

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

BRYAN DAVID BUDVITIS  
(CRD No. 4216953),

Respondent.

Disciplinary Proceeding  
No. 2008016013501

Hearing Officer – LBB

**DEFAULT DECISION**

**March 5, 2010**

**Respondent is barred from associating with any member firm for misappropriation of customer funds, in violation of NASD Conduct Rules 2330(a) and 2110. He is also barred for failure to respond to requests for information, in violation of FINRA Procedural Rule 8210 and Conduct Rule 2010.**

*Appearances*

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

No appearance by or for Respondent.

**DECISION**

The Department of Enforcement filed the Complaint in this action on October 12, 2009. The Complaint asserts two causes of action against Respondent Bryan David Budvitis ("Respondent"). The first cause of action charges Respondent with misappropriation of customer funds and falsification of firm records, in violation of NASD Conduct Rules 2110 and

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2330(a).<sup>1</sup> 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 of FINRA Procedural Rule 8210 and Conduct Rule 2010.<sup>2</sup> 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 January 14, 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.<sup>3</sup>

#### **I. Respondent’s Default**

On October 12, 2009, Enforcement served Respondent with the Complaint and Notice of Complaint by certified mail at his residential address as reflected in the Central Registration Depository (“CRD”). The mailing was returned to FINRA by the Postal Service marked “return to sender ... unclaimed.” Decl. of Margaret M. Tolan, ¶¶ 17, 18.

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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 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 for the first cause of action, and on FINRA Procedural Rule 8210 and Conduct Rule 2010 for Respondent’s failure to respond to requests for information. The applicable rules are available at [www.finra.org/rules](http://www.finra.org/rules).

<sup>2</sup> The Complaint charges Respondent with violations of NASD Rules 8210 and 2110, but the violations took place after FINRA had transferred those rules to the Consolidated FINRA Rulebook. The rules were transferred without substantive change as FINRA Rules 8210 and 2010. See Reg. Notice 08-57; Exchange Act Rel. No. 58643 (Sept. 25, 2008), 73 FR 57174 (Oct. 1, 2008) (Order Approving Proposed Rule Change; File No. SR-FINRA-2008-028).

<sup>3</sup> 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 “Decl. of Margaret M. Tolan, ¶ \_\_.” The supporting documentation is cited as “CX-\_\_.”

Enforcement served Respondent with a Second Notice of Complaint, and copies of the original Notice of Complaint and Complaint, on November 18, 2009, by certified mail at his CRD address. The mailing was not returned to FINRA. Decl. of Margaret M. Tolan, ¶ 20.

Enforcement served the Complaint and the Notices of Complaint on Respondent in accordance with Procedural Rule 9134, giving him constructive notice of this proceeding. Respondent has not answered or otherwise responded to the Complaint. By failing to respond, he defaulted.

## **II. Jurisdiction**

Respondent was first associated with a FINRA member firm in 2001, and was first registered with FINRA in 2002. He was a registered representative with FINRA member firm Citigroup Global Markets (“Citigroup”) from May 23, 2005, through November 22, 2008. CX-1; Decl. of Margaret M. Tolan, ¶¶ 4, 5. On August 13, 2009, Citigroup filed an amended Form U5, reporting to FINRA that Respondent’s employment had been terminated for obtaining client funds and using them for his own purposes without authorization, and accepting checks from a client in violation of the firm’s gift policy.<sup>4</sup> Decl. of Margaret M. Tolan, ¶ 6; CX-2. Respondent has not been registered with any FINRA member firm since the termination of his employment with Citigroup. CX-1; Decl. of Margaret M. Tolan, ¶ 7.

Although Respondent has not been registered with any FINRA member firm since the termination of his employment with Citigroup, he 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 his registration with a member firm, and it charges him with misconduct while he was registered with a member firm and with

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<sup>4</sup> FINRA’s investigation began as a result of a telephone call from Citigroup, advising FINRA that Citigroup was conducting an internal review of Respondent after a customer had complained of money missing from his account. Decl. of Margaret M. Tolan, ¶ 8.

failing to respond to Rule 8210 requests issued within two years following the termination of his registration with a member firm.

### **III. Violations**

#### **A. Misappropriation of Customer Funds and Falsification of Firm Documents, in Violation of NASD Conduct Rules 2330(a) and 2110**

The Complaint alleges that Respondent, while employed by Citigroup, misappropriated funds from the account of a customer by falsifying firm documents. On August 22, 2008, Respondent completed a Client Verbal Instructions Form requesting that a \$20,000 check be issued to his wife from the account of Citigroup customers G.F. and C.F. ("Customer Account"). Respondent represented that he had received the instructions from the account owners to issue the check. The check was issued, but on August 25, 2008, he requested a stop payment for the check to his wife.

On August 29, 2008, Respondent completed a Client Verbal Instructions Form requesting the transfer of \$40,000 from the Customer Account to his wife's account at Bank One. He represented that he had received the instructions from the account owners to make the transfer. The funds were transferred to his wife's account. On September 2, 2008, Respondent deposited a cashier's check for \$20,000 in the Customer Account.

On October 17, 2008, Respondent completed a Client Verbal Instructions Form requesting another transfer of \$6,500 from the Customer Account to his wife's account at Bank One. Respondent represented that he had received instructions from the account owners to make the transfer. The funds were thereafter transferred to his wife's account.

Respondent did not have permission or authority from G.F. or C.F. to take or use the funds. In total, Respondent misappropriated \$26,500 from the Customer Account.

Respondent's conduct violates Rules 2330(a) and 2110. See *Dep't of Enforcement v. Patel*, No. C02990052, 2001 NASD Discip. LEXIS 42 (N.A.C. May 23, 2001) (misuse of funds by diverting funds received from customers for bond purchases to personal use violates Rules 2110 and 2330(a)). Furthermore, although Enforcement characterizes Respondent's conduct as "misappropriation of customer funds," it also fits within the definition of conversion. Conversion 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). Respondent also violated Rule 2110 by submitting false information to his firm. See, e.g., *Dep't of Enforcement v. Nouchi*, No. E102004083705, 2009 FINRA Discip. LEXIS 8, at \*6 (N.A.C. Aug. 7, 2009).

The allegations of the Complaint, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent violated NASD Conduct Rules 2330(a) and 2110 by misappropriating client funds and falsifying firm documents.

**B. Failure to Provide Information, in Violation of FINRA Procedural Rule 8210 and Conduct Rule 2010**

On February 23, 2009, pursuant to Rule 8210, FINRA staff sent Respondent a written request for information related to the staff's investigation of him, directing Respondent to submit a written statement to Enforcement. Respondent first requested an extension of time to respond, and subsequently assured FINRA staff that he would respond, but failed to do so.

FINRA staff sent a second request for information by letter of March 19, 2009, directing Respondent to appear and testify at an OTR on March 30, 2009, and again directing Respondent to submit a written statement. On March 29, 2009, Respondent informed FINRA staff that he would not attend the OTR the next day and asked that it be rescheduled to take place in Chicago. On May 4, 2009, FINRA staff sent a letter to Respondent pursuant to Rule 8210 renewing the

staff's request for information and rescheduling the OTR for May 13, 2009, at FINRA's Chicago office. Respondent failed to appear at the Chicago office for the OTR on May 13, 2009. He has not submitted the written statement requested in the Rule 8210 requests.

Both requests were served within two years of the termination of Respondent's registration with a member firm. Respondent was required to respond pursuant to Rule 8210 and Article V, Section 4 of FINRA's By-Laws. 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 Procedural Rule 8210. A violation of Rule 8210 is also a violation of Conduct Rule 2010.<sup>5</sup>

#### IV. Sanctions

FINRA Sanction Guidelines ("Guidelines") recommend a bar as the sanction for conversion in violation of Conduct Rules 2330(a) and 2110, regardless of the amount converted. *Sanction Guidelines* at 38. There is no evidence of any mitigating factors that would make a sanction of anything less than a bar appropriate. A bar is the appropriate sanction for Respondent's conversion of funds. Because the customers have been "made whole" by Citigroup, restitution will not be ordered.

The Guidelines recommend a bar where a respondent fails to respond in any manner to a request for information issued pursuant to FINRA or NASD Procedural Rule 8210. *Sanction Guidelines* at 35. Where mitigation exists, the Guidelines recommend consideration of a suspension in all capacities of up to two years. The record reflects that Respondent failed to respond in any manner to requests for information. There are no mitigating factors that would

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<sup>5</sup> *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).

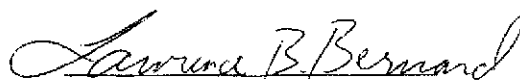
justify imposition of a lesser sanction. A bar is the appropriate sanction under the facts and circumstances of this case for Respondent's violations of FINRA Rules 8210 and 2010.

Enforcement has not addressed the violation for falsification of firm documents or requested a separate sanction. In light of the imposition of the bars, and the pleading of the falsification of documents in the same cause of action as misappropriation of funds, no additional sanction is imposed for falsification of firm documents.

**V. Conclusion**

Respondent Bryan David Budvitis is barred from associating with any member firm for misappropriation of customer funds, in violation of NASD Conduct Rules 2330(a) and 2110. He is also barred for failure to respond to requests for information, in violation of FINRA Procedural Rule 8210 and Conduct Rule 2010. The bars will become effective immediately if this decision becomes FINRA's final disciplinary action in this proceeding.

**SO ORDERED.**

A handwritten signature in cursive script, reading "Lawrence B. Bernard".

Lawrence B. Bernard  
Hearing Officer

Copies to: Bryan D. Budvitis (*via overnight courier and first-class mail*)  
Margaret M. Tolan, Esq. (*via electronic and first-class mail*)  
David R. Sonnenberg, Esq. (*via electronic mail*)

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

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|-----------------------------------|
| <b>DEPARTMENT OF ENFORCEMENT,</b> |
| <b>COMPLAINANT,</b>               |
| <b>V.</b>                         |
| <b>BRYAN DAVID BUDVITIS,</b>      |
| <b>CRD #4216953</b>               |
| <b>RESPONDENT.</b>                |

DISCIPLINARY PROCEEDING  
NO. 20080160135

**COMPLAINT**

The Department of Enforcement alleges:

**OVERVIEW**

1. Respondent Bryan David Budvitis ("Budvitis"), while employed by Citigroup Global Markets, misappropriated funds from the account of one customer in the name of "G. and C. F. ("the F account")". When Enforcement sought Budvitis' explanation for the relevant events, Budvitis refused to provide the requested testimony. Budvitis' conduct was in violation of NASD Conduct Rule 2110 and NASD Procedural Rule 8210.

**RESPONDENT AND JURISDICTION**

2. Bryan David Budvitis was born in [REDACTED] Budvitis first entered the securities industry in March 2001 when he began his employment with Man Financial, Inc as an account executive.
3. During the period March 2005 until his employment was terminated on November 22, 2008, Budvitis was employed by Citigroup Global Markets as a client service assistant for two brokers. Budvitis held Series 7 and 63 licenses.
4. Budvitis has not been employed with a FINRA member firm since November 22, 2008.
5. Budvitis remains subject to FINRA's jurisdiction pursuant to Article V, Section 4 of the NASD By-Laws as his misconduct alleged occurred while Budvitis was associated with a member firm and a complaint was filed within two years following Respondent's resignation.

## **FIRST CAUSE OF ACTION**

### **Misappropriation of Customer Funds and Falsification of Firm Documents**

#### **(NASD PROCEDURAL RULE 2110 and 2330 (a))**

6. Enforcement re-alleges and incorporates by reference paragraphs 1-5 above.
7. Respondent misappropriated \$26,500.00 in funds from his customer's account. Budvitis misappropriated an additional \$40,000 but either issued a stop payment or replaced the misappropriated funds himself.
8. Specifically,
  - a. On August 22, 2008 Budvitis completed a Client Verbal Instructions Form requesting that a \$20,000 check be issued to his wife, Amy Bohn, from the F account. Budvitis represented that he received and confirmed these instructions from all the account owners; that he repeated the instructions back to the account owners and that he personally knew the account holders. A check was issued.
  - b. On August 25, 2008, Budvitis requested a stop payment for the check to Amy Bohn in the amount of \$20,000.
  - c. On August 29, 2008, Budvitis completed a Client Verbal Instructions Form requested that \$40,000 be transferred from the F account to the account of Amy Bohn at Bank One. Budvitis represented that he received and confirmed these instructions from all the account owners; that he repeated the instructions back to the account owners and that he personally knew the account holders. These funds were thereafter transferred to Amy Bohn's account at Banc One.
  - d. On September 2, 2008, Budvitis deposited a cashier's check in the amount of \$20,000 to the F account.
  - e. On October 17, 2008, Budvitis completed a Client Verbal Instructions Form requesting that \$6,500 be transferred from the F account to the account of Amy Bohn at Bank One. Budvitis represented that he received and confirmed these instructions from all the account owners; that he repeated the instructions back to the account owners and that he

personally knew the account holders. These funds were thereafter transferred to Amy Bohn's account at Banc One.

f. The total amount of misappropriated funds, taking into account the \$20,000 returned by cashier's check to the F account, was \$26,500.

9. Budvitis did not have permission or authority from F to take or use his funds for Budvitis' use and purposes.

10. NASD Rule 2110 requires that members and associated persons observe "high standards of commercial honor and just and equitable principles of trade." NASD Rule 2330(a) states "No member or person associated with a member shall make improper use of a customer's securities or funds.

11. Budvitis engaged in conduct inconsistent with high standards of commercial honor and equitable principles of trade in that he misappropriated funds from his member firm employer and falsified firm documents in order to effect his misappropriation.

12. As a result of his conduct, Budvitis violated NASD Rule 2110.

#### **SECOND CAUSE OF ACTION**

##### **Failure to Respond to a Request for Information and Requests to Appear and Testify**

**(NASD Rules 8210 and 2110)**

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

##### **Background**

14. Budvitis failed to cooperate with FINRA's requests to appear and testify in connection with its investigation into his misconduct.

15. By letter dated February 23, 2009, sent first class mail to his CRD address, which Budvitis received, FINRA asked, pursuant to NASD Rules 8210 and 2110, Budvitis to provide a written statement to Enforcement no later than March 4, 2009.

16. On March 4, 2009 Budvitis contacted FINRA by e-mail and requested an extension of time until March 10, 2009 to respond to FINRA's request. That request was granted.

17. On March 13, 2009, Budvitis was contacted by FINRA since his written statement had not been received on March 10, 2009. Budvitis informed the staff that his statement would arrive by Federal Express on March 16, 2009.

18. As of September 14, 2009 Budvitis' response has not been received by FINRA.

19. By letter dated March 19, 2009, FINRA sent Budvitis an additional request for a written statement by first class and certified mail at his CRD address, the certified letter was returned unclaimed but the first class letter was not returned. Budvitis was asked to respond by March 30, 2009. In addition, Budvitis was requested to appear and testify, on-the-record, on March 30, 2009.

20. In an e-mail dated March 29, 2009, Budvitis informed FINRA he would not attend the on-the-record interview scheduled for the next day and asked that it be rescheduled to take place in Chicago.

21. On May 4, 2009, FINRA, by first class and certified mail to his CRD address, which certified letter was returned unclaimed, renewed its request for information with a response date of May 8, 2009 and rescheduled Budvitis' on-the-record interview for May 13, 2009 at FINRA's Chicago office.

22. On May 13, 2009, Budvitis failed to appear for his on-the-record interview in the Chicago office and did not contact the staff for an adjournment.

23. On May 13, 2009, Enforcement opened and closed an official transcribed record noting Budvitis' failure to appear.

24. Budvitis has failed to cooperate and has not complied with Enforcement's requests for testimony pursuant to NASD Rule 8210.

25. NASD 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..." NASD 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."

26. As a result of the conduct set forth in paragraphs 1 through 23 above, Budvitis violated NASD Rules 8210 and 2110.

#### **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: 10/9/09

By: L. Riefberg

Linda S. Riefberg, Chief Counsel, Vice President  
Margaret Tolan, Senior Trial Counsel

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