

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

FRANK J. SCARCELLO
(CRD No. 5675353),

Respondent.

Disciplinary Proceeding
No. 2010021368801

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

April 11, 2011

Respondent is barred from associating with any FINRA registered firm in any capacity for converting funds from bank customers' accounts, in violation of FINRA Conduct Rule 2010; and failing to respond to requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2010.

Appearances

Miranda Chatelain, Esq., and Linda Riefberg, Esq., for the Department of Enforcement.

No appearance by or on behalf of Frank J. Scarcello.

DECISION

I. Introduction

The FINRA Department of Enforcement ("Enforcement") filed the attached Complaint with the Office of Hearing Officers on September 30, 2010. The Complaint charges Respondent Frank J. Scarcello ("Scarcello") with: (1) converting funds from the accounts of two customers of JP Morgan Chase Bank ("JP Morgan"), in violation of FINRA Conduct Rule 2010; and (2) failing to respond to requests for information and documents and failure to appear and provide testimony, in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010.

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Scarcello defaulted by failing to answer or otherwise respond to the Complaint. Accordingly, on February 17, 2011, Enforcement filed a Motion for Entry of Default Decision and Request for Sanctions (“Default Motion”). The Default Motion is supported by the Declaration of Miranda Chatelain, Esq., and 36 attached exhibits.¹ For the reasons set forth below, Enforcement’s Default Motion is granted.

II. Procedural History

On September 30, 2010, Enforcement served the Complaint and the First Notice of Complaint on Scarcello by mailing them to his most recent residential address recorded in the Central Registration Depository (“CRD”). Enforcement mailed the Complaint and First Notice of Complaint by first-class and certified mail, return receipt requested.² The United States Postal Service returned the certified mailing to Enforcement with a sticker notifying Enforcement of Scarcello’s forwarding address. The United States Postal Service did not return the first-class mailing.³ Scarcello did not answer or otherwise respond to the First Notice of Complaint.

On November 9, 2010, Enforcement served a Second Notice of Complaint on Scarcello by mailing it to his CRD address by first-class and certified mail, return receipt requested.⁴ At the time Enforcement served the Second Notice of Complaint, the person responsible for service was not aware of Scarcello’s forwarding address.⁵ The United States Postal Service returned the certified mailing to Enforcement with the notation, “Unclaimed.” Scarcello did not answer or otherwise respond to the Complaint.⁶

¹ Enforcement’s exhibits are labeled CX-1 through CX-36.

² Chatelain Decl. ¶ 30.

³ *Id.* ¶ 31.

⁴ *Id.* ¶ 34.

⁵ *Id.*

⁶ *Id.* ¶ 35.

After Enforcement learned of Scarcello's forwarding address, Enforcement recommenced service of the Complaint at both his CRD address and the forwarding address. On December 14, 2010, Enforcement served the Complaint and the First Notice of Complaint on Scarcello by mailing them to both addresses. Enforcement sent the Complaint and First Notice of Complaint by first-class and certified mail, return receipt requested.⁷ The United States Postal Service returned both certified mailings to Enforcement with notations that they were not deliverable as addressed.⁸ The first-class mailing sent to the CRD address was not returned. The first-class mailing sent to the forwarding address was returned.⁹ Scarcello did not answer or otherwise respond to the Complaint.

On January 14, 2011, Enforcement served the Complaint and Second Notice of Complaint on Scarcello by mailing them to his CRD address and the forwarding address. Once again, the United States Postal Service returned both certified mailings to Enforcement with notations that the mailings were not deliverable as addressed.¹⁰ The United States Postal Service returned the first-class mailing sent to the forwarding address with the notation that Scarcello had moved without leaving a forwarding address.¹¹ The first-class mail sent to the CRD address was not returned.¹² To date, Scarcello has not answered or otherwise responded to the Complaint.

Based on Scarcello's default, the Hearing Officer deemed the allegations in the attached Complaint admitted pursuant to Rules 9215(f) and 9269(a).

⁷ Chatelain Decl. ¶ 41.

⁸ *Id.* ¶¶ 42-43.

⁹ *Id.* ¶ 44.

¹⁰ *Id.* ¶¶ 48-49.

¹¹ *Id.* ¶ 50.

¹² *Id.* ¶ 48.

III. Findings of Fact and Conclusions of Law

A. Background

Scarcello was a personal banker with JP Morgan. In connection with his employment as a personal banker, he was registered with FINRA as Investment Company and Variable Contracts Products Representative from June 26, 2009, until January 13, 2010, through Chase Investment Services Corp. (“Chase Investment”), a FINRA registered firm and an affiliate of JP Morgan.¹³

On January 13, 2010, Chase Investment filed a Uniform Termination Notice for Securities Industry Registration (Form U5) on Scarcello’s behalf, which disclosed that he had been discharged by JP Morgan for making unauthorized withdrawals from a customer’s bank account and then transferring funds belonging to a second bank customer to cover up his wrongdoing.¹⁴ FINRA staff commenced the investigation that led to this proceeding after it received the Form U5.

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 after FINRA terminated Scarcello’s registration, and (2) the Complaint charges him with misconduct that occurred while he was associated with a FINRA member firm, and with failing to respond to Enforcement’s requests for information made during the two-year period following the termination of his FINRA registration.¹⁵

¹³ CX-1, at 3; CX-2, at 2; CX-3, at 1; Chatelain Decl. ¶ 4.

¹⁴ CX-2.

¹⁵ 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”).

C. Conversion of Funds

The First Cause of Action alleges that Scarcello effected an online wire transfer of \$8,024.54 from DM's bank account at JP Morgan to Luxor Motors on October 5, 2009, to purchase a motorcycle.¹⁶ Customer DM had not authorized the wire transfer.

On October 30, 2009, Scarcello obtained an Automated Teller Machine ("ATM") card that gave Scarcello access to Customer DM's bank account at JP Morgan. Scarcello used the ATM card to withdraw more than \$12,000 from Customer DM's account, without his authorization or knowledge. Scarcello used the funds for his personal benefit.¹⁷

When Customer DM discovered the unauthorized withdrawals, he confronted Scarcello. Scarcello then executed an unauthorized wire transfer of \$20,000 from Customer JF's line of credit at JP Morgan to Customer DM's bank account.¹⁸

On December 14, 2009, Scarcello provided a written statement to Chase Global Security and Investigation in which he admitted his wrongdoing.¹⁹

The Hearing Officer finds that the foregoing facts establish that Scarcello converted approximately \$32,000 from two JP Morgan customers, in violation of FINRA Conduct Rule 2010, which requires members and associated persons to observe high standards of commercial honor and just and equitable principles of trade. Rule 2010 is sufficiently broad to encompass any unethical business-related misconduct, regardless of whether it involves a security.²⁰

¹⁶ Compl. ¶ 6.

¹⁷ *Id.* ¶ 8.

¹⁸ *Id.* ¶¶ 9-10.

¹⁹ CX-4.

²⁰ *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 (now Rule 2010)).

D. Failure to Provide Information and Documents

The Second Cause of Action alleges that Scarcello failed to respond to four requests for information FINRA staff sent to him pursuant to FINRA Rule 8210 in connection with FINRA's investigation of his conversion of funds from bank accounts at JP Morgan.

By letter dated January 21, 2010, FINRA staff notified Scarcello that FINRA had commenced an investigation into the reasons he was discharged by JP Morgan. FINRA staff requested that Scarcello provide a written statement addressing the allegations regarding his discharge disclosed in the Form U5 Chase Investment filed with FINRA. FINRA staff sent the request by first-class and certified mail to Scarcello at his CRD address. The United States Postal Service returned the delivery receipt signed by "Rochelle Scarcello." Scarcello did not respond to the first request for information.²¹

On February 25, 2010, FINRA staff sent Scarcello a second request that he provide a written statement concerning the allegations in the Form U5 and the circumstances surrounding his discharge from JP Morgan.²² FINRA staff sent the second request by first-class and certified mail to Scarcello at his CRD address. In response, Scarcello sent FINRA staff an undated, notarized statement. Scarcello indicated in his notarized statement that he had decided to surrender his securities and insurance licenses. Scarcello did not provide the information requested in the second request for information.²³

²¹ Compl. ¶ 14.

²² *Id.* ¶ 15; CX-13.

²³ Compl. ¶¶ 15-16; CX-15.

On June 2, 2010, FINRA staff sent Scarcello a third request to his CRD address by first-class and certified mail, which required Scarcello's appearance for an on-the-record interview on June 29, 2010.²⁴ Scarcello failed to appear.²⁵

On July 6, 2010, FINRA staff sent Scarcello a fourth request to his CRD address by first-class and certified mail. The fourth request required Scarcello's appearance for an on-the-record interview on July 13, 2010.²⁶ Scarcello failed to appear.²⁷

The Hearing Officer finds that the facts alleged in the Second Cause of Action establish that Scarcello violated FINRA Rules 8210 and 2010 by failing to respond to the staff's requests for information.

IV. Sanctions

A. Conversion of Funds

The FINRA Sanction Guidelines ("Sanction Guidelines") for conversion state that a bar is "standard," regardless of the amount converted.²⁸ The Hearing Officer finds that a bar is the appropriate sanction in this case.

B. Failure to Respond to Requests for Information

For failing to respond to FINRA Rule 8210 requests for information, the Sanction Guidelines provide that a bar should be "standard" when there is a complete failure to respond.²⁹ In addition, the Sanction Guidelines provide that a bar is standard where an individual has provided a partial but incomplete response unless the partial response "substantially complied

²⁴ Compl. ¶ 18.

²⁵ *Id.* ¶ 19.

²⁶ Compl. ¶ 20.

²⁷ *Id.* ¶ 21.

²⁸ FINRA Sanction Guidelines 36 (2011), www.finra.org/sanctionguidelines.

²⁹ Sanction Guidelines 33.

with all aspects of the request.”³⁰ The Hearing Officer finds that Scarcello’s notarized statement did not substantially comply with FINRA’s request for information. In addition, Scarcello completely failed to comply with the two Rule 8210 requests that he appear and provide testimony.

In assessing the appropriate sanctions, the Sanction Guidelines further direct adjudicators consider the importance of the information requested as viewed from FINRA’s perspective.³¹ In this case, FINRA staff was investigating serious misconduct, and there is no evidence of mitigating factors that would warrant a lesser sanction. Accordingly, the Hearing Officer finds that a bar from associating with any FINRA member firm in any capacity is the appropriate sanction for this violation.

V. Order

Scarcello is barred from associating with any member firm in any capacity for converting bank customers’ funds, in violation of FINRA Conduct Rule 2010; and for failing to respond to requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2010. The bars shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.³²



Andrew H. Perkins
Hearing Officer

³⁰ Sanction Guidelines 33.

³¹ *Id.*

³² The Hearing Officer did not order Scarcello to pay restitution to the bank customers because Enforcement did not request an order of restitution, and the record does not show whether JP Morgan restored the accounts when it discovered the unauthorized transfers.

Copies to:

Frank J. Scarcello (*via overnight courier and first-class mail*)

Miranda Chatelain, Esq. (*via electronic and first-class mail*)

Linda Riefberg, Esq. (*via electronic mail*)

David R. Sonnenberg, Esq. (*via electronic mail*)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v:

Frank J. Scarcello (CRD No. 5675353),

Respondent.

DISCIPLINARY PROCEEDING
No. 2010021368801

COMPLAINT

The Department of Enforcement ("Enforcement") alleges:

SUMMARY

1. From October to November 2009, Frank J. Scarcello ("Scarcello"), a Series 6 licensed banker registered with Chase Investment Services Corp. (the "Firm"), effected a wire transaction and several ATM withdrawals from the account of DM, a customer of JP Morgan Chase Bank (the "Bank"), a non-FINRA regulated entity. DM confronted Scarcello, who attempted to reimburse DM by transferring funds from the credit line of JF, another Bank customer, into DM's account.
2. Additionally, Scarcello provided Enforcement with a non-responsive written statement that did not address the subject matter of Enforcement's request. Further, Scarcello failed to appear and testify at two On-the-Record ("OTR") interviews, in violation of FINRA Rules 8210 and 2010.

RESPONDENT(S) AND JURISDICTION

3. Scarcello entered the securities industry in June 2009 as a Series 6 licensed banker with the Firm, a FINRA regulated entity, while employed with the Bank, a non-broker-dealer Firm affiliate. Scarcello remained in that position until the Bank terminated his employment and the Firm terminated his securities registration on December 17, 2009.
4. Although Respondent has not been associated with a FINRA member firm since December 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 regulated entity and (2) the Complaint charges him with a misconduct committed while he was associated with a FINRA member.

FIRST CAUSE OF ACTION

Conversion of Bank Customer Funds— FINRA Rule 2010

5. Enforcement realleges and incorporates by reference paragraphs 1-4 above.
6. On or about October 5, 2009, Scarcello effected an online wire transfer for \$8,024 to Luxor Motors from DM's account at the Bank. Scarcello used DM's funds to purchase a motorcycle for his own personal use and benefit.
7. On October 30, 2009, Scarcello obtained an ATM card linked to DM's Bank account.
8. Scarcello used the ATM card to make numerous ATM withdrawals of funds from DM's Bank account. Using the ATM card, Scarcello withdrew over \$12,000 from DM's account. Scarcello's used DM's funds for his own personal benefit.

9. When DM discovered that funds were missing from his Bank account, he confronted Scarcello.
10. Thereafter, Scarcello executed an unauthorized telephone wire funds transfer from the line of credit of the Bank account of JF to DM's account in the amount of \$20,000.
11. As a result of the foregoing conduct, Scarcello converted funds of Bank customers DM and JF and used the funds for his personal benefit, in violation of FINRA Rule 2010.

SECOND CAUSE OF ACTION

Failure to Respond to FINRA Requests— FINRA Rule 8210

A. SCARCELLO'S FAILURE TO FULLY AND COMPLETELY RESPOND TO REQUESTS FOR INFORMATION

12. Enforcement realleges and incorporates by reference paragraphs 1-11 above.
13. By letter dated January 21, 2010, Enforcement notified Scarcello of its investigation and, pursuant to FINRA Rule 8210, requested that he submit a written statement responding to the allegations.
14. The January 21, 2010 letter was sent via certified mail, return receipt requested and first class mail to Scarcello's address as reflected in FINRA's Central Registration Depository ("CRD"). The certified mail receipt that was returned to FINRA was purportedly signed by "Rochelle Scarcello." The first class copy was not returned to FINRA by the U.S. postal authorities. FINRA did not receive a written statement from Scarcello in response to the January 21, 2010 Rule 8210 request.
15. By letter dated February 25, 2010, sent to Scarcello's CRD address via certified mail, return receipt requested and first class mail, FINRA requested a detailed written statement responding to the aforementioned allegations. The certified letter was

returned to FINRA marked "Return to Sender, Unclaimed, Unable to Forward." The first class copy was not returned to FINRA by the U.S. postal authorities.

16. In response to the February 25, 2010 Rule 8210 request, Scarcello, by an undated, notarized letter, submitted a written statement. In Scarcello's written response, he asserted that he "decided to voluntarily surrender [his] licensing ... in both securities and insurance." Scarcello further claimed that "the real victims here are Chase Bank and myself." Scarcello's written statement was not responsive to FINRA's request.
17. Based upon the foregoing, Scarcello violated FINRA Rules 8210 and 2010.

B. SCARCELLO'S FAILURE TO COMPLY WITH REQUESTS FOR TESTIMONY

18. By letter dated June 2, 2010, FINRA requested that Scarcello appear and testify on June 29, 2010. The June 2, 2010 letter was sent to Scarcello's CRD address via certified mail, return receipt requested and first class mail. The certified mail copy of the June 2, 2010 FINRA Rule 8210 letter was returned to Enforcement marked "Return to Sender, Not Deliverable as Addressed, Unable to Forward." The June 2, 2010 letter sent via first class mail was not returned to Enforcement by the U.S. postal authorities.
19. On June 29, 2010, Scarcello failed to appear and testify before Enforcement pursuant to FINRA Rule 8210.
20. By letter dated July 6, 2010, sent to Scarcello's CRD address via certified mail, return receipt requested and first class mail, FINRA requested that Scarcello appear and testify before Enforcement on July 13, 2010.

21. On July 13, 2010, Scarcello failed to appear in order to provide Enforcement with testimony pursuant to FINRA Rule 8210. Based upon the foregoing, Scarcello violated FINRA Rules 8210 and 2010.

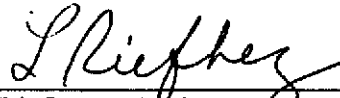
RELIEF REQUESTED

WHEREFORE, Enforcement respectfully requests that the Panel:

- A. Order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed, including a requirement that Respondent disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest.
- 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: 9-30-10



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