

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

CRISTIE LYNN ROTHWEILER
(CRD No. 5209424),

Respondent.

Disciplinary Proceeding

No. 2010024238801

Hearing Officer – MC

AMENDED DEFAULT DECISION¹

May 21, 2013

For engaging in check kiting, by writing checks on an account with insufficient funds and on a closed account, and for converting funds from her FINRA member firm employer, in violation of FINRA Rule 2010, Respondent Cristie Lynn Rothweiler is barred from associating with any FINRA member firm in any capacity, and is ordered to pay restitution.

Appearances

Miranda Chatelain, Esq., and Richard R. Best, Esq., New York, New York, for the Department of Enforcement.

Respondent Cristie Lynn Rothweiler appeared pro se.

DECISION

I. Background

Respondent Cristie Lynn Rothweiler, a back office employee of a FINRA member firm, violated FINRA Rule 2010 by engaging in unethical conduct relating to her checking account and her brokerage account.

The Department of Enforcement filed and served the attached Complaint upon

¹ The original Default Decision has been amended to correct a typographical error regarding the date the Complaint was filed.

Rothweiler on August 17, 2012. The first cause of action charges her with check kiting,² writing a check on an account with insufficient funds and, after the bank closed the account, writing another check on the closed account. The second cause of action alleges that Rothweiler converted funds of her FINRA member firm employer.

Rothweiler filed an Answer denying the allegations in the Complaint. She asserted that she was “framed,” the Complaint contains allegations that are “blatantly false,” and “[t]here will be no disciplinary hearing” in this matter.³

After filing her Answer, Rothweiler ceased to participate in this proceeding. She failed to appear at a pre-hearing conference, failed to comply with an Order to file a proposed pre-hearing schedule, and failed to appear at a hearing to show cause why she should not be deemed in default (“Show Cause Hearing”). The Hearing Officer then issued an Order Finding Respondent in Default and Setting Deadline for Complainant to File a Motion for Entry of Default Decision. Pursuant to that order, Enforcement filed a Motion for Entry of Default Decision (“Default Motion”) supported by the Declaration of Miranda Chatelain, Esq., and 24 exhibits. Rothweiler has not filed a response to the Default Motion.

Rothweiler’s failure to appear at the pre-hearing conference, and her failure to appear at the Show Cause Hearing, constitute a default.⁴ Accordingly, for the reasons set forth below, Enforcement’s Default Motion is granted.⁵

² Kiting is the wrongful practice of writing a check to obtain funds from an account with insufficient funds before the bank dishonors the check. Black’s Law Dictionary 871 (Sixth Ed. 1990).

³ Answer, at 3. Rothweiler’s Answer establishes that the Complaint was served upon her and that she received actual notice of the filing of the Complaint.

⁴ FINRA Rules 9241(f), 9269(a)(1).

⁵ The factual determinations in this Decision are based on the allegations in the Complaint, which are deemed admitted pursuant to FINRA Rule 9269(a)(2); Enforcement’s Default Motion; the Declaration of Miranda Chatelain, Esq. (“Decl.”); and Enforcement’s Exhibits CX-1 through CX-25.

II. Findings of Fact and Conclusions of Law

A. Jurisdiction

From August 2006 to August 25, 2010, Rothweiler was employed by FINRA member firm Charles Schwab & Co., Inc. (“Schwab”) as an unregistered asset transfer associate.⁶ Her responsibilities included reviewing and processing asset transfers for Schwab customers.⁷ Because asset transfers are an integral part of Schwab’s business, Rothweiler was an “associated person.”⁸ On August 25, 2010, Schwab terminated Rothweiler’s association for failing to comply with firm policy.⁹ Rothweiler is not currently associated with any FINRA member firm. Pursuant to Article V, Section 4 of FINRA’s By-Laws, Rothweiler nonetheless remains subject to FINRA’s jurisdiction for the purposes of this disciplinary proceeding because Enforcement filed the Complaint less than two years after Schwab terminated her association with the firm, and because the Complaint charges her with misconduct committed when she was associated with Schwab.¹⁰

B. Rothweiler Defaulted

The initial order setting a pre-hearing conference in this case warned that the failure of a party to appear at the conference may be deemed a default.¹¹ Prior to the scheduled date of the conference, Rothweiler requested, and the assigned Hearing Officer granted, a postponement.¹² The Hearing Officer then became unavailable and the conference was again postponed. On the

⁶ Decl. ¶¶ 5, 6; CX-2.

⁷ Decl. ¶ 8.

⁸ Decl. ¶ 10. *See also* FINRA’s By-Laws, Article I(rr) that defines a “person associated with a member” or “associated person of a member” to include a “natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member.”

⁹ Decl. ¶ 11.

¹⁰ Decl. ¶ 12.

¹¹ Decl. ¶ 38.

¹² Decl. ¶¶ 39-40.

new date, Rothweiler, complaining of technical problems with her cellular telephone, abruptly left the conference.¹³

The Hearing Officer issued an order scheduling the conference for a fourth time. Rothweiler confirmed with the Office of Hearing Officers that she was available on the designated date and time and that she had the necessary information provided by the Office of Hearing Officers to call in to the conference. Despite these assurances, Rothweiler failed to appear for the conference.¹⁴

After the conference, the Hearing Officer issued an order setting a deadline for Rothweiler to file a proposed pre-hearing schedule. Rothweiler failed to do so, and the Hearing Officer issued an Order to Show Cause for Rothweiler to demonstrate why she should not be deemed in default. Rothweiler did not appear for the scheduled Show Cause Hearing.¹⁵ Under FINRA Rule 9241(f), Rothweiler's failures to appear for the conference and the Show Cause Hearing constitute a default. As a result, the Hearing Officer issued an order finding Rothweiler in default.¹⁶

C. Rothweiler's Check Kiting

Rothweiler used her checking account and her brokerage account to violate FINRA Rule 2010. She held the former at her bank, which was affiliated with Schwab; the latter was her Schwab brokerage account ("Brokerage Account"). On September 1, 2009, Rothweiler transferred \$592.76, the entire balance of her checking account, to her Brokerage Account.¹⁷ The same day, she wrote a check for \$320 drawn on her checking account, even though it now had a

¹³ Decl. ¶¶ 41-43.

¹⁴ Decl. ¶¶ 44-45.

¹⁵ Decl. ¶¶ 46-48.

¹⁶ Decl. ¶ 9.

¹⁷ Decl. ¶ 14; CX-4, at 5, CX-5, at 3.

zero balance, and deposited it into her Brokerage Account.¹⁸ Thus she made it appear, misleadingly, that the balance in her Brokerage Account was \$912.76.

Also on the same day, Rothweiler directed Schwab to issue a check from her Brokerage Account to her landlord in the amount of \$887.70.¹⁹ Because it appeared that Rothweiler's Brokerage Account contained sufficient funds, Schwab issued the check. Rothweiler's landlord negotiated the check and credited the funds to Rothweiler's rent.²⁰

On September 8, 2009, Rothweiler's bank dishonored the \$320 check she had written on her depleted checking account and returned the check to Schwab for insufficient funds. In turn, Schwab charged Rothweiler's Brokerage Account for the bad check, creating a negative balance in the account.²¹

On February 2, 2010, Schwab notified Rothweiler that its affiliated bank had terminated her check writing privileges and had closed her checking account because of additional insufficient funds transactions.²² On February 22, 2010, Rothweiler acknowledged to Schwab that she knew the bank had terminated her check writing privileges.²³ Despite this, on March 30, 2010, Rothweiler wrote a check to a third party for \$410 drawn on the closed account. The third party presented the check for payment; the bank did not honor it, and returned it on April 5, 2010.²⁴

By these acts, Rothweiler violated FINRA Rule 2010.

¹⁸ Decl. ¶ 15.

¹⁹ Decl. ¶ 17; CX-4, at 5, CX-8.

²⁰ Decl. ¶ 18.

²¹ Rothweiler made up the debit balance by September 30, 2009. Decl. ¶¶ 20-22.

²² Decl. ¶ 23; CX-9, CX-10, at 5.

²³ Decl. ¶ 24; CX-11.

²⁴ Decl. ¶¶ 25-26.

D. Rothweiler's Conversion of Firm Funds

On August 4, 2010, Rothweiler wrote another worthless check on her closed checking account, in the amount of \$1,250, and deposited it into her Brokerage Account.²⁵ On August 6, 2010, before the bank processed this check, Rothweiler directed Schwab to issue a check from her Brokerage Account in the amount of \$1,198.55.²⁶ Rothweiler deposited this check into an account she maintained at different institution and used the funds.²⁷

On August 10, 2010, Rothweiler's bank returned the \$1,250 closed account check to Schwab.²⁸ Schwab charged Rothweiler's Brokerage Account for the bad check, which created a negative balance, because she had only \$1.89 in the account.²⁹

By these acts, Rothweiler converted to her own use \$1,198.55 of Schwab's funds, in violation of FINRA Rule 2010.

III. Sanctions

FINRA's Sanction Guidelines do not contain sanctions for writing bad checks or for check kiting. However, the Guidelines for conversion or improper use of funds provide appropriate guidance. The Guidelines define conversion as "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."³⁰ By kiting, writing checks on insufficient funds, and writing checks on a closed account, Rothweiler intentionally obtained and used funds which were not hers, and to which she was not entitled.

²⁵ Decl. ¶ 27.

²⁶ Decl. ¶ 28; CX-15, at 13.

²⁷ Decl. ¶¶ 29-30.

²⁸ Decl. ¶ 32.

²⁹ Decl. ¶ 33; CX-16 ¶ 2. Rothweiler repaid Schwab \$160 towards the \$1,198.55.

³⁰ *FINRA Sanction Guidelines* 36 & n.2 (2011).

The Guidelines for conversion recommend a bar without regard to the amount taken.³¹ Conversion “is extremely serious and patently antithetical to the ‘high standards of commercial honor and just and equitable principles of trade’ that [FINRA] seeks to promote” and therefore it constitutes a clear violation of the ethical strictures of Rule 2010.³² Here, Rothweiler’s misconduct evidences a serious and sustained ethical lapse, with the first improper transaction occurring on September 1, 2009, and the last on August 6, 2010. For this misconduct, Enforcement recommends imposing a bar and ordering restitution to Schwab.

As Enforcement notes, the record discloses no mitigating factors, and Rothweiler has expressed no responsibility or remorse for her misconduct from the time she committed the wrongful acts until she ceased participating in this disciplinary proceeding.³³ To the contrary, in her Answer, Rothweiler denied any wrongdoing, claimed the allegations in the Complaint are false, and argued that the insufficient funds transactions resulted from circumstances beyond her control.³⁴

The Guidelines encourage ordering restitution “to restore the status quo ante where a victim otherwise would unjustly suffer loss.”³⁵ Here, the record reflects that Rothweiler has repaid Schwab only \$160 of the funds she converted. Thus, she has benefitted financially from her misconduct, and Schwab has been harmed.

For these reasons, a bar and an order of restitution are the appropriate sanctions.

³¹ *Guidelines*, at 36.

³² *John Edward Mullins*, Exchange Act Rel. No. 66373, 2012 SEC LEXIS 464, at *42 (Feb. 10, 2012).

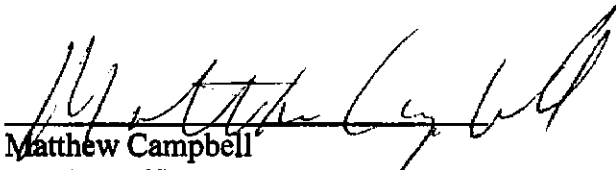
³³ *Guidelines*, at 6 (Principal Considerations in Determining Sanctions, No. 2).

³⁴ Answer ¶ 1.

³⁵ *Guidelines*, at 4 (General Principles Applicable to All Sanction Determinations, No. 5). Adjudicators should, in weighing sanctions, consider: (1) all mitigating factors that respondent has raised; (2) the seriousness of respondent’s offenses; (3) the corresponding harm that respondent caused to members of the trading public; (4) respondent’s potential gain for disobeying the rules; (5) the potential for repetition of respondent’s misconduct in light of the current regulatory regime; and (6) the deterrent value to the respondent and others). *McCarthy v. SEC*, 406 F.3d 179 (2d Cir. 2005).

IV. Order

For engaging in check kiting, by writing checks on an account with insufficient funds and on a closed account, and for converting funds of her FINRA member firm employer, as alleged in the Complaint, Respondent Cristie Lynn Rothweiler is barred from associating with any FINRA member firm in any capacity, and is ordered to pay restitution to Schwab in the amount of \$1,038.55,³⁶ plus interest on the unpaid balance from August 6, 2010, until paid in full. Interest shall accrue at the rate set in 26 U.S.C. § 6621(a)(2).³⁷ The bar will be effective immediately if this Default Decision becomes FINRA's final disciplinary action in this proceeding. Restitution shall be payable on a date set by FINRA, but not less than 30 days after this decision becomes FINRA's final disciplinary action.



Matthew Campbell
Hearing Officer

Copies to:

Cristie L. Rothweiler (*via overnight courier and first-class mail*)
Miranda Chatelain, Esq. (*via electronic and first-class mail*)
Myles L. Orosco, Esq. (*via electronic mail*)
Richard R. Best, Esq. (*via electronic mail*)
Danielle I. Schanz, Esq. (*via electronic mail*)
Jeffrey D. Pariser, Esq. (*via electronic mail*)

³⁶ This is the amount she converted from Schwab, \$1,198.55, minus the \$160 repayment she made to the firm.

³⁷ The interest rate set in Section 6621(a)(2) of the Internal Revenue Code is used by the Internal Revenue Service to determine interest due on underpaid taxes and is adjusted each quarter.

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

Department of Enforcement,

Complainant,

v.

Cristie Lynn Rothweiler
(CRD No. 5209424),

Respondents.

DISCIPLINARY PROCEEDING
No. 2010024238801

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. In September 2009 and March 2010, Cristie Lynn Rothweiler engaged in check kiting and drew bad checks on her account at a bank affiliated with the firm with which she was associated, Charles Schwab & Co., Inc. ("Charles Schwab" or the "Firm"). In addition, in August 2010, Rothweiler converted \$1,198.55 from Charles Schwab by providing the Firm with a check drawn on a closed account to obtain immediate access to Firm funds. By this conduct, Rothweiler violated FINRA Rule 2010.

RESPONDENT(S) AND JURISDICTION

2. In August 2006, Rothweiler became associated with Charles Schwab as an unregistered asset transfer associate and remained employed in that capacity until the Firm terminated her employment on August 25, 2010. On August 25, 2010, the Firm filed a Form 3070(a), reporting Rothweiler's termination of employment for failure to adhere to company policy. Rothweiler is not employed with a FINRA regulated firm.

Although Respondent is no longer registered or associated with a FINRA member, she 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 she ceased to be associated with a FINRA member, namely, August 25, 2010, and (2) the Complaint charges her with misconduct committed while she was associated with a FINRA member.

FIRST CAUSE OF ACTION

Check Kiting and Issuing a Bad Check (FINRA Rule 2010)

3. The Department realleges and incorporates by reference paragraphs 1 to 2 above.

Transaction with Insufficient Funds

4. On September 1, 2009, Rothweiler transferred the entire balance of her checking account with a bank affiliated with the Firm (the "Bank Account") to her brokerage account with the Firm (the "Brokerage Account").
5. That same day, Rothweiler drew a check on the Bank Account in the amount of \$320 and deposited it into the Brokerage Account. Since Rothweiler transferred the entire balance of her Bank Account into the Brokerage Account before she deposited the check into the Brokerage Account, she knew or should have known that her Bank Account did not have sufficient funds to cover the \$320 check.
6. After Rothweiler transferred funds from her Bank Account and deposited the \$320 check into the Brokerage Account, she requested that the Firm issue a Firm check for \$887.70 to her landlord, payable against the Brokerage Account. The landlord negotiated the check and applied the funds to Rothweiler's rent.

7. Without the purported \$320 deposit, the Brokerage Account would not have had sufficient funds to cover the \$887.70 check and the Firm would not have issued its check.
8. On September 8, 2009, Rothweiler's check in the amount of \$320 was dishonored and returned to the Firm for insufficient funds. The Firm then charged her Brokerage Account for the bad check resulting in a debit balance in the account. Rothweiler covered the debit balance between September 24 and 30, 2009.

Issuing a Bad Check

9. On February 2, 2010, after Rothweiler initiated additional insufficient funds transactions in the Bank Account, the Firm sent Rothweiler an email notifying her that its affiliated bank had terminated her checking privileges and that the Bank Account was closed. On February 22, 2010, Rothweiler replied to the Firm's February 2 email acknowledging that she was aware that her checking privileges had been terminated. Therefore she knew or should have known that she could not draw further checks on this account.
10. Despite this knowledge, on March 30, 2010, Rothweiler drew a check on the closed Bank Account in the amount of \$410, payable to a third party, for her husband's business licensing renewal fee.
11. The third party attempted to negotiate the \$410 check, but it was dishonored and returned on April 2, 2010.
12. By virtue of this conduct, Rothweiler violated FINRA Rule 2010.

SECOND CAUSE OF ACTION
Conversion of Firm Funds (FINRA Rule 2010)

13. The Department realleges and incorporates by reference paragraphs 1 to 12 above.
14. On August 4, 2010, Rothweiler drew another check on the closed Bank Account in the amount of \$1,250 and deposited it into her Brokerage Account. Rothweiler then requested that the Firm issue a Firm check for \$1,198.55 to herself payable against the Brokerage Account
15. On August 6, 2010, Rothweiler deposited the Firm check for \$1,198.55 into her personal account at another bank. This check was paid, and the funds became available for Rothweiler's use.
16. Without the purported \$1,250 deposit, the Brokerage Account would not have had sufficient funds to cover the \$1,198.55 Brokerage Account check and the Firm would not have issued its check.
17. On August 10, 2010, the \$1,250 check that Rothweiler drew on her closed Bank Account was dishonored and returned unpaid to the Firm. The Firm then charged her Brokerage Account for the bad check, resulting in a debit balance in the account. To date, Rothweiler has repaid the Firm only \$160 of the \$1,198.55 that she converted for her own use and benefit.
18. By virtue of this conduct, Rothweiler violated FINRA Rule 2010.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent 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 Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest;
- C. order that Respondent bears such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date:

8/17/12



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