

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Michael Wayne Evans (CRD No. 1726255),
Respondent

DISCIPLINARY PROCEEDING
No. 2009017222501

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. During the period from July 2008 through January 2009 (the "Relevant Period"), while serving as a financial consultant in the Long Island, New York branch office of WaMu Investments, Inc. ("WaMu" or the "Firm"),¹ Michael Wayne Evans ("Evans") engaged in six unauthorized withdrawals and two unauthorized sales out of the joint WaMu brokerage account (the "Brokerage Account") of husband and wife, JG and YG. (together, "the Gs"), without their knowledge, authorization or consent. In addition, during the Relevant Period, Evans forged five checks linked to the Gs' Washington Mutual Bank Deposit Account (the "Deposit Account"), deposited the checks into his personal WaMu bank account and without the Gs' knowledge, authorization, or consent, ultimately withdrew the Gs' funds. Further,

¹ During the course of Staff's investigation, WaMu and Washington Mutual Bank ceased doing business and were subsequently acquired by Chase Investment Services, Corp. ("Chase") and JPMorgan Chase Bank, N.A. ("Chase Bank"), respectively. In connection with the events at issue, Staff communicated with the compliance departments of both WaMu and Chase.

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during the Relevant Period, Evans forged one cash withdrawal form linked to the Gs' Deposit Account and without the Gs' knowledge, authorization, or consent, withdrew the Gs' funds. As a result of his effecting the unauthorized withdrawals and sales in the Gs' Brokerage Account, and his forging of the checks linked to the Gs' Bank Deposit Account, Evans misappropriated a total of \$60,000 from the Gs' Bank Deposit Account.

2. In connection with his theft of the Gs' Bank Deposit funds, Evans was arrested, arraigned, and is currently under criminal investigation by New York State authorities. To date, Evans has refused to cooperate with FINRA's investigation.

RESPONDENT AND JURISDICTION

3. 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.
4. 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.

5. 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.

DISCUSSION OF VIOLATIVE CONDUCT

Conversion of Brokerage Account and Bank Account Customer Funds, Forgery and Unauthorized Sales

6. The Department realleges and incorporates by reference paragraphs 1 through 5, above.
7. According to the Gs, they first met Evans in 1999 when he was assigned as their FA at Prudential. In 2003, Evans left Prudential for employment with Citigroup. At that time, the Gs agreed to transfer their account to Citigroup, where Evans serviced their account. In 2007, the Gs again transferred their account to WaMu, where they opened the joint Brokerage Account. According to the Gs, some five months later and at Evans' insistence, they opened a joint deposit account at Washington Mutual Bank, (the "Bank Deposit Account"). During their 10-year professional relationship with Evans, the Gs developed a close personal relationship with him, treating and trusting him "like a son."
8. During the Relevant Period, the Gs gave Evans five checks linked to their Bank Deposit Account (Check Numbers [REDACTED]). Evans requested the checks to engage in "unspecified business transactions" on the Gs' behalf and the Gs did not question Evans' request. Specifically, the Gs gave Evans four checks (Numbers [REDACTED]) and

████ in blank form, i.e., without a specified payee and not signed by either of the Gs, and one check (Number █████ signed by YG but not otherwise completed.

9. On July 18, 2008, Evans withdrew \$10,000 from the Gs' Brokerage Account and deposited the same into the Gs' Bank Deposit Account. Subsequently, on or about July 21, 2008, Evans endorsed Check Number █████ from the Bank Deposit Account to "cash" in the amount of \$10,000 and forged JG's signature as payor. Thereafter, Evans cashed Check Number █████ deposited the \$10,000 into his personal bank account at WaMu Bank. These transactions occurred without the Gs' knowledge, authorization, or consent.
10. On August 7, 2008, Evans sold 873.362 shares of the Gs' New York Tax Free Class A securities, totaling \$10,000, from the Gs' Brokerage Account. On August 19, 2008, Evans withdrew the \$10,000 from the Gs' Brokerage Account and deposited the same into the Gs' Bank Deposit Account. On or about August 22, 2008, Evans endorsed Check Number █████ from the Bank Deposit Account to "cash" in the amount of \$10,000 and forged JG's signature as payor. Evans subsequently cashed the check and deposited the \$10,000 into his personal bank account at WaMu Bank. These transactions occurred without the Gs' knowledge, authorization, or consent.
11. On September 9, 2008, Evans took a margin loan against the Gs' Brokerage Account in the amount of \$10,000 and subsequently withdrew that amount from the Gs' Brokerage Account and deposited it into their Bank Deposit Account. On or about September 15, 2008, Evans completed a cash withdrawal form, assigning \$10,000 payable to himself from the Gs' Bank Deposit Account. Evans thereafter forged J G's signature on the completed cash withdrawal form to withdraw the Gs' funds from their Bank Deposit Account. Evans subsequently

deposited the \$10,000 into his personal bank account at WaMu Bank. These transactions occurred without the Gs' knowledge, authorization, or consent.

12. On October 13, 2008, Evans took a second margin loan against the Gs' Brokerage Account in the amount of \$10,000 and subsequently withdrew that amount from the Gs' Brokerage Account and deposited it into their Bank Deposit Account. On or about October 24, 2008, Evans endorsed Check Number [REDACTED] from the Bank Deposit Account in the amount of \$10,000 to "cash" and thereafter forged J G's signature as payor. Evans subsequently cashed the check and deposited the \$10,000 into his personal bank account at WaMu Bank. These transactions occurred without the Gs' knowledge, authorization, or consent.

13. On November 18, 2008, Evans took a third margin loan against the Gs' Brokerage Account in the amount of \$10,000 and subsequently withdrew that amount from the Gs' Brokerage Account and deposited it into their Bank Deposit Account. On or about that same day, Evans endorsed Check Number [REDACTED] from the Bank Deposit Account to "Michael W. Evans" in the amount of \$10,000 and thereafter forged J G's signature as payor. Evans subsequently cashed the check and deposited the \$10,000 into his personal bank account at WaMu Bank. These transactions occurred without the Gs' knowledge, authorization, or consent.

14. On January 20, 2009, Evans sold 12,345.679 shares totaling \$20,000 of the Gs' Franklin Income Class A securities from the Gs' Brokerage Account and transferred \$10,000 to the Gs' Bank Deposit Account. Evans applied the remaining \$10,000 to reduce the Gs' margin loan amount. Previously, YG had signed Check Number [REDACTED] from the Bank Deposit Account and given it to Evans. Subsequently, on or about January 27, 2009, Evans endorsed Check Number [REDACTED] from the Bank Deposit Account to "Michael W. Evans" in the amount of \$10,000 and forged JG's signature as payor next to YG's signature. Evans subsequently

cashed the check and deposited the \$10,000 into his personal bank account at WaMu Bank.

These transactions occurred without the Gs' knowledge, authorization, or consent.

Failure to Cooperate

15. By letter dated March 20, 2009, sent via First Class Mail and Certified Mail, Return Receipt Requested, FINRA sent to Evans a request for a signed statement addressing the Gs' allegations, pursuant to FINRA Rule 8210. FINRA sent the letter to Evans at the residential address as reflected in the Central Registration Depository ("CRD"). Evans' response to the letter was due on April 3, 2009. The Certified Mail Receipt for the March 20th letter reflected that "B Evans" signed the receipt on March 29, 2009. Additionally, the letter sent via First Class Mail was not returned to FINRA. Evans failed to submit a response to the March 20th letter by the April 3, 2009 deadline.
16. By letter dated April 14, 2009, sent via First Class Mail and Certified Mail, Return Receipt Request, FINRA sent to Evans a second request for a signed statement addressing the Gs' allegations, pursuant to FINRA Rule 8210. The April 14th letter informed Evans that he would be subject to discipline for his failure to respond. FINRA sent the letter to Evans at the residential address as reflected in the CRD. Evans's response to the letter was due on April 28, 2009. The Certified Mail receipt for the April 14th letter reflected that "B Evans" signed the receipt on April 17, 2009. Additionally, the letter sent via First Class Mail was not returned to FINRA.
17. 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 during the pendency of a criminal proceeding. Evans' counsel advised Enforcement that Evans would

not cooperate with FINRA during the pendency of a criminal proceeding against Evans. To date, Evans has not complied with Staff's written or verbal requests for information.

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)**

18. The Department realleges and incorporates by reference paragraphs 1 through 17, above.
19. 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.
20. 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 above in paragraphs 10 and 14, 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.
21. 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.

22. 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.
23. 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.
24. 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)

25. The Department realleges and incorporates by reference paragraphs 1 through paragraphs 24 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.
26. 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.

27. 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)

28. The Department realleges and incorporates by reference paragraphs 1 through 27, above.
29. 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.
30. 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.
31. 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)

32. The Department reallages and incorporates by reference paragraphs 1 through 31, above.
33. 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.
34. 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.
35. 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.

36. 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.

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.
- 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: 1/24/11


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