

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

DEPARTMENT OF MARKET
REGULATION,

Complainant,

v.

VICKI LEE PERCHINSKE
(CRD No. 2628617),

Respondent.

Disciplinary Proceeding
No. 20100248437

Hearing Officer – SNB

DEFAULT DECISION

December 8, 2011

Respondent is barred from associating with any FINRA member firm in any capacity for misusing and converting customer funds, in violation of NASD Conduct Rules 2330(a) and 2110, and FINRA Conduct Rules 2150(a) and 2010, and for failing to appear for testimony, in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010. Respondent is also required to pay a fine of \$430,420.71, representing disgorgement of ill-gotten gains.

Appearances

Laurie A. Doherty, Esq., for the Department of Market Regulation.

No appearance by or on behalf of Vicki L. Perchinske.

DECISION

I. Introduction

The FINRA Department of Market Regulation (“Market Regulation”) filed the attached Complaint with the Office of Hearing Officers on July 20, 2011. The Complaint charges Respondent Vicki L. Perchinske (“Respondent”) with two causes of action. The first cause charges that Respondent misused and converted \$430,420.71 in customer funds, in violation of NASD Conduct Rules 2330(a) and 2110, and FINRA Conduct

Rules 2150(a) and 2010.¹ The second cause charges that Respondent failed to appear and provide on-the-record testimony, in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010.

Respondent defaulted by failing to answer or otherwise respond to the Complaint. Accordingly, on October 13, 2011, Market Regulation filed a Motion for Entry of Default Decision (“Default Motion”), together with the declaration of Laurie A. Doherty, Esq. (“Doherty Decl.”) and three exhibits.² For the reasons set forth below, Market Regulation’s Default Motion is granted.

II. Procedural History

On July 20, 2011, Market Regulation served the Complaint and First Notice of Complaint on Respondent by sending them to her most recent residential address recorded in the Central Registration Depository (“CRD”) by first-class certified mail and FedEx.³ The certified mail return receipt was not returned by the U.S. Postal Service. Respondent signed the return receipt for the FedEx mailing.⁴ Respondent did not answer or otherwise respond to the Complaint.⁵

¹ The FINRA Rules, which include NASD Procedural and Conduct Rules, are available at www.finra.org/Rules. On December 15, 2008, the first phase of new consolidated FINRA Rules went into effect. *See*, Regulatory Notice 08-57. In this rule consolidation, NASD Rule 2110 was renumbered to FINRA Rule 2010. In a later consolidation effective December 15, 2009, NASD Rule 2330 was renumbered, with minor changes, to FINRA Rule 2150. The findings in this Default Decision refer to the rules that were in effect at the time of the violations.

² Market Regulation’s exhibits are labeled CX-1 through CX-3.

³ Doherty Decl. ¶ 6; CX-2.

⁴ *Id.*

⁵ Second Notice of Complaint, p. 1

On August 19, 2011, Market Regulation served the Complaint and Second Notice of Complaint on Respondent by mailing them to her CRD address by first-class certified mail and FedEx.⁶ Respondent signed the return receipt for the FedEx mailing.⁷

To date, Respondent has not answered or otherwise responded to the Complaint. Based on Respondent's default, the Hearing Officer deemed the allegations in the attached Complaint admitted pursuant to Rules 9215(f) and 9269(a).

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

Respondent was first registered in the securities industry in 1995. From July 2005 through January 2010, Respondent was registered as an Investment Company and Variable Contracts Products representative with Invest Financial Corporation ("Invest Financial"). From January 2010 through October 2010, she was registered in the same capacity with Firstmerit Financial Services Inc. ("Firstmerit").⁸ On October 18, 2010, Firstmerit filed a Uniform Termination Notice for Securities Industry Registration ("Form U-5"), which disclosed that Respondent had been discharged for failing to follow firm procedures with respect to investment funds. She has not been registered since that time.⁹

Although Respondent is not currently associated with a member firm, FINRA has jurisdiction to bring this proceeding because (1) the Complaint charges Respondent with misconduct while she was a registered person and with failing to comply with requests

⁶ Doherty Decl. ¶ 8; CX-3.

⁷ *Id.*

⁸ Complaint ¶ 4; CX-1; Motion for Default Decision, p. 3.

⁹ *Id.*; Doherty Decl. ¶ 3.

for information made prior to the end of the two-year period following termination of her last registration, and (2) the Complaint was filed within that two-year period.

B. Conversion of Customer Funds

The first cause of action alleges that between February 2006 and July 2010, Respondent misused and converted \$430,420.71 from five customers. Respondent obtained customer funds by liquidating customer annuities and mutual funds, or withdrawing funds held by customers at a bank affiliated with her firm. Respondent then used the proceeds to purchase cashier's checks, which were deposited into Respondent's personal bank account.¹⁰ Specifically, Respondent converted customer funds as follows:

- Between August and October 2008, Respondent liquidated mutual fund holdings for proceeds of \$54,948.21 from customer EH's account;
- Between February 2006 and May 2008, Respondent redeemed annuity holdings for proceeds of \$55,067.68 from customer RE's account;
- Between April and December 2009, Respondent liquidated mutual fund holdings and redeemed annuity holdings for proceeds of \$50,606.74 from customer LS's account;
- Between January and July 2010, Respondent redeemed \$45,823.78 in customer SC's annuity holdings and withdrew funds in the amount of \$37,686 from a bank account affiliated with Respondent's firm; and
- Between May 2006 and February 2007, Respondent withdrew customer MS's funds in the amount of \$186,288.30 from a bank account affiliated with Respondent's firm.¹¹

The Hearing Officer finds that the foregoing facts establish that Respondent converted \$430,420.71 from her customers' accounts, in violation of NASD Conduct Rules 2330(a) and 2110, and FINRA Conduct Rules 2150(a) and 2010.¹²

¹⁰ Doherty Decl. ¶ 10.

¹¹ Doherty Decl. ¶ 11; Complaint ¶¶ 8-10, 11-15, 16-20, 23-30, 31-35.

¹² The conversion from MS's account did not involve securities. Accordingly, it constituted a violation of NASD Rule 2110, but not NASD Rule 2330(a).

C. Failure to Provide On-The-Record Testimony

The Second cause alleges that Respondent failed to appear for on-the-record testimony requested by FINRA Staff (“Staff”) to answer questions in connection with FINRA’s investigation of her misuse of customer funds. Specifically, on December 2, 2010, Staff sent Respondent a letter, pursuant to FINRA Rule 8210, requesting her appearance for testimony on December 13, 2010. Staff sent the request by FedEx to Respondent’s CRD address. FedEx records indicate that the request was delivered on December 3, 2010. In addition, Staff sent a copy of the request to Respondent’s email address. Respondent acknowledged receipt of the email by email reply on December 2, 2010. On December 9, 2010, Staff sent Respondent another email requesting confirmation that she would appear for testimony on December 13, 2010. Respondent did not respond. On December 10, 2010, Staff left Respondent a voicemail with the same request. Respondent did not respond. Respondent failed to appear on December 13, 2010. On December 13, 2010, Staff received a letter from Respondent postmarked December 8, 2010, stating that she would be unable to attend her testimony due to health reasons.¹³

On December 16 and 17, 2010, Staff left separate messages on Respondent’s voicemail requesting that she contact Staff to reschedule her appearance for testimony. Respondent did not respond.¹⁴ On December 17, 2010, Staff sent Respondent a second Rule 8210 request to appear for testimony on January 6, 2011. The request asked Respondent to provide a signed letter from her physician stating why she could not appear, if that was the case. The letter was sent via FedEx to Respondent’s CRD address.

¹³ Doherty Decl. ¶¶ 17-22.

¹⁴ Doherty Decl. ¶ 23.

The letter was delivered on December 20, 2010. Respondent did not respond.¹⁵

Respondent did not appear.¹⁶

The facts alleged in the second cause establish that Respondent violated FINRA Rules 8210 and 2010 by failing to appear for testimony.¹⁷

IV. Sanctions

The FINRA Sanction Guidelines (“Guidelines”) state that a bar is the standard sanction for conversion and for a complete failure to respond to a Rule 8210 request for information.¹⁸ The Hearing Officer finds that a bar is appropriate for both violations. There are no mitigating factors that would warrant consideration of lesser sanctions. Accordingly, the Hearing Officer will bar Respondent from associating with any FINRA member firm in all capacities for each violation.

Market Regulation does not request restitution because the Respondent’s firms have settled all customer claims. However, it requests disgorgement of Respondent’s ill-gotten gains in the amount of \$430,420.71. The Guidelines suggest that Adjudicators require disgorgement even if an individual is barred in all sales practice cases involving widespread, significant and identifiable customer harm or where the respondent has retained substantial ill-gotten gains.¹⁹ Based upon the facts of this case, disgorgement is warranted. Respondent is therefore required to pay a fine of \$430,420.71, representing the total amount of ill-gotten gains that she derived from her conversion of customer funds.

¹⁵ Doherty Decl. ¶¶ 24-25.

¹⁶ Doherty Decl. ¶ 26.

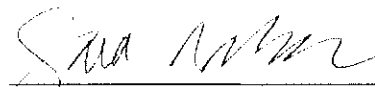
¹⁷ Doherty Decl. ¶¶ 27-28.

¹⁸ FINRA Sanction Guidelines (2011) 33, 36, www.finra.org/sanctionguidelines.

¹⁹ Guidelines 10.

V. Order

Respondent is barred from associating with any member firm in any capacity for converting customer funds, in violation of NASD Rules 2330(a) and 2110 and FINRA Rules 2150(a) and 2010; and for failing to appear for testimony, 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. Respondent is also required to pay a fine \$430,420.71, representing the total amount of ill-gotten gain that she derived from her conversion of customer funds.



Sara Nelson Bloom
Hearing Officer

Copies to: Vicki Lee Perchinske (*via courier and first-class mail*)
Laurie Doherty, Esq. (*via electronic and first-class mail*)
James J. Nixon, Esq. (*via electronic mail*)

**Financial Industry Regulatory Authority
Office of Hearing Officers**

Department of Market Regulation,
Complainant,

v.

Vicki L. Perchinske
(CRD No. 2628617),

Respondent.

Disc. Proc. No. 20100248437
Hearing Officer:

COMPLAINT

The Department of Market Regulation alleges:

Summary

1. Between approximately late February 2006 and August 2010, Vicki L. Perchinske ("Perchinske"), while registered at FINRA member firms, made improper use of, and converted, approximately \$430,420.71 in funds from five customers. Specifically, Perchinske caused funds to be withdrawn from customer accounts held at a banking institution affiliated with her FINRA-member employer (the "Affiliated Bank"), and from customer annuities and mutual fund holdings at other financial institutions, and used the proceeds to purchase cashier's checks. The cashier's checks were then deposited into Perchinske's personal bank account.

2. On December 2, 2010 and December 17, 2010, FINRA staff sent Perchinske letters requiring Perchinske to appear and testify in connection with this matter on December 13, 2010 and January 6, 2011, respectively, in FINRA's office in Rockville, Maryland. The letters were sent to Perchinske pursuant to FINRA Rule 8210 and were properly served. Perchinske failed to appear to testify on both occasions.

3. By virtue of this conduct, Perchinske violated NASD Rules 2330(a) and 2110, and FINRA Rules 2150(a), 2010 and 8210.

Respondent and Jurisdiction

4. At all times relevant to this Complaint, Perchinske, age 52, was a registered representative at a FINRA member firm. Perchinske first became registered in the securities industry in 1995 as a Series 6 Investment Company and Variable Contracts Products representative ("IR"). She was last registered with a FINRA member as an IR from January 2010 through October 2010. Her FINRA registration was terminated on October 18, 2010 by the filing a Form U-5, which disclosed that Perchinske may have engaged in conduct actionable under applicable statutes, rules, and regulations. On January 11, 2011, Perchinske's former employer firm filed an amendment to Perchinske's Form U-5, which disclosed that Perchinske may have engaged in additional conduct actionable under applicable statutes, rules, and regulations.

5. Although Perchinske has not been associated with a FINRA member firm since October 18, 2010, 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 an amendment to her notice of termination that disclosed conduct actionable under any statute, rule or regulation was filed; and (2) the Complaint charges her with misconduct committed while she was associated with a FINRA member, and with failing to appear for on-the-record testimony during the two-year period after the date upon which she ceased to be associated with a FINRA member.

First Cause of Action
Misuse of Customer Funds and Conversion
(Violations of NASD Rules 2110 and 2330(a) and FINRA Rules 2010 and 2150(a))

6. The Department realleges and incorporates by reference all preceding paragraphs.
7. Between March 2006 and August 2010, Perchinske converted approximately \$430,420 from five customers, while registered at FINRA member firms.

Customer EH

8. EH is 87 years old. At all times relevant to this Complaint, Perchinske served as EH's assigned registered representative at a FINRA member firm.
9. In approximately August 2008, Perchinske submitted a request to a mutual fund company to liquidate a mutual fund held by EH through that company. The mutual fund company issued a check payable to the Affiliated Bank for the benefit of EH in the amount of \$54,948.21 and sent it to the Affiliated Bank to the attention of Perchinske. On October 16, 2008, the check was cashed at the Affiliated Bank. The proceeds were used to purchase a cashier's check from the Affiliated Bank in the same amount and made payable to a different bank at which Perchinske maintained a personal account. The cashier's check was deposited into Perchinske's personal bank account.
10. EH did not authorize the liquidation of the mutual fund, or the deposit of the proceeds into Perchinske's personal bank account.

Customer RE

11. RE is 88 years old. At all times relevant to this Complaint, Perchinske served as RE's assigned registered representative at a FINRA member firm.

12. In approximately late February 2006, Perchinske submitted a request to an insurance company to redeem one of RE's fixed annuities held through the insurance company. The insurance company issued a check dated March 31, 2006 payable to RE c/o the Affiliated Bank in the amount of \$20,067.68 and mailed it to the Affiliated Bank. On April 4, 2006, that check was cashed at the Affiliated Bank and the proceeds were used to purchase a cashier's check from the Affiliated Bank. The cashier's check, which was made payable to Perchinske's personal bank, was deposited into Perchinske's personal bank account.

13. RE did not authorize the redemption request to the insurance company or the deposit of the proceeds into Perchinske's personal bank account.

14. In approximately May 2008, a cash withdrawal of approximately \$35,000 was made from RE's savings account at the Affiliated Bank and the proceeds were deposited into Perchinske's personal bank account.

15. RE did not authorize the withdrawal of funds from her savings account at the Affiliated Bank or the deposit of the proceeds into Perchinske's personal bank account.

Customer LS

16. LS is 88 years old. At all times relevant to this Complaint, Perchinske served as LS's assigned registered representative at a FINRA member firm.

17. On or about April 13, 2009, Perchinske submitted a withdrawal request in LS's name to a mutual fund. The mutual fund issued two checks payable to LS in the amounts of \$8,311.93 and \$8,082.51 and sent them to the Affiliated Bank.

18. On or about April 8, 2009, Perchinske submitted a redemption request in LS's name to an insurance company, requesting a redemption of one of LS's fixed annuities. The

insurance company issued a check payable to LS in the amount of \$13,288.84, and sent it to the Affiliated Bank.

19. On May 22, 2009, a cashier's check payable to Perchinske's personal bank in the amount of \$29,683.28 (an amount identical to the total of the three checks identified in paragraphs 17 through 18 above) was purchased from the Affiliated Bank using the proceeds from the same three checks. The cashier's check was deposited into Perchinske's personal bank account.

20. On December 2, 2009, a withdrawal in the amount of \$4,931.62 from LS's fixed annuity at the insurance company was made, and a check payable to LS was issued by the insurance company. On December 11, 2009, that check was cashed at the Affiliated Bank and the proceeds were used to purchase a cashier's check in an equal amount from the Affiliated Bank. The cashier's check was deposited into Perchinske's personal bank account.

21. On or about December 9, 2009, another withdrawal in the amount of \$15,991.84 was made from LS's fixed annuity at the insurance company and a check was issued by the insurance company payable to LS. On December 22, 2009, the check was cashed at the Affiliated Bank and the proceeds were used to purchase a cashier's check in an equal amount from the Affiliated Bank. The cashier's check was deposited into Perchinske's personal bank account.

22. LS did not authorize any of the withdrawals or redemption requests described in the paragraphs 17 through 21 above, or the deposits of proceeds into Perchinske's personal bank account.

Customer SC

23. SC is 92 years old. At all times relevant to this Complaint, Perchinske served as SC's assigned registered representative at a FINRA member firm.

24. On or about January 13, 2010, a withdrawal in the amount of \$20,000 was made from SC's savings account at the Affiliated Bank and the proceeds were used to purchase a cashier's check payable to Perchinske's personal bank. The cashier's check was deposited into Perchinske's personal bank account.

25. On May 7, 2010, another withdrawal in the amount of \$9,686.00 was made from SC's savings account at the Affiliated Bank. Again, the proceeds were used to purchase a cashier's check in the same amount, payable to Perchinske's personal bank. The cashier's check was deposited into Perchinske's personal bank account.

26. In late June 2010, a redemption request dated June 28, 2010 was submitted to an insurance company requesting a redemption of one of SC's fixed annuities. Proceeds from the annuity of \$4,817.02 were deposited into SC's savings account at the Affiliated Bank.

27. A second redemption request from SC's fixed annuity, dated July 1, 2010, was submitted to the insurance company and the proceeds of \$41,006.76 were deposited into SC's savings account at the Affiliated Bank.

28. Also on July 1, 2010, a counter check for \$8,000 drawn from SC's checking account at the Affiliated Bank was deposited into his savings account at the Affiliated Bank.

29. Combined, these three deposits into SC's savings account, identified in paragraphs 26 through 28, totaled approximately \$53,823.78. On July 23, 2010, \$53,823.78 was withdrawn from SC's savings account at the Affiliated Bank and used to purchase a

cashier's check from the Affiliated Bank in that same amount. The cashier's check was deposited into Perchinske's personal bank account.

30. SC did not authorize the withdrawals from his bank accounts or the redemption requests described in paragraphs 24 through 29 of this Complaint, nor did he authorize the deposit of proceeds from them into Perchinske's personal bank account.

Customer MS

31. MS is 82 years old. At all times relevant to this Complaint, Perchinske served as MS's assigned registered representative at a FINRA member firm.

32. On May 8, 2006, a withdrawal in the amount of \$89,934.05 was made from MS's account at the Affiliated Bank. The proceeds were used to purchase a cashier's check and the cashier's check was deposited into Perchinske's personal bank account.

33. On February 8, 2007, a withdrawal in the amount of \$96,354.25 was made from MS's account at the Affiliated Bank. The proceeds were used to purchase a cashier's check and the cashier's check was deposited into Perchinske's personal bank account.

34. MS did not authorize the withdrawals described in paragraphs 32 through 33 above, or the deposits of proceeds into Perchinske's personal bank account.

35. Based on the foregoing, Perchinske made improper use of, and converted customer funds, in violation of NASD Rule 2330(a) (for conduct before December 14, 2009), FINRA Rule 2150(a) (for conduct beginning on December 15, 2009), NASD Rule 2110 (for conduct before December 15, 2008), and FINRA Rule 2010 (for conduct beginning on December 15, 2008).

SECOND CAUSE OF ACTION
Failure to Appear for Testimony
(Violations of FINRA Rules 2010 and 8210)

36. The Department realleges and incorporates by reference all preceding paragraphs.

37. On December 2, 2010, staff from FINRA's Office of the Whistleblower ("OWB") sent a letter to Perchinske, pursuant to FINRA Rule 8210, requesting her appearance for testimony on December 13, 2010 at 10:00 a.m. at FINRA's office in Rockville, Maryland ("First 8210 Letter"). Perchinske's appearance for testimony was requested as part of OWB's investigation into allegations that Perchinske had converted customer funds. The First 8210 Letter warned Perchinske that failure to appear for testimony could subject her to disciplinary action.

38. The First 8210 Letter was sent by overnight delivery by FedEx to Perchinske's home address, as reflected in the Central Registration Depository ("CRD"). The First 8210 Letter was delivered to Perchinske's home address on December 3, 2010. A copy of the First 8210 Letter was also sent to Perchinske by electronic mail at [REDACTED]. Perchinske acknowledged receipt of FINRA's email by reply email to FINRA on December 2, 2010.

39. On December 9, 2010, OWB staff sent a follow-up email to Perchinske to the same email address requesting that she confirm by reply email, that she would be appearing for testimony on December 13, 2010. OWB staff attached a copy of the First 8210 Letter to the email. The email again advised Perchinske of her obligation to appear pursuant to FINRA Rule 8210, and warned her that failure to satisfy her obligation could subject her to disciplinary action. Perchinske did not respond to OWB's email.

40. On December 10, 2010, OWB staff left a message on Perchinske's voicemail, requesting that she return their call to confirm her appearance. Perchinske did not respond to OWB's voicemail.

41. On December 13, 2010, after waiting for Perchinske to appear, OWB staff opened the record at 10:49 a.m. EST, noted that Perchinske had failed to appear, and closed the record. Later on that same day, OWB received a letter postmarked December 8, 2010 from Perchinske stating that she would be unable to attend her testimony on December 13, 2010 due to health reasons.

42. On December 16, 2010 and December 17, 2010, OWB staff left separate messages on Perchinske's voicemail requesting that she contact them to reschedule her appearance for testimony. Perchinske did not respond to OWB's voicemail messages.

43. On December 17, 2010, OWB staff sent a second letter, pursuant to FINRA Rule 8210, to Perchinske rescheduling her testimony for January 6, 2011 in Rockville, Maryland at 10:00 a.m. ("Second 8210 Letter"). The Second 8210 Letter further requested, pursuant to FINRA Rule 8210, that if Perchinske was unable to appear on January 6, 2011, that she provide a signed letter from her treating physician, no later than December 30, 2010, stating why she could not appear, and providing the earliest date on which she would be able to appear. A copy of OWB's Second 8210 letter was also sent to Perchinske by email at [REDACTED]

44. The Second 8210 letter was sent via FedEx overnight delivery to Perchinske's home address, as reflected in CRD. The letter was delivered to Perchinske's home address on December 20, 2010. Perchinske did not respond to OWB's Second 8210 Letter.

45. On January 6, 2011, after waiting for Perchinske to appear, OWB staff opened the record at 10:44 a.m. EST, noted that Perchinske had failed to appear, and closed the record. OWB staff has had no further communications with Perchinske.

46. Based on the foregoing, Perchinske violated FINRA Rules 2010 and 8210 by failing to appear for testimony under oath as requested by FINRA staff in connection with its investigation of this matter.

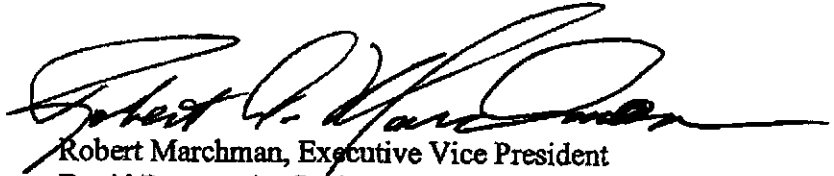
Relief Requested

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Perchinske committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under Rule 8310(a) be imposed, including that Perchinske be required to disgorge all ill-gotten gains and make full and complete restitution, together with interest;
- C. order that Perchinske bear such costs of this proceeding as are deemed fair and appropriate under the circumstances in accordance with Rule 8330; and
- D. order all further relief, legal or equitable, that is warranted under the circumstances.

FINRA DEPARTMENT OF MARKET
REGULATION

Date: July 20, 2011



Robert Marchman, Executive Vice President

David Rosenstein, Senior Vice President

James J. Nixon, Chief Litigation Counsel

Laurie A. Doherty, Counsel

FINRA Department of Market Regulation

9509 Key West Avenue

Rockville, Maryland 20850

Tel. (240) 386-5006

Laurie.Doherty@finra.org

marketreglitigation@finra.org