

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ANDREW G. SPOTTS
(CRD No. 2660556),

Respondent.

Disciplinary Proceeding
No. 20090186618

Hearing Officer – MC

DEFAULT DECISION

June 9, 2011

Respondent is barred from associating with any FINRA member firm in any capacity for misappropriating a co-worker's funds, in violation of NASD Conduct Rule 2110 and FINRA Rule 2010; for forging a co-worker's checks, in violation of NASD Rule 2110 and 2010; and for failing to appear and provide testimony pursuant to requests issued under FINRA Procedural Rule 8210, in violation of FINRA Rules 2010 and 8210.

Appearances:

Stephanie Glenn-Palmer, Senior Counsel, and Marianne Paoli, Director, New York, New York, for the Department of Enforcement.

No appearance by or on behalf of Respondent Andrew G. Spotts.

DECISION

The Department of Enforcement filed the attached three-cause Complaint on January 5, 2011. The Complaint alleges that Respondent Andrew G. Spotts engaged in an extended, serious course of misconduct spanning approximately two and a half years. The misconduct involved Spotts allegedly taking blank checks belonging to a co-worker, forging the co-worker's signature, and making the checks payable either to himself or his creditors. In addition, Spotts subsequently failed to appear and testify in compliance with requests that FINRA staff issued to him pursuant to Rule 8210.

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The Complaint's First Cause of Action charges Spotts with misappropriation; the Second charges him with forgery. Because of the time spanned by his misconduct, the First and Second Causes of Action each allege that Spotts' violations contravened both NASD Conduct Rule 2110 and FINRA Conduct Rule 2010.¹ The Third Cause of Action charges Spotts with violating FINRA Conduct Rule 2010 and Procedural Rule 8210 for failing to provide testimony as required.

Enforcement served the Complaint and Notices of Complaint upon Spotts by certified mail at his residential address as it appears in FINRA's Central Registration Depository. Spotts failed to file an Answer or otherwise respond to the Complaint. As a result, on April 14, 2011, Enforcement filed a Motion for Entry of Default Decision and Request for Sanctions ("Default Motion") supported by the Declaration of Stephanie Glenn-Palmer and 12 exhibits.²

I. Findings of Fact and Conclusions of Law

A. Jurisdiction

Spotts first became registered with FINRA through member firm Wachovia Securities in 1999. Subsequently, FINRA member firm Wells Fargo Advisors (the "Firm") acquired Wachovia Securities; Spotts remained registered and employed there until the Firm terminated his employment on June 8, 2009.³ Since then, Spotts has not been associated with any member firm in any capacity. Because Enforcement filed the Complaint within two years of the last date

¹ The Complaint asserts that Spotts' misappropriations and forgeries began in 2006 and continued through June 2009. As of July 30, 2007, NASD consolidated with the member regulation and enforcement functions of NYSE Regulation and began operating under a new corporate name, the Financial Industry Regulatory Authority (FINRA). Following consolidation, FINRA began developing a new FINRA Consolidated Rulebook. See Regulatory Notice 08-57 (Oct. 2008). FINRA Conduct Rule 2010 replaced NASD Conduct Rule 2110, to which it is identical, as of December 15, 2008. Thus, the misappropriations and forgeries occurring before December 15, 2008, violated NASD Conduct Rule 2110, and those occurring afterwards violated FINRA Conduct Rule 2010. The rules are available at www.finra.org/rules.

² Enforcement's exhibits will be referred to as "CX-___," with the appropriate exhibit and page numbers. The Declaration of Stephanie Glenn-Palmer will be referred to as "Decl." or "Glenn-Palmer Declaration," with citations to specific paragraphs.

³ Decl. ¶ 5; CX-1.

Spotts was registered, and because the Complaint alleges that his misconduct occurred both while he was registered with FINRA and within two years afterwards, FINRA retains jurisdiction over him for the purposes of this disciplinary proceeding.⁴

B. Default

Enforcement served the Complaint and First Notice of Complaint upon Spotts by certified mail at his CRD address on January 5, 2011. The certified mailing was returned to Enforcement, the envelope marked "UNCLAIMED."⁵ When Spotts did not file an Answer or otherwise respond to the Complaint, Enforcement served the Complaint and Second Notice of Complaint upon Spotts at his CRD address by certified mail on February 17, 2011. The certified mailing was returned to Enforcement marked with notations indicating several delivery attempts and, as with the previous mailing, "UNCLAIMED."⁶

By serving the Complaint, Notice of Complaint, and Second Notice of Complaint upon Spotts by first-class certified mail at his CRD address, Enforcement complied with the requirements of Rule 9134 and provided him with constructive notice that the Complaint had been filed.⁷ By failing to file an Answer or respond in any manner, Spotts defaulted. Accordingly, pursuant to Rules 9215(f) and 9269(a)(2), and for the reasons set forth below, the Default Motion is granted.⁸

⁴ Article V, Section 4, FINRA By-Laws.

⁵ Decl. ¶¶ 32, 34; CX-10.

⁶ Decl. ¶¶ 36, 38; CX-12.

⁷ FINRA Procedural Rule 9134(a); *Dep't of Enforcement v. Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at *5 (N.A.C. Dec. 9, 2003) (Rule 9134(b)(1) allows for constructive notice by mailing a complaint to the respondent's most recent CRD address) (citing *Lubeck v. SEC*, 1998 U.S. App. LEXIS 18849, at *20 (9th Cir. Aug. 12, 1998)).

⁸ The factual determinations in this Default Decision are based on the allegations of the attached Complaint, which are deemed admitted, as well as the Glenn-Palmer Declaration and the exhibits filed by Enforcement.

C. Spotts Misappropriated Funds and Forged Checks of a Co-Worker

From on or about December 2006 through June 2009, Spotts obtained approximately 83 blank personal checks belonging to his co-worker, DC. The checks were for an account maintained by DC at the Firm. Spotts, without DC's knowledge or consent, used them to misappropriate approximately \$197,860 from DC's account. Spotts made 48 of the checks, totaling approximately \$129,619, payable to himself, depositing the funds into his personal checking account. He made the other 35 checks, totaling approximately \$68,241, payable to credit card companies and other creditors to pay his personal bills.⁹

Spotts provided the Firm's Corporate Fraud Investigative Services Department with a written statement dated June 9, 2009, admitting that he took DC's checkbook and forged DC's signature on the checks, making some of the checks payable to himself, which he deposited to his own personal account, and others payable to third parties.¹⁰ On March 9, 2010, Spotts entered a plea of guilty to criminal charges filed against him related to the misconduct described in the Complaint, including forgery and theft, in the Court of Common Pleas of Dauphin County, Pennsylvania.¹¹

These facts, as alleged in the Complaint and supported by the Glenn-Palmer Declaration, suffice to establish, for the purposes of this Default Decision, that Spotts misappropriated funds and forged the personal checks of a co-worker, in violation of NASD Conduct Rule 2110 and FINRA Conduct Rule 2010.

D. Spotts Failed to Appear and Testify as Required

On March 16, 2010, shortly after Spotts entered his guilty pleas in criminal court, Enforcement sent a letter to Spotts by certified and first-class mail at his CRD address,

⁹ Decl. ¶¶ 9-11, 13.

¹⁰ Decl. ¶¶ 19 (B) and (C).

¹¹ Decl. ¶¶ 15-16.

requesting him to appear for an on-the-record interview on April 7, 2010, pursuant to FINRA Procedural Rule 8210. In the letter, Enforcement advised Spotts that failure to appear could expose him to disciplinary sanctions, including a bar. The first-class mailing was not returned, but the U.S. Postal Service returned the receipt for the certified mailing with a signature indicating that "Andy Spotts" received delivery on March 20, 2010.¹² Nonetheless, Spotts failed to appear for the interview on April 7, 2010.¹³

Consequently, on June 18, 2010, Enforcement sent another letter, again by certified and first-class mail, to Spotts at his CRD address, and again pursuant to Rule 8210, requesting that he appear to provide testimony at an on-the-record interview on July 14, 2010. As before, Enforcement advised Spotts that failure to appear could expose him to disciplinary sanctions. The U.S. Postal service returned a signed receipt for the certified mailing with a signature indicating that it was delivered to "Andy Spotts" on June 21, 2010; the first-class mailing was not returned.¹⁴ Spotts did not appear.¹⁵

By these facts, Enforcement has sufficiently established, for the purposes of this Default Decision, that Spotts violated FINRA Rules 2010 and 8210 by failing to appear at on-the-record interviews after Enforcement requested him to do so pursuant to Rule 8210.

¹² Decl. ¶¶ 25-26; CX-4.

¹³ Decl. ¶ 27.

¹⁴ Decl. ¶¶ 28-29; CX-7.

¹⁵ Decl. ¶ 30.

II. Sanctions

A. Spotts' Misappropriations

The FINRA Sanction Guidelines recommend that adjudicators consider imposing a bar for misappropriation, or conversion, defined as "intentional and unauthorized taking of ... property" of another by one not entitled to the property, regardless of the amount.¹⁶

As noted above, Spotts' misappropriations violated FINRA Rule 2010 and its identical predecessor, NASD Rule 2110. Such violations require that (i) a respondent commits the misconduct in the course of his business, and (ii) the misconduct violates just and equitable principles of trade.¹⁷ The ethical requirements of the rule apply to unethical conduct that is not securities-related but reflects on the respondent's "ability both to comply with regulatory requirements fundamental to the securities business and to fulfill his fiduciary responsibilities in handling other people's money."¹⁸ Here, even though Spotts' misappropriations did not involve a security, and did not involve customers, it is well-established that misappropriation constitutes unethical business conduct in violation of NASD Rule 2110 and FINRA Rule 2010.¹⁹

For the many discrete acts of misappropriation comprising Spotts' course of misconduct, a bar, as recommended by Enforcement, is an appropriate sanction, to deter him and others.²⁰

¹⁶ *FINRA Sanction Guidelines*, 36 (2011).

¹⁷ *Dep't of Enforcement v. Shvarts*, No. CAF980029, 2000 NASD Discip. LEXIS 6, at *18 (N.A.C. June 2, 2000).

¹⁸ *Id.*, *35 (quoting *James A. Goetz*, Exch. Act Rel. No. 39796, 1998 SEC LEXIS 499, at *11 (Mar. 25, 1998)).

¹⁹ *Dep't of Enforcement v. Foran*, No. C8A990017, 2000 NASD Discip. LEXIS 8, at *21 (N.A.C. Sept. 1, 2000).

²⁰ There is no need to order Spotts to pay restitution. The criminal court before which Spotts entered his guilty pleas imposed, among other sanctions, a requirement that Spotts pay restitution. In compliance, Spotts paid restitution in the amount of \$152,470.05 to DC. The credit card and other companies to which Spotts had diverted DC's funds paid DC approximately \$44,000. Decl. ¶¶ 17-18. Consequently, Enforcement does not request an Order of Restitution here. Department of Enforcement's Motion for Entry of Default Decision and Request for Sanctions, p. 9.

B. Spotts' Forgeries

It is also well-established that "[t]here can hardly be more serious misconduct in the securities business than forgery and theft."²¹ It is indisputable that signing another's name on a document without authority constitutes forgery and violates FINRA Rule 2010.²² The Guidelines recommend that in egregious cases, adjudicators consider imposing a bar.²³ The egregiousness of the forgeries in this instance is unarguable. Spotts forged 83 separate checks over a period of approximately two and a half years to accomplish his misappropriation of a co-worker's funds to his own use. For these reasons, Enforcement's request for the imposition of a bar for Spotts' forgeries is reasonable and appropriate to deter him and others similarly situated from such serious misconduct.

C. Spotts' Failures to Appear at On-the-Record Interviews

For failure to respond in any manner to a request pursuant to Procedural Rule 8210, the Sanction Guidelines recommend a bar. If there are mitigating factors, the Guidelines recommend consideration of a suspension in any or all capacities for up to two years.²⁴ In this case, there are no mitigating factors. Spotts did not respond at all to two requests to provide on-the-record testimony, both of which he apparently actually received, and both of which were properly issued by FINRA pursuant to Procedural Rule 8210.

Conduct Rule 2010 and Procedural Rule 8210 are "crucial components of [FINRA's] examinations and investigations. ... Procedural Rule 8210 gives [FINRA] the right to require a member or person associated with a member to provide information, orally or in writing, in

²¹ *Dep't of Enforcement v. Neaton*, No. 2007009082902, 2011 FINRA Discip. LEXIS 1, at *32 (N.A.C. Jan. 7, 2011)(quoting *Brian G. Allen*, 50 Exch. Act Rel. No. 28925, 1991 SEC LEXIS 312, at *3 (Feb. 28, 1991).

²² *Dep't of Enforcement v. Claggett*, No. 205000631501, 2007 NASD Discip. LEXIS 27, at *10 (N.A.C. Sept. 28, 2008); *Dep't of Enforcement v. Cooper*, No. C04050014, 2007 NASD Discip. LEXIS 15, at *9 (N.A.C. May 7, 2007).

²³ *Guidelines*, 37.

²⁴ *Id.*, 33.

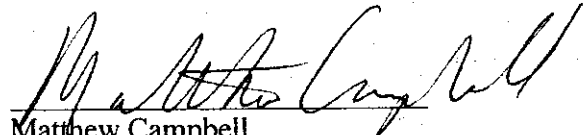
connection with an examination or investigation. The rule further states that no member or person shall fail to provide such information."²⁵

For these reasons, Enforcement's recommendation of a bar from the securities industry is appropriate for Spotts' failure to respond to FINRA's requests for information.

III. Order

Respondent Andrew G. Spotts is barred from associating with any FINRA member firm in any capacity for misappropriating funds, and for forgery, in violation of NASD Conduct Rule 2110 and FINRA Conduct Rule 2010. He is also barred for failing to respond to requests to appear and provide on-the-record testimony, in violation of FINRA Conduct Rule 2010 and Procedural Rule 8210.

If this Decision becomes FINRA's final disciplinary action, the bars shall be effective immediately.


Matthew Campbell
Hearing Officer

Copies to:

Andrew G. Spotts (*via overnight courier and first-class mail*)
Stephanie Glenn-Palmer, Esq. (*via e-mail and first-class mail*)
Marianne Paoli, Esq., (*via e-mail and first-class mail*)
David R. Sonnenberg, Esq. (*via e-mail*)

²⁵ *Dep't of Enforcement v. Masceri*, No. C8A040079, 2006 NASD Discip. LEXIS 29, at *35-36 (N.A.C. Dec. 18, 2006).