

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.

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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.

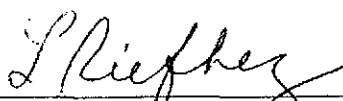
RELIEF REQUESTED

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


Linda Riefberg, Chief Counsel
FINRA Department of Enforcement

Myles L. Orosco, Enforcement Director
FINRA Department of Enforcement
14 Wall Street, 14th Floor
New York, New York 10005
Phone (646) 315- 7383 Fax (202) 689-3419
Myles.Orosco@finra.org

Miranda Chatelain, Senior Counsel
FINRA Department of Enforcement
14 Wall Street, 14th Floor
New York, New York 10005
Phone (646) 315- 7320 Fax (202) 689-3429
Miranda.Chatelain@finra.org