

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant

v.

Andrew Paul Arno
(CRD No. 2643104),

Respondent

DISCIPLINARY PROCEEDING
No. 2010023480801

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Registered Representative Andrew Arno misrepresented to four customers that he was going to invest their funds in IRAs. Instead, Arno placed the customers' funds into a bank account that he controlled.
2. From November 10, 2010 through the present, in connection with FINRA's investigation of Arno's misuse of customer funds, Arno failed to produce information and to appear for testimony, which had been requested pursuant to FINRA Rule 8210.

FACTUAL BACKGROUND

3. From January 2008 through January 2010, Arno accepted customer funds claiming that he would use them to fund IRAs; requested that customers make checks for their investments payable to Arno Financial Services, Inc.; instead placed customers' funds in a bank account he controlled; and failed to make customers' requested investments.

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4. Customer M.F. had established Delaware Investments IRA accounts with Arno and made periodic investments to them. For the first few years, M.F. and her husband made all checks payable to H.D. Vest; however, beginning in January 2008, Arno instructed M.F. to make all checks payable to Arno Financial Services.
5. After failing to receive account statements for an extended period of time, M.F. contacted Delaware Investments directly, and she learned that there was no record of any IRA contributions for 2009. After M.F. brought this to Arno's attention, Arno claimed that the funds were being held with H.D. Vest directly. When M.F. contacted H.D. Vest, she learned that there were no IRA accounts for her or her husband held at H.D. Vest.
6. After learning that Arno had failed to invest their funds, M.F. demanded that Arno return her and her husband's money. After receiving her demand, Arno sent checks dated June 14, 2010 to M.F. and her husband for \$14,784.00 each.
7. On July 26, 2010, investor S.E. filed a complaint with H.D. Vest claiming that Arno had stolen \$64,000 from him and his wife. S.E. explained that he and his wife believed that they held IRA accounts with Delaware Investments and had made contributions during 2008, 2009, and 2010; however, they learned that Arno had failed to fund their IRAs as instructed and had misused their funds. S.E. informed Arno that he intended to bring the matter to law enforcement's attention. Shortly after, Arno provided S.E. with a cashier's check reimbursing him for the funds that Arno had misused.

RESPONDENT AND JURISDICTION

8. Arno became registered with FINRA as a Limited Representative—Investment Company and Variable Contracts Products on July 21, 1995, through registered firm H.D. Vest Investment Services, Inc. (H.D. Vest)(CRD 13686). On July 23, 2010, H.D. Vest filed a

Uniform Termination Notice for Securities Industry Registration ("Form U5") on behalf of Arno. Since then, he has not registered with another FINRA member firm.

9. Although Respondent has not been associated with a FINRA-registered firm since July 23, 2010, 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-registered firm, and (2) the Complaint charges him with misconduct committed while he was associated with a firm registered with FINRA and for failing to provide requested information and testimony during the two-year period after the date upon which he ceased to be associated with a FINRA-registered firm.

FIRST CAUSE OF ACTION

(Misuse of Funds – NASD Rules 2330 and 2110 and FINRA Rule 2010)

10. The Department realleges and incorporates by reference paragraphs one to nine above.
11. During the period from January 2008 through January 2010, Arno misused customers' funds by depositing them into a bank account that he controlled instead of investing them in IRAs as he had represented to M.F., S.E., and their spouses.
12. As a result of the foregoing, Arno violated NASD Rule 2330. As a result of the foregoing, Arno also violated NASD Rule 2110 during the period from January 2008 to December 15, 2008, and FINRA Rule 2010 during the period from December 16, 2008 to January 2010.

SECOND CAUSE OF ACTION

(Failure to Provide Information and Appear for Testimony – FINRA Rules 8210 and 2010)

13. The Department realleges and incorporates by reference paragraphs one to twelve above.

14. On October 27, 2010, pursuant to FINRA Rule 8210, FINRA Staff investigating Arno's potential violations of NASD Rule 2330 sent an information request letter to Arno at his address of record on FINRA's Central Registration Depository (CRD Address).
15. The request letter was sent via First Class Mail and Certified Mail, return receipt requested, and imposed a response deadline of November 10, 2010. The letter sent via First Class mail was not returned to FINRA staff. The letter sent via Certified Mail, return receipt requested was returned to FINRA, marked "unclaimed."
16. Arno did not respond to the initial request for information by the stated deadline of November 10, 2010. As a result, on November 23, 2010, again pursuant to FINRA Rule 8210, FINRA Staff sent a testimony request to Arno at his CRD Address. FINRA Staff sent an identical copy of this letter to an alternative address. The testimony request letters were again sent via First Class Mail and Certified Mail, return receipt requested, and requested testimony on December 7, 2010. The letters sent via First Class mail were not returned to FINRA staff. The letter sent via Certified Mail, return receipt requested, to the CRD Address was returned to FINRA, marked "Refused." The letter sent via Certified Mail, return receipt requested, to the alternative address was returned to FINRA, signed by K.N.
17. Arno failed to appear for his testimony on December 7, 2010. As a result, on February 22, 2011, again pursuant to FINRA Rule 8210, FINRA Staff sent a second testimony request to Arno at his CRD Address and to the alternative address. The testimony request letters were again sent via First Class Mail and Certified Mail, return receipt requested, and requested testimony on March 9, 2011. The letters sent via First Class mail were not returned to FINRA staff. The letter sent via Certified Mail, return receipt requested, to

the CRD Address was returned to FINRA with Arno's signature. No response was received from Arno, and he failed to appear for his March 9, 2011 testimony.

18. As a result of the foregoing, Arno violated 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

September 30, 2011


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