

**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

DEFAULT DECISION

July 7, 2010

Respondent is barred from associating with any member firm in any capacity for (1) conversion of funds, in violation of NASD Conduct Rule 2110, (2) failing to respond to FINRA's requests for information, in violation of Procedural Rule 8210, NASD Conduct Rule 2110, and FINRA Conduct Rule 2010; and (3) failing to appear and testify at an on-the-record interview, in violation of Procedural Rule 8210 and FINRA Conduct Rule 2010.

Appearances

Rodney W. Turner, Counsel, Washington, DC, for the Department of Enforcement.

No appearance by or on behalf of Richard Totoy.

DECISION

I. Introduction

The FINRA Department of Enforcement ("Enforcement") filed the attached Amended Complaint with the Office of Hearing Officers on February 5, 2010. The Amended Complaint charges Respondent Richard Totoy ("Totoy") with three violations: (1) conversion of funds through the unauthorized use of a bank customer's ATM card, in violation of NASD Conduct Rule 2110; (2) failure to respond to requests for information, in violation of Procedural Rule 8210, NASD Conduct Rule 2110, and FINRA Conduct Rule 2010; and (3) failure to appear and

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testify at an on-the-record interview, in violation of Procedural Rule 8210 and FINRA Conduct Rule 2010.¹

Totoy failed to answer or otherwise respond to the Amended Complaint. Accordingly, on April 23, 2010, the Hearing Officer directed Enforcement to file a motion for entry of a default decision. On May 20, 2010, Enforcement filed a Motion for Entry of Default Decision and Request for Sanctions ("Default Motion") with the Office of Hearing Officers, together with the Declaration of Rodney W. Turner and two exhibits. Totoy did not respond to the motion.

The Hearing Officer entered an order on June 1, 2010, denying Enforcement's Default Motion because Enforcement had not provided sufficient evidence to support a finding that Enforcement had served Totoy with notice of this proceeding in accordance with the Code of Procedure. On June 2, 2010, Enforcement filed a Supplemental Declaration of Rodney W. Turner, together with two additional exhibits. The Hearing Officer accepted the Supplemental Declaration as Enforcement's request to renew its Default Motion.

The Hearing Officer grants Enforcement's Default Motion. Based on the facts alleged in the Amended Complaint, which are deemed admitted pursuant to Rules 9215(f) and 9269(a), as well as the additional evidence Enforcement filed in support of the Default Motion, the Hearing Officer will bar Totoy from associating with any member firm in any capacity for each violation.

¹ NASD consolidated with the member regulation and enforcement functions of NYSE Regulation in July 2007 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. See Regulatory Notice 08-57 (Oct. 2008). In that process, NASD Conduct Rule 2110 was renumbered as FINRA Conduct Rule 2010. This decision refers to and relies on the Conduct Rules that were in effect at the time of Respondent's alleged misconduct. For the first and third causes of action, the applicable conduct rule is NASD Conduct Rule 2010 because the alleged misconduct occurred after December 15, 2008. For the second cause of action, NASD Conduct Rule 2110 and FINRA Conduct Rule 2010 apply. The applicable rules are available at www.finra.org/rules.

II. Background

Totoy was employed as a personal banker by JP Morgan Chase Bank, N.A. (“Chase Bank”) from September 2007 until September 15, 2008.² In addition, from October 10, 2007, until October 1, 2008, Totoy was registered with FINRA as an Investment Company and Variable Contracts Products Representative through Chase Bank’s broker-dealer affiliate, Chase Investment Services Corp. (“Chase Investment”).³

On October 1, 2008, Chase Investment filed a Uniform Termination Notice for Securities Industry Registration (Form U5) on Totoy’s behalf, which disclosed that Chase Bank and Chase Investment terminated Totoy because he had misappropriated money from a customer’s deposit account at Chase Bank.⁴ Totoy’s misconduct did not involve securities or a customer’s securities account.⁵ Upon receipt of Totoy’s Form U5, FINRA initiated an investigation that led to Enforcement filing the Complaint in this proceeding.⁶

III. Jurisdiction

FINRA has jurisdiction over this disciplinary proceeding, pursuant to Article V, Section 4 of FINRA’s By-Laws, because (1) the Complaint was filed within two years after October 1, 2008, the date FINRA terminated Totoy’s registration, and (2) the Complaint charges him with misconduct that occurred while he was associated with a FINRA member firm, and with failing

² Ex. 1, at 1.

³ *Id.*; Ex. 2.

⁴ Ex. 1, at 5.

⁵ *Id.*

⁶ Turner Decl. ¶ 5.

to respond to Enforcement's requests for information made during the two-year period following the termination of his FINRA registration.⁷

IV. Totoy's Default

On February 5, 2010, Enforcement served Totoy with the Notice of Amended Complaint by certified mail (return receipt requested) and first-class mail sent to his residential address recorded in the Central Registration Depository ("CRD").⁸ Enforcement did not receive a signed receipt for the certified mailing although neither mailing was returned as undeliverable.⁹ Totoy did not file an Answer or otherwise respond to the Amended Complaint.

On March 9, 2010, Enforcement served Totoy with the Second Notice of Amended Complaint by certified mail (return receipt requested) and first-class mail sent to his CRD address.¹⁰ Again, Enforcement did not receive a signed receipt for the certified mailing although neither mailing was returned as undeliverable.¹¹ Totoy did not respond to the Second Notice of Amended Complaint.

The Hearing Officer finds that Totoy received constructive notice of this proceeding.¹² Accordingly, the Hearing Officer finds that Totoy defaulted by failing to answer or otherwise respond to the Amended Complaint.

⁷ See Article V, Sec. 4(a), FINRA By-Laws, available at www.finra.org/Rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: By-Laws").

⁸ Turner Decl. ¶ 8.

⁹ *Id.*

¹⁰ *Id.* ¶ 9.

¹¹ *Id.* ¶ 9.

¹² *Department of Enforcement v. Reynolds Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at *5 (N.A.C. Dec. 9, 2003) (Procedural Rule 9134(b)(1) allows for constructive notice by mailing a complaint to the respondent's most recent CRD address) (quoting *Lubeck v. SEC*, 1998 U.S. App. LEXIS 18849, at *20 (9th Cir. Aug. 12, 1998)).

V. Findings of Fact and Conclusions of Law

A. Conversion of Funds

The First Cause of Action alleges that Totoy withdrew \$1,000 from EJ's bank account at Chase Bank through the unauthorized use of her ATM card. Chase Bank's surveillance camera confirmed that Totoy used EJ's ATM card on August 28 and September 6, 2008. On each date, Totoy withdrew \$500 in cash from the bank's ATM system. When Chase Bank questioned Totoy, he admitted that he made the withdrawals and returned the \$1,000 to the bank.

The Hearing Officer finds that the foregoing facts establish that Totoy converted \$1,000 from EJ, in violation of NASD Conduct Rule 2110.¹³

B. Failure to Respond to Requests for Information and Failure to Appear and Provide Testimony

The Second Cause of Action alleges that Totoy failed to respond to a series of requests seeking information about his alleged conversion of funds reported on his Form U5. FINRA staff sent the requests on October 22, 2008, December 16, 2008, and September 23, 2009. The staff sent the first two requests by certified mail to Totoy's CRD address in accordance with Procedural Rule 8210(d). The staff sent the third request to an alternate address Totoy had provided to Chase Bank during its investigation. Totoy did not respond to any of the requests.

The Third Cause of Action alleges that Enforcement sent Totoy a Rule 8210 request that he appear on March 31, 2009, for an on-the-record interview. Enforcement sent the request dated March 17, 2009, to Totoy by certified and first-class mail to his CRD address. Totoy did not comply with the request. Enforcement then sent him a request that he appear for his on-the-record interview on April 21, 2009. Enforcement sent the second request on March 31, 2009, to

¹³ Rule 2110 requires that FINRA members and associated persons "observe high standards of commercial honor and just and equitable principles of trade." A respondent violates the just and equitable principles of NASD Rule 2110 when he engages in unethical conduct. *See, e.g., Department of Enforcement v. Davenport*, No. C05010017, 2003 NASD Discip. LEXIS 4, at *8 (N.A.C. May 7, 2003).

Totoy by certified and first-class mail to his CRD address. Totoy did not appear on April 21, 2009.

The facts alleged in the Second Cause of Action establish that Totoy violated Procedural Rule 8210 and NASD Conduct Rule 2110 by failing to respond to the requests for information dated October 22, 2008, and Procedural Rule 8210 and FINRA Conduct Rule 2010 by failing to respond to the request for information dated December 16, 2008. In addition, the facts alleged in the Third Cause of Action establish that he violated Procedural Rule 8210 and FINRA Conduct Rule 2010 by failing to appear and testify at his scheduled on-the-record interviews.

VI. Sanctions

A. Conversion

The FINRA Sanction Guidelines (“Sanction Guidelines”) for conversion state that a bar is “standard,” regardless of the amount converted.¹⁴ The Hearing Officer finds that a bar is the appropriate sanction in this case. Totoy took advantage of EJ, an elderly bank customer by using the ATM card he had issued to her in August 2008. There are no mitigating factors warranting a lesser sanction.

B. Failure to Respond to Requests for Information

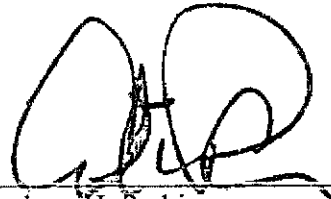
The Sanction Guidelines recommend a bar when a respondent fails to respond in any manner to a request for information and there are no mitigating factors.¹⁵ Here, Totoy repeatedly failed to respond to FINRA’s requests for information. He twice failed to respond to requests that he respond in writing, and he twice failed to appear for an on-the-record interview. Accordingly, the Hearing Officer will bar Totoy for these violations as well.

¹⁴ *FINRA Sanction Guidelines* 38 (2007), www.finra.org/sanctionguidelines.

¹⁵ *Sanction Guidelines* 35.

VII. Order

Richard Totoy is barred from associating with any member firm in any capacity for each of the following violations: (1) converting funds, in violation of NASD Conduct Rule 2110, as alleged in the First Cause of Action; (2) failing to respond to requests for information in writing, in violation of Procedural Rule 8210, NASD Conduct Rule 2110, and FINRA Conduct Rule 2010, as alleged in the Second Cause of Action; and (3) failing to appear and testify at an on-the-record interview, in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010, as alleged in the Third Cause of Action. The bars shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.

A handwritten signature in black ink, appearing to read 'A. Perkins', written over a horizontal line.

Andrew H. Perkins
Hearing Officer

Copies to:

Richard Totoy (by FedEx, next day delivery, and first-class mail)
Rodney W. Turner, Esq. (by electronic and first-class mail)
David R. Sonnenberg, Esq. (by electronic mail)

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**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.

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

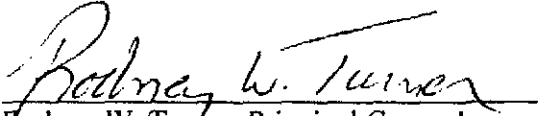
WHEREFORE, the Department respectfully requests that the Panel:

- 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.

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- 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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