

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JOHN MONTAGUE
(CRD No. 1466653),

Respondent.

Disciplinary Proceeding
No. 2009018858601

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

December 13, 2011

Montague is barred from associating with any FINRA registered firm in any capacity for converting customer funds, in violation of NASD Rules 2330(a) and 2110 and FINRA Rule 2010; and failing to appear and testify at a scheduled on-the-record interview, in violation of Procedural Rule 8210 and Conduct Rule 2010.

Appearances

For the FINRA Department of Enforcement, Complainant, Lane A. Thurgood, Washington, DC.

John Montague, Respondent, did not appear.

DECISION

I. Introduction

The FINRA Department of Enforcement (“Enforcement”) filed the attached Complaint with the Office of Hearing Officers on August 15, 2011. The Complaint charges Respondent John Montague (“Montague”) with: (1) conversion of funds from four of his customers, in violation of NASD Conduct Rules 2330(a) and 2110 and FINRA Conduct Rule 2010; and (2)

failing to appear for an on-the-record interview, in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010.¹

Montague did not answer the Complaint. Accordingly, on November 3, 2011, Enforcement filed a Motion for Entry of Default Decision and Imposition of Sanctions (“Default Motion”), together with the declaration of Lane Thurgood, Esq. (“Decl.”) and three exhibits.² For the reasons set forth below, the Hearing Officer found Montague in default and granted Enforcement’s Default Motion.

II. Procedural History

On August 15, 2011, Enforcement served the Complaint and Notice of Complaint on Montague by mailing them to his most recent address recorded in the Central Registration Depository (“CRD”).³ Enforcement mailed the Complaint and Notice of Complaint by first-class and certified mail, return receipt requested. The receipt for the certified mailing reflects that Montague received the mailing on August 18, 2011.⁴ Montague did not answer the Complaint.

On September 20, 2011, Enforcement served Montague with a Second Notice of Complaint.⁵ Enforcement mailed the Second Notice of Complaint by first-class and certified mail, return receipt requested, to his CRD address. The receipt for the certified mailing reflects

¹ Following 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 consolidated rules became effective on December 15, 2008. *See* FINRA Regulatory Notice 08-57, 2008 FINRA LEXIS 74 (Dec. 8, 2008). Because the Complaint in this case was filed after December 15, 2008, the procedural rules that apply are the FINRA rules of procedure. The conduct rules that apply are those that existed at the time of the conduct at issue.

² Enforcement’s exhibits are labeled CX-1 through CX-3.

³ Decl. ¶ 15; CX-2.

⁴ CX-2.

⁵ Decl. ¶ 19.

that Montague received the mailing on September 23, 2011.⁶ To date, Montague has not answered the Complaint. Montague also did not respond to the Default Motion.

Based on Montague's default, the Hearing Officer deemed the allegations in the attached Complaint admitted pursuant to Rules 9215(f) and 9269(a).

III. Findings of Fact and Conclusions of Law

A. Background

Montague entered the securities industry in February 1986 as an Investment Company Products/Variable Annuity Representative (Series 6) and thereafter worked at various registered firms until he transferred to USAllianz Securities, Inc. ("USAllianz") in 2005. USAllianz became Questar Capital Corporation in 2006.⁷ Montague resigned from Questar in July 2009 after he came under investigation by the Federal Bureau of Investigation for conversion of customer funds.⁸ Montague's FINRA registration terminated on July 17, 2009.⁹ Montague has not been associated with any FINRA registered firm since that time.¹⁰

FINRA staff began the investigation that led to this proceeding after FINRA received a Uniform Termination Notice for Securities Industry Registration ("Form U5") dated July 17, 2009, which referenced the pending FBI investigation into Montague's finances and use of customer funds.¹¹

⁶ Decl. ¶ 21; CX-3.

⁷ Decl. ¶ 5.

⁸ *Id.*; CX-1, at 3.

⁹ CX-1, at 3.

¹⁰ Decl. ¶ 5.

¹¹ *Id.* ¶ 7.

B. Jurisdiction

FINRA has jurisdiction over this disciplinary proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years after FINRA received an amended Form U5 in August 2010, and (2) the Complaint charges him with misconduct that occurred while he was associated with a FINRA member firm, and with failing to respond to Enforcement's requests for information made during the two-year period following receipt of the amended Form U5.¹²

C. Conversion of Customer Funds—First Cause of Action

The First Cause of Action alleges that Montague converted funds from four of his customers, LC, AP, DP, and KD, between July 2008 and July 2009.

1. Customer LC

Customer LC became a customer of Montague in 1999. In July 2008, Montague recommended that she liquidate approximately \$20,000 from two mutual funds for the purpose of making a "Private Investment" with Montague. Under the terms of this "Private Investment," LC was to receive quarterly dividends in the amount of \$325 each beginning in October 2008 but she was restricted from withdrawing any principal before January 1, 2010.¹³

At Montague's request, LC wrote two checks payable to Montague in July 2008, totaling \$20,000, which she intended him to invest on her behalf. Montague, however, did not invest the funds on LC's behalf. Instead, he deposited the funds into his own account for his personal use.¹⁴

In September 2008, Montague recommended that LC enter into a second "Private Investment" by liquidating some of her mutual fund shares. Montague told LC that this

¹² See Article V, Sec. 4, FINRA By-Laws, *available at* www.finra.org/Rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: By-Laws").

¹³ Compl. ¶¶ 8-9.

¹⁴ *Id.* ¶¶ 10-11.

investment would pay her quarterly dividend payments of \$375 each beginning in January 2009. LC accepted Montague's recommendation, redeemed funds from two of her mutual funds, and wrote a check payable to him in the amount of \$23,000, dated September 10, 2008. LC intended that Montague invest the funds on her behalf. However, he did not invest the funds on LC's behalf. Instead, he deposited the funds into his own account for his personal use.¹⁵

On or about September 10, 2008, Montague provided LC with a one page document that summarized the terms of the "Private Investments." Montague and LC signed the document.¹⁶

Between January and September 2009, Montague made three payments to LC, each in the amount of \$375, from his personal checking account. Montague did not make any other payments to LC.¹⁷

2. Customers AP and DP

Customers AP and DP are a married couple who became Montague's customers in 2007 while he was associated with Questar. In April 2008, Respondent solicited AP and DP for a "Private Investment" in a company called Go Healthy, Inc. AP and DP decided to invest in Go Healthy, and they gave Montague \$80,000 for that purpose. However, Montague did not invest the funds on their behalf. Instead, he converted the funds for his personal use.¹⁸

In August 2008, Montague again recommended that AP and DP invest in Go Healthy, and AP and DP gave Montague an additional \$20,000 for that investment. Montague also converted these funds by depositing them into his personal account. Nevertheless, on or about

¹⁵ Compl. ¶¶ 14-15.

¹⁶ *Id.* ¶ 16.

¹⁷ *Id.* ¶ 17.

¹⁸ *Id.* ¶¶ 20-22.

August 25, 2008, Montague gave AP and DP a document that summarized the terms of their Go Healthy investment.¹⁹

3. Customer KD

Although KD did not maintain an account at Questar, she had purchased a fixed annuity from Montague. In or around December 2008, she began taking withdrawals from the annuity. Then, in May 2009, Montague recommended that KD use the withdrawals to invest in a “Private Investment.” He instructed KD to give him two checks, one for \$7,000 and the other for \$8,000. After he received the checks, Montague gave KD an “Investment Summary Agreement,” which provided that she was to receive quarterly dividends from the investment. On or about June 22, 2009, KD gave Montague two more checks totaling \$5,000 for investment in a “Private Investment.” Montague did not provide any written documentation regarding this investment.²⁰

Montague did not invest the funds on KD’s behalf. Instead, he converted the funds by depositing them into his own account for his personal use.²¹

Based on the foregoing allegations in the Complaint, the Hearing Officer finds that Montague converted \$163,000 from customers LC, AP, DP, and KD for his personal use and thereby violated NASD Rules 2330(a) and 2110 and FINRA Rule 2010.

D. Failure to Comply with a Request that he Appear for an On-The-Record Interview

The Second Cause of Action alleges that Montague failed to comply with a Rule 8210 request that he appear for an on-the-record interview to answer questions in connection with FINRA’s investigation of his misuse of his customers funds. FINRA staff sent the request on November 19, 2010. FINRA staff sent the request letter by first-class certified mail to

¹⁹ Compl. ¶¶ 23-25.

²⁰ *Id.* ¶¶ 30-34

²¹ *Id.* ¶ 35.

Montague's CRD address.²² Shortly thereafter, Montague's attorney telephoned FINRA and advised that Montague would not appear at the scheduled on-the-record interview, nor would he participate in any other on-the-record interview. Montague did not appear at the scheduled on-the-record interview.²³

The facts alleged in the Second Cause of Action establish that Montague violated FINRA Rules 8210 and 2010 by failing to appear for his on-the-record interview on December 15, 2010.

IV. Sanctions

A. Conversion of Customer Funds

The FINRA Sanction Guidelines ("Sanction Guidelines") for conversion state that a bar is "standard," regardless of the amount converted.²⁴ The Hearing Officer finds that a bar is the appropriate sanction in this case. The record reveals no mitigating factors.

B. Failure to Respond to Requests for Information

For failing to respond to FINRA Rule 8210 requests for information, the Sanction Guidelines provide that a bar should be "standard" when there is a complete failure to respond.²⁵ In addition, the Guidelines instruct adjudicators to consider the importance of the information requested as viewed from FINRA's perspective.²⁶

The Hearing Officer finds that a bar from associating with any FINRA member firm in all capacities is an appropriately remedial sanction given all of the facts and circumstances, including a lack of mitigating factors that would warrant a lesser sanction. FINRA staff was investigating serious misconduct. A bar remedies the risk that Enforcement will not be able to

²² Compl. ¶ 38.

²³ *Id.* ¶ 40.

²⁴ FINRA Sanction Guidelines 36 (2011), www.finra.org/sanctionguidelines.

²⁵ *Id.* 33.

²⁶ *Id.* 33.

obtain information necessary to the protection of investors and will serve to deter others from failing to provide Enforcement with information requested under Rule 8210 at the time such requests are made. Accordingly, the Hearing Officer will bar Montague from associating with any FINRA member firm in all capacities for his refusal to appear and testify at an on-the-record interview.

V. Order

Montague is barred from associating with any member firm in any capacity for converting funds, in violation of NASD Rules 2330(a) and 2110 and FINRA Rule 2010; and for failing to appear and testify at a scheduled on-the-record interview, in violation of Procedural Rule 8210 and Conduct Rule 2010. The bars shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.

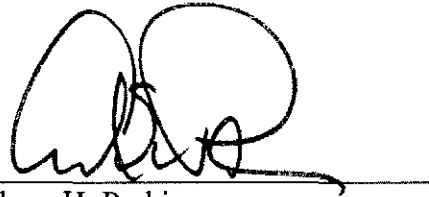
In addition, Montague is ordered to pay restitution as follows:

- Montague shall pay Customer LC \$43,000, plus interest thereon at the rate established under Section 6621(a)(2) of the Internal Revenue Code from January 1, 2009, until paid.²⁷
- Montague shall pay Customers AP and DP, or survivor, \$80,000, plus interest thereon at the rate established under Section 6621(a)(2) of the Internal Revenue Code from May 1, 2008, until paid.
- Montague shall pay Customers AP and DP, or survivor, \$20,000, plus interest thereon at the rate established under Section 6621(a)(2) of the Internal Revenue Code from September 1, 2008, until paid.

²⁷ 26 U.S.C. § 6621(a)(2). The interest rate, which is used by the Internal Revenue Service to determine interest due on underpaid taxes, is adjusted each quarter and reflects market conditions. The customers are identified in the addendum to this decision, which is served only on the parties.

- Montague shall pay Customer KD \$20,000, plus interest thereon at the rate established under Section 6621(a)(2) of the Internal Revenue Code from June 22, 2009, until paid.

Restitution shall be due and payable immediately upon this Default Decision becoming final.

A handwritten signature in black ink, appearing to read 'Andrew H. Perkins', is written over a horizontal line.

Andrew H. Perkins
Hearing Officer

Copies to:

John Montague (*via overnight courier and first-class mail*)
Lane A. Thurgood, Esq. (*via electronic and first-class mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

V.

John Montague (CRD No. 1466653),

Respondent.

DISCIPLINARY PROCEEDING
No. 2009018858601

COMPLAINT

The Department of Enforcement alleges:

OVERVIEW

1. Between July 2008 and July 2009 (“the relevant period”), John Montague (“Respondent”) (CRD No. 1466653) converted more than \$160,000 from four customers. He solicited them to make “Private investments” with him outside of his employing firm Questar Capital Corporation (“Questar” or the “firm”). The customers wrote personal checks to Respondent with the understanding that Respondent would invest these funds on their behalf. In fact, Respondent merely deposited these funds into his personal account for his personal use and made no investments on the customers’ behalf, thereby converting customer funds in violation of NASD Rules 2330(a) and 2110, and FINRA Rule 2010.¹

¹ Effective December 15, 2008, NASD Rule 2110 (Standards of Commercial Honor and Principles of Trade) was converted to FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade).

RESPONDENT AND JURISDICTION

2. Respondent entered the securities industry in February 1986 as an Investment Company Products/Variable Annuity Representative (Series 6) and worked at various registered firms until he transferred to USAllianz Securities, Inc. ("USAllianz"), in 2005. USAllianz became Questar in 2006. Respondent resigned from Questar in or around July 2009 after being the subject of a Federal Bureau of Investigation ("FBI") operation that uncovered the Respondent's conversion of customer funds for personal use. Respondent has not been associated with any FINRA registered firm since that time.

3. Since his resignation, ten amendments to Respondent's Form U5 have been filed that are based on customer complaints related to Respondent's conduct prior to his resignation, the last of which was dated September 29, 2010. This Amendment disclosed additional potential misconduct prior to Respondent's resignation.

4. Pursuant to Article V, Section 4 of the FINRA By-Laws, FINRA retains jurisdiction over Respondent until at least September 28, 2012.

FIRST CAUSE OF ACTION

CONVERSION OF CUSTOMER FUNDS IN VIOLATION OF NASD RULES 2330(a) AND 2110 AND FINRA RULE 2010

CUSTOMER LC

5. The Department realleges and incorporates by reference paragraphs 1-4 above.
6. Customer LC is a resident of Mantua, New Jersey. She is a librarian and a widow.
7. LC became a client of Respondent in 1999 when she opened accounts at a FINRA member firm with which he was registered.

8. In or around July 2008, Respondent recommended that customer LC liquidate approximately \$20,000 from two mutual funds for the purpose of making a "Private Investment" with the Respondent.

9. Under the terms of this "Private Investment," LC was to receive quarterly dividends in the amount of \$325 beginning in October 2008 but could not withdraw any principal before January 1, 2010.

10. LC wrote two checks dated July 2008, totaling \$20,000 payable to Respondent with the understanding that Respondent would invest the funds on her behalf.

11. Respondent did not invest the funds on LC's behalf. Instead, he deposited the funds into his own account for his personal use.

12. In or around September 2008, Respondent recommended LC liquidate part of her mutual fund holdings and enter into another "Private Investment."

13. Under the terms of the second "Private Investment" Respondent told LC that there would be quarterly dividend payments of \$375 beginning in January 2009 but the type of investment was not specified.

14. LC partly redeemed funds from two mutual funds and wrote a check payable to Respondent for \$23,000, dated September 10, 2008 with the understanding that Respondent would invest the funds on her behalf.

15. Respondent did not invest the funds on LC's behalf. Instead, he deposited the funds into his own account for his personal use.

16. Respondent provide LC with a one-page document, dated September 10, 2008, which summarized the terms of the two purported investments. The document was signed by both Respondent and LC.

17. Between January and September of 2009, Respondent wrote three separate checks, each for \$375, payable to LC, from his own checking account but did not make any additional payments.

CUSTOMERS AP & DP

18. Customers AP & DP are a married couple residing in Turnersville, NJ.

19. AP and DP became clients of Respondent in 2007 and opened accounts with Respondent at Questar.

20. In or around April 2008, Respondent solicited AP and DP for a "Private Investment" in a company called Go Healthy, Inc. ("Go Healthy").

21. In or around April 2008, AP and DP wrote two checks totaling \$80,000 payable directly to Respondent for their investment in Go Healthy with the understanding that Respondent would invest the funds on their behalf.

22. Respondent did not do so. Rather, he converted the funds for his personal use.

23. In or around August 2008, Respondent recommended that AP and DP invest additional funds in Go Healthy. AP and DP wrote another check payable to Respondent for an additional \$20,000 investment in Go Healthy with the understanding that Respondent would invest the funds on their behalf.

24. Respondent did not invest the funds on the customers' behalf. Instead, Respondent converted the customers' funds by depositing the check into his own account for his personal use.

25. Respondent provided AP and DP with a one-page document, dated August 25, 2008 and signed by Respondent, which summarized the terms of the purported investment in Go Healthy.

26. Respondent also provided AP and DP a copy of a stock certificate that indicated that Respondent, not AP and DP, owned 33,333 shares of Go Healthy.

CUSTOMER KD

27. Customer KD and her late husband opened insurance accounts with Respondent in 1994.

28. Customer KD did not maintain an account at Questar but had purchased a fixed annuity from Respondent.

29. KD began taking withdrawals from the annuity in or around December 2008.

30. In or around May 2009, Respondent recommended that KD use the withdrawals from the annuity for a "Private Investment" and instructed KD to write the checks out to him.

31. KD wrote two checks payable to Respondent for \$7,000 and \$8,000, dated May 28, 2009, and June 1, 2009, respectively. To cover up his misconduct, Respondent provided KD with an "Investment Summary Agreement" for the \$15,000 and claimed that he would pay her quarterly dividends from the investment.

32. The type of investment was not specified and KD did not receive any statements or confirmations, other than the agreement prepared by Respondent regarding the investment and its accrued interest.

33. KD wrote two more checks, both dated June 22, 2009, totaling \$5,000 payable to Respondent for an additional "Private Investment."

34. Respondent did not provide KD with any written documentation regarding these payments or any detail regarding the investment product purchased with these funds.

35. Respondent did not invest the funds on her behalf. Instead, Respondent converted her funds by depositing them into his own account for his personal use.

36. By virtue of the foregoing, Respondent converted more than \$160,000 from customers LC, AP, DP and KD for his personal use and thereby violated NASD Rules 2330(a) and 2110 and FINRA Rule 2010.

SECOND CAUSE OF ACTION

FAILURE TO APPEAR FOR ON-THE-RECORD INTERVIEW VIOLATION OF FINRA CONDUCT RULE 2010 AND FINRA PROCEDURAL RULE 8210

37. The Department realleges and incorporates by reference paragraphs 1-36 above.

38. In a letter dated November 19, 2010, sent by certified and United States mail to Respondent's CRD address, the Department scheduled Respondent's on-the-record (OTR) testimony pursuant to FINRA Rule 8210 to be held December 15, 2010 in FINRA's Washington, D.C. Enforcement office.

39. Shortly thereafter, Respondent's attorney telephoned FINRA's Enforcement staff investigator and stated that Respondent would not be replying to the letter dated November 19, 2010, would not attend the scheduled OTR, and would not participate in any on-the-record testimony.

40. Respondent did not appear at the Washington, D.C. office on December 15, 2010 for his OTR, as requested.

41. As Respondent failed to appear for his OTR on December 15, 2010, and no adjournment was requested or granted, he 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) 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 NASD Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date: August 15, 2011


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