

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

SHAWN S. KELLER  
(CRD No. 2973355),

Respondent.

Disciplinary Proceeding  
No. 2008015227201

Hearing Officer—Andrew H. Perkins

**DEFAULT DECISION**

May 20, 2009

**The Respondent violated Conduct Rule 2110 by stealing equipment from his firm's office, and violated Conduct Rule 2110 and Procedural Rule 8210 by failing to respond to requests for information. For these violations, the Respondent was barred from associating with any member firm in any capacity.**

**Appearances**

Jill G. Fieldstein, Senior Counsel, New York, NY, for the Department of Enforcement.

No appearance by or for Shawn S. Keller.

**DECISION**

**I. Introduction**

The Department of Enforcement ("Enforcement") for the Financial Industry Regulatory Authority ("FINRA") filed a Complaint (attached to this Decision as Exhibit A) on March 4, 2009. The First Cause of Action alleges that Respondent Shawn S. Keller ("Keller") stole computer monitors and telephone equipment valued at approximately \$4,400 from the branch office of Hartford Investment Financial Services, LLC ("HIFS") where he was employed, in violation of Conduct Rule 2110. The Second Cause of Action alleges that

Keller violated Procedural Rule 8210 and Conduct Rule 2110 by failing to respond to FINRA requests for information regarding the allegations in the First Cause of Action.<sup>1</sup>

Keller did not answer or otherwise respond to the Complaint. Consequently, on May 8, 2009, Enforcement filed a Motion for Entry of Default Decision and Request for Sanctions, supported by the Declaration of Jill G. Fieldstein ("Fieldstein Decl.") and seven exhibits. Keller did not respond to the motion.<sup>2</sup>

## **II. Findings of Fact and Conclusions of Law**

### **A. Respondent's Default**

The Hearing Officer finds that Enforcement properly served Keller with the Complaint by mailing the Complaint and the First and Second Notices of Complaint to his most current residential address shown in the Central Registration Depository (the "CRD Address") in accordance with FINRA Procedural Rule 9134(b)(1). Enforcement mailed the Complaint and First Notice of Complaint to Keller by first-class and certified mail, return receipt requested, on March 4, 2009.<sup>3</sup> The United States Postal Service returned the certified mailing to FINRA marked, "Unclaimed."<sup>4</sup> Enforcement mailed the Complaint and Second Notice of Complaint to Keller's CRD Address by first-class and certified mail, return receipt requested, on April 2, 2009. The certified mailing was delivered on April 10, 2009; however, the United States Postal Service returned the letter to FINRA on May 4, 2009, marked

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<sup>1</sup> 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 consolidate 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. The applicable rules are available at [www.finra.org/rules](http://www.finra.org/rules).

<sup>2</sup> The factual determinations in this decision are based on the allegations of the attached Complaint, which are deemed admitted, as well as additional materials filed by Enforcement.

<sup>3</sup> Fieldstein Decl. ¶ 24.

<sup>4</sup> CX-4.

“Unclaimed.”<sup>5</sup> To date, Keller has not filed an Answer with the Office of Hearing Officers or otherwise responded to the Complaint.

Keller defaulted by failing to answer the Complaint.<sup>6</sup> Accordingly, pursuant to Procedural Rules 9215(f) and 9269(a)(2), the Hearing Officer deems the allegations in the attached Complaint admitted and grants Enforcement’s motion for entry of a default decision.

#### **B. Jurisdiction**

Keller first became registered as an Investment Company Products and Variable Contracts Representative in 1998.<sup>7</sup> Between March 14, 2002, and September 12, 2008, he was registered in the same capacity through HIFS.<sup>8</sup> On October 7, 2008, HIFS filed a Uniform Termination Notice for Securities Industry Registration (Form U5) that indicated HIFS had terminated Keller’s employment on September 12, 2008, for “alleged theft of company property.”<sup>9</sup>

Keller has not been registered with FINRA since October 7, 2008.<sup>10</sup> Nonetheless, he remains subject to FINRA’s jurisdiction for purposes of this proceeding pursuant to Article V, Section 4 of FINRA’s Bylaws because (1) the Complaint was filed within two years following the termination of his registration, and (2) the Complaint charges him with misconduct committed while he was associated with HIFS and with failing to respond to

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<sup>5</sup> Fieldstein Decl. ¶ 28; CX-7.

<sup>6</sup> *Dep’t of Enforcement v. Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at \*5 (N.A.C. Dec. 9, 2003) (NASD 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 (9<sup>th</sup> Cir. Aug. 12, 1998)).

<sup>7</sup> CX-1.

<sup>8</sup> Fieldstein Decl. ¶ 5; CX-1.

<sup>9</sup> CX-2.

<sup>10</sup> CX-1, at 5.

FINRA's requests for information made during the two-year period following the termination of his FINRA registration.<sup>11</sup>

**C. Origin of the Underlying Investigation**

FINRA began its investigation of Keller on October 7, 2008, after it received the Form U5 filed by HIFS, which reported that it had terminated him for theft of company property. FINRA staff investigated Keller's conduct to determine if he had violated Conduct Rule 2110. In connection with the investigation, the staff sent Keller two requests for information pursuant to Procedural Rule 8210. Keller failed to respond to either request. At the conclusion of the investigation, Enforcement filed the Complaint in this proceeding, alleging that Keller stole equipment from HIFS and failed to respond to the two related information requests.<sup>12</sup>

**D. Theft of Firm Property**

The First Cause of Action alleges that Keller stole 15 computer monitors and one telephone set from his HIFS branch office in July and August 2008 and then sold the equipment to pawn shops. The equipment was worth approximately \$4,400. In a written statement Keller provided dated September 4, 2008, he admitted that he took the monitors and pawned them for cash.<sup>13</sup>

The allegations in the First Cause of Action are sufficient to establish for the purposes of this Decision that Keller violated Conduct Rule 2110.

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<sup>11</sup> Article V, Sec. 4, FINRA By-Laws, *available at* [www.finra.org/rules](http://www.finra.org/rules) (then follow "FINRA Manual" hyperlink to "Corporate Organization: Bylaws").

<sup>12</sup> Fieldstein Decl. ¶ 8.

<sup>13</sup> *Id.* ¶¶ 9, 11. The police recovered, and is in possession of, eight of the monitors. They are being held by the police to be used as evidence in any future criminal proceedings. *Id.* ¶ 14.

#### **E. Failure to Respond to Information Requests**

The Second Cause of Action alleges that Keller failed to respond to two written requests that he provide information about his alleged theft of the HIFS equipment. The requests were dated October 28 and November 19, 2008. FINRA staff sent each request to Keller at his CRD Address by regular and certified first-class mail pursuant to Procedural Rule 8210. Keller signed for receipt of the first request on November 1, 2008.<sup>14</sup> Nonetheless, Keller did not respond to either request.<sup>15</sup>

The Hearing Officer finds that the allegations in the Second Cause of Action are sufficient to establish, for purposes of this default decision, that Keller violated Procedural Rule 8210 and Conduct Rule 2110.

### **III. Sanctions**

#### **A. Theft of Firm Property**

The FINRA Sanction Guidelines (“Guidelines”) for conversion of property recommend a bar, regardless of the amount converted.<sup>16</sup> Here, there is no evidence of any mitigating factors that would justify a lesser sanction. Accordingly, the Hearing Officer will bar Keller from associating with any member firm in any capacity.

#### **B. Failure to Respond to Requests for Information**

The Guidelines also recommend a bar where a respondent fails to respond in any manner to a request for information issued pursuant to Procedural Rule 8210.<sup>17</sup> Here, Keller failed to respond in any manner to two written requests that he provide information in

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<sup>14</sup> Fieldstein Decl. ¶ 18.

<sup>15</sup> *Id.* ¶¶ 19, 22.

<sup>16</sup> FINRA Sanction Guidelines 38 (2007), available at <http://www.finra.org/RegulatoryEnforcement/index.htm> (then follow “FINRA Sanction Guidelines” hyperlink).

<sup>17</sup> Guidelines at 35.

connection with the staff's investigation into the allegations that he stole equipment from the HIFS branch office where he worked. There are no mitigating factors that would justify a less severe sanction. Accordingly, the Hearing Officer will bar Keller from associating with any FINRA member in any capacity for violating Procedural Rule 8210 and Conduct Rule 2110.

#### **IV. Order**

Keller is barred from association with any member firm in any capacity for his conversion of property owned by HIFS, in violation of Conduct Rule 2110, and his failure to respond to requests for information, in violation of Conduct Rule 2110 and Procedural Rule 8210. The bars will become effective immediately if this Default Decision becomes FINRA's final disciplinary action in this proceeding.



Andrew H. Perkins  
Hearing Officer

Copies to:

Shawn S. Keller (by FedEx, next-day delivery, and first-class mail)  
Jill G. Fieldstein, Esq. (by first-class and electronic mail)  
David Sonnenberg, Esq. (by electronic mail)  
Mark P. Dauer, Esq. (by electronic mail)

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

**Department of Enforcement,**

**Complainant,**

**vs.**

**Shawn S. Keller (CRD No. 2973355),**

**Respondent.**

**DISCIPLINARY PROCEEDING**

**No. : 2008015227201**

**HEARING OFFICER:**

**COMPLAINT**

The Department of Enforcement alleges:

**SUMMARY**

1. Between July and August 2008, while registered at Hartford Investment Financial Services, LLC ("HIFS" or the "Firm"), Shawn S. Keller ("Keller") stole 15 computer monitors and one telephone from the Firm. Moreover, between October and December 2008, Keller failed to respond to FINRA's two requests for information pursuant to NASD Rule 8210. Keller's theft of the Firm's computer and telephone equipment constitutes a violation of NASD Conduct Rule 2110. Keller's failure to respond to FINRA's information requests constitutes a violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

**JURISDICTION**

2. Keller first became registered with FINRA (f/k/a NASD) as an Investment Company Products/Variable Contracts Representative ("IR") with Woodbury Financial Services, Inc. on January 7, 1998. Between March 14, 2002 and September 12, 2008, Keller was registered as an IR with HIFS. On October 7, 2008, HIFS filed a Uniform Termination Notice for Securities Industry Registration ("Form U-5") regarding Keller. The Form U-5 indicated that

Keller's registration with HIFS was terminated on September 12, 2008 for the "alleged theft of company property."

3. Keller has not been associated with any member firm since his termination from HIFS. FINRA retains jurisdiction over Keller pursuant to Article V, Section 4(a) of the By-Laws because the conduct that serves as the basis for this action commenced prior to his termination of registration from a member firm and this Complaint has been filed within two years after the effective date of Keller's termination of registration from a member firm.

**FIRST CAUSE OF ACTION**

**Stolen Computer and Telephone Equipment  
Violation of NASD Conduct Rule 2110,**

4. The Department realleges and incorporates Paragraphs 1 through 3 by reference.

5. Between July and August 2008, Keller stole 15 computer monitors and one telephone set from the HIFS branch office in which Keller was employed and sold the equipment to local pawn shops. The stolen equipment had a value of approximately \$4,400.

6. By reason of the foregoing, Keller violated NASD Conduct Rule 2110.

**SECOND CAUSE OF ACTION**

**Failure to Respond to FINRA Request  
Violations of NASD Procedural Rule 8210 and NASD Conduct Rule 2110**

7. The Department realleges and incorporates Paragraphs 1 through 6 by reference.

*The October 28, 2008 Request for Information*

8. By letter dated October 28, 2008, FINRA notified Keller of its investigation and requested that he provide a statement addressing the allegations regarding Keller's theft of the computer and telephone equipment.

9. The request was made pursuant to, and in accordance with, NASD Procedural Rule 8210, and required a response by November 11, 2008. The request was sent by certified mail (return receipt requested) and regular first class mail to Keller's last known residential address as reflected in the records of the Central Records Depository (the "CRD Address"). Neither the certified nor the first class letters were returned to FINRA by the postal authorities. The United States Postal Service's ("USPS") website shows that Keller signed for the certified copy on November 1, 2008.

10. Keller did not respond to the October 28, 2008 request.

*The November 19, 2008 Request for Information*

11. By letter dated November 19, 2008, FINRA again requested that Keller provide information regarding the theft of the computer and telephone equipment.

12. The request was made pursuant to, and in accordance with, NASD Procedural Rule 8210, and required a response by December 2, 2008. The request was sent by certified mail (return receipt requested) and regular first class mail to Keller's CRD Address. The certified letter was returned to FINRA by the postal authorities stamped "Return to Sender – Unclaimed – Unable to Forward." The first class letter has not been returned to FINRA.

13. Keller did not respond to the November 19, 2008 request.

14. By failing to respond to FINRA's requests for information dated October 28, 2008 and November 19, 2008, Keller violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

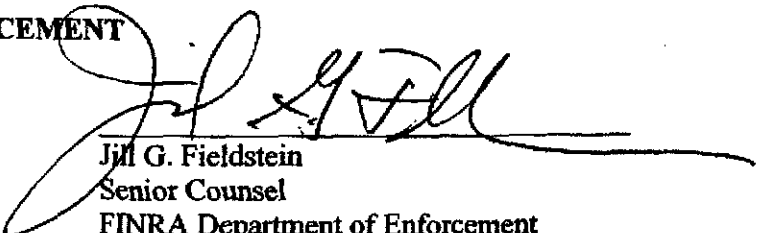
**RELIEF REQUESTED**

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; and
- B. Order that Respondent bear such costs of this proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

**FINRA DEPARTMENT OF ENFORCEMENT**

Dated: March 4, 2009



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