

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

BRIAN THOMAS BELDYK
(CRD No. 2035064)

Respondent.

Disciplinary Proceeding
No. 2009020090301

Hearing Officer – RSH

DEFAULT DECISION

December 2, 2010

For converting customer funds, in violation of Rules 2330, 2110, and 2010; falsifying documents, in violation of Rule 2010; and failing to provide requested information, in violation of Rules 8210 and 2010, the Respondent was barred from associating with any FINRA-regulated firm in any capacity.

Appearances

Jeffrey P. Bloom, Senior Special Counsel, and Samuel L. Israel, Chief Counsel, Washington, DC, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

I. Introduction

The FINRA Department of Enforcement commenced the investigation that led to the Complaint against Respondent Brian Thomas Beldyk after FINRA-regulated firm LPL Financial Corporation ("LPL") filed a Uniform Termination Notice for Securities Industry Registration ("Form U5"). The Form U5, which was filed on or about September 28, 2009, disclosed that LPL had terminated Beldyk's employment for violating LPL's policies on the unauthorized transfer of customer funds for personal use. FINRA staff investigated Beldyk's conduct to determine if he had violated any FINRA

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rules or regulations. As a result of the investigation, Enforcement filed the Complaint on July 16, 2010.¹

In the First Cause of Action of its Complaint, Enforcement charged that between the mid-1990s and September 2009, Beldyk misappropriated over \$450,000 from five customers, and thereby violated Rules 2330(a), 2110, and 2010. The Complaint's Second Cause of Action alleged that in February and May 2009, Beldyk created false account statements, thereby violating Rule 2010. The Third Cause of Action alleged that in November 2009 and January 2010, Beldyk failed to respond to FINRA's requests for information, thereby violating Rules 8210 and 2010.²

Enforcement filed the Complaint with the Office of Hearing Officers on July 16, 2010. Beldyk did not answer or otherwise respond to the Complaint. Consequently, on September 29, 2010, Enforcement filed a Motion for Entry of Default Decision, supported by the Declaration of Jeffrey P. Bloom, the Addendum to the Declaration of Jeffrey P. Bloom, and four exhibits. Beldyk did not reply to the motion.³

II. Jurisdiction

Beldyk first became registered as a General Securities Representative in February 1990. He was registered through LPL from December 1, 1993, through September 28, 2009, when he was discharged. He has not been associated with a FINRA-regulated firm since then.⁴

¹ Declaration of Jeffrey P. Bloom ("Bloom Decl.") ¶ 5.

² The FINRA Rules, which include NASD Procedural and Conduct Rules, are available at www.finra.org/Rules. On December 15, 2008, the first phase of new consolidated FINRA Rules went into effect. See, Regulatory Notice 08-57. In the rule consolidation, NASD Rule 2110 was renumbered to FINRA Rule 2010, which is identical to Rule 2110. Unless otherwise noted, the relevant FINRA Rules cited in this decision are identical to the corresponding NASD Rules.

³ The factual determinations in this decision are based on the allegations of the attached Complaint, which are deemed admitted, as well as additional materials filed by Enforcement.

⁴ Complainant's Exhibit ("CX")-2; Bloom Decl. ¶ 6.

Although Beldyk is not currently registered with a FINRA-regulated firm, FINRA has jurisdiction over this disciplinary proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years following the termination of his registration with a FINRA-regulated firm and (2) the Complaint charges him with misconduct that occurred while he was registered with a FINRA-regulated firm, and with failing to respond to FINRA's requests for information made during the two-year period following the termination of his association with a FINRA-regulated firm.⁵

III. Beldyk's Default

On July 16, 2010, Enforcement sent the Notice of Complaint and Complaint to Beldyk by first-class and certified mail (return receipt requested) at his residential address as recorded in FINRA's Central Registration Depository ("CRD Address"). Enforcement received the signed certified mail receipt indicating that delivery was made on July 19; however, the signature was illegible. Beldyk did not respond to the Complaint by August 13, 2010, the deadline specified in the Notice of Complaint.⁶

On August 16, 2010, Enforcement sent the Second Notice of Complaint and Complaint by first-class and certified mail to Beldyk at his CRD Address. Enforcement received the signed certified mail receipt indicating that delivery was made on August 18; however, the signature was illegible. Beldyk did not respond to the Complaint by September 2, 2010, the deadline specified in the Second Notice of Complaint.⁷

To date, Beldyk has not filed an Answer with the Office of Hearing Officers or otherwise responded to the Complaint.

⁵ See Article V, Sec. 4(a), FINRA By-Laws, available at www.finra.org/Rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: By-Laws").

⁶ Bloom Decl. ¶¶ 8-10; CX-3.

⁷ Bloom Decl. ¶¶ 11-13; CX-4.

By failing to answer the Complaint, Beldyk defaulted. Accordingly, pursuant to Procedural Rules 9215(f) and 9269(a)(2), the Hearing Officer deems the allegations in the attached Complaint admitted and grants Enforcement's Motion for Entry of Default Decision.

IV. Violations

A. Conversion and Misuse of Customer Funds

The Complaint's First Cause of Action alleges that Beldyk misappropriated funds from five customers, in violation of Rules 2330(a), 2110, and 2010.

1. Customer RL

Beginning at some point in the mid-1990s, Beldyk began misappropriating funds from his customer, RL. RL periodically gave Beldyk checks to deposit into her variable annuity account, and he deposited a number of those checks into his own account. In total, Beldyk misappropriated approximately \$175,000 from RL in this manner. In the fall of 2001, RL sought to liquidate her investments and discovered a deficit of \$175,000. Beldyk paid RL back the \$175,000 he took from her by misappropriating funds from other customers—AS and WJ.

2. Customer AS

To obtain funds from AS, an elderly customer, Beldyk had checks from her LPL account sent to her for endorsement. He then deposited the checks into his own account. Beldyk misappropriated between \$60,000 and \$100,000 from AS in this manner. AS took monthly withdrawals from her account, and beginning in 2003, Beldyk began making monthly payments to AS to prevent her from learning that her account was empty because of his misappropriation.

3. Customer WJ

Beldyk misappropriated approximately \$90,000 from WJ in 2001. To obtain her money, Beldyk led WJ to believe that she was making an investment, and directed her to write a check for \$90,000 on her LPL account. He directed her to endorse the check, then deposited the funds into his own account. Beldyk misappropriated funds from WJ on two other occasions: \$50,000 in a check written directly to Beldyk in 2008, and a \$10,000 withdrawal from her LPL account which she gave to him in 2009:

4. Customer MA

Beldyk misappropriated approximately \$50,000 between 2008 and 2009 from MA. To do so, he directed MA to withdraw money from her LPL account and deposit the check into her money market account. He then directed her to write a check to him, saying she had withdrawn too much and needed to reinvest the money.

5. Customer PG

Beldyk misappropriated approximately \$27,000 from PG in April 2008 by directing her to write him a check for deposit into her LPL account. Beldyk did not deposit the check into PG's account.

Beldyk admitted to LPL's in-house counsel that he had misappropriated funds from RL, AS, WJ, and MA, as described.⁸ All of Beldyk's customers have been fully compensated for their losses, either by Beldyk or LPL.⁹

FINRA Conduct Rule 2330(a) prohibits any person associated with a member from making improper use of a customer's securities or funds. Conduct Rule 2010 and its predecessor, Rule 2110, state that "[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade."

⁸ Bloom Decl. ¶ 24.

⁹ Supplemental Declaration of Jeffrey P. Bloom.

FINRA Sanction Guidelines (“Guidelines”) define conversion as “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.”¹⁰ It is clearly a violation of just and equitable principles of trade to convert funds from a customer, and the Guidelines specifically recognize conversion as a violation of Rule 2110.¹¹

The facts alleged in the Complaint establish that, for purposes of this default decision, Beldyk converted the funds of five customers, and thereby violated Rules 2330(a), 2110, and 2010.

B. Falsification of Documents

The Second Cause of Action alleges that Beldyk falsified documents in connection with his misappropriation of funds from AS, thereby violating Rule 2010. In 2009, AS’s niece, who had AS’s power of attorney, contacted Beldyk for information regarding AS’s LPL account, including past account statements. Because AS’s LPL account was empty, there were no account statements for it. Therefore, Beldyk created a false statement, which included non-existent holdings, and gave the false statement to AS’s niece. Beldyk gave AS’s niece another false statement in May 2009, which stated that AS’s account value was \$150,000. Beldyk created these false statements in an attempt to hide his misappropriations. Beldyk admitted to LPL’s in-house counsel that he had created the false statements.¹²

Conduct Rule 2010 requires registered persons to observe high standards of commercial honor and just and equitable principles of trade. As recently reiterated by the National Adjudicatory Council in the *Saad* case, “Rule 2110 is an ethical rule....FINRA’s

¹⁰ *FINRA Sanction Guidelines* 38 (2007), <http://www.finra.org/sanctionguidelines>.

¹¹ *Department of Enforcement v. Easley*, 2009 FINRA Discip. LEXIS 31 (N.A.C. Sept. 14, 2009).

¹² Bloom Decl. ¶ 33.

authority to pursue disciplinary action for violations of Rule 2110 is sufficiently broad to encompass any unethical business-related misconduct, regardless of whether it involves a security.”¹³

The facts alleged in the Complaint establish that, for purposes of this default decision, Beldyk falsified documents, and thereby violated Conduct Rule 2010.

C. Failure to Respond to Requests for Information

The Complaint’s Third Cause of Action alleges that Beldyk violated Rules 8210 and 2010 by failing to respond to two written requests for information concerning the funds removed from his customers’ accounts.

On November 10, 2009, FINRA Staff sent the first request for information by first-class and certified mail to Beldyk at his CRD Address. Beldyk signed for the certified mailing on November 13, 2009. The first-class mailing was not returned. Beldyk did not respond to the November 10 request.¹⁴

On January 5, 2010, FINRA Staff sent a second request to Beldyk at his CRD Address by first-class and certified mail. Beldyk signed for the certified mailing on January 7, 2010. The first-class mailing was not returned. Beldyk did not respond to the January 5 request.¹⁵

The facts alleged in the Complaint establish that, for purposes of this default decision, Beldyk failed to respond in any manner to two requests for information, and thereby violated Rule 8210. A violation of Rule 8210 is also a violation of Rule 2010.¹⁶

¹³ *Department of Enforcement v. Saad*, 2009 FINRA Discip. LEXIS 29, at *11 (N.A.C. Oct. 6, 2009) (finding that a registered person’s submission of false expense reimbursement requests and receipts to his broker-dealer violated Rule 2110).

¹⁴ Bloom Decl. ¶¶ 35-38.

¹⁵ *Id.*

¹⁶ *Department of Enforcement v. Hoeper*, No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (N.A.C. Nov. 2, 2001).

V. Sanctions

A. Conversion and Misuse of Customer Funds

Beldyk's misuse of funds in this case amounts to conversion, inasmuch as he used customer funds for his own purposes without authorization. For conversion, the FINRA Sanction Guidelines ("Guidelines") recommend a bar, regardless of the amount converted.¹⁷ Beldyk will therefore be barred from associating with any FINRA-regulated firm in any capacity.

B. Falsification of Documents

The Guidelines governing sanctions for forgery and/or falsification of records recommend a fine of \$5,000 to \$100,000 and a suspension for up to two years where mitigating factors exist, or a bar in egregious cases.¹⁸ This is an egregious case, and there is no evidence of mitigating factors. Beldyk fabricated account statements in order to hide the fact that he had stolen money from his customer and depleted her assets. He will therefore be barred from associating with any FINRA-regulated firm in any capacity.

C. Failure to Respond to Requests for Information

A violation of Rule 8210 is serious because Rule 8210 is a key element in FINRA's oversight function and allows FINRA to carry out its regulatory functions without subpoena power.¹⁹ When an individual fails to provide information, FINRA's ability to perform its regulatory functions is subverted.²⁰ For these reasons, the Guidelines recommend a bar when a respondent fails to respond in any manner to a request for information issued pursuant to Rule 8210.²¹ Beldyk failed to respond in any

¹⁷ Guidelines 38.

¹⁸ Guidelines 39.

¹⁹ *Howard Brett Berger*, Exchange Act Rel. No. 58950, 2008 SEC LEXIS 3141 (Nov. 14, 2008); *Joseph G. Chiulli*, Exchange Act Rel. No. 42359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000).

²⁰ *Joseph P. Hannan*, Exchange Act Rel. No. 40438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998).

²¹ Guidelines 35.

manner to two requests for information from FINRA. There is no evidence of any mitigating facts that would justify a sanction less than a bar.

Accordingly, the Hearing Officer finds that Beldyk should be barred from associating with any FINRA-regulated firm in any capacity.

VI. Order

For converting customer funds, in violation of Rules 2330, 2110, and 2010; falsifying documents, in violation of Rule 2010; and failing to provide requested information, in violation of Rules 8210 and 2010, Brian Thomas Beldyk is barred from associating with any FINRA-regulated firm in any capacity. The bars shall become effective immediately if this Decision becomes the final disciplinary action of FINRA.

SO ORDERED.



Rochelle S. Hall
Hearing Officer

Copies to: Brian Thomas Beldyk (*via overnight courier and first-class mail*)
Jeffrey P. Bloom, Esq. (*via electronic and first-class mail*)
Samuel L. Israel, Esq. (*via electronic mail*)
David Sonnenberg, Esq. (*via electronic mail*)