

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

MARK McEWEN
(CRD No. 4613500),

Respondent.

Disciplinary Proceeding
No. 20080149406

Hearing Officer – LBB

DEFAULT DECISION

March 9, 2010

Respondent is barred from associating with any member firm for conversion of customer funds, in violation of NASD Conduct Rules 2330(a) and 2110. He is also barred for failure to appear and testify at an on-the-record interview, in violation of FINRA Procedural Rule 8210 and Conduct Rule 2010.

Appearances

Peter Schlossman, Senior Counsel, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

The Department of Enforcement filed the Complaint in this action on November 5, 2009, asserting two causes of action against Respondent Mark McEwen ("Respondent"). The First Cause of Action charges Respondent with conversion of customer funds, in violation of NASD

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Conduct Rules 2330(a) and 2110.¹ The second cause of action charges Respondent with failure to appear and testify at an on-the-record interview (“OTR”), in violation of FINRA Procedural Rule 8210 and Conduct Rule 2010.² Despite being properly served with the Complaint, Notice of Complaint, and Second Notice of Complaint, Respondent has not filed an answer or otherwise responded to the Complaint. On January 15, 2010, Enforcement filed a Motion for Entry of a Default Decision, to which Respondent did not respond. Accordingly, pursuant to Procedural Rules 9215(f) and 9269, the allegations in the Complaint will be deemed admitted and Enforcement’s motion will be granted.³

I. Respondent’s Default

On November 5, 2009, Enforcement served Respondent with the Complaint and Notice of Complaint by certified mail at his residential address as reflected in the Central Registration Depository (“CRD”). The receipt from the certified mailing was returned to FINRA, signed by Respondent. Schlossman Decl., ¶ 15.

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). This decision refers to and relies on the NASD Conduct Rules that were in effect at the time of Respondent’s alleged misconduct for the first cause of action, and on FINRA Procedural Rule 8210 and Conduct Rule 2010 for Respondent’s failure to respond to requests for information. The applicable rules are available at www.finra.org/rules.

² The Complaint charges Respondent with violations of NASD Rules 8210 and 2110, but the violations took place after FINRA had transferred those rules to the Consolidated FINRA Rulebook. The rules were transferred without substantive change as FINRA Rules 8210 and 2010. *See* Reg. Notice 08-57; Exchange Act Rel. No. 58643 (Sept. 25, 2008), 73 FR 57174 (Oct. 1, 2008) (Order Approving Proposed Rule Change; File No. SR-FINRA-2008-028).

³ The factual determinations in this decision are based on the allegations of the attached Complaint and the materials Enforcement filed with its default motion, which included a Declaration in Support of Motion for Entry of a Default Decision, signed by Enforcement attorney Peter Schlossman, and supporting documentation that was attached to counsel’s declaration. Counsel’s declaration is cited herein as “Schlossman Decl., ¶ __.” The supporting documentation is cited as “CX-__.”

Enforcement served Respondent with a Second Notice of Complaint and Complaint on December 15, 2009, by certified mail at his CRD address. The mailing was returned to FINRA as unclaimed. Schlossman Decl., ¶ 16.

Enforcement served the Complaint and the Notices of Complaint on Respondent in accordance with Procedural Rule 9134, giving him actual and constructive notice of this proceeding. Respondent has not answered or otherwise responded to the Complaint. By failing to respond, he defaulted.

II. Jurisdiction

Respondent was first associated with FINRA member firm World Group Securities, Inc. (“World Group”) in 2003, and was registered through World Group on May 17, 2003. His employment with World Group was terminated on September 15, 2008, for improperly obtaining funds from a client.⁴ Respondent has not been registered with any FINRA member firm since the termination of his employment with World Group. CX-1; Schlossman Decl., ¶¶ 5, 6.

Although Respondent is not registered with a FINRA member firm, he remains subject to FINRA’s jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA’s By-Laws, because the Complaint was filed within two years after the termination of his registration with a member firm, and it charges him with misconduct while he was registered with a member firm and with failing to respond to Rule 8210 requests issued within two years following the termination of his registration with a member firm.

⁴ FINRA staff commenced the investigation that led to the Complaint following the filing of a Form U5 by World Group, reporting that Respondent’s employment had been terminated for converting customer funds.

III. Violations

A. Conversion of Customer Funds, in Violation of NASD Conduct Rules 2330(a) and 2110

Customer L.L., 78 years old, is a retired widow. She and her late husband opened several Individual Retirement Accounts and trust accounts with Respondent in 2004. In 2005, at Respondent's recommendation, L.L. and her husband sold a variable annuity in order to purchase another one, and liquidated Class A mutual funds to purchase another variable annuity. As the result of an investigation by the Missouri Securities Division into unsuitable variable annuity sales to the elderly, World Group agreed to a consent order that required the firm to refund commissions and other fees paid by L.L. and her husband for these transactions.

Pursuant to the consent order, World Group sent a check for \$32,528.56 to L.L. in November 2006. Shortly after L.L. received the check, Respondent falsely informed her that it had been sent to her by mistake, and that the check actually represented commissions owed to him by the firm. Respondent instructed L.L. to deposit the check into her bank account and then write a check payable to him in the same amount. L.L. followed Respondent's instructions. Respondent cashed L.L.'s check in January 2007, and deposited \$32,528.56 into his personal bank account.

Between May 2006 and March 2007, L.L. wrote five other checks to Respondent for a total amount of \$31,000. Respondent deposited \$11,000 that was intended for investment in L.L.'s World Group accounts into his personal bank account, and did not use the money to invest in L.L.'s investment accounts. In addition, Respondent persuaded L.L. to pay him \$20,000 so he could help two of her grandchildren become associated with World Group. The \$20,000 was supposed to be used for expenses, but, Enforcement alleges, \$20,000 far exceeded the "actual

value of these undertakings.” Moreover, Respondent separately charged the grandchildren for some of the same costs.

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 (2007) (“Sanction Guidelines”). Conversion of customer funds violates Rules 2330(a) and 2110. See, e.g., *Dep’t of Enforcement v. Kendzierski*, No. C9A980021, 1999 NASD Discip. LEXIS 40 (N.A.C. Nov. 12, 1999) (registered representative barred for converting customer funds where he altered the customer’s check to substitute his name for his firm’s name on the payee line, deposited the check into his personal bank account and used the money to pay personal expenses); *Dep’t of Enforcement v. Patel*, No. C02990052, 2001 NASD Discip. LEXIS 42 (N.A.C. May 23, 2001) (misuse of funds by diverting funds received from customers for bond purchases to personal use violates Rules 2110 and 2330(a)).

The allegations of the Complaint, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent converted customer funds, in violation of NASD Conduct Rules 2330(a) and 2110 by using false statements to induce L.L. to pay him \$32,528.56, and by depositing checks for \$11,000 that L.L. intended to be used for investments into his personal bank account.⁵

B. Failure to Appear and Testify at an On-the-Record Interview, in Violation of FINRA Procedural Rule 8210 and Conduct Rule 2010

On May 19, 2009, pursuant to Rule 8210, FINRA staff sent Respondent a request to appear and testify at an OTR on June 18, 2009. The request, sent by certified mail to his CRD address, was returned unclaimed. A first-class mailing that was also sent to Respondent at his

⁵ The allegations in the Complaint are insufficient to determine whether Respondent also converted the \$20,000 that L.L. paid him for assisting her grandchildren to get jobs with World Group.

CRD address was not returned. FINRA staff also left three telephone messages for Respondent at his place of employment, but Respondent did not return any of the messages. Respondent did not appear at the June 18 OTR.

Enforcement sent a second Rule 8210 request on June 22, 2009, by certified and first-class mail to his CRD address, scheduling an OTR for July 14, 2009. The certified mailing was returned unclaimed. The first-class mailing was not returned. Respondent did not appear on July 14, 2009.

Both requests were served within two years of the termination of Respondent's registration with a member firm. Respondent was required to respond pursuant to Rule 8210 and Article V, Section 4 of FINRA's By-Laws. These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent failed to respond to requests for information, in violation of Procedural Rule 8210. A violation of Rule 8210 is also a violation of Conduct Rule 2010.⁶

IV. Sanctions

The Sanction Guidelines recommend a bar as the sanction for conversion in violation of NASD Conduct Rules 2330(a) and 2110, regardless of the amount converted. *Sanction Guidelines* at 38. There is no evidence of any mitigating factors that would make a sanction of anything less than a bar appropriate. A bar is the appropriate sanction for Respondent's conversion of funds. Because the customer has been reimbursed by World Group, restitution will not be ordered.

The Guidelines recommend a bar where a respondent fails to respond in any manner to a request for information issued pursuant to FINRA or NASD Procedural Rule 8210. *Sanction*

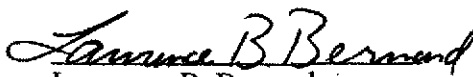
⁶ *Dep't of Enforcement v. Hoeper*, No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (N.A.C. Nov. 2, 2001) (violation of NASD Procedural Rule 8210 was a violation of NASD Conduct Rule 2110).

Guidelines at 35. Where mitigation exists, the Guidelines recommend consideration of a suspension in all capacities of up to two years. The record reflects that Respondent failed to appear and testify at his OTR. There are no mitigating factors that would justify imposition of a lesser sanction. A bar is the appropriate sanction under the facts and circumstances of this case for Respondent's violations of FINRA Procedural Rule 8210 and Conduct Rule 2010.

V. Conclusion

Respondent Mark McEwen is barred from associating with any member firm for conversion of funds, in violation of NASD Conduct Rules 2330(a) and 2110. He is also barred for failure to appear and testify at an on-the-record interview, in violation of FINRA Procedural Rule 8210 and Conduct Rule 2010. The bars will become effective immediately if this decision becomes FINRA's final disciplinary action in this proceeding.

SO ORDERED.


Lawrence B. Bernard
Hearing Officer

Copies to: Mark McEwen (*via overnight courier and first-class mail*)
Peter Schlossman, Esq. (*via e-mail and first-class mail*)
David R. Sonnenberg, Esq. (*via e-mail*)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

V.

Mark McEwen (CRD No. 4613500),

Respondent.

DISCIPLINARY PROCEEDING
NO. 20080149406

COMPLAINT

The Department of Enforcement alleges:

1. Respondent Mark McEwen ("Respondent" or "McEwen") first became registered as a limited securities representative (Series 6) and (Series 63) in 2003, at World Group Securities, Inc. ("World Group" or "firm"), in Chesterfield, MO.
2. On September 15, 2008, World Group terminated Respondent McEwen in part for improperly obtaining funds from a customer. Respondent McEwen has not been associated with any FINRA member or registered with FINRA in any capacity since that time.
3. Pursuant to Article V, Section 4 of the NASD By-Laws, FINRA retains jurisdiction over Respondent.

FIRST CAUSE OF ACTION

CONVERSION OF CUSTOMER'S FUNDS VIOLATION OF NASD

CONDUCT RULES 2330(A) AND 2110

4. The Department realleges and incorporates by reference paragraphs 1-3 above.
5. Customer LL, 78, is a resident of St. Charles, Missouri. She is retired and a widow.
6. LL and her husband opened several Individual Retirement Accounts ("IRAs") and trust accounts with McEwen at World Group in 2004.
7. In 2005, McEwen recommended that LL and her husband sell a variable annuity in order to purchase another one and liquidate Class A mutual funds to purchase yet another variable annuity. LL and her husband followed McEwen's recommendation.
8. As a result of an investigation by the Missouri Securities Division into unsuitable variable annuity sales to the elderly, World Group agreed to a Consent Order to return commissions and other fees paid by LL and her husband for these transactions.
9. Pursuant to this Order, World Group sent LL a check for \$32,528.56 in November 2006.
10. Shortly after LL received the check McEwen falsely informed her that it was sent to her by mistake and actually represented commissions owed to him by the firm. McEwen instructed LL to deposit the check into her bank account and then make a check payable to him in the same amount. LL followed these instructions. McEwen cashed the check supplied by LL in January 2007 and deposited \$32,528.56 into his personal bank account.

11. Additionally, between May 2006 and March 2007, LL wrote five other checks to McEwen for a total amount of \$31,000 in addition to the \$32,528.56 check described in paragraph 10. McEwen deposited these checks into his personal bank account and did not use the money to invest in LL's investment accounts.

12. Of the \$31,000, LL wrote checks made payable to McEwen for \$11,000 to invest in her World Group accounts. However, McEwen deposited these funds in his personal bank account and failed to purchase investments on LL's behalf or otherwise place these funds in her accounts.

13. LL wrote checks payable to McEwen for the remaining portion of the \$31,000, or \$20,000, pursuant to McEwen's suggestion that he could help two of her grandchildren become associated with World Group if she paid certain expenses. However, the amount that McEwen charged LL to pay for registration fees, examination preparation, and related costs, and trips by the grandchildren to firm events greatly exceeded that actual value of these undertakings. Moreover, McEwen separately charged the grandchildren for some of the same costs, such as registration fees.

14. The firm reimbursed LL \$63,528.56 for the monies she provided to McEwen. McEwen did not contribute any money towards the settlement. On September 15, 2008, World Group terminated Respondent McEwen's employment for improperly obtaining funds from LL and for refusing to cooperate with its investigation.

15. By reason of the foregoing, Respondent McEwen violated NASD Conduct Rules 2330(a) and 2110 by misappropriating funds from LL.

SECOND CAUSE OF ACTION

**FAILURE TO APPEAR FOR ON-THE-RECORD INTERVIEW
VIOLATION OF NASD CONDUCT RULE 2110 AND
NASD PROCEDURAL RULE 8210**

16. The Department realleges and incorporates by reference paragraphs 1-15 above.

17. In a letter dated May 19, 2009, sent by certified and United States mail to Respondent McEwen's CRD address, the Department scheduled Respondent McEwen's on-the-record (OTR) testimony pursuant to Rule 8210 for June 18, 2009, in FINRA's Washington, D.C. Enforcement office.

18. The certified letter was returned to Staff as "unclaimed" after three delivery attempts. The copy sent by first class U.S. mail was not returned.

19. Staff left telephone messages for McEwen at his place of employment on June 8, June 15, and June 17, 2009. McEwen did not return any of these messages.

20. Respondent McEwen did not appear at the Washington, D.C. office on June 18, 2009 for his OTR, as requested.

21. The Department sent Respondent McEwen a second Rule 8210 request, dated June 22, 2009, by certified and United States mail pursuant to Rule 8210, scheduling his OTR testimony for July 14, 2009, in FINRA's Washington, D.C. Enforcement office.

22. The certified letter was returned to Staff as "unclaimed" after three delivery attempts. The copy sent by first class U.S. mail was not returned.

23. Respondent McEwen did not appear at the Washington, D.C. office on July 14, 2009 for his OTR, as requested.

24. As Respondent McEwen failed to appear for his OTRs on both June 18, 2009 and July 14, 2009, and no adjournment was requested or granted, he violated NASD Conduct Rule 2110 and NASD Procedural Rule 8210.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under NASD 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 NASD Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date: 11/4/09


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