

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

SOURICHANH MALIVARN
(CRD No. 4722533),

Respondent.

Disciplinary Proceeding
No. 2009020085601

Hearing Officer – LBB

DEFAULT DECISION

February 15, 2011

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

Appearances

Sharon Tilove-Navatta, Esq., Senior Counsel, for the Department of Enforcement, New York, NY.

No appearance by or on behalf of Respondent.

DECISION

The Department of Enforcement ("Enforcement") filed the two-cause Complaint in this disciplinary proceeding on October 1, 2010. The Complaint charges Respondent Sourichanh Malivarn ("Respondent") with: (1) conversion, in violation of FINRA Conduct Rule 2010; and

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(2) failure to respond to requests for documents and information, in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010.¹

Despite being properly served with the Complaint, Notice of Complaint, and Second Notice of Complaint, Respondent has not filed an Answer or otherwise responded to the Complaint.

On December 15, 2010, Enforcement filed a Motion for Entry of Default Decision and Request for Sanctions.² Respondent did not file a response to Enforcement's motion. Accordingly, pursuant to FINRA Rules 9215(f) and 9269, Enforcement's motion is granted, and the allegations of the Complaint are deemed admitted.

I. Respondent

In July 2004, Respondent was first registered as an Investment Company and Variable Contracts Products Representative at a FINRA member firm. CX-1; Complaint ¶ 2. In July 2006, she became employed as a Platform Representative at Fifth Third Bank ("Bank"), and registered as an Investment Company and Variable Contracts Products Representative at Fifth Third Securities, Inc., the Bank's affiliated broker-dealer ("Firm"), a FINRA member firm. Respondent remained dually employed by the Bank and the Firm until her employment was

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). 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, including certain conduct rules and procedural rules. See Regulatory Notice 08-57 (Oct. 2008). This decision refers to and relies on the NASD Conduct Rules that were in effect at the time of Respondent's alleged misconduct. The applicable rules are available at www.finra.org/rules. For the First Cause of Action, the Complaint charges only a violation of FINRA Rule 2010. Respondent began to convert funds prior to December 15, 2008, and continued her acts of conversion after that date, and therefore violated NASD Rule 2110 prior to December 15, 2008. Because NASD Conduct Rule 2110 and FINRA Conduct Rule 2010 are not materially different, this decision refers only to FINRA Rule 2010, as set forth in the Complaint.

² The factual determinations in this decision are based on the allegations of the attached Complaint and the materials Enforcement filed with its default motion, which included the Declaration of Sharon Tilove-Navatta, Esq. in Support of Motion for Entry of Default Decision and Request for Sanctions, and supporting documentation that was attached to counsel's declaration. Counsel's declaration is cited herein as "Decl. ¶ ___." The supporting documentation is cited as "CX-___."

terminated on October 1, 2009. Complaint ¶ 2. The Firm filed a Form U5 on October 13, 2009, reporting that Respondent's employment had been terminated for embezzlement. CX-2; Decl. ¶ 5.

Although Respondent has not been registered with any FINRA member firm since the termination of her employment in October 2009, she remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because the Complaint was filed within two years after the termination of her registration with a member firm, and the Complaint charges Respondent with misconduct while she was registered with a member firm and with failing to respond to Rule 8210 requests issued within two years following the termination of her registration with a member firm.

II. Origin of Investigation

FINRA began its investigation of Respondent in October 2009, after the Firm filed a Form U5 reporting the termination of her employment at the Firm for embezzlement. Decl. ¶ 14; CX-2.

III. Respondent's Default

On October 1, 2010, Enforcement served the Notice of Complaint and Complaint by *certified and first-class mail on Respondent at her most recent address, as recorded in the Central Registration Depository ("CRD address")*. Decl. ¶ 7. Enforcement received the return receipt for this mailing with Respondent's signature. The first-class mailing was not returned. Decl. ¶ 8; CX-4.

Respondent failed to respond to the Complaint within the time specified by FINRA Procedural Rule 9215 and set forth in the Notice of Complaint. On November 4, 2010, Enforcement served Respondent with a Second Notice of Complaint, along with a copy of the Complaint and Notice of Complaint, by *certified and first-class mail*. Decl. ¶ 10; CX-5.

Enforcement received the return receipt for this mailing with Respondent's signature. The first-class mailing was not returned. Decl. ¶ 11; CX-8. Respondent has not filed an Answer or otherwise filed a response to the Complaint.

Enforcement served the Complaint and the Notices of Complaint on Respondent in accordance with Procedural Rule 9134, giving her actual and constructive notice of this proceeding. By failing to file a response, Respondent defaulted.

IV. First Cause of Action: Respondent Violated FINRA Conduct Rule 2010 by Converting the Bank's Funds

On September 30, 2008, Respondent used her position as licensed banker at the Bank to create a personal installment loan account in the name of Bank customer A.B. Respondent then withdrew \$10,000 in loan proceeds without the knowledge or permission of A.B. or the Bank. Complaint ¶ 6. Respondent manipulated the address on the loan account so that correspondence, including the loan billing statements, would be sent to the banking center at her branch office of the bank, and not to A.B.'s home address. Complaint ¶ 7. Between September 30, 2008, and September 23, 2009, Respondent made approximately \$600 in payments on the loan. She used the remaining funds from the loan for her own purposes. Complaint ¶ 8. When Respondent could no longer make payments on the loan and it became delinquent, the Bank's collections department contacted the customer regarding the delinquency. The customer informed the Bank that he had declined to take such a loan from the Bank. Decl. ¶ 21. The Bank then investigated the circumstances of the loan, and Respondent confessed to processing the loan and using the funds for her personal purposes. Decl. ¶ 21.

Conversion is "an intentional and unauthorized taking of and/or exercise of ownership over property by one who neither owns the property nor is entitled to possess it."³ Conversion of

³ *FINRA Sanction Guidelines* at 36 n.2 (2010).

funds violates FINRA Conduct Rule 2010.⁴ By converting the Bank's funds, Respondent violated FINRA Conduct Rule 2010.

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent violated FINRA Conduct Rule 2010 by converting the funds of a customer of the bank where she was employed.

V. Second Cause of Action: Respondent Violated FINRA Rules 8210 and 2010 by Failing to Respond to Requests Information

On May 7, 2010, FINRA Staff sent a letter by first-class and certified mail to Respondent at her CRD address, pursuant to FINRA Rule 8210, requesting that she provide a written statement regarding the circumstances of the termination of her employment at the Firm. The certified letter was returned to FINRA unclaimed. The first-class mailing was not returned. Respondent failed to respond to the May 7, 2010, letter. Complaint ¶¶ 12-13.

On May 25, 2010, FINRA Staff sent a second request to Respondent's CRD address by first-class and certified mail, pursuant to Rule 8210, enclosing a copy of the May 7 letter. The certified letter was returned unclaimed, and the first-class mailing was not returned. Respondent failed to respond to the May 25 letter. Complaint ¶¶ 14-15.

Both requests were served within two years of the termination of Respondent's registration with a FINRA member firm. Respondent was required to respond pursuant to Rule 8210 and Article V, Section 4 of FINRA's By-Laws. These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent failed

⁴ *John M. Saad*, Exchange Act Rel. No. 62178, 2010 SEC LEXIS 1761 (May 26, 2010), *appeal filed*, No. 10-1195 (D.C. Cir. July 22, 2010) (barred for misappropriation of member firm's funds by submitting false expense reports); *Dist. Bus. Conduct Comm. v. Vail*, No. C06920051, 1994 NASD Discip. LEXIS 192, at *13 (N.B.C.C. Sept. 22, 1994), *aff'd*, 52 S.E.C. 339, 342 (1995), *aff'd*, 101 F.3d 37 (5th Cir. 1996) (barred for conversion of funds of private political club); *Daniel D. Manoff*, Exchange Act Rel. No. 46708, 2002 SEC LEXIS 2684 (Oct. 23, 2002) (barred for unauthorized use of co-worker's credit card numbers).

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 2010.⁵

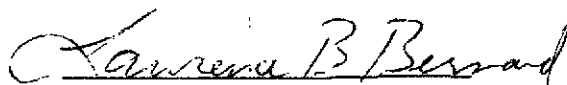
VI. Sanctions

The Hearing Officer imposes separate bars for each cause of action. For conversion, FINRA's sanction guidelines recommend a bar.⁶ There are no mitigating factors. A bar is the appropriate sanction.

For a complete failure to respond to a request for information pursuant to FINRA Procedural Rule 8210, a bar is standard.⁷ There are no mitigating factors, and a bar is the appropriate sanction.

VII. Conclusion

For conversion of funds, in violation of FINRA Conduct Rule 2010, Respondent Sourichanh Malivarn is barred from associating with any FINRA member firm in any capacity. Respondent is also barred for failing to respond to requests for information, in violation of FINRA Procedural Rule 8210 and Conduct Rule 2010. The bars will be effective immediately if this decision becomes FINRA's final disciplinary action in this proceeding.


Lawrence B. Bernard
Hearing Officer

Copies to:

Sourichanh Malivarn (*via overnight courier and first-class mail*)
Sharon Tilove-Navatta, Esq. (*via e-mail and first-class mail*)
David R. Sonnenberg, Esq. (*via e-mail*)

⁵ *Dep't of Enforcement v. Hoeper*, No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (N.A.C. Nov. 2, 2001) (violation of NASD Procedural Rule 8210 was a violation of NASD Conduct Rule 2110).

⁶ *FINRA Sanction Guidelines* at 36.

⁷ *FINRA Sanction Guidelines* at 33.