

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

Department of Enforcement,

Complainant,

V.

Richard Totoy (CRD No. 5423558),

Respondent.

DISCIPLINARY PROCEEDING  
No. 2008015139801

Hearing Officer – Andrew H. Perkins

**AMENDED COMPLAINT**

The Department of Enforcement alleges:

**SUMMARY**

1. On or about August 28, 2008, and again on or about September 6, 2008, Respondent Richard Totoy ("Totoy"), a personal banker with JP Morgan Chase Bank, N.A. ("Chase Bank"), used an ATM card that he created to access the account of an elderly bank customer, EJ, and withdrew a total of \$1,000 from the account without EJ's knowledge or authorization. During an internal investigation by Chase Bank, Totoy admitted taking the money from EJ's account. Totoy ultimately returned the \$1,000 that he took, and he was terminated from Chase Bank. By virtue of this conduct, Totoy violated NASD Conduct Rule 2110.

2. On two separate occasions following his termination from Chase Bank, FINRA staff members requested information from Totoy, pursuant to NASD Rule 8210, regarding his alleged theft of \$1,000 from EJ. Totoy did not respond to any of these requests for information. By virtue of this conduct, Totoy violated NASD Rules 8210 and 2110.

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3. On two separate occasions following his termination from Chase Bank, FINRA staff members requested that Totoy appear to provide testimony, pursuant to FINRA Rule 8210. Totoy never appeared to testify. By virtue of this conduct, Totoy violated FINRA Rules 8210 and 2010.

#### **RESPONDENT AND JURISDICTION**

4. Respondent Totoy (CRD No. 5423558) first became registered as an Investment Company & Variable Products Representative in October of 2007 with member firm Chase Investment Services Corp. During all relevant times herein, Totoy was employed as a personal banker with Chase Bank. Totoy began working at Chase Bank in September 2007, and he was terminated on September 15, 2008, after admitting to misappropriating money from a bank client's savings account. Totoy is not currently associated with any FINRA member firm but remains within FINRA's jurisdiction pursuant to Article V, Section 4 of the FINRA By-Laws.

#### **FIRST CAUSE OF ACTION**

##### **CONVERSION OF CUSTOMER'S FUNDS (VIOLATION OF NASD CONDUCT RULE 2110)**

5. The Department of Enforcement re-alleges and incorporates by reference paragraphs 1 through 4, above.

6. EJ, an elderly client of Chase Bank, had an account with the bank since 1990. On multiple occasions, Totoy, while working as a personal banker, assisted EJ with her banking transactions. In addition to executing banking transactions for EJ, Totoy issued an ATM card to her on August 21, 2008.

7. On or about late August/early September 2008, Chase Bank initiated an investigation into EJ's account activity through its internal investigative department. The bank's management handled all banking transactions involving EJ thereafter.

8. During its investigation, Chase Bank found that two \$500 withdrawals had been made from EJ's account with an ATM card, the first occurring on August 28, 2008, and the second on September 6, 2008. The bank reviewed surveillance photographs of the ATM withdrawals and discovered that the withdrawals were not made by EJ, but by a young, adult male.

9. After determining that the person in the surveillance photographs was Totoy, members of the bank's internal investigative department confronted Totoy about the withdrawals. When confronted with the evidence regarding the withdrawals in an interview, Totoy admitted that he had, in fact, improperly withdrawn the funds from EJ's account without her knowledge or consent.

10. After admitting that he had taken the money from EJ's account, Totoy returned the \$1,000 to the bank.

11. By reason of the foregoing, Respondent Totoy violated NASD Conduct Rule 2110.

## **SECOND CAUSE OF ACTION**

### **FAILURE TO PROVIDE INFORMATION TO FINRA (VIOLATION OF NASD RULES 8210 AND 2110)**

12. The Department of Enforcement re-alleges and incorporates by reference paragraphs 1 through 11, above.

13 FINRA issued to Totoy requests for information, pursuant to NASD Rules 8210, on October 22, 2008, and December 16, 2008. Each request was mailed to Totoy by first-class mail and certified mail to his residential address as reflected in the Central Registration Depository ("CRD address"). The first request letter, dated October 22, 2008, sent by certified mail, was returned unclaimed. The second request letter, dated December 16, 2008, sent by certified mail, was also returned unclaimed. The letters sent by first-class mail were not returned. Nevertheless, Totoy failed to respond to either request letter. On September 23, 2009, the staff sent a third request for information to Totoy, pursuant to FINRA Rule 8210, at an alternate address that he provided to Chase Bank during its internal investigation. That request letter was returned as "undeliverable." As a result of failing to respond to the first two requests for information, Totoy violated NASD Rule 8210. By failing to respond to these regulatory requests, Totoy also failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of NASD Rule 2110.

## **THIRD CAUSE OF ACTION**

### **FAILURE TO APPEAR FOR ON-THE-RECORD INTERVIEWS (VIOLATION OF FINRA RULES 8210 AND 2010)**

14. The Department re-alleges and incorporates by reference paragraphs 1 through 13, above.

15. FINRA issued, pursuant to FINRA Rule 8210, a request for Totoy to appear to testify on-the-record in FINRA's Department of Enforcement Washington, D.C. office on March 31, 2009.

16. This letter was sent by first-class mail and certified mail to Totoy's CRD address.

17. The certified letter was received at Totoy's CRD address and the return receipt was signed by Josefa Melendez and returned to FINRA. The first-class letter was not returned. Nevertheless, Totoy did not appear to testify on March 31, 2009, nor he did not contact FINRA staff to explain his absence.

18. In a second letter dated March 31, 2009, sent by first-class mail and certified mail to Totoy's CRD address, FINRA scheduled a second date for Totoy to testify. This second request letter was issued pursuant to FINRA Rule 8210 and requested Totoy to appear to testify on-the-record in FINRA's Department of Enforcement Washington, D.C. office on April 21, 2009. The certified letter was returned, unclaimed. The first-class letter was not returned. Still, Totoy did not appear to testify on April 21, 2009, nor did he contact FINRA to explain his absence.

19. By virtue of the foregoing, Totoy violated FINRA Rules 8210 and 2010.

### **RELIEF REQUESTED**

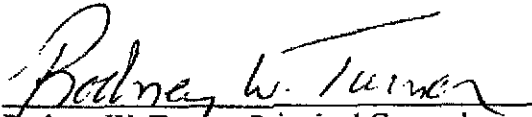
WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided pursuant to FINRA Rule 8310, including a bar against Respondent from associating with any member firm in any capacity, 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: February 5, 2010

  
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