt requested and a copy by first class mail to Polage's residential address as reflected in the Central Registration Depository ("CRD") [REDACTED] Enforcement notified Polage that it was investigating the alleged misappropriation of funds from Bank customers. In the letter, Enforcement requested that, pursuant to NASD Rule 8210, Polage provide a detailed written statement addressing the allegations that he had misappropriated funds from Bank customers.
18. A signature of "Dustin Polage" was placed on the certified receipt and dated September 12, 2008, evidencing receipt of the request, but Polage never responded to the request. The first class copy of the request letter dated September 8, 2009 was not returned to Enforcement.

19. By letter dated October 27, 2008, pursuant to NASD Rule 8210, Enforcement sent a second request to Polage's residential address, as reflected in the CRD, via certified mail, return receipt requested and a copy by first class mail, requesting a written statement addressing the theft allegations. In the letter, Enforcement notified Polage that his failure to comply with the request could result in the institution of formal disciplinary action.
20. A signature of "Dustin Polage" was placed on the certified receipt, dated November 5, 2008, evidencing receipt of the request, but Polage never responded to the request. The first class copy of the request letter dated October 27, 2008 was not returned to Enforcement.
21. By virtue of the foregoing conduct, Polage violated NASD Rules 8210 and 2110.

THIRD CAUSE OF ACTION

Failure to Respond (FINRA Rules 8210 and 2010)

22. The Department realleges and incorporates by reference paragraphs 1 through 21 above.
23. By letter dated January 22, 2009, sent via certified mail, return receipt requested, to Polage's address at the Ohio Department of Rehabilitation and Correction - Southeastern Correctional Institution (Dustin E. Polage, [REDACTED] and a copy to his residential address as reflected in the CRD, Enforcement requested, pursuant to FINRA Rule 8210, that Polage provide a written explanation to the allegations that he had misappropriated funds from Bank customers.¹

¹ On November 21, 2008, Polage was convicted of one count of theft, two counts of grand theft, and three counts of unauthorized use of property, all felonies, for his activities in connection with these allegations. Polage is currently serving a 4 ½ year prison sentence in the Ohio Department of Rehabilitation and Correction - Southeastern Correctional Institution in Licking County, Ohio.

24. A signature of "Scott Douglas," an employee at the Ohio Department of Rehabilitation and Correction-Southeastern Correctional Facility, was placed on the certified receipt and dated January 27, 2009, evidencing receipt of the request, but Polage never responded to the request. The first class copy of the request letter dated January 22, 2009 was not returned to Enforcement.
25. By letter dated February 25, 2009, pursuant to FINRA Rule 8210, Enforcement sent a second request to Polage's address at the Ohio Department of Rehabilitation and Correction - Southeastern Correctional Institution via certified mail, return receipt requested and a copy by first class mail to his residential address as reflected in the CRD, requesting a written statement addressing the theft allegations.
26. A signature of "Scott Douglas" was placed on the certified receipt and dated March 3, 2009, evidencing receipt of the request, but Polage never responded to the request. The first class copy of the request was not returned to Enforcement.
27. To date, Polage has not responded to Enforcement's requests for information.
28. By virtue of the foregoing conduct, Polage violated FINRA Rules 8210 and 2010.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. Findings of fact and conclusions of law that Polage committed the violations charged and alleged herein;
 - B. Order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed.
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- C. Order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed, including that the Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest.
- D. Make specific findings that Respondent, as alleged in the First Cause of Action, converted funds of two retail Bank customers in violation of NASD Rule 2110.
- E. Make specific findings that Respondent, as alleged in the Second Cause of Action, failed to respond to requests for information in violation of NASD Rules 8210 and 2110.
- F. Make specific findings that Respondent, as alleged in the Third Cause of Action, failed to respond to requests for information in violation of FINRA Rules 8210 and 2010.
- G. 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: 12/31/09

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