

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

LAZARO E. SALADO
(CRD No. 2899323),

Respondent.

Disciplinary Proceeding
No. 2009021081301

Hearing Officer – MC

DEFAULT DECISION

June 7, 2011

Respondent is barred from associating with any FINRA member firm in any capacity for misappropriating customer funds, in violation of NASD Conduct Rule 2110 and FINRA Rule 2010, and for failing to respond to requests for information, in violation of FINRA Rules 8210 and 2010.

Appearances:

Jolina Cuaresma, Counsel, Washington, DC, for the Department of Enforcement.

No appearance by or on behalf of Respondent Lazaro E. Salado.

DECISION

The Department of Enforcement filed the attached two-cause Complaint on February 16, 2011. The First Cause of Action charges Respondent Lazaro E. Salado with misappropriating customer funds in violation of NASD Conduct Rule 2110 and FINRA

Conduct Rule 2010.¹ The Second Cause of Action charges Salado with failing to respond to requests for information issued by FINRA staff pursuant to FINRA Rule 8210, in violation of FINRA Rules 8210 and 2010.

Enforcement served the Complaint and Notices of Complaint upon Salado by certified mail at his residential address as it appears in FINRA's Central Registration Depository. Salado failed to respond to the Complaint. As a result, on April 5, 2011, Enforcement filed a Motion for Entry of Default Decision and Request for Sanctions ("Default Motion") supported by the Declaration of Jolina Cuaresma and seven exhibits, and the Supplementary Declaration of Jolina Cuaresma.²

I. Findings of Fact and Conclusions of Law

A. Jurisdiction

In December, 2000, Salado became associated with FINRA member firm First Union Securities in Miami, Florida. In 2003, First Union became Wachovia Securities, LLC, which, in turn, became Wells Fargo Advisors, LLC in 2008.³ Salado remained registered through Wells Fargo until June 30, 2009, when the firm terminated Salado's employment.⁴

Subsequently, FINRA issued three requests for information to Salado pursuant to Rule 8210. FINRA issued the first request on December 30, 2009, and the final request on February

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). Following consolidation, FINRA began developing a new FINRA Consolidated Rulebook. See Regulatory Notice 08-57 (Oct. 2008). The initial misappropriation of customer funds alleged in the First Cause of the Complaint occurred in 2006, in violation of NASD Conduct Rule 2110. Later misappropriations alleged in the First Cause of the Complaint occurred on December 31, 2008, and in 2009, after FINRA Rule 2010 had replaced NASD Rule 2110, to which it is identical. The misconduct alleged in the Second Cause of the Complaint occurred in December 2009 and January 2010 after the relevant FINRA rules had taken effect. The rules are available at www.finra.org/rules.

² Enforcement's exhibits will be referred to as "CX-__" with the appropriate exhibit and page numbers. The Declaration of Jolina Cuaresma will be referred to as "Decl." or "Cuaresma Declaration," and the Supplementary Declaration will be referred to as "Supp. Decl.," with citation to specific paragraphs.

³ Decl. ¶ 4; CX-1, p. 3; CX-2, p. 1.

⁴ Decl. ¶ 5; CX-3, p. 2.

9, 2010.⁵ As noted above, Enforcement filed the Complaint in this disciplinary proceeding on February 16, 2011. Because Enforcement filed the Complaint within two years of the last date of Salado's registration, and the Complaint alleges misconduct that occurred while Salado was registered with FINRA and other misconduct that occurred less than two years after he was last registered, FINRA retains jurisdiction over him for the purposes of this disciplinary proceeding.⁶

B. Default

On January 18, 2011, Enforcement served the Complaint and Notice of Complaint on Salado by first-class certified mail at two addresses: Salado's CRD address and a second address of which Enforcement was aware.⁷ The Complaint and Notice of Complaint served at the CRD address were returned to Enforcement unclaimed.⁸ The signed receipt for the Complaint and Notice of Complaint served at the second address, however, was returned to Enforcement.⁹

When Salado failed to file an Answer or respond to the Complaint, on February 25, 2011, Enforcement served the Complaint and Second Notice of Complaint on Salado at both addresses, but they were unclaimed.¹⁰ Salado has not filed an Answer or otherwise responded to the Complaint.

By serving the Complaint, Notice of Complaint, and Second Notice of Complaint upon Salado by first-class certified mail at his CRD address, Enforcement complied with the requirements of Rule 9134 and provided him with constructive notice that the Complaint had

⁵ Decl. ¶¶ 21, 23.

⁶ Article V, Section 4, FINRA By-Laws.

⁷ Decl. ¶¶ 7-8. As noted above, although the Complaint was served on Salado on January 18, 2011, Enforcement did not file it with the Office of Hearing Officers until February 16, 2011, because of what Enforcement describes as an "administrative error." Decl. ¶ 6, n.1. Pursuant to FINRA Rules 9134(a)(2) and (b)(3), service of the Complaint was effective upon mailing.

⁸ Decl. ¶ 7; CX-4.

⁹ Decl. ¶ 8; CX-5.

¹⁰ Decl. ¶¶ 9, 10; CX-6; CX-7.

been filed.¹¹ By failing to file an Answer or respond in any manner, Salado defaulted.

Accordingly, pursuant to Rules 9215(f) and 9269(a)(2), and for the reasons set forth below, the Default Motion is granted.¹²

C. Salado Misappropriated Customer Funds

From June 14, 2006, through May 8, 2009, Salado served as a financial advisor for Wachovia Bank ("Wachovia") customers.¹³ In that capacity, Salado misappropriated to his own use a total of \$186,114.28 of his customers' funds in three separate transactions over a three-year span, in violation of NASD Conduct Rule 2110 and FINRA Rule 2010:

- First, on June 14, 2006, Salado caused Wachovia to issue a check for \$35,000 drawn on the bank account of customer RH. The check appeared to be signed by RH, although RH had neither authorized the withdrawal nor signed the check. The check was made payable to a bank loan account created when Salado had taken out a loan years earlier. The check was applied to defray Salado's loan.¹⁴
- Next, on December 31, 2008, Salado caused Wachovia to issue a check for \$71,114.28 drawn on the bank account of customer CH. The check appeared to have been signed by CH, but CH had neither signed it nor authorized the withdrawal. This check, like RH's in 2006, was made payable to Salado's bank account and was applied to defray Salado's loan.¹⁵

¹¹ FINRA Procedural Rule 9134(a); *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)).

¹² The factual determinations in this Default Decision are based on the allegations of the attached Complaint, which are deemed admitted, as well as the Cuaresma Declaration and the exhibits filed by Enforcement.

¹³ Decl. ¶ 14.

¹⁴ Decl. ¶¶ 13-15. In 2002, Salado had obtained a loan from BankAtlantic as a result of which he maintained a loan account at the bank throughout the period relevant to this matter. Decl. ¶ 13. The checks were made payable to the loan account, e.g., "BANKATLANTIC ACCT #..." . Decl. ¶ 19.

¹⁵ Decl. ¶ 16.

- Finally, on May 8, 2009, Salado caused Wachovia to issue another check, this one for \$80,000, drawn on the bank account of customer DG. It appeared to have been signed by DG. DG, however, had neither authorized the withdrawal nor signed the check. As with the checks of CH and RH, this check was made payable to Salado's bank account and it, too, was applied to his loan balance.¹⁶

D. Salado Failed to Respond to Requests for Information

Wells Fargo filed an amendment to Salado's Form U5 on December 21, 2009, stating that the firm was investigating Salado because of customer allegations involving unauthorized transfers from their accounts.¹⁷ Shortly thereafter, on December 30, 2009, FINRA staff issued the first of three requests for information to Salado to provide information about the allegations. The request was sent to Salado's CRD address by both certified and first-class mail. Both mailings were returned to FINRA marked "Return to Sender, Attempted – Not Known, Unable to Forward."¹⁸

On January 25, 2010, FINRA staff renewed its request for information. This time the staff sent it to both Salado's CRD address and the second address, by certified and first-class mail. The two mailings sent to Salado's CRD address, and the certified mailing sent to the second address, were returned to the staff marked "Return to Sender, Attempted – Not Known, Unable to Forward." The request sent by first-class mail to the second address, however, was not returned.¹⁹

FINRA staff sent the third request for information about the misappropriations on February 9, 2010. Once again, the staff sent it to both Salado's CRD and second addresses, by

¹⁶ Decl. ¶ 17.

¹⁷ CX-3, p. 5.

¹⁸ Decl. ¶ 21.

¹⁹ Decl. ¶ 22.

certified and first-class mail. The mailings to Salado's CRD address were returned bearing the same markings as the second mailings to the CRD address. The certified mailing to the second address, however, was signed for by Salado on February 12, 2010. The first-class mailing was not returned.²⁰

Salado did not provide any information in response to the staff's requests, all of which were made pursuant to Rule 8210.²¹ His failure to do so violated FINRA Rules 2010 and 8210.

II. Sanctions

A. Salado's Misappropriations

For his misappropriations, Enforcement's Complaint charges Salado with violations of FINRA Rule 2010 and its identical predecessor, NASD Rule 2110. Such violations occur when a respondent (i) commits the misconduct in the course of his business, and (ii) the misconduct violates just and equitable principles of trade.²² The ethical requirements of the rule apply to conduct that reflects on the respondent's "ability both to comply with regulatory requirements fundamental to the securities business and to fulfill his fiduciary responsibilities in handling other people's money."²³ Here, Salado's misconduct occurred in the course of his employment as a registered person working in his capacity as an investment advisor. The acts of misappropriation directly reflect on his inability to comply with the requirements incumbent upon one whose profession involves handling the money of others.

Salado's misconduct is most serious; indeed, as has been noted before in a case similar in nature, a "clearer prima facie case of ... conversion is difficult to imagine."²⁴ By his actions, Salado simply misappropriated, or converted, substantial funds of customers to his own use

²⁰ Decl. ¶ 23.

²¹ Decl. ¶ 24.

²² *Dep't of Enforcement v. Shvarts*, No. CAF980029, 2000 NASD Discip. LEXIS 6, at *18 (N.A.C. June 2, 2000).

²³ *Id.* at *35 (quoting *James A. Goetz*, Exch. Act Rel. No. 39796, 1998 SEC LEXIS 499, at *11 (Mar. 25, 1998)).

²⁴ *Dep't of Enforcement v. Saad*, No. 2006003738501, 2010 FINRA Discip. LEXIS 1, at *17 (N.A.C. Feb. 24, 2010).

without authorization under circumstances demonstrating that he intended to deprive the customers permanently of their money.²⁵ For such misconduct, a bar is standard regardless of the amount of money misappropriated.²⁶

B. Salado's Failure to Respond to Information Requests

For failure to respond to a request for information issued pursuant to Procedural Rule 8210, the Sanction Guidelines recommend a bar. If there are mitigating factors, the Guidelines recommend consideration of a suspension in any or all capacities for up to two years.²⁷ In this case, there are no mitigating factors. Salado did not respond in any manner to requests for information properly issued by FINRA pursuant to Procedural Rule 8210.

Conduct Rule 2010 and Procedural Rule 8210 are "crucial components of [FINRA's] examinations and investigations. ... Procedural 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."²⁸ As for sanctions, "[t]he Guidelines treat a failure to respond ... as egregious."²⁹

For these reasons, Enforcement's recommendation of a bar from the securities industry is appropriate for Salado's failure to respond to FINRA's requests for information.

²⁵ When a registered representative deposits a customer's check into his own account without authorization and fails to repay the customer, it is conversion. *Dep't of Enforcement v. Kendzierski*, No. C9A980021, 1999 NASD Discip. LEXIS 40, at *7 (N.A.C. Nov. 12, 1999).

²⁶ *FINRA Sanction Guidelines*, p. 36 (2011). Because the firm repaid the customers from whose accounts Salado misappropriated their funds, Enforcement did not request an order of restitution in this case. Supplementary Decl. ¶¶ 4-5.

²⁷ *FINRA Sanction Guidelines* at 33 (2011).

²⁸ *Dep't of Enforcement v. Masceri*, No. C8A040079, 2006 NASD Discip. LEXIS 29, at *35-*36 (N.A.C. Dec. 18, 2006).

²⁹ *Id.* at *41.

III. Order

Respondent Lazaro E. Salado is barred from associating with any FINRA member firm in any capacity for misappropriating customer funds, in violation of NASD Conduct Rule 2110 and FINRA Conduct Rule 2010, and for failing to respond to requests for information issued pursuant to Rule 8210, in violation of FINRA Procedural Rule 8210 and Conduct Rule 2010.

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



Matthew Campbell
Hearing Officer

Copies to:

Lazaro E. Salado (*via overnight courier and first-class mail*)
Jolina Cuaresma, Esq. (*via electronic and first-class mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Lazaro E. Salado
CRD No. 2899323

Respondent.

DISCIPLINARY PROCEEDING
No. 2009021081301

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. From January 13, 2005 through May 8, 2009, Respondent Lazaro E. Salado, while registered with Wells Fargo Advisors, LLC ("Wells Fargo" or the "Firm"), misappropriated \$186,114.28 from three customers in violation of NASD Rule 2110 and FINRA Rule 2010. Salado also failed to comply with FINRA's requests for documents and information in violation of FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

2. Salado entered the securities industry in May 1997 when he became registered with a FINRA-regulated firm as a General Securities Representative. He registered through First Union Securities, Inc. on December 21, 2000. First Union Securities, Inc.

became Wachovia Securities, LLC in 2003 and then Wells Fargo in 2008. On July 7, 2009, Wells Fargo filed a Uniform Termination Notice for Securities Industry Registration form with FINRA on Salado's behalf, terminating his association as of June 30, 2009.

3. Although Salado is not currently associated with a FINRA-regulated firm, he remains within the jurisdiction of FINRA pursuant to Article V, Section 4 of the FINRA By-Laws, because (1) the Complaint was filed within two years after the date upon which he ceased to be associated with a FINRA member and (2) the Complaint charges him with misconduct that occurred while he was associated with a FINRA-regulated firm.

FIRST CAUSE OF ACTION

Misappropriation of Customer Funds Violation of NASD Rule 2110 and FINRA Rule 2010

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

Customer RH

5. Salado was RH's financial advisor during all relevant times herein.
6. On June 14, 2006, Salado caused Wachovia Bank ("Wachovia") to issue a check for \$35,000 from Customer RH's bank account. The check was made payable to a personal account of Salado's over which Customer RH had no possession or control.
7. The check was deposited into Salado's personal account and bore a signature purporting to be that of Customer RH.
8. Customer RH did not authorize the withdrawal and did not sign the check.

Customer CH

9. Salado was CH's financial advisor during all relevant times herein.
10. On December 31, 2008, Salado caused Wachovia to issue a check for \$71,114.28 from Customer CH's bank account. The check was made payable to a personal account of Salado's held at another banking institution over which Customer CH had no possession or control.
11. The check was deposited into Salado's personal account and bore a signature purporting to be that of Customer CH.
12. Customer CH did not authorize the withdrawal and did not sign the check.

Customer DG

13. Salado was DG's financial advisor during all relevant times herein.
14. On May 8, 2009, Salado caused Wachovia to issue a check for \$80,000 from Customer DG's bank account. The check was made payable to a personal account of Salado's held at another banking institution over which Customer DG had no possession or control.
15. The check was deposited into Salado's personal account and bore a signature purporting to be that of Customer DG.
16. Customer DG did not authorize the withdrawal and did not sign the check.
17. By misappropriating customer funds, Salado violated NASD Rule 2110 and FINRA Rule 2010.

SECOND CAUSE OF ACTION

**Failure to Respond to FINRA Requests
Violation of FINRA Rules 8210 and 2010**

18. The Department re-alleges and incorporates by reference paragraphs 1-17 above.
19. By letter dated December 30, 2009, FINRA staff requested, pursuant to FINRA Rule 8210, that Salado provide a written response to the allegations of the conduct described above. The letter was sent via certified mail, return receipt requested and first class regular mail to Salado's last known address as contained in the Central Registration Depository ("CRD address"). Both letters were returned on January 15, 2010, marked as "Return to Sender, Attempted - Not Known, Unable to Forward." As of the date hereof, Salado has failed to respond to the staff's December 30, 2009 letter.
20. FINRA staff located an additional potential address ("Lexis address") for Salado and on January 25, 2010, FINRA staff sent a second request to the CRD address and the Lexis address pursuant to FINRA Rule 8210, via certified, return receipt requested and first class mail. Both the certified copy and the first class copy of the letter sent to the CRD address were returned on January 30, 2010, marked as "Return to Sender, Attempted - Not Known, Unable to Forward." The certified copy of the letter sent to the Lexis address was returned on February 19, 2010, marked as "Return to Sender, Attempted - Not Known, Unable to Forward." The first class copy of the letter sent to the Lexis address was not returned. As of the date hereof, Salado has failed to respond to the staff's January 25, 2010 letter.
21. FINRA staff mailed a third request letter pursuant to FINRA Rule 8210 on February 9, 2010. The letter was sent via certified mail, return receipt requested and first class regular mail to Salado's CRD address and the Lexis address. The letters sent via certified mail and first class mail to the CRD address were returned on March 3,

2010, and February 18, 2010, respectively, marked as "Return to Sender, Attempted – Not Known, Unable to Forward." According to the postal authorities, Salado signed for the certified letter sent to the Lexis address on February 12, 2010, at 1:30 p.m. The first class copy of the letter sent to the Lexis address was not returned. As of the date hereof, Salado has failed to respond to the staff's February 9, 2010 letter.

22. By virtue of the foregoing, Salado violated FINRA Rules 8210 and 2010.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under FINRA Rule 8310, including a bar against the Respondent from associating with any member firm in any capacity, be imposed.
- B. 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: _____

1/18/11



Jolina C. Cuaresma
Counsel
FINRA Department of Enforcement
1801 K Street, N.W.
Suite 800
Washington, D.C. 20006-1500
Phone: (202) 974-2982
Fax: (202) 721-1351
e-mail: jolina.cuaresma@finra.org