

**FINANCIAL INDUSTRY REGULATORY AUTHORITY**

**OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

Carlos C. Sarmiento (CRD No. 5003883),

Respondent.

**DISCIPLINARY PROCEEDING  
No. 2009019888601**

**HEARING OFFICER:**

**COMPLAINT**

The Department of Enforcement ("Department") alleges:

**SUMMARY**

1. From approximately March 11, 2009 through approximately August 7, 2009, Carlos C. Sarmiento converted a total of approximately \$82,350 through seven checks that he took and forged from a joint brokerage account held by two of his customers, in violation of NASD Rule 2330(a) and FINRA Rule 2010. In addition, Sarmiento failed to respond to multiple requests for information and documents, in violation of FINRA Rules 8210 and 2010.

**RESPONDENT AND JURISDICTION**

2. Sarmiento first became registered in the securities industry in September 2005 as a General Securities Representative (Series 7). He also acquired a Series 66 license in September 2005. In November 2007, Sarmiento became registered as a General Securities Representative with FINRA regulated firm Merrill Lynch Pierce Fenner & Smith ("Merrill Lynch" or the "Firm").

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3. On approximately September 11, 2009, Sarmiento resigned from Merrill Lynch and became registered as a General Securities Representative with FINRA regulated firm Investment Professionals, Inc. ("IPI"). IPI terminated Sarmiento's registration on approximately October 6, 2009 and he has not been associated with another FINRA regulated firm since that date. FINRA retains jurisdiction over Sarmiento in this proceeding pursuant to Article V, Section 4 of FINRA's By-Laws because the conduct that serves as the basis for this action commenced prior to his termination of registration from a FINRA regulated broker-dealer and the Complaint has been filed within two years after the effective date of Sarmiento's last termination of registration from a FINRA regulated broker-dealer

**FIRST CAUSE OF ACTION  
(Conversion of Customer Funds  
-Violation of NASD Rule 2330(a) and FINRA Rule 2010)**

4. The Department re-alleges and incorporates by reference paragraphs 1 through 3, above.

5. Sarmiento's clients, MGM and her adult daughter, MHLG (the "clients"), held a joint brokerage account with the Firm from which they could write checks.

6. Prior to March 11, 2009, Sarmiento obtained checks belonging to the clients' joint brokerage account and subsequently caused seven of those checks to be made payable to the order of "Alamo Travel," all without the clients' permission or knowledge. The checks were dated from approximately March 11 through approximately August 7, 2009 and totaled approximately \$82,350.

7. On approximately September 22, 2009, Sarmiento, while speaking with MHLG on the telephone, admitted that he had taken the checks (from the clients' joint brokerage

account) while at the home of MGM and also admitted to stealing their money. Sarmiento indicated to MHLG that he would return the money. He also asked MHLG not to report him.

8. On approximately September 25, 2009, IPI was contacted by Merrill Lynch's Cash Management Account Fraud Department ("CMA") regarding Sarmiento's conversion of the clients' funds while at Merrill Lynch. IPI questioned Sarmiento regarding the conversion, and Sarmiento admitted to having taken the customers' funds.

9. By virtue of this conduct, Sarmiento violated NASD Rule 2330(a) and FINRA Rule 2010.

**SECOND CAUSE OF ACTION  
(Failures to Respond to Rule 8210 Requests for Information and Documents  
– Violations of FINRA Rules 8210 and 2010)**

10. The Department re-alleges and incorporates by reference paragraphs 1 through 9, above.

11. By letter dated October 9, 2009, FINRA staff requested, pursuant to FINRA Rule 8210, that Sarmiento provide a signed statement in response to the Firm's allegations regarding conversion of customer funds, as reported on the Firm's amended Form U5 filing. Additionally, FINRA requested information and documents on pending or closed complaints made against Sarmiento during his employment at Merrill Lynch for the three years prior to the conversion allegation. This Rule 8210 request was sent via certified mail and first-class mail to: [REDACTED]  
[REDACTED] which is Sarmiento's address of record as contained in the records of the Central Registration Depository ("CRD address"). The October 9, 2009 certified letter was received by Sarmiento on October 14, 2009, as reflected on the U.S. Postal Service return receipt signed by "Carlos Sarmiento." The request sent via first-class mail was

not returned to FINRA. The October 9, 2009 request included a response due date of November 9, 2009. Sarmiento failed to respond to the October 9, 2009 request.

12. FINRA staff mailed a second request letter to Sarmiento, pursuant to Rule 8210, dated November 11, 2009. This request also was sent by U.S. Postal Service certified mail and first-class mail to Sarmiento's CRD address. This request asked that Sarmiento provide the information and documents previously requested in the October 9, 2009 Rule 8210 request. The November 11, 2009 request included a copy of the October 9, 2009 FINRA request and had a response due date of November 25, 2009. The electronic tracking information provided by the U.S. Postal Service for this request reflects that a notice of the request was left at the San Antonio Post Office but was eventually returned to FINRA's New York office on December 18, 2009. The request sent via first-class mail was not returned. Sarmiento did not respond to the November 11, 2009 request.

13. FINRA Enforcement staff mailed a third request letter, dated February 26, 2010, to Sarmiento's CRD address, pursuant to Rule 8210, requesting Sarmiento to provide information and documents. This request letter, as with the others, was sent via U.S. Postal Service certified mail and first class mail, and included a response due date of March 12, 2010. The certified copy of the request letter was received by Sarmiento on March 30, 2010, as indicated by his signature on the receipt. The request letter sent via first class mail was not returned. Sarmiento failed to respond to the requests for information and documents set forth in the February 26, 2010 request.

14. FINRA Enforcement staff mailed a fourth request letter to Sarmiento's CRD address, dated March 24, 2010, pursuant to Rule 8210. This request letter was sent via U.S. Postal Service certified mail and via first class mail and included a response due date of March

31, 2010. This request letter instructed Sarmiento to respond to the prior requests, as noted in the February 26, 2010 letter, and included a copy of each of the previous request letters, dated October 9, 2009, November 11, 2009, and February 26, 2010. The certified mail delivery receipt was signed for by "Carlos Sarmiento" on March 26, 2010. The request letter sent via first-class mail was not returned. Again, Sarmiento failed to respond to the requests set forth in the March 24, 2010 letter.

15. By virtue of the foregoing, Sarmiento's failures to respond to the above requests constitute four separate and distinct violations of 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, including a bar against Respondent from associating with any member firm in any capacity, be imposed.
- B. Order that the Respondent bear such costs of proceedings as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

#### **FINRA DEPARTMENT OF ENFORCEMENT**

Date:

July 16, 2010

  
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