

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

SEAN D. FITZGERALD
(CRD No. 5465012),

Respondent.

Disciplinary Proceeding
No. 20100242409

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

April 17, 2012

Respondent is barred from associating with any FINRA registered firm in any capacity for converting funds from bank customers' accounts, in violation of FINRA Conduct Rule 2010; and failing to respond to requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2010.

Appearances

Janice Payne, Esq., for the Department of Enforcement.

No appearance by or on behalf of Sean D. Fitzgerald.

DECISION

I. Introduction

The FINRA Department of Enforcement ("Enforcement") filed the attached Complaint with the Office of Hearing Officers on October 17, 2011. The Complaint charges Respondent Sean D. Fitzgerald ("Fitzgerald") with: (1) misappropriating funds from the accounts of nine customers of JP Morgan Chase Bank ("Chase Bank") by issuing unauthorized ATM cards in their names and then using the cards to withdraw funds from their bank accounts, in violation of FINRA Conduct Rule 2010; and (2) failing to respond to requests for information regarding his

misappropriation of customer funds, in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010.

Fitzgerald defaulted by failing to answer or otherwise respond to the Complaint. Accordingly, on February 23, 2012, Enforcement filed a Motion for Entry of Default Decision (“Default Motion”). The Default Motion is supported by the Declaration of Janice Payne, Esq., (“Payne Decl.”) and three attached exhibits.¹

II. Procedural History

On November 22, 2011, Enforcement served the Complaint and the First Notice of Complaint on Fitzgerald by mailing them to his most current residential address recorded in the Central Registration Depository (“CRD”) and to an alternate address Enforcement obtained from LexisNexis.² Enforcement mailed the Complaint and First Notice of Complaint by first-class certified mail, return receipt requested.³ The United States Postal Service returned the mailing sent to the alternate address but not the mailing sent to the CRD address. Fitzgerald did not answer or otherwise respond to the First Notice of Complaint.

On December 23, 2011, Enforcement served a Second Notice of Complaint on Fitzgerald by mailing it to his CRD address and the alternate address by first-class certified mail, return receipt requested.⁴ The Postal Service returned the certified mailing sent to his CRD address with the notation that Fitzgerald had moved and left no forwarding address.⁵ The Postal Service also returned the mailing Enforcement sent to the alternative address.

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

² Payne Decl. ¶¶ 9, 12.

³ *Id.* ¶ 12.

⁴ *Id.* ¶ 13.

⁵ Payne Decl. ¶ 13.

The Second Notice of Complaint required Fitzgerald to file an Answer with the Office of Hearing Officers on or before January 9, 2012. Fitzgerald did not answer or otherwise respond to the Complaint.

The Hearing Officer finds that Fitzgerald received valid constructive notice of this proceeding. Enforcement properly served Fitzgerald with a copy of the Complaint. The Hearing Officer further finds that Fitzgerald defaulted by failing to file an Answer or otherwise respond to the Complaint by the deadline set forth in the Second Notice of Complaint. Accordingly, the Hearing Officer grants Enforcement's Default Motion.

III. Findings of Fact and Conclusions of Law

Based on Fitzgerald's default, the Hearing Officer deemed the allegations in the attached Complaint admitted pursuant to Rules 9215(f) and 9269(a).

A. Background

Fitzgerald was a personal banker with Chase Bank. In connection with his employment as a personal banker, he was registered with FINRA as Investment Company and Variable Contracts Products Representative from February 6, 2008, until September 10, 2010, through Chase Investment Services Corp. ("Chase Investment"), a FINRA-registered firm and an affiliate of Chase Bank.⁶

On September 10, 2010, FINRA received a Uniform Termination Notice for Securities Industry Registration (Form U5) filed on Fitzgerald's behalf by Chase Investment. The Form U5 disclosed that Chase Bank had terminated Fitzgerald's employment on August 12, 2010, because

⁶ CX-1, at 4; Compl. ¶ 3.

he had misappropriated customer funds.⁷ Following receipt of the Form U5, FINRA staff commenced an investigation that led to this proceeding.⁸

Fitzgerald has not been registered with FINRA since September 10, 2010. Fitzgerald is not currently associated with a FINRA-registered firm.

B. 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 FINRA terminated Fitzgerald's registration, 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 Rule 8210 requests for information made during the two-year period following the termination of his FINRA registration.⁹

C. Misappropriation of Funds

On August 10, 2010, Chase Bank received a complaint from a customer L.C. regarding numerous cash withdrawals made with a temporary ATM card, which she claimed she had not requested. Chase Bank identified Fitzgerald as the person who made the withdrawals using the card issued for L.C.'s account.¹⁰

Chase Bank's Global Security and Investigation Department interviewed Fitzgerald on August 11, 2010, at which time he admitted that he had misappropriated funds from L.C.'s account. Fitzgerald admitted he used an ATM card linked to L.C.'s bank account to make cash withdrawals from that account, as well as purchases at various retail stores. Fitzgerald also

⁷ CX-1, at 4; Payne Decl. ¶ 5.

⁸ Payne Decl. ¶ 4.

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 Compl. ¶ 4.

submitted a written statement dated August 11, 2010, in which he admitted taking funds from L.C.'s bank account.¹¹ Fitzgerald misappropriated \$33,102.50 from L.C.'s bank account.

Chase Retail Bank also discovered that Fitzgerald misappropriated funds from eight other bank customers. In each case, Fitzgerald obtained a temporary ATM card and then made cash withdrawals against the account. Fitzgerald did not have permission or authority from Chase Bank or the customers to issue ATM cards for these accounts or to withdraw funds from the accounts for his own use. Fitzgerald misappropriated \$18,771.25 from these additional eight customers.¹²

In total, Fitzgerald misappropriated \$51,873.75 from nine Chase Bank customers. On August 12, 2010, Chase Bank terminated Fitzgerald's employment. Chase Bank later reimbursed the customers in full.

The Hearing Officer finds that the foregoing facts establish that Fitzgerald misappropriated \$51,873.75 from nine Chase Bank customers, in violation of FINRA Conduct Rule 2010, which rule requires members and associated persons to observe high standards of commercial honor and just and equitable principles of trade. Rule 2010 is sufficiently broad to encompass any unethical business-related misconduct, regardless of whether it involves a security.¹³

D. Failure to Provide Information

Fitzgerald failed to respond to four requests for information concerning his misappropriation of funds. Each request was issued pursuant to Rule 8210. Enforcement's

¹¹ Compl. ¶ 5.

¹² *Id.* ¶¶ 8-10.

¹³ *Department of Enforcement v. Saad*, 2009 FINRA Discip. LEXIS 29, at *11 (NAC Oct. 6, 2009) (finding that a registered person's submission of false expense reimbursement requests and receipts to his broker-dealer violated Rule 2110 (now Rule 2010)).

Preliminary Investigations Unit (“PI Unit”) issued the first three requests. The PI Unit sent the first request to Fitzgerald at his CRD address on September 20, 2010. The letter requested Fitzgerald to provide a written statement concerning his termination from Chase Bank.¹⁴ Fitzgerald did not respond.

On November 4, 2010, the PI Unit sent Fitzgerald another request for the same information. The PI Unit sent this letter to Fitzgerald’s CRD address and to alternative address.¹⁵ Fitzgerald did not respond.

On December 13, 2010, the PI Unit sent a third letter to Fitzgerald requesting the same information. The PI Unit sent this letter to Fitzgerald’s CRD address and to alternative address.¹⁶ Fitzgerald did not respond.

On January 19, 2011, Enforcement opened a formal investigation into Fitzgerald’s discharge from Chase Bank and his unauthorized withdrawals from customers’ accounts. In connection with this formal investigation, Enforcement sent Fitzgerald a request for information pursuant to Rule 8210. Enforcement sent the letter to Fitzgerald’s CRD address and to an alternative address.¹⁷ Fitzgerald did not provide any of the information Enforcement requested.¹⁸

Fitzgerald failed to respond to four requests for information FINRA staff sent to him pursuant to FINRA Rule 8210 in connection with FINRA’s investigation of his conversion of funds from bank accounts at Chase Bank.

The Hearing Officer finds that the foregoing facts establish that Fitzgerald violated FINRA Rules 8210 and 2010 by failing to respond to the Rule 8210 requests for information.

¹⁴ Compl. ¶ 14.

¹⁵ *Id.* ¶ 15.

¹⁶ *Id.* ¶ 16.

¹⁷ Compl. ¶¶ 17-18.

¹⁸ Compl. ¶ 19.

IV. Sanctions

A. Misappropriation of Funds

Fitzgerald converted funds from the nine Chase Bank customers. He intentionally used their funds for his personal use without their authorization. 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.¹⁹ There are no mitigating factors in the record that would warrant consideration of a lesser sanction. Accordingly, the Hearing Officer determined that a bar is the appropriate sanction for this violation.

B. Failure to Respond to Requests for Information

A violation of Rule 8210 is serious because Rule 8210 is a key element in FINRA’s oversight function and allows FINRA to carry out its regulatory functions without subpoena power.²⁰ When an individual fails to provide information, FINRA’s ability to perform its regulatory functions is subverted.²¹ For these reasons, the Sanction Guidelines recommend a bar when a respondent fails to respond in any manner to a request for information issued pursuant to Rule 8210.²² Fitzgerald failed to respond in any manner to four requests for information. There is no evidence of any mitigating facts that would justify a sanction less than a bar. Accordingly, the Hearing Officer determined that a bar is the appropriate sanction for this violation.

V. Order

Sean D. Fitzgerald is barred from associating with any member firm in any capacity for misappropriating bank customers’ funds, in violation of FINRA Conduct Rule 2010; and for

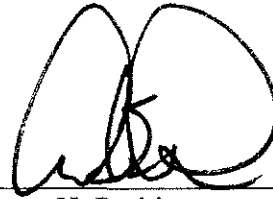
¹⁹ FINRA Sanction Guidelines 36 (2011), available at www.finra.org/sanctionguidelines.

²⁰ *Howard Brett Berger*, Exchange Act Rel. No. 58950, 2008 SEC LEXIS 3141 (Nov. 14, 2008); *Joseph G. Chiulli*, Exchange Act Rel. No. 42359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000).

²¹ *Joseph P. Hannan*, Exchange Act Rel. No. 40438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998).

²² Guidelines 33.

failing to respond to requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2010. The bars shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.²³

A handwritten signature in black ink, appearing to be 'A. Perkins', written over a horizontal line.

Andrew H. Perkins
Hearing Officer

Copies to:

Sean D. Fitzgerald (*via overnight courier and first-class mail*)
Janice Payne, Esq. (*via electronic and first-class mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

²³ Payne Decl. ¶ 25. The Hearing Officer did not order Fitzgerald to pay restitution because JP Morgan restored the accounts when it discovered the unauthorized transfers.

**FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA)
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

SEAN D. FITZGERALD
(CRD No. 5465012),

RESPONDENT.

DISCIPLINARY PROCEEDING
No. 20100242409

COMPLAINT

The Department of Enforcement ("Enforcement") alleges:

1. Between November 2009 and August 2010, while employed as a personal banker at JPMorgan Chase Bank (the "Chase Retail Bank"), respondent Sean D. Fitzgerald ("Fitzgerald") misappropriated \$51,873.75 from nine customer bank accounts by issuing unauthorized ATM cards and using the cards to withdraw funds from the customers' accounts and to make purchases without the customers' authorization. This conduct violated FINRA Rule 2010.

2. As part of an ongoing investigation, Enforcement issued four requests pursuant to FINRA Rule 8210 requiring Fitzgerald to provide a written statement regarding his termination by the Chase Retail Bank for his misappropriation of bank customer funds. Fitzgerald has not provided the requested information. By virtue of this conduct, Fitzgerald has violated, and continues to violate, FINRA Rule 8210.

RESPONDENT AND JURISDICTION

3. Fitzgerald has been registered with FINRA since December 3, 2007, when he became a personal banker at Chase Retail Bank with his license held by FINRA member firm Chase Investment Services Corp., an affiliate of Chase Retail Bank. Fitzgerald remained at Chase Retail Bank until August 12, 2010, when he was terminated for misappropriating funds from bank customers' accounts without their authorization in violation of Chase Retail Bank's Code of Ethics and its policies and procedures. Fitzgerald is no longer associated with a member firm. However, pursuant to Article V, Section 4 of FINRA's By-Laws, he remains subject to FINRA's jurisdiction.

BACKGROUND

Misappropriation of Funds by Fitzgerald

4. On August 10, 2010, the branch manager for Chase Retail Bank's Prospect Street/Stamford, Connecticut Banking Center received a complaint from a customer ("Customer A") regarding numerous cash withdrawals made with a temporary ATM card that she had never applied for nor authorized. The Chase Retail Bank reviewed the ATM video surveillance of several of the transactions at issue and identified Fitzgerald as the card user.

5. In an August 11, 2010 interview with the Chase Retail Bank's Global Security and Investigation Department ("GS&I") and in subsequent conversations with GS&I, Fitzgerald admitted his misappropriation of Customer A's funds. Fitzgerald admitted to using an ATM card for Customer A's bank account to make cash withdrawals from that account, as well as purchases at various retail stores. Fitzgerald also submitted to the GS&I a written statement dated August 11, 2010, in which he admitted taking funds from Customer A's bank account.

6. Fitzgerald misappropriated a total of approximately \$33,102.50 through unauthorized transactions in Customer A's account dating as far back as November 25, 2009. Fitzgerald admitted this conduct to Chase Retail Bank.

7. Fitzgerald did not have permission or authority from Chase Retail Bank or Customer A to issue ATM cards from this customer's account to himself or to withdraw the customer's funds for his own purposes.

8. Chase Retail Bank also discovered that Fitzgerald misappropriated funds from eight other bank customers ("Customers B through I"). Fitzgerald issued to himself temporary ATM cards for the bank accounts of Customers B through I and then made cash withdrawals against the accounts.

9. Fitzgerald did not have permission or authority from Chase Retail Bank or Customers B through I to issue ATM cards from these customers' accounts to himself or to withdraws the customers' funds for his own purposes.

10. Fitzgerald misappropriated approximately \$18,771.25 from Customers B through I. Fitzgerald admitted this conduct to Chase Retail Bank.

11. In total, Fitzgerald misappropriated approximately \$51,873.75 from Customers A through I.

12. On August 12, 2010, the Chase Retail Bank terminated Fitzgerald's employment and has since reimbursed Customers A-I in full for the funds misappropriated by Fitzgerald.

Prior Regulatory Communications with Fitzgerald

13. On September 13, 2010, FINRA received a Form U-5 from the Chase Retail Bank reporting its termination of Fitzgerald's employment.

14. On September 20, 2010, the Preliminary Investigations Unit of Enforcement (“PI Unit”) sent a request to Fitzgerald pursuant to FINRA Rule 8210 for a written statement concerning Fitzgerald’s termination by the Chase Retail Bank. The letter was sent via first class mail and certified, return receipt requested, to the address listed on his CRD, which was [REDACTED] [REDACTED] (the “Fitzgerald CRD Address”). Both the letter sent to the Fitzgerald CRD Address via first class mail and the letter sent to the Fitzgerald CRD Address via certified mail were returned to Enforcement as “NOT DELIVERABLE AS ADDRESSED. UNABLE TO FORWARD.”

15. On November 4, 2010, the PI Unit sent a second request to Fitzgerald pursuant to FINRA Rule 8210 for a written statement and information with regard to the Form U-5 from the Chase Retail Bank. This letter was sent via first class mail and certified mail, return receipt requested, both to the Fitzgerald CRD Address and to an address listed on LexisNexis public records as a current address for Sean D. Fitzgerald, which was [REDACTED] [REDACTED] (the “Fitzgerald Alternative Address”). Both the letter sent to the Fitzgerald CRD Address via first class mail and the letter sent to the Fitzgerald CRD Address via certified mail were returned to Enforcement as “NOT DELIVERABLE AS ADDRESSED. UNABLE TO FORWARD.” The letter sent via certified mail to the Fitzgerald Alternative Address was returned as “UNCLAIMED. UNABLE TO FORWARD.” The letter sent via first class mail to the Fitzgerald Alternative Address was not returned.

16. On December 13, 2010, the PI Unit sent a third request to Fitzgerald pursuant to FINRA Rule 8210 requesting information with regard to the U-5 disclosure from the Chase Retail Bank. The letter was sent via first class mail and certified mail, return receipt requested, both to Fitzgerald CRD Address and to the Fitzgerald Alternative Address. Both the letter sent

to the Fitzgerald CRD Address via first class mail and the letter sent to the Fitzgerald CRD Address via certified mail were returned to Enforcement as “NOT DELIVERABLE AS ADDRESSED. UNABLE TO FORWARD.” The letter sent via certified mail to the Fitzgerald Alternative Address was returned as “UNCLAIMED. UNABLE TO FORWARD.” The letter sent via first class mail to the Fitzgerald Alternative Address was not returned.

17. On January 19, 2011, Enforcement opened a formal investigation into Fitzgerald’s termination from the Chase Retail Bank for allegedly misappropriating funds from customers’ bank accounts using unauthorized ATM cards.

18. As part of its formal investigation, on January 28, 2011, Enforcement issued a request pursuant to FINRA Rule 8210 requesting Fitzgerald to provide information relating to his termination from the Chase Retail Bank. The letter was sent via certified mail, return receipt requested, and Federal Express both to the Fitzgerald CRD Address and to the Fitzgerald Alternative Address. Fitzgerald was required to produce the information no later than February 11, 2011. The letter sent via certified mail to the Fitzgerald CRD Address was returned as “UNCLAIMED. UNABLE TO FORWARD.” The request sent via Federal Express to the Fitzgerald CRD Address was delivered on February 1, 2011 and signed for by an “L.Conine.” Lynne Conine later contacted Enforcement staff to inform them that she had signed for the Federal Express package in error believing it was for her. She also stated that Fitzgerald did not reside at the Fitzgerald CRD Address. The letter sent via certified mail to the Fitzgerald Alternative Address was returned as “UNCLAIMED. UNABLE TO FORWARD.” The request sent via Federal Express to the Fitzgerald Alternative Address was returned as “MOVED.”

19. Fitzgerald has not provided the information requested in Enforcement’s January 28, 2011 letter.

FIRST CAUSE OF ACTION
Misappropriation of Funds

20. Enforcement realleges and incorporates by reference paragraphs 3-17 above.

21. Fitzgerald misappropriated a total of \$51,873.75 from nine customer bank accounts by issuing unauthorized ATM cards and using the cards to withdraw funds from the customers' accounts and to make purchases without the customers' authorization.

22. By virtue of the foregoing, Fitzgerald violated FINRA Rule 2010.

SECOND CAUSE OF ACTION
Failure to Provide Written Statement in Response to Requests by Enforcement

23. Enforcement realleges and incorporates by reference paragraphs 3-19 above.

24. FINRA has sent Fitzgerald a total of four requests pursuant to FINRA Rule 8210, asking for a written statement regarding his termination from Chase Retail Bank for misappropriating funds from customers' bank accounts. To date, Fitzgerald has not provided the requested information.

25. By virtue of the foregoing, Fitzgerald has violated, and is continuing to violate, FINRA Rule 8210.

RELIEF REQUESTED

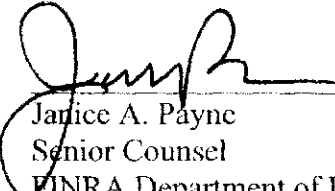
WHEREFORE, Enforcement respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under NASD Rule 8310(a), including monetary sanctions, be imposed.

B. order that the Respondent Fitzgerald bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date: 11-22-11



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