

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

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

**CHARLES EUGENE BISHOP, JR.
(CRD No. 1621380)**

RESPONDENT.

DISCIPLINARY PROCEEDING
No. 2009017699201

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. During the period from January to June 2009, Charles Eugene Bishop, Jr. ("Bishop") attempted to misappropriate approximately \$3 million from an elderly, terminally-ill customer of his employer, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch" or the "Firm"), in violation of FINRA Rule 2010. Bishop deceived the customer into believing that the money in her Firm brokerage account would be transferred, after her death, to a company that she created to care for her prized show dogs. Bishop, however, actually created paperwork by which the deceased customer's assets would be transferred to his own personal company. Bishop's scheme was foiled when a probate court refused to permit the transfer.

RESPONDENT AND JURISDICTION

2. Bishop, born in 1958, entered the securities industry in 1989 and, prior to his joining Merrill Lynch in August 2008, was employed at over a dozen FINRA-regulated and non-regulated firms.

3. On April 1, 2009, Merrill Lynch filed a Uniform Termination Notice of Securities Industry Registration ("Form U5"), reporting that effective that day, the Firm had terminated Bishop's employment for "...violating the Firm's policies regarding financial arrangements with clients by inheriting assets from the accounts of a deceased client who was not a family member and for failing to disclose an outside business interest."

4. In October 2009, the Firm filed an arbitration claim against Bishop to recover the balance due on a promissory note that Bishop failed to repay; the Firm asserted that the amount was due because his employment was terminated for violating firm policy as stated in the Form U5. Bishop disputed that the amount was due, alleging that he had not inherited the client's assets or violated Firm policy. In January 2011, Bishop was found liable for breach of contract/ promissory note, and liable to refund Merrill Lynch approximately \$993,000 of his sign-on bonus plus interest and attorney's fees. Additionally, the Panel recommended that Bishop's Form U5 should have the word "inheriting" deleted and replaced with "attempting to inherit". The Form U5 has not yet been amended to reflect the recommended change.

5. Bishop has not been employed by a FINRA-regulated firm since Merrill Lynch terminated his employment. He is currently employed as a Registered Investment Advisor at National Asset Management, a non-FINRA regulated entity.

6. Although Bishop is no longer registered or associated with a FINRA member, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4

of FINRA's By-Laws, because the Complaint was filed within two years after Merrill Lynch filed an Amended Form U5 on December 22, 2010, reporting a complaint from another Firm customer, who alleged that Bishop misappropriated funds from her father's trust and the Complaint charges Bishop with misconduct committed while he was registered with a FINRA member. FINRA has jurisdiction over Bishop until at least December 21, 2012.

FACTS

7. In 2005, Bishop, prior to his joining Merrill Lynch, began servicing the accounts of SL and EL. EL was born on [REDACTED]; SL was born on [REDACTED]

8 In September 2006, EL formed a Florida corporation known as Dancing Bear Kennel, Inc. ("DBK"). EL was the registered agent and sole Director of DBK.

9. SL and EL transferred their accounts worth approximately \$2 million to Merrill Lynch when Bishop commenced his employment at Merrill Lynch in 2008.

10. On January 5, 2009, SL died, leaving the entirety of his estate to his wife EL, who had a terminal illness.

11. EL wished to provide for her dogs after her death. EL did not wish to leave her money to Bishop.

12. EL had on file at Merrill Lynch an undated Transfer on Death Form ("TOD") listing DBK as her sole beneficiary. The TOD required entry of the corporate beneficiary's Employer Identification Number ("EIN") (also known as a Federal Tax Identification Number), which is used to identify a business entity. The TOD listed the EIN for DBK as (XX-XXX9780). This was the number DBK had been assigned when it was formed in 2006. The TOD listed the address of DBK as EL's home address.

13. EL signed a Merrill Lynch Client Relationship Agreement, dated February 9, 2009, ("CRA") which named DBK as the beneficiary of EL's brokerage account. The CRA lists the EIN for DBK as "applied for"; notably, DBK, which had been formed in 2006, already had an EIN (XX-XXX9780). That account had approximately \$3.2 million in assets.

14. EL also executed a TOD, dated February 9, 2009, which named Dancing Bear Kennel I ("DBK1") as the beneficiary of the assets in EL's brokerage account. The TOD provided that EL's brokerage account assets were to be transferred to DBK1 immediately upon her death. The TOD listed the address of DBK as EL's home address. The TOD lists the EIN (YY-YYY5354) for DBK1.

15. Correspondence from the IRS, dated February 26, 2009, confirmed that the IRS had issued EIN (YY-YYY5354) for DBK1. The IRS letter was sent to Bishop's attention at his home address, and Bishop was listed on the IRS correspondence as "Sole Member" of DBK1. However, DBK1 was never created as a business entity.

16. Although EL's signature on the TOD is notarized, EL was not present before the notary when the signature was notarized.

17. On February 11, 2009, two days after the execution of the CRA and TOD, Bishop received approval from the Florida Department of State to form Dancing Bear Dog Kennel LLC ("DBDK"). Bishop is listed in the Florida State records as the sole managing member of DBDK and his home address is listed as the mailing address and principal place of business for DBDK.

18. On or about February 19, 2009 – three days prior to EL's death and ten days after she had executed the CRA, the CRA was altered. The "applied for" was removed and replaced with the newly obtained EIN for DBK1 (YY-YYY5354). The beneficiary was still listed as DBK despite the fact that the newly inserted EIN belonged to DBK1, of which, according to the IRS Letter,

Bishop was the "Sole Member." The signature date of the CRA was not altered or changed, and the change of the EIN number was not initialed by EL.

19. Bishop created an entity he controlled called DBDK and obtained a taxpayer ID number for DBK1, an entity he controlled. Both DBK1 and DBDK were easily confused with DBK, the entity EL controlled.

20. Bishop had EL sign a TOD naming his entity, DBK1, as the beneficiary of the assets in her brokerage account. He also listed the EIN number of his entity, DBK1, on the CRA form designating a beneficiary for the brokerage assets, without EL's written acknowledgment.

21. Bishop's actions assured that the paperwork at his Firm made him the inheritor of EL's Merrill Lynch brokerage account outside the probate process. He did this just after her husband died, and a few days before EL's own death.

22. EL died on February 22, 2009.

23. On February 25, 26, and March 2, 2009, Bishop met and/or conferred with DSO, an attorney, to discuss EL's estate and the rights of DBDK, the entity he had created and of which he was the manager.

24. On or about February 26, 2009, a Probate Division of the Florida Circuit Court for Broward County froze EL's assets pending the filing of her estate and the appointment of a personal representative.

25. A facsimile of this Order was sent to Bishop on March 2, 2009.

26. Shortly thereafter, on March 4, 2009, Bishop retained the services of RM, an attorney, to advise him regarding his "interest as a beneficiary of the Estate of EL." Bishop signed an Agreement for Legal Services with RM and issued RM a retainer check in the amount of \$10,000.

27. On March 16, 2009, the Probate Court received a "Notice of Interested Person and Request for Notice and Copies," dated March 13, 2009 and filed on behalf of Bishop by his attorney RM. The notice represented that Bishop "has an interest in the above Estate as a claimant and beneficiary of the decedent's Estate."

28. On March 16, 2009, the Probate Court ordered that all "paid on death" titled accounts with a beneficiary designation be frozen and that Merrill Lynch freeze all "paid on death" titled accounts with the beneficiary designation Dancing Bear Dog Kennel, LLC. On that same day, the Court issued another Order permitting LB, the curator of EL's estate, to deposit into a designated account any of EL's assets that were not titled "paid on death"; no withdrawals from the designated account could be made without court order.

29. On May 18, 2009, LB petitioned the Probate Court requesting an order "invalidating the beneficiary designations" for DBK and DBK1 that were on file at Merrill Lynch for EL's brokerage securities account, and requesting that the assets in EL's accounts be transferred to LB as curator for EL's estate. LB also, on the same day sent a letter to Bishop seeking his consent to the transfer of assets.

30. On May 29, 2009, after Merrill Lynch had terminated Bishop's employment for "inheriting assets from the accounts of a deceased client who was not a family member," Bishop consented to the transfer requested by LB and waived "any right, title, interest" to EL's Merrill Lynch brokerage accounts.

31. On June 9, 2009, the Probate Court, issued an order "invalidating the beneficiary designations" that were on file at Merrill Lynch for EL's securities accounts.

CAUSE OF ACTION
Attempted Conversion of Customer Funds
(FINRA Rule 2010)

32. The Department realleges and incorporates by reference paragraphs 1 through 31 above.

33. FINRA Rule 2010 requires that members observe "high standards of commercial honor and just and equitable principles of trade." Bishop attempted to misappropriate funds in violation of FINRA Rule 2010 thereby engaging in unethical conduct by failing "to observe high standards of commercial honor and just and equitable principles of trade," in that (i) less than two weeks before customer EL's death, Bishop had EL sign a Merrill Lynch document which designated as the sole beneficiary of EL's securities accounts a company whose business entity name was virtually identical to a company that EL owned, but which Bishop had recently created and owned entirely; (ii) three days prior to customer EL's death, Bishop changed the beneficiary's tax identification number on the Merrill Lynch document signed by customer EL ten days earlier to that of an entity that he owned; and (iii) after EL's death retained an attorney to appear in Probate Court on Bishop's behalf to claim the proceeds of EL's securities account for the company that was entirely owned by Bishop.

34. By virtue of the above, Bishop wrongfully attempted to misappropriate and use for his own benefit funds from a customer of his firm employer in the amount of approximately \$3 million, thereby engaging in conduct inconsistent with high standards of commercial honor and just and equitable principles of trade.

35. By virtue of the above, Bishop's conduct constitutes a violation of FINRA Rule 2010

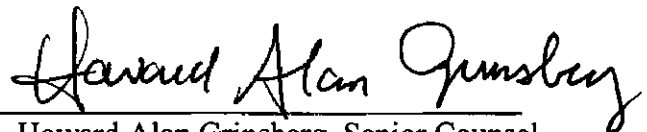
RELIEF REQUESTED

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: December 5, 2011



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