

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

THOMAS M. KINSER
(CRD No. 1435579),

Disciplinary Proceeding
No. 2009017466201

Hearing Officer – MC

DEFAULT DECISION

April 18, 2011

Respondent is barred from associating with any FINRA member firm in any capacity for: (i) violating NASD Conduct Rules 2110 and 2330 by converting approximately \$330,000; (ii) violating NASD Conduct Rule 2110 by forging and falsifying documents; and (iii) violating FINRA Conduct Rule 2010 and Procedural Rule 8210 by failing to respond to requests for documents and information issued pursuant to Rule 8210.

Appearances:

Daniel D. McClain, Director, Enforcement Center, and Thomas B. Lawson, Vice President and Chief Counsel, Washington, DC, for the Department of Enforcement.

No appearance by or on behalf of Respondent Thomas M. Kinser.

DECISION

I. Introduction

The Department of Enforcement filed the attached three-cause Complaint on September 28, 2010. The Complaint generally alleges that Respondent Thomas M. Kinser engaged in a course of serious misconduct over a three-year period. Specifically, the First Cause of Action

000000110 2011

alleges that Kinser violated NASD Conduct Rules 2110 and 2330¹ by converting approximately \$330,000 of a customer's funds. The Second Cause of Action alleges that Kinser violated NASD Conduct Rule 2110 by forging the customer's signature on checks issued to the customer and falsifying customer account documentation in the course of committing and attempting to conceal the conversions. Finally, the Third Cause of Action alleges that Kinser violated FINRA Conduct Rule 2010 and Procedural Rule 8210 by failing to respond to repeated requests by FINRA staff to provide information and documents in connection with FINRA's investigation of the alleged conversions and forgeries.

Enforcement served the Complaint and First and Second Notices of Complaint upon Kinser by certified mail at his residential address in Southlake, Texas, as it appears in FINRA's Central Registration Depository ("CRD address"), as well as at forwarding addresses Enforcement obtained from the United States Postal Service. Kinser failed to respond to the Complaint. As a result, on February 28, 2011, Enforcement filed a Motion for Entry of Default Decision ("Default Motion") supported by the Declaration of Daniel D. McClain and four exhibits.²

¹ 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. See Regulatory Notice 08-57 (Oct. 2008). Because Kinser engaged in the misconduct alleged in the First and Second Causes of Action between approximately November 2005 and November 2008, before the effective date of the first phase of the consolidated rules, where appropriate this Decision refers to and relies on the NASD Rules. For the misconduct alleged in the Third Cause of Action, occurring between June and August 2010, this Decision refers to and relies on the FINRA Rules that were then in effect. The applicable rules are available at www.finra.org/rules.

² Enforcement's exhibits will be referred to as "CX-__" with the appropriate exhibit and page numbers. The Declaration of Daniel D. McClain will be referred to as "Decl." or "McClain Declaration" with citation to specific paragraphs.

II. Findings of Fact and Conclusions of Law

A. Jurisdiction

From January 10, 2001, until August 27, 2007, Kinser was registered through FINRA member firm American General Securities Incorporated ("AGSI"). Kinser was registered through FINRA member firm AXA Advisors, LLC ("AXA"), from August 27, 2007, until AXA terminated his employment on March 25, 2009. Since then, Kinser has not been associated with any FINRA member firm. At both firms, Kinser held a general securities license.³

Because the Complaint alleges misconduct by Kinser while he was registered with FINRA and within two years of his last registration, and because Enforcement filed the Complaint less than two years after he was last registered, FINRA retains jurisdiction over him for the purposes of this disciplinary proceeding.⁴

B. Default

On September 28, 2010, Enforcement served the Complaint and Notice of Complaint upon Kinser at his CRD address and a forwarding address in Dallas. Both certified mailings were returned to FINRA. The certified mailing to the CRD address was returned marked "FORWARD TIME EXP" and "RETURN TO SENDER" and it contained another forwarding address in Keller, Texas.⁵

On November 5, 2010, the Complaint and Second Notice of Complaint were served by certified mail upon Kinser at the CRD address, the Dallas address, and the Keller address. The certified mailing to the CRD address was returned marked "FORWARD TIME EXP" and "RETURN TO SENDER." The certified mailing sent to the Dallas address was returned

³ Decl. ¶ 2; CX-1.

⁴ Decl. ¶¶ 3, 5, 9; Article V, Section 4, FINRA By-Laws.

⁵ Decl. ¶ 9; CX-2.

stamped "ATTEMPTED NOT KNOWN." The certified mailing sent to the Keller address was returned stamped "UNCLAIMED."⁶

On December 22, 2010, Enforcement sent additional copies of the Complaint and Second Notice of Complaint to each of the three addresses by certified mail. The mailing served at the CRD address was returned stamped "NOT DELIVERABLE AS ADDRESSED – UNABLE TO FORWARD." The mailing to the Dallas address was returned stamped "FORWARDING ORDER EXPIRED." The mailing to the Keller address was returned stamped "UNCLAIMED."⁷

Kinser has not filed an Answer or otherwise responded to the Complaint.

By serving the Complaint, Notice of Complaint, and Second Notice of Complaint upon Kinser by certified mail at his CRD address and the forwarding addresses, Enforcement complied with the requirements of Rule 9134 and provided Kinser with constructive notice that the Complaint had been filed.⁸ By failing to file an Answer, Kinser defaulted. Accordingly, pursuant to Rules 9215(f) and 9269(a)(2) and, for the reasons set forth below, the Default Motion is granted.⁹

C. Kinser Violated NASD Conduct Rules 2110 and 2330 by Converting Customer Funds

NASD Conduct Rule 2330 prohibits members and associated persons from making improper use of a customer's securities or funds. Conversion is an intentional and unauthorized

⁶ Decl. ¶ 10; CX-3.

⁷ Decl. ¶ 11; CX-4.

⁸ FINRA Procedural Rule 9134(a); *Dep't of Enforcement v. Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at *5 (N.A.C. Dec. 9, 2003) (Rule 9134(b)(1) allows for constructive notice by mailing a complaint to the respondent's most recent CRD address) (citing *Lubeck v. SEC*, 1998 U.S. App. LEXIS 18849, at *20 (9th Cir. Aug. 12, 1998)).

⁹ The factual determinations in this Default Decision are based on the allegations of the attached Complaint, which are deemed admitted, as well as the McClain Declaration and the exhibits filed by Enforcement.

taking of the property of another without an ownership interest or entitlement to do so.¹⁰

Improper use rises to the level of conversion when a registered person deposits a customer's check into his own account without permission and does not repay the customer.¹¹

In this case, in 2004, Customer BB, a college student who received a substantial cash settlement resulting from injuries he suffered in an automobile accident, opened an account with Kinser at AGSI. In 2005, BB invested \$285,000 in mutual funds in the account. For these investments, account documents show Kinser as BB's financial adviser.¹²

Subsequently, Kinser encountered financial difficulties, including foreclosure of his residence.¹³ On or about November 18, 2005, Kinser called the mutual fund company through which he had invested BB's funds to change the address on BB's account from the customer's residential address to Kinser's office address in Southlake, Texas. Thereafter, at Kinser's request, the mutual fund company sent redemption checks drawn on BB's account to Kinser without the customer's knowledge, consent, or authorization. Kinser then forged BB's signature on the checks, endorsed them to make them payable to him, and deposited the funds in his own account.¹⁴ Because Kinser had caused the address on the account to be changed, the company sent the account statements to Kinser, not to BB. By these actions, Kinser converted 23 redemption checks, each in the amount of \$9,500, between November 29, 2005, and June 20,

¹⁰ *Dep't of Enforcement v. Saad*, No. 2006006705601, 2009 FINRA Discip. LEXIS 29, at *27 (N.A.C. Oct. 6, 2009), *aff'd*, *John M.E. Saad*, Exch. Act Rel. No. 62178, 2010 SEC LEXIS 1761 (May 26, 2010).

¹¹ *Dep't of Enforcement v. Mission Sec. Corp.*, No. 2006003738501, 2010 FINRA Discip. LEXIS 1, at *17 (N.A.C. Feb. 24, 2010), *citing Dep't of Enforcement v. Kendzierski*, No. C9A980021, 1999 NASD Discip. LEXIS 40, at *7 (N.A.C. Nov. 12, 1999).

¹² Complaint ¶¶ 4-5; Decl. ¶ 16.

¹³ Complaint ¶ 6.

¹⁴ Complaint ¶ 7.

2007, for a total of \$207,500.¹⁵ In its investigation, Enforcement obtained an affidavit executed by BB in which BB stated that Kinser “stole” the redemption checks.¹⁶

In August 2007, Kinser left AGSI and registered with FINRA through AXA. While employed as a registered representative at AXA, Kinser continued to work from his Southlake office. On or about December 31, 2007, BB invested \$176,300 in another mutual fund through Kinser. From January 23 to November 24, 2008, Kinser directed the mutual fund company to send approximately 16 checks payable to BB to Kinser’s office. Then Kinser forged BB’s signature on the checks and deposited the funds, amounting to approximately \$122,500, into his account without BB’s knowledge or consent.

To conceal his misconduct, Kinser fabricated account summaries which he presented to BB in periodic meetings, misleading BB into believing all of his money was still invested in mutual funds and was still earning interest.¹⁷ In the course of conducting an annual review of Kinser’s files, an AXA compliance officer noted an apparently altered customer statement in BB’s account documentation. AXA investigated further, and in a subsequent interview, Kinser admitted that he had converted funds from BB’s mutual fund investments without the customer’s knowledge or consent.¹⁸

These facts, as alleged in the Complaint and supported by the McClain Declaration, suffice to establish, for the purposes of this Default Decision, that Kinser violated NASD Conduct Rules 2110 and 2330 by improperly converting customer funds to his own use.

¹⁵ Decl. ¶ 18.

¹⁶ Decl. ¶ 19.

¹⁷ Complaint ¶¶ 9-12.

¹⁸ Decl. ¶¶ 22-25.

D. Kinser Forged a Customer's Signature and Falsified Account Documents

NASD Conduct Rule 2110 imposes upon all associated persons the obligation to conduct themselves consistently with "high standards of commercial honor and just and equitable principles of trade."

Enforcement's review of the redemption checks issued by the mutual funds, drawn on BB's accounts, revealed that Kinser forged his customer's signature on approximately 39 separate checks that the companies sent to Kinser. Furthermore, Kinser fabricated account documents, including charts and statements purporting to reflect BB's account balances, which Kinser provided to BB in order to conceal his conversions of the funds.¹⁹

By these facts, as alleged in the Complaint and supported by the McClain Declaration, Enforcement has established sufficiently for the purposes of this Default Decision that Kinser violated NASD Conduct Rule 2110 by forging his customer's signature and creating false account documents.

E. Kinser Failed to Respond in Any Manner to Requests for Documents and Information Issued Pursuant to FINRA Procedural Rule 8210

In June 2009, FINRA initiated an investigation after reviewing a Form U5 that described the circumstances of Kinser's termination from AXA and referred to Kinser's admission that he misappropriated customer funds.²⁰ In the course of its investigation, from June 2009 to August 2010, FINRA issued a series of four requests for information to Kinser pursuant to FINRA Procedural Rule 8210, seeking documents and information relating to the possible misappropriations.

¹⁹ Complaint ¶¶ 26-27; Decl. ¶¶ 30-31.

²⁰ Decl. ¶ 13.

FINRA sent the first Rule 8210 request to Kinser on June 2, 2009, by certified and first-class mail to his CRD address. The certified mailing was returned stamped with a forwarding address in Dallas, Texas. The first-class mailing was not returned.²¹

FINRA followed up with a second, identical Rule 8210 request on July 7, 2009, and sent it to Kinser by certified and first-class mail to the Dallas address. The second certified mailing was returned stamped "Return to Sender -- No Such Number." The first-class mailing was not returned.²²

The third request, dated August 11, 2009, enclosed the June 2 request. FINRA sent this request by certified and first-class mail to Kinser's CRD address and the Dallas address. Neither the certified mailings nor the first-class mailings were returned to FINRA.²³

On January 6, 2010, FINRA sent a letter to Kinser at the Dallas address to advise him that the matter was being referred to Enforcement.²⁴

A fourth and final Rule 8210 request issued to Kinser enclosed the prior requests FINRA had sent to him on June 2 and July 7, 2009. Enforcement sent this request on August 3, 2010, by certified and first-class mail to Kinser's CRD and Dallas addresses. Kinser has not responded in any manner to the multiple Rule 8210 requests.²⁵

These facts, as alleged in the Complaint and supported by the McClain Declaration, clearly establish, for the purposes of this Default Decision, that Kinser violated FINRA Rules 2010 and 8210.

²¹ Decl. ¶ 33.

²² Decl. ¶ 34.

²³ Decl. ¶ 35.

²⁴ Decl. ¶ 36.

²⁵ Decl. ¶¶ 37-38.

III. Sanctions

Enforcement recommends imposing a bar upon Kinser for the violations described in each of the three causes of action in the Complaint. For the reasons cited by Enforcement, and considering the additional factors set forth below, Enforcement's recommendation of a bar is the appropriate sanction for the various courses of misconduct described in the Complaint.²⁶

A. Kinser's Conversions of Customer Funds

The FINRA Sanction Guidelines define conversion as an intentional and unauthorized taking of property of another by one with no ownership interest or entitlement.²⁷ The Guidelines state that a bar is standard when a registered person converts customer funds, regardless of the amount converted.²⁸ In this case, Kinser converted approximately \$330,000 of BB's funds over an extended period, between November 2005 and November 2008, by improperly obtaining a total of 39 separate redemption checks. Given the egregiousness of Kinser's misconduct, Enforcement's recommendation of a bar from the securities industry is appropriate for Kinser's conversions of customer funds.

B. Kinser's Forgeries and Falsifications of Records

The Sanction Guidelines recommend a bar for egregious cases of forgery and falsification of documents. Signing a customer's name without authority on documents constitutes forgery and is conduct inconsistent with the high standards of conduct required by NASD Conduct Rule 2110.²⁹ Here, on 39 separate occasions, Kinser forged BB's signature on redemption checks to

²⁶ AXA and AGSI made restitution to BB for the funds Kinser misappropriated, and compensated BB for additional miscellaneous fees he was charged while Kinser handled his accounts. Decl. ¶ 26. Thus, Enforcement did not request, and there is no need for, an order of restitution in this case.

²⁷ *FINRA Sanction Guidelines* at 36, n.2 (2011).

²⁸ *Id.* at 36.

²⁹ *Dep't of Enforcement v. Kirlin Sec.*, No. EAF0400300001, 2009 FINRA Discip. LEXIS 2, at *57 (N.A.C. Feb. 25, 2009), citing *Dep't of Enforcement v. Claggett*, No. 2005000631501, 2007 FINRA Discip. LEXIS 2, at *10 (N.A.C. Sept. 28, 2007); *Dep't of Enforcement v. Cooper*, No. C04050014, 2007 NASD Discip. LEXIS 15, at *9 (N.A.C. May 7, 2007).

enable himself to convert his customer's funds to his own use. "There can hardly be more serious conduct in the securities business than forgery and theft."³⁰

As noted above, Kinser fabricated account statements and charts to conceal his forgeries and conversions from his customer. Thus, the falsified documents were devices essential to allow him to avoid detection. The forgeries and falsification of records constitute egregious misconduct because they reveal a pattern of misconduct over an extended period of time designed to conceal misconduct and "lull ... mislead, [and] deceive" his customer, resulting in injury to the customer as a consequence of Kinser's intentional wrongdoing designed to enrich himself substantially through numerous illicit transactions.³¹

For these reasons, Enforcement's recommendation for the imposition of a bar from the industry is the appropriate sanction to impose upon Kinser for his forgeries and falsifications of records.

C. Kinser's Failures to Respond to Requests for Information

For failure to respond to a request for information issued pursuant to Procedural Rule 8210, the Sanction Guidelines recommend a bar. If there are mitigating factors, the Guidelines recommend consideration of a suspension in any or all capacities for up to two years.³² In this case, there are no mitigating factors. Kinser did not respond in any manner to repeated requests for information issued by FINRA pursuant to Procedural Rule 8210.

Conduct Rule 2010 and Procedural Rule 8210 are "crucial components of [FINRA's] examinations and investigations. ... Procedural Rule 8210 gives [FINRA] the right to require a member or person associated with a member to provide information, orally or in writing, in

³⁰ *Brian G. Allen*, Exh. Act Rel. No. 28925, 1991 SEC LEXIS 312, at *2 (Feb. 28, 1991), *quoted in Dep't of Enforcement v. Neaton*, No. 2007009082902, 2011 FINRA Discip. LEXIS 1, at *32 (N.A.C. Jan. 7, 2011).

³¹ See Principal Considerations in Determining Sanctions, Nos. 8, 9, 10, 11, 13, 17, and 18, *Sanction Guidelines* at 6-7.

³² *Sanction Guidelines* at 33.

connection with an examination or investigation. The rule further states that no member or person shall fail to provide such information."³³ As for sanctions, "[t]he Guidelines treat a failure to respond ... as egregious."³⁴

For these reasons, Enforcement's recommendation of a bar from the securities industry is appropriate for Kinser's egregious failure to respond to FINRA's requests for information.

IV. Order

Respondent Thomas Michael Kinser is barred from associating with any FINRA member firm in any capacity for: (i) violating NASD Conduct Rules 2110 and 2330 by converting customer funds; (ii) NASD Conduct Rule 2110 by forging and falsifying documents; and (iii) FINRA Conduct Rule 2010 and Procedural Rule 8210 by failing to respond in any manner to repeated requests for information issued to him pursuant to Rule 8210.

If this Decision becomes FINRA's final disciplinary action, the bars shall be effective immediately.


Matthew Campbell
Hearing Officer

Copies to: Thomas M. Kinser (*via FedEx and first-class mail*)
Daniel D. McClain, Esq. (*via e-mail and first-class mail*)
David R. Sonnenberg, Esq. (*via e-mail*)

³³ *Dep't of Enforcement v. Masceri*, No. C8A040079, 2006 NASD Discip. LEXIS 29, at *35-36 (N.A.C. Dec. 18, 2006).

³⁴ *Id.* at *41.

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

THOMAS MICHAEL KINSER,
CRD No. 1435579

Respondent.

**Disciplinary Proceeding
No. 2009017466201**

Hearing Officer: _____

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Over the course of approximately three years, Thomas M. Kinser misappropriated approximately \$330,000 from a customer, BB, by causing a mutual fund company to issue approximately 39 redemption checks directly to Kinser's office, rather than BB's home address, forging BB's signatures on the checks, depositing the checks in his own account, and then forging account documentation in an attempt to conceal his misappropriation from BB. By converting BB's funds for his own use, Kinser violated NASD Rule 2330 and, by virtue of that violation, NASD Rule 2110. In addition, by forging BB's signatures on approximately 39 redemption checks, and presenting falsified account documents to BB in an effort to conceal his misappropriation of BB's funds, Kinser violated NASD Rule 2110. Finally, by failing to respond to multiple requests for

information and documents from FINRA, Kinser violated FINRA Rule 8210 and, by virtue of those violations, FINRA Rule 2010.¹

RESPONDENT

2. Thomas Michael Kinser, CRD# 1435579, was a registered representative associated with several FINRA-registered firms from 1985 until January 2001, when he was associated with American General Securities, Inc. (AGSI). Kinser was associated with AGSI, working from an office in Southlake, Texas, from January 2001 until August 2007. In August 2007, Kinser left AGSI to join AXA Advisors, LLC, where he continued to work from an office in Southlake, Texas. AXA Advisors terminated Kinser's registration on March 25, 2009, after Kinser admitted to the firm that he misappropriated client funds, and filed a Form U-5 the next day. Since March 25, 2009, Kinser has not been associated with any FINRA-registered firm. FINRA retains jurisdiction over Kinser pursuant to Art. 5, § 4, of the FINRA By-Laws because the conduct that serves as the basis for this action commenced prior to his termination from a member firm and this action is filed within two years after the effective date of his termination from AXA Advisors.

STATEMENT OF FACTS

A. Kinser Misappropriated Approximately \$330,000 from BB

4. In approximately 2004, while he was associated with AGSI, Kinser was introduced to BB, a college student who had received a substantial cash settlement as the result of injuries he had sustained in a car accident.

¹ FINRA Rule 2010 replaced NASD Rule 2110 as of December 15, 2008.

5. BB opened an account with Kinser in 2004, while Kinser was associated with AGSI. On January 6, 2005, BB made a direct investment of \$35,000 into a mutual fund on January 6, 2005. On June 10, 2005, BB made another direct investment into the mutual fund, this time of \$250,000. On the account applications by which BB made his mutual fund purchase, BB listed Kinser as his financial adviser.

6. At or around this time, Kinser began to experience financial problems, which resulted in the foreclosure of his house. In order to pay his bills, Kinser began to misappropriate money from BB.

7. On approximately November 18, 2005, Kinser changed the address for BB's account with the mutual fund company from BB's home address to Kinser's office address in Southlake, Texas. He did this by making a telephonic request to the mutual fund company. Kinser then requested periodic redemptions from BB's account from the mutual fund company, without BB's knowledge, consent, or authorization. The mutual fund company sent the checks to the address of record on BB's account, Kinser's office address in Southlake, Texas. Kinser endorsed the checks with his own signature and forged BB's signature on the checks. Because Kinser changed the address for the account to his office address in Southlake, Texas, the mutual fund company sent account statements for BB's account to Kinser's office address.

8. While Kinser was associated with AGSI, he misappropriated approximately \$207,500 in this manner from BB's account. Between November 29, 2005 and June 20, 2007, Kinser caused the mutual fund company in which BB had been invested to issue approximately 23 checks to BB at Kinser's office address in Southlake, Texas. Each of the 23 checks was in the amount of \$9,500. Kinser forged BB's

signature on the checks made payable to BB and deposited in the funds in his own account.

9. In August 2007, Kinser terminated his registration with AGSI and became a registered representative associated with AXA Advisors. As with AGSI, Kinser worked out of an office in Southlake, Texas while he was associated with AXA Advisors.

10. On or about December 31, 2007, while Kinser was associated with AXA Advisors, BB made a direct investment of \$176,300 into another mutual fund in the same mutual fund family.

11. While he was associated with AXA Advisors, Kinser continued to misappropriate money from BB. Between January 23, 2008 and November 24, 2008, Kinser redeemed approximately \$122,500 in funds from BB without BB's knowledge, consent, or authorization. During that time period, Kinser caused the mutual fund company in which BB had invested to issue approximately 16 checks to BB at Kinser's office address in Southlake, Texas. Kinser forged BB's signature on the checks made payable to BB and deposited the funds in his own account.

12. To conceal his conversion of BB's funds while he was associated with AGSI and AXA, Kinser created fictitious summaries of account performance, including charts and graphs. When Kinser met with BB every few months, Kinser delivered these falsified documents to BB to persuade BB that his money was still invested with the mutual fund company and earning interest.

B. Kinser Failed to Respond to Multiple 8210 Requests

13. On or about June 2, 2009, FINRA sent a letter to Kinser requesting: (1) a signed statement regarding the allegations of misappropriating client funds, as set forth in

his Form U5; (2) copies of all correspondence and memoranda relating to those allegations; and (3) any other customer complaints he received in the previous three years. FINRA issued these requests pursuant to Rule 8210.

14. The June 2, 2009 letter was sent by certified mail and first class mail to Kinser's home address in Southlake, Texas, as listed in the Central Registration Depository ("CRD") System maintained by FINRA. As set forth in the letter, the deadline for Kinser to respond to the 8210 requests was July 2, 2009. The certified copy was returned by the United States Postal Service (USPS) with a forwarding address in Dallas, Texas. The first-class copy was not returned.

15. On or about July 7, 2009, FINRA sent another letter to Kinser requesting the same items requested in the June 2, 2009 letter. As with its earlier letter, FINRA specified that its requests were issued pursuant to Rule 8210. FINRA sent the request by certified mail and first class mail to the Dallas, Texas address listed on the returned certified copy of the June 2, 2009 letter. In the July 7, 2009 letter, FINRA asked Kinser to respond to the original requests by August 7, 2009. The certified copy was returned by the postal authorities stamped "Return to Sender – No Such Number." The first-class copy was not returned.

16. On August 11, 2009, FINRA sent a "second request" letter to Kinser. Like the letters that preceded it, this letter was sent pursuant to Rule 8210. FINRA enclosed with this letter the June 2, 2009 request letter. FINRA asked Kinser to respond to the requests by August 23, 2009. In addition, FINRA sent the letter via certified mail and first-class mail both to the home address listed for Kinser in CRD (Southlake, Texas)

and the forwarding address (Dallas, Texas). Neither the certified copy nor the first-class copy was returned by the postal authorities.

17. On January 6, 2010, FINRA sent a letter to Kinser at his forwarded address in Dallas Texas. In the letter, FINRA advised Kinser that the matter regarding the allegations contained in his Form U-5 was being referred to the Enforcement Department.

18. On August 3, 2010, the Enforcement Department sent another letter to Kinser, by certified mail and first-class mail. This letter attached FINRA's June 2, 2009 letter containing 8210 requests and FINRA's July 7, 2009 letter containing 8210 requests. A copy of the August 3, 2010 letter was sent to Kinser's home address in Southlake, Texas, as listed in CRD, and another copy was sent to his forwarding address in Dallas, Texas. The August 3, 2010 letter was issued pursuant to Rule 8210 and requested that Kinser respond by August 24, 2010. Both copies were returned to FINRA as undeliverable.

19. Kinser has not responded in any way to any of FINRA's requests for documents and information.

**FIRST CAUSE OF ACTION
CONVERSION OF CUSTOMER FUNDS
VIOLATION OF NASD RULE 2330 AND NASD RULE 2110**

20. The allegations set forth in paragraphs 1 through 19 are realleged and incorporated by reference.

21. 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."

22. Between approximately November 2005 and November 2008, Kinser misappropriated approximately \$330,000 from his customer, BB.

23. Kinser accomplished this misappropriation by changing the address of record on BB's account with the mutual fund company so that redemption checks, as well as account statements, were sent to Kinser's office address rather than BB's home address. Kinser made periodic telephonic redemption requests to the mutual fund company for payments from BB's account, without BB's knowledge or authorization, forged BB's signature on the redemption checks, deposited the funds from the checks in his own account, and used the funds for his own purposes.

24. By making improper use of his customer's funds, Kinser violated NASD Rule 2330 and, by virtue of that violation, NASD Rule 2110.

**SECOND CAUSE OF ACTION
FORGERY AND FALSIFICATION OF DOCUMENTS
VIOLATION OF NASD RULE 2110**

25. The allegations set forth above in paragraphs 1 through 24 are realleged and incorporated by reference.

26. Kinser misappropriated funds from BB by forging BB's signature on approximately 39 redemption checks issued to BB by the mutual fund company with which BB's money was invested.

27. In addition, when Kinser periodically met with BB about his account, Kinser presented BB with falsified account documentation, including charts and account balances, in an attempt to conceal his misappropriation of funds from BB.

28. By forging BB's signatures on approximately 39 redemption checks, and by falsifying account documentation that he presented to BB to conceal his misappropriation of BB's funds, Kinser violated NASD Rule 2110.

**THIRD CAUSE OF ACTION
FAILURE TO RESPOND TO FINRA INVESTIGATIVE REQUESTS
VIOLATION OF FINRA RULES 8210 AND 2010**

29. The allegations set forth above in paragraphs 1 through 28 are realleged and incorporated by reference.

30. FINRA Rule 8210 requires that members and persons associated with members provide documents and information requested by FINRA in connection with an examination or investigation.

31. FINRA sent letters containing document and information requests to Kinser on the following dates: June 2, 2009, July 7, 2009, August 11, 2009, and August 3, 2010. Each of these letters requested documents and information pursuant to FINRA Rule 8210.

32. Kinser failed to respond to any of Enforcement's requests. By failing to provide documents and information requested by Enforcement pursuant to Rule 8210, Kinser violated FINRA Rule 8210. By virtue of these violations, FINRA also violated FINRA Rule 2010.

PRAYER

WHEREFORE, the Department of Enforcement 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 Kinser bear such costs of the proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330; and
- C. impose any other fitting sanction.

Dated: September 28, 2010

Respectfully submitted,



Thomas B. Lawson, Vice President and
Chief Counsel

Daniel D. McClain, Director
Department of Enforcement
FINRA

1801 K Street, NW, Suite 800

Washington, DC 20006

daniel.mcclain@finra.org

Telephone: (202) 974-2862

Fax: (202) 721-8389