

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

STEVEN E. FLOYD
(CRD No. 4894766),

Respondent.

Disciplinary Proceeding
No. 2009016586601

DEFAULT DECISION

Hearing Officer – Sara Nelson Bloom

June 14, 2010

For conversion of customer funds, in violation of Rule 2110, and for failing to respond to requests for information, in violation of Rules 8210 and 2010, Respondent is barred from associating with any FINRA member in any capacity.

Appearances

Kevin E. Pogue, Esq., New York, NY, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

I. Background

On December 21, 2009, the Department of Enforcement (“Enforcement”) filed a two-cause Complaint in this proceeding, attached to this Decision as Exhibit A. The first cause alleges that Steven E. Floyd (“Respondent”) violated Rule 2110 by converting over \$15,000 from three customer accounts. The second cause alleges that Respondent violated Rules 8210 and 2010 by failing to respond to requests for information.¹

¹ Following the consolidation of NASD and the member regulation, enforcement, and arbitration functions of NYSE Regulation into FINRA, FINRA began developing a new “Consolidated Rulebook” of FINRA Rules. The first phase of the new consolidated rules became effective on December 15, 2008. See FINRA Regulatory Notice 08-57 (Oct. 2008). In that process, FINRA renumbered NASD Rule 2110 as FINRA Rule 2010. Because the Complaint in this case was filed after December 15, 2008, the procedural rules that apply are the current FINRA Rules. The conduct rules that apply are the NASD Rules that existed at the time of the conduct at issue.

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Respondent did not file an Answer to the Complaint. Accordingly, on April 26, 2010, Enforcement filed a Motion for Entry of Default Decision, supported by the Declaration of Kevin E. Pogue, Esq. ("Pogue Decl.") and 11 exhibits. Respondent did not file a response to the Motion.

For the reasons set forth below, Enforcement's motion is granted.²

II. Respondent's Default

On December 21, 2009, Enforcement sent the Complaint and Notice of Complaint by certified mail to Respondent's last known residential address according to the Central Registration Depository (the "CRD Address") as well as an alternative address (the "First Alternative" address) obtained by Enforcement. Pogue Decl. ¶ 14; CX-1, CX-3, CX-4. The mailings to the CRD address were returned unclaimed. Pogue Decl. ¶ 15; CX-5. The certified mail receipt for the Alternative address indicated that the mailing was signed for and accepted; however, the signature is illegible. The first-class mailing was not returned. Pogue Decl. ¶ 16; CX-6. Respondent did not file an Answer. Pogue Decl. ¶ 17.

In the same manner, on January 20, 2010, Enforcement sent the Complaint and Second Notice of Complaint to Respondent at his CRD and First Alternative addresses. Pogue Decl. ¶ 18; CX-7. The mailings to the CRD address were returned unclaimed. Pogue Decl. ¶ 19; CX-8. The certified mail receipt to the First Alternative address was returned, unclaimed, with a reference to an additional alternative address (the "Second Alternative" address). Pogue Decl. ¶ 20; CX-9. The first-class mailing was not returned. Pogue Decl. ¶ 20. Respondent again did not file an Answer. Pogue Decl. ¶ 21.

² The factual determinations in this Decision are based on the allegations of the attached Complaint, which are deemed admitted, and the declarations and exhibits filed by Enforcement with its motion.

On March 3, 2010, Enforcement sent the Complaint and First, Second, and Third Notices of Complaint to Respondent at the Second Alternative address in the same manner. Pogue Decl. ¶ 22; CX-10. The certified mailing was returned unclaimed and the first-class mailing was not returned. Pogue Decl. ¶ 23; CX-11.

Enforcement complied with Rule 9134(b)(1) by mailing the Complaint and Notices of Complaint to Respondent's CRD Address, thereby giving him constructive notice of this proceeding.³ By failing to file an Answer, Respondent defaulted. Accordingly, pursuant to Rules 9215(f) and 9269(a)(2), the allegations in the Complaint are deemed admitted.

III. Jurisdiction

Respondent first became registered with a FINRA member firm in December 2004. Pogue Decl. ¶ 4; CX-1. Between January 2006 and December 2008, Respondent was employed as a General Securities Representative with FINRA member Chase Investment Services Corp. (the "Firm"), and as a personal banker at an affiliated retail bank, JP Morgan Chase, N.A. (the "Bank"). Pogue Decl. ¶ 5; CX-1. On January 8, 2009, the Firm filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") reflecting that it terminated Respondent on December 12, 2008, for "opening and using multiple Bank clients (sic) ATM cards to withdraw funds for personal use without the clients (sic) knowledge or consent." Pogue Decl. ¶ 6; CX-2. He has not been associated with a member firm since then. CX-1.

Although Respondent is not currently associated with a member firm, FINRA has jurisdiction to bring this proceeding, pursuant to Art. V, § 4 of FINRA's By-Laws, because (1) the Complaint charges Respondent with misconduct while he was an associated person and with

³ Because one of the certified mailings was signed for and accepted, Respondent may have had actual notice of this proceeding.

failing to comply with requests for information made during the two-year period following termination of his last registration, and (2) the Complaint was filed within that two-year period.

IV. Origin of Proceeding

The investigation leading to this proceeding followed the Firm's filing of a Form U5 disclosing that Respondent had been terminated for converting customer funds.

V. Violations

A. Conversion – Rule 2110

The first cause of the Complaint alleges that during the period between October and December 2008, Respondent converted customer funds to his own benefit and use. Specifically, Respondent requested and received temporary ATM cards in the name of three customers and used the cards to withdraw a total of more than \$15,000 from these customer accounts without the customers' knowledge or consent.

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). The allegations of the Complaint, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent violated Rule 2110 by converting the customer funds.

B. Failure to Respond – Rules 8210 and 2010

Rule 8210 authorizes FINRA to require any person subject to its jurisdiction to provide information related to any matter under investigation.⁴ The second cause of the Complaint alleges that on May 18, 2009, FINRA Staff sent a request to Respondent at his CRD address by first-class and certified mail, pursuant to Rule 8210, requesting a written statement concerning the allegations that he created and used Bank customers' ATM cards to convert customer funds to his own use. Pogue Decl. ¶ 13. The mailings were returned with notations from the U.S. Postal Service that the address was insufficient and the mailings could not be forwarded. *Id.*

Again, on June 9, 2009, in the same manner, FINRA Staff sent the same request to Respondent at his CRD address. *Id.* Again, the mailings were returned with notations from the U.S. Postal Service that the address was insufficient and the mailings could not be forwarded. *Id.*

On June 22, 2009, in the same manner, FINRA Staff sent the same request to Respondent at the First Alternative Address that it discovered through a Lexis/Nexis search. *Id.* The certified mailing was returned with the notation "Return to Sender – no mail receptacle – Unable to Forward." The first-class mailing was not returned. *Id.* On July 7, 2009, FINRA Staff again sent the same request in the same manner. Again, the certified mailing was returned with the same notation, and the first class mailing was not returned. *Id.*

⁴Rule 8210 serves as a key element in FINRA's oversight function and allows FINRA to carry out its regulatory functions without subpoena power. See, e.g., *Dep't of Enforcement v. Valentino*, No. FPI010004, 2003 NASD Discip. LEXIS 15, at *12 (NAC May 21, 2003), *aff'd*, 2004 SEC LEXIS 330 (Feb. 13, 2004) ("It is well established that because NASD lacks subpoena power over its members, a failure to provide information fully and promptly undermines NASD's ability to carry out its regulatory mandate.") (citation omitted); *Joseph G. Chiulli*, Exchange Act Rel. No. 42,359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for FINRA to effectively conduct its investigations, and emphasizing that NASD members and associated persons must fully cooperate with requests for information).

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 Rule 8210 and Article V, Section 4 of FINRA's By-Laws, but he did not do so.

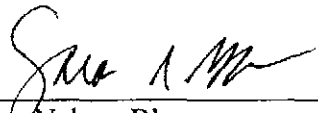
These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent failed to respond to requests for information, in violation of Rules 8210 and 2010.⁵

VI. Sanctions

For conversion, the FINRA Sanction Guidelines ("*Guidelines*") recommend a bar, regardless of the amount converted. *Guidelines* at 38. A bar is also standard for a failure to provide requested information in any manner. *Guidelines* at 35. There is no evidence of any mitigating circumstances that would justify a lesser sanction for these violations. Therefore, the Hearing Officer imposes a bar for each violation.⁶

VII. Conclusion

For conversion of customer funds, in violation of Rule 2110, and failing to respond to requests for information, in violation of Rules 8210 and 2010, Respondent is barred from associating with any FINRA member in any capacity. These bars shall become effective immediately if this Decision becomes the final disciplinary action of FINRA.


Sara Nelson Bloom
Hearing Officer

Copies to: Steven Floyd (via overnight and first-class mail)
Kevin E. Pogue, Esq. (via first-class and electronic mail)
David R. Sonnenberg, Esq. (via electronic mail)

⁵ A violation of Rule 8210 is also a violation of Rule 2010. *Dep't of Enforcement v. Hoeper*, No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (NAC Nov. 2, 2001) (applying former Rule 2110).

⁶ Enforcement did not seek restitution because the Firm reimbursed the customers.

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Steven Emery Floyd
CRD No. 4894766,

Respondent.

DISCIPLINARY PROCEEDING
No. 2009016586601

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Between October 28, 2008 and December 12, 2008, while registered with Chase Investment Services Corporation ("Chase" or the "Firm") and employed as personal banker at a Chase affiliated retail bank, JP Morgan Chase, N.A. (the "Bank"), Steven Emery Floyd ("Floyd") requested and obtained temporary ATM cards for three Bank customers and used the cards to withdraw approximately \$15,668 from their accounts without their knowledge or consent. Floyd's misconduct violated NASD Conduct Rule 2110. Floyd also failed to respond to FINRA's Procedural Rule 8210 requests for documents and information in this matter. As a result, Floyd violated FINRA Procedural Rule 8210 and Conduct Rule 2010.

RESPONDENT AND JURISDICTION

2. Floyd entered the securities industry in December 2004 as an employee with A.F.S Inc. In March and April 2005, he qualified as a state securities agent through a Series 66 examination and as a general securities representative through a Series 7 examination, respectively.

3. From in or about January 18, 2006 to December 12, 2008, Floyd was employed as a registered representative with the Firm and as a personal banker at the South Jordan, Utah branch of the Bank.

4. Although he was licensed to sell securities through Chase, Floyd referred Bank customers to Chase financial advisors for securities transactions. As a personal banker with the Bank, Floyd was able to sell a limited number of mutual funds and certain fixed annuities.

5. Floyd is not currently associated with a FINRA member firm. Pursuant to Article V, Section 4 of FINRA's Bylaws, Floyd remains subject to FINRA's jurisdiction until December 12, 2010. Floyd has no prior disciplinary history in the securities industry.

FIRST CAUSE OF ACTION

NASD Conduct Rule 2110 – Conversion of Funds

6. The allegations in paragraphs one through five above are realleged and incorporated by reference.

Customers SS and JS

7. From at least October 2008 through December 2008, SS was a customer of the Bank where she maintained a joint account with her husband JS.

8. In or about October 2008, Floyd caused the issuance of a temporary ATM card for SS's joint Bank account.

9. On or about October 28, 2008 through November 10, 2008, without SS's prior knowledge or consent, Floyd used SS's temporary ATM card to make 11 withdrawals totaling approximately \$3,303 from SS's account.

10. To date, Floyd has not returned any of the funds to customers SS and JS or reimbursed the Bank after the Bank re-paid the funds to SS and JS.

Customer LL

11. In November 2008, LL was a customer of the Bank where he maintained an account.

12. In or about November 2008, Floyd accessed the Bank's electronic systems to review LL's account information and thereafter caused the issuance of a temporary ATM card for LL's Bank account.

13. Between November 14, 2008 and November 26, 2008, without LL's prior knowledge or consent, Floyd used LL's temporary ATM card to make 13 withdrawals totaling approximately \$3,918 from LL's account.

14. To date, Floyd has not returned any of the funds to LL or reimbursed the Bank after the Bank re-paid the funds to LL.

Customer AJ

15. From at least November 2008 through December 2008, AJ was a customer of the Bank where he maintained an account.

16. In or about November 2008, Floyd caused the issuance of a temporary ATM card for AJ's Bank account.

17. Between November 17, 2008 and December 12, 2008, without AJ's prior knowledge or consent, Floyd used AJ's temporary ATM card to make 28 withdrawals totaling approximately \$8,447 from AJ's account.

18. To date, Floyd has not returned any of the funds to AJ or reimbursed the Bank after the Bank re-paid the funds to customer AJ.

19. These acts, practices and conduct described above constitute separate and distinct violations of NASD Conduct Rule 2110.

SECOND CAUSE OF ACTION

Failure to Respond –

FINRA Procedural Rule 8210 and Conduct Rule 2010

20. The allegations in paragraphs one through 19 above are realleged and incorporated by reference.

21. By letters dated May 18, 2009 and June 9, 2009 (the "May 18th Letter" and "June 9th Letter" respectively), Enforcement requested pursuant to FINRA Procedural Rule 8210 that Floyd submit a detailed written statement concerning allegations that he created and used several Bank customers' ATM cards without their authorization. These letters were sent by certified mail return receipt requested and first class mail to Floyd's residential address as indicated in the Central Registration Depository: [REDACTED] [REDACTED] (the "CRD Address").

22. The May 18th and June 9th Letters sent via certified mail were returned to Enforcement by the United States Postal Service with the notation "Return to Sender – Not Deliverable as Addressed – Unable to Forward." The first class copies of the May 18th and June 9th Letters were also returned to Enforcement by the United States Postal Service with the notation "Return to Sender – Insufficient Address – Unable to Forward."

23. By letter dated June 22, 2009 (the "June 22nd Letter"), Enforcement requested pursuant to FINRA Procedural Rule 8210, that Floyd submit a detailed written statement concerning allegations that he created and used several Bank customers' ATM cards without their authorization. The June 22nd Letter requested that Floyd provide his response on or before July 7, 2009. The June 22nd Letter was sent by certified mail, return receipt requested, and first class mail to Floyd's last known address according to a search performed on the LexisNexis website, <http://www.lexis.com>: [REDACTED] (the "Lexis address").

24. The June 22nd Letter sent via certified letter was returned to Enforcement with the notation by the United States Postal Service "Return to Sender – no mail receptacle – Unable to Forward." However, the June 22nd Letter sent by first class mail was not returned to Enforcement.

25. By letter dated July 7, 2009 (the "July 7th Letter"), Enforcement again requested pursuant to FINRA Procedural Rule 8210, that Floyd provide a detailed written statement concerning the termination of his employment from the Firm. The July 7th Letter stated that Floyd's response was due on or before July 21, 2009. Enforcement noted in its July 7th Letter that it was renewing its prior request that Floyd provide a detailed written statement and enclosed a copy of the June 22nd Letter.

26. The July 7th Letter was sent by certified mail, return receipt requested, and first class mail to Floyd's Lexis address.

27. The July 7th Letter sent via certified mail was returned to Enforcement by the United States Postal Service with the notation by the United States Postal Service "Return to Sender -- no mail receptacle -- Unable to Forward." However, the July 7th Letter sent via first class mail was not returned to Enforcement.

28. Enforcement has sent multiple requests, as described above, for information pursuant to FINRA Procedural Rule 8210, to Floyd's CRD address, in addition to the Lexis address. To date, Floyd has failed to provide any response to Enforcement's Rule 8210 requests for information.

29. The acts, practices and conduct described herein constitute a violation of FINRA Procedural Rule 8210 and Conduct Rule 2010.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. Findings of fact and conclusions of law that Floyd committed the violations charged and alleged herein;
- B. Order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed;
- C. 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;
and

- D. 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: December ~~16~~ 18, 2009



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