

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DOUGLAS EDMOND INLAY
(CRD No. 4770488),

Respondent.

Disciplinary Proceeding
No. 2010023753901

Hearing Officer—LOM

DEFAULT DECISION

August 3, 2012

Respondent is barred from associating with any FINRA member in any capacity for conversion of customer funds in violation of FINRA Rule 2010. Respondent also is barred from associating with any FINRA member in any capacity for falsification of records, in violation of FINRA Rule 2010. In addition, Respondent is barred from association with any FINRA member in any capacity for his failure to appear for testimony pursuant to FINRA Rule 8210, in violation of FINRA Rules 8210 and 2010.

Appearances

Lane A. Thurgood, Director, Rockville, MD, for the Department of Enforcement.

No appearance on behalf of Douglas Edmond Inlay.

I. Introduction And Origin Of Complaint

This is a disciplinary proceeding brought by the Department of Enforcement (“Enforcement”) of the Financial Industry Regulatory Authority, Inc. (“FINRA”) against Respondent, Douglas Edmond Inlay (“Inlay” or “Respondent”), for violation of FINRA Rules

2010 and 8210.¹ Inlay was an Investment Company Products and Variable Annuity Contracts Representative (“IR”) with a FINRA member firm, Pruco Securities (“Pruco” or the “Firm”) from March 2004 until July 1, 2010, and also was an insurance agent for a property and casualty insurance company affiliated with Pruco, Liberty Mutual (“LM”), during the period relevant to this proceeding. He worked for another FINRA member firm as an IR from July to December 2010.²

Enforcement began an investigation after Pruco filed a Uniform Termination Notice for Securities Industry Registration (“Form U5”) for Inlay on July 28, 2010. The Form U5 reported that Pruco had conducted an internal review after it was alerted by an insurer that Inlay may have misapplied cash premium payments and altered the date on a customer’s money order.³ Using Inlay’s residential address in the Central Registration Depository (“CRD”), Enforcement twice requested in writing that Inlay appear for testimony, first in August 2011 and then again in September 2011. These requests were sent to Inlay by three different methods (FedEx (no signature required), certified mail, and first-class mail). Inlay failed to appear.⁴

On April 9, 2012, Enforcement filed a Complaint alleging that in the period from November 2009 through April 2010 (the “relevant period”), Inlay converted customer funds for

¹ The Financial Industry Regulatory Authority, Inc. (“FINRA”) is responsible for regulatory oversight of securities firms and associated persons who do business with the public. It was formed in July 2007 by the consolidation of NASD and the regulatory arm of the New York Stock Exchange (“NYSE”). FINRA is developing a new “Consolidated Rulebook” of FINRA Rules that includes NASD Rules. The first phase of the new consolidated rules became effective on December 15, 2008. *See* FINRA Regulatory Notice 08-57 (Oct. 2008). FINRA’s Rules are available at www.finra.org/Rules.

² The facts set forth herein are based on the allegations of the Complaint, which, as discussed below, are deemed admitted as a result of Respondent’s default, and on a Declaration given by a FINRA Enforcement attorney, Lane A. Thurgood (“Thurgood Decl.”), and the three accompanying exhibits, marked CX-1 through CX-3. *See* Compl. ¶¶ 4-5; Thurgood Decl. ¶ 4.

³ Thurgood Decl. ¶ 7.

⁴ Compl. ¶¶ 23-26.

his own use, attempted to conceal the conversion by making false statements to LM, and separately submitted false information to LM in connection with another customer's insurance application. The Complaint also alleges that Enforcement made two separate requests for Respondent's testimony pursuant to FINRA Rule 8210 to no avail.⁵ Enforcement twice attempted to serve the Complaint on Inlay at his CRD address by certified mail, return receipt requested. Inlay failed to file an Answer or responsive pleading.⁶

Enforcement filed and served its Motion For Entry Of Default Decision And Imposition Of Sanctions ("Default Motion") on June 15, 2012, accompanied by the Thurgood Declaration and three supporting exhibits.⁷

For the reasons set forth below and pursuant to authority granted by FINRA Rule 9269(a), the Hearing Officer finds Inlay in default, grants Enforcement's Default Motion, and deems the allegations of the Complaint admitted. Based on the Complaint and other evidence of record, the Hearing Officer issues this Decision barring Inlay from associating with any FINRA member firm in any capacity.

II. Jurisdiction

FINRA has jurisdiction over this disciplinary proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because the Complaint alleges acts of conversion and false statements that occurred while Inlay was a registered representative, and the Complaint was filed within two years after Inlay's last registration with a FINRA member firm. FINRA also has jurisdiction as

⁵ Compl. ¶¶ 1-28.

⁶ Compl.; Second Notice of Compl.; Thurgood Decl. ¶¶ 9-16.

⁷ Default Motion; Thurgood Decl.

to the failure to provide investigative testimony because that misconduct occurred in the two-year period after Respondent ceased to be associated with a FINRA member firm.⁸

III. Procedural History And Grant Of Default Motion

On April 9, 2012, Enforcement served the Complaint and Notice of Complaint on Respondent by certified mail, return receipt requested, directed to Inlay's CRD address.⁹ Enforcement has no other address for Inlay and no reason to believe that the CRD address is outdated.¹⁰ Enforcement received back the certified mail return receipt, which bore a signature and an April 14, 2012 deliver date.¹¹ The Notice of Complaint required Respondent to file an Answer on or before May 7, 2012.¹² Respondent failed to file an Answer by the specified date.¹³

On May 8, 2012, Enforcement served the Complaint and a Second Notice of Complaint in the same manner on Inlay at his CRD address.¹⁴ Enforcement received back the certified mail return receipt marked "unclaimed."¹⁵ The Second Notice of Complaint informed Inlay that he was required to file an Answer on or before May 25, 2012.¹⁶ The Second Notice of Complaint also informed Inlay that if he did not file an Answer by the specified date a default decision

⁸ Thurgood Decl. ¶¶ 5-6.

⁹ Thurgood Decl. ¶ 9.

¹⁰ Thurgood Decl. ¶ 11.

¹¹ Thurgood Decl. ¶ 11; CX-2.

¹² Thurgood Decl. ¶ 12.

¹³ Thurgood Decl. ¶ 12.

¹⁴ Thurgood Decl. ¶ 13.

¹⁵ Thurgood Decl. ¶ 15; CX-3.

¹⁶ Thurgood Decl. ¶ 16.

could be entered against him pursuant to FINRA Rule 9269, and the allegations of the Complaint could be treated as true.¹⁷ Inlay nevertheless failed to file an Answer.¹⁸

Under FINRA Rule 9134, service of a complaint is valid if sent to an individual respondent by certified mail at the person's most recent residential address in the CRD, unless the staff has actual knowledge that the CRD address is outdated and knows of a more current address. Enforcement researched alternative addresses for Inlay but uncovered no address other than the CRD address.¹⁹ It states that it has no reason to believe that Inlay's CRD address is outdated.²⁰ Accordingly, Enforcement's efforts in this case were sufficient to establish constructive service in accordance with the provisions of FINRA Rule 9134(a)(2) and (b)(1).

The Hearing Officer finds that the Complaint was validly served and that Inlay failed to file an Answer. Pursuant to FINRA Rules 9215(f) and 9269(a), the Hearing Officer grants Enforcement's Default Motion and deems the allegations in the attached Complaint admitted.

IV. Findings Of Fact And Conclusions Of Law As To Underlying Violations

A. Respondent's Conversion Of Customer Funds

In the first cause of action, the Complaint alleges that during the first quarter of 2010 Inlay received a \$160 cash down payment to purchase an automobile insurance policy from a customer, RR. Instead of submitting the payment to LM, Pruco's affiliated insurance company,

¹⁷ Second Notice of Complaint, ¶ 2.

¹⁸ Thurgood Decl. ¶ 16.

¹⁹ Compl. ¶ 27.

²⁰ Thurgood Decl. ¶ 11.

Inlay converted the money for his own purposes. The customer later complained and an LM representative interviewed Inlay on March 26, 2010, concerning the cash payment.²¹

Inlay falsely claimed to the insurance company representative that he had received a money order instead of cash. He blamed his former marketing assistant for misplacing the payment. Inlay falsely claimed to have discovered the customer's money order in the customer's file and also falsely stated that he had mailed the payment to LM for processing on the same day that he discovered it.²² On April 6, 2010, Inlay provided a copy of a money order to LM that he claimed the customer had provided to him. But Inlay had actually purchased the money order after the customer complained and then altered its date to show a false date of purchase of March 22, 2010. In fact, Inlay purchased the money order himself on March 30, 2010.²³

Conversion is "an intentional and unauthorized taking of and/or exercise of ownership over property by one who neither owns the property nor is entitled to possess it."²⁴ In more colloquial terms, it is stealing. Inlay's conduct constituted conversion.

FINRA Rule 2010 requires the observance of "high standards of commercial honor and just and equitable principles of trade." It is fundamentally inconsistent with the duties imposed by this Rule to steal money. FINRA has found that associated persons violate FINRA Rule 2010

²¹ Compl. ¶¶ 8-9.

²² Compl. ¶ 9.

²³ Compl. ¶ 10.

²⁴ FINRA Sanction Guidelines (2011), available at www.finra.org/oho (then follow "Enforcement" hyperlink to "Sanction Guidelines") at 36 n.2.

(and its predecessor, NASD Rule 2110) by conversion, even where funds are stolen from non-customers.²⁵

The Hearing Officer finds that Inlay violated FINRA Rule 2010 by this conduct.

B. Respondent's Falsification Of Records

As discussed above, Inlay attempted to conceal his conversion of the customer's funds by presenting the Firm's insurance company affiliate with a falsely altered money order. In addition, on January 12, 2010, Inlay provided an application for home insurance coverage to the insurance company that Inlay knew contained false information. The false insurance application was created to conceal that the property for which the insurance was sought did not meet LM's insurability requirements.²⁶

Specifically, on November 11, 2009, Inlay initiated a homeowner's insurance policy for customer DG at LM and ordered a property inspection. On December 2, 2009, DG's residence failed the home inspection. LM's underwriting department determined that DG's insurance policy would be cancelled due to the poor physical condition of the residence and sent DG a cancellation notice to be effective January 22, 2010. On January 12, 2010, Inlay established a second homeowner's insurance policy at LM for DG by submitting an application containing the following false information: (i) Inlay falsely labeled the second policy as a "rewrite" or re-issuance of an existing home owner's insurance policy that was in good standing at LM; (ii)

²⁵ *Dist. Bus. Conduct Comm. v. Vail*, No. C06920051, 1994 NASD Discip. LEXIS 192, at *13 (N.B.C.C. Sept. 22, 1994), *aff'd*, *Henry E. Vail*, 52 S.E.C. 339, 342 (1995), *aff'd*, 101 F.3d 37 (5th Cir. 1996) (barred for misappropriation of funds of private political club); *Daniel D. Manoff*, Exchange Act Rel. No. 46708, 2002 SEC LEXIS 2684 (Oct. 23, 2002) (barred for unauthorized use of co-worker's credit card numbers); *Dist. Bus. Conduct Comm. v. Kwikkel-Elliott*, No. C04960004, 1998 NASD Discip. LEXIS 4 (N.B.C.C. Jan. 16, 1998) (barred for converting funds from employer by submission of false expense reimbursement requests); *Dep't of Enforcement v. Farley*, No. C9A000038, 2001 NASD Discip. LEXIS 51 (O.H.O. Oct. 2, 2001) (respondent barred for keeping and spending firm funds deposited into his account by girlfriend).

²⁶ Compl. ¶¶ 11-15, 19-21.

Inlay provided a false expiration date for the prior insurance carrier; (iii) Inlay falsely answered “no” to LM’s question of whether any of DG’s previous homeowner’s or renter’s policies had been cancelled, non-renewed or declined in the past 12 months; (iv) Inlay falsely answered “no” to LM’s question whether DG’s residence had “any physical conditions of property in need of repair or which clearly present likelihood for injury;” (v) Inlay falsely indicated that a down payment was not required because the second policy was a “rewrite.”²⁷

The Hearing Officer finds that the conduct described in the second cause of action is inconsistent with the high standards of commercial honor required by FINRA Rule 2010 and constitutes a separate violation of the Rule.

C. Respondent’s Failure To Appear For On-The-Record Testimony Pursuant To FINRA Rule 8210

FINRA Rule 8210 requires FINRA members and their associated persons to cooperate with FINRA investigations by providing information when requested by FINRA staff. Pursuant to Rule 8210, FINRA may require an associated person “to provide information orally, in writing, or electronically . . . and to testify at a location specified by FINRA staff, under oath or affirmation” in connection with any investigation. The Rule is crucial to FINRA’s ability to oversee and regulate member firms and associated persons because FINRA does not have subpoena power. Instead, FINRA must depend on member firms and associated persons to

²⁷ Compl. ¶ 14.

cooperate fully and promptly with requests for information.²⁸ A failure to cooperate in an investigation frustrates FINRA's ability to detect misconduct and protect investors and markets.²⁹

In this case, Enforcement made two attempts to obtain Inlay's testimony pursuant to FINRA Rule 8210. Each time, Enforcement sent a written request for testimony to Inlay's CRD address by three different methods (FedEx (no signature required), certified mail, and first-class mail). The certified mail papers were returned to Enforcement marked "unclaimed." Inlay failed to appear for testimony either time at the specified location and date. The staff made efforts to find another address for Inlay, but all searches yielded the CRD address.

The Hearing Officer finds that Inlay violated FINRA Rule 8210 by his failure to provide testimony that was sought pursuant to that Rule. In addition, the Hearing Officer finds that Respondent violated FINRA Rule 2010. It is well-established that a violation of the duty to cooperate and provide information pursuant to Rule 8210 is also a violation of Rule 2010.³⁰

²⁸ See, e.g., *Dep't of Enforcement v. Valentino*, No. FPI010004, 2003 NASD Discip. LEXIS 15, at *12 (N.A.C. May 21, 2003), *aff'd*, 2004 SEC LEXIS 330 (Feb. 13, 2004) ("It is well established that because NASD [FINRA's predecessor] lacks subpoena power over its members, a failure to provide information fully and promptly undermines NASD's ability to carry out its regulatory mandate.") (citation omitted); *Joseph G. Chiulli*, 54 S.E.C. 515, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for NASD to effectively conduct its investigations, and emphasizing that NASD members and associated persons must fully cooperate with requests for information). See also *Morton Bruce Erenstein*, 316 Fed. Appx. 865, 871, 2008 U.S. App. LEXIS 19746, at *13 (11th Cir. Sept. 16, 2008) ("[I]t is critically important to the self-regulatory system that members and associated persons cooperate with NASD investigations, especially because the NASD lacks subpoena power."); *Robert Fitzpatrick*, 55 S.E.C. 419, 2001 SEC LEXIS 2185, at *11-12 (Oct. 19, 2001).

²⁹ *PAZ Sec., Inc.*, 2008 SEC LEXIS 820, at *13 (Apr. 11, 2008), *petition for review denied sub nom. Paz Sec. v. SEC*, 566 F.3d 1172, 2009 U.S. App. LEXIS 11500 (D.C. Cir. May 29, 2009).

³⁰ See *CMG Inst. Trading, LLC*, Exchange Act Rel. No. 59325, 2009 SEC LEXIS 215, at *30 (Jan. 30, 2009); *Stephen J. Gluckman*, 54 S.E.C. 175, 1999 SEC LEXIS 1395, at *22 (July 20, 1999).

V. Sanctions

The FINRA Sanction Guidelines (“Sanction Guidelines”) recommend a bar for conversion, regardless of the amount involved.³¹ That sanction is entirely appropriate here for Inlay’s conversion of customer funds in violation of FINRA Rule 2010.

With respect to the falsification of the insurance application, the Sanction Guidelines for the falsification and forgery of records are applicable. The Sanction Guidelines recommend up to a two-year suspension where mitigating factors are present.³² No mitigating factors appear on this record. The Sanction Guidelines provide that a bar may be considered in egregious cases. This is an egregious case, because Inlay purposely provided false information to the insurance company. Accordingly, for the intentional falsification of records, Inlay is separately barred for violation of FINRA Rule 2010.

The Sanction Guidelines state that a bar should be the standard sanction for a complete failure to respond to a request for information pursuant to Rule 8210.³³ That sanction is also appropriate for Inlay’s failure to appear for on-the-record testimony, which is a separate violation of FINRA Rules 8210 and 2010.

VI. Order

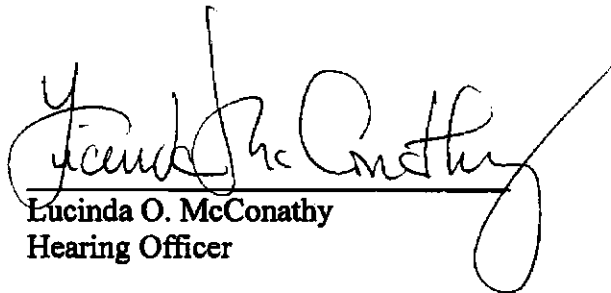
Enforcement’s Default Motion is granted and the allegations of the Complaint are deemed to be true. Respondent Douglas Edmond Inlay is barred from association with any FINRA member firm in any capacity for conversion, separately barred from association with any FINRA member firm in any capacity for falsification of records, and

³¹Sanction Guidelines at 36.

³² Sanction Guidelines at 37.

³³ Sanction Guidelines at 33.

separately barred from association with any FINRA member firm in any capacity for his failure to provide on-the-record testimony pursuant to Rule 8210. The bars shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.



Lucinda O. McConathy
Hearing Officer

Copies to: Douglas Edmond Inlay (via first-class mail and overnight courier)
Lane A. Thurgood, Esq. (via first-class and electronic mail)
Thomas B. Lawson, Esq. (via electronic mail)
David R. Sonnenberg, Esq. (via electronic mail)