

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ALAN D. SCHELL
(CRD No. 4955739),

Respondent.

Disciplinary Proceeding
No. 20090176940

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

September 14, 2010

Schell is barred from associating with any FINRA registered firm in any capacity for conversion of funds, in violation of NASD Conduct Rule 2110 and FINRA Conduct Rule 2010; and failing to respond to requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2010.

Appearances

Jessica Dennehy, Esq., Richard R. Best, Esq., and Suzanne Elovic, Esq., for the Department of Enforcement.

No appearance by or on behalf of Alan D. Schell.

DECISION

I. Introduction

The FINRA Department of Enforcement ("Enforcement") filed the attached Complaint with the Office of Hearing Officers on May 18, 2010. The Complaint charges Alan D. Schell ("Schell") with: (1) converting funds from a bank customer's accounts, in violation of NASD Conduct Rule 2110 and FINRA Conduct Rule 2010; and (2) failing to provide documents

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FINRA staff requested in connection with its investigation into his conversion of funds, in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010.¹

Schell did not answer the Complaint. Accordingly, on July 29, 2010, Enforcement filed a Motion for Entry of Default Decision and Imposition of Sanctions (“Default Motion”), together with the declaration of Jessica Dennehy (“Dennehy Decl.”) and 18 exhibits.² For the reasons set forth below, the Hearing Officer found Schell in default and granted Enforcement’s Default Motion.

II. Procedural History

On May 18, 2010, Enforcement served the Complaint and the First Notice of Complaint on Schell by mailing them to his most recent address recorded in the Central Registration Depository (“CRD”), as well as an alternate address Enforcement obtained from the Circuit Court of Anne Arundel County, Maryland.³ Enforcement mailed the Complaint and First Notice of Complaint by first-class and certified mail, return receipt requested. The receipt for the certified mailing sent to the alternate address was returned bearing an illegible signature.⁴ The certified mailing sent to his CRD address was returned to Enforcement.⁵ Schell did not answer or otherwise respond to the Complaint.

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). Because the Complaint in this case was filed after December 15, 2008, the FINRA procedural rules apply. The conduct rules that apply are those that existed at the time of the conduct at issue. The applicable rules are available at www.finra.org/rules.

² Enforcement’s exhibits are labeled CX-1 through CX-18.

³ Dennehy Decl. ¶ 31; CX-4.

⁴ Dennehy Decl. ¶ 33; CX-13.

⁵ *Id.* ¶ 34.

On June 18, 2010, Enforcement served a Second Notice of Complaint on Schell by mailing it to his CRD address and the alternate address.⁶ Enforcement mailed the Second Notice of Complaint by first-class and certified mail, return receipt requested. Enforcement received the receipt for the mailing sent to the alternate address signed by "Alan Schell."⁷ The United States Postal Service returned the certified mailing Enforcement sent to Schell's CRD address with a notation that it was unclaimed.⁸ To date, Schell has not answered or otherwise responded to the Complaint.

On July 7, 2010, the Office of Hearing Officers issued an order setting a deadline for Enforcement to file a motion for entry of a default decision, which Enforcement filed on July 29, 2010. Schell did not file a response to the motion.

Based on Schell's default, the Hearing Officer deemed the allegations in the attached Complaint admitted pursuant to Rules 9215(f) and 9269(a).

III. Findings of Fact and Conclusions of Law

A. Background

Wachovia Bank, N.A. ("Wachovia Bank") hired Schell as a financial specialist in May 2005. On June 24, 2005, Schell submitted a Uniform Application for Securities Industry Registration or Transfer ("Form U4") to FINRA through Wachovia Securities, LLC ("Wachovia Securities"), a FINRA member. According to Schell's CRD record, he registered with FINRA as an Investment Company and Variable Contracts Products Representative on July 4, 2005.⁹

⁶ Dennehy Decl. ¶ 38.

⁷ *Id.* ¶ 41; CX-16.

⁸ Dennehy Decl. ¶ 43.

⁹ The Hearing Officer took official notice of Schell's CRD record in the absence of other evidence of his registration status. See Rule 9145(b).

On April 8, 2009, Wachovia Securities filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") on Schell's behalf, which indicated that Wachovia Bank had discharged Schell after he admitted that he made unauthorized withdrawals from a customer's certificates of deposit.¹⁰ FINRA terminated his registration on April 8, 2009. FINRA staff commenced the investigation that led to this proceeding after it received the Form U5.

B. 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 April 8, 2009, the date FINRA terminated Schell's registration, 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 Enforcement's requests for information made during the two-year period following the termination of his FINRA registration.¹¹

C. Conversion

The First and Second Causes of Action allege that Schell converted \$17,410 from GB, a Wachovia Bank customer. Schell converted the funds by making 23 unauthorized withdrawals from GB's certificates of deposit. Between December 6, 2006, and December 13, 2008, Schell made 20 unauthorized withdrawals totaling \$13,310. He then made an additional three withdrawals totaling \$4,100 between December 16, 2008, and January 26, 2009. When confronted about the withdrawals, Schell stated that he had taken the money to fund an inner-city girls' basketball team.

¹⁰ CX- 2, at 2.

¹¹ 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").

In October 2009, the State of Maryland charged Schell with felony theft of GB's funds.¹² On March 24, 2010, he pleaded guilty to the charge, and, on July 13, 2010, he was sentenced to two years in prison and placed on probation for five years.¹³ The court also ordered him to pay restitution to GB in the amount of \$14,387.01.¹⁴

The Hearing Officer finds that the foregoing facts establish that Schell converted \$17,410 from GB, in violation of NASD Conduct Rule 2110 and FINRA Conduct Rule 2010, which rules require members and associated persons to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. The rules are sufficiently broad to encompass any unethical business-related misconduct, regardless of whether it involves a security."¹⁵

D. Failure to Provide Information and Documents

The Second Cause of Action alleges that Schell failed to respond to three requests for information and documents FINRA staff sent to him pursuant to FINRA Rule 8210 in connection with FINRA's investigation of his conversion of funds from GB. The requests were dated December 16, 2009, and December 30, 2009, and March 23, 2010, and sent by certified mail, return receipt requested.

The staff sent each request to Schell's CRD address. In addition, the staff sent the third request to his alternate address. The staff received signed receipts for delivery of the December

¹² CX-4.

¹³ The court suspended all but ten days of the prison sentence.

¹⁴ CX-4. The court records Enforcement submitted with the Default Motion do not explain how the court calculated the restitution amount.

¹⁵ *Department of Enforcement v. Saad*, 2009 FINRA Discip. LEXIS 29, at *11 (N.A.C. Oct. 6, 2009) (finding that a registered person's submission of false expense reimbursement requests and receipts to his broker-dealer violated Rule 2110 (now Rule 2010)).

30, 2009, and the March 23, 2010 requests bearing illegible signatures.¹⁶ Schell did not respond to any of the requests.

The facts alleged in the Second Cause of Action establish that Schell violated FINRA Rules 8210 and 2010 by failing to respond to the staff's requests for information.

IV. Sanctions

A. Conversion

The FINRA Sanction Guidelines ("Sanction Guidelines") for conversion state that a bar is "standard," regardless of the amount converted.¹⁷ The Hearing Officer finds that a bar is the appropriate sanction in this case. There is no evidence of mitigating factors that would warrant imposition of a lesser sanction.

B. Failure to Respond to Requests for Information

For failing to respond to FINRA Rule 8210 requests for information, the Sanction Guidelines provide that a bar should be "standard" when there is a complete failure to respond.¹⁸ The Guidelines for failing to respond to requests for information list principal considerations for adjudicators to assess in determining appropriate sanctions. Adjudicators are instructed to consider "[w]hether the information was provided and, if so, [to] consider the number of requests made, the time respondent took to respond, and the degree of regulatory pressure required to obtain a response." Adjudicators also consider the nature of the information requested in assessing appropriate sanctions.¹⁹

¹⁶ Dennehy Decl. ¶¶ 16-23.

¹⁷ FINRA Sanction Guidelines 38 (2007), www.finra.org/sanctionguidelines.

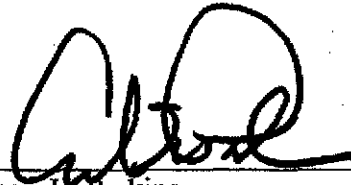
¹⁸ Sanction Guidelines 35.

¹⁹ *Id.*

The Hearing Officer finds that a bar from associating with any FINRA member firm in all capacities is an appropriately remedial sanction given all of the facts and circumstances, including a lack of mitigating factors that would warrant a lesser sanction. The documents and information that the staff sought were important. The staff was investigating serious misconduct. In addition, a bar will serve to deter others from failing to provide Enforcement with information requested under Rule 8210 at the time such requests are made. Accordingly, the Hearing Officer will bar Schell from associating with any FINRA member firm in all capacities.

V. Order

Schell is barred from associating with any member firm in any capacity for converting funds, in violation of Conduct Rules 2110 and 2010, as alleged in the First Cause of Action; and failing to respond to requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2010, as alleged in the Second Cause of Action. The bars shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.²⁰



Andrew H. Perkins
Hearing Officer

Copies to:

Alan D. Schell (*via overnight courier and first-class mail*)
Jessica Dennehy, Esq. (*via electronic and first-class mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

²⁰ The Hearing Officer did not order restitution because the Circuit Court of Anne Arundel County, Maryland, ordered Schell to pay restitution to GB. In addition, Enforcement did not request restitution.

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

Department of Enforcement,

COMPLAINANT,

V.

**Alan D. Schell
CRD No. 4955739**

RESPONDENT.

**DISCIPLINARY PROCEEDING
No. 20090176940**

COMPLAINT

The Department of Enforcement alleges:

RESPONDENT & JURISDICTION

1. In June 2005, Respondent Alan D. Schell ("Respondent") became registered with Wachovia Securities, LLC ("Wachovia" or the "Firm") as a result of his employment as a financial specialist with the Firm's affiliate, Wachovia Bank, N.A. ("Wachovia Bank"). On April 8, 2009, Wachovia filed a Uniform Termination Notice for Securities Industry Registration reporting that Wachovia Bank had terminated Respondent's employment on March 17, 2009. Since that time, Respondent has not been associated with any other FINRA member.

2. Although Respondent is not currently associated with a FINRA member, he remains subject to the jurisdiction of FINRA pursuant to Article V, Section 4, of the FINRA By-Laws in that the misconduct alleged occurred while Respondent was associated with a member and a Complaint was filed within two years of Respondent's registration termination.

OVERVIEW

3. Respondent wrongfully converted customer funds from a Wachovia Bank customer and failed to cooperate with FINRA's investigation.

FIRST CAUSE OF ACTION

Conversion of Funds

(NASD Conduct Rule 2110)

4. The Department realleges and incorporates by reference paragraphs 1-2 above.
5. From December 2006 through December 2008, Respondent converted \$13,310 from four certificates of deposit ("CDs") belonging to a Wachovia Bank customer.
6. During the year 2000, GB purchased three CDs from Wachovia Bank. GB purchased an additional CD from Wachovia Bank in 2007. On January 16, 2006 GB's daughter, CP, was given power of attorney over the CDs GB had at Wachovia Bank because GB had become ill.
7. On March 9, 2009, CP visited a local branch of Wachovia Bank to discuss several withdrawals made to GB's CDs for which she received an IRS 1099 Form. CP identified four CDs from which there were several unauthorized withdrawals.
8. Specifically, from December 6, 2006 through December 13, 2008, there were 20 unauthorized withdrawals from GB's CDs, totaling \$13,310.
9. The withdrawals were made using handwritten withdrawal slips with GB's name signed at the bottom.
10. According to Wachovia Bank records, Respondent processed each withdrawal at a Wachovia Bank branch office in Glenburnie, Maryland.

11. Cash was received for 19 of the withdrawals and the remaining withdrawal was drawn from the CD as a money order. The money order was processed on September 12, 2008 in the amount of \$400 and was made payable to Bryn Mawr School ("the September 2008 Money Order").

12. On March 17, 2009, Wachovia Bank conducted an interview of Respondent during which Respondent admitted, both verbally and in writing, that he made unauthorized withdrawals from GB's CDs. Respondent stated that he used the money to fund the inner city girls' basketball team that he coached at the Bryn Mawr School.

13. Neither GB, CP, Wachovia Bank nor the Firm gave Respondent permission or authority to withdraw the \$13,310 from GB's CDs.

14. On October 29, 2009, the State of Maryland filed a criminal case against Respondent in the Circuit Court for Anne Arundel County for his conduct at Wachovia Bank.

15. On March 24, 2010, Respondent pleaded guilty to Theft-Scheme \$500 Plus, a felony in violation of Title 7, Section 104 of the Maryland Criminal Code regarding funds that he improperly withdrew from GB's CDs.

16. Respondent is scheduled to be sentenced on May 25, 2010.

17. Accordingly, Respondent violated NASD Conduct Rule 2110 in that he wrongfully converted \$13,310 from GB's CD accounts.

SECOND CAUSE OF ACTION

Conversion of Funds

(FINRA Conduct Rule 2010)

18. The Department realleges and incorporates by reference paragraphs 1, 2, 6, 7, and 12-17 above.

19. Between December 16, 2008 through January 26, 2009, there were three withdrawals from GB's CDs, totaling \$4,100.

20. The withdrawals were made using handwritten withdrawal slips with GB's name signed at the bottom.

21. According to Wachovia Bank records, the Respondent processed each withdrawal at a Wachovia Bank branch office located in Glenburnie, Maryland. Cash was received for each withdrawal.

22. Neither GB, CP, Wachovia Bank nor the Firm gave Respondent permission or authority to withdraw the \$4,100 from GB's CDs.

23. Accordingly, Respondent violated FINRA Conduct Rule 2010 in that he wrongfully converted \$4,100 from GB's CDs.

THIRD CAUSE OF ACTION

Failing to Provide Requested Documents

(FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010)

24. The Department realleges and incorporates by reference paragraphs 1-2 above.

25. On several occasions, Respondent failed to provide documents and information requested pursuant to FINRA Rule 8210.

26. On December 16, 2009, Enforcement sent a letter to Respondent, requesting that, pursuant to FINRA Rule 8210, he provide certain documents and information regarding Enforcement's investigation. The letter was sent via certified mail and return receipt requested and a copy was sent by first class mail to Respondent at his last known residential address as reflected in the Central Registration Depository: [REDACTED]

[REDACTED] (the "CRD Address"). The letter sent via certified mail was returned to

Enforcement and marked "Unclaimed." The letter sent via first class mail was never returned to Enforcement. To date, Respondent has failed to provide the requested information.

27. On December 30, 2009, Enforcement sent a letter to Respondent, requesting that, pursuant to FINRA Rule 8210, he provide certain documents and information regarding Enforcement's investigation. The letter was sent via certified mail and return receipt requested and a copy was sent by first class mail to Respondent at his CRD Address. The return receipt associated with the letter sent via certified mail was returned to Enforcement with an illegible signature on it. The letter sent via first class mail was never returned to Enforcement. To date, Respondent has failed to provide the requested information.

28. On March 23, 2010, Enforcement sent a letter to Respondent pursuant to FINRA Rule 8210 which renewed its request for documents and information. The letter was sent via certified mail and return receipt requested and a copy was sent by first class mail to Respondent at his CRD Address, as well as an address listed on Respondent's court documentation from the Circuit Court of Maryland's website: [REDACTED] [REDACTED] (the "Alternate Address"). The return receipts associated with the letters sent to the CRD Address and Alternate Address via certified mail were returned to Enforcement with illegible signatures on them. The letters sent via first class mail were never returned to Enforcement.

29. To date, Respondent has failed to provide the requested information.

30. Accordingly, Respondent violated FINRA Procedural Rule 8210 and Conduct Rule 2010 by failing to provide the requested documents and information.

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 and restitution, 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

Dated: 5/18/2010


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To: Alan D. Schell

[REDACTED]

[REDACTED]