

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

HANSEL CLARENCE LEE
(CRD No. 3259991)

Respondent.

Disciplinary Proceeding
No. 2008015280701

Hearing Officer - RSH

DEFAULT DECISION

November 12, 2010

For conversion of customer funds, in violation of Rules 2330 and 2110, and for failure to provide requested information, in violation of Rules 8210, 2110, and 2010, the Respondent was barred from associating with any FINRA member in any capacity.

Appearances

Ronald W. Sannicandro, Senior Counsel, and Linda S. Riefberg, Chief Counsel, New York, NY, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

I. Introduction

The FINRA Department of Enforcement commenced the investigation that led to the Complaint against Respondent Hansel C. Lee after Banc of America Investment Services, Inc. ("BAIS") filed an amended Uniform Termination Notice for Securities Industry Registration ("Form U-5"). The Form U-5 disclosed that a customer had filed a complaint alleging that Lee had made misrepresentations and unauthorized trades.

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FINRA staff investigated Lee's conduct to determine if he had violated any FINRA rules or regulations. As a result of the investigation, Enforcement filed the Complaint.¹

In its Complaint, Enforcement charged Lee with misappropriation and improper use of customer funds, in violation of Rules 2330(a) and 2110, and with failing to respond to requests for information, in violation of Rules 8210, 2110, and 2010.²

Enforcement filed the Complaint with the Office of Hearing Officers on June 17, 2010. Lee did not answer or otherwise respond to the Complaint. Consequently, on September 9, 2010, Enforcement filed a Motion for Entry of Default Decision, supported by the Declaration of Ronald W. Sannicandro, the Addendum to the Declaration of Ronald W. Sannicandro, and 13 exhibits. Lee did not reply to the motion.³

II. Jurisdiction

Lee first became registered as a General Securities Representative in August 1999. He was registered with BAIS from June 26, 2006, through August 15, 2008. On or about August 15, 2008, Lee left BAIS and joined Morgan Stanley & Co., Inc. ("Morgan Stanley"), where he remained until he was discharged on or about September 26, 2008. He has not been associated with a FINRA member firm since then.⁴

Although Lee is not currently registered with a FINRA-regulated firm, 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 following the termination of his registration with a FINRA-regulated firm and (2) the Complaint

¹ Declaration of Ronald W. Sannicandro ("Sannicandro Decl."), ¶¶ 8, 12.

² The FINRA Rules, which include NASD Procedural and Conduct Rules, are available at www.finra.org/Rules. On December 15, 2008, the first phase of new consolidated FINRA Rules went into effect. See, Regulatory Notice 08-57. With respect to this decision, unless otherwise noted, the relevant FINRA Rules are identical to the corresponding NASD Rules.

³ 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.

⁴ Complainant's Exhibit ("CX")-1; Sannicandro Decl., ¶¶ 4-5.

charges him with misconduct that occurred while he was registered with a FINRA-regulated firm, and with failing to respond to FINRA's requests for information made during the two-year period following the termination of his association with a FINRA-regulated firm.⁵

III. Respondent's Default

On June 17, 2010, Enforcement sent the Notice of Complaint and Complaint to Respondent by first-class and certified mail (return receipt requested) at his residential address as recorded in FINRA's Central Registration Depository ("CRD Address"). Enforcement received the signed certified mail receipt indicating that delivery was made on June 24; however, the signature was illegible. The mailing sent by first-class mail was not returned to Enforcement. Respondent did not respond to the Complaint by July 15, 2010, the deadline specified in the Notice of Complaint.⁶

On July 19, 2010, Enforcement sent the Second Notice of Complaint and Complaint by first-class and certified mail to Respondent at his CRD Address. On or about August 14, 2010, the certified mailing was returned to Enforcement marked "Unclaimed." The first-class mailing was not returned to Enforcement. Respondent did not respond to the Complaint by August 5, 2010, the deadline specified in the Second Notice of Complaint.

Enforcement does not know of any business address or current residential address for Lee. After a criminal trial in July 2009, Lee was convicted of converting \$500,000 from JA. According to the Assistant United States Attorney who prosecuted Lee, he failed to appear for sentencing following his conviction and has been a fugitive subject to

⁵ 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").

⁶ Motion for Default, fn.5; Sannicandro Decl., ¶¶ 39-42; CX-11.

a bench warrant since September 2009. U.S. Marshalls have been conducting an extensive search for him since then, and his whereabouts are unknown.⁷

To date, Respondent has not filed an Answer with the Office of Hearing Officers or otherwise responded to the Complaint.

By failing to answer the Complaint, Respondent defaulted. 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.

IV. Violations

A. Misappropriation and Improper Use of Customer Funds

The Complaint's First Cause of Action alleges that Lee misappropriated customer funds, in violation of Rule 2110. The Complaint's Second Cause of Action alleges that Lee made improper use of the same customer's funds, in violation of Rules 2330(a) and 2110. Both charges stem from the same set of facts, as described below.

In July 2008, while working for BAIS, Lee sold approximately \$500,000 worth of treasury and municipal securities in customer JA's BAIS account without JA's permission or knowledge. Without JA's knowledge or consent, Lee then opened a checking account in JA's name, and placed the proceeds from the unauthorized sale of securities in the checking account. Lee then requested that a check in the amount of \$500,000 be drawn on the account and made payable to "Capital Group," a company under Lee's control and ownership. On July 19, 2008, when the check for \$500,000 could not be processed because of irregularities, Lee requested that two other checks be drawn on the account—one for \$280,000, and one for \$220,000. Both checks were made

⁷ Sannicandro Decl., ¶¶ 43-48; CX-12, 13.

payable to "Capital Partners," another company owned and controlled by Lee. Lee endorsed both of the checks, and deposited the proceeds into his own checking account. Customer JA stated that he has never heard of "Capital Group" or "Capital Partners," and that the signatures appearing on the checks were not his. BAIS reimbursed JA for all of his losses.⁸

FINRA Conduct Rule 2330(a) prohibits any person associated with a member from making improper use of a customer's securities or funds. Conduct Rule 2110 states that "[a] member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade." FINRA Sanction Guidelines ("Guidelines") define conversion as "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."⁹ It is clearly a violation of just and equitable principles of trade to convert funds from a customer, and the Guidelines specifically recognize conversion as a violation of Rule 2110.¹⁰

Enforcement does not distinguish between "misappropriation," "improper use" and "conversion," but alleges all three in the Complaint. Respondent's conduct fits within the definitions of "conversion" as well as "misappropriation" and "improper use." The Hearing Officer finds that the facts alleged in the Complaint establish that Lee misappropriated or converted JA's funds, in violation of Conduct Rule 2110, and also made improper use of JA's funds, in violation of Conduct Rules 2330(a) and 2110.

⁸ Addendum to Sannicandro Decl., ¶ 5.

⁹ FINRA Sanction Guidelines 38 (2007), <http://www.finra.org/sanctionguidelines>.

¹⁰ Department of Enforcement v. Easley, 2009 FINRA Discip. LEXIS 31 (Sept. 14, 2009).

B. Failure to Respond to Requests for Information and Testimony

The Complaint's Third and Fourth Causes of Action allege that Lee violated Procedural Rule 8210 and Conduct Rules 2110 and 2010 by failing to respond to two written requests for information, and a request for testimony, concerning the funds removed from JA's account.

On October 23, 2008, FINRA Staff sent the first request for information by first-class and certified mail to Lee at his CRD Address. The certified mailing was returned marked "return to sender, unclaimed unable to forward." The first-class mailing was not returned. Lee did not respond to the October 23 request.¹¹

On March 2, 2009, FINRA Staff sent a second request to Lee at his CRD Address by first-class and certified mail. The receipt for the certified mailing was returned to FINRA showing that the package was signed for, but the signature is illegible. The first-class mailing was not returned. Lee did not respond to the March 2 request.¹²

On May 17, 2010, FINRA Staff sent a request for an on-the-record interview to Lee at his CRD Address by first-class and certified mail. The receipt for the certified mailing was returned to FINRA showing that the package was signed for, but the signature is illegible. The first-class mailing was returned to FINRA marked, "Return to sender, not deliverable as addressed, unable to forward." Lee did not respond to the May 17 request.¹³

The facts alleged in the Complaint establish that Lee failed to respond in any manner to two requests for information and one request for testimony, thereby violating

¹¹ Sannicandro Decl., ¶¶ 18-23; CX-5, 6.

¹² Sannicandro Decl., ¶¶ 26-31; CX-7, 8.

¹³ Sannicandro Decl., ¶¶ 32-37; CX-9, 10.

Procedural Rule 8210. A violation of Rule 8210 is also a violation of Rules 2110 and 2010.¹⁴

V. Sanctions

A. Misappropriation and Improper Use of Customer Funds

Lee's misuse of funds in this case amounts to conversion, inasmuch as he used customer funds for his own purposes without authorization. For conversion, the Guidelines recommend a bar, regardless of the amount converted.¹⁵ Lee will therefore be barred from associating with any FINRA member firm in any capacity.

B. Failure to Respond to Requests for Information

A violation of Rule 8210 is serious because Rule 8210 is a key element in FINRA's oversight function and allows FINRA to carry out its regulatory functions without subpoena power.¹⁶ When an individual fails to provide information, FINRA's ability to perform its regulatory functions is subverted.¹⁷ For these reasons, the Guidelines recommend a bar when a respondent fails to respond in any manner to a request for information issued pursuant to Rule 8210.¹⁸ Lee failed to respond in any manner to two requests for information and a request for testimony. There is no evidence of any mitigating facts that would justify a sanction less than a bar.

Accordingly, the Hearing Officer finds that Lee should be barred from associating with any FINRA member in any capacity for violating Rules 8210, 2110, and 2010.

¹⁴ *Department of Enforcement v. Hooper*, No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (N.A.C. Nov. 2, 2001). Rule 2110 was renumbered to 2010 effective December 15, 2008. The two rules are substantially identical.

¹⁵ *FINRA Sanction Guidelines* 38 (2007).

¹⁶ *Howard Brent Berger*, Exchange Act Rel. No. 58950, 2008 SEC LEXIS 3141 (Nov. 14, 2008); *Joseph G. Chiulli*, Exchange Act Rel. No. 42359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000).

¹⁷ *Joseph P. Hannan*, Exchange Act Rel. No. 40438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998).

¹⁸ *FINRA Sanction Guidelines* 35 (2007).

VI. Order

For converting customer funds, in violation of Conduct Rules 2330(a) and 2110, and for failing to provide information, in violation of Procedural Rule 8210 and Conduct Rules 2110 and 2010, Lee is barred from associating with any FINRA member in any capacity. The bars shall become effective immediately if this Decision becomes the final disciplinary action of FINRA.

SO ORDERED.



Rochelle S. Hall
Hearing Officer

Copies to: Hansel C. Lee (*via Federal Express and first-class mail*)
Ronald W. Sannicandro, Esq. (*via electronic and first-class mail*)
Linda S. Riefberg, Esq. (*via electronic mail*)
David Sonnenberg, Esq. (*via electronic mail*)

**FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA)
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

V

**HANSEL CLARENCE LEE
CRD#3259991**

RESPONDENT

**DISCIPLINARY PROCEEDING
No. 20080152807**

01

COMPLAINT

The Department of Enforcement ("Enforcement") alleges:

OVERVIEW

1. Respondent Hansel Clarence Lee ("Lee") misused and misappropriated customer funds while working under the auspices of his member firm employer, Banc of America Investment Services, Inc. ("BAIS" or the "Firm").
2. Lee did this by selling without authorization certain securities in customer JA's brokerage account and then taking the proceeds of those sales and depositing them in a checking account opened by Lee in the customer's name, without the customer's consent or knowledge.
3. Lee then requested that a check in the amount of \$500,000 be drawn on the customer's checking account, payable to "Capital Group," a company under Lee's control and ownership. Due to irregularities the check could not be processed.
4. Lee then requested that two checks be drawn on the above referenced customer's checking account for \$220,000 and \$280,000, both payable to "Capital Partners," a company, also under Lee's control and ownership.

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5. Two checks totaling \$500,000 were issued and Lee endorsed them, and deposited them into his own checking account at an outside bank.

6. In addition, Lee failed to cooperate with the Department of Enforcement's investigation in this matter, failing to respond to one request for information in violation of NASD Rules 8210 and 2110 and two other requests for information in violation of FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

7. Lee was born on November 16, 1974. He entered the securities industry in June 1999 with Morgan Stanley DW Inc. Lee passed the Series 7 exam in August 1999, the Series 63 exam in October 1999 and the Series 65 exam in January 2007.

8. In January 2002, Lee left Morgan Stanley and began work as a registered representative with ML Stern & Co., LLC. In May 2004, Lee left ML Stern and began working for BAIS as a registered representative. Lee remained there until August 2008.

9. In August 2008, Lee left BAIS and joined Morgan Stanley & Co. Inc. where he remained until September 26, 2008. He was a registered employee during the tenure of his employment at Morgan Stanley.

10. Although Respondent has not been associated with a FINRA member firm since September 26, 2008, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years after the date upon which he ceased to be associated with a FINRA member and the filing of an amendment to Form U5 and (2) the Complaint charges him with misconduct committed while he was associated with a FINRA member and with failing to respond to FINRA requests for information including failing to appear for on-the-record testimony during the two-

year period after the date upon which he ceased to be associated with a FINRA member and the filing of an amendment to Form U5.

FIRST CAUSE OF ACTION

Misappropriation

(NASD Rule 2110)

11. Enforcement re-alleges and incorporates by reference paragraphs 1 through 10 above.

12. In July 2008, a check was drawn on the aforementioned checking account in the amount of \$500,000, payable to "Capital Group," a company under the ownership and control of Respondent.

13. On July, 19, 2008, when the check for \$500,000 could not be processed because of irregularities, Lee requested that two other checks be drawn on JA's checking account.

14. Specifically,

- a. Lee requested that checks in the amount of \$280,000 and \$220,000 be drawn on the account. Both checks were made payable to "Capital Partners," a company under the ownership and control of Lee.
- b. Lee endorsed both of these checks. The checks were then processed and the proceeds were deposited into Lee's Wells Fargo Bank checking account.
- c. Customer JA stated that he has never heard of "Capital Group" or "Capital Partners" and that the signatures appearing on the checks were not his.

15. NASD Rule 2110 requires that members and associated persons observe "high standards of commercial honor and just and equitable principles of trade."

16. Lee engaged in conduct inconsistent with high standards of commercial honor and equitable principles of trade in that while employed by the Firm he improperly used customer funds and misappropriated them for his own purposes.

17. As a result of his conduct, Lee violated NASD Rule 2110.

SECOND CAUSE OF ACTION

Improper Use of Customer Funds

(NASD Rules 2330(a) and 2110)

18. Enforcement re-alleges and incorporates by reference paragraphs 1-17 above.

19. Respondent misused approximately \$500,000 in funds from customer JA by improperly selling treasuries and municipal bonds in JA's account, without JA's knowledge and permission.

20. Respondent then deposited the proceeds in a checking account without the customer's knowledge or permission.

Specifically,

- a. In July 2008, Lee sold approximately \$500,000 in treasuries and municipal bonds in customer JA's brokerage account, without JA's permission.
- b. The proceeds from the sales, approximately \$500,000, were deposited in a checking account in JA's name with the Firm's banking affiliate. Lee set up a checking account in JA's name without JA's permission or knowledge.

21. In July 2008, a check was drawn on the aforementioned checking account in the amount of \$500,000, payable to "Capital Group," a company under the ownership and control of Respondent.

22. On July, 19, 2008, when the check for \$500,000 could not be processed because of irregularities, Lee requested that two other checks be drawn on JA's checking account.

23. Specifically,

a. Lee requested that checks in the amount of \$280,000 and \$220,000 be drawn on the account. Both checks were made payable to "Capital Partners," a company under the ownership and control of Lee.

b. Lee endorsed both of these checks. The checks were then processed and the proceeds were deposited into Lee's Wells Fargo Bank checking account.

24. When JA confronted Lee about the sales of the treasuries and bonds, Lee told JA that JA was mistaken and not reading the account statement correctly.

25. Customer JA stated that he has never heard of "Capital Group" or "Capital Partners" and that the signatures appearing on the checks were not his.

26. Lee did not have permission or authority from the customer to sell the securities or use the funds for his own personal purposes.

27. NASD Rule 2330(a) requires that no member or person associated with a member shall make "improper use of a customer's securities or funds."

28. As a result of his conduct, Lee violated NASD Rules 2330(a) and 2110.

THIRD CAUSE OF ACTION

Failure to Cooperate

(NASD Rules 8210 and 2110)

29. Enforcement re-alleges and incorporates by reference paragraphs 1 through 28 above.

30. NASD Rule 8210 requires members and associated persons to provide information orally, in writing or electronically if requested, with respect to any investigation, complaint, examination or proceeding.

31. In a letter dated October 23, 2008, sent via certified and first class mail to Respondent's last known address, as reflected in the Central Registration Depository (the "CRD address"), pursuant to NASD Rule 8210, FINRA requested Respondent's signed, written response to customer JA's allegations that Lee had facilitated an unauthorized sale of bonds in his account. The response was due November 23, 2008. The copy that was sent by certified mail was returned to FINRA and stamped, "Return to sender, unclaimed, unable to forward." The first class copy was not returned to FINRA. Respondent failed to respond.

32. By virtue of the above, Lee violated NASD Rules 8210 and 2110.

FOURTH CAUSE OF ACTION

Failure to Cooperate

(FINRA Rules 8210 and 2010)

33. Enforcement re-alleges and incorporates by reference paragraphs 1 through 32 above.

34. In a letter dated March 2, 2009, sent via certified and first class mail to Respondent's CRD address, FINRA again requested Lee's written response to the allegations made by customer JA. This request was made pursuant to FINRA Rule 8210. It was requested that a signed response from Lee be provided to FINRA by March 16, 2009. Someone at the address signed for the letter sent via certified mail on March 6, 2009, however the signature is indecipherable. The request sent by first class mail was not returned to FINRA. The Respondent failed to respond.

35. In a letter dated May 17, 2010, sent via certified and first class mail to Respondent's CRD address, FINRA requested that Respondent contact Enforcement in order to set up a mutually convenient time to take Respondent's on the record testimony regarding the aforementioned matter. This request was made pursuant to FINRA Rule 8210. It was requested that Lee contact Enforcement no later than June 1, 2010. Someone at the address signed for the request sent by certified mail on May 21, 2010, however the signature is indecipherable. The request sent via first class mail was returned to FINRA, and the envelope was stamped, "Return to sender, not deliverable as addressed, unable to forward." The Respondent failed to respond.

36. By virtue of the above, Lee violated FINRA Rules 8210 and 2010.

RELIEF REQUESTED

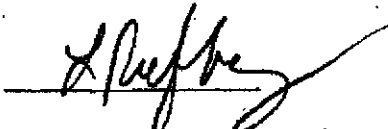
WHEREFORE, Enforcement respectfully requests that the Panel:

- A. Order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed, including that the Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest.
- 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: June 17, 2010

By: _____


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