

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

CAROLYN AVIA HARMON
(CRD No. 4126542),

Respondent.

Disciplinary Proceeding
No. 2009021041501

Hearing Officer – MC

DEFAULT DECISION

February 15, 2012

Respondent Carolyn Avia Harmon is barred from associating with any FINRA member firm in any capacity for misappropriating funds from a customer, in violation of NASD Conduct Rule 2110 and FINRA Conduct Rule 2010, and failing to provide information and documents to FINRA staff when requested pursuant to Rule 8210, in violation of FINRA Conduct Rule 2010 and Procedural Rule 8210.

Appearances

Carolyn Craig, Director, Enforcement Center, and Colleen Hanrahan, Senior Counsel, Washington, DC, for the Department of Enforcement.

No appearance by or on behalf of Respondent.

DECISION

I. Introduction

The Department of Enforcement alleges that Respondent Carolyn Avia Harmon misappropriated customer funds and then, when FINRA staff investigated, failed to respond to requests for information issued pursuant to Procedural Rule 8210. Enforcement filed the attached Complaint on July 11, 2011, and served the Complaint and Notices of Complaint on Harmon. Harmon failed to file an Answer. Consequently, on December 2, 2011, Enforcement filed a Motion for Entry of Default Decision and Request for Sanctions (“Default Motion”),

accompanied by the Declaration of Carolyn Craig and four exhibits. On January 24, 2012, Enforcement filed a Supplement to Its Motion Requesting Entry of Default Judgment and Request for Sanctions (“Supplement to Default Motion”).¹

II. Findings of Fact and Conclusions of Law

A. Jurisdiction

Beginning in January 2000, Harmon was associated with FINRA member firm Edward Jones as an unregistered Branch Office Administrator.² On November 30, 2009, Edward Jones terminated her employment for misappropriating client funds.³ FINRA began an investigation when it learned of the circumstances of the termination.⁴ Enforcement filed the Complaint on July 11, 2011. Harmon is not currently and was not previously registered with any FINRA member firm employer.⁵ She remains subject to FINRA’s jurisdiction pursuant to Article V, Section 4(a) of FINRA’s By-Laws because the misconduct described in the Complaint occurred while Harmon was an associated person with a FINRA member firm; because Enforcement filed the Complaint less than two years after Edward Jones terminated Harmon’s employment; and because the Complaint charges her with failing to respond to requests for information issued pursuant to Rule 8210 within two years of her termination.

B. Default

On July 11, 2011, Enforcement served Harmon with the Complaint and Notice of Complaint by certified and first-class mail at her current residential address, which it obtained

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 include Carolyn Craig’s Declaration in Support of Motion for Entry of Default Decision, and the exhibits attached to the Declaration. The Declaration is referred to as “Decl.” The exhibits are referred to as “CX-__.”

² CX-1; Decl. ¶ 6.

³ Decl. ¶¶ 5-6.

⁴ Decl. ¶ 5.

⁵ CX-1, p. 2.

from a search of LEXIS/Public Records. Harmon acknowledged actual service of the Complaint when she signed the return receipt for the certified mailing on July 25, 2011.⁶

Harmon failed to file an Answer.⁷ On August 9, 2011, Enforcement filed the Second Notice of Complaint. On November 14, 2011, through a private process server, Enforcement successfully served Harmon personally with the Complaint and Second Notice of Complaint.⁸ Despite being provided with actual notice of the Complaint for a second time, Harmon again failed to file an Answer or otherwise respond to the Complaint.⁹

These facts establish that Harmon received actual notice of the Complaint. By failing to file an Answer, Harmon defaulted. Accordingly, pursuant to Rules 9215(f) and 9269(a)(2), the Default Motion is granted and the allegations against Harmon contained in the Complaint are deemed admitted.

C. Harmon Misappropriated Customer Funds

As a Branch Office Administrator at Edward Jones, Harmon processed account openings, closings, and transfers. In November 2006, she opened an account in the name of her husband, without his knowledge or consent, and an additional account in her own name.¹⁰ Between November 2006 and September 2009, Harmon deposited customer funds, which should have been deposited into the customers' accounts, into the account in her husband's name.¹¹ She

⁶ Decl. ¶ 8; CX-3. CRD listed no residential address for Harmon. CX-1, p. 1. Because Edward Jones had terminated her employment before Enforcement filed its Complaint, Enforcement could not serve her at the Edward Jones branch office address listed in CRD. This led Enforcement to search public records for Harmon's current residential address. Decl. ¶ 8. As noted below, Harmon responded to a Rule 8210 request for information FINRA mailed to this address, thereby confirming that it was her current residential address, and supporting the finding that she received actual notice of the Complaint for which she signed when it was served on her there.

⁷ Decl. ¶ 9.

⁸ Decl. ¶ 10; CX-4.

⁹ Decl. ¶ 11.

¹⁰ Complaint ¶ 6.

¹¹ Complaint ¶ 7.

subsequently transferred most of these funds into her own account and used them for personal purposes.¹² Harmon also deposited customer checks into another Edward Jones account she held jointly with her husband.¹³

In November 2009, Edward Jones discovered that checks had not been deposited into three customer accounts as they should have been.¹⁴ Edward Jones traced the deposits to the account in Harmon's husband's name. When questioned about the deposits, Harmon initially said the checks had been deposited improperly as the result of administrative error; she also, inconsistently, claimed that they may have represented compensation to her husband for work he had done for those customers.¹⁵ Upon further questioning, Harmon confessed that she had diverted the funds to assist a relative. From November 2006 to September 2009, Harmon misappropriated over \$63,000 from at least 21 Edward Jones customers.¹⁶

These facts establish, for the purposes of this default decision, that Harmon misappropriated customer funds, in violation of NASD Conduct Rule 2110 and FINRA Conduct Rule 2010, as alleged in the Complaint.¹⁷

D. Harmon Failed to Provide Information and Documents When Requested

On January 27, 2010, Enforcement sent Harmon a request for information pursuant to Rule 8210 by regular first-class and certified mail to the residential address Enforcement

¹² Complaint ¶ 8.

¹³ Complaint ¶ 9.

¹⁴ Complaint ¶ 10.

¹⁵ Complaint ¶ 11.

¹⁶ Complaint ¶¶ 13-14.

¹⁷ 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. Thus, Harmon's misappropriations from November 2006 to December 14, 2008, violated NASD Conduct Rule 2110, and her misappropriations from December 15, 2008, to September 2009 violated FINRA Conduct Rule 2010. The rules are available at www.finra.org/rules.

obtained through its search of public records.¹⁸ Harmon signed the return receipt for the certified mailing. She then responded to the Rule 8210 request by sending Enforcement a brief handwritten letter dated February 8, 2010.¹⁹ To follow up on the information Harmon provided, Enforcement sent two additional requests for information to her by regular first-class and certified mail to her residential address. Enforcement received the return receipts for the certified mailings, which appear to have been signed by “David Barlowe.” The U.S. Postal Service did not return the first-class mailings. Harmon failed to respond to these requests. After Edward Jones provided an e-mail address for Harmon, in September 2010, Enforcement attempted to contact Harmon by e-mail to elicit a response to the information requests. Harmon did not respond to Enforcement’s e-mail.²⁰

These facts establish, for the purposes of this default decision, that Harmon failed to respond to requests for information issued to her pursuant to Rule 8210, in violation of FINRA Conduct Rule 2010 and Procedural Rule 8210, as alleged in the Complaint.

III. Sanctions

Enforcement requests the imposition of a bar upon Harmon for the violations described in each cause of action.²¹ FINRA’s Sanction Guidelines support Enforcement’s recommendations.

A. Harmon’s Misappropriations

The Guidelines recommend a bar for misappropriation of customer funds.²² The misappropriations involved a substantial amount of money over a prolonged period of time in a

¹⁸ Decl. ¶ 8; Complaint ¶ 17.

¹⁹ Complaint ¶ 17.

²⁰ Complaint ¶ 18.

²¹ Enforcement does not seek restitution. Enforcement represents that Edward Jones offered to make all 21 of the customers whole and that 19 customers accepted restitution, although two, for unknown reasons, rejected the offer to make them whole. Supplement to Default Motion, p. 2; Decl. ¶ 14(x).

²² *FINRA Sanction Guidelines* at 36 (2011).

large number of customer accounts. Such an egregious course of conduct reflects adversely on her ability “both to comply with regulatory requirements fundamental to the securities business and to fulfill [her] fiduciary responsibilities in handling other people’s money.”²³ For these reasons, a bar is the appropriate sanction to remediate Harmon’s misconduct and to deter others from similar misconduct.

B. Harmon’s Failures to Respond to Information Requests

With regard to Rule 8210 violations, “[t]he Guidelines treat a failure to respond ... as egregious.”²⁴ This is because 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.”²⁵ The FINRA Sanction Guidelines also recommend a bar when a respondent makes a partial but incomplete response, unless the respondent demonstrates that the information provided “substantially complied with all aspects of the request.”²⁶ In this case, Harmon responded to the initial Rule 8210 request for information but failed to respond in any manner to two subsequent requests for information, and has made no showing that her initial response constituted substantial compliance with the requests taken as a whole.

As noted above, Enforcement recommends imposing an additional bar for Harmon’s Rule 8210 violations.²⁷ It argues the additional bar is justified because Harmon’s failure to respond to

²³ *Dep’t of Enforcement v. Foran*, No. C8A990017, 2000 NASD Discip. LEXIS 8, at *21 (N.A.C. Sept. 1, 2000), quoting *James A. Goetz*, Exch. Act Rel. No. 39796, 1998 SEC LEXIS 499, at *11 (N.A.C. Mar. 25, 1998).

²⁴ *Dep’t of Enforcement v. Masceri*, No. C8A040079, 2006 NASD Discip. LEXIS 29, at *41 (N.A.C. Dec. 18, 2006).

²⁵ *Id.* at *36.

²⁶ *Sanction Guidelines* at 33.

²⁷ Default Motion, p. 9.

the two follow-up requests for information impeded FINRA's investigation of her misappropriations, and there are no mitigating factors warranting a lesser sanction.

For these reasons, a bar is the appropriate sanction for Harmon's failures to respond to Enforcement staff's follow-up requests for documents and information.

IV. Conclusion

Respondent Carolyn Avia Harmon is barred from associating with any FINRA member firm in any capacity for violating NASD Conduct Rule 2110 and FINRA Conduct Rule 2010 by misappropriating customer funds, as charged in the first cause of the Complaint, and for violating FINRA Conduct Rule 2010 and Procedural Rule 8210 by failing to respond to two requests for documents and information issued to her pursuant to Rule 8210, as charged in the second cause of the Complaint.

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


Matthew Campbell
Hearing Officer

Copies to:

Carolyn Avia Harmon (*via overnight courier and first-class mail*)
Colleen Hanrahan, Esq. (*via e-mail and first-class mail*)
Carolyn Craig, Esq. (*via e-mail and first-class mail*)
David R. Sonnenberg, Esq. (*via e-mail*)

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

Department of Enforcement,

Complainant,

v.

Carolyn Avia Harmon
CRD No. 4126542,

Respondent.

DISCIPLINARY PROCEEDING
No. 20090210415

HEARING OFFICER -

COMPLAINT

The Department of Enforcement ("Enforcement") alleges:

SUMMARY

1. Between November 2006 and September 2009, Respondent Carolyn Avia Harmon ("Harmon"), an unregistered Branch Office Administrator with a Lenoir, North Carolina branch of Edward Jones (the "Firm"), misappropriated more than \$63,000 in funds intended for customer accounts. By virtue of this conduct, Harmon violated NASD Rule 2110 and FINRA Rule 2010.

2. Specifically, in or around November 2006, Harmon opened an account in her husband's name without his knowledge or authorization and, through November 2009, improperly deposited customer funds into this account. The majority of the improper deposits were subsequently moved into an account in Harmon's name. To effect these transfers, Harmon signed her husband's name to several letters of authorization without his knowledge or authorization.

3. During the course of FINRA's investigation into her alleged misappropriations, FINRA staff members requested information from Harmon on several occasions, pursuant to

FINRA Rule 8210. Harmon failed to respond to several of these requests for information, thereby violating FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

4. Respondent Harmon (CRD No. 4126542) entered the securities industry in January 2000 as an unregistered Branch Office Administrator at an Edward Jones branch office in Lenoir, North Carolina. Harmon remained associated with the Firm in this position until her employment was terminated in November 30, 2009. FINRA retains jurisdiction over Harmon pursuant to Article V, Section 4(a) of the By-Laws, as the conduct that serves as the basis for this action commenced prior to her termination and this action is filed within two years after the date upon which she ceased to be associated with a member firm.

FIRST CAUSE OF ACTION

Harmon Wrongfully Converted and Misappropriated Customer Funds (Violation of NASD Rule 2110 and FINRA Rule 2010)

5. Enforcement re-alleges and incorporates by reference paragraphs 1 through 4, above.

6. As a Branch Office Administrator at the Firm, Harmon was responsible for, among other things, administrative processing of account transfers and account openings and closings. In November 2006, Harmon opened account number [REDACTED] in the name of her husband, Clint D. Harmon, Jr., without his knowledge or authorization ("husband's account"). At approximately the same time in November 2006, Harmon opened account number [REDACTED] in her own name.

7. Between November 2006 and September 2009, Harmon deposited funds intended for certain customer accounts at the Firm into her husband's account.

8. She subsequently transferred the majority of the funds into her account. Harmon used these funds to pay her personal bills.

9. In addition, Harmon also improperly deposited two other customers' checks into Edward Jones account number [REDACTED]—an account held jointly by Harmon and her husband.

10. The Firm discovered the activity in November 2009 when checks intended to be deposited into three customers' accounts were never received into those accounts. The activity was discovered by the Firm's Field Supervision Department.

11. During the course of the Firm's investigation, the Firm tracked the deposits to Harmon's husband's account. On November 23, 2009, the Firm questioned Harmon regarding the nature of the deposits in question. Harmon stated that she did not know why the funds were deposited in her husband's account and attributed the misallocation to an administrative error. Harmon also claimed that her husband performed work for some of the entities in question and that the funds may have been payment for his services.

12. When questioned further, Harmon could not explain why: 1) the checks in question had the customer account numbers written on the checks prior to being deposited, but the Firm's internal deposit record reflected Harmon's husband's account as the recipient of the funds; or 2) the check numbers on the Firm's internal deposit records did not match the check numbers on the deposited checks.

13. The Firm had a second conversation with Harmon on November 30, 2009. During this conversation, Harmon verbally admitted to diverting the funds in question into her husband's account to assist a relative living in a group home.

14. In total, between November 2006 and September 2009, Harmon misappropriated more than \$63,000 from at least 21 customers of the Firm.

15. By virtue of the foregoing, Harmon violated NASD Rule 2110 and FINRA Rule 2010.

SECOND CAUSE OF ACTION

**Harmon Failed to Provide Information and Documents to FINRA
(Violation of FINRA Rules 8210 and 2010)**

16. Enforcement re-alleges and incorporates by reference paragraphs 1 through 15, above.

17. Pursuant to FINRA Rule 8210, Enforcement issued a request for information and documents to Harmon on January 27, 2010, by certified mail, return receipt requested, and first-class mail to [REDACTED] Harmon's residential address as reflected in the Central Registration Depository ("CRD Address"). The letter sent by certified mail was signed for by Harmon. The letter sent by first-class mail was not returned to FINRA. Enforcement received a brief, hand-written letter dated February 8, 2010, in which Harmon responded to the initial Rule 8210 request for information and documents.

18. On August 13, 2010, and September 2, 2010, Enforcement issued additional requests for information and documents to Harmon, pursuant to FINRA Rule 8210. These requests were sent by certified mail, return receipt requested, and first-class mail to Harmon's CRD Address. The August 13, 2010, and September 2, 2010, letters sent by certified mail were signed for by a "David Barlowe." Neither letter sent by first-class mail was returned to FINRA. Harmon failed to respond to either of these requests. In September 2010, Enforcement also received from the Firm an e-mail address for Harmon and attempted to contact her via this newly discovered e-mail address in order to solicit a response to the prior requests. Harmon did not respond to that e-mail.

19. By virtue of the foregoing, Harmon violated FINRA Rule 8210. By failing to respond to these regulatory requests, Harmon also failed to observe high standards of commercial honor and just and equitable principles of trade, thereby violating FINRA Rule 2010.

RELIEF REQUESTED

WHEREFORE, the Department of Enforcement respectfully requests:

- A. an order that one or more of the sanctions provided pursuant to FINRA Rule 8310, including a bar against Respondent from associating with any member firm in any capacity, be imposed; and
- B. an order that Respondent bear such costs of any proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date: July 11, 2011


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