

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

PURVIS PRESHA
(CRD No. 5433332);

Respondent.

Disciplinary Proceeding
No. 2009018773301

Hearing Officer – SNB

DEFAULT DECISION

July 15, 2010

Respondent is barred from associating with any member firm for failing to respond to requests for information, in violation of FINRA Procedural Rule 8210 and Conduct Rule 2010. The cause of action alleging that Respondent made material misrepresentations and misappropriated customer funds, in violation of NASD Conduct Rule 2110, is dismissed.

Appearances

Jennifer L. Mennella, Esq., New York, NY, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

On January 14, 2010, the Department of Enforcement ("Enforcement") filed a two-cause Complaint. The first cause of action alleges that Respondent Purvis Presha ("Respondent") made material misrepresentations to induce a customer to give him \$10,000, which Respondent then misappropriated, in violation of Conduct Rule 2110. The second cause of action charges

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Respondent with failing to provide information, in violation of FINRA Procedural Rule 8210 and Conduct Rule 2010.¹

Respondent did not file an Answer to the Complaint. Accordingly, on April 20, 2010, Enforcement filed a Motion for Entry of Default Decision, supported by the Declaration of Jennifer L. Mennella, Esq. ("Mennella Decl.") and nine exhibits. On June 7, 2010, Enforcement filed a supplement to its Default Motion to provide additional information regarding whether the conduct underlying the first cause of the Complaint occurred while Respondent was associated with a member firm (the "Mennella Supp. Decl."). Respondent did not file a response to the Motion.

For the reasons set forth below, Enforcement's motion is granted in part.²

I. Respondent's Default

On January 14, 2010, Enforcement served Respondent with the Complaint and Notice of Complaint by certified mail at his residential address as reflected in the Central Registration Depository ("CRD"). Mennella Decl. ¶ 8; CX-4. The certified mailing was returned to FINRA marked, "Return to Sender – Attempted – Not Known – Unable to Forward." Mennella Decl. ¶ 9; CX-5. Respondent did not file an Answer or otherwise respond to the Complaint. Mennella Decl. ¶ 10.

¹Following the consolidation of NASD and the member regulation, enforcement, and arbitration functions of NYSE Regulation into FINRA, FINRA began developing a new "Consolidated Rulebook" of FINRA Rules. The first phase of the new consolidated rules became effective on December 15, 2008. See FINRA Regulatory Notice 08-57 (Oct. 2008). Because the Complaint in this case was filed after December 15, 2008, the procedural rules that apply are the current FINRA Rules. The conduct rules that apply are the NASD Rules that existed at the time of the conduct at issue. The applicable rules are available at www.finra.org/rules.

² The factual determinations in this Decision are based on the allegations of the attached Complaint, which are deemed admitted, and the declarations and exhibits filed by Enforcement with its motion. The exhibits are referred to as "CX-__."

On February 16, 2010, Enforcement served Respondent with a Second Notice of Complaint, and copies of the original Notice of Complaint and Complaint, by certified mail at his CRD address and an alternative address discovered by Enforcement (the "Alternative" address). Mennella Decl. ¶ 11; CX-6. The certified mailings were returned to FINRA marked "Return to Sender – Not Deliverable as Addressed –Unable to Forward." Mennella Decl. ¶ 12; CX-7. Respondent did not file an Answer or otherwise respond to the Complaint. Mennella Decl. ¶ 13.

Enforcement complied with Rule 9134(b)(1) by mailing the Complaint and Notices of Complaint to Respondent's CRD and Alternative addresses, thereby giving him constructive notice of this proceeding. By failing to file an Answer, Respondent defaulted. Accordingly, pursuant to Rules 9215(f) and 9269(a)(2), the factual allegations in the Complaint are deemed admitted.

II. Jurisdiction

On November 6, 2007, Respondent was hired as an agent for New York Life Insurance Company ("NYLIC"). Mennella Decl. ¶ 4. On November 27, 2007, Respondent became associated with member firm NYLIFE Securities, LLC, (the "Firm"), a wholly owned indirect subsidiary of NYLIC. CX-2. On December 13, 2007, the Firm filed a Uniform Application for Broker-Dealer Registration ("Form U4) on Respondent's behalf, which opened his Series 6 examination window and subjected him to FINRA's jurisdiction. Mennella Decl. ¶ 5; CX-2.

On December 21, 2007, prior to his completion of the Series 6 examination, the Firm terminated Respondent, effective January 21, 2008. On January 29, 2008, the firm filed a Form U5, which reflected his January 21, 2008, termination date. Mennella Decl. ¶ 6; CX-3. Respondent never completed the requirements to become registered with the Firm and is not currently associated with a FINRA member firm. Mennella Decl. ¶ 7.

Although Respondent has not been associated with any FINRA member firm since his termination of employment with the Firm, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because the Complaint was filed within two years after he ceased to be associated with a member firm, and it charges him with misrepresentations and omissions while he was associated with a member firm and with failing to respond to Rule 8210 requests issued within two years following the termination of his association with a member firm.

III. Origin of Proceeding

The investigation leading to this proceeding was initiated in July 2009 following Enforcement's receipt of an Amended Form U5 filed by the Firm disclosing a customer complaint that Respondent misappropriated \$10,000 in customer funds intended for the purchase of an annuity. Mennella Decl. ¶ 6; CX-8, p. 6.

IV. Violations

A. Misrepresentation and Misappropriation of Customer Funds - NASD Conduct Rule 2110

The theory of the first cause of the Complaint is somewhat confusing. The heading in the Complaint indicates that the cause involves misappropriation and misrepresentation. On the other hand, Enforcement's Motion for Entry of Default Decision points only to the sanction guidelines for misappropriation. In addition, the alleged misappropriation occurred when Respondent was no longer associated with a member firm. Accordingly, at the Hearing Officer's request, Enforcement filed a supplement to its motion which asserts:

[E]ven though the actual misappropriation of [the customer's] funds occurred when [Respondent] was no longer associated with the Firm, [Respondent] engaged in a series of events and misrepresentations or omissions of material facts that occurred while he was employed by the Firm in order to induce [the customer] to give him a check for \$10,000. Accordingly, he committed unethical acts while he was still employed by the Firm.

Enforcement's Supplement in Support of Motion for Default Decision at 3. As discussed below, the Hearing Officer finds that the evidence is insufficient to support the first cause of action, regardless of Enforcement's theory.

The record facts are quite limited. In October 2007, prior to his association with the Firm, Respondent contacted the customer to solicit her investment in an annuity and assist the customer in completing an annuity application in October 2007. Mennella Supp. Decl. ¶ 5. On November 27, 2007, Respondent became associated the Firm. CX-2, CX-3. Less than a month later, on December 21, 2007, the Firm notified Respondent that he would be terminated from employment, effective on January 21, 2008. Mennella Supp. Decl. ¶ 6. In early January 2008 Respondent continued to speak with the customer about the annuity investment.³ Mennella Supp. Decl. ¶ 7. On January 14, 2008, the customer drafted a \$10,000 check payable to "NY Life," which she sent to Respondent through a family member.⁴ Mennella Supp. Decl. ¶ 8. On January 21, 2008, Respondent ceased to be employed by the Firm. CX-2; CX-3. After Respondent's last day of employment, but before January 23, 2008, Respondent returned the check to the customer through a family member, and directed the customer to draft a \$10,000 check payable directly to him. Mennella Supp. Decl. ¶ 9. On January 23, 2008, the customer did as requested and signed

³ There is nothing in the record to indicate the exact substance of Respondent's representations to the customer, other than the fact Respondent suggested the name of an attorney to assist the customer in obtaining funds from her prior employer to fund the annuity purchase. Mennella Supp. Decl. ¶ 6.

⁴ There is no evidence as to when Respondent received this check. Mennella Supp. Decl. ¶ 7.

a \$10,000 check payable to Respondent, which she dated January 24, 2008. This check was later cashed.⁵ Mennella Supp. Decl. ¶ 10.

Respondent misappropriated customer funds when he was no longer associated with the Firm. Thus, while the misappropriation was egregious, it falls outside FINRA's jurisdiction.

Enforcement's alternative theory is that, while employed with the Firm, Respondent "engaged in a series of events and misrepresentations or omissions" to lay the groundwork for the misappropriation. This theory is also not supported by the record.⁶ The only specific misconduct alleged in support of this theory is that Respondent did not inform the customer that he would soon cease employment and would be unable to purchase an annuity. *See, Enforcement's Supplement in Support of Motion for Default Decision* at 3. However, there is nothing to support the claim that Respondent would have been unable to facilitate the customer's purchase of an annuity while Respondent was employed with the Firm. Nor is there support for a general obligation to disclose one's future departure from a member firm, where, as here, there have been no allegations of a need to correct prior representations as to employment status. Beyond those specific allegations, Enforcement generally suggests that Respondent's activities and interactions with the customer during his employment were part of a calculated plan to misappropriate the customer's funds. However, this is speculation. There is no evidence that tips the balance in favor of Enforcement's theory over the alternative likelihood that Respondent's misappropriation was an impromptu decision following his departure from the

⁵ On July 13, 2010, Enforcement filed a Second Supplemental Declaration of Jennifer L. Mennella in support of the Motion for Default. The Declaration indicates that, on June 28, 2010, the customer provided Enforcement with a note and check for \$10,000 that the customer received from Respondent in July 2009. Respondent's note states, in part, "I am terribly sorry for losing your funds. I grossly misrepresented myself and I have felt nothing but guilt...Here is your 10K back."

⁶ Because the Hearing Officer found that this theory is not supported by the record, she does not reach the issue of whether it is pled in the Complaint. *See, Dep't of Enforcement v. Paul Bryan Zenke*, No. 2006004377701, 2009 FINRA Discip. LEXIS 37, *10-13 (NAC Dec. 14, 2009) (dismissing cause of action for exceeding the scope of the complaint).

Firm. In fact, the customer's preparation of a check to "NY Life" on January 14, 2008, suggests the contrary, given that Respondent could have requested that the check be made payable to him at that time, rather than waiting until after he was no longer associated with the Firm.

For these reasons, this cause of action is dismissed.

B. Failure to Provide Information, in Violation of FINRA Procedural Rule 8210 and Conduct Rule 2010

The second cause of action alleges that Respondent failed to respond to requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2010.

Specifically, on October 21, 2009, FINRA Staff sent Respondent a Rule 8210 request for information regarding the allegation that he misappropriated customer funds. Mennella Decl. ¶ 23. The request was sent to Respondent at his CRD address by Federal Express, first-class, and certified mail. Mennella Decl. ¶ 24. The Federal Express mailing was left at Respondent's door, the certified mailing was returned unclaimed, and the first-class mailing was not returned. Mennella Decl. ¶ 25.

On November 6, 2009, in the same manner, FINRA Staff sent a second request for information. Mennella Decl. ¶ 27. Again, the Federal Express mailing was left at Respondent's door, the certified mailing was returned unclaimed, and the first-class mailing was not returned. Mennella Decl. ¶ 28.

The requests were served within two years of the termination of Respondent's association with a member firm. Respondent was required to respond, but he failed to do so. Mennella Decl. ¶¶ 26, 29.

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

V. Sanctions

The FINRA Sanction Guidelines ("Guidelines") provide that a bar is standard for failing to provide requested information in any manner. *Guidelines* at 35. There is no evidence of any mitigating circumstances that would justify a lesser sanction. Therefore, the Hearing Officer imposes a bar.

VI. Conclusion

Respondent is barred from associating with any member firm for failing to respond to requests for information, in violation of FINRA Procedural Rule 8210 and Conduct Rule 2010. The cause of action alleging that Respondent made material misrepresentations and misappropriated customer funds, in violation of NASD Conduct Rule 2110, is dismissed. The bar will become effective immediately if this decision becomes FINRA's final disciplinary action in this proceeding.


Sara Nelson Bloom
Hearing Officer

Copies to: Purvis Presha (*via overnight courier and first-class mail*)
Jennifer L. Mennella, Esq. (*via electronic and first-class mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

⁷ *Dep't of Enforcement v. Hoeper*, No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (NAC Nov. 2, 2001) (violation of NASD Procedural Rule 8210 was a violation of NASD Conduct Rule 2110).

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Purvis Presha (CRD No. 5433332),

Respondent.

DISCIPLINARY PROCEEDING
No. 2009018773301

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Between October 2007 and January 2008, Purvis Presha ("Presha" or "Respondent") made misrepresentations and omissions of material fact to an individual, JL, that led JL to give Presha a check in his name for \$10,000 to purchase an annuity on her behalf that he misappropriated for his own use. Presha therefore violated NASD Rule 2110.
2. In addition, between October 2009 and November 2009, Presha failed to provide information, as requested by FINRA staff, in violation of FINRA Rules 8210 and 2010.

JURISDICTION

3. In September 2007, Presha completed an application for employment with New York Life Insurance Company ("NYLIC" or the "Firm") and in November 2007 was hired as an Agent whereby he was authorized to solicit applications for individual and group annuities, life insurance and health insurance policies.
4. On December 13, 2007, NYLIFE Securities LLC ("NYLIFE"), a wholly owned, indirect subsidiary of NYLIC, filed a "Uniform Application for Broker-Dealer Registration" ("Form U4") on Presha's behalf, disclosing that Presha intended to take the Series 6 examination.
5. On December 21, 2007, prior to sitting for the Series 6 examination, Presha was terminated for inappropriate non-business related conduct.
6. NYLIFE filed a "Uniform Termination Notice for Securities Industry Registration" ("Form U5") dated January 29, 2008 which specified January 21, 2008, as the "Date Terminated" and explained: "Presha was terminated by NYLIC, the parent company of NYLIFE Securities Inc., for administrative reasons. As a result, his registration with NYLIFE Securities LLC was automatically terminated. No sales practice issues were involved."
7. Respondent is no longer associated with a FINRA member. FINRA retains jurisdiction over Respondent pursuant to Article V, Section 4 of the FINRA By-Laws.

FIRST CAUSE OF ACTION

(NASD Rule 2110 -Misappropriation/Misrepresentation)

8. The Department realleges and incorporates by reference paragraphs 1 through 7 above.

9. Between October 2007 and January 2008, Presha agreed to purchase an annuity on behalf of JL.
10. In October 2007, Respondent assisted JL in the completion of forms necessary for the purchase of the annuity. JL informed Respondent that she would fund the annuity with \$10,000 she would be receiving from her employer in January 2008.
11. On December 21, 2007 Presha was notified that effective January 21, 2008 his contract as an Agent of the Firm would be terminated.
12. In the first half of January 2008, JL called Presha to discuss her future investment. During that conversation, and multiple subsequent conversations, Presha failed to inform JL that he had been terminated from the Firm, was not registered as a Series 6, and could not purchase an annuity for her.
13. Based on these conversations, and after she received the funds she wished to invest, JL sent a check to Presha, made out to NYLIC.
14. Presha returned the check to JL.
15. Later that month, JL spoke again with Presha, who instructed her to make the check for her investment payable to him. JL did not inform Presha that he had been terminated by NYLIC, was not registered as a Series 6, and could not purchase an annuity for her.
16. On January 24, 2008, following Presha's instructions, JL wrote a check in the amount of \$10,000 payable to Presha. This check was cashed on or about January 24, 2008.
17. In May 2009, NYLIC informed JL that she did not have an account with it and that it had never issued an annuity to her.

18. As a result of this conduct, Presha violated NASD Rule 2110.

SECOND CAUSE OF ACTION

(FINRA Rules 8210 and 2010 – Failure to Provide Information)

19. The Department re-alleges and incorporated by reference paragraphs 1 through 16 above.

20. On October 21, 2009, FINRA sent a letter to Presha pursuant to FINRA Rule 8210, requesting that he provide, among other things, a written statement regarding the allegation that he misappropriated \$10,000 from JL. The letter was sent to Presha's last know residential address, as reflected in the Central Registration Depository ("CRD"), by Federal Express ("Fed Ex"), certified mail return receipt requested and first class mail. The letter required a response no later than November 6, 2009.

21. The certified letter dated October 21, 2009 was returned to FINRA unclaimed. The copy of the letter sent by Fed Ex was left at Presha's front door based on a release on file which authorized "signature not required." The copy of this letter sent by first class mail was not returned to FINRA. Presha did not respond to FINRA's October 21, 2009 request.

22. On November 6, 2009, FINRA sent another letter to Presha pursuant to FINRA Rule 8210 which informed Presha that it was a second request for the information requested by FINRA's letter dated October 21, 2009, to which no response had been received. The letter was sent to Presha's last know residential address, as reflected in the CRD, by Fed Ex, certified mail return receipt requested and first class mail. The

letter required a response no later than November 20, 2009. The original certified letter dated November 6, 2009 was returned to FINRA unclaimed. The copy of the letter sent by Fed Ex was left at Presha's front door based on a release on file which authorized "signature not required." The copy of this letter sent by first class mail was not returned to FINRA. Presha did not respond to FINRA's November 6, 2009 request.

23. No responses to any of FINRA's 8210 requests have been received from Respondent.

24. By virtue of the foregoing, Respondent violated FINRA Rules 8210 and 2010.

RELIEF REQUESTED

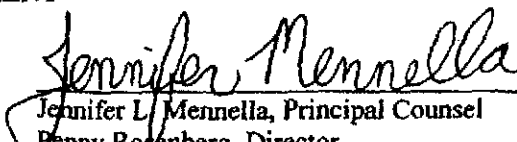
WHEREFORE, the Department respectfully requests that the Panel:

- 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:

1/14/2010


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