

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JASON MATTHEW PENNINGTON
(CRD No. 2522216),

Respondent.

Disciplinary Proceeding
No. 2010023483501

Hearing Officer – SNB

DEFAULT DECISION

May 4, 2012

Respondent is barred from associating with any FINRA member firm in any capacity for falsifying documents and converting customer funds, in violation of FINRA Rule 2010, and failing to respond to requests for information, in violation of FINRA Rules 8210 and 2010.

Appearances

Dale A. Glanzman, Esq., and Mark A. Koerner, Esq., Chicago, IL, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

The Department of Enforcement (“Enforcement”) filed the three-cause Amended Complaint in this disciplinary proceeding on December 12, 2011, charging Respondent Jason Matthew Pennington (“Respondent”) with: (1) falsification of documents, in violation of FINRA Rule 2010; (2) conversion of customer funds, in violation of FINRA Rule 2010; and (3) failure to respond to requests for information, in violation of FINRA Rules 8210 and 2010.

Despite being properly served with the Complaint, Notice of Amended Complaint, and Second Notice of Amended Complaint, Respondent has not filed an answer to the Complaint.

Enforcement filed a Motion for Entry of Default Decision and Request for Sanctions on March 16, 2012, to which Respondent did not respond. Accordingly, pursuant to FINRA Rules 9215(f) and 9269, the allegations in the Amended Complaint are deemed admitted and Enforcement's motion is granted.¹

I. Respondent

Between May 2000 and July 2010, Respondent was registered as an Investment Company/Variable Contracts Products Representative with State Farm VP Management Corp. (the "Firm"). Decl. ¶ 5; CX-1.

Respondent remains subject to FINRA's jurisdiction for the purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because the Complaint was filed within two years after the termination of his FINRA registration, and it charges him with misconduct while he was associated with a member firm, and with failing to provide information pursuant to Rule 8210 within two years after the termination of his registration.

II. Respondent's Default

On December 12, 2011, Enforcement served the Amended Complaint and Notice of Amended Complaint on Respondent by first-class and certified mail to Respondent's last known home address, as reflected in Central Registration Depository (the "CRD address"). Decl. ¶ 6; CX-2. The return receipt for the certified mailing was returned with an illegible signature. Decl. ¶ 6; CX-3. The first-class mailing was not returned. *Id.* The Notice of Amended Complaint informed Respondent that he was required to answer the Amended Complaint by

¹ The factual determinations in this decision are based on the allegations of the attached Amended Complaint and the materials Enforcement filed with its default motion, which includes the Declaration of Dale A. Glanzman, Esq. in Support of Motion for Entry of Default Decision, and supporting documentation that is attached to counsel's declaration. Counsel's declaration is cited herein as "Decl. ¶ ____." The supporting documentation is cited herein as "CX-____."

January 9, 2012. Respondent did not answer or otherwise respond to the Amended Complaint by that date.

On January 10, 2012, Enforcement served copies of the Amended Complaint, Notice of Amended Complaint, and Second Notice of Amended Complaint on Respondent at his CRD address, by certified and first-class mail. CX-4. The receipt for the certified mailing was returned to FINRA staff (“Staff”) with an illegible signature. The first-class mailing was not returned. Decl. ¶ 7; CX-5. The Second Notice of Amended Complaint informed Respondent that he was required to answer the Amended Complaint by January 27, 2011. Respondent has not answered or otherwise responded to the Amended Complaint. Decl. ¶ 8.

Enforcement served the Complaint and the Notices of Complaint on Respondent in accordance with FINRA Rule 9134, giving him constructive notice of this proceeding. By failing to respond, he defaulted.

III. Violations

A. Falsification of Documents - FINRA Rule 2010

On July 17, 2006, customer MB executed a last will and testament and established a living trust (the “Trust”). Respondent was designated as the successor trustee if MB became incapacitated or died.

On July 28, 2006, MB purchased a \$983,000 life insurance policy from Respondent to be held by the Trust. On October 10, 2006, MB amended her application to increase the policy to \$1,325,000. From August 1 through October 21, 2006, MB paid \$741,215.03 in premiums on the policy.

MB died on October 28, 2009. The next day, Respondent met with the beneficiaries of the Trust: RH, GW, and DW. He informed them that the bulk of MB’s estate was to be donated to charities, but he refused to disclose the names and amounts, claiming that it was MB’s

request that he not do so.

After several requests from the beneficiaries, on March 31, 2010, Respondent provided them with a false trust agreement ("False Trust A"), with the amounts and percentages to be paid to the beneficiaries crossed out, including the two designated charities. The individual beneficiaries showed this agreement to MB's attorney, who informed them that the agreement was not legal, and was not the agreement that he prepared. The beneficiaries demanded that Respondent provide them with a legal copy of the Trust and a complete accounting of its assets and expenditures. Several days later, Respondent gave them another false trust agreement ("False Trust B"), which included entries that he had previously crossed out.

Respondent falsified MB's trust documents in several respects. First, Respondent removed provisions that provided for the removal of the trustee by a majority of the beneficiaries with or without cause, from the False Trusts A and B. Respondent also removed a provision which prohibited the distribution of income to beneficiaries by an "interested trustee," and included a person "eligible to receive income or principal from the trust." Finally, False Trust B stated that the two designated charities were to receive \$50,000 each, when in fact, the Trust provided that each charity would receive \$100,000.

Respondent resigned as trustee of the Trust on April 27, 2010. Documents obtained by the successor trustee reveal that Respondent falsified Trust records indicating that he deposited a \$1,049,205 check from State Farm Life Insurance into the Trust account on November 25, 2009. However, Respondent's accounting provided to the beneficiaries did not reflect this deposit.

In addition, Trust records indicate that the charitable beneficiaries have received no funds from the Trust, in contrast with the documents Respondent provided to the beneficiaries that indicated they had been paid \$100,000 to \$125,000.²

Further, in January 2010, Respondent made disbursements totaling \$67,000 from the Trust to personal accounts that he controlled, but the accounting he provided to the beneficiaries did not reflect this.

The allegations of the Complaint are sufficient to establish that Respondent falsified customer documents, thereby violating FINRA Rule 2010.

B. Conversion - FINRA Rule 2010

On September 17, 2009, MB requested a partial withdrawal from her life insurance policy in the amount of \$278,250. As a result, State Farm Insurance issued a check that was endorsed by “MMB, Trustee” and countersigned by Respondent. The check was cashed on September 28, 2009, and deposited into six different bank accounts, which were owned or controlled by Respondent or his wife. Later that month, Respondent used over \$50,000 of these funds to pay off loans.

In addition, Trust documents indicated that in January 2010, Respondent wrote three checks to himself from the Trust’s checking account, totaling \$77,000.

The allegations of the Complaint are sufficient to establish that Respondent converted customer funds, in violation of FINRA Rule 2010.

C. Failure to Provide Information - FINRA Rules 8210 and 2010

On or about August 23, 2010, and pursuant to FINRA Rule 8210, Staff sent Respondent a request for information regarding whether he timely reported his role as trustee to his Firm, and whether he made a false statement to the beneficiaries of MB’s Trust. Staff sent the

² The discrepancy between the \$100,000 and \$125,000 is due to the inconsistencies in the documents provided.

request by certified mail, return receipt requested, and by first-class mail to Respondent's CRD address. Neither mailing was returned. Respondent did not respond.

On or about September 16, 2010, and pursuant to FINRA Rule 8210, FINRA staff sent a request for the same information. The request was sent by certified mail, return receipt requested, and by first-class mail to Respondent's CRD address. The first-class mailing was not returned. The receipt for the certified mailing was returned to FINRA and was signed by "Rishanda Pennington." Respondent never responded to the request.

FINRA Rule 8210 authorizes FINRA to require any person subject to its jurisdiction to provide information and testimony related to any matter under its investigation. Respondent failed to respond to the Staff's requests for information. The allegations of the Amended Complaint are sufficient to establish that Respondent violated FINRA Rules 8210 and 2010.

IV. Sanctions

Because Respondent's falsification of documents was used in connection with his conversion of customer funds, it is appropriate to impose a unified sanction for the first and second causes of action. FINRA's Sanction Guidelines ("Guidelines") recommend a bar for conversion of funds, regardless of the amount converted.³ The Guideline for forgery and falsification of records recommends a suspension of up to two years where mitigating factors exist, and a bar in egregious cases.⁴ There are aggravating factors supporting the imposition of a bar. Respondent took advantage of his role as trustee to convert a substantial amount of money from the Trust. In connection with his conversion of funds, Respondent repeatedly made verbal and written misrepresentations to the beneficiaries of the Trust. He also falsified Trust and accounting records to mislead the beneficiaries and postpone their discovery of Respondent's

³ *Guidelines* at 36 (2011).

⁴ *Guidelines* at 37.

fraud, thereby enabling him to continue withdrawing Trust funds. There are no mitigating factors. Accordingly, a bar is the appropriate sanction for Respondent's conversion of customer funds and falsification of documents, in violation of FINRA Rule 2010.⁵

A bar is also the standard sanction for failure to respond to a request for information.⁶ The principal consideration is the importance of the information requested as viewed from FINRA's perspective. The information sought by Staff was important. Staff was investigating a scheme to convert customer funds. There are no mitigating considerations. A bar is the appropriate sanction.

V. Conclusion

Respondent is barred from associating with any FINRA member firm in any capacity for falsification of documents and conversion of customer funds, in violation of FINRA Rule 2010. He is also barred for failing to respond to Staff requests for information, in violation of FINRA Rules 8210 and 2010.

The bars will be effective immediately if this decision becomes FINRA's final disciplinary action in this proceeding.


Sara Nelson Bloom
Hearing Officer

Copies to: Jason M. Pennington (*via overnight and first-class mail*)
Dale A. Glanzman, Esq. (*via electronic and first-class mail*)
Mark P. Dauer, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

⁵ Enforcement does not recommend restitution, and the Hearing Officer does not order it because the U.S. Attorney's Office has a pending action to seize Respondent's real and personal property for the benefit of the estate and Trust beneficiaries.

⁶ *Guidelines* at 33.

FINANCIAL INDUSTRY REGULATORY AUTHORITY
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Department of Enforcement,	
Complainant,	
v.	
Jason M. Pennington (CRD No. 2522216),	DISCIPLINARY PROCEEDING No. 2010023483501
Respondent.	

AMENDED COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Respondent Jason M. Pennington, serving as a trustee, gave falsified trust documents to Trust beneficiaries to hide the fact that he had converted trust funds for his personal use. In addition, Respondent failed to respond to FINRA staff's Rule 8210 requests for information.

RESPONDENT AND JURISDICTION

2. Between May 2000 and July 2010, Pennington was registered as an Investment Company/Variable Contracts Products Representative with State Farm VP Management Corp. ("State Farm").

3. Although Pennington is no longer registered or associated with a FINRA member, 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 effective date of termination of Respondent's registration with State Farm, namely, July 6, 2010; and (2) the Complaint charges him with misconduct committed while he was registered or 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 he ceased to be registered or associated with a FINRA member.

**FIRST CAUSE OF ACTION
FINRA Rule 2010
False Documents**

4. On July 17, 2006, MB executed a last will and testament and established The MMB Living Trust (the "Trust"). MB was named as trustee. Pennington was named as the successor trustee, to serve if MB became incapacitated while living, and upon her death.

5. On July 28, 2006, MB purchased a life insurance policy from Pennington in the amount of \$983,000. In the application, MB specified the Trust as the owner and beneficiary of the policy. On October 10, 2006, MB amended her application to increase the amount of her policy to \$1,325,000. From August 1, 2006 to October 31, 2006, MB paid a total of \$741,215.03 in premiums for the policy.

6. MB died on October 28, 2009.

7. The next day, October 29, 2009, Pennington met in his office with the beneficiaries of the Trust: RH, GW, and DW. Pennington told the beneficiaries that the bulk of MB's estate was to be donated to charities, but he refused to disclose the names of the charities and the amounts to be donated. Pennington claimed that MB had asked that he not disclose the information.

8. Over the next approximately two weeks, the beneficiaries made numerous demands for a copy of the Trust agreement, and a complete accounting of all assets of the estate and the Trust, to no avail.

9. Finally, on November 12, 2009, Pennington met with the beneficiaries at his office and showed them what he claimed to be a copy of the Trust agreement ("False Trust Agreement A").

10. In False Trust Agreement A, the percentages of the Trust to be distributed to the beneficiaries, and the amounts to be donated to two identified charities, Wichita State University and the Kansas Humane Society, had been replaced by a series of "X"s typed on the page.

11. On November 23, 2009, Pennington mailed DW a copy of False Trust Agreement A. This copy again had the percentages of the Trust to be distributed to the beneficiaries, and the amounts to be donated to the identified charities, Wichita State University and the Kansas Humane Society, had been replaced with "X"s.

12. On March 31, 2010, the beneficiaries met with DB, the attorney who prepared the Trust documents for MB. The beneficiaries showed False Trust Agreement A to DB.

13. DB informed the beneficiaries that False Trust Agreement A was not a legal document and denied giving it to Pennington. DB agreed to advise Pennington that he should give the beneficiaries a legal copy of the Trust and a complete accounting of all assets and expenditures of the Trust.

14. Later that day, on March 31, 2010, Pennington sent the beneficiaries an email stating that he had spoken with DB, and that he had determined that he could share additional information with them.

15. Following their meeting with DB, through a series of emails, the beneficiaries demanded to be provided with a legal copy of the Trust and a complete accounting of the assets of, and expenditures made by, the Trust.

16. On April 1, 2010, Pennington sent the beneficiaries another email stating that they could come to his State Farm insurance office and obtain the documents.

17. When Pennington and the beneficiaries met at Pennington's State Farm office, Pennington provided a packet of documents to the beneficiaries that included another altered version of the Trust ("False Trust Agreement B").

18. In False Trust Agreement B, the percentages of the Trust to be distributed to the beneficiaries had again been replaced with "X"s. The names of the two charities that were identified in False Trust Agreement A that were identified in the authentic Trust Agreement had been redacted, but the amounts to be donated to each were listed as \$50,000.

19. The packet also included a printed report entitled "Account transactions Brown Trust", dated April 1, 2010, and a bank statement showing expenditures from the trust account, which appeared to be printed from the internet.

20. On April 5, 2010, Pennington sent another email to the beneficiaries claiming that they "all three now have the complete copy of the trust doc [sic] and also you have the correct and complete accounting as of last Friday...But outside of today's bills, yes you should have everything complete and up to date as you requested."

21. On April 19, 2010, the attorney for the beneficiaries obtained an authentic copy of the trust agreement ("Authentic Trust Agreement") that had actually been signed by MB.

22. A comparison of the Authentic Trust Agreement with False Trust Agreements A and B revealed substantial material deletions and modifications of the Real Trust Agreement.

These material alterations included:

- a. The Authentic Trust Agreement provided that Wichita State University and the Kansas Humane Society were each to be donated \$100,000. False Trust Agreement B provided that the charities (names redacted) were each to be donated \$50,000.
- b. The Authentic Trust Agreement provided for the removal of the trustee by a majority of the beneficiaries, with or without cause. False Trust Agreements A and B had no such provision.
- c. The Authentic Trust Agreement contained provisions prohibiting the distribution of income to beneficiaries by an “interested trustee,” which included a trustee who was “beneficiary of the trust,” who in turn was defined as a person “eligible to receive income or principal from the trust pursuant to the terms of the trust.” False Trust Agreements A and B had no such provisions.

23. Pennington resigned as trustee of the Trust on April 27, 2010. On May 12, 2010, RH became trustee of the Trust.

24. After becoming trustee, RH obtained copies of bank statements from Home Bank & Trust Company, the financial institution which held the checking account for the trust. A comparison of the bank statements obtained by RH to the accounting and printed bank statement that Pennington provided to the beneficiaries on April 1, 2010, shows that the accounting and

bank statement from Pennington inaccurately reflected the following actual deposits to, and withdrawals from, the account:

- a. On November 25, 2009, RH obtained a copy of a check in the amount of \$1,049,206.15 from State Farm Life Insurance Company, which was endorsed by Pennington and deposited in the Trust checking account on November 25, 2009. Neither the accounting nor the bank statement Pennington provided the beneficiaries on April 1, 2010, reflected this \$1 million deposit. The deposit, however, was reflected in the bank statements later provided to RH by Home Bank & Trust Company, the financial institution that held the checking accounts of the Trust.
- b. In addition, the accounting Pennington provided to the beneficiaries reflects that a "Charitable Beneficiary" received a \$25,000 check from Trust funds on November 25, 2009, and two \$50,000 checks on December 1, 2009, while the bank statement provided by Pennington to the beneficiaries reflects that two \$50,000 checks cleared the Trust bank account, one on February 9, 2010, and the other on February 23, 2010, and no mention of any \$25,000 check. In fact, however, Wichita State University and the Kansas Humane Society, to date, have not received a donation from the Trust, and Pennington has never advised them that they were to receive a donation from the Trust.

25. In January 2010, Pennington wrote three checks to himself out of the Trust checking account. On January 14, 2010, Pennington transferred \$25,000 from the Trust account to a personal account he controlled. On January 15, 2010, Pennington transferred \$20,000 from the Trust account to a personal account he controlled. On January 20, 2010, Pennington

transferred \$22,000 from the Trust account to a personal account he controlled. None of these checks was reflected in the accounting or bank statements that Pennington provided to the beneficiaries on April 1, 2010.

26. The acts, practices and conduct described above constitute violations of FINRA Rules 2010 by Pennington.

**SECOND CAUSE OF ACTION
FINRA Rule 2010
Conversion**

27. The Department realleges and incorporates by reference Paragraph 1 through 26 above.

28. Neither Pennington nor his relatives were identified as beneficiaries in any of the Trust versions.

29. On September 17, 2009, MB submitted a request to State Farm Insurance to make a partial withdrawal from her life insurance policy in the amount of \$278,250. The request was purportedly signed by MB and witnessed by Pennington.

30. As a result of the request, State Farm Insurance issued a \$278,250 check on September 22, 2009. The check was endorsed by "MMB, Trustee" and countersigned by Pennington. The check was cashed at Home Bank & Trust on September 28, 2009, and the money was deposited into six different bank accounts, five of which belonged to Pennington or his insurance agency. Of the money that was deposited, \$183,909.40 was deposited into Home Bank & Trust account [REDACTED] which was opened on September 24, 2009, under the name of "Matthew Pennington State Farm." The sixth bank account into which money was deposited belonged to Pennington's spouse, RP.

31. On September 30, 2009, two of Pennington's loans at State Farm Federal Credit Union were paid off, via checks written against the Trust checking account. The checks were in the amount of \$50,251.90 and \$53,676.02. The latter check referenced a loan for a 2007 Mercedes GL450. On the same day, State Farm Federal Credit Union issued a Release of Lien letter for a 2007 Mercedes GL450.

32. During the meeting on November 12, 2009, between Pennington and the beneficiaries of the Trust, Pennington claimed that MB's flat screen television sets had been given to a family that MB had befriended. However, Pennington refused the beneficiaries' request to identify the family.

33. The befriended family, as it turned out, was Pennington's. Pennington gave the 37-inch television to himself, and gave the 52-inch television to his father, without the knowledge or consent of MB. The 37-inch television was seized from Pennington's house during the execution of a FBI search warrant on May 24, 2010. Pennington's father told the FBI that he was in possession of the 52-inch television, and returned it to the beneficiaries of the Trust.

34. During the same November 12, 2009, meeting, Pennington claimed that MB's 2002 Lincoln LS automobile had been given to a single mother, and again refused to identify the mother to the beneficiaries. In fact, Pennington had given the automobile to his relative, Jim Pennington, without the knowledge or consent of MB.

35. In January 2010, Pennington wrote three checks to himself out of the Trust checking account, without the knowledge or consent of MB. On January 14, 2010, Pennington transferred \$25,000 from the Trust account to a personal account he controlled. On January 15, 2010, Pennington transferred \$20,000 from the Trust account to a personal account he controlled.

On January 20, 2010, Pennington transferred \$22,000 from the Trust account to a personal account he controlled.

36. The acts, practices and conduct described above constitute violations of FINRA Rule 2010 by Pennington.

**THIRD CAUSE OF ACTION
Violation of FINRA Rules 8210 and 2010
Failure to Respond**

37. The Department realleges and incorporates by reference paragraphs 2 through 36 above.

38. On or about August 23, 2010, FINRA staff sent to Pennington a request that he provide certain information, pursuant to and in accordance with the provisions of FINRA Rule 8210. Specifically, FINRA requested that Pennington address whether he failed to timely report his role as a trustee to State Farm, and whether he had made false statements to the beneficiaries of MB's Trust regarding accountings and payments from the Trust. The request for information was sent by first class mail and by certified mail, return receipt requested, to [REDACTED] [REDACTED] which was Pennington's last known address and Pennington's address of record as contained in the records of the Central Registration Depository ("CRD address"). Neither mailing was returned.

39. FINRA staff received no response to the August 23, 2010 mailing. Accordingly, on or about September 16, 2010, FINRA sent to Pennington a second request that he provide the same information, pursuant to and in accordance with the provisions of FINRA Rule 8210. That request for information was sent by first class mail and by certified mail, return receipt requested, to Pennington's CRD address. The first class mailing was not returned. The receipt for the certified mailing was returned, and apparently signed by "Rishanda Pennington."

40. To date, Pennington has failed to respond to the request for documents and information described in Paragraphs 38 and 39 above to date, and the dates for responding to the request have passed.

41. The acts, practices and conduct described above constitute a violation of FINRA Rules 8210 and 2010 by Pennington.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent Pennington committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed, including that the Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest; and
- C. order that the Respondent(s) 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: December 12, 2011


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