

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

MARCIA J. McLEMORE
(CRD No. 1881990),

Respondent.

Disciplinary Proceeding
No. 20080157087

Hearing Officer – LBB

DEFAULT DECISION

June 14, 2010

Respondent Marcia J. McLemore is barred from associating with any member firm in any capacity for conversion of funds from her member firm, in violation of NASD Conduct Rule 2110. She is also barred for failure to provide information and failure to appear and testify at an on-the-record interview, in violation of FINRA Procedural Rule 8210 and Conduct Rule 2010.

Appearances

Margaret M. Tolan, Esq., New York, New York, Senior Trial Counsel, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION¹

The Department of Enforcement filed the Complaint in this disciplinary proceeding on January 13, 2010, asserting two causes of action against Respondent Marcia J. McLemore

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 NASD Conduct Rule 2110, which was in effect at the time of the violation charged in the First Cause of Action, and on FINRA Procedural Rule 8210 and Conduct Rule 2010 for the Second Cause of Action. The applicable rules are available at www.finra.org/rules.

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("Respondent"). The First Cause of Action charges Respondent with conversion of funds from her member firm, in violation of NASD Conduct Rule 2110. The Second Cause of Action charges Respondent with failure to provide information and failure to appear and testify at an on-the-record interview ("OTR"), in violation FINRA Procedural Rule 8210 and Conduct Rule 2010. Despite being properly served with the Complaint, Notice of Complaint, and Second Notice of Complaint, Respondent has not filed an answer or otherwise responded to the Complaint.

On April 22, 2010, Enforcement filed a Motion for Entry of Default Decision and Request for Sanctions, to which Respondent did not respond. Accordingly, pursuant to Procedural Rules 9215(f) and 9269, the allegations in the Complaint will be deemed admitted and Enforcement's motion will be granted.²

I. Respondent's Default

On January 13, 2010, Enforcement served the Complaint and Notice of Complaint on Respondent by certified mail at her residential address, as listed in the Central Registration Depository ("CRD"). Tolan Decl. ¶ 19. The Notice of Complaint notified Respondent that her answer to the Complaint was required to be filed by February 10, 2010. Respondent did not answer or otherwise respond to the Complaint by February 10, 2010. Tolan Decl. ¶ 20. The mailings were not returned to FINRA by the Postal Service. Tolan Supp. Decl. ¶ 9.

On February 25, 2010, Enforcement served the Complaint, Notice of Complaint, and Second Notice of Complaint on Respondent by certified and first-class mail at Respondent's

² The factual determinations in this decision are based on the allegations of the attached Complaint and the materials Enforcement filed with its default motion, which included the Declaration of Margaret M. Tolan in Support of Motion for Entry of Default Decision, and supporting documentation that was attached to counsel's Declaration. Counsel's Declaration is cited herein as "Tolan Decl. ¶ ____." The supporting documentation is cited as "CX-____." In addition, Enforcement submitted a supplemental declaration in response to an order from the Hearing Officer. See Declaration of Margaret M. Tolan in Response to Order Requiring Supplementation of Motion for Entry of Default Decision," dated May 26, 2010. The supplemental declaration is cited as "Tolan Supp. Decl. ¶ ____."

CRD address. The certified mailing was returned to FINRA by the Postal Service, marked "Return to Sender, Moved Left No Address, Unable to Forward." The first-class mailing was not returned to FINRA. Tolan Decl. ¶ 21. The Second Notice of Complaint informed Respondent that she was required to respond to the Complaint by March 15, 2010. Tolan Supp. Decl. ¶ 10. Respondent has not answered or otherwise responded to the Complaint.

Enforcement served the Complaint and the Notices of Complaint on Respondent in accordance with Procedural Rule 9134, giving her constructive notice of this proceeding. By failing to respond, she defaulted.

II. Jurisdiction

Respondent was employed by FINRA member firm Edward D. Jones & Co., L.P. ("Edward Jones") from July 1988 through November 11, 2008. She was registered with FINRA through Edward Jones from February 2000 until her employment was terminated. Tolan Decl. ¶¶ 4, 6; CX-1. On November 16, 2008, Edward Jones filed a Uniform Termination Notice of Securities Industry Registration (Form U5), reporting that the firm had terminated Respondent's employment on November 11, 2008. Tolan Decl. ¶ 7; CX-2. Respondent is not currently employed in the securities industry. Tolan Decl. ¶ 8; CX-1.

Although Respondent is not registered with a FINRA member firm, she remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because the Complaint was filed within two years after the termination of *her registration with a member firm, and it charges her with misconduct while she was registered with a member firm and with failing to respond to Rule 8210 requests issued within two years following the termination of her registration with a member firm.*

III. Origin of the Investigation

Edward Jones filed the Form U5 on November 16, 2008, notifying FINRA that Respondent had been terminated for "Inappropriate Conduct – Not Securities Industry Related." CX-2. Upon receipt of the Form U5, FINRA staff started an investigation to determine if Respondent had violated NASD Rule 2110. The investigation led to the filing of the Complaint. Tolan Decl. ¶ 9.

IV. Violations

A. Respondent Converted Funds from Her Firm, in Violation of NASD Conduct Rule 2110

Respondent was employed by Edward Jones as an auditor in the branch audit department of the firm's compliance department. Because her job required frequent travel, the firm gave her a corporate credit card. When Respondent accepted the corporate credit card, she agreed to use the card only for reimbursable business expenses, and to pay the balance in full each month. The agreement with the firm informed her that using the card for non-business expenses, or failing to pay the balance in full when due, would be considered a misuse of the firm's resources, and could result in disciplinary action by the firm.

On August 6, 2007, Edward Jones sent a memorandum to Respondent about deficient and late payments on her corporate credit card, reminding her that she had agreed to use the card only for corporate expenses and to pay the balance in full each month. The firm warned Respondent that her actions constituted misuse of corporate resources and could adversely affect her ability to do her job, and that any further issues with respect to the corporate credit card could result in the termination of her employment.

During the period April 2008 through November 2008, Respondent misappropriated firm funds by using expense reimbursements for personal expenses, charging personal expenses to her

corporate credit card, and failing to pay the bills on her corporate card. During this period, Respondent charged more than \$6,000 in business expenses to her corporate credit card, for which she promptly sought reimbursement by the firm. Upon receipt of the funds from the firm, she deposited the funds into her personal bank account to pay her personal expenses. In addition, Respondent charged \$386.48 in personal expenses on her corporate credit card. While she did not submit a travel and expense report for her personal expenses, she also did not pay the credit card charges.

In November 2008, the firm was notified by the firm's credit card vendor that Respondent's account was delinquent, with a balance of \$6,442.20. The firm terminated Respondent's employment and paid the balance on her credit card, including the charges that were incurred for her personal expenses, as it was obligated to do.

Conversion, or misappropriation of funds, is "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." *FINRA Sanction Guidelines* at 38 n.2 (2007). A registered representative violates Rule 2110 by converting funds from her member firm. *John M. E. Saad*, Exchange Act Rel. No. 62178, 2010 SEC LEXIS ____ (May 26, 2010) (barred for filing a false reimbursement form and misappropriating firm funds, thereby violating Rule 2110); *Dist. Bus. Conduct Comm. v. Kwikkel-Elliott*, No. C04960004, 1998 NASD Discip. LEXIS 4 (N.B.C.C. Jan. 16, 1998) (barred for converting funds from employer by submission of false expense reimbursement requests).

The allegations of the Complaint, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent misappropriated her firm's funds, in violation of NASD Conduct Rule 2110.

B. Respondent Failed to Provide Information and Failed to Appear to Testify at an On-the-Record Interview, in Violation of FINRA Procedural Rule 8210 and Conduct Rule 2010

The Second Cause of Action charges Respondent with failure to respond to requests for information and failure to appear and testify at an OTR, pursuant to FINRA Rule 8210.

By letter of March 2, 2009, FINRA staff asked Respondent to submit a written statement relating to the allegations in the Form U5 that she had used her corporate credit card inappropriately. The request was sent to her CRD address by first-class and certified mail. FINRA received the return receipt for the certified mailing, signed "Jenay McLemore." Respondent's middle name is Jenay. Respondent failed to respond to the March 2 letter.

FINRA staff sent a second request for information to Respondent at her CRD address on June 22, 2009, by first-class and certified mail, requesting the same information as requested by the March 2 letter. Neither mailing was returned to FINRA. On August 12, 2009, FINRA staff sent a third request for information to Respondent at her CRD address, by first-class and certified mail, requiring her to testify by telephone at an on-the-record interview on August 25, 2009. Neither mailing was returned to FINRA staff. Respondent did not appear to testify at the OTR.

All of the requests were served within two years of the termination of Respondent's registration with a member firm. Respondent was required to respond pursuant to FINRA Rule 8210. These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent failed to respond to requests for information, in violation of FINRA Procedural Rule 8210. A violation FINRA Rule 8210 is also a violation of FINRA Conduct Rule 2010.³

³ *Dep't of Enforcement v. Hoeper*, No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (N.A.C. Nov. 2, 2001) (violation of NASD Procedural Rule 8210 was a violation of NASD Conduct Rule 2110).

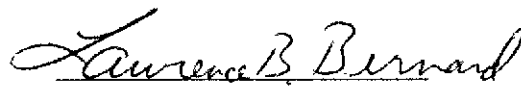
V. Sanctions

The FINRA Sanction Guidelines recommend a bar as the sanction for misappropriation of funds in violation of Conduct Rule 2110, regardless of the amount converted. *FINRA Sanction Guidelines* at 38 (2007) ("Sanction Guidelines"). There is no evidence of any mitigating factors that would make a sanction of anything less than a bar appropriate. Respondent is barred for conversion of funds.

The Sanction Guidelines recommend a bar where a respondent fails to respond in any manner to a request for information issued pursuant to Procedural Rule 8210. *Sanction Guidelines* at 35. Where mitigation exists, the Sanction Guidelines recommend consideration of a suspension in all capacities of up to two years. The record reflects that Respondent failed to respond to two requests to submit a written statement, and failed to appear and testify at her OTR. There are no mitigating factors that would justify imposition of a lesser sanction. A bar is the appropriate sanction under the facts and circumstances of this case for Respondent's violations of FINRA Procedural Rule 8210 and Conduct Rule 2010.

VI. Conclusion

Respondent Marcia J. McLemore is barred from associating with any member firm in any capacity for conversion of funds, in violation of NASD Conduct Rule 2110. She is also barred for failure to provide information and failure to appear and testify at an on-the-record interview, in violation of FINRA Procedural Rules 8210 and FINRA Conduct Rule 2010. The bars will become effective immediately if this decision becomes FINRA's final disciplinary action in this proceeding.


Lawrence B. Bernard
Hearing Officer

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

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

V.

JAN 14 2010

MARCIA J. MCLEMORE,

RESPONDENT

COMPLAINT

The Department of Enforcement alleges:

OVERVIEW

1. Respondent Marcia J. McLemore ("McLemore"), while employed by Edward Jones ("the Firm"), incurred legitimate business expenses totaling over \$6,000.00 on her corporate credit card for which she was reimbursed by the Firm. Once reimbursed, McLemore was required to use the reimbursed amounts to pay off her corporate credit card balance in full. Instead McLemore deposited the money in her money market account and then into her personal checking account. McLemore also incurred additional personal expenses on her credit card of approximately \$386.48 for which she did not reimburse her Firm. When Enforcement sought McLemore's explanation for the relevant events, McLemore refused to provide the requested information. The conversion of Firm funds was a violation of NASD Rule 2110 and her failure to provide information and testimony violated of FINRA Rules 2110 and 8210.

RESPONDENT AND JURISDICTION

2. McLemore was born in [REDACTED] McLemore first entered the securities industry in January 1988 with Edward Jones. Her employment was terminated from Edward Jones in November 2008.
3. McLemore remains subject to FINRA's jurisdiction pursuant to Article V, Section 4 of the NASD By-Laws as her alleged misconduct occurred while she was associated with a member firm and a complaint was filed within two years following Respondent's resignation.
4. McLemore is subject to FINRA's jurisdiction as an "associated person" pursuant to Art. V, Section 4 of FINRA's By-Laws. McLemore joined the Firm in 1998. McLemore was employed as a branch auditor in the compliance department. Her duties and responsibilities included traveling to branch offices to conduct audits.

FIRST CAUSE OF ACTION

CONVERSION OF FIRM FUNDS (NASD PROCEDURAL RULE 2110)

4. Enforcement re-alleges and incorporates by reference paragraphs 1-4 above.
5. In 2008, McLemore was employed as an auditor in the branch audit department of the Firm's compliance department

6. On August 6, 2007, McLemore received a final written warning from the Firm regarding her unauthorized use of the corporate credit card. In 2007, McLemore's corporate credit card payments were deficient and late and she maintained a balance of \$4166.82. McLemore signed and agreed at that time to pay off her account in full by August 20, 2007 and to abide by the Firm's policies regarding the use of the corporate credit card going forward.
7. In November 2008, the Firm was notified by the Firm's credit card vendor, of a delinquent payment for McLemore's corporate credit card totaling \$6,442.20. Furthermore, the Firm was informed the card was over its \$5,000 limit and had been revoked.
8. Respondent was given a corporate credit card to use for business expenses only as her job as an auditor required frequent travel. In contravention of this policy, McLemore incurred legitimate business expenses totaling over \$6000 for which she was promptly reimbursed by the Firm. Under the agreement with the Firm, McLemore was required to pay off her credit card balance in full when reimbursed by the Firm. Instead, McLemore deposited the over \$6000 she was reimbursed by the Firm into her personal checking account to pay her personal expenses.
9. McLemore also incurred personal expenses on her credit card. While McLemore did not submit a travel and expense report for those charges, she also did not submit payment to Commerce Bank for those expenses. After her employment was terminated the Firm paid Commerce Bank approximately \$386.48 to cover McLemore's personal expenses.

10. In sum, McLemore used her corporate card for personal expenses totaling approximately \$386.48; exceeded the card's \$5,000 limit; had a total outstanding credit card balance of \$6442 in October 2008; failed to pay the outstanding balance in full when reimbursed by the Firm and had her credit card revoked which violated the Firm's credit card policies. This conduct also constituted a conversion of Firm funds.
11. As of September 2009, McLemore has not reimbursed the Firm for her personal expenses charged on her corporate credit card. The Firm settled the balance on the corporate credit card with the credit card vendor.
12. NASD Rule 2110 requires that members and associated persons observe "high standards of commercial honor and just and equitable principles of trade."
13. McLemore engaged in conduct inconsistent with high standards of commercial honor and equitable principles of trade in that she converted funds from her member firm employer.
14. As a result of her conduct, McLemore violated NASD Rule 2110.

Second Cause of Action

Failure to Repond to a Request for Information and Requests to Appear and Testify

(FINRA Rules 8210 and 2010)

15. Enforcement re-alleges and incorporates by reference paragraphs 1-12 above.

Background

15. McLemore failed to cooperate with FINRA's requests for information and to appear and testify in connection with its investigation into her misconduct.
16. FINRA requested an explanation of this matter from McLemore by letter dated March 2, 2009. The letter was sent via certified mail and first class mail to McLemore's last known home address according to CRD. On March 17, 2009, the certified copy was signed for by "Jenay McLemore." McLemore's middle name is Jenay. The first class copy was not returned to FINRA.
17. McLemore failed to respond to the March 17, 2009 letter.
18. On June 22, 2009, a second request for information was sent to McLemore via certified mail and first class mail to her CRD address. Neither copy has been returned to FINRA.
19. On August 12, 2009, a third request for information and testimony was sent to McLemore via certified and first class mail to her CRD address. In its letter the staff requested that McLemore give an on-the-record interview by telephone at 1:00 pm on August 25, 2009. Neither copy of the letter has been returned to FINRA and McLemore failed to submit to an interview or request that the interview be rescheduled.
20. McLemore has failed to cooperate and has not complied with Enforcement's requests for testimony pursuant to FINRA Rule 8210.
21. FINRA Rule 8210 (a) provides that Enforcement may "require a member, person associated with a member, or a person subject to the Association's jurisdiction to

provide information orally, in writing or electronically..." FINRA Rule 8210 (c) provides that "No member or person shall fail to provide information or testimony or to permit an inspection and copying of books and records, or accounts pursuant to this Rule."

22. As a result of the conduct set forth in paragraphs 1 through 18 above, McLemore 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 NASD Rule 8310(a) be imposed.

FINRA DEPARTMENT OF ENFORCEMENT

Date:

Jan 12, 2010


Linda Riefberg, Chief Counsel
Margaret Tolan, Senior Trial Counsel

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