

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

OCT 20 2010

Department of Enforcement,

Complainant,

v.

**Ernesto Zuniga Gomez
(CRD No. 4713558),**

Respondent.

**DISCIPLINARY PROCEEDING
No. 2008015692801**

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Respondent Ernesto Zuniga Gomez ("Zuniga") misused customer funds, falsified firm records, and failed to comply with requests for information from FINRA. On three separate occasions, Zuniga transferred funds between the accounts of his different customers without their authorization. He secured supervisory approval of these unauthorized fund transfers by creating Verbal Authorization Forms which contained false and misleading explanations to justify the transfers. Moreover, Zuniga failed to comply with four requests for information from FINRA staff. Accordingly, Zuniga violated NASD Rules 2330(a) and 2110, FINRA and NASD Rules 8210, and FINRA Rule 2010.

RESPONDENT AND JURISDICTION

2. Zuniga entered the securities industry in July 2003 with Merrill Lynch, Pierce,

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Fenner & Smith ("Merrill") in San Diego, California. While associated with Merrill, Zuniga maintained the following registrations:

- a. General Securities Representative (Series 7); and
 - b. Uniform Combined State Law and Registered Investment Advisor (Series 66).
3. Merrill terminated Zuniga on November 3, 2008.
 4. On November 13, 2008, Merrill filed a Form U-5 disclosing for the first time that Zuniga had engaged in the conduct described below.
 5. Although Zuniga has not been associated with a FINRA member firm since his termination by Merrill, 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 (2) the Complaint charges Zuniga with misconduct committed while he was associated with a FINRA member and with failing to respond to NASD and FINRA requests for information during the two-year period after the date upon which he ceased to be associated with a member.

**FIRST CAUSE OF ACTION
Improper Use of Customer Funds
(NASD Rules 2330(a) and 2110)**

6. The Department realleges and incorporates by reference paragraphs 1-5 above.
7. For fund transfers of under \$50,000, Merrill did not require its registered representatives to secure a Letter of Authorization signed by the customer. Instead, the transfer could be approved by a manager based upon a Verbal Authorization Form ("VAF") in which the registered representative confirmed that he/she had personally spoken with the customer and verified that the customer had authorized the fund transfer.

8. Zuniga created VAFs on May 15, 2008, June 24, 2008 and July 7, 2008 to authorize transfers of funds between the accounts of different customers. Each of these VAFs contained false explanations as to the reasons for the fund transfers.

May 15, 2008 Transfer of \$37,000 from Client A to Client B

9. On May 15, 2008, Zuniga created a VAF that falsely represented that Client A had given him verbal authorization to transfer \$37,000 from Client A's account to Client B's account, and that the funds were a "personal loan" to Client B.

10. The VAF was approved by Zuniga's managers and the funds were transferred on May 15, 2008.

11. Client A had not authorized this transfer of funds. Client A had not agreed or intended to make a personal loan to Client B, either at this time or any other time.

12. When Client A later complained to Merrill about the unauthorized fund transfer, Merrill credited the \$37,000 back to Customer A's account, with interest.

June 24, 2008 Transfer of \$7,957 from Client B to Client A

13. On June 24, 2008, Zuniga created a VAF that falsely represented that Client B had given him verbal authorization to transfer \$7,957 from Client B's account back to Client A's account. The VAF indicated that Client B was enacting the transfer in order to transfer funds to her "business partner" in order to "pay off a personal loan" she had purportedly received from Client A.

14. The VAF was approved by Zuniga's managers and the funds were transferred on June 24, 2008.

15. Client B had not authorized this transfer of funds, borrowed funds from Client A,

or faced any need to pay off a personal loan from Client A. Moreover, Client B had no business dealings with Client A that involved their Merrill accounts or personal loans to one another.

16. When Client B later complained to Merrill about this unauthorized transfer of funds from her account, Merrill credited the \$7,957 back to her account.

July 7, 2008 Transfer of \$43,000 from Client C to Client B

17. On July 7, 2008, Zuniga created a VAF that falsely represented that Client C had given him verbal authorization to transfer \$43,000 from Client C's account to Client B's account. The VAF indicated that Client C was enacting the transfer in order to "lend money to a business partner for the purchase of real estate."

18. The VAF was approved by Zuniga's managers and the funds were transferred on July 7, 2008.

19. Client C had not authorized this transfer of funds, and he had not agreed or intended to lend money to Client B.

20. Client B (the recipient of the funds) was not a business partner of Client C; was not purchasing real estate; was not borrowing money from Client C, and had no advanced knowledge of this fund transfer.

21. When Client C later complained to Merrill about the unauthorized fund transfer, Merrill credited the \$43,000 back to Customer C's account, with interest.

22. Zuniga told his supervisors at Merrill that Client B's account had faced a margin call on July 7, 2008, that he had transferred the funds from Client C's account to help Client B meet the margin call, that he had not consulted with, or received the consent of, either client in advance of the fund transfer, and that he had exercised poor judgment.

23. Zuniga also admitted to his supervisors that he had told Client C that the funds had been transferred because of an error and not because of a purported loan for the purchase of real estate.

24. In arranging for the unauthorized transfers of funds between his customers' accounts on May 15, 2008, June 24, 2008 and July 7, 2008, Zuniga was improperly using customer funds in violation of NASD Rules 2330(a) and 2110.

**SECOND CAUSE OF ACTION
Falsification of Firm Records
(NASD Rule 2110)**

25. The Department realleges and incorporates by reference paragraphs 1-24 above.

26. The VAFs that Zuniga created on May 15, 2008, June 24, 2008 and July 7, 2008 contained false representations as to why the funds were being transferred between the accounts of his customers.

27. These false VAFs became part of Merrill's records.

28. By including false and misleading information on three VAFs, Zuniga violated NASD Rule 2110.

**THIRD CAUSE OF ACTION
Failure to Respond to Requests for Information
(NASD and FINRA Rule 8210, NASD Rule 2110 and FINRA Rule 2010)**

29. The Department realleges and incorporates by reference paragraphs 1-28 above.

30. On December 11, 2008, FINRA staff sent a written request to Zuniga seeking information and documents pursuant to NASD Rule 8210. The letter was sent by certified mail to the address listed for Zuniga in Web CRD ("the CRD address"). Zuniga failed to respond by the requested deadline.

31. On June 5, 2009, FINRA staff sent a written request to Zuniga seeking information and documents pursuant to FINRA Rule 8210. The letter was sent by certified mail to the CRD address. Zuniga failed to respond by the requested deadline.

32. On August 7, 2009, FINRA staff sent a written request to Zuniga seeking information and documents pursuant to FINRA Rule 8210. The letter was sent by certified mail to the CRD address and enclosed a copy of the previous request letter dated June 5, 2009. Zuniga failed to respond by the requested deadline.

33. On January 4, 2010, FINRA staff sent a written request to Zuniga seeking information and documents pursuant to FINRA Rule 8210. The letter was sent by certified mail to the CRD address and enclosed a copy of each of the previous request letters. Zuniga failed to respond by the requested deadline.

34. Each of the four request letters discussed above was delivered to Zuniga's CRD address and signed for by F.J.

35. In failing to respond to the request letter dated December 11, 2008, Zuniga violated NASD Rules 8210 and 2110. In failing to respond to the request letters dated June 5, 2009, August 7, 2009, and January 4, 2010, Zuniga violated FINRA Rules 8210 and 2010.

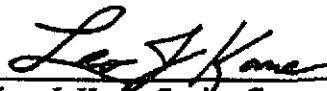
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed; and
- 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: 10/20/2010


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