

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

EVAN TABER
(CRD No. 1892751),

Respondent.

Disciplinary Proceeding
No. 2010021196801

Hearing Officer – MAD

DEFAULT DECISION

September 7, 2011

Respondent is barred from associating with any FINRA registered firm in any capacity for conversion of customer funds, in violation of NASD Conduct Rules 2330(a) and 2010.

Appearances

Laura Leigh Blackston, Senior Regional Counsel, New Orleans, LA, for the Department of Enforcement.

David J. Feingold, Esq., Feingold & Kam, LLC, Palm Beach Gardens, FL, for Respondent Evan Taber.

DECISION

I. Background

The FINRA Department of Enforcement (“Enforcement”) filed the attached Complaint with the Office of Hearing Officers on March 17, 2011. The Complaint alleges that Respondent Evan Taber (“Taber”), formerly a registered representative with Aura Financial Services, Inc.

("Aura"), converted customer funds in violation of NASD Conduct Rules 2330(a) and 2110.¹

Taber did not answer the Complaint. Instead, Taber's counsel filed a motion to stay the proceeding because of Taber's medical condition. Thereafter, Taber did not comply with the Hearing Officer's orders to provide current medical records regarding his asserted medical condition. Because Taber also failed to appear for a July 1, 2011 show cause hearing, which the Hearing Officer ordered as a result of Taber's failure to comply with her orders, the Hearing Officer held Taber in default.

On August 1, 2011, Enforcement filed a Motion for Entry of Default Decision and Request for Sanctions ("Default Motion"), together with the declaration of Laura Leigh Blackston, Esq. ("Decl.") and five exhibits.² For the reasons set forth below, the Hearing Officer granted Enforcement's Default Motion.

II. Taber's Default

On March 17, 2011, Enforcement served Taber with the Notice of Complaint and Complaint by first-class certified mail sent to his residential address recorded in the Central Registration Depository ("CRD").³ Enforcement also served a copy on Taber's counsel.⁴ Taber did not file an answer.

¹ On July 26, 2007, the Securities and Exchange Commission approved a proposed rule change that NASD filed seeking to amend its Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority, Inc. ("FINRA"), in connection with the consolidation of its member firm regulatory functions with NYSE Regulation, Inc. See Exchange Act Rel. No. 56148 (July 26, 2007), 72 Fed. Reg. 42,146 (Aug. 1, 2007). Following the consolidation, FINRA began developing a new "Consolidated Rulebook" of FINRA Rules. The first phase of the new consolidated rules became effective on December 15, 2008. See Exchange Act Rel. No. 58643 (Sept. 25, 2008), 73 Fed. Reg. 57,174 (Oct. 1, 2008). FINRA's disciplinary action was instituted after the consolidation of NASD and NYSE, but the conduct at issue took place before the consolidated rules took effect. Accordingly, the Hearing Officer applied the conduct rules in effect at the time of the alleged misconduct. In addition, references to FINRA include references to NASD.

² Enforcement's exhibits are labeled CX-1 through CX-5.

³ Decl. ¶ 20; CX-3, at 11.

⁴ Decl. ¶ 29; CX-3, at 5.

On April 15, 2011, Taber, through counsel, filed a motion to stay the proceeding because of Taber's medical condition. The Hearing Officer held a pre-hearing conference with the parties on May 2, 2011, to discuss Taber's condition. Taber's counsel participated in the conference. On May 3, 2011, the Hearing Officer issued an order requiring Taber to provide a report from his treating physician, addressing Taber's condition, treatment, and ability to participate in this disciplinary proceeding. While Taber provided medical records, the records were not current and did not address Taber's ability to participate in the proceeding. Accordingly, the Hearing Officer issued another order on June 1, 2011, directing Taber to provide the necessary medical documentation on or before June 20, 2011. Taber did not provide the required documentation.

On June 27, 2011, the Hearing Officer issued a show cause order requiring Taber to appear on July 1, 2011, to show cause why he should not be held in default for failing to comply with her previous orders, which directed him to supply current documentation of his medical condition. Taber failed to appear for the show cause hearing. Accordingly, on July 1, 2011, the Hearing Officer issued an Order holding Taber in default.

III. Origin of Investigation

FINRA's investigation of Taber began on December 21, 2009, following the receipt of a complaint from customer JC. Customer JC alleged that Taber converted \$30,000 that JC provided him to invest on his behalf. FINRA's investigation revealed that Taber deposited the funds into a checking account that he controlled and then used the funds to pay his personal and business expenses. As a result of the investigation, Enforcement filed the Complaint against Taber.

IV. Findings of Fact and Conclusions of Law

A. Respondent

Taber first entered the securities industry in May 1989.⁵ From March 1, 2005 through October 5, 2009, Taber was registered with FINRA as a General Securities Representative through his association with Aura.⁶ On October 7, 2009, Aura filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") on Taber's behalf, stating that Taber was terminated as of October 5, 2009.⁷

B. Jurisdiction

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 of the termination of his registration with FINRA, and (2) the Complaint charges him with misconduct that occurred while he was registered with a FINRA member firm.⁸

C. Conversion

The Complaint alleges that Taber converted customer JC's funds. Prior to November 21, 2008, Taber discussed with JC an investment in DOS Investments that would yield a 15% rate of return.⁹ JC gave Taber a check for \$30,000 payable to DOS Investments on November 21, 2008.¹⁰ On November 26, 2008, Taber deposited JC's check into a DOS Investments' checking

⁵ Decl. ¶ 6.

⁶ Decl. ¶ 6, CX-1, at 4.

⁷ Decl. ¶ 7; CX-2, at 2.

⁸ 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").

⁹ Decl. ¶ 10.

¹⁰ *Id.* ¶ 11.

account.¹¹ Customer JC repeatedly called Taber to determine the status of his investment.¹² Each time Taber reassured JC that his funds had been invested.¹³ Taber failed to inform JC that DOS Investments was actually the name of his personal bank account.¹⁴

At no time did Taber make any investment with JC's funds.¹⁵ Instead, Taber used JC's funds for numerous business and personal expenses.¹⁶ Taber ultimately refunded JC's funds, but not until FINRA began its investigation into JC's complaint.¹⁷

The Hearing Officer finds that the foregoing facts establish that Taber intentionally converted (or misappropriated)¹⁸ customer funds and thereby violated NASD Conduct Rules 2330(a) and 2110, as alleged in the Complaint.

V. Sanctions

The FINRA Sanction Guidelines ("Sanction Guidelines") for conversion state that a bar is "standard," regardless of the amount converted.¹⁹ The Hearing Officer finds that Taber's intentional conversion of customer JC's funds was egregious. The Hearing Officer finds no evidence of mitigating factors that would justify permitting Taber to remain in the securities industry. Accordingly, the Hearing Officer will bar Taber from associating with any member firm in any capacity for violating NASD Conduct Rules 2330(a) and 2110, as alleged in the Complaint.

¹¹ *Id.* ¶ 12.

¹² *Id.* ¶ 15.

¹³ *Id.*

¹⁴ *Id.* ¶ 10.

¹⁵ *Id.* ¶ 14.

¹⁶ *Id.* ¶ 16.

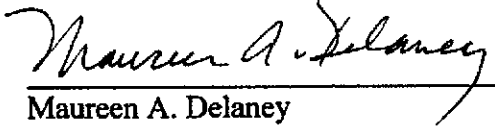
¹⁷ *Id.* ¶ 15.

¹⁸ An intentional taking of funds can be alleged as either a "misappropriation" or a "conversion." Conversion is the wrongful exercise of dominion over the personal property of another. *Department of Enforcement v. Paratore*, No. 2005002570601, 2008 FINRA Discip. LEXIS 1, at *10 (N.A.C. Mar. 7, 2008) (citations omitted).

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

VI. Order

Evan Taber is barred from associating with any member firm in any capacity for converting customer funds, in violation of NASD Conduct Rules 2330(a) and 2110, as alleged in the Complaint. The bar shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.


Maureen A. Delaney
Hearing Officer

Copies to:

Evan Taber (*via first-class mail and overnight courier*)
David J. Feingold, Esq. (*via first-class and electronic mail*)
Laura Leigh Blackston, Esq. (*via first-class and electronic mail*)
Mark P. Dauer, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

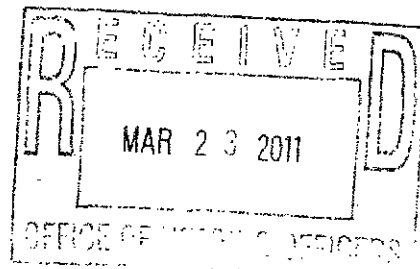
Complainant,

v.

Evan Taber, Respondent
General Securities Representative
[CRD No.1892751],

Respondent.

DISCIPLINARY PROCEEDING
No. 2010021196801



COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. On or about November 18, 2008, Evan Taber converted \$30,000 that Aura Financial Services, Inc. (Aura) customer JC had entrusted with him to invest on JC's behalf. Rather than invest the money as he stated he would, Taber deposited the funds into a checking account that he controlled, and used the funds in the account to pay personal and business expenses. Taber's conduct violated NASD Conduct Rules 2330 and 2110.

RESPONDENT AND JURISDICTION

2. Evan Taber entered the securities industry on May 23, 1989, as a General Securities Representative of F.D. Roberts Securities, Inc., a member of FINRA. From March 1, 2005 through October 5, 2009, Evan Taber was associated with Aura Financial Services,

Inc. and was registered with FINRA under Article V of the By-Laws as a General Securities Representative.

3. Although Taber has not been associated with a FINRA member firm since October 5, 2009, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's 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 committed while he was associated with a FINRA member.

CAUSE OF ACTION
NASD Rules 2110 and 2330(a)
Conversion of Customer Funds
Against Evan Taber.

4. The Department realleges and incorporates by reference paragraphs 1 through 3 above.
5. Prior to November 21, 2008, Taber initiated a discussion with JC regarding an investment that would return 15% annually. JC expressed interest, and Taber instructed JC to issue a check to a company called DOS Investments. Taber did not inform JC that DOS Investments was the name he had given to a personal bank account. Taber also did not inform JC that Taber would be using the funds for personal and home office expenses.
6. On or about November 21, 2008, JC gave Taber a check for \$30,000 made payable to DOS Investments. JC provided the check to Taber with the intention that the funds would be invested as Taber had represented.
7. On or about November 26, 2008, the same check was deposited into a checking account bearing the name of DOS Investments. The check was endorsed by Evan Taber.

8. Taber's Form U4 states that he has owned DOS Investments, Inc. since July 1, 2005, that it is "not investment related," and that it is a "dba only for personal holdings and accounting for personal income."
9. Taber did not make an investment of any kind with JC's funds of \$30,000.
10. JC repeatedly called Taber to determine the status of his investment. Taber reassured JC that the funds had been invested. Despite JC's repeated inquiries, Taber did not refund JC's money until after FINRA had begun its investigation into JC's complaint. Taber refunded the money to JC on July 14, 2010.
11. After depositing JC's check, Taber used the DOS Investment account for numerous business and personal expenses. Taber used JC's funds to cover expenses that included, but were not limited to, a \$127.99 check issued on December 24, 2008 to Pinch-a-Penny for fish tank cleaning services, two checks totaling \$404.55 issued on January 16, 2008 to Toys-R-Us, a \$550.00 check issued on January 16, 2009 to BMW Financial Services for payment of his wife's BMW car note, a \$58.83 check issued on January 27, 2009 to Victoria's Secret, and a \$503.46 check issued on January 27, 2009 to Ford Credit for payment of Taber's car note. In fact, for the months of December 2008 and January 2009 alone, Taber issued checks from the DOS Investments account for personal and home office expenses totaling \$128,761.93.
12. Rather than invest the \$30,000 as directed by JC, Taber converted JC's funds by intentionally depositing the funds into a personal bank account and using the account to pay personal expenses, in violation of NASD Rules 2110 and 2330(a).

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 monetary sanctions, 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: March 17, 2011



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