

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Jason M. Pennington
(CRD No. 2522216),

Respondent.

DISCIPLINARY PROCEEDING
No. 2010023483501

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 #30-000-XXX, 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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