

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

SHAWN PATRICK CASUCCIO
(CRD No. 4193661),

Respondent.

Disciplinary Proceeding
No. 2008015240601

Hearing Officer – SNB

DEFAULT DECISION

March 31, 2010

For making material misrepresentations and omitting material facts to induce customers to purchase fictitious securities, in violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and NASD Rules 2120 and 2110, and misappropriating customer funds, in violation of NASD Rules 2330 and 2110 and IM-2310-2, Respondent is barred from associating with any FINRA member in any capacity.

Appearances

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

No appearance by or for Respondent.

DECISION

I. Procedural Background

On October 12, 2009, the Department of Enforcement filed a two-count Complaint in this proceeding, which is attached to this Decision as Exhibit A. The first count alleges that Shawn P. Casuccio ("Respondent"), violated Section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. §78j(b)), Rule 10b-5 thereunder (17 C.F.R. § 240.10b-5), and NASD Rules 2120 and 2110 by making material misrepresentations to induce three customers to invest in fictitious securities. The second count alleges that Respondent violated NASD Rules 2330 and 2110 and

IM-2310-2 by misappropriating customer funds.¹ Respondent did not file an Answer or otherwise respond to the Complaint. On December 18, 2009, Enforcement filed a Motion for Entry of Default Decision and Request for Sanctions supported by the Declaration of Jill G. Fieldstein and six exhibits. On February 3, 2010, Enforcement filed a supplement to its Motion, including an additional exhibit, addressing the issue of restitution. On March 22, 2010, Enforcement filed a second supplement to its Motion, providing additional support for the charge that Respondent violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Respondent did not respond to the Motion.

II. Respondent's Default

On October 12, 2009, Enforcement served the Complaint and Notice of Complaint on Respondent, by first-class certified mail, at his last known residential address as listed in the Central Registration Depository ("CRD address"). Complainant's Exhibit ("CX")-3; Fieldstein Decl. ¶ 22. Enforcement also sent a copy of the Complaint and Notice of Complaint to Respondent's attorney, by first-class mail and electronic mail. *Id.* The certified mail receipt indicated that Respondent signed for the mailing and that the mailing had been delivered to a different address (the "Alternative address"). CX-4; Fieldstein Decl. ¶ 23. Respondent did not file an Answer or otherwise respond to the Complaint. Fieldstein Decl. ¶ 24.

On November 10, 2009, Enforcement served the Complaint and Second Notice of Complaint on Respondent, by first-class certified mail, at the CRD address and the Alternative

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. In addition, because the Complaint was filed after December 15, 2008, FINRA procedural rules were applied in this disciplinary proceeding.

address. Enforcement also sent a copy of the Complaint and Second Notice of Complaint to Respondent's attorney, by first-class mail and electronic mail. CX-5; Fieldstein Decl. ¶ 25. The certified mail receipt to the CRD address indicated that Respondent signed for the mailing. CX-6; Fieldstein Decl. ¶ 26. The certified mail receipt to the Alternative address indicated that a person with the last name "Casuccio" signed for the mailing. Id. Again, Respondent did not file an Answer or otherwise respond to the Complaint. Fieldstein Decl. ¶ 27.

Enforcement served the Complaint and the Notices of Complaint on Respondent in accordance with Procedural Rule 9134, giving him constructive notice of this proceeding. Moreover, Respondent received actual notice of this proceeding, as evidenced by at least one, and possibly two, certified mail return receipts with his signature. By failing to respond, he defaulted.

Accordingly, pursuant to Rules 9215(f) and 9269, the allegations in the Complaint are deemed admitted. For the reasons set forth below, Enforcement's motion is granted.²

III. Jurisdiction

Respondent entered the securities industry in 2000. CX-1; Fieldstein Decl. ¶ 4. From June 2003 through September 2006, Respondent was registered as a General Securities Representative ("GSR") with The O.N. Equity Sales Company ("Ohio National"). CX-1; Fieldstein Decl. ¶ 5. From October 30, 2006, through September 29, 2008, Respondent was registered as a GSR with MetLife Securities, Inc. ("MetLife" or the "Firm"). CX-1; Fieldstein Decl. ¶ 6. On October 17, 2008, MetLife filed a Uniform Termination Notice of Securities Industry Registration ("Form U5") indicating that Respondent's employment had been

² The factual determinations in this decision are based on the allegations of the attached Complaint and the additional materials filed by Enforcement with its motion.

terminated for misappropriating customer funds. CX-2; Fieldstein Decl. ¶ 7. Respondent is not currently associated with a FINRA member firm. Fieldstein Decl. ¶ 8.

Although Respondent is not currently associated with a member firm, FINRA has jurisdiction to bring this proceeding, pursuant to Article V, § 4 of FINRA's By-Laws, because the Complaint charges Respondent with misconduct while he was associated with a FINRA member and the Complaint was filed within the two-year period following the termination of his registration with FINRA.³

IV. Origin of Disciplinary Proceeding

The Staff initiated the investigation resulting in this action in October 2008, when MetLife advised FINRA that it was terminating Respondent for misappropriating customer funds. Fieldstein Decl. ¶9.

V. Facts

The Complaint alleges that Respondent made material misrepresentations to facilitate his misappropriation of funds from six customers. The Complaint also alleges that Respondent violated the anti-fraud provisions of the securities laws because he induced three of the customers to invest in fictitious securities. The material misrepresentations Respondent made to each of the customers are detailed below.

First, in 2005, Respondent persuaded customer JM to invest in "the Chinese stock market." Fieldstein Decl. ¶12. Second, from April 2006 through March 2008, Respondent convinced MK to surrender annuities and use a portion of the proceeds to invest \$334,127 in a

³ Article V, § 4, FINRA By-Laws, *available at* www.finra.org/rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: Bylaws").

fictitious business.⁴ Third, from September 2006 through November 2007, Respondent influenced customer KG to surrender annuities and use a portion of the proceeds to lend \$200,000 to a fictitious person and a fictitious entity.⁵ Fourth, between September 2007 and January 2008, Respondent convinced customer MO to liquidate mutual funds and use a portion of the proceeds to invest \$56,000 in fictitious mutual funds. Fieldstein Decl. ¶18. Finally, in April 2008, Respondent convinced RA and VA, two elderly sisters who held a joint account, to lend a total of \$103,000 to a fictitious entity, funded, in part, from the proceeds of an annuity withdrawal. Fieldstein Decl. ¶20.

In each case, instead of investing or lending the approximately \$723,000 that he received from his customers, Respondent used the funds for his own purposes, with the exception of approximately \$56,000 that he paid to two of the customers, telling them that these payments were either interest earned or a return on their investment.⁶

VI. Violations

A. Material Misrepresentations – Anti-Fraud Violations

The first count of the Complaint alleges that Respondent made material misrepresentations to induce three customers, JM, MK, and MO, to invest in non-existent securities, in violation of Section 10(b) of the Securities Exchange Act, Rule 10b-5 thereunder, and Rules 2120 (the “anti-fraud rules”) and Rule 2110.

“The [SEC’s] and [FINRA’s] anti-fraud rules are designed to ensure that members of the securities industry fulfill their obligation to the public to be complete and accurate when making

⁴ From February 2007 through September 2008, Respondent made payments to MK totaling \$39,750, which he characterized as a return on the investment. Fieldstein Decl. ¶14.

⁵ From January 2008 through September 2008, Respondent made monthly payments to KG totaling \$16,050, which he characterized as interest payment on the loan. Fieldstein Decl. ¶19.

⁶ See, notes 4-5 and accompanying text.

statements about securities.”⁷ A finding of a violation requires a showing that a respondent, acting with scienter, misrepresented or omitted material facts in connection with securities transactions.⁸ A fact is material if there is a substantial likelihood that a reasonable investor would have considered the fact important in making an investment decision, and disclosure of the omitted fact would have significantly altered the total mix of information available.⁹ Scienter is the “intent to deceive, manipulate, or defraud.”¹⁰

Here, Respondent plainly acted with scienter when he made material misrepresentations and omissions to convince customers to invest in fictitious securities. It makes no difference that the securities were non-existent; a respondent cannot escape liability under the securities laws on the basis that investments he sold were fictitious.¹¹

Based on the foregoing, the Hearing Officer finds that Respondent violated Section 10(b), Exchange Act Rule 10b-5, and Rules 2120 and 2110.

B. Misappropriation of Customer Funds

The second count of the Complaint alleges that Respondent misappropriated customer funds, in violation Rules 2330, 2110, and IM-2310-2. Rule 2330(a) provides that “[n]o member

⁷ *Department of Enforcement v. Donner Corp. Int’l*, No. CAF020048, 2006 NASD Discip. LEXIS 4, at *50 (NAC Mar. 9, 2006) (quoting *District Bus. Conduct Comm. v. Euripides*, No. C9B950014, 1997 NASD Discip. LEXIS 45, at **16-17 (NBCC July 28, 1997)).

⁸ *Department of Enforcement v. Donner Corp. Int’l*, 2006 NASD Discip. LEXIS 4, at *50. In addition, violations of Section 10(b) and Exchange Act Rule 10b-5 must involve the use of any means or instrumentalities of transportation or communication in interstate commerce, or the mails, or any facility of any national securities exchange. *See, e.g., SEC v. Hasho*, 784 F. Supp. 1059, 1106 (SDNY 1992). In this case, the requirement is satisfied because Respondent made telephone calls and/or sent mail to the customers. Moreover, in the case of customer MO, he used a national securities exchange to sell mutual funds. Fieldstein Supplemental Decl. ¶ 5.

⁹ *Basic v. Levinson*, 485 U.S. 224, 231-32 (1988).

¹⁰ *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 (1976).

¹¹ *See, First National Bank of Chicago v. Shearson Lehman Brokers, Inc.*, 1988 U.S. Dist. LEXIS 17186, at *13 (ND. Ill. 1989).

or person associated with a member shall make improper use of a customer's securities or funds." IM-2310-2 requires registered persons to deal fairly with customers. Rule 2110 requires members and persons associated with members to "observe high standards of commercial honor and just and equitable principles of trade."

Here, Respondent misappropriated approximately \$667,000 from six customers. Instead of investing or loaning the funds as he represented, he used the funds for his personal expenses.¹²

Accordingly, the Hearing Officer finds that Respondent misappropriated customer funds, in violation of Rules 2330 and 2110, and IM-2310-2.

VII. Sanctions

A bar is standard for misappropriation of funds. *Sanction Guidelines* ("Guidelines") at 38 (2007). There is no evidence of any mitigating factors that would justify a lesser sanction. Accordingly, Respondent is barred for misappropriating customer funds, in violation of Rules 2330 and 2110, and IM-2310-2.¹³

For intentional or reckless misrepresentations of material facts, the Guidelines recommend a fine of \$10,000 to \$100,000, and a suspension of ten business days to two years, or, in egregious cases, a bar. *Id.* at 93. Here, the misrepresentations, which were in furtherance of Respondent's scheme to misappropriate customer funds, were egregious. Accordingly, a bar is the appropriate sanction.

¹² Respondent received approximately \$723,000 from six customers, but repaid two customers approximately \$56,000, which he claimed was a return on their investment, resulting in a net misappropriation of \$667,000.

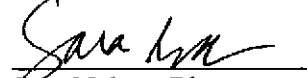
¹³ Because Respondent has already been ordered to pay restitution to the customers in a related criminal matter, the Department of Enforcement is not seeking restitution.

VIII. Conclusion

For making material misrepresentations and omitting material facts to induce customers to purchase fictitious securities, in violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and NASD Rules 2120 and 2110, and misappropriating customer funds in violation of NASD Rules 2330 and 2110, and IM-2310-2, Respondent is barred from associating with any FINRA member in any capacity.

These bars will be effective immediately if this decision becomes FINRA's final disciplinary action.

SO ORDERED.


Sara Nelson Bloom
Hearing Officer

Copies to: Shawn P. Casuccio (*via overnight and first-class mail*)
 Gary S. Wigal, Esq. (*via first-class mail*)
 Jill G. Fieldstein, Esq. (*via electronic and first-class mail*)
 David R. Sonnenberg, Esq. (*via electronic mail*)

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

Department of Enforcement,

Complainant,

vs.

Shawn P. Casuccio (CRD No. 4193661),

Respondent.

DISCIPLINARY PROCEEDING

No. : 2008015240601

HEARING OFFICER:

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Between 2005 and September 2008, Shawn P. Casuccio ("Casuccio") fraudulently induced six customers to invest approximately \$723,000 in fictitious investments. Rather than invest the money, Casuccio deposited the customers' funds in his personal bank account for his own benefit and use. He made payments totaling \$55,800 to two of the six customers, telling them that these payments were either interest earned or other returns on their investments. Casuccio misappropriated the remaining approximately \$667,000. By virtue of this conduct, Casuccio violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder, and NASD Conduct Rules 2330, 2120, 2110, and IM-2310-2.

JURISDICTION

2. Casuccio was first registered with FINRA (f/k/a NASD) as a General Securities Representative ("GSR") in May 2000. From June 2003 through September 2006, Casuccio was registered with FINRA as a GSR with The O.N. Equity Sales Company ("Ohio National"). From October 30, 2006 until September 29, 2008, Casuccio

was registered with FINRA as a GSR with MetLife Securities, Inc. ("MetLife" or the "Firm").

3. Casuccio has not been associated with a FINRA regulated broker-dealer since his termination from MetLife in September 2008. FINRA retains jurisdiction over Casuccio 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 FINRA regulated broker-dealer and this Complaint has been filed within two years after the effective date of Casuccio's termination of registration from a FINRA regulated broker-dealer.

FACTS COMMON TO THE FIRST AND SECOND CAUSES OF ACTION

Customer J.M.

4. In 2005, Casuccio solicited his 73 year old customer, J.M., to make an investment in "the Chinese stock market." In connection with the recommendation, Casuccio told the customer that the investment was a three-year investment and she would receive returns in the last quarter of 2008, all of which was false. Based on the recommendation, J.M. gave Casuccio \$30,000 to invest. Casuccio instead took the \$30,000 for his personal use.

Customer M.K.

5. Casuccio told his 63 year old customer, M.K., who was invested in several annuities, that he "had a better way" for her to make money. In April 2006, Casuccio recommended that M.K. surrender an annuity, which had a cash value of \$222,623.24, and invest in what she understood to be the Mundell Financial Group, which was the name of the entity under which Casuccio was doing business. After surrendering the annuity, on May 17, 2006, M.K. gave Casuccio a check made payable to Shawn Casuccio for

\$100,000 to invest in Mundell Financial Group. Casuccio did not invest the money on M.K.'s behalf, but instead, deposited M.K.'s check into his personal bank account.

6. In September, October and November 2006, and January 2007, Casuccio sent M.K. checks from his personal bank account for \$750 each. Casuccio told M.K. that the checks he sent were a return on her investment in what she understood to be the Mundell Financial Group.

7. In January 2007, Casuccio recommended that M.K. partially surrender another annuity and invest more money in what she understood to be the Mundell Financial Group. After receiving \$191,290.50 for the partial surrender of the annuity, on February 11, 2007, M.K. gave Casuccio a check for \$180,000 to invest in Mundell Financial Group. Once again, M.K.'s check was made payable to Shawn Casuccio and he deposited it into his personal account.

8. On February 22, 2007, Casuccio began sending M.K. regular monthly checks from his personal account for \$1,750 per month. Casuccio continued sending these monthly checks to M.K. until on or around September 1, 2008.

9. M.K. also gave Casuccio additional money to invest in what she understood to be the Mundell Financial Group. On July 27, 2007, M.K. gave Casuccio a check for \$50,000, payable to Shawn Casuccio, and on March 25, 2008, M.K. gave Casuccio a check for \$4,127, payable to Shawn Casuccio. As with the other funds, Casuccio deposited the checks into his personal bank account. The money was not invested in Mundell Financial Group or any other investment for the benefit of M.K.

10. In total, M.K. gave Casuccio \$334,127 to invest in the Mundell Financial Group. During the period of September 2006 until September 2008, Casuccio returned a

total of \$39,750 to M.K. Casuccio retained \$294,377 of M.K.'s money for his personal use.

Customer K.G.

11. In September 2006, K.G., a 46 year old customer of Casuccio, received approximately \$110,000 from a partial surrender of an annuity, which she had surrendered at Casuccio's recommendation. Casuccio also recommended that K.G. lend \$150,000 to Marshall G. Hibbs ("Hibbs"), who Casuccio claimed was the president of the Silver Pinnacle Group. On September 18, 2006, K.G. gave Casuccio a check for \$150,000, payable to Shawn Casuccio, and signed a loan agreement. Under the loan agreement, in exchange for loaning Hibbs \$150,000 for 120 months, K.G. would receive 9.25% annual interest, paid out in monthly installments of \$1,783.33 per month. At the end of the 120 month period, the agreement provided that K.G.'s principal payment of \$150,000 was to be returned to her.

12. Hibbs was not present when K.G. signed the agreement, nor did K.G. ever meet anyone named Hibbs. A signature in the name of Hibbs was added and dated approximately one week after K.G. executed the agreement. In actuality, Hibbs was a fictitious person and the Silver Pinnacle Group was a fictitious entity, both created by Casuccio.

13. In or around November 2007, Casuccio told K.G. that he had another investment opportunity with the Silver Pinnacle Group, but that she had to act quickly to take advantage of the investment opportunity. Casuccio recommended that K.G. fully surrender her annuity, from which she received \$84,000, and invest \$50,000 in the Silver Pinnacle Group. Casuccio told K.G. that while she waited for her check from the surrender

of the annuity, he would invest \$50,000 of his own money in the Silver Pinnacle Group and that she could pay him back when she got the money. On November 27, 2007, K.G. wrote a check for \$50,000 made payable to Shawn Casuccio, to reimburse him for the purported Silver Pinnacle Group investment.

14. Casuccio used the \$150,000 he received from K.G. in September 2006 for his own personal use. After receiving the additional \$50,000 from K.G. in November 2007, Casuccio began to give K.G. what he told her were interest payments from Hibbs. Beginning in January 2008 and continuing through September 2008, Casuccio wrote K.G. a regular monthly check for \$1,783.33 from his personal bank account. K.G. received a total of \$16,050 from Casuccio. Casuccio kept the rest of K.G.'s \$50,000 for his personal use.

15. In total, Casuccio misappropriated approximately \$183,950 from K.G.

Customer M.O.

16. Between September 2007 and January 2008, Casuccio recommended that his 26 year old customer, M.O., sell her investments in four different mutual funds because the market was unstable. M.O. grossed \$59,518 from the sale of her mutual funds. On October 18, 2007, Casuccio recommended that M.K. invest in mutual funds that he claimed he created through Mundell Financial and MetLife. M.K. wrote him a check for \$28,000, payable to Shawn Casuccio, for this purported mutual fund investment. On February 11, 2008, M.O. gave Casuccio another check for \$28,000, payable to Shawn Casuccio, to invest in the same purported mutual funds. Casuccio, however, did not invest the \$56,000 in mutual funds or any other investment. He instead kept the money for his own personal use.

Customers V.A. and R.A.

17. R.A. and V.A. are two elderly sisters who began investing with Casuccio in or around January 2006. At the time, R.A. was 64 years old, and V.A. was 73 years old and disabled. In April 2008, Casuccio solicited R.A. and V.A. to invest in an entity, "Summit Trading," of which Casuccio said he was the President. Based on his recommendation, R.A. gave Casuccio a check from her and V.A.'s joint account for \$50,000, payable to Shawn Casuccio.

18. In June 2008, Casuccio recommended that V.A. take a partial withdrawal of approximately \$59,000 from one of her annuities and invest the money in Summit Trading. On June 24, 2008, V.A. wrote a check from her and R.A.'s joint checking account for \$53,000, payable to Shawn Casuccio.

19. Casuccio characterized the sisters' investment in Summit Trading as a "loan" that would be repaid with interest. On July 1, 2008, the sisters entered into a "Loan Agreement" with Casuccio, as President of Summit Trading. According to the "Loan Agreement," interest would accumulate at a rate of 7.9% for 36 months. No payments were to be made to R.A. and V.A. until the loan came due on August 1, 2011. On that date, the sisters were to be paid \$28,952 in interest, plus their principal of \$113,000. (The loan agreement referenced the amount of \$113,000 rather than the \$103,000 which R.A. and V.A. actually gave Casuccio).

20. Casuccio did not use the sisters' so-called "loan" of \$103,000 to benefit Summit Trading. Instead, Casuccio misappropriated the sisters' money for his personal use.

FIRST CAUSE OF ACTION

**Fraud in Connection with the Purchase of Securities
Violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5
promulgated thereunder, and NASD Conduct Rules 2120 and 2110**

21. The Department realleges and incorporates Paragraphs 1 through 20 by reference.

22. Casuccio defrauded J.M., M.K. and M.O. by soliciting them to invest in various types of securities, all of which Casuccio knew involved fictitious entities or non-existent securities. J.M., M.K. and M.O. each gave Casuccio substantial sums of money to invest in the recommended schemes.

23. By reason of the foregoing, Casuccio violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder, and NASD Conduct Rules 2120 and 2110.

SECOND CAUSE OF ACTION

**Misappropriation of Customers' Funds
Violation of NASD Conduct Rules 2330 and 2110 and IM-2310-2**

24. The Department realleges and incorporates Paragraphs 1 through 23 by reference.

25. Casuccio admits that he made improper use of his customers' funds. Rather than invest his customers' money, Casuccio retained for his personal use a total of approximately \$667,000 from his customers J.M., M.K., K.G., M.O., and R.A. and V.A.

26. By reason of the foregoing, Casuccio violated NASD Rules 2330, 2110 and IM-2310-2.

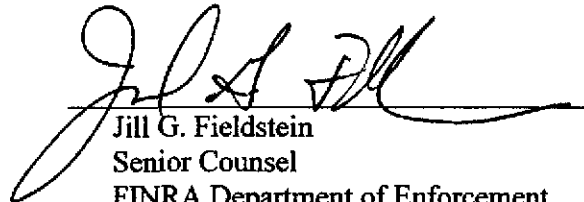
RELIEF REQUESTED

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 Casuccio 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: October 12, 2009



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