

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ANDREW PAUL ARNO
(CRD No. 2643104),

Respondent.

Disciplinary Proceeding
No. 2010023480801

Hearing Officer – SNB

DEFAULT DECISION

May 4, 2012

Respondent is barred from associating with any FINRA registered firm in any capacity for misusing customer funds, in violation of NASD Rules 2330(a) and 2110 and FINRA Rules 2150(a) and 2010; and failing to respond to requests for information and testimony, in violation of FINRA Rules 8210 and 2010.

Appearances

Robert Long, Esq., and Andrew A. Favret, Esq., for the Department of Enforcement.

No appearance by or on behalf of Respondent.

DECISION

I. Introduction

The Department of Enforcement (“Enforcement”) filed the attached Complaint with the Office of Hearing Officers on October 3, 2011. The Complaint charges Respondent Andrew Paul Arno (“Respondent”), with misusing customer funds, in violation of NASD Rules 2330(a) and 2110 and FINRA Rule 2010; and failing to respond to requests for information and testimony issued by FINRA Staff (“Staff”), in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010.¹

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

Respondent did not answer the Complaint. Accordingly, on March 1, 2012, Enforcement filed a Motion for Entry of Default Decision and Request for Sanctions (“Default Motion”), together with the declaration of Robert Long, Esq. (“Decl.”) and three 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 was first registered with H.D. Vest Investment Services, Inc. (the “Firm”) in December 1995. The Firm terminated his employment on July 23, 2010, for misusing customer funds.³

Following the Firm’s disclosure of his termination, Staff commenced the investigation that led to the filing of the Complaint in this proceeding.⁴ On September 30, 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 an alternate address obtained by Enforcement.⁵ Enforcement mailed the Complaint and First Notice of Complaint by first-class and certified mail, return receipt

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. Specifically, NASD Rule 2110 was renumbered as FINRA Rule 2010 effective December 15, 2008. Similarly, NASD Rule 2330(a) was renumbered as FINRA Conduct Rule 2150(a) effective December 14, 2009. Although Enforcement did not specifically charge a violation of FINRA Rule 2150(a), the Hearing Officer finds that Respondent had sufficient notice of an alleged violation of Rule 2150(a) because Enforcement charged him with violating its predecessor rule, NASD Rule 2330. In addition, references to FINRA include references to NASD.

² Enforcement’s exhibits are labeled CX-1 through CX-3.

³ CX-1.

⁴ Decl. ¶ 3.

⁵ Decl. ¶ 17; CX-2.

requested. The mailings to the CRD address were returned unclaimed. The certified mailing to the alternate address was signed “K. Nowacki.” The first-class mailing to the alternate address was not returned.”⁶

In a letter dated October 26, 2011, Respondent indicated that he intended to permanently relinquish his securities licenses and waived his right to a hearing.⁷ On December 3, 2011, the Hearing Officer issued an order requiring Respondent to appear at a pre-hearing conference on December 19, 2011. Respondent did not appear. On December 19, 2011, the Hearing Officer issued an Order to Show Cause why Respondent should not be held in default for failing to appear at the pre-hearing conference.⁸ Respondent did not respond. Accordingly, Respondent was held in default. On March 1, 2012, 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 in July 2010, 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

⁶ Decl. ¶¶ 18-19.

⁷ CX-3.

⁸ The Hearing Officer re-issued this Order to Show Cause on January 4, 2012, because Respondent’s copy of the December 19, 2011, Order was inadvertently affixed to the copy mailed to Enforcement.

information made during the two-year period following the termination of his FINRA registration.⁹

B. Misuse of Customer Funds

The First Cause of Action alleges that from January 2008 through January 2010, Respondent misused customer funds by redirecting IRA contributions from MF's and SE's customer accounts to a bank account that he controlled.

Specifically, customer MF established Delaware Investments IRA accounts with Respondent and made periodic investments in them. For the first few years, MF and her husband made all checks payable to the Firm. However, beginning in January 2008, Respondent instructed them to make all checks payable to Arno Financial Services. After failing to receive account statements for an extended period of time, MF contacted Delaware Investments directly and learned that they had no record of any IRA contributions for 2009. When MF raised this with Respondent, he claimed that the Firm was holding the funds directly. When MF contacted the Firm, she learned that this was not true and confronted Respondent, who reimbursed MF and her husband for approximately \$30,000, in aggregate.¹⁰

Similarly, in July 2010, customer SE filed a complaint with the Firm, claiming that Respondent had stolen \$64,000 from SE and his wife by taking funds that they told him to invest in their Delaware Investments IRAs. Shortly after this complaint, Respondent reimbursed SE and his wife.¹¹

⁹ 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").

¹⁰ Decl. ¶¶ 5-7.

¹¹ *Id.* ¶ 8.

The Hearing Officer finds that the facts alleged in the First Cause of Action establish that Respondent violated NASD Conduct Rule 2330(a) (from January 2008 through December 13, 2009), and FINRA Conduct Rule 2150(a) (from December 14, 2009, through January 2010).¹² Respondent also thereby violated FINRA Rule 2010, (from December 15, 2008 through January 2010) and NASD Rule 2110 (from January 2008 through December 14, 2008).

C. Failure to Respond to Requests for Information and Testimony

The Second Cause of Action alleges that Respondent failed to respond to requests for information and testimony pursuant to FINRA Rule 8210 in connection with FINRA's investigation of the circumstances surrounding his termination from the Firm. Staff first sent a request for information to Respondent on October 27, 2010, by first-class and certified mail to Respondent's CRD address.¹³ Respondent did not respond to the request.¹⁴

On November 23, 2010, Staff sent a request that Respondent appear for testimony. Again, the request was sent by first-class and certified mail to Respondent's CRD address. Respondent did not appear for testimony.¹⁵

On February 22, 2011, in the same manner, Staff sent a second request that Respondent appear for testimony. Again, Respondent did not appear for testimony, despite the fact that he signed the certified mail receipt.¹⁶

¹² See note 1.

¹³ Compl. ¶¶ 14-15.

¹⁴ *Id.* ¶ 16.

¹⁵ *Id.* ¶¶ 16-17.

¹⁶ *Id.* ¶ 17.

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

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.¹⁷ 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.

B. Failure to Respond to Requests for Information and Testimony

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.¹⁸ 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.¹⁹

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. Staff was investigating serious misconduct—Respondent's misuse of customer funds. Accordingly,

¹⁷ FINRA Sanction Guidelines 36 (2011), available at www.finra.org/sanctionguidelines.

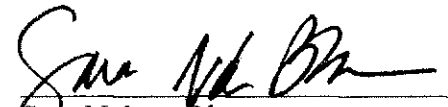
¹⁸ Sanction Guidelines 33.

¹⁹ *Id.*

the Hearing Officer also will bar Respondent from associating with any FINRA member firm in all capacities for this violation.

V. Conclusion

Respondent is barred from associating with any member firm in any capacity for misuse of customer funds, in violation of NASD Rules 2330(a) and 2110, and FINRA Rules 2150(a) and 2010; and for failing to respond to requests for information, in violation of FINRA Rules 8210 and 2010. The bars shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.


Sara Nelson Bloom
Hearing Officer

Copies to: Andrew Paul Arno *(via overnight courier and first-class mail)*
 Robert Long, Esq. *(via electronic and first-class mail)*
 Mark P. Dauer, Esq. *(via electronic mail)*
 David R. Sonnenberg, Esq. *(via electronic mail)*

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.

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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