

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ERNESTO PAIZ
(CRD No. 4582379),

Respondent.

Disciplinary Proceeding
No. 20090182111

Hearing Officer – SNB

DEFAULT DECISION

January 20, 2011

Respondent is barred from associating with any FINRA registered firm in any capacity for misappropriating customer insurance premium payments, in violation of Conduct Rule 2010, and failing to respond to requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2010.

Appearances

Margaret M. Tolan, Esq., for the Department of Enforcement.

No appearance by or on behalf of Respondent.

DECISION

I. Background

The FINRA Department of Enforcement (“Enforcement”) filed the attached Complaint with the Office of Hearing Officers on July 30, 2010. The Complaint charges Ernesto Paiz (“Respondent”) with misappropriating customer insurance premium payments, in violation of FINRA Conduct Rule 2010, and failing to provide documents to FINRA Staff (“Staff”), in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010.¹

¹ The applicable rules are available at www.finra.org/rules.

Respondent did not answer the Complaint. Accordingly, on November 22, 2010, Enforcement filed a Motion for Entry of Default Decision and Imposition of Sanctions (“Default Motion”), together with the declaration of Margaret M. Tolan, Esq. (“Tolan Decl.”) and 27 exhibits.² Respondent did not respond to the Default Motion. For the reasons set forth below, the Hearing Officer found Respondent in default and granted Enforcement’s Default Motion.

II. Respondent’s Default

On July 30, 2010, Enforcement served the Complaint and the Notice of Complaint on Respondent by mailing them to his most recent address recorded in the Central Registration Depository (“CRD”). CX-1, CX-26; Tolan Decl. ¶ 24. Enforcement mailed the Complaint and Notice of Complaint by first-class and certified mail, return receipt requested. The certified mailing was returned to Enforcement.³ CX-26. Respondent did not answer the Complaint. Tolan Decl. ¶ 25.

On September 8, 2010, Enforcement served the Second Notice of Complaint on Respondent by mailing it to his CRD address. CX-27; Tolan Decl. ¶ 26. Enforcement mailed the Second Notice of Complaint by first-class and certified mail, return receipt requested. The certified mailing was returned to Enforcement.⁴ CX-27. Respondent did not answer the Complaint. Tolan Decl. ¶ 27.

By failing to file an Answer or otherwise respond to the Complaint, Respondent defaulted. Based on Respondent’s default, the Hearing Officer deemed the allegations in the attached Complaint admitted pursuant to Rules 9215(f) and 9269(a).

² Enforcement’s exhibits are labeled CX-1 through CX-27.

³ There is no information in the record as to whether the first-class mailing was returned.

⁴ There is no information in the record as to whether the first-class mailing was returned.

III. Jurisdiction

Respondent entered the securities industry in 2001. Between November 2002 and May 2009, Respondent was registered with Allstate Financial Services, LLC (“the Firm”) as an Investment Company Products/Variable Contracts Products Representative. CX-1.

Although Respondent is not currently associated with a member firm, 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 the date FINRA terminated Respondent’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.⁵

IV. Origin of Investigation

The investigation leading to this proceeding was initiated in May 2009 following Enforcement’s receipt of an Amended Form U5 filed by the Firm, disclosing that Respondent misappropriated property and casualty premium payments. CX-2, CX-21, CX-24; Tolan Decl. ¶ 10.

V. Violations

A. Misappropriation

The first cause of the Complaint alleges that between March and May 2009, Respondent misappropriated customer insurance premium payments totaling more than \$7,400. Respondent misappropriated the funds using three different methods.

⁵ 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”).

First, Respondent reflected customer insurance payments on remittance reports to his Firm, but did not deposit the full amount of these payments into the Agent Group Banking account (the "AGB account"), as required by the Firm. During the period between March and May 2009, Respondent misappropriated \$1,746.93 using this method. Complaint ¶ 8; CX-3 – CX-12.

Second, in April 2009, Respondent's customers MF, CC, and RS made cash insurance premium payments in the amount of \$1,300, \$1,021.74, and \$1,011.90, respectively. However, no payment was applied to MF's account; only \$535 was applied to CC's account; and only \$300 was applied to RS's account. In total, Respondent misappropriated \$2,498.64 in customer payments using this method. Complaint ¶ 9; CX-13 – CX-17.

Finally, between March 9 and April 1, 2009, customers DC and JR made insurance premium payments by check of \$2,401.05 and \$800, respectively. However, Respondent did not apply these funds to the customer accounts as required. Instead, Respondent credited the payments to another customer and to his own account. Complaint ¶ 10; CX-18 – CX-20. Respondent misappropriated \$3,201.05 using this method.

The allegations of the Complaint, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent violated Conduct Rule 2010 by misappropriating \$7,446.62 in customer insurance premium payments.

B. Failure to Respond

The Complaint alleges that Respondent failed to respond to Staff's three requests for information, sent pursuant to FINRA Rule 8210. The requests were dated July 8,

2009, September 23, 2009, and January 26, 2010, and sent by first-class and certified mail, return receipt requested. CX-21, CX- 23 – CX 24.

Staff sent each request to Respondent's CRD address. The certified mailing for the first Rule 8210 request was returned. CX-22. It is unclear whether the second certified mailing was returned.⁶ The certified mailing for the third request was returned with the signature "Sylvia Paiz." CX-25. The first-class mailings were not returned. Respondent did not respond to the requests.

The allegations are sufficient to establish, for purposes of this default decision, that Respondent failed to respond to requests for information, in violation of Procedural Rule 8210. A violation of Procedural Rule 8210 is also a violation of Conduct Rule 2010.⁷

VI. Sanctions

Since Respondent's misappropriation essentially constituted conversion, the Hearing Officer applied the FINRA Sanction Guideline ("Guideline") for conversion in determining the appropriate sanction for this violation.⁸ The Guideline for conversion recommends a bar regardless of the amount converted.⁹ There is no evidence of any mitigating factors. Accordingly, the Hearing Officer finds that a bar is the appropriate sanction for this violation.

For failing to respond to FINRA Rule 8210 requests for information, the Guideline provides that a bar should be "standard" where, as here, there is a complete

⁶ The declaration in support of the Default Motion indicates that the certified mailing was not returned. Tolan Decl. ¶ 19. However, the Complaint alleges that it was. Complaint ¶ 20.

⁷ *Dep't of Enforcement v. Hoepfer*, No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (N.A.C. Nov. 2, 2001).

⁸ Enforcement is not seeking restitution because the Firm has credited the customer accounts for the misappropriated payments.

⁹ *Guidelines* at 38, available at www.finra.org/sanctionguidelines.

failure to respond.¹⁰ There are no mitigating factors that would warrant a lesser sanction. Accordingly, the Hearing Officer also bars Respondent from associating with any FINRA member firm in any capacity for this violation.

VII. Order

Respondent is barred from associating with any FINRA registered firm in any capacity for misappropriating customer insurance premium payments, in violation of Conduct Rule 2010, and failing to respond to requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2010. These bars shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.


Sara Nelson Bloom
Hearing Officer

Copies to: Ernesto Paiz (via overnight courier and first-class mail)
Margaret M. Tolan, Esq. (via first-class and electronic mail)
David Sonnenberg, Esq. (via electronic mail)

¹⁰ *Guidelines at 35, available at www.finra.org/sanctionguidelines.*

EXHIBIT A

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Ernesto Paiz
(CRD No. 4582379),

Respondent

Disciplinary Proceeding
No. 20090182111

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Respondent Ernesto Paiz ("Paiz"), while a registered employee of Allstate Financial Services, LLC ("the Firm"), misappropriated \$7,446.62 in customer insurance premium payments. Paiz misappropriated the funds in three different ways: 1) by not depositing all of the received cash or check payments from Firm customers documented in remittance reports into his Agent Group Banking ("AGB") account as required; 2) by accepting payments in cash from Firm customers and neglecting to apply the entire cash premium payment to certain customers' insurance policies; and 3) by accepting check payments from certain Firm customers and failing to apply the premium payments to the correct policies, but instead crediting the check payments to his own insurance policy and towards other customers' policies. When the Department sought Paiz's explanation for the relevant events, Paiz refused to provide

the requested information. The misappropriation of Firm funds was a violation of FINRA Rule 2010, and Paiz's failure to provide information violated FINRA Rules 2010 and 8210.

RESPONDENT AND JURISDICTION

2. Paiz was born in [REDACTED]. He first entered the securities industry when he was hired by the Firm in September 2001 as an independent contractor exclusive agent. Paiz became a registered representative with the Firm in April 2002 and held both Series 6 and Series 63 licenses. Paiz was terminated on May 21, 2009.
3. Although Respondent has not been associated with a FINRA member firm since May 21, 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 a registered person with a FINRA member 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 member.

FIRST CAUSE OF ACTION

Misappropriation of Firm Funds (FINRA Conduct Rule 2010)

4. The Department realleges and incorporates by reference paragraphs 1-3 above.
5. In 2009, Paiz was employed as an independent contractor agent at FINRA member firm Allstate Financial Services, LLC. His duties and responsibilities included collecting customer premium insurance payments, crediting customers' accounts,

documenting the payments on remittance reports, and promptly depositing the funds into his AGB account.

6. The Firm discovered a period of shortages ranging from remittance reports dated March 5, 2009 through May 11, 2009 totaling \$7,446.62 in unaccounted for premium payments.
7. Under the agreement with the Firm, Paiz was required to promptly account for and deposit customer insurance premium payments in his AGB account. Instead, Paiz misappropriated \$7,446.62 in customer funds via three different schemes.
8. First, according to remittance reports dated March 5, 2009, March 26, 2009, May 7, 2009, and May 11, 2009 (remittance reports 64, 85, 127, and 131 respectively), Paiz deposited \$1,746.93 less in his AGB account than the remittance reports state his agency received in premium payments from certain Firm customers as follows:
 - a. The total for remittance report number 64 dated March 5, 2009 is \$3,530.10, but only \$3,233.06 was deposited. \$297.04 is missing.
 - b. The total for remittance report number 85 dated March 26, 2009 is \$3,070.98, but only \$2,670.98 was deposited. \$400.00 is missing.
 - c. The total for remittance report number 127 dated May 7, 2009 is \$5,411.92, but only \$4,683.03 was deposited. \$728.89 is missing.
 - d. The total for remittance report number 131 dated May 11, 2009 is \$3,947.38, but only \$3,626.38 was deposited. \$321.00 is missing.
9. Secondly, receipts dated April 13, 2009, April 14, 2009 and April 29, 2009 documenting customer cash payments indicate that a total of \$3,333.64 was submitted

by customers to be applied to three separate customer accounts, yet a total of \$2,498.64 of these funds was never applied to the customers' accounts. The Firm obtained recorded interviews and/or affidavits from these customers that reflect the fact that the payments were made to Paiz as follows:

- a. A receipt dated April 13, 2009 shows that customer MF made a \$1,300.00 cash payment. That payment was not applied to the customer's account and is missing.
- b. A receipt dated April 14, 2009 shows that customer CC made a \$1,021.74 cash payment of which only \$535.00 was applied to his customer policy. \$486.74 is missing.
- c. A receipt dated April 29, 2009 shows that customer RS made a \$1,011.90 cash payment of which only \$300.00 was applied to his customer policy. \$711.90 is missing.

10. Lastly, receipts dated March 9, 2009 and April 1, 2009 indicate that Paiz misappropriated \$3,201.05 in customer insurance premium payments by accepting the check payments and failing to apply the premium payments to the correct policies. Instead, he credited the check payments to other customers' policies presumably to cover cash premium payments for those customers which were misappropriated. Further, in one instance, Paiz credited a customer check payment to Paiz's own insurance policy. The Firm obtained recorded interviews and/or affidavits from these customers that reflect the fact that the payments were made to Paiz as follows:

- a. A receipt dated March 9, 2009 shows that customer DC made a \$2,401.05 check payment. That payment was not applied to the customer's account and is missing.
 - b. A receipt dated April 1, 2009 shows that customer JR made a \$800.00 check payment. That payment was not applied to the customer's account and is missing.
11. On May 13, 2009, Paiz's supervisor delivered a termination letter to Paiz. As of June 2010, Paiz has not reimbursed the Firm for the misappropriated customer insurance premium payments. In accordance with company policy, the Firm has credited the affected customers' policies for the amounts misappropriated by Paiz so as not to impact their insurance coverage.
12. In sum, Paiz misappropriated \$7,446.62 in customer insurance premium payments. This conduct constituted a misappropriation of Firm funds.
13. FINRA Rule 2010 requires that members and associated persons "observe high standards of commercial honor and just and equitable principles of trade."
14. Paiz engaged in conduct inconsistent with high standards of commercial honor and equitable principles of trade in that he misappropriated funds from his member firm employer.
15. As a result, Paiz violated FINRA Rule 2010.

SECOND CAUSE OF ACTION

Failure to Respond to a Request for Information and Requests to Appear and Testify (FINRA Procedural Rule 8210 and Conduct Rule 2010)

16. The Department realleges and incorporates by reference paragraphs 1–16 above.
17. Paiz failed to cooperate with FINRA's requests for information.
18. FINRA requested an explanation of this matter from Paiz by letter dated July 8, 2009.

The letter was sent via certified mail and first class mail to Paiz's last known home address according to CRD. While the certified copy was returned to FINRA, the first class copy was not.
19. Paiz failed to respond to the July 8, 2009 letter.
20. On September 23, 2009, a second request for this same information was sent to Paiz via certified mail and first class mail to his CRD address. While the certified copy was returned to FINRA, the first class copy was not.
21. Paiz failed to respond to the September 23, 2009 letter.
22. On January 26, 2010, a third request for this information was sent to Paiz via certified and first class mail to his CRD address. On February 2, 2010, the certified copy was signed for by Sylvia Paiz. The first class copy was not returned to FINRA.
23. Paiz failed to respond to the January 26, 2010 letter.
24. Paiz has failed to cooperate and has not complied with the Department's requests for information pursuant to FINRA Rule 8210.
25. FINRA Rule 8210(a) provides that the Department may "require a member, person associated with a member, or person subject to FINRA's jurisdiction to provide

information orally, in writing or electronically” FINRA Rule 8210(c) provides that “[n]o member or person shall fail to provide information or testimony or to permit an inspection and copying of books, records, or accounts pursuant to this Rule.”

26. As a result of the conduct set forth in paragraphs 1–26 above, Paiz violated FINRA Rules 8210 and 2010.

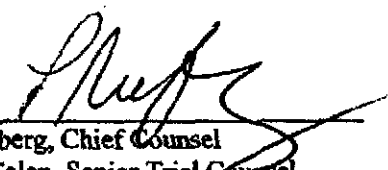
RELIEF REQUESTED

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: July 30, 2010


Linda Riefberg, Chief Counsel
Margaret Tolan, Senior Trial Counsel

FINRA Department of Enforcement
14 Wall Street, 14th Floor
New York, New York 10005
Phone: (646) 315-7414 Fax: (646) 315-7442
margaret.tolan@finra.org