

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

BRYAN LEE ADDINGTON
(CRD No. 2641975),

Respondent.

Disciplinary Proceeding
No. 2010021774001

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

July 20, 2011

Respondent is barred from associating with any FINRA registered firm in any capacity for misuse of customer funds, in violation of NASD Conduct Rule 2330(a) and FINRA Conduct Rules 2150(a) and 2010; and failing to respond to requests for information, in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010.

Appearances

Rebecca L. Burnaugh, Regional Counsel, and Andrew A. Favret, Regional Chief Counsel, for the Department of Enforcement.

No appearance by or on behalf of Bryan Lee Addington.

DECISION

I. Introduction

The FINRA Department of Enforcement ("Enforcement") filed the attached Complaint with the Office of Hearing Officers on March 23, 2011. The Complaint charges Respondent Bryan Lee Addington ("Respondent"), formerly a registered representative with First Midwest Securities, Inc. ("First Midwest"), with: (1) misuse of customer funds, in violation of NASD Conduct Rule 2330(a) and FINRA Conduct Rules 2150(a) and 2010; and (2) failing to respond

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to information requests issued by FINRA staff, in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010.¹

Respondent did not answer the Complaint. Accordingly, on June 8, 2011, Enforcement filed a Motion for Entry of Default Decision and Request for Sanctions ("Default Motion"), together with the declaration of Rebecca L. Burnaugh, Esq. ("Decl.") and five exhibits.² For the reasons set forth below, the Hearing Officer found Respondent in default and granted Enforcement's Default Motion.

II. Background and Procedural History

According to Respondent's record in the Central Registration Depository ("CRD"), he began working in the securities industry in 1995.³ After working for several other broker-dealers, he was associated with First Midwest from February 2007 until February 2010. First Midwest terminated his employment on February 19, 2010, and filed a Uniform Termination Notice for Securities Industry Registration (Form U5).⁴ Respondent's registrations with FINRA terminated on February 19, 2010.

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* Securities Exchange Act Rel. No. 56148 (July 26, 2007), 91 SEC Docket 522. 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 some of 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 Enforcement did not submit copies of the relevant portions of Respondent's CRD record as required by the Order Setting Deadline for Filing Motion for Entry of Default Decision dated May 16, 2011. Accordingly, the Hearing Officer took official notice of the Respondent's employment and registration history recorded in CRD, which is available through BrokerCheck on FINRA's website. *See also* Compl. ¶ 2.

⁴ CX-1.

The Form U5 First Midwest filed on Respondent's behalf disclosed that he was discharged because he had a client make a check payable to "SAL Financial Services" instead of First Midwest's clearing firm for the purchase of securities. Respondent did not deposit the check into the client's account at First Midwest. The account was then sold out for non-payment of a stock purchase, and the check Respondent wrote from SAL Financial Services to repay the client dated February 11, 2010, was dishonored for insufficient funds.⁵

Following receipt of the Form U5, Enforcement commenced the investigation that led to the filing of the Complaint in this proceeding.⁶ On March 23, 2011, Enforcement served the Complaint and the First Notice of Complaint on Respondent by mailing them to his most recent residential address recorded in CRD, as well as three alternative addresses that Enforcement believed might be more current than the CRD address.⁷ Enforcement mailed the Complaint and First Notice of Complaint by first-class and certified mail, return receipt requested. Enforcement received signed receipts for each of the certified mailings. Three of the receipts were signed by Respondent, and one was signed, "Gigi Heine."⁸ Respondent did not answer or other respond to the Complaint by April 20, 2011, the deadline in the First Notice of Complaint.⁹

On April 25, 2011, Enforcement served a copy of the Complaint and the Second Notice of Complaint on Respondent by mailing them to Respondent's CRD address and the three alternate addresses.¹⁰ Enforcement sent the mailings by first-class and certified mail, return receipt requested. Enforcement received signed receipts for each of the certified mailings. Three

⁵ CX-1, at 2.

⁶ Decl. ¶¶ 6-7.

⁷ Decl. ¶ 14.

⁸ *Id.* ¶ 16.

⁹ *Id.* ¶ 17.

¹⁰ *Id.* ¶ 18.

of them appear to have been signed by Respondent.¹¹ The other receipt bears the signature of "Angela Hilton."¹² To date, Respondent has not answered or otherwise responded to the Complaint.

On June 8, 2011, Enforcement filed the Default Motion. Respondent did not file a response.

III. Findings of Fact and Conclusions of Law

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

A. 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 Respondent's last registration with FINRA terminated, 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.¹³

B. Misuse of Customer Funds

The First Cause of Action alleges that D.J.N. instructed Respondent to purchase 500 shares of Exxon Mobil Corporation common stock in his account at First Midwest. On September 3, 2009, Respondent placed an order to purchase the stock and instructed D.J.N. to write a check in the amount of \$34,019 made payable to "SAL Financial Services" to pay for the

¹¹ Decl. ¶ 20.

¹² *Id.*

¹³ 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").

purchase.¹⁴ Respondent however did not credit the payment to D.J.N.'s account. As a result, on September 25, 2009, First Midwest liquidated the 500 shares of Exxon common stock in D.J.N.'s account for non-payment.¹⁵

D.J.N. did not learn of the liquidating transaction promptly. In January 2010, D.J.N. instructed Respondent to sell the 500 shares of Exxon common stock that D.J.N. believed was still in his account.¹⁶ Thereafter, he received a check dated February 1, 2010, in the amount of \$35,500.98 from Respondent. The check was drawn on the account of "SAL Financial Services," signed by Respondent.¹⁷ When D.J.N. deposited the check in his account, it was dishonored for insufficient funds.¹⁸

On February 11, 2010, D.J.N. called Respondent and demanded that he repay him. Respondent then paid D.J.N. \$35,000 in cash.¹⁹

The Hearing Officer finds that the facts alleged in the First Cause of Action establish that Respondent violated NASD Conduct Rule 2330(a) (from September 2009 through December 13, 2009), and FINRA Conduct Rule 2150(a) (from December 14, 2009, through February 11, 2010).²⁰ Respondent also thereby violated FINRA Conduct Rule 2010, which requires members and associated persons to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business.

¹⁴ Compl. ¶¶ 6-7.

¹⁵ *Id.* ¶ 9.

¹⁶ *Id.* ¶ 10.

¹⁷ *Id.* ¶ 11.

¹⁸ *Id.* ¶ 12.

¹⁹ *Id.* ¶ 15.

²⁰ FINRA Conduct Rule 2150(a) replaced NASD Conduct Rule 2330(a) effective December 14, 2009. Rule 2150(a) prohibits member firms and associated persons from making improper use of a customer's securities or funds.

C. Failure to Respond to Written Requests for Information

The Second Cause of Action alleges that Respondent failed to respond to requests for information FINRA staff sent to him pursuant to FINRA Rule 8210 in connection with FINRA's investigation of the allegations in the Form U5 filed by First Midwest. The staff sent the first request to Respondent on July 27, 2010, by first-class and certified mail to Respondent's CRD address and three alternate addresses FINRA staff had obtained from conducting an online address search.²¹ Respondent did not respond to the request.²²

On August 18, 2010, FINRA staff sent a second request for information to Respondent. The request was sent by first-class and certified mail to the same four addresses. Respondent did not respond to the request.²³

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

A. Misuse of Customer Funds

The FINRA Sanction Guidelines ("Sanction Guidelines") for "Conversion or Improper Use of Funds or Securities" state that a bar is standard for conversion, regardless of the amount converted.²⁴ Respondent's misuse of funds in this case amounts to conversion, inasmuch as he used customer funds for his own purposes without authorization. Therefore, Respondent will be barred from associating with any FINRA member firm in any capacity for this violation.

²¹ Compl. ¶ 20.

²² *Id.* ¶ 21.

²³ *Id.* ¶ 23.

²⁴ FINRA Sanction Guidelines 36 (2011), available at www.finra.org/sanctionguidelines.

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.²⁵ In assessing sanctions for a failure to respond to a request for information, the Guidelines direct adjudicators to consider the importance of the information requested as viewed from FINRA’s perspective.²⁶

The Hearing Officer finds that a bar from associating with any FINRA member firm in all capacities is an appropriately remedial sanction given all of the facts and circumstances, including a lack of mitigating factors that would warrant a lesser sanction. The documents and information that the staff sought were important. The staff was investigating serious misconduct—Respondent’s conversion of customer funds. Accordingly, the Hearing Officer also will bar Respondent from associating with any FINRA member firm in all capacities for this violation.

V. Order

Respondent is barred from associating with any member firm in any capacity for misuse of customer funds, in violation of NASD Conduct Rule 2330(a) and FINRA Conduct Rules 2150(a) and 2010; and for failing to respond to requests for information, in violation of

²⁵ Sanction Guidelines 33.

²⁶ *Id.*

Procedural Rule 8210 and Conduct Rule 2010. 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 be 'A. Perkins', written over a horizontal line.

Andrew H. Perkins
Hearing Officer

Copies to:

Bryan Lee Addington (*via overnight courier and first-class mail*)
Rebecca L. Burnaugh, Esq. (*via electronic and first-class mail*)
Andrew A. Favret, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

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DEPARTMENT OF ENFORCEMENT,

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v.

BRYAN LEE ADDINGTON,
(CRD No. 2641975)

Respondent.

Disciplinary Proceeding
No. 2010021774001

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Bryan Lee Addington (Addington) misused customer funds from approximately September 4, 2009 until approximately February 11, 2010, in violation of NASD Conduct Rule 2330(a), FINRA Rules 2150(a), and 2010. Addington also failed to respond to FINRA's requests for information issued pursuant to FINRA Rule 8210, in violation of FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

2. Addington was first registered as an investment company and variable contracts products representative in September 1995. Addington was first registered as a general securities representative in November 1997. In February 2007, Addington was registered as an investment company and variable contracts products representative, and as a general securities representative by FINRA member firm First Midwest Securities, Inc. (First Midwest). On February 19, 2010, First Midwest filed a Uniform Termination Notice for

Securities Industry Registration (Form U5) on behalf of Addington, terminating his association with First Midwest as of February 19, 2010.

3. Addington is not currently associated with a FINRA member firm, but remains subject to FINRA's jurisdiction pursuant to Article V, Section 4 of FINRA's By-Laws until February 18, 2012, in that the violations of NASD and FINRA rules alleged in the Complaint occurred while Addington was registered with a FINRA member firm, and this Complaint was filed within two years of Addington's last association with a FINRA member firm.

FIRST CAUSE OF ACTION

NASD Rule 2330(a) and FINRA Rules 2150 (a) and 2010

(Misuse of Customer Funds)

4. The Department re-alleges and incorporates by reference paragraphs 1 through 3 above.
5. At all relevant times, D.J.N. was a customer of Addington who maintained a securities account at First Midwest.
6. On or about September 3, 2009, D.J.N. instructed Addington to purchase 500 shares of Exxon Mobil Corporation (Exxon) common stock in his account at First Midwest.
7. Addington instructed D.J.N. to pay for the 500 shares of Exxon common stock with a check in the amount of \$34,019 made payable to "SAL Financial Services." The check should have been made payable to First Midwest's clearing firm, Legent Clearing. D.J.N. provided the check to Addington, but Addington never deposited the funds into D.J.N.'s account.
8. On September 3, 2009, Addington placed an order to purchase 500 shares of Exxon common stock in D.N.J.'s account, for a total amount of \$34,019.

9. On or about September 25, 2009, First Midwest liquidated the 500 shares of Exxon common stock in D.J.N.'s account for non-payment. D.N.J. was not aware of this immediately, as D.J.N. was not reviewing his confirmations and statements regularly.
10. In January 2010, D.J.N. instructed Addington to sell the 500 shares of Exxon common stock D.J.N. believed was still in his account, and to send the proceeds to D.N.J.
11. Subsequently, D.J.N. received a check dated February 1, 2010 in the amount of \$35,500.98 from Addington. This check was issued from an account titled "SAL Financial Services," signed by Addington, and made payable to a business that is owned by D.J.N.
12. D.J.N. attempted to deposit the check in his account, but the check was returned by D.J.N.'s bank due to insufficient funds.
13. Accordingly, D.J.N. contacted Addington, and Addington stated that he had forgotten to change his account from "call to cover" and advised D.J.N. to redeposit the check.
14. D.J.N. attempted to re-deposit the check in his account, and was advised by his bank that the check would not clear.
15. On February 11, 2010, D.J.N. called Addington and demanded his money be returned to him that day. Addington gave customer D.J.N. \$35,000 in cash that day.
16. Addington failed to purchase 500 shares of Exxon common stock as requested by D.J.N., or to otherwise deposit the funds into D.J.N.'s brokerage account, instead misappropriating the customer's funds, and retaining the funds from approximately September 4, 2009 to February 11, 2010.
17. Such acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rule 2330(a) (from approximately September 4, 2009 to December 13, 2009),

FINRA Rule 2150(a) (from approximately December 14, 2009 to February 11, 2010) and FINRA Rule 2010 by Respondent Addington.

SECOND CAUSE OF ACTION

FINRA Rules 8210 and 2010

(Failure to Respond to Information Requests)

18. The Department re-alleges and incorporates by reference paragraphs 1 through 17 above.
19. On February 19, 2010, First Midwest filed a Form U5 on behalf of Addington, which indicated that Addington had been terminated because he had a customer pay for the purchase of stock with a check made payable to someone other than the clearing firm, the check was not deposited into the customer's account, and the stock at issue was liquidated for non-payment. FINRA initiated an investigation into the allegations on the Form U5 filed by First Midwest.
20. On July 27, 2010, FINRA requested, pursuant to FINRA Rule 8210, that Addington submit a detailed written response regarding the allegation on his Form U5 filed by First Midwest. The letter was sent to Addington via first class and certified mail at his residential CRD address and to three alternate addresses obtained through a LexisNexis address search. The July 27, 2010 letter set a deadline of August 10, 2010 for Addington to respond.
21. The July 27, 2010 letters sent by first class mail to Addington's residential CRD address and to the three alternate addresses were not returned. The July 27, 2010 letter sent to Addington's residential CRD address by certified mail was returned marked "unclaimed." The receipt for the July 27, 2010 letter sent by certified mail to one of the alternate addresses was returned, and appears to be signed by "Gigi Henie." The July 27,

2010 letters sent to the other two alternate addresses were returned marked "unclaimed."

Addington failed to respond by the August 10, 2010 deadline.

22. On August 18, 2010, FINRA sent a second request, pursuant to FINRA Rule 8210, that Addington submit a detailed written response regarding the allegations contained in the Form U5. The letter was sent via first class and certified mail to Addington's residential CRD address and to the three alternate addresses. The August 18, 2010 letter set a deadline of September 1, 2010 for Addington to respond.
23. The August 18, 2010 letters sent by first class mail to Addington's residential CRD address and to the three alternate addresses were not returned. The August 18, 2010 letter sent by certified mail to Addington's residential CRD address was returned marked "unclaimed." The receipt for the August 18, 2010 letter sent by certified mail to one of the alternate addresses was returned, and appears to be signed by Addington. The August 18, 2010 letters sent by certified mail to the other two alternate addresses were returned marked "unclaimed." Addington failed to respond by the September 1, 2010 deadline.
24. To date, Addington has not responded to FINRA's requests dated July 27, 2010 and August 18, 2010.
25. Such acts, practices and conduct constitute separate and distinct violations of FINRA Rules 8210 and 2010 by Respondent Addington.

RELIEF REQUESTED

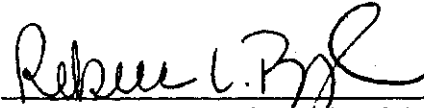
WHEREFORE, the Department respectfully requests that the Panel:

- 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 the proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date: March 23, 2011



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