

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

Department of Enforcement,

Complainant,

v.

David A Schams
(CRD No. 1587140)

Respondent

Disciplinary Proceeding

No. 20090182932

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Over a nearly two year period, from October 2007 to May 29, 2009, ("the relevant period"), while registered with OneAmerica, David A. Schams ("Schams" or "Respondent") misappropriated over \$120,000 from his customer and used those funds for his personal use and benefit.
2. Respondent Schams, while named a beneficiary under the Will of his elderly and ailing customer, and possessing a General Durable Power of Attorney, took charge of his customer's checkbook and almost immediately began to misuse his Power of Attorney by engaging in numerous self-dealing transactions.
3. Respondent Schams' misappropriation of customer funds for his personal use and benefit constitutes a violation of NASD Conduct Rule 2110 and FINRA Rule 2010.¹
4. Respondent Schams' assumption of the role of Power of Attorney without

¹ Schams' misconduct occurred from October 2007 to May 2009. On December 15, 2008, NASD Rule 2110 was superseded by FINRA Rule 2010. Therefore, Schams is charged with violations of both NASD Rule 2110 and FINRA Rule 2010.

OneAmerica Securities Inc.'s ("One America") knowledge or approval constitutes a violation of NASD Conduct Rule 2110 and FINRA Rule 2010.

5. On June 10, 2008, Respondent Schams took a \$40,000 interest free loan from his customer and did not inform OneAmerica in violation of NASD Conduct Rule 2370 and FINRA Rule 3240.²

RESPONDENT AND JURISDICTION

6. Respondent Schams was born on [REDACTED]. He has been licensed as an insurance agent in the state of Wisconsin since October 1984. Schams sold insurance for Thrivent for Lutherans from October 1, 1984 through October 31, 2005. In December 2005, Schams joined OneAmerica as a registered representative in its Alma, Wisconsin office. His employment was terminated on May 29, 2009 and he has not been employed with a member firm since that time.
7. FINRA retains jurisdiction over Respondent Schams pursuant to Article V, Section 4(a) of the NASD By-laws because the conduct that serves as the basis for this action commenced prior to his termination of registration from a member firm.

FACTS COMMON TO ALL COUNTS

8. The Department realleges and incorporates by reference paragraphs 1-7 above.
9. In June 2007, Respondent Schams was named Personal Representative of GB's ("GB") estate, in the event of EB's death. GB was born in [REDACTED] and EB was born in [REDACTED]. By June 2007 GB, 86, had been diagnosed with Alzheimer's disease and EB, 89, with cancer. EB succumbed to cancer in November 2007.
10. Respondent Schams was also named secondary Attorney in Fact for GB and EB with financial Power of Attorney. On November 24, 2007, after the death of EB, Schams became GB's financial Power of Attorney in violation of OneAmerica's policies and procedures which prohibit registered representatives from exercising or maintaining any discretionary authority or power of attorney for any customer and also prohibited

² Effective June 14, 2010, NASD Rule 2370 was superseded by FINRA Rule 3240.

registered representatives from acting in a personal capacity independently as an agent for a customer without the express written consent of Compliance. By his conduct Respondent violated NASD Conduct Rule 2110 and FINRA Rule 2010.

11. In GB's Will dated June 6, 2007, Respondent Schams was named as beneficiary which entitled him to a 12.5 share of GB's residual estate.
12. In October of 2007, Respondent Schams began exercising his Power of Attorney by signing checks on GB's behalf and improperly obtaining and using customer funds for his personal use and benefit in violation of NASD Conduct Rule 2110 and FINRA Rule 2010.

Checks to Sandra Schams

13. On November 10, 2007, Respondent Schams wrote a check to Sandra Schams (his wife) from GB's account for \$10,000.00 and placed GB's name on the signature line.
14. On November 20, 2007, Respondent Schams wrote a second check to Sandra Schams from B's account for \$10,000.00 and placed GB's name on the signature line.

The Purported Loan to Schams

15. On June 10, 2008, Schams drafted a note which GB signed:

I, GB agree to make loans to David A. Schams up to approximately one half the value of his anticipated inheritance under my Will. These loans, if any, shall be paid back to my estate at the time of my death or deducted from the value of David's share of the inheritance. These loans shall be interest free in exchange for Dave helping with my care.
16. On June 10, 2008, Respondent Schams took a \$40,000 interest-free loan from GB.
17. Respondent Schams did not inform OneAmerica about the loan in violation of OneAmerica's policies and procedures which state that a registered representative is prohibited from issuing or transacting promissory notes, loans or other similar forms of debt for customers without the express written consent of Compliance and in violation of NASD Rule 2370 and FINRA Rule 3240.

Withdrawals by Schams

18. In August 2008, Respondent Schams withdrew \$20,000 from GB's Curian Bank account for his personal use and benefit. Schams had GB sign the back of the check while he also endorsed the check as POA.
19. In August 2008, Respondent Schams withdrew another \$20,000 from GB's Curian Bank account for his personal use and benefit.
20. On or about October 15, 2008, Respondent Schams opened a joint checking account at Associated Bank jointly with Sandra Schams and GB. David and Sandra Schams' names along with an address registered to David Schams were listed on the checks; GB's name and address were not listed.
21. Beginning November 2008, Respondent Schams began making payments to Merchants Bank from the joint checking account for the mortgage payment and/or loan for the property located at [REDACTED] Schams resides at [REDACTED]
22. On or about December 2008, Respondent Schams withdrew another \$20,000.00 from GB's Curian Bank account for his personal use and benefit.
23. As a result of the conduct set forth in paragraphs 1-20 above, Respondent Schams violated NASD Conduct Rule 2110 and FINRA Rule 2010 and NASD Conduct Rule 2370 and FINRA Rule 3240.

FIRST CAUSE OF ACTION

Misappropriation (NASD Conduct Rule 2110 and FINRA Rule 2010)

24. The Department realleges and incorporates by reference paragraphs 1 through 23 above.
25. Respondent Schams misappropriated over \$120,000 of customer funds for his personal use and benefit in violation of NASD Conduct Rule 2110 and FINRA Rule 2010.

SECOND CAUSE OF ACTION

DISCRETIONARY AUTHORITY/POWER OF ATTORNEY (NASD CONDUCT RULE 2110 AND FINRA RULE 2010)

26. The Department realleges and incorporates by reference paragraphs 1 through 23 above.
27. Respondent Schams was named secondary Attorney in Fact for EB and GB with financial Power of Attorney. On November 24, 2007, after the death of EB, Schams became GB's financial Power of Attorney in violation of OneAmerica's policies and procedures which prohibit registered representatives from exercising or maintaining any discretionary authority or power of attorney for any customer and in violation of NASD Conduct Rule 2110 and FINRA Rule 2010.

THIRD CAUSE OF ACTION

LOANS FROM A CUSTOMER

(NASD CONDUCT RULE 2370 AND IN THE ALTERNATIVE FINRA RULE 3240)

28. The Department realleges and incorporates by reference paragraphs 1 through 23 above.
29. On June 10, 2008, Respondent Schams drafted a note which GB signed:
- I, GB agree to make loans to David A. Schams up to approximately one half the value of his anticipated inheritance under my Will. These loans, if any, shall be paid back to my estate at the time of my death or deducted from the value of David's share of the inheritance. These loans shall be interest free in exchange for Dave helping with my care.
30. Respondent Schams took a \$40,000 interest free loan from GB. Schams did not notify the Compliance Department of his firm and did not receive OneAmerica's written consent. By taking this loan, Schams violated OneAmerica's policies and procedures which state that a registered representative is prohibited from issuing or transacting promissory notes, loans or other similar forms of debt for customers without the express written consent of Compliance and violated NASD Rule 2370 and, in the alternative, FINRA Rule 3240.

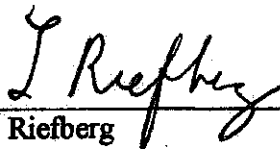
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under NASD Rule 8310(a), including monetary sanctions, be imposed, including that the Respondent be required to disgorge fully any and all ill-gotten gains, 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 NASD Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

5/27/11
Date



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