

**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: LBB

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: December 1, 2010

INTRODUCTION

Disciplinary Proceeding No. 2009019888601 was filed on July 16, 2010 by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent Carlos C. Sarmiento submitted an Offer of Settlement (Offer) to Complainant dated October 30, 2010. Pursuant to FINRA Rule 9270(e), the Complainant and the National Adjudicatory Council (NAC), a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA) have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to FINRA Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.

Under the terms of the Offer, Respondent has consented, without admitting or denying the allegations of the Complaint, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, to the entry of

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findings and violations consistent with the allegations of the Complaint, and to the imposition of the sanctions set forth below, and fully understands that this Order will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA.

BACKGROUND

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").

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.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:

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.

VIOLATIONS

Conversion of Customer Funds—Violation of NASD Rule 2330(a) and FINRA Rule 2010

4. 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.

5. 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.

6. 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.

7. 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.

8. MGM and MHLG received restitution of \$82,350 from the Firm.

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

Failures to Respond to Rule 8210 Requests for Information and Documents—Violations of FINRA Rules 8210 and 2010

10. 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.

11. 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.

12. 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.*

13. 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.

14. 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.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondent from any future misconduct, and represent a proper discharge by FINRA, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

It is ordered that Respondent:

- (i) Be barred from associating with any FINRA member in any capacity; and
- (ii) Pay restitution to the Firm in the total amount of \$82,350, plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2), from August 9, 2009, until the date of this Order. The restitution shall to be paid in accordance with the terms specified in Schedule A attached to Respondent's Offer of Settlement in this matter.

The sanctions imposed herein shall be effective on a date set by FINRA staff. Pursuant to FINRA Rule 8313(e), a bar shall become effective upon approval or acceptance of this Order.

SO ORDERED.

FINRA

12/1/10
Date

Signed on behalf of the
Director of ODA, by delegated authority



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Attachment A

An initial payment of not less than \$20,000 is due by or before **March 1, 2011**.

Payment in full of the remaining amount of \$66,777 is due by or before **March 1, 2014**.

Payment shall be made to the order of:

Merrill Lynch, Pierce, Fenner & Smith Incorporated

Each check/money order and all correspondence will be marked to reflect:

Restitution per FINRA proceeding No. 2009019888601

Each payment shall be mailed to:

Russel D. Francisco, Esq.
Assistant General Counsel
Bank of America
Merrill Lynch Global Wealth and Investment Management
South Tower, 2 World Financial Center
New York, NY 10281

Proof of Payment:

Satisfactory proof of payment of restitution shall be submitted to David L. Fenimore, Senior Counsel, Financial Industry Regulatory Authority (FINRA), Department of Enforcement 1801 K Street, N.W. Suite 800 Washington, DC 20006-1500 either by letter that (i) identifies the you and the case number (2009019888601) and (ii) includes a copy of the check, money order or other method of payment *or* by e-mail, with pdf copies of the payment documentation, to EnforcementNotice@FINRA.org.

This proof shall be provided to the FINRA staff member listed above no later than 30 days after the initial payment and the final payment.