

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

Department of Enforcement,

Complainant,

v.

Jeremy McGilvrey (CRD No. 4167743),

Respondent.

DISCIPLINARY PROCEEDING
No. 2009018290001

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Between January 17, 2007 through April 14, 2009, Jeremy McGilvrey ("McGilvrey") participated in private securities transactions by assisting in the sale of stock repurchase agreements and a promissory note purportedly related to a business owned by McGilvrey, without providing notice to, and receiving prior approval from, his employing registered firms, in violation of NASD Rules 3040 and 2110 and FINRA Rule 2010. Additionally, McGilvrey converted customers' funds from these private securities transactions for his personal use, in violation of NASD Rules 2330 and 2110 and FINRA Rule 2010.

RESPONDENT AND JURISDICTION

2. McGilvrey entered the securities industry in April 2000, when he became registered with Edward Jones. He has Series 7, 24, 63, and 66 licenses. McGilvrey was subsequently registered with Raymond James Financial Services, Inc. and LPL

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Financial Corporation. In June 2008, McGilvrey became registered with NEXT Financial Group, Inc., and he was an OSJ manager in its San Antonio branch office. The branch office did business under the name Hill Country Wealth. On May 29, 2009, NEXT Financial Group, Inc. filed a Uniform Termination Notice for Securities Industry Registration ("Form U-5") on behalf of McGilvrey.

3. Although Respondent has not been associated with a FINRA-registered firm since May 22, 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-registered firm, and (2) the Complaint charges him with misconduct committed while he was associated with a FINRA-registered firm.

**FIRST CAUSE OF ACTION
Private Securities Transactions
NASD Rules 3040 and 2110 and FINRA Rule 2010**

4. The Department realleges and incorporates by reference paragraphs 1 through 3 above.
5. Between 2007 and 2009, McGilvrey participated in private securities transactions by assisting in the sale of stock repurchase agreements. The agreements provided McGilvrey's clients with non-transferable, non-voting shares of Hill Country Wealth, Inc. McGilvrey was the sole officer, director, and owner of Hill Country Wealth.
6. McGilvrey sold the stock repurchase agreements to seven firm customers who invested approximately \$1,282,500.

Investors D and TC

7. Investors D and TC are a married couple who were customers of McGilvrey at NEXT Financial Group, Inc. ("NEXT"). On May 14, 2009, D and TC were deemed legally incapacitated and placed under the guardianship of TC's son. TC is a retired two-star General and a physician. He is 94 years old and suffers from severe dementia and Alzheimer's disease. TC was incapable of making independent decisions regarding financial matters during all of his dealings with McGilvrey. DC is a 90 year-old retired Colonel. She suffers from paranoia, depression, and memory problems. DC was incapable of making independent decisions regarding financial matters during all of her dealings with McGilvrey.
8. In early 2008, McGilvrey recommended that D and TC liquidate their conservative investments, such as their USAA Short Term Tax Free Municipal Bond Fund, USAA Long Term Tax Free Municipal Bond Fund, and shares of Exxon-Mobil stock. Pursuant to McGilvrey's recommendation, D and TC liquidated these investments.
9. In June 2008, McGilvrey had a stock repurchase agreement prepared, and he persuaded DC to sign it. The agreement provided that DC would invest \$500,000 in non-voting shares of unregistered stock in Hill Country Wealth. The obligation by Hill Country Wealth to repurchase the stock pursuant to the agreement did not arise until June 30, 2013. No payments of any kind were due under the agreement until DC reached the age of 94. In October 2008, McGilvrey persuaded Investor DC to invest an additional \$500,000 in non-voting shares of unregistered stock in Hill Country Wealth. McGilvrey failed to give written notice of his intention to participate in the sale of the stock repurchase agreements to, and failed to obtain

written approval from, his employing registered firms prior to engaging in such activities.

10. In February 2009, McGilvrey engaged in another private securities transaction when he sold DC a \$500,000 promissory note from Hill Country Wealth. The promissory note was a balloon note with a maturity date of February 2, 2011, paying 8% annual interest. No payments of any kind were due under the agreement until DC reached the age of 92. McGilvrey failed to give written notice of his intention to participate in the sale of the promissory note to, and failed to obtain written approval from, his employing registered firm prior to engaging in such activities.
11. On April 8, 2009, after litigation was instituted by D and TC's guardian, McGilvrey entered into a settlement agreement, and he promised to pay D and TC \$1,000,000.00 in three payments. McGilvrey made the first payment of \$225,000; however, he failed to pay the remaining \$775,000.

Investor AK

12. Investor AK is an 85 year-old investor who was McGilvrey's customer at NEXT. On or about April 14, 2009, McGilvrey sold AK \$100,000 in non-voting shares of unregistered stock in Hill Country Wealth. On April 14, 2009, McGilvrey deposited AK's \$100,000 check in Hill Country Wealth's account. One day later, McGilvrey wrote a \$225,000 check from the same account to D and TC's guardian for the first settlement payment. The balance in Hill Country Wealth's account prior to the receipt of AK's check was not sufficient to write the settlement check to D and TC's guardian.

13. The stock repurchase agreements and promissory notes were “securities” pursuant to the Exchange Act.
14. McGilvrey failed to give written notice of his intention to participate in the sale of the stock repurchase agreements and promissory note to, and failed to obtain written approval from, his employing registered firms prior to engaging in such activities.
15. The above acts, practices, and conduct constitute violations of NASD Rule 3040 and 2110 and FINRA Rule 2010. The conduct occurring between January 17, 2007 and December 14, 2008 violated NASD Rule 2110, and the conduct occurring between December 15, 2008 and April 14, 2009 violated FINRA Rule 2010.

SECOND CAUSE OF ACTION
Conversion
NASD Rules 2330 and 2110 and FINRA Rule 2010

16. The Department realleges and incorporates by reference paragraphs 1 through 15 above.
17. From 2007 until 2009, McGilvrey received approximately \$1,782,500 from seven customers.
18. While McGilvrey falsely told the clients that their money would be used for the expansion of Hill Country Wealth, he utilized the clients’ funds for his personal use. McGilvrey deposited or transferred his customers’ funds into his business and personal bank accounts from which he paid, among other personal expenses, his personal credit card, his mortgage, legal settlement expenses, gambling expenses, vacations, tanning membership fees, and beauty supplies.

19. The acts, practices, and conduct above constitute violations of NASD Rules 2330 and 2110 and FINRA Rule 2010 by Respondent. The conduct occurring between January 17, 2007 and December 14, 2008 violated NASD Rule 2110, and the conduct occurring between December 15, 2008 and April 14, 2009 violated 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) be imposed, including that the Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest;
- 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

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