

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DEAN ALLEN RABER
(CRD No. 2214667),

Respondent.

Disciplinary Proceeding
No. 2008016254501

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

May 21, 2010

Respondent is barred from associating with any member firm in any capacity for conversion of funds, in violation of NASD Conduct Rules 2110; and 2330(a); and for failing to respond to requests for information, in violation of Procedural Rule 8210 and FINRA Conduct Rule 2010.

Appearances

Sharon Tilove-Navatta, Senior Counsel, New York, New York, for the Department of Enforcement.

No appearance by or on behalf of Dean Allen Raber.

DECISION

I. Introduction

The FINRA Department of Enforcement ("Enforcement") filed the attached Complaint with the Office of Hearing Officers on January 7, 2010. The Complaint charges Respondent Dean Allen Raber ("Raber"), a former broker with PFS Investments, Inc. ("PFS"), with three violations: (1) conversion of non-customer funds, in violation of NASD Conduct Rule 2110; (2) misuse of customer funds, in violation of NASD Conduct Rules 2330(a) and 2110; and, failure to

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provide information and documentation, in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010.¹

Raber defaulted by failing to answer or otherwise respond to the Complaint. On March 31, 2010, Enforcement filed a Motion for Entry of Default Decision and Request for Sanctions with the Office of Hearing Officers, together with the Declaration of Sharon Tilove-Navatta and seven exhibits. Raber did not respond to the motion.

Based on the facts alleged in the Complaint, which are deemed admitted pursuant to Rules 9215(f) and 9269(a), as well as the additional evidence Enforcement filed in support of its motion for entry of default decision, the Hearing Officer barred Raber from associating with any member firm in any capacity for each violation.

II. Background

Raber first entered the securities industry in January 1992 when he joined PFS, an affiliate of Primerica Financial Services, Inc. ("Primerica"). In July 1992, Raber registered with FINRA as an Investment Company and Variable Contracts Products Representative. In May 2003, he also registered as an Investment Company and Variable Contracts Products Principal.² In addition, Raber was employed by Primerica as an insurance salesman during the period relevant to this proceeding.

¹ NASD consolidated with the member regulation and enforcement functions of NYSE Regulation in July 2007 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. See Regulatory Notice 08-57 (Oct. 2008). In that process, NASD Conduct Rule 2110 was renumbered as FINRA Conduct Rule 2010. This decision refers to and relies on the Conduct Rules that were in effect at the time of Respondent's alleged misconduct. For the first and second causes of action, the applicable conduct rule is NASD Conduct Rule 2110 because the alleged misconduct occurred before December 15, 2008. For the third cause of action, the applicable conduct rule is FINRA Conduct Rule 2010. In addition, because the Complaint was filed after December 15, 2008, FINRA's procedural rules govern this proceeding. The applicable rules are available at www.finra.org/rules.

² Ex. 1, at 3.

On January 13, 2009, PFS discharged Raber because he had misappropriated funds that had been given to him by AB to be invested in an account with PFS. At the same time, PFS filed a Uniform Termination Notice for Securities Industry Registration (Form U5) with FINRA's Central Registration Depository ("CRD"), which included a description of the reasons for Raber's discharge.³ FINRA then initiated an investigation of the facts and circumstances surrounding Raber's discharge.⁴ During the investigation, in June 2009, PFS reported that it had determined that Raber also had misappropriated funds from Customer PP in late 2007.⁵ The Complaint covers both misappropriations, as well as Raber's failure to respond to requests for information FINRA staff issued during its related investigation.

III. Jurisdiction

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 after January 13, 2009, the date FINRA terminated Raber's registrations, and (2) the Complaint charges him with misconduct that occurred while he was associated with a FINRA member firm, and with failing to respond to FINRA's requests for information made during the two-year period following the termination of his last FINRA registration.⁶

IV. Raber's Default

On January 7, 2010, Enforcement served Raber with the Notice of Complaint by first-class certified mail (return receipt requested) and by first-class mail sent to his residential address

³ Ex. 2.

⁴ Tilove-Navatta Decl. ¶ 16.

⁵ Ex. 7.

⁶ 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").

recorded in CRD, as well as an address Enforcement obtained from PFS (referred to as his “Alternate Address”).⁷ The U.S. Postal Service returned both mailings sent to Raber’s CRD address with notations that he had moved.⁸ Neither of the mailings Enforcement sent to his Alternate Address was returned by the U.S. Postal Service.⁹ Raber did not answer the Complaint by the deadline specified in the Notice of Complaint.

On February 5, 2010, Enforcement served Raber with the Second Notice of Complaint by first-class certified mail (return receipt requested) and by first-class mail sent to his CRD address and his Alternate Address.¹⁰ Again, the U.S. Postal Service returned both mailings sent to Raber’s CRD address with notations that he had moved.¹¹ Neither of the mailings Enforcement sent to his Alternate Address was returned by the U.S. Postal Service.¹² Raber did not respond to the Second Notice of Complaint.

Raber received valid constructive notice of this proceeding.¹³ Accordingly, the Hearing Officer finds that Raber defaulted by failing to answer or otherwise respond to the Complaint.

V. Findings of Fact and Conclusions of Law

A. Raber’s Conversion of Funds—First Cause of Action

In early 2007, AB informed Raber that she planned to use funds that she had received from the sale of a business to build a garage on her property. Although AB did not have an

⁷ Tilove-Navatta Decl. ¶ 7.

⁸ Tilove-Navatta Decl. ¶ 8; Ex. 4.

⁹ *Id.* ¶ 9.

¹⁰ *Id.* ¶ 11; Ex. 5.

¹¹ Tilove-Navatta Decl. ¶ 12; Ex. 6.

¹² Tilove-Navatta Decl. ¶ 13.

¹³ *Department of Enforcement v. Reynolds Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at *5 (N.A.C. Dec. 9, 2003) (Procedural Rule 9134(b)(1) allows for constructive notice by mailing a complaint to the respondent’s most recent CRD address) (quoting *Lubeck v. SEC*, 1998 U.S. App. LEXIS 18849, at *20 (9th Cir. Aug. 12, 1998)).

account with Raber, he nonetheless persuaded her to give him the funds she intended to use for her new garage for investment until she was ready to begin construction. On April 12, 2007, AB gave Raber four checks totaling \$30,000, which Raber cashed. Rather than opening an account for AB, Raber kept the proceeds.

Also in early 2007, AB spoke to Raber about opening a personal retirement account. Raber told AB that he could get her a higher rate of return than she was earning on her individual retirement account. On or about May 23, 2007, AB gave Raber a check for \$14,000 to open a new retirement account. Rather than open a retirement account, Raber cashed the check and kept the funds.

In September 2007, AB asked Raber to return the money she had set aside for her new garage. At that point, Raber told her that he had deposited her funds in his personal account and that he had not invested the funds as she had directed. Raber never returned any of AB's funds. Eventually, PFS repaid \$30,000 of the \$44,000 Raber took from AB.¹⁴ AB sustained a loss of \$14,000.

Based on the foregoing facts, the Hearing Officer finds that Raber violated Conduct Rule 2110 by converting funds belonging to AB.

B. Misuse of Funds—Second Cause of Action

In 2007, Customer BB had purchased a variable annuity for \$65,000 through Raber at PFS. On or about November 17, 2007, BB gave Raber two checks that totaled \$10,000 for a private investment. Raber did not invest the money as BB directed. Instead, Raber cashed the

¹⁴ Tilove-Navatta Decl. ¶ 22(e).

checks and kept the \$10,000 for his own use. Raber never returned any of the money to BB. However, PFS reimbursed BB in full.¹⁵

Based on the foregoing facts, the Hearing Officer finds that Raber violated Conduct Rules 2330(a) and 2110 by misusing customer funds.

C. Failure to Provide Information—Third Cause of Action

The Third Cause of Action alleges that Raber violated Procedural Rule 8210 and Conduct Rule 2010 by failing to respond to FINRA staff's written requests for information concerning his conversion of funds from AB and BB.

On June 23, 2009, and November 10, 2009, pursuant to Procedural Rule 8210, FINRA Staff sent Raber requests for information by first-class and certified mail at his CRD address and his Alternate Address. The staff requested Raber to provide a signed written statement regarding the disposition of the funds he received from AB and BB. Raber did not respond to either request.¹⁶

In addition, on September 4, 2009, and October 7, 2009, pursuant to Procedural Rule 8210, the staff sent duplicate requests for information to Raber at his Alternate Address by first-class and certified mail. The staff received by return mail the receipt for the September 4 certified mailing, indicating that the request had been delivered on September 11, 2009.¹⁷ Raber did not respond to either request.

The facts alleged in the Third Cause of Action establish that Raber failed to respond in any manner to several requests for information. Accordingly, the Hearing Officer finds that Raber violated Procedural Rule 8210 and Conduct Rule 2010.

¹⁵ *Id.* ¶ 24(d).

¹⁶ *Id.* ¶¶ 26-29, 36, 39.

¹⁷ *Id.* ¶ 31.

VI. Sanctions

A. Conversion of Funds—First and Second Causes of Action

Raber's misuse of AB's and BB's funds amounted to conversion. Raber wrongfully "exercised dominion" over their funds.¹⁸ The only distinction between the first two causes of action is the status of the owner of the converted funds. Because BB was Raber's customer, Enforcement properly alleged that Raber violated the specific provisions of NASD Conduct Rule 2330(a), which rule prohibits the improper use of a customer's securities or funds, as well as NASD Conduct Rule 2110. However, because AB was not Raber's customer at the time of the conversion, Enforcement only charged him with violating NASD Conduct Rule 2110 for his wrongful taking of AB's funds.

The Sanction Guidelines for Conversion or Improper Use of Funds or Securities recommend a bar for conversion, regardless of the amount converted.¹⁹ Raber will therefore be barred from associating with any FINRA member firm in any capacity. Raber will also be ordered to pay restitution to AB in the amount of \$14,000, plus interest until the full amount is paid.

B. Failure to Respond to Requests for Information—Third Cause of Action

The Sanction Guidelines recommend a bar when a respondent fails to respond in any manner to a request for information and there are no mitigating factors.²⁰ Here, Raber failed to respond to requests that he provide information regarding his conversion of funds from AB and

¹⁸ See *Department of Enforcement v. Paratore*, No. 2005002570601, 2008 FINRA Discip. LEXIS 1, at *10 (FINRA N.A.C. Mar. 7, 2008).

¹⁹ *FINRA Sanction Guidelines* 38 (2007), www.finra.org/sanctionguidelines.

²⁰ *Id.* 35.

BB. There are no mitigating factors. Accordingly, the Hearing Officer will bar Raber for this violation as well.

VII. Order

Dean Allen Raber is barred from associating with any member firm in any capacity for (1) conversion of funds from a person other than a customer, in violation of Conduct Rule 2110, as alleged in the First Cause of Action; (2) conversion of customer funds, in violation of NASD Conduct Rules 2330(a) and 2110, as alleged in the Second Cause of Action; and (3) failure to provide information and documentation, in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010, as alleged in the Third Cause of Action. The bars shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.

In addition, Raber is ordered to pay restitution to AB in the principal amount of \$14,000, plus interest thereon at the rate established under Section 6621(a)(2) of the Internal Revenue Code from May 23, 2007, until paid.²¹



Andrew H. Perkins
Hearing Officer

Copies to:

Dean Allen Raber (by FedEx, next day delivery, and first-class mail)
Sharon Tilove-Navatta, Esq. (by electronic and first-class mail)
Mark P. Dauer, Esq. (by electronic mail)
David R. Sonnenberg, Esq. (by electronic mail)

²¹ 26 U.S.C. § 6621(a)(2). The interest rate, which is used by the Internal Revenue Service to determine interest due on underpaid taxes, is adjusted each quarter and reflects market conditions. AB is identified in the addendum to this decision, which is served only on the parties.

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

**Dean Allen Raber
CRD No. 2214667,**

Respondent.

**DISCIPLINARY PROCEEDING
NO. 2008016254501**

HEARING OFFICER - _____

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Between April 2007 and November 2007, Dean Allen Raber ("Raber" or "Respondent") misappropriated approximately \$44,000 that had been entrusted to him by an individual, who was not his customer or a customer of his member firm employer, for the purpose of making investments on her behalf in violation of NASD Rule 2110. In addition, Raber misappropriated approximately \$10,000 that had been entrusted to him by a customer for the purpose of making an investment on her behalf in violation of NASD Rules 2330(a) and 2110. Raber also failed to respond to FINRA's Rule 8210 requests for information and documents in this matter in violation of FINRA Rules 8210 and 2010.

JURISDICTION

2. Raber became employed at Primerica Financial Services Inc. ("Primerica") in March 1985 as an insurance salesperson. Raber was registered with FINRA at Primerica's

broker-dealer affiliate, PFS Investments, Inc. ("PFS" or the "Firm") in July 1992, as an Investment Company and Variable Contracts Products Representative (Series 6).

3. In May 2003, Raber was approved as an Investment Company and Variable Contracts Products Principal (S26) while at PFS.

4. Raber remained dually employed by Primerica and the Firm until he was terminated by PFS on January 13, 2009.

5. Respondent is no longer associated with a FINRA member.

6. FINRA retains jurisdiction over Respondent pursuant to Article V, Section 4 of the FINRA By-Laws.

FIRST CAUSE OF ACTION
(CONVERSION – NASD RULE 2110)

7. The Department re-alleges and incorporates by reference paragraphs 1 through 6 above.

8. During all relevant times, AB was a member of the public and a personal acquaintance of the Respondent.

9. Early in 2007, AB began discussing the possibility of investing money with Respondent.

10. AB informed Respondent that she was planning to use funds from the sale of her small business to build a garage on her property in the coming months.

11. Respondent persuaded AB to give him the funds so that he could invest them for her on a short-term basis until she was ready to build the garage.

12. On April 12, 2007, at Respondent's instruction, AB issued four personal checks payable to Respondent personally, which Respondent represented he would invest for AB. Three of these checks were drawn in the amount of \$9,000, and the fourth check was drawn in the amount of \$3,000.

13. Respondent did not open an investment account for AB and did not make any investment on behalf of AB, using the \$30,000 payment that AB had given to Respondent for investment.

14. Instead, without AB's knowledge or consent, Respondent negotiated the checks that AB had given to him and kept the funds for Respondent's own uses and purposes.

15. In early 2007, AB also began to discuss with Respondent the idea of establishing a personal retirement account.

16. Respondent told AB that he could get her more for her money than she was then earning on an individual retirement account ("IRA") she had with her credit union.

17. Around April 2007, Respondent met with AB and showed her various brochures advertising IRAs. Respondent gave AB one of the pamphlets that described certain IRAs and encouraged AB to think about opening an IRA through Respondent.

18. On or about May 23, 2007, AB issued a personal check payable to Respondent in the amount of \$14,000, which Respondent represented he would use to open an IRA account for AB.

19. Respondent did not open an IRA account and did not make any other investment on behalf of AB, using the \$14,000 payment that AB had given to Respondent for investment.

20. Instead, without AB's knowledge or consent, Respondent negotiated the \$14,000 check that AB had given to him and kept the funds for Respondent's own uses and purposes.

21. In September 2007, AB requested that Respondent return the money she had given him so that she could pay for the garage she was building.

22. Respondent admitted to AB that he had deposited her money in his own personal account and never opened any account for AB.

23. Respondent never returned any of the \$44,000 given to him by AB.

24. Accordingly, Respondent violated NASD Rule 2110.

SECOND CAUSE OF ACTION

(MISUSE OF CUSTOMER FUNDS – NASD RULES 2330(a) and 2110)

25. The Department re-alleges and incorporates by reference paragraphs 1 through 24 above.

26. During all relevant times, BB was a member of the public and a customer of the Firm.

27. BB had purchased a variable annuity through the Respondent at PFS during 2007 in the amount of \$65,000.

28. In November 2007, BB agreed to give Respondent an additional \$10,000 for a new investment.

29. On or about November 17, 2007, BB issued two personal checks payable to Respondent in the amounts of \$6,000 and \$4,000, which Respondent represented he would invest for BB.

30. Respondent did not make any investment on behalf of BB using the \$10,000 payment that BB had given to Respondent for investment.

31. Instead, without BB's knowledge or consent, Respondent negotiated the two checks that BB had given to him and kept the funds for Respondent's own uses and purposes.

32. Respondent never returned any of the \$10,000 to BB.

33. Accordingly, Respondent violated NASD Rules 2330(a) and 2110.

THIRD CAUSE OF ACTION

(FAILURE TO PROVIDE INFORMATION AND DOCUMENTATION FINRA RULES 8210 AND 2010)

34. The Department re-alleges and incorporates by reference paragraphs 1 through 33 above.

35. On June 23, 2009, FINRA sent a letter to Respondent pursuant to FINRA Rule 8210, requesting that he provide, among other things, a signed written statement responding to allegations that he misappropriated funds from AB and then used the funds for personal expenses; and that he invested \$10,000 from BB in a non-Firm investment. The letter was sent to Respondent's CRD address by certified mail return receipt requested and first class mail. A copy of the letter was also sent by certified mail return receipt requested and first class mail, to the Respondent at a new residential address that was provided to FINRA by Respondent's former member firm employer, PFS (the "New Address"). The letter required a response no later than July 1, 2009.

36. Neither the certified letter addressed to Respondent's CRD address dated June 23, 2009 nor the copy of the June 23, 2009 letter sent by certified mail to the New Address were returned to FINRA.

37. Neither of the copies of the June 23, 2009 letter sent by first class mail to Respondent's CRD and New Address was returned to FINRA.

38. No response to FINRA's June 23, 2009 request was received from Respondent.

39. On September 4, 2009, FINRA sent a letter to Respondent pursuant to FINRA Rule 8210, requesting that he provide, among other things, a signed written statement responding to allegations that he misappropriated funds from AB and BB. The letter was sent to Respondent's New Address by certified mail return receipt requested and first class mail. The letter required a response no later than September 19, 2009.

40. On or about September 11, 2009, the return receipt requested for the September 4, 2009 letter was returned to FINRA indicating that the certified letter had been delivered to, and signed for by, a member of Respondent's household. The copy of this letter sent by first class mail was not returned to FINRA.

41. No response to FINRA's September 4, 2009 request was received from Respondent.

42. On October 7, 2009, FINRA sent a letter to Respondent pursuant to FINRA Rule 8210, requesting that he provide, among other things, a signed written statement requesting the same information previously requested in the September 4, 2009 letter. The letter was sent to Respondent's New Address by certified mail return receipt requested and first class mail. The letter required a response no later than October 23, 2009.

43. The original certified letter dated October 7, 2009 was returned to FINRA unclaimed. The copy of this letter sent by first class mail was not returned to FINRA.

44. No response to FINRA's October 7, 2009 request was received from Respondent.

45. On November 10, 2009, FINRA sent a letter to Respondent pursuant to FINRA Rule 8210, requesting the same information previously requested in the October 7, 2009 letter. A copy of FINRA's October 7, 2009 letter was enclosed with the November 10, 2009 letter. The

letter was sent to Respondent's CRD address by certified mail return receipt requested and first class mail. A copy of the letter was also sent by certified mail return receipt requested and first class mail to the Respondent at the New Address. The letter required a response no later than November 27, 2009.

46. The certified letter dated November 10, 2009 addressed to Raber's CRD address and the copy sent to his CRD address by first class mail were returned to FINRA with labels affixed by the United States Post Office indicating that "forward time" to Raber at the New Address had expired.

47. The copy of the November 10, 2009 letter sent by certified mail letter to Respondent's New Address was returned to FINRA marked "unclaimed" by the United States Post Office.

48. The copy of the November 10, 2009 letter sent by first class mail to the New Address was not returned to FINRA.

49. No response to FINRA's November 10, 2009 request was received from Respondent.

50. To date, Respondent has not responded to any of the staff's 8210 letters and has not provided any of the information or documentation requested therein.

51. By virtue of the foregoing, Respondent has violated, and is continuing to violate, FINRA Rules 8210 and 2010.

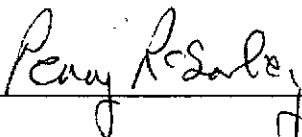
RELIEF REQUESTED

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: January 6, 2010



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