

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

Department of Enforcement,

Complainant,

v.

**Sourichanh Malivarn
(CRD No. 4722533),**

Respondent.

**DISCIPLINARY PROCEEDING
NO. 2009020085601**

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. In September 2009, Sourichanh Malivarn ("Malivarn") used her position as a licensed banker at a FINRA member firm to create a personal installment loan account in the name of an affiliated bank's customer without the customer's permission or authority. Malivarn thereafter withdrew the \$10,000 in loan proceeds for her own use, in violation of FINRA Rule 2010. In addition, Malivarn failed to respond to FINRA's requests for information and documents in this matter, in violation of FINRA Rules 8210 and 2010.

JURISDICTION

2. Malivarn entered the securities industry in July 2004 when she became a licensed banker and registered with FINRA as an Investment Company and Variable Contracts Products Representative at a member firm. Between 2004 and 2006, Malivarn continued to be associated in this capacity with FINRA member firms and their affiliated banks. In July 2006, Malivarn became employed as a Platform Representative at Fifth Third Bank (the "Bank") and registered

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as an Investment Company and Variable Contracts Products Representative at Fifth Third Securities, Inc., the Bank's affiliated broker-dealer (the "Firm"). Malivarn remained dually employed by the Bank and the Firm until she was terminated on October 1, 2009.

3. Malivarn is not currently associated with a FINRA member; however, she remains subject to FINRA's jurisdiction pursuant to Article V, Section 4 of the FINRA By-Laws, in that the Complaint was filed within two years of Malivarn's last association with a FINRA member and the Complaint charges her with misconduct committed while she 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 she ceased to be associated with a FINRA member.

FIRST CAUSE OF ACTION
(FINRA Rule 2010 – Misuse and Conversion of Funds)

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

5. At all times relevant to this Complaint, AB was a customer of the Bank.

6. On September 30, 2008, Malivarn used her position as a licensed banker to create a personal installment loan account at the Bank in the name of AB and, thereafter, withdrew the sum of \$10,000 in loan proceeds, without AB's or the Bank's knowledge or permission.

7. Malivarn manipulated the address on the loan account so that correspondence including the loan billing statements would be directed to the banking center at her branch office of the Bank, and not sent to AB's home address.

8. Between September 30, 2008 and September 23, 2009, Malivarn made approximately \$600 in payments on the loan. Malivarn used the remainder of the funds for her own purposes.

9. Such acts, practices and conduct constitute a violation by Respondent of FINRA Rule 2010.

SECOND CAUSE OF ACTION
(FINRA Rules 2010 and 8210 – Failure to Respond to Information Requests)

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

11. On October 13, 2009, a Uniform Termination Notice for Securities Industry Registration (“Form U5”) was filed by Fifth Third Securities, Inc. reporting that Malivarn had been terminated on October 1, 2009 when the Firm learned that she was terminated by the Bank for embezzlement.

12. On May 7, 2010, FINRA sent a letter to Malivarn pursuant to FINRA Rule 8210, requesting that she provide a detailed written statement regarding the circumstances of her termination from Fifth Third Securities, Inc. The letter was sent to Malivarn’s last known residential address as reflected in the Central Registration Depository (the “CRD address”), by certified mail return receipt requested and by first class mail. The letter required a response no later than May 21, 2010.

13. The original certified letter dated May 7, 2010 was returned to FINRA unclaimed. The copy of this letter sent by first class mail was not returned to FINRA. Malivarn failed to respond by the May 21, 2010 deadline.

14. On May 25, 2010, FINRA sent another letter to Malivarn pursuant to FINRA Rule 8210 which informed her that it was a second request for the information requested by FINRA’s letter dated May 7, 2010, to which no response had been received. The May 25, 2010

letter was sent to Malivarn's CRD address, by certified mail return receipt requested and by first class mail. The letter required a response no later than June 9, 2010.

15. The original certified letter dated May 25, 2010 was returned to FINRA unclaimed. The copy of this letter sent by first class mail was not returned to FINRA. Malivarn failed to respond by the June 9, 2010 deadline.

16. As of the date hereon, Malivarn has not responded to FINRA's requests for a written statement regarding the embezzlement alleged on the Form U5 filed by the Firm. Such acts, practices and conduct constitute separate and distinct violations of FINRA Rules 2010 and 8210 by Respondent.

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 that the Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest, be imposed.
- B. Order that the Respondent bear such costs of the proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Dated: October 1, 2010


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