

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DONNA MARIE MILLER
(CRD No. 2822229),

Respondent.

Disciplinary Proceeding
No. 2010021623401

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

April 25, 2011

Respondent is barred from associating with any FINRA registered firm in any capacity for conversion of funds from her employer, in violation of NASD Conduct Rule 2110; and failing to respond to requests for information, in violation of Procedural Rule 8210 and FINRA Conduct Rule 2010.

Appearances

C. Anthony Trambly, Esq., for the Department of Enforcement.

No appearance by or on behalf of Donna Marie Miller.

DECISION

I. Introduction

The FINRA Department of Enforcement ("Enforcement") filed the attached Complaint with the Office of Hearing Officers on December 1, 2010. The Complaint charges Respondent Donna Marie Miller ("Respondent") with: (1) converting \$19,736.76 from her employer, Citigroup Global Markets, Inc. ("Citigroup"), in violation of NASD Conduct Rule 2110; and

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(2) failing to provide information and documents requested by FINRA staff, in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010.¹

Respondent did not answer the Complaint. Accordingly, on March 10, 2011, Enforcement filed a Motion for Entry of Default Decision (“Default Motion”), together with the declaration of C. Anthony Trambley, Esq. (“Trambley Decl.”) and 11 exhibits.² For the reasons set forth below, the Hearing Officer found Respondent in default and granted Enforcement’s Default Motion.

II. Procedural History

On December 1, 2010, Enforcement served the Complaint and the First Notice of Complaint on Respondent by mailing them to her most recent residential address recorded in the Central Registration Depository (“CRD”).³ Enforcement mailed the Complaint and First Notice of Complaint by first-class and certified mail, return receipt requested. Respondent signed the receipt for the certified mailing.⁴ Respondent did not answer or otherwise respond to the Complaint.

On January 3, 2011, Enforcement served the Complaint and Second Notice of Complaint on Respondent by mailing it to her CRD address by first-class and certified mail, return receipt requested.⁵ The United States Postal Service returned the certified mailing to Enforcement with a

¹ The FINRA Rules, which include NASD Procedural and Conduct Rules, are available at www.finra.org/Rules. On December 15, 2008, the first phase of new consolidated FINRA Rules went into effect. See, Regulatory Notice 08-57. In the rule consolidation, NASD Rule 2110 was renumbered to FINRA Rule 2010. The findings in this Default Decision refer to the rules that were in effect at the time of the violations.

² Enforcement’s exhibits are labeled CX-1 through CX-11.

³ Trambley Decl. ¶ 11.

⁴ *Id.* ¶ 13; CX-4.

⁵ Trambley Decl. ¶ 15.

notation that it had been “refused.”⁶ The United States Postal Service did not provide a forwarding address. To date, Respondent has not answered or otherwise responded to the Complaint.

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

III. Findings of Fact and Conclusions of Law

A. Background and Jurisdiction

Respondent began working with Citigroup as a Branch Manager’s Assistant in December 2000.⁷ While employed with Citigroup, Respondent was actively engaged in the securities business although she was not registered with FINRA. She served as a branch office cashier, receiving securities and checks from customers and recording them on the firm’s books and records.⁸ She was responsible for accounts payable and human resources functions in her branch office.⁹ In addition, Respondent acted as an unregistered sales assistant, supporting the registered representatives in the branch office.¹⁰ In her capacity as Branch Manager’s Assistant, she had authority to request that checks be issued from the branch general ledger account to pay branch expenses.¹¹ While employed by Citigroup, Respondent submitted a Uniform Application for Securities Industry Registration or Transfer (Form U4) on numerous occasions.¹²

⁶ Trambley Decl. ¶ 17; CX-6.

⁷ Trambley Decl. ¶ 6. Respondent was employed as a Branch Manager’s Assistant in the Torrance, California, branch office of Smith Barney, which at the time was a division of Citigroup. CX-8, ¶¶2-3.

⁸ Trambley Decl. ¶ 7.

⁹ *Id.*

¹⁰ *Id.*

¹¹ CX-8, ¶3.

¹² CX-1, at 11.

On February 18, 2009, Citigroup filed a Form 351(a) with FINRA, reporting that her employment had been terminated for embezzling funds from the firm.¹³

FINRA has jurisdiction over this disciplinary proceeding. Respondent was a “person associated with a member”¹⁴ while she was employed by Citigroup, and Enforcement filed the Complaint in this proceeding within two years following Citigroup’s termination of her association with the firm.¹⁵ In addition, Enforcement issued the Rule 8210 requests for information, which are the subject of the second cause of action, within two years after her association with Citigroup ended.¹⁶

B. Conversion of Funds

Between September 2007 and December 2008, Respondent had 38 checks issued from Citigroup’s branch office payable to her boyfriend for construction work that he never performed.¹⁷ Each check was written for \$500 or less, which meant that she could authorize the payments without the approval of another Citigroup manager.¹⁸ One check was canceled. Her

¹³ CX-2.

¹⁴ Article I(dd)(1) of NASD’s By-Laws (now Article I(rr) of FINRA’s By-Laws) defines “person associated with a member” to include “a natural person who is registered or has applied for registration,” and a “branch manager of a member, or other natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered.” This definition means that “any person who signs and submits a Form U4 is an associated person.” *Department of Enforcement v. Berger*, No. C9B040069, 2006 NASD Discip. LEXIS 19, at *10-11 (N.A.C. July 28, 2006) (quoting NASD Notice to Members 99-95)). In addition, Respondent exercised functions that fell within the foregoing definition. *Stephen M. Carter*, Exchange Act Rel. No. 26264, 1988 SEC LEXIS 2204 (Nov. 8, 1988) (finding that respondent’s duties as a cashier, such as receiving and recording checks and securities, preparing checks and deposit slips for signature, and furnishing account balances and other information to customers were “part of the conduct of a securities business”).

¹⁵ See Article V, Sec. 4(a)(iii), FINRA By-Laws, available at www.finra.org/Rules (then follow “FINRA Manual” hyperlink to “Corporate Organization: By-Laws”). Article V, Sec. 4(a)(iii) provides for retained jurisdiction over a former associated person for two years following a firm’s termination of that person’s association.

¹⁶ Article V, Sec. 4(a), FINRA By-Laws.

¹⁷ Trambley Decl. ¶ 21.

¹⁸ *Id.* at ¶ 22; CX-8, ¶ 4.

boyfriend cashed the remaining 37 checks in the total value of \$18,225, and gave the money to Respondent.¹⁹

In May 2008, Respondent had another check in the amount of \$475.96 drawn on Citigroup's account and made payable to her.²⁰ And, in December 2008, Respondent requested duplicate paychecks totaling \$1,035.80, to replace checks she reported she had not received. Citigroup issued the requested replacement checks with the understanding that Respondent would return her original paychecks if she later received them.²¹ However, when Respondent did receive her original paychecks, she deposited them to her account without reimbursing Citigroup.²²

On or about February 17, 2009, an in-house attorney with Citigroup questioned Respondent about the checks she had issued to her boyfriend. During the interview, Respondent admitted that she had created fraudulent invoices to support the issuance of the checks to her boyfriend because she needed the money.²³ As a result of the interview, Citigroup referred the matter to law enforcement. Respondent was later charged and convicted of Theft by Embezzlement and sentenced to five years probation.²⁴ She also was ordered to pay restitution in the amount of \$19,761.76.²⁵

The Hearing Officer finds that Respondent converted \$19,761.76 from Citigroup in violation of NASD Conduct Rule 2110, which requires members and associated persons to observe high standards of commercial honor and just and equitable principles of trade in the

¹⁹ CX-8, ¶ 6.

²⁰ Trambley Decl. ¶ 23.

²¹ *Id.* ¶ 24.

²² *Id.*

²³ CX-7, ¶ 4.

²⁴ *Id.* ¶ 8.

²⁵ CX-8, Ex. F.

conduct of their business. Rule 2110 is sufficiently broad to encompass any unethical business-related misconduct, regardless of whether it involves a security.”²⁶

C. Failure to Provide Information and Documents

The Second Cause of Action alleges that Respondent failed to respond to requests for information and documents FINRA staff sent to her pursuant to FINRA Rule 8210. The staff sent three requests to Respondent at her CRD address by certified mail. The requests were dated February 11, March 3, and April 30, 2010.²⁷ Respondent did not respond to any of the requests.

The facts alleged in the Second Cause of Action establish that Respondent violated FINRA Rules 8210 and 2010 by failing to respond to the staff’s requests for information.

IV. Sanctions

The FINRA Sanction Guidelines state that a bar is the standard sanction for conversion and for a complete failure to respond to a Rule 8210 request for information.²⁸ The Hearing Officer finds that a bar is the appropriate sanction in this case. There are no mitigating factors that would warrant consideration of lesser sanctions. Accordingly, the Hearing Officer will bar Respondent from associating with any FINRA member firm in all capacities.

V. Order

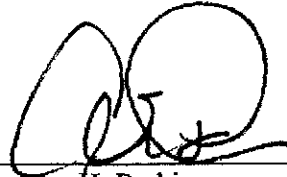
Donna Marie Miller is barred from associating with any member firm in any capacity for converting funds, in violation of Conduct Rule 2110, as alleged in the First Cause of Action; and for failing to respond to requests for information, in violation of Procedural Rule 8210 and

²⁶ *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).

²⁷ CX-9; CX-10; CX-11.

²⁸ FINRA Sanction Guidelines 33, 36 (2011), www.finra.org/sanctionguidelines.

Conduct Rule 2010, as alleged in the Second Cause of Action. The bars shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.

A handwritten signature in black ink, appearing to read 'A. Perkins', is written over a horizontal line.

Andrew H. Perkins
Hearing Officer

Copies to:

Donna Marie Miller (*via overnight courier and first-class mail*)
C. Anthony Trambley, Esq. (*via electronic and first-class mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

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Department of Enforcement,

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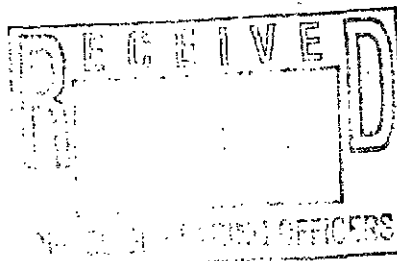
Donna Marie Miller (CRD No. 2822229),

Respondent.

DISCIPLINARY PROCEEDING
No.

COMPLAINT

The Department of Enforcement alleges:



RESPONDENT AND JURISDICTION

1. From December 2000 to February 2009, Respondent Donna Marie Miller ("Respondent") was associated with Citigroup Global Markets, Inc. ("Citigroup" or the "Firm"). During this time, Respondent was employed by the Firm as the Branch Administrator at its Branch Office in Torrance, California. In this role, Respondent worked as the branch office cashier, receiving securities and checks from customers, recording them on the firm's ledgers and preparing deposit slips, among other cashiering duties. She also acted as an unregistered sales assistant in support of branch Financial Advisors on an as needed basis. Respondent was also responsible for accounts payable and human resources functions at the branch.

2. Respondent was terminated by Citigroup on February 18, 2009 and, on information and belief is no longer working in the securities industry. Following Respondent's termination, she was referred to criminal authorities, charged and convicted of felony Grand Theft and Embezzlement and sentenced to probation for five years.
3. Although Respondent has not been associated with a FINRA member firm since February 18, 2009, she 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 she ceased to be associated with a FINRA member, and (2) the Complaint charges her with misconduct committed while she was associated with a FINRA member and with failing to respond to FINRA requests for information during the two-year period after the date upon which she ceased to be associated with a FINRA member.

FIRST CAUSE OF ACTION
Misappropriation
NASD Rule 2110 and FINRA Rule 2010

4. The Department realleges and incorporates by reference paragraphs 1-2 above.
5. From September 2007 to December 2008, Respondent misappropriated \$19,736.76 from Citigroup. In her capacity as Assistant to the Branch Manager, Respondent had authority to request that checks be issued from the branch office general ledger account to pay for branch expenses.
6. Respondent caused thirty-eight (38) checks to be issued off the branch office general ledger to her boyfriend, MM, for construction work at the branch that was never performed. One of these checks was cancelled.

7. The thirty-seven paid checks totaled \$18,225. Each check was created in an amount equal to or less than \$500 so that only one member of branch management was required to authorize issuance of the check.
8. In May 2008, Respondent caused another check in the amount of \$475.96 to be issued to her from the branch office general ledger.
9. Additionally, in December 2008, Respondent reported to branch management that she did not receive her paycheck. Respondent obtained replacement checks from the branch totaling \$1,035.80, with the understanding that she would return her paycheck to the branch if she received it. When Respondent received her paycheck, she deposited it into her personal account at the Firm without notifying branch management and without returning the replacement funds.
10. By reason of the foregoing, Respondent's conduct constitutes violations of NASD Rule 2110 and FINRA Rule 2010.

SECOND CAUSE OF ACTION
Failure to Cooperate
FINRA Rule 8210 and FINRA Rule 2010

11. The Department realleges and incorporates by reference paragraphs 1-9 above.
12. In connection with its ongoing investigation of Respondent, FINRA sought, pursuant to FINRA Rule 8210, certain documents and information.
13. By letters dated February 11, 2010, March 3, 2010 and April 30, 2010, FINRA requested, pursuant to FINRA Rule 8210, that Respondent produce certain documents and information concerning allegations that she misappropriated funds from Citigroup. These letters were sent *via* certified mail to Respondent's reported

residential address at [REDACTED]

Respondent's telephone number at her reported residential address has been disconnected since at least May 2010, when FINRA staff first attempted to contact her by telephone.

14. Respondent did not respond to FINRA's requests under FINRA Rule 8210, failed to produce requested documents and information, failed to provide an itemized privilege log of withheld documents and failed to provide any explanation for her failure to respond or produce requested documents and information.
15. By reason of the foregoing, Respondent's conduct constitutes violations of 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(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:

Nov. 29, 2010



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