

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ANDREW J. LONGORIA
(CRD No. 2299271),

Respondent.

Disciplinary Proceeding
No. 2009019969101

Hearing Officer – MC

DEFAULT DECISION

July 28, 2011

Respondent is barred from associating with any FINRA member firm in any capacity for: (i) misusing customer funds, in violation of FINRA Conduct Rule 2010 and NASD Conduct Rule 2330; (ii) misusing a non-customer's funds, in violation of FINRA Rule 2010; and (iii) failing to respond to requests for documents and information issued to him pursuant to FINRA Procedural Rule 8210, in violation of FINRA Rules 2010 and 8210. In addition, Respondent is ordered to pay restitution in the amount of \$5,000 plus interest.

Appearances

Helen G. Barnhill, Senior Regional Counsel, Denver, Colorado, for the Department of Enforcement.

No appearance by or on behalf of Respondent Andrew J. Longoria.

DECISION

The Department of Enforcement filed the attached three-cause Complaint on March 23, 2011. The First Cause of Action charges Respondent Andrew J. Longoria with misuse of

customer funds, in violation of FINRA Conduct Rule 2010 and NASD Conduct Rule 2330.¹ The Second Cause of Action charges him with misuse of a non-customer's funds, in violation of FINRA Rule 2010. The Third Cause of Action charges him with failing to respond to requests for information issued pursuant to FINRA Rule 8210, in violation of FINRA Conduct Rule 2010 and Procedural Rule 8210.

Enforcement served the Complaint and Notices of Complaint upon Longoria by certified mail at his residential address as it appears in FINRA's Central Registration Depository. He failed to respond to the Complaint. Consequently, on June 1, 2011, Enforcement filed a Motion for Entry of Default Decision ("Default Motion") supported by the Declaration of Helen G. Barnhill and five exhibits.²

I. Findings of Fact and Conclusions of Law

A. Jurisdiction

Longoria entered the securities industry in March 1993, registering with a FINRA member firm as a General Securities Representative. In August 2007, Longoria became registered through IMS Securities, Inc. ("IMS"), where he remained registered until IMS terminated his employment on September 4, 2009. Since then, Longoria has not been associated with any FINRA member firm.³

¹ As of July 30, 2007, NASD consolidated with the member regulation and enforcement functions of NYSE Regulation and began operating under a new corporate name, the Financial Industry Regulatory Authority (FINRA). Following consolidation, FINRA began developing a new FINRA Consolidated Rulebook. See Regulatory Notice 08-57 (Oct. 2008). FINRA Conduct Rule 2010 replaced NASD Conduct Rule 2110, to which it is identical, as of December 15, 2008, but NASD Conduct Rule 2330 was still in effect. Thus, because Longoria's misuse of customer funds, as alleged in the First Cause of the Complaint, occurred in February 2009, it violated FINRA Conduct Rule 2010 and NASD Conduct Rule 2330. The rules are available at www.finra.org/rules.

² Enforcement's exhibits are referred to as "CX-__," with the appropriate exhibit and page numbers. The Declaration of Helen G. Barnhill is referred to as "Decl." or "Barnhill Declaration," with citation to specific paragraphs.

³ Decl. ¶ 5; CX-1, pp. 2, 3, 10.

Because Enforcement filed the Complaint less than two years from the last date of Longoria's registration, and the Complaint alleges misconduct that occurred while Longoria was registered and within two years after he was last registered, FINRA retains jurisdiction over him for the purposes of this disciplinary proceeding, pursuant to Article V, Section 4, of FINRA's By-Laws.

B. Default

Enforcement served the Complaint and Notice of Complaint upon Longoria by certified and first-class mail at his residential address as reflected in the Central Registration Depository ("CRD address") on March 17, 2011. The certified letter was returned to Enforcement on April 11, 2011, marked "Not Deliverable As Addressed." The first-class mailing was not returned. Longoria did not file an Answer to the Complaint.⁴

Enforcement served the Complaint and Second Notice of Complaint upon Longoria at his CRD address on April 15, 2011, again by certified and first-class mail. The certified mailing was returned to Enforcement marked "RETURN TO SENDER, MOVED LEFT NO ADDRESS, UNABLE TO FORWARD." The first-class mailing was not returned. Longoria did not file an Answer or respond in any manner to the Complaint.⁵

By serving the Complaint, Notice of Complaint, and Second Notice of Complaint upon Longoria by certified mail at his CRD address, Enforcement complied with the requirements of Rule 9134 and provided him with constructive notice that the Complaint had been filed.⁶ By

⁴ Decl. ¶ 12; CX-4, p. 13.

⁵ Decl. ¶ 13; CX-5, p. 17.

⁶ FINRA Procedural Rule 9134(a); *Dep't of Enforcement v. Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at *5 (N.A.C. Dec. 9, 2003) (Rule 9134(b)(1) allows for constructive notice by mailing a complaint to the respondent's most recent CRD address) (*citing Lubeck v. SEC*, 1998 U.S. App. LEXIS 18849, at *20 (9th Cir. Aug. 12, 1998)).

failing to file an Answer, Longoria defaulted. Accordingly, pursuant to Rules 9215(f) and 9269(a)(2), and for the reasons set forth below, the Default Motion is granted.⁷

C. Violations

On October 1, 2009, IMS filed an amendment to Longoria's Uniform Termination Notice for Securities Industry Registration ("Form U5") disclosing that IMS had received a customer complaint indicating that Longoria may have converted the customer's funds. The Form U5 also stated that when IMS investigated the complaint, Longoria admitted to IMS management that he had converted client funds. These disclosures on his Form U5 led FINRA staff to investigate.⁸

1. Longoria Misused Customer Funds

NASD Conduct Rule 2330(a) states that a person associated with a member firm may not "make improper use of a customer's securities or funds." Misuse of funds occurs when the associated person fails to use the funds as directed by the customer.⁹

In February 2009, IMS customer PA opened an account with a mutual fund company through Longoria. Acting on Longoria's instructions, PA wrote a check to "LRS Investments" for \$12,000 to fund the account. LRS Investments is an entity owned by Longoria. Longoria never funded the account and did not return the \$12,000 to PA.¹⁰

These facts, as alleged in the First Cause of the Complaint, and supported by the Barnhill Declaration and exhibits filed by Enforcement, suffice to establish that Longoria misused PA's funds by failing to invest them as she intended, in violation of FINRA Conduct Rule 2010 and NASD Conduct Rule 2330.

⁷ The factual determinations in this Default Decision are based on the allegations of the attached Complaint, which are deemed admitted, as well as the Barnhill Declaration and the exhibits filed by Enforcement.

⁸ Decl. ¶ 6; CX-2, p. 6.

⁹ *Dep't of Enforcement v. Patel*, No. C02990052, 2001 NASD Discip. LEXIS 42, at *25 (N.A.C. May 23, 2001).

¹⁰ Decl. ¶ 16.

2. Longoria Misused Funds of a Non-Customer

KW, who was not an IMS customer, knew Longoria because their children played on a sports team together. On April 6, 2009, KW gave Longoria a check for \$5,000 to invest in what Longoria had represented was an exchange-traded mutual fund whose performance was tied to that of the Standard and Poor Index. Longoria instructed KW to make the check payable to LRS Investments. KW completed and signed forms to open the account, but no account was opened. KW requested copies of the forms and evidence of the investment, but Longoria did not provide these documents to KW. Subsequently, KW repeatedly asked Longoria to return his \$5,000. Longoria promised to do so, and he eventually gave KW a check for \$5,820, but the check was returned for insufficient funds.¹¹

These facts, as alleged in the Second Cause of the Complaint and supported by the Barnhill Declaration and Enforcement's exhibits, establish that Longoria misused the funds of a non-customer, in violation of FINRA Conduct Rule 2010.

3. Longoria Failed to Provide Information

On November 23, 2009, in order to investigate the circumstances described in Longoria's U5 amendment, Enforcement sent Longoria a written request for information pursuant to FINRA Rule 8210 by certified and first-class mail to Longoria's CRD address. Enforcement requested that Longoria provide information concerning the possible misuse of PA's funds, including Longoria's bank records for Longoria's personal accounts and accounts in the name of LRS Investments. The certified mailing was returned marked "unclaimed unable to forward." The first-class letter was not returned. Longoria failed to provide the requested information.¹²

¹¹ Decl. ¶ 18.

¹² Decl. ¶ 21.

Consequently, on December 9, 2009, Enforcement sent a second request pursuant to Rule 8210 for the same information, again to Longoria's CRD address by certified and first-class mail. The first-class mailing was not returned. The receipt for the certified mailing was returned signed "A. Longoria" and dated December 11, 2011. However, Longoria failed to provide the requested information.¹³

These facts, as alleged in the Third Cause of the Complaint and supported by the Barnhill Declaration, establish that Longoria failed to provide information requested pursuant to Rule 8210, in violation of FINRA Conduct Rule 2010 and Procedural Rule 8210.

II. Sanctions

Enforcement recommends imposition of a bar upon Longoria in all capacities for each of the violations described in the Complaint and an order requiring Longoria to pay restitution in the amount of \$5,000, plus interest, to KW. Because IMS repaid customer PA the \$12,000 she sought to invest through Longoria, there is no need for restitution to be paid to her.¹⁴

FINRA's Sanction Guidelines call for a bar for conversion, regardless of the amount, and consideration of a bar for misuse of funds, unless there are mitigating factors such as a misunderstanding concerning the intended use of the funds.¹⁵ There are no mitigating factors here. Instead, IMS's amendment to Longoria's Form U5 states that he admitted converting customer funds. Furthermore, Longoria's failure to provide his bank records as requested frustrated Enforcement's investigation by preventing it from determining what Longoria did with the funds he took from PA and KW.¹⁶

¹³ Decl. ¶ 22.

¹⁴ Decl. ¶ 16.

¹⁵ *FINRA Sanction Guidelines*, p. 36 (2011).

¹⁶ Decl. ¶ 23.

Making improper use of customer funds, as Longoria did in PA's case, is "a serious offense which undermines the integrity of the securities industry."¹⁷ Such conduct also constitutes a violation of the fundamental obligation of registered representatives to respect high standards of commercial honor and just and equitable principles of trade imposed by Conduct Rule 2010.¹⁸

Even though KW was not an IMS customer, the nature of Longoria's misconduct in misusing KW's funds is identical to his misuse of customer PA's funds, and is equally egregious and violative of the requirement imposed by Conduct Rule 2010 upon Longoria to respect high standards of commercial honor and just and equitable principles of trade.

Rule 8210 gives FINRA "the right to require a member or person associated with a member to provide information, orally or in writing, in connection with an examination or investigation. The rule further states that no member or person shall fail to provide such information."¹⁹ As for sanctions, "[t]he Guidelines treat a failure to respond ... as egregious."²⁰

For failing to comply with Rule 8210 requests to provide information and documents, the Sanction Guidelines recommend a bar. If there are mitigating factors, the Guidelines recommend consideration of a suspension in any or all capacities for up to two years.²¹

Here, there are no mitigating factors related to Longoria's failure to provide information. Instead, a significant aggravating factor is the frustration of FINRA's effort to investigate fully Longoria's misuse of PA's and KW's funds. Without the bank records Enforcement requested

¹⁷ *District Bus. Conduct Comm. v. Westberry*, No. C07940021, 1995 NASD Discip. LEXIS 225, at *24 (N.B.C.C. Aug. 11, 1995).

¹⁸ *District Bus. Conduct Comm. v. Bernadette Jones*, No. C02970023, 1998 NASD Discip. LEXIS 60, at *8 (N.A.C. Aug. 7, 1998).

¹⁹ *Dep't of Enforcement v. Masceri*, No. C8A040079, 2006 NASD Discip. LEXIS 29, at *35-36 (N.A.C. Dec. 18, 2006).

²⁰ *Id.* at *41.

²¹ *Guidelines* at 33.

Longoria to produce, it could not determine the use to which Longoria put the funds, or whether the records contained evidence that he misused other funds.

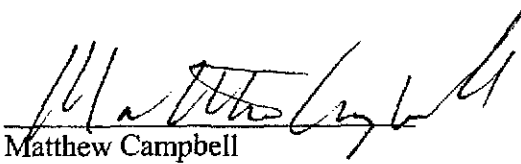
For these reasons, Enforcement's recommendation that Longoria be barred for each of the violations described above is reasonable and necessary to deter him and others from further such serious misconduct.

III. Order

Respondent Andrew J. Longoria is barred from associating with any FINRA member firm in any capacity for: (i) misusing customer funds, in violation of FINRA Conduct Rule 2010 and NASD Conduct Rule 2330; (ii) misusing the funds of a non-customer, in violation of FINRA Conduct Rule 2010; and (iii) failing to provide information in response to requests issued to him by FINRA staff pursuant to Rule 8210, in violation of FINRA Conduct Rule 2010 and Procedural Rule 8210.

In addition, Respondent is ordered to pay restitution to KW in the amount of \$5,000 plus interest, from April 6, 2009, until paid.²²

If this Decision becomes FINRA's final disciplinary action, the bars shall be effective immediately.


Matthew Campbell
Hearing Officer

Copies to:

Andrew J. Longoria (*via overnight courier and first-class mail*)
Helen G. Barnhill, Esq. (*via e-mail and first-class mail*)
Mark P. Dauer, Esq. (*via e-mail*)
David R. Sonnenberg, Esq. (*via e-mail*)

²² KW is identified in the Addendum to this Decision, which is served only on the parties. Interest shall be paid at the rate set forth in the Internal Revenue Code at 26 U.S.C. 6621(b)(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.

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Andrew J. Longoria (CRD No. 2299271),

Respondent.

DISCIPLINARY PROCEEDING
No. 2009019969101

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Andrew J. Longoria ("Longoria") misused a total of \$17,000 entrusted to him by two clients in February and April 2009 for investment purposes. He never invested the funds as promised and he never returned the funds to his clients. In addition, he failed to respond to a FINRA 8210 request pertaining to the misuse. This conduct violated NASD Conduct Rule 2330 and FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

2. Longoria first became registered as a general securities representative with DC, a FINRA member firm in March 1993. In July 1994, he left DC. He was registered with six other FINRA member firms in this same capacity before joining IMS Securities Inc. ("IMS")

on August 6, 2007 as a general securities representative. Longoria voluntarily terminated his registration with IMS on September 4, 2009. Although Longoria has not been associated with a FINRA member firm since September 4, 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 of the filing of an amendment to Longoria's Form U5 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 of the filing of an amendment to his Form U5.

FIRST CAUSE OF ACTION

(Misuse of Customer Funds – NASD Conduct Rule 2330 and FINRA Rule 2010)

3. The Department realleges and incorporates by reference paragraphs 1 and 2 above.
4. PA opened an account with HMF, a mutual fund company, through Longoria in February 2009. Per Longoria's instructions, PA wrote a check for \$12,000.00 to fund that account on February 4, 2009, payable to "LRS Investments." LRS is an unregistered entity owned and controlled by Longoria. Although an account was opened at HMF for PA, it was never funded. Longoria never returned the \$12,000.00 to PA. When IMS learned of this situation, the firm repaid PA, who was an IMS customer, the \$12,000.00 she had given to Longoria.
5. By failing either to invest PA's \$12,000 as PA intended or to return the funds to PA, Longoria violated NASD Conduct Rule 2330 and FINRA Rule 2010.

SECOND CAUSE OF ACTION
(Misuse of Funds – FINRA Rule 2010)

6. The Department realleges and incorporates by reference paragraphs 1, 2 and 4 and 5 above.
7. KW met Longoria because their children played on the same softball team. On April 6, 2009, KW gave Longoria a check for \$5,000 for Longoria to invest on KW's behalf in what Longoria represented to be an exchange-traded mutual fund tied to the performance of the S&P Index. Longoria instructed KW to make the check payable to LRS Investments. Longoria had KW complete and sign forms to open an account but no account was ever established. Initially, KW made numerous requests for copies of the forms and evidence of the investment; however, Longoria never gave him this information. Between September 2009 and December 2009, KW made numerous requests that Longoria return his funds. Longoria made several promises to repay \$5,000.00 to KW, but has never done so. At one point, Longoria gave KW a check for \$5,820.00, but the check was returned for insufficient funds. KW was never an IMS customer.
8. By failing either to invest KW's \$5,000.00 as KW intended or to return KW's money, Longoria violated FINRA Rule 2010.

THIRD CAUSE OF ACTION

(Failure to Respond to a Request for Information and Documents

FINRA Rules 8210 and 2010)

9. The Department realleges and incorporates by reference paragraphs 1, 2, 4, 5, 7 and 8.
10. On November 23, 2009, FINRA staff sent Longoria a written request for information pursuant to Rule 8210, via US Postal Service certified and first class mail to Longoria's residential CRD address which is [REDACTED] [REDACTED] ("residential CRD address"). The letter asked for information concerning the misuse of funds belonging to PA, including bank documents reflecting the deposit of PA's \$12,000.00 check. It also asked for, among other things, Longoria's personal bank records and bank records for accounts in the name of LRS Investments. Longoria's response was due by December 4, 2009. The certified mailing was returned marked "unclaimed unable to forward." The first class letter was not returned. Longoria did not provide the information or documents requested in the November 23, 2009, letter.
11. On December 9, 2009, the staff re-sent the same Rule 8210 request referenced in paragraph 10 above to Longoria's residential CRD address via US Postal Service certified and first class mail. The letter requested a response by December 23, 2009. The first class letter was not returned. However, an "A. Longoria" did sign the Domestic Return Receipt for the certified mailing on December 11, 2009. Longoria did not provide the information or documents requested in the letter dated December 9, 2009.

12. FINRA's ability to fully investigate Longoria's apparent violations of FINRA rules was hampered by Longoria's failure to respond. Without the provision of his bank records, FINRA staff could not determine whether Longoria converted PA's funds for his own use. Moreover, the staff was unable to investigate other possible instances of misuse.
13. The failure to provide information and documents to FINRA as requested in its written Rule 8210 requests dated November 23, 2009 and December 9, 2009, constituted separate and distinct violations of FINRA Rules 8210 and 2010 by Longoria.

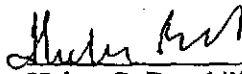
RELIEF REQUESTED

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: March 17, 2011



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