

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

CESAR MADRIGAL
(CRD No. 4572698),

Respondent.

Disciplinary Proceeding
No. 2009019322001

Hearing Officer – SNB

DEFAULT DECISION

February 10, 2011

Respondent is barred from associating with any FINRA member firm in any capacity for misappropriating bank customer funds, in violation of FINRA Conduct Rule 2010 and NASD Conduct Rule 2110, and failing to respond to requests for information and documents, in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010.

Appearances

Paul M. Schindler, Esq., for the Department of Enforcement.

No appearance by or on behalf of Respondent.

DECISION

I. Background

The FINRA Department of Enforcement (“Enforcement”) filed the attached Complaint with the Office of Hearing Officers on September 23, 2010. The Complaint charges Cesar Madrigal (“Respondent”) with misappropriating \$102,054.55 in bank customer funds, in violation of FINRA Conduct Rule 2010 and NASD Conduct Rule

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2110, and failing to provide information to FINRA Staff ("Staff"), in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010.¹

Respondent did not answer the Complaint. Accordingly, on December 21, 2010, Enforcement filed a Motion for Entry of Default Decision ("Default Motion"), together with the declaration of Paul M. Schindler, Esq. ("Schindler Decl.") and 4 exhibits.²

Respondent did not respond to the Default Motion. For the reasons set forth below, the Hearing Officer found Respondent in default and granted Enforcement's Default Motion.

II. Respondent's Default

On September 23, 2010, Enforcement served the Complaint and the Notice of Complaint on Respondent by mailing them to his most recent address recorded in the Central Registration Depository ("CRD"). Enforcement mailed the Complaint and Notice of Complaint by certified mail, return receipt requested. The return receipt for the mailing was signed by Respondent. CX-3; Schindler Decl. ¶ 7. Respondent did not answer the Complaint. Schindler Decl. ¶ 8.

On October 29, 2010, Enforcement served the Second Notice of Complaint on Respondent by mailing it to his CRD address. Enforcement mailed the Second Notice of Complaint by certified mail, return receipt requested. Neither the certified mailing nor

¹ NASD consolidated with the member regulation and enforcement functions of NYSE Regulation in July 2007 and began operating under a new corporate name, the Financial Industry Regulatory Authority (FINRA). References in this decision to FINRA include, where appropriate, NASD. Following consolidation, FINRA began developing a new FINRA Consolidated Rulebook. The first phase of the new consolidated rules became effective on December 15, 2008. See Regulatory Notice 08-57 (Oct. 2008). In that process, NASD Conduct Rule 2110 was renumbered as FINRA Conduct Rule 2010. This decision refers to and relies on the Conduct Rules that were in effect at the time of Respondent's alleged misconduct. For the first cause of action, both FINRA Conduct Rule 2010 and NASD Conduct Rule 2110 apply, because the alleged misconduct occurred both before and after December 15, 2008. In addition, because the Complaint was filed after December 15, 2008, FINRA's procedural rules govern this proceeding. The applicable rules are available at www.finra.org/rules.

² Enforcement's exhibits are labeled CX-1 through CX-4.

the return receipt was returned to Enforcement. CX-4; Schindler Decl. ¶ 8. Respondent did not answer the Complaint. Schindler Decl. ¶ 9.

By failing to file an Answer or otherwise respond to the Complaint, Respondent defaulted. Based on Respondent's default, the Hearing Officer deemed the allegations in the attached Complaint admitted pursuant to FINRA Procedural Rules 9215(f) and 9269(a).

III. Jurisdiction

Between August 2007 and August 2009, Respondent was registered with Wells Fargo Advisors, LLC, ("the Firm") as an Investment Company Products/Variable Contracts Products Limited Representative. CX-1.

Although Respondent is not currently associated with a member firm, 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 the date FINRA terminated Respondent's registration, 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 the termination of his FINRA registration.³

IV. Violations

A. Misappropriation

The first cause of the Complaint alleges that between November 2007 and June 2009, Respondent misappropriated \$102,054.55 from five customers of the Firm's affiliated bank, Wachovia Bank, N.A. Respondent misappropriated the funds from the

³ See Article V, Sec. 4(a), FINRA By-Laws, available at www.finra.org/rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: By-Laws").

bank accounts of these five customers using forged customer signatures on partial withdrawal general ledger tickets. Complaint ¶¶ 1, 9 – 11; Schindler Decl. ¶¶ 11-13. Respondent has admitted to his Firm that he engaged in this misconduct. Schindler Decl. ¶ 14.

The allegations of the Complaint, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent violated FINRA Conduct Rule 2010 and NASD Conduct Rule 2110 by misappropriating \$102,054.55 in bank customer funds.

B. Failure to Respond

The Complaint alleges that Respondent failed to respond to Staff's four Rule 8210 requests for information regarding the allegations in the first cause of action. The requests were dated September 1, 2009, October 13, 2009, January 13, 2010, and February 19, 2010, and were sent by first-class and certified mail, return receipt requested. Complaint ¶¶ 15-18; Schindler Decl. ¶¶ 18-21. Staff sent each request to Respondent's CRD address. *Id.* The certified mailings for the first, second and fourth Rule 8210 requests were returned marked "unclaimed." Complaint ¶¶ 15-16, 18; Schindler Decl. ¶¶ 18-19, 21. The first-class mailings were not returned. Complaint ¶¶ 15-18; Schindler Decl. ¶¶ 18-21. The third certified mailing was signed by Respondent on January 25, 2010. Complaint ¶ 17; Schindler Decl. ¶ 20. In addition, Respondent acknowledged that he received the third request during a telephone conversation with Staff. Complaint ¶ 19; Schindler Decl. ¶ 22. Respondent did not respond to the requests.

The allegations are sufficient to establish, for purposes of this default decision, that Respondent failed to respond to requests for information, in violation of FINRA Procedural Rule 8210. A violation of Procedural Rule 8210 is also a violation of Conduct Rule 2010.⁴

V. Sanctions

Since Respondent's misappropriation essentially constitutes conversion, the Hearing Officer applied the FINRA Sanction Guideline ("Guideline") for conversion in determining the appropriate sanction for this violation.⁵ The Guideline for conversion recommends a bar regardless of the amount converted.⁶ There is no evidence of any mitigating factors. Accordingly, the Hearing Officer finds that a bar is the appropriate sanction for this violation.

For failing to respond to FINRA Rule 8210 requests for information, the Guideline provides that a bar should be "standard" where, as here, there is a complete failure to respond.⁷ There are no mitigating factors that would warrant a lesser sanction. Accordingly, the Hearing Officer also bars Respondent from associating with any FINRA member firm in any capacity for this violation.

VI. Order

Respondent is barred from associating with any FINRA member firm in any capacity for misappropriating bank customer funds, in violation of FINRA Conduct Rule 2010 and NASD Conduct Rule 2110, and failing to respond to requests for information,

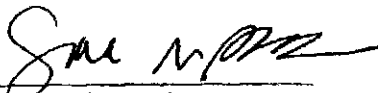
⁴ *Dep't of Enforcement v. Hoeper*, No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (N.A.C. Nov. 2, 2001).

⁵ Enforcement is not seeking restitution because the Firm reimbursed the customers.

⁶ *Guidelines* at 38, available at www.finra.org/sanctionguidelines.

⁷ *Guidelines* at 35, available at www.finra.org/sanctionguidelines.

in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010. These bars shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.


Sara Nelson Bloom
Hearing Officer

Copies to: Cesar Madrigal (*via courier and first-class mail*)
Paul M. Schindler, Esq. (*via e-mail and first-class mail*)
David R. Sonnenberg, Esq. (*via e-mail*)

EXHIBIT A

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Cesar Madrigal
(CRD No. 4572698),

Respondent.

DISCIPLINARY PROCEEDING
No. 2009019322001

Hearing Officer -

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Between November 2007 and June 2009, while associated with FINRA member Wells Fargo Advisors, LLC f/k/a Wachovia Securities, LLC ("Wells Fargo" or the "Firm"), Respondent Cesar Madrigal, misappropriated \$102,054.55 from five customers of the Firm's affiliated bank, Wachovia Bank, N.A. He engaged in the misappropriation by using forged partial withdrawal general ledger tickets to make unauthorized withdrawals from the customers' bank accounts. Madrigal subsequently failed to respond to four letter requests for documents and information issued by FINRA pursuant to FINRA Rule 8210.

2. By reason of the forgoing, Madrigal violated NASD Rules 2110 and FINRA Rule 2010, and FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

3. Madrigal became employed by Wells Fargo, a FINRA member, on May 3, 2007, where he worked until he was terminated on July 29, 2009.

4. He became an associated person, as defined under the FINRA By-Laws, on May 3, 2007, when a Uniform Application for Securities Industry Registration or Transfer (Form U4) was submitted on his behalf to FINRA.

5. Madrigal became a Series 6 Registered Representative effective August 7, 2007, and maintained his registration until his termination on July 29, 2009.

6. Madrigal is not currently registered or associated with any FINRA member.

7. Although Madrigal has not been associated with a FINRA member firm since July 29, 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 respond to FINRA requests for information during the two-year period after the date upon which he ceased to be associated with a FINRA member.

FIRST CAUSE OF ACTION
NASD Rule 2110 and FINRA Rule 2010¹
(Misappropriation)

8. The Department re-alleges and incorporates by reference paragraphs 1 through 7 above.
9. Madrigal misappropriated \$102,054.55 from five customers' bank accounts while he was an associated person of the Firm.
10. The specific amounts he misappropriated while he was associated with the Firm are as follows:
 - a. \$51,287.68 from Customer A between November 28, 2007 and March 10, 2009, of which \$16,178.41 was misappropriated after December 14, 2008;
 - b. \$23,235.00 from Customer B between June 14, 2008 and June 30, 2009, of which \$13,630.00 was misappropriated after December 14, 2008;
 - c. \$19,364.10 from Customer C between May 19, 2008 and June 25, 2009, of which \$6,750.00 was misappropriated after December 14, 2008;
 - d. \$5,147.77 from Customer D between December 26, 2007 and April 1, 2008; and,
 - e. \$3,020.00 from Customer E between May 30, 2008 and December 9, 2008.
11. Madrigal misappropriated the funds referenced in paragraphs 8 through 10 above by using forged bank customer signatures on partial withdrawal general ledger tickets to make unauthorized withdrawals from the customers' bank accounts.

¹ NASD Rule 2110 was renumbered FINRA Rule 2010 effective December 15, 2008. The staff is alleging a violation of NASD Rule 2110 for misappropriations occurring before December 15, 2008, and a violation of FINRA Rule 2010 for misappropriations occurring on, or after, December 15, 2008.

12. At or about the time of his termination, Madrigal admitted to the Firm's affiliated bank that he had misappropriated Funds from customer bank accounts for his own personal use.

13. By reason of the foregoing, Madrigal violated NASD Rule 2110 and FINRA Rule 2010.

SECOND CAUSE OF ACTION

FINRA Rules 8210 and 2010

(Failure to Respond to Requests for Documents and Information)

14. The Department re-alleges and incorporates by reference paragraphs 1 through 13 above.

15. On or about September 1, 2009, FINRA staff sent a request letter pursuant to FINRA Rule 8210 to Madrigal requesting a statement addressing allegations that he misappropriated funds from customer bank accounts. The letter indicated that a response from Madrigal was due no later than October 1, 2009. This request was sent by first class mail and by certified mail, return receipt requested, to Madrigal's address of record as contained in the records of the Central Registration Depository ("CRD address"). The first class mailing to the CRD address was not returned to the FINRA staff. The certified mailing to the CRD address was returned to FINRA staff marked "Unclaimed."

16. On or about October 13, 2009, FINRA staff sent a second request to Madrigal requesting a response to the initial September 1, 2009, request letter, pursuant to and in accordance with the provisions of FINRA Rule 8210. The staff, in its letter, warned Madrigal that his failure to comply with the request may subject him to disciplinary action. This request was sent by first class mail and by certified mail, return receipt requested, to Madrigal's CRD

address. The first class mailing to the CRD address was not returned to the FINRA staff. The certified mailing to the CRD address was returned to FINRA staff marked "Unclaimed."

17. On or about January 13, 2010, FINRA staff sent a third request to Madrigal requesting a response to the initial September 1, 2009, request letter, pursuant to and in accordance with the provisions of FINRA Rule 8210. The staff, in its letter, warned Madrigal that his continued failure to respond to the staff's requests would lead to disciplinary action against him. This request was sent by first class mail and by certified mail, return receipt requested, to Madrigal's CRD address. The first class mailing to the CRD address was not returned to the FINRA staff. The certified mailing to the CRD address was signed for and accepted by Madrigal on January 25, 2010.

18. On or about February 19, 2010, FINRA staff sent a fourth and final request to Madrigal requesting a response to the initial September 1, 2009, request letter, pursuant to and in accordance with the provisions of FINRA Rule 8210. The staff, in its letter, warned Madrigal that his continued failure to respond to the staff's requests would lead to disciplinary action against him. This request was sent by first class mail and by certified mail, return receipt requested, to Madrigal's CRD address. The first class mailing to the CRD address was not returned to the FINRA staff. The certified mailing to the CRD address was returned to FINRA staff marked "Unclaimed."

19. The FINRA staff confirmed with Madrigal by telephone that he still resided at his CRD address of record. He acknowledged receiving the third request during a telephone call with the FINRA staff.

20. Madrigal has not provided the documents and information requested by FINRA to the staff in response to any of the four request letters referenced in paragraphs 15 through 18

above. The acts, practices and conduct described above constitute a violation of FINRA Rules 8210 and 2010 by Madrigal.

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; and
- 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: September 23, 2010



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