

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JOSEPH JAMES SCIARRA, JR.
(CRD No. 1576322),

Respondent.

Disciplinary Proceeding
No. 2010022840501

Hearing Officer – MAD

DEFAULT DECISION

October 17, 2011

Respondent 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, and FINRA Conduct Rule 2010, and failing to respond to requests for information, in violation of FINRA Procedural Rule 8210 and Conduct Rule 2010. Respondent is also ordered to pay restitution to the customer.

Appearances

William Brice La Hue, Senior Regional Counsel, Atlanta, GA, for the Department of Enforcement.

No appearance by or on behalf of Joseph James Sciarra, Jr.

DECISION

I. Introduction

The FINRA Department of Enforcement ("Enforcement") filed the attached Complaint with the Office of Hearing Officers on June 15, 2011. The Complaint alleges that Respondent Joseph James Sciarra, Jr. ("Sciarra"), while employed with Delta Equity Services Corporation ("Delta"), converted a customer's funds by not applying the funds for the purpose intended by the customer, in violation of NASD Conduct Rules 2330(a) and 2110 and FINRA Conduct Rule

000057292 2011

2010.¹ The Complaint also alleges that Sciarra failed to respond to FINRA requests for information, in violation of FINRA Procedural Rule 8210 and Conduct Rule 2010.

Sciarra defaulted by failing to answer or otherwise respond to the Complaint. On September 9, 2011, Enforcement filed a Motion for Entry of Default Decision with the Office of Hearing Officers, together with the Affidavit of William Brice La Hue (“La Hue Aff.”) and four exhibits. Sciarra did not respond to the motion.

Based on the facts alleged in the Complaint, which are deemed admitted pursuant to Rules 9215(f) and 9269(a), as well as the additional evidence Enforcement filed in support of its motion for entry of default decision, the Hearing Officer barred Sciarra from associating with any member firm in any capacity for these violations.

II. Background

Sciarra first entered the securities industry in January 1987. Sciarra was employed by three FINRA member firms from January 1987 through July 2005. From July 2005 through May 2009, Sciarra was registered with FINRA as a General Securities Representative and General Securities Principal through his association with Delta.² On August 31, 2010, Delta filed an Amended Uniform Termination Notice for Securities Industry Registration (“Amended Form U5”) on Sciarra’s behalf.³ The Amended Form U5 disclosed an investment related, customer-

¹ As of July 30, 2007, NASD consolidated with the member regulation and enforcement functions of NYSE Regulation and began operating under a new corporate name, the Financial Industry Regulatory Authority (FINRA). References in this decision to FINRA include, where appropriate, NASD. Following consolidation, FINRA began developing a new FINRA Consolidated Rulebook. The first phase of the new consolidated rules became effective on December 15, 2008, including certain conduct rules and procedural rules. See Regulatory Notice 08-57 (Oct. 2008). This decision refers to and relies on the conduct rules that were in effect at the time of Respondent’s misconduct. Conduct Rule 2110 was renumbered as Rule 2010 in the Consolidated Rulebook without substantive change. The applicable rules are available at www.finra.org/rules.

² CX-2, at 2.

³ La Hue Aff. ¶ 8; CX-1.

initiated action.⁴ On April 28, 2011, Delta filed a second Amended Form U5, disclosing additional information about the customer arbitration proceeding.⁵ Upon review of the Amended Forms U5, Enforcement commenced an investigation, which led to the filing of this Complaint.⁶

III. 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 Amended Form U5 filed by Delta, and (2) the Complaint charges Sciarra with misconduct that occurred while he was registered 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.⁷

IV. Sciarra's Default

On June 15, 2011, Enforcement served Sciarra with the Notice of Complaint and Complaint by first-class and certified mail (return receipt requested) sent to his residential address recorded in the Central Registration Depository ("CRD").⁸ The United States Postal Service ("USPS") returned the certified receipt card, which appeared to be signed by Sciarra, dated June 21, 2011.⁹ The first-class mailing was not returned.¹⁰

⁴ La Hue Aff. ¶ 5; CX-1, at 4.

⁵ La Hue Aff. ¶ 6; CX-1, at 6-15.

⁶ La Hue Aff. ¶¶ 6, 26.

⁷ 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").

⁸ La Hue Aff. ¶ 10; CX-3.

⁹ CX-3.

¹⁰ La Hue Aff. ¶ 10.

On July 14, 2011, Enforcement served Sciarra with the Second Notice of Complaint and Complaint by first-class and certified mail (return receipt requested) sent to his CRD address.¹¹ The USPS delivered the certified mailing on July 16, 2011.¹² The first-class mailing was not returned.¹³ To date, Sciarra has not responded to the Complaint.

The Hearing Officer finds that Sciarra received constructive notice of this proceeding. In addition, given that the signature on the certified receipt associated with the First Notice of Complaint appears to be Sciarra's, in all likelihood, he received actual notice of this proceeding.¹⁴ Accordingly, the Hearing Officer finds that Sciarra defaulted by failing to answer or otherwise respond to the Complaint.

V. Findings of Fact and Conclusions of Law

A. Conversion

The First Cause of the Complaint alleges that between May 2006 and May 2009, Sciarra converted Customer JB's funds by not applying the funds for the purpose intended by the customer. Sciarra was JB's account representative at Delta.¹⁵ Customer JB wrote 48 checks, totaling \$393,935, and provided these checks to Sciarra for the purpose of investing in "warrants."¹⁶ Sciarra neither deposited the checks into JB's account nor provided any warrants or other securities to JB.¹⁷ Instead, Sciarra cashed the checks or deposited them into a bank account.¹⁸

¹¹ La Hue Aff. ¶ 11; CX-4.

¹² CX-4.

¹³ La Hue Aff. ¶ 12.

¹⁴ CX-3.

¹⁵ Compl. ¶ 6.

¹⁶ La Hue Aff. ¶¶ 15-17.

¹⁷ *Id.* ¶¶ 20-21.

¹⁸ *Id.* ¶ 18.

Customer JB, who began to exhibit symptoms of Alzheimer's disease in 2007, passed away in October 2009.¹⁹ Sciarra has not reimbursed Customer JB's estate.²⁰

The Hearing Officer finds that the foregoing facts establish that Sciarra intentionally converted customer funds thereby violating NASD Conduct Rules 2330(a) and 2110, and FINRA Conduct Rule 2010, as alleged in the First Cause of the Complaint.²¹

B. Failure to Respond

The Second Cause of Action in the Complaint alleges that Sciarra failed to respond to two written requests seeking information about the allegations made by Customer JB's estate.²² The requests were dated July 20 and August 4, 2010. FINRA staff sent the July 20 request to Sciarra at his CRD Address by first-class and certified mail, pursuant to Procedural Rule 8210.²³ The USPS returned the certified return receipt with a signature, which appeared to be Sciarra's, indicating delivery.²⁴ The first-class mailing was not returned to FINRA.²⁵

FINRA staff sent the August 4 request to Sciarra at his CRD Address by first-class and certified mail.²⁶ The USPS returned the certified return receipt with a signature, signed by someone with the last name "Sciarra," indicating delivery.²⁷ The first-class mailing was not

¹⁹ *Id.* ¶ 22.

²⁰ *Id.* ¶ 23.

²¹ 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 (NAC Mar. 7, 2008) (citations omitted).

²² *La Hue Aff.* ¶ 36.

²³ *Id.* ¶ 27.

²⁴ *Id.* ¶ 30.

²⁵ *Id.*

²⁶ *Id.* ¶ 32.

²⁷ *Id.* ¶ 34.

returned.²⁸ Sciarra did not respond to either of FINRA's information request letters.²⁹

The Hearing Officer finds that the allegations in the Second Cause of the Complaint are sufficient to establish, for purposes of this default decision, that Sciarra violated FINRA Procedural Rule 8210 and Conduct Rule 2010.

VI. Sanctions

A. Conversion

The FINRA Sanction Guidelines ("Guidelines") for conversion state that a bar is "standard," regardless of the amount converted.³⁰ The Hearing Officer finds that Sciarra's intentional conversion of his customer's funds was egregious. The Hearing Officer finds no evidence of mitigating factors that would justify permitting Sciarra to remain in the securities industry. Accordingly, the Hearing Officer will bar Sciarra from associating with any member firm in any capacity for violating NASD Conduct Rules 2330(a) and 2110, and FINRA Conduct Rule 2010, as alleged in the First Cause of the Complaint. The Hearing Officer also orders that Sciarra pay restitution to Customer JB's estate in the amount of \$393,935.

B. Information Requests

The Guidelines also recommend a bar where a respondent fails to respond in any manner to a request for information issued pursuant to Procedural Rule 8210.³¹ Here, Sciarra failed to respond to two written requests that he provide information in connection with the staff's investigation into the alleged conversion. There are no mitigating factors. Accordingly, the Hearing Officer will bar Sciarra from associating with any FINRA member in any capacity for violating FINRA Rules 8210 and 2010, as alleged in the Second Cause of the Complaint.

²⁸ *Id.*

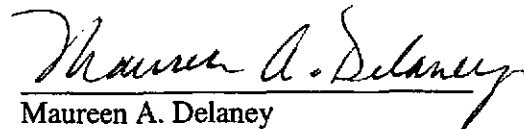
²⁹ *Id.* ¶¶ 31, 37.

³⁰ *FINRA Sanction Guidelines* 36 (2011), www.finra.org/sanctionguidelines.

³¹ *Sanction Guidelines* at 33.

VII. Order

Joseph James Sciarra, Jr. is barred from associating with any member firm in any capacity for (1) converting customer funds, in violation of NASD Conduct Rules 2330(a) and 2110, and FINRA Conduct Rule 2010, and (2) failing to respond to FINRA requests for information, in violation of FINRA Procedural Rule 8210 and Conduct Rule 2010, as alleged in the Complaint. Sciarra is also ordered to pay Customer JB's estate restitution in the amount of \$393,935, plus interest thereon at the rate established under Section 6621(a)(2) of the Internal Revenue Code from the date of each transaction until paid.³² The bars shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.


Maureen A. Delaney
Hearing Officer

Copies to:

Joseph James Sciarra, Jr. (*via overnight courier and first-class mail*)
William Brice La Hue, Esq. (*via first-class and electronic mail*)
Mark P. Dauer, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

³² 26 U.S.C. § 6621(a)(2). The interest rate, which is used by the Internal Revenue Service to determine interest due on underpaid taxes, is adjusted each quarter and reflects market conditions. Customer JB is identified in the Addendum to this decision, which is served only on the parties.

**FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA)
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JOSEPH JAMES SCIARRA, JR.,
(CRD No. 1576322)

Respondent.

Disciplinary Proceeding
No. 2010022840501

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Joseph James Sciarra, Jr. (Sciarra), while employed by Delta Equity Services Corporation (Delta), converted a customer's funds by not applying the funds for the purpose intended by the customer, in violation of NASD Conduct Rules 2330(a) and 2110 and FINRA Rule 2010. Sciarra further failed to respond to FINRA's requests for information, in violation of FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

2. Sciarra entered the securities industry in January 1987, when he was employed by a FINRA member firm. Sciarra was first registered as a general securities representative in February 1987, and was subsequently registered as a general securities principal in December 1992. Sciarra was employed by three FINRA member firms from January 1987 through July 2005. Then in July 2005, Sciarra was employed by FINRA member firm Delta. Sciarra remained with Delta until May 2009.

3. Delta filed an Amended Form U5 disclosing a consumer-initiated action on August 31, 2010. Sciarra is not currently employed by a FINRA member firm.
4. Although Sciarra has not been associated with a FINRA member firm since May 2009, Sciarra 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 of an Amended Form U5 filed by Delta during the two-year period following Sciarra's termination, and (2) the Complaint charges Sciarra with misconduct committed while he was associated with a FINRA member firm, and with failing to respond to FINRA's requests for information during the two-year period after the date upon which Sciarra ceased to be associated with a FINRA member firm.

FIRST CAUSE OF ACTION

NASD Conduct Rules 2330(a) and 2110 and FINRA Rule 2010

(Conversion of Customer Funds)

5. The Department realleges and incorporates by reference paragraphs 1 through 4 above.
6. In July 2005, customer J.B. opened an account at Delta, with Sciarra serving as J.B.'s account representative.
7. Between May 2006 and May 2009, customer J.B. wrote a total of 48 checks in the aggregate amount of \$393,935 and provided the checks to Sciarra.
8. The checks were written on a bank account for customer J.B.'s company, BHI, and were made payable directly to Sciarra.
9. The checks were intended for investment purposes with some indicating "Re: warrants" or simply "warrants" on the memo line.

10. Sciarra endorsed the checks and either cashed them or deposited them into a bank account.
11. Sciarra never deposited the checks or the proceeds from the checks into customer J.B.'s account at Delta.
12. Sciarra never deposited any securities purchased with the proceeds of the 48 checks into customer J.B.'s account at Delta.
13. Customer J.B., who had begun to exhibit symptoms of Alzheimer's disease in 2007, passed away in October 2009.
14. Sciarra has not repaid customer J.B.'s estate the \$393,935 he received from customer J.B.
15. Sciarra exercised unauthorized ownership and control over customer J.B.'s \$393,935.
16. Delta expressly prohibits its representatives from converting customer payments or funds to their own account or accounts controlled by the representative.
17. Such acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rules 2330(a) and 2110 by Sciarra, during the period from May 2006 through December 14, 2008.
18. Such acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rule 2330(a) and FINRA Rule 2010 by Sciarra, during the period from December 15, 2008 through May 2009.

SECOND CAUSE OF ACTION

FINRA Rules 8210 and 2010

(Failure to Respond)

19. The Department realleges and incorporates by reference paragraphs 1 through 18 above.

20. In June 2010, FINRA commenced an investigation into the allegations in a Statement of Claim filed by customer J.B.'s estate against Sciarra.
21. On July 20, 2010, FINRA sent a letter to Sciarra via first class and certified mail addressed to his residential address as listed in the Central Registration Depository (CRD).
22. The July 20, 2010 letter requested, pursuant to FINRA Rule 8210, that Sciarra submit a detailed written statement regarding the allegations listed on the Statement of Claim filed by the estate of customer J.B.
23. The July 20, 2010 letter requested that the statement be submitted no later than August 3, 2010.
24. The July 20, 2010 letter sent by first class mail to Sciarra was not returned. A receipt for the certified letter sent to Sciarra was returned indicating that it was delivered and appears to be signed by Sciarra.
25. Sciarra failed to provide the requested statement by the August 3, 2010 deadline.
26. Therefore, on August 4, 2010, FINRA sent Sciarra a second letter via first class and certified mail addressed to his residential CRD address. The August 4, 2010 letter once again requested that Sciarra provide a detailed, written statement regarding the allegations disclosed on the Statement of Claim filed by the estate of customer J.B.
27. The August 4, 2010 letter cited FINRA Rule 8210, and required Sciarra to provide the requested statement to FINRA no later August 18, 2010.
28. The August 4, 2010 letter sent by first class mail to Sciarra was not returned. A receipt for the August 4, 2010 letter sent to Sciarra by certified mail was returned indicating that it had been delivered and appears to be signed by someone with the name Sciarra.

29. Sciarra failed to provide the requested statement by the August 18, 2010 deadline.
30. As of the date hereon, Sciarra has not responded to FINRA's requests for a detailed written statement regarding the allegations listed on the Statement of Claim filed by the estate of customer J.B.
31. Sciarra's failure to submit the requested written statement impeded FINRA's investigation and prevented FINRA from completing its regulatory responsibility to fully investigate potential rule violations.
32. Such acts, practices and conduct constitute separate and distinct violations of FINRA Rules 8210 and 2010 by Sciarra.

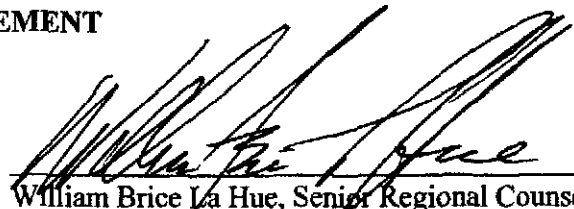
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. Order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed, including that Sciarra be required to disgorge fully any and all ill-gotten gains and make full and complete restitution, together with interest.
- B. Order that the Sciarra 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: 6/15/11


William Brice La Hue, Senior Regional Counsel
FINRA Department of Enforcement
Atlanta District Office
One Securities Centre, Suite 500
3490 Piedmont Road, N.E.
Atlanta, Georgia 30305
Phone: (404) 239-6111; Fax: (404) 264-1586
E-Mail: brice.lahue@finra.org

Andrew A. Favret, Assoc. VP/Reg'l Chief Counsel
FINRA Department of Enforcement
New Orleans District Office
1100 Poydras Street
Energy Centre, Suite 850
New Orleans, Louisiana 70163
Phone: (504) 412-2404; Fax: (202) 721-6527
E-Mail: andrew.favret@finra.org