

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

Department of Enforcement,

Complainant,

v.

Michael Wayne Evans (CRD No. 1726255)
Respondent.

Disciplinary Proceeding
No. 2009017222501

Hearing Officer LBB

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: HE 4/19/11

INTRODUCTION

Disciplinary Proceeding No. 2009017222501 was filed on January 24, 2011, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent Michael Wayne Evans submitted an Offer of Settlement (Offer) to Complainant dated April 15, 2011. Pursuant to FINRA Rule 9270(e), the Complainant and the National Adjudicatory Council (NAC), a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA) have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to FINRA Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.

Under the terms of the Offer, Respondent has consented, without admitting or denying the allegations of the Complaint, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, to the entry of

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findings and violations consistent with the allegations of the Complaint, and to the imposition of the sanctions set forth below, and fully understands that this Order will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA.

BACKGROUND

1. Evans was born in [REDACTED] and entered the securities industry in 1987 as a Series 7 registered employee with Smith Barney Inc., where he remained employed until August 1994. Upon leaving Smith Barney, Evans worked for several member organizations over the next 12 years. Ultimately, on April 2, 2007, Evans joined WaMu as a registered Financial Advisor, ("FA"). On September 2, 2008, Evans was promoted to an Associate Regional Manager at WaMu.
2. On February 14, 2009, WaMu terminated Evans' employment due to a personnel downsizing and Evans was allowed to resign voluntarily. Although Respondent has not been associated with a FINRA member firm since February 14, 2009, 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 him with misconduct committed while he was associated with a FINRA-regulated firm and with failing to respond to FINRA requests for information during the two-year period after the date upon which he ceased to be associated with a FINRA-regulated firm.
3. On March 4, 2009, FINRA received an Amended Uniform Termination Notice for Securities Industry Registration ("Form U5A") from the Firm notifying FINRA about the Gs'

complaint and confirming that Evans' employment had been terminated on February 14, 2009.

4. Respondent has not been the subject of any prior disciplinary action.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:

FIRST CAUSE OF ACTION

Conversion of Customer Brokerage Account Funds or Securities

(NASD RULES 2330 AND 2110 AND FINRA RULE 2010)

Conversion of Bank Account Customer Funds

(NASD RULE 2110 AND FINRA RULE 2010)

5. The Department realleges and incorporates by reference paragraphs 1 through 4, above.
6. NASD Rule 2330 provides that "[n]o member or person associated with a member shall make improper use of a customer's securities or funds. NASD Rule 2110 and FINRA Rule 2010 require that members and associated persons observe high standards of commercial honor and just and equitable principles of trade. A violation of NASD Rule 2330 is also a violation NASD Rule 2110 and FINRA Rule 2010.
7. On two occasions during the Relevant Period, Evans, without the Gs' permission, knowledge or authority, converted the G's securities in the Gs' Brokerage Account when he sold their securities, as described below in paragraphs 15 and 18, transferred the proceeds of the two sales into the Gs' Bank Deposit Account, and ultimately deposited the funds from the two sales into his personal checking account at WaMu Bank.
8. On four occasions during the Relevant Period, Evans, without the G's permission, knowledge or authority, converted the G's funds from their Brokerage Account when he withdrew funds

from the G's Brokerage Account, as set forth above, transferred the funds into the Gs' Bank Deposit Account and ultimately deposited the funds into his personal checking account at WaMu Bank.

9. During the Relevant Period, as set forth above, Evans transferred funds from the Gs' Brokerage Account and thereafter deposited the funds into the Gs' Bank Deposit Account. On each occasion, Evans transferred and withdrew \$10,000 per transaction.
10. By virtue of the foregoing, during the Relevant Period, on six occasions, Evans converted securities and funds from the Gs' Brokerage Account, in violation of NASD Rules 2330 and 2110 and FINRA Rule 2010.
11. In addition, by virtue of the foregoing conduct, during the Relevant Period, on six occasions, Evans violated NASD Rule 2110 and FINRA Rule 2010, in that he withdrew funds from the Gs' Bank Deposit Account and ultimately deposited the funds into his personal checking at WaMU Bank. As a result, Evans converted an aggregate total of \$60,000 from the Gs' Bank Deposit Account via his sale of securities and transfer of funds from the Gs' Brokerage Account.

SECOND CAUSE OF ACTION

Forgery

(NASD RULE 2110 AND FINRA RULE 2010)

12. The Department realleges and incorporates by reference paragraphs 1 through paragraphs 11 above. NASD Rule 2110 and FINRA Rule 2010 require that members and associated persons observe high standards of commercial honor and just and equitable principles of trade.

13. As set forth above, during the Relevant Period: (i) on five occasions, Evans forged the signature of JG on checks that the Gs had given to him which were linked to their Bank Deposit Account; (ii) on three of the five occasions, Evans made the forged checks payable to "CASH"; (iii) on two of the five occasions Evans made the forged checks payable to "Michael W. Evans"; and (iv) on one occasion, Evans forged customer JG's signature on a cash withdrawal form related to the Gs' Bank Deposit Account.
14. By virtue of the foregoing, during the Relevant Period, on five occasions, Evans forged the signature of JG, in violation of NASD Rule 2110 and FINRA Rule 2010.

THIRD CAUSE OF ACTION

Unauthorized Sales

(NASD Rule 2110 and FINRA Rule 2010)

15. The Department realleges and incorporates by reference paragraphs 1 through 14, above.
16. On August 7, 2008, without the Gs' knowledge, authorization, or consent, Evans sold 873.362 shares of the Gs' New York Tax Free Class A Securities, totaling \$10,000 from the Gs' Brokerage Account.
17. On January 20, 2009, without the Gs' knowledge, authorization, or consent, Evans sold 12,345.679 shares totaling \$20,000 of the Gs' Franklin Income Class A Securities from the Gs' Brokerage Account. Evans transferred \$10,000 of the Class A Securities sale proceeds to the Gs' Bank Deposit Account and, also without the Gs' knowledge, authorization or consent, applied the remaining \$10,000 of the Class A Securities sale proceeds to the Gs' Brokerage Account margin balance.
18. By virtue of the foregoing conduct, Evans engaged in two unauthorized sales in the Gs' Brokerage Account, in violation of NASD Rule 2110 and FINRA Rule 2010.

FOURTH CAUSE OF ACTION

Failure to Cooperate

(FINRA RULES 8210 AND 2010)

19. The Department reallages and incorporates by reference paragraphs 1 through 18, above.
20. In pertinent part, FINRA Rule 8210 provides that “[f]or purpose of an investigation, complaint, examination, or proceeding authorized by the FINRA By-Laws or rules, and Adjudicator or FINRA staff shall have the right to: (1) require a member, person associated with a member, or person subject to FINRA’s jurisdiction to provide information orally, in writing or electronically ... and to testify at a location specified by FINRA staff ... with respect to any matter involved in the investigation, complaint, examination or proceeding; ...” A violation of FINRA Rule 8210 is also a violation of FINRA Rule 2010.
21. As stated above in paragraphs 15 through 17, by letters dated March 20, 2009 and April 14, 2009, Enforcement issued two letters, pursuant to FINRA Rule 8210, via certified and first class mail to Evans’ residential address as reflected in CRD. Both letters requested that Evans provide FINRA with a signed, written statement addressing the Gs’ allegations. The April 14th FINRA Rule 8210 request advised Evans that his failure to cooperate could result in discipline for his failure to respond.
22. On April 24, 2009, FINRA received a written response from Evans stating that based on his attorney’s advice, he would not respond to FINRA’s request for information. Evans’ thereafter advised Enforcement that Evans would not cooperate with FINRA during the pendency of a criminal proceeding against Evans. In addition, to date, Evans has not cooperated with Enforcement’s investigation.

23. By virtue of the foregoing, Evans violated FINRA Rules 8210 and 2010, in that he twice failed to respond to requests for a signed, written statement regarding FINRA's investigation of his conduct.

Based on the foregoing, Respondent violated of NASD Rules 2330, 2110, and 8210, and FINRA Rules 8210 and 2010.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondent from any future misconduct, and represent a proper discharge by FINRA, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

It is ordered that Respondent be Barred from association in any capacity with any FINRA regulated entity.

The sanctions imposed herein shall be effective on a date set by FINRA staff. Pursuant to FINRA Rule 8313(e), a bar or expulsion shall become effective upon approval or acceptance of this Order.

Staff is not seeking restitution from Evans on behalf of the Gs because WaMU reimbursed the Gs for the entirety of their losses. In addition, Evans reimbursed WaMu approximately \$47,000 of the \$60,000 that he misappropriated from the Gs and is in the process of earning the remaining \$13,000.¹

Respondent understands that if he is barred or suspended from associating with any FINRA member, he becomes subject to a statutory disqualification as that term is defined in

¹On April 6, 2011 in Suffolk County, New York (Long Island), Evans, following a guilty plea to felony larceny, was sentenced to five years probation and a requirement to complete 800 hours of community service within one year of the sentencing date.

Article III, Section 4 of FINRA's By-Laws, incorporating Section 3(a)(39) of the Securities Exchange Act of 1934. Accordingly, Respondent may not be associated with any FINRA member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension. (See FINRA Rules 8310 and 8311.)

SO ORDERED.

4/19/11
Date

FINRA

Signed on behalf of the
Director of ODA, by delegated authority


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