

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

HOJIN KYUNG
(CRD No. 2659191),

Respondent.

Disciplinary Proceeding
No. 2009020752301

Hearing Officer – MC

DEFAULT DECISION

June 6, 2012

For misappropriating customer funds, in violation of FINRA Conduct Rule 2010, Respondent Hojin Kyung is barred from associating with any FINRA member firm in any capacity.

Appearances

Keith A. Alt, Principal Counsel, New York, New York, for the Department of Enforcement.

No appearance by or on behalf of Respondent.

DECISION

I. Introduction

On January 18, 2012, the Department of Enforcement filed a Complaint alleging that Respondent Hojin Kyung misappropriated funds from two customers. Despite being served with the Complaint, Notice of Complaint, and Second Notice of Complaint, Kyung has not filed an Answer or otherwise responded to the Complaint.

On April 20, 2012, Enforcement filed a Motion for Entry of Default Decision and Request for Sanctions (“Default Motion”) supported by the Declaration of Keith A. Alt and 11 exhibits.¹

II. Findings of Fact and Conclusions of Law

A. Jurisdiction

Kyung first registered with a FINRA member firm in October 1995. From April 2002 to November 2009, he was registered as a General Securities Representative and Principal at FINRA member firm Farmers Financial Solutions LLC. While employed there, Kyung was an insurance agent for Farmers Insurance Group (“FIG”), an affiliate of his firm. Kyung resigned from the firm on November 30, 2009. He was employed and registered through another FINRA member firm from April 2010 to September 12, 2011, when the firm terminated his employment.² He has not subsequently been registered or associated with a FINRA member firm. He nonetheless remains subject to FINRA’s jurisdiction for the purposes of this disciplinary proceeding because Enforcement filed the Complaint less than two years after his registration terminated, and the misconduct occurred while Kyung was employed and registered with a FINRA member firm.³

B. Default

On January 18, 2012, Enforcement served the Complaint and Notice of Complaint on Kyung by certified mail at his last residential address listed in the Central Registration

¹ 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 Keith A. Alt in Support of the Motion for Entry of Default Decision, and the exhibits attached to the Declaration. The Declaration will be referred to as “Decl.”

² Complaint ¶¶ 1-5.

³ Complaint ¶ 6.

Depository (“CRD address”).⁴ Enforcement sent duplicate copies of the Complaint and Notice of Complaint to Kyung’s CRD address by first-class mail and to e-mail addresses Enforcement had acquired in its investigative file.⁵ The Postal Service returned the certified mailing stamped “Returned to Sender” and “Unclaimed.”⁶ The first-class mailing was not returned.⁷ Kyung did not file an Answer.⁸

On February 27, 2012, Enforcement served the Complaint and Second Notice of Complaint, again by certified and first-class mail at his CRD address, and as before sent electronic copies of the Complaint and Second Notice of Complaint to Kyung’s e-mail addresses.⁹ Once again, the Postal Service returned the certified mailing stamped “Returned to Sender” and “Unclaimed,” but did not return the first-class mailing.¹⁰ Kyung has not filed an Answer or otherwise responded to the Complaint.¹¹

By serving the Complaint, Notice of Complaint, and Second Notice of Complaint upon Kyung 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.¹² By failing to file an Answer, Kyung defaulted. Accordingly, pursuant to Rules 9215(f) and 9269(a)(2), and for the reasons set forth below, the Default Motion is granted.

⁴ Decl. ¶ 16.

⁵ Decl. ¶ 18.

⁶ Decl. ¶ 19.

⁷ Decl. ¶ 20.

⁸ Decl. ¶ 21.

⁹ Decl. ¶¶ 22, 24.

¹⁰ Decl. ¶¶ 25, 26.

¹¹ Decl. ¶ 27.

¹² *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)).

C. Kyung Misappropriated Customer Funds

In July 2009, one of Kyung's customers gave him a check for \$664.91 to pay a premium on an insurance policy.¹³ Kyung deposited the check into his own personal trust account instead of the customer's FIG bank account.¹⁴ The next day, Kyung used the money for his own purposes when he withdrew \$680 in cash from the trust account, leaving a balance of only \$1.41. Even after FIG notified Kyung of the missing premium payment in January 2010, Kyung failed to submit the \$664.91 to FIG for the policy premium. It was only after FIG initiated collection proceedings against him and FINRA began its investigation that Kyung paid FIG's counsel the amount owed.¹⁵

In October 2009, another customer gave Kyung three checks totaling \$2,778.66 to pay for insurance policy premiums. Kyung deposited the checks into his personal trust account. He subsequently withdrew cash and also made payments for his own purposes drawn on the account. He did not submit any money to pay the customer's premiums even after FIG notified him that the payments were missing. Finally, more than a year after the customer gave Kyung the three checks, and only after FIG initiated collection proceedings and FINRA started its investigation, Kyung submitted \$2,778.66 to FIG's counsel.¹⁶

Misappropriation, or conversion, occurs when "a registered representative deposits a customer's check into his own account" without authorization instead of depositing the check into an account for the benefit of the customer, and fails to repay the customer.¹⁷ Kyung's

¹³ Complaint ¶ 11.

¹⁴ Complaint ¶¶ 12-14.

¹⁵ Complaint ¶¶ 15-18.

¹⁶ Complaint ¶¶ 19-25.

¹⁷ *Dep't of Enforcement v. Kendzierski*, No. C9A980021, 1999 NASD Discip. LEXIS 40, at *7 (N.A.C. Nov. 12, 1999).

ultimate return of the funds to FIG does not alter the fact that he converted to his own use payments his customers entrusted to him for their insurance premiums.¹⁸

These facts, as the Complaint alleges, establish for the purposes of this default decision that Kyung misappropriated funds customers entrusted to him, in violation of FINRA Conduct Rule 2010.

III. Sanctions

The FINRA Sanction Guidelines (“Sanction Guidelines”) for “Conversion or Improper Use of Funds or Securities” state that a bar is standard for conversion, regardless of the amount converted.¹⁹ Kyung’s conversion of funds his customers entrusted to him “reflect[s] directly on [his] ability both to comply with regulatory requirements fundamental to the securities business and to fulfill his fiduciary responsibilities in handling other people’s money.”²⁰ There are no mitigating factors in the record warranting consideration of a lesser sanction.

Enforcement recommends the imposition of a bar. Under the circumstances of this case, to deter Kyung and others from such misconduct, a bar is the appropriate sanction.²¹

¹⁸ *Dep’t of Enforcement v. Mission Sec. Corp.*, No. 2006003738501, 2010 FINRA Discip. LEXIS 1, at *27 (N.A.C. Feb. 24, 2010).

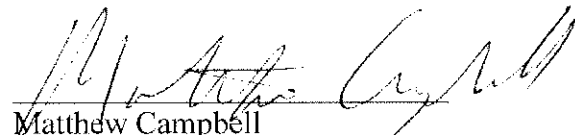
¹⁹ FINRA Sanction Guidelines 36 (2011), available at www.finra.org/sanctionguidelines.

²⁰ *Dep’t of Enforcement v. Foran*, No. C8A990017, 2000 NASD Discip. LEXIS 8, at *21 (N.A.C. Sept. 1, 2000), citing *James A. Goetz*, Exchange Act Rel. No. 39796, 1998 SEC LEXIS 499, at *11 (Mar. 25, 1998).

²¹ It is unnecessary to order restitution because FIG provided the insurance coverage for which the customers had paid Kyung and they suffered no loss. Default Motion, p. 8.

IV. Conclusion

For misappropriating customer funds, as described in the Complaint, Respondent Hojin Kyung is barred from associating with any FINRA member firm in any capacity. The bar shall become effective immediately if this default decision becomes FINRA's final action in this disciplinary proceeding.



Matthew Campbell
Hearing Officer

Copies to:

Hojin Kyung (*via e-mail and first-class mail*)
Keith A. Alt, Esq. (*via e-mail and first-class mail*)
Mark P. Dauer, Esq. (*via e-mail*)
David R. Sonnenberg, Esq. (*via e-mail*)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Hojin Kyung (CRD No. 2659191),

Respondent

DISCIPLINARY PROCEEDING
No. 2009020752301

COMPLAINT

The Department of Enforcement ("Enforcement") alleges:

SUMMARY

1. During the months of July and October 2009, Hojin Kyung ("Kyung") violated FINRA Rule 2010 by misappropriating a total of \$3,443.57 from two customers of his insurance company employer. At the time, he was an independent contractor registered representative employed by Farmers Financial Solutions LLC ("Farmers Financial"), a FINRA registrant. The money that he misappropriated was insurance premiums paid by customers of Farmers Insurance Group ("FIG"), an affiliate of Farmers Financial. Kyung was also an insurance agent for FIG at all times relevant herein. Kyung failed to deposit the premiums into an FIG account or remit the customers' insurance premiums to FIG. Instead, he misappropriated the funds by depositing the premiums into his own account and withdrawing cash and making other payments.

RESPONDENT AND JURISDICTION

2. From October 1995 to August 2001, Kyung was employed and registered with several FINRA-regulated firms.
3. From April 2002 to November 2009, Kyung was an independent contractor and registered at FINRA as a General Securities Representative and Principal at Farmers Financial.
4. Farmers Financial filed an amended Form U-5 ("Uniform Termination Notice for Securities Industry Registration"), dated February 2, 2010, reporting that FIG found that Kyung misappropriated property and casualty insurance premiums prior to his resignation on November 30, 2009.
5. From April 2010 to September 2011, Kyung was employed and registered with another FINRA-regulated firm. On September 12, 2011, this firm filed a Form U-5 for Kyung, reporting that his employment had been terminated on September 9, 2011 due to declining business activity and a regulatory investigation into his activities at a prior firm.
6. Although Kyung is no longer registered or associated with a FINRA-regulated firm, he remains subject to FINRA's jurisdiction pursuant to Article V, Section 4 of FINRA's By-Laws, because the Complaint was filed within two years after the effective date of his termination of registration from last member firm employer, namely when that firm filed a Form U-5 on September 12, 2011. FINRA has jurisdiction over Kyung until at least September 11, 2013.

CAUSE OF ACTION

Misappropriation of Funds [Violation of FINRA Rule 2010]

7. The Department realleges and incorporates by reference paragraphs 1 to 6, above.

8. FINRA Rule 2010 requires an associated person, in the conduct of his or her business, to “observe high standards of commercial honor and just and equitable principles of trade.”

9. In July and October 2009, Kyung misappropriated insurance premium payments made by two FIG customers.

10. In February 2010, after receiving a complaint initiated by one of the customers in January 2010, FIG completed a special internal audit of Kyung’s handling of insurance customer premiums. During the audit, FIG found evidence of misappropriation from two customers by Kyung, notified Farmers Financial, and continued the customers’ insurance policy coverage. Farmers Financial then filed an amended Form U-5 for Kyung (who had already left the firm in November 2009) reporting the conduct.

Misappropriation of EIL’s Insurance Premium

11. On or about July 10, 2009, one of Kyung’s insurance customers, EIL, gave Kyung a check in the amount of \$664.91 as payment of a premium on an insurance policy.

12. As an FIG agent, Kyung was required to collect and promptly remit monies due to FIG from its insurance customers.

13. Under FIG procedures, when an agent collects a premium for insurance business, he is supposed to make an entry into FIG’s automated premium receipt system to reflect that payment was made, place the business with one of FIG’s insurance companies, and deposit the premium payment into a FIG bank account to which the agent has deposit access only.

14. On or about July 15, 2009, Kyung deposited EIL’s check into his own personal trust account, rather than the FIG account where he had deposit access only.

15. On or about July 16, 2009, Kyung withdrew \$680 in cash from the trust account, leaving a balance of approximately \$1.41.

16. At various times during the months that followed, Kyung's trust account had a negative balance and had checks returned for insufficient funds.

17. Kyung did not remit the \$664.91 as payment for EJJ's insurance policy to FIG in January 2010 when FIG notified Kyung of the missing premium payment or in April 2010 when Kyung closed the trust account.

18. On or about February 1, 2011, a year and seven months after EJJ gave the July 2009 payment to Kyung, Kyung remitted the \$664.91 to FIG's outside counsel. He did so after FIG initiated collection proceedings against him and after FINRA commenced its investigation into this matter.

Misappropriation of JWH's Insurance Premiums

19. On or about October 20, 2009, JWH, another of Kyung's insurance customers, gave Kyung three checks, in the amounts of \$1,940.50, \$541.16, and \$297 for three insurance policies.

20. The first two checks were insurance premium payments for policies sold by FIG. Kyung deposited these checks on October 28, 2009 and November 5, 2009, respectively, into his own personal trust account, rather than the FIG account where he had deposit access only.

21. The third check was an insurance premium payment for a policy not sold by FIG. Kyung deposited this check in his trust account on December 1, 2009, rather than the FIG account where he had deposit access only.

22. Following each of the deposits of JWH's premium payments, Kyung made multiple cash withdrawals and check payments from the trust account. From October 28, 2009

to November 30, 2009, Kyung withdrew \$2,013. He also made multiple Paypal payments drawn on the trust account during the same time period.

23. As a result of the foregoing withdrawals and payments, the trust account had a balance of \$316.52 as of December 7, 2009.

24. Kyung did not remit JMH's payments to FIG or any other insurance carrier for JMH's insurance policies in January 2010 when FIG notified Kyung of the missing premium payments or in April 2010 when Kyung closed the trust account.

25. On or about February 1, 2011, a year and three months after JHM gave Kyung the October 2009 payments, Kyung remitted the \$2,778.66 to FIG's outside counsel. He did so after FIG initiated collection proceedings against him and after FINRA commenced its investigation into this matter.

26. By virtue of the foregoing conduct, Kyung engaged in misappropriation, and thus failed to adhere to high standards of commercial honor and just and equitable principles of trade in violation of FINRA Rule 2010.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent(s) committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed.
- C. 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: January 17, 2012

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