

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Andrew G. Spotts (CRD No. 2660556),

Respondent.

DISCIPLINARY PROCEEDING
No. 20090186618

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. From on or about December 2006 through June 2009, Andrew George Spotts ("Spotts" or "Respondent") misappropriated approximately \$197,860 from a coworker, DC, at his member firm employer, by taking approximately 83 blank personal checks (the "83 checks") from DC, making the checks payable to himself and to third parties, without DC's knowledge or approval, and then forging DC's signature on the checks, which were then deposited into Respondent's personal account or issued to third parties. Respondent's conduct violated NASD Rule 2110 and FINRA Rule 2010.¹

¹ On December 15, 2008, NASD Rule 2110 was superseded, without substantive changes, by FINRA Rule 2010.

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2. FINRA staff sent Spotts two FINRA Rule 8210 requests requiring Spotts to appear and testify in connection with the misappropriation of funds from DC. Spotts failed to appear and testify on the scheduled dates as required. Respondent's conduct violated FINRA Rule 8210 and FINRA Rule 2010.

RESPONDENT AND JURISDICTION

3. Spotts first became registered with NASD as a general securities representative in October 1999 with FINRA member Wachovia Securities, which subsequently was acquired by Wells Fargo Advisors (the "Firm"), and remained employed there until his termination on June 8, 2009. Spotts registration as a general securities representative ended on July 1, 2009. On or about July 1, 2009, the Firm filed a Uniform Termination Notice for Securities Industry Registration (the "Form U-5") reporting that Spotts' employment was terminated by the Firm for "misappropriating funds of a coworker to himself by falsely writing checks from the coworker's checking account".
4. Although Respondent has not been associated with a FINRA member firm since June 8, 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 associated with a FINRA member and with failing to provide information and failing to appear for on-the-record testimony as required during the two-year period after the date upon which he ceased to be associated with a FINRA member.

FACTS

Misappropriation and Forgery

5. During the period from on or out December 2006 through June 2009, Spotts took approximately 83 blank personal checks from DC. The checks were for a personal checking account DC maintained at the Firm.
6. Spotts made 48 of the 83 checks payable to himself totaling approximately \$129,619 and made 35 of the 83 checks payable to credit card and other companies totaling approximately \$68,241 to pay his personal bills. Spotts signed DC's name to each of the 83 checks. Spotts deposited the checks that he made payable to himself into his personal checking account at Wachovia Securities and issued the checks to the third parties, thereby causing a total of approximately \$197,860 to be removed from DC's personal checking account, without DC's knowledge or permission.
7. DC never gave Spotts permission or authority to sign DC's name on the 83 checks or to make any of the 83 checks payable to Spotts or to third parties.
8. On June 8, 2009, the Firm terminated Spotts' employment.

Spotts Failed to Appear and Testify

9. On or about December 22, 2009 and pursuant to FINRA Procedural Rule 8210. FINRA staff sent a letter (the "December 22 Letter") to Spotts requesting that he provide a detailed statement on or before January 12, 2010 explaining his conduct in connection with the possible misappropriation of funds from a Firm employee. The December 22 Letter informed Spotts that he was obligated to respond to the request

fully, promptly and without qualification. The December 22 Letter also instructed Spotts that the failure to respond to the request "fully, promptly and without qualification" could expose him to disciplinary sanctions, including a permanent bar from the securities industry. The December 22 Letter was sent by certified mail, return receipt requested, and first class mail to Spotts' last known home address, as reflected in the FINRA Central Registration Depository ("CRD"): [REDACTED]

[REDACTED] The first class copy of the December 22 Letter was not returned to FINRA. The certified copy of the December 22 letter was returned to FINRA marked "unclaimed".

10. Spotts did not provide a statement in response to the December 22 Letter.
11. On or about March 16, 2010 and pursuant to FINRA Procedural Rule 8210, FINRA staff sent a letter (the "March 16 Letter") to Spotts requesting that he appear for an on-the-record interview on April 7, 2010. The March 16 Letter informed Spotts that he was obligated to appear as requested and to answer all questions. The March 16 Letter instructed Spotts that the failure to appear for the on-the-record interview could expose him to disciplinary sanctions, including a permanent bar from the securities industry. The March 16 Letter was sent by certified mail and first class mail to Spotts' last known home address as reflected on the CRD: [REDACTED]

[REDACTED] In March 2010, Enforcement received from the U.S. Postal Service a certified return receipt card dated March 20, 2010 for the March 16 Letter. The return receipt card was signed and contains a signature and indicates that it was received by "Andy Spotts". The March 16 Letter sent by first class mail to his CRD Address was never returned.

12. On April 7, 2010, Spotts did not appear and testify as required by the March 16 Letter.
13. On June 18, 2010 and pursuant to FINRA Procedural Rule 8210, FINRA staff sent a letter (the "June 18 Letter") to Spotts requesting that he appear for an on-the-record interview on July 14, 2010. The June 18 Letter informed Spotts that he was obligated to appear as requested and to answer all questions. The June 18 Letter instructed Spotts, as did the March 16 Letter, that the failure to appear for the on-the-record interview could expose him to disciplinary sanctions, including a permanent bar from the securities industry. The June 18 Letter was sent by certified mail and first class mail to Spotts' last known home address as reflected on the CRD: [REDACTED]
- [REDACTED] In June 2010, Enforcement received from the U.S. Postal Service a certified return receipt card dated June 21, 2010 for the June 18 Letter. The return receipt was signed and indicates that it was received by "Andy Spotts". The June 18 Letter sent by first class mail to his CRD Address was never returned.
14. On July 14, 2010, Spotts did not appear and testify as required by the June 18 Letter.

FIRST CAUSE OF ACTION
(Misappropriation)
NASD Rule 2110 and FINRA Rule 2010

15. The Department realleges and incorporates by reference paragraphs 1 through 14 above.
16. NASD Rule 2110 requires that members observe "high standards of commercial honor and just and equitable principles of trade." NASD Rule 2110 was superseded

by FINRA Rule 2010 on December 15, 2008, but the language of the Rule remains the same.

17. Respondent wrongfully misappropriated approximately \$197,860 from DC.
18. As a result of this conduct, Respondent violated NASD Conduct Rules 2110 and FINRA Rule 2010.

SECOND CAUSE OF ACTION
(Forgery)
NASD Rule 2110 and FINRA Rule 2010

19. The Department realleges and incorporates by reference paragraphs 1 through 18 above.
20. Spotts signed DC's name on the 83 checks that he took from DC, without DC's knowledge or authorization.
21. As a result of this conduct, Spotts violated NASD Conduct Rule 2110 and FINRA Rule 2010.

THIRD CAUSE OF ACTION
(Failure to Testify)
FINRA Rule 8210 and FINRA Rule 2010

22. The Department realleges and incorporates by reference paragraphs 1 through 21.
23. FINRA Rule 8210 requires any person subject to FINRA's jurisdiction to provide information and testimony related to any matter under its investigation.
24. Respondent failed to appear and testify on two separate occasions as directed by FINRA in the March 22 Letter and the June 18 Letter.

25. As a result of this conduct, Respondent violated FINRA Rule 8210 and 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:

1/5/11



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