

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

vs.

CARLOS FRANCISCO OTALVARO
(CRD No. 2294420),

Respondent.

Disciplinary Proceeding

No. 2010024837301

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Carlos Francisco Otalvaro misused the funds of two customers, in violation of FINRA Rules 2150(a) and 2010.

2. Otalvaro also failed to provide certain documents requested by FINRA staff, in violation of FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

3. Otalvaro acquired a Series 7 license in May 1993. He subsequently acquired Series 4, 24, 27, 63, and 66 licenses.

4. Otalvaro was associated with a former FINRA member from August 19, 1992 through January 22, 1998.

5. Most recently, Otalvaro was associated with former FINRA member WallStreet*E Financial Services, Inc. ("WSE") from August 13, 1997 through December 2, 2010. In September 1997, WSE filed a Form U4 for Otalvaro, commencing his association with

the firm as of August 13, 1997. WSE did not file a Form U5 for Otalvaro; rather, on December 2, 2010, FINRA canceled WSE's membership under FINRA Rule 9553 for its failure to pay fees.

6. Otalvaro currently is not associated with a FINRA member.

7. Although Otalvaro has not been associated with a FINRA member since December 1, 2010, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because: (a) the Complaint was filed within two years after the date when he ceased to be associated with a member; and (b) the Complaint charges him with misconduct committed while he was associated with a member (First and Third Causes of Action) and with failing to provide certain documents requested by FINRA staff during the two-year period after the date when he ceased to be associated with a member (Second Cause of Action).

FACTS

Additional Background Information on Otalvaro

8. Prior to the cancellation of its membership, WSE operated both general retail and on-line securities businesses.

9. Otalvaro owned, and still may own, 75% or more of WSE.

10. From at least November 2009 through December 2010, Otalvaro served as WSE's President, CCO, and FINOP.

11. As the owner and a principal of WSE, Otalvaro had access to, and control over, its books, records, and accounts, including its bank account at ABC Bank.

Otalvaro's Misuse of Customer LF's Funds

12. In mid-December 2009, WSE customer LF sent a check in the amount of \$12,586.75 to WSE, an introducing firm, to be credited to an account for her benefit.

13. On or about December 22, 2009, WSE deposited the check into its account at ABC Bank, instead of sending the check to its clearing firm to be credited to an account for the benefit of LF.

14. Customer LF has demanded of Otalvaro, who controlled, and still may control, the finances of WSE, that her funds be returned to her.

15. As of January 28, 2011, Otalvaro had not returned LF's funds to her.

Otalvaro's Failure to Provide Certain Documents

16. On December 31, 2010, in connection with the investigation of LF's funds and pursuant to, and in accordance with, FINRA Rule 8210, the staff sent a letter to Otalvaro, wherein the staff requested that he provide it with certain documents and information by January 12, 2011, including bank statements from December 1, 2009 through the present (*i.e.*, through the date of his response or production) for the account that WSE maintained at ABC Bank ("December 31st Request").

17. The staff sent the December 31st Request to Otalvaro at his residential address reflected in the CRD ("CRD Address") by first class and certified mail.

18. The staff did not receive a response to the December 31st Request by the deadline.

19. Accordingly, on January 18, 2011, pursuant to, and in accordance with, Rule 8210, the staff sent a second letter to Otalvaro, wherein the staff requested that he provide it with the previously requested documents and information by February 1, 2011 ("January 18th Request").

20. The staff sent the January 18th Request to Otalvaro by e-mail and by first class and certified mail at his CRD Address and at another address that it had obtained for him, which is the same as his CRD Address, except the last number of the zip code is different (“Second Address”).

21. On January 28, 2011, Otalvaro provided investigative testimony to the staff regarding, among other things, the complaints of LF and CS.

22. In a letter dated February 1, 2011, Otalvaro provided a written response to all of the outstanding document and information requests. However, he did not provide the staff with all of the requested documents. Specifically, Otalvaro did not produce the aforementioned bank statements.

23. The staff requested the bank statements in both the December 31st Request and January 18th Request because LF’s funds were deposited into the account.

24. In his February 1, 2011 response, Otalvaro wrote: “We have requested copies of the bank statements and will forward them as they become available.”

25. On March 3, 2011, the staff called Otalvaro and told him that it had not received the bank statements and that he needed to produce them.

26. In addition, on March 3, 2011, pursuant to, and in accordance with, Rule 8210, the staff sent a third letter to Otalvaro, wherein the staff requested that he provide it with the previously requested statements by March 17, 2011 (“March 3rd Request”).

27. The staff sent the March 3rd Request to Otalvaro by e-mail and by first class and certified mail at his CRD Address and the Second Address.

28. The staff has not received any documents in response to the March 3rd Request.

29. On October 3, 2011, pursuant to, and in accordance with, Rule 8210, the staff sent a fourth letter to Otalvaro, wherein the staff requested that he provide it with the previously requested statements by October 17, 2011 (“October 3rd Request”).

30. The staff sent the October 3rd Request to Otalvaro by e-mail and by first class and certified mail at his CRD Address, the Second Address, and an address for him that the staff learned of during his January 28, 2011 investigative testimony.

31. On October 11, 2011, the United States Postal Service (“USPS”) returned all three certified mail receipts for the certified mailings of the October 3rd Request to the FINRA Florida District Office. The signatures on the receipts are illegible. The USPS has not returned any of the first class mailings of the October 3rd Request to the FINRA Florida District Office.

32. The staff has not received any documents in response to the October 3rd Request.

33. At some point in time, the staff assigned to the investigation of the LF matter learned that Otalvaro had provided some, but not all, of the requested bank statements to another member of the staff in connection with an unrelated matter. Specifically, the staff has the requested statements for the period of December 2009 through May 2010.

34. However, Otalvaro still has not provided the staff with the requested statements for the period of June 2010 through the present (*i.e.*, through the date of his response or production).

Otalvaro’s Misuse of Customer SWI’s Funds

35. On or about November 4, 2009, CS sent a package containing \$5,302 in cash to WSE, along with instructions that the money be deposited into the account of WSE customer SWI. On or about November 6, 2009, the package was delivered to WSE.

36. WSE did not deposit the cash into the account.

37. WSE invited CS, who resides in Switzerland, to pick up the funds in Florida and also agreed to return them to him via Western Union.

38. On or about May 3, 2010, CS sent wire instructions to Otalvaro.

39. On or about June 16, 2010, Otalvaro sent an e-mail to CS, wherein he informed CS that he would wire the funds to him at a Western Union in Solothurn, Switzerland.

40. On or about June 23, 2010, Otalvaro sent an e-mail to CS, wherein he informed CS that: (a) CS needed three valid government-issued identification cards with pictures for him to transmit the funds to CS; (b) CS also needed to provide him with a new personal e-mail address; and (c) it would cost \$230 to wire the funds.

41. On June 25, 2010, CS sent an e-mail to Otalvaro, wherein he provided Otalvaro with a copy of his passport and driver's license and informed Otalvaro that Switzerland only issues two documents for identification purposes.

42. CS has repeatedly demanded that Otalvaro, who controlled, and still may control, the finances of WSE, return the funds to him.

43. As of January 28, 2011, Otalvaro had not returned the funds to CS, but he has claimed that they are in storage.

FIRST CAUSE OF ACTION (Misuse of Customer LF's Funds)

44. The Department incorporates paragraphs 1 through 43 herein by reference.

45. FINRA Rule 2150(a) provides that: "No member or person associated with a member shall make improper use of a customer's securities or funds."

46. FINRA Rule 2010 requires associated persons, in the conduct of their business, to "observe high standards of commercial honor and just and equitable principles of trade."

47. By failing to return LF's funds to her, or by failing to promptly return them to her, Otalvaro has misused her funds and has violated FINRA Rules 2150(a) and 2010.

SECOND CAUSE OF ACTION
(Failure to Provide Requested Documents)

48. The Department incorporates paragraphs 1 through 47 herein by reference.

49. FINRA Rule 8210 requires persons associated with a member and others subject to its jurisdiction to provide documents, information, and investigative testimony to FINRA in connection with, among other things, an investigation or examination.

50. Otalvaro has failed on repeated occasions to produce certain bank statements requested under FINRA Rule 8210.

51. By failing to provide all of the bank statements requested in the December 31st Request, January 28th Request, and October 3rd Request, Otalvaro has violated FINRA Rules 8210 and 2010.

THIRD CAUSE OF ACTION
(Misuse of Customer SWI's Funds)

52. The Department incorporates paragraphs 1 through 51 herein by reference.

53. By failing to return SWI's funds to CS, or by failing to promptly return them to him, Otalvaro has misused the funds and has violated FINRA Rules 2150(a) and 2010.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

A. order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed, including that Otalvaro be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest; and

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

FINRA DEPARTMENT OF ENFORCEMENT

Dated: November 30, 2011


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