

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Andres Madero (CRD No. 2101826),

Respondent.

DISCIPLINARY PROCEEDING
No. 2010025179801

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Andres Madero ("Madero"), a registered representative associated with State Farm VP Management Corp. (the "Firm") and an insurance agent of the Firm's affiliate, State Farm Insurance Company ("State Farm" or the "Affiliate"), violated FINRA Rule 2010 by misappropriating funds from the insurance company affiliate of his FINRA member firm employer. Madero misappropriated funds when he received premium payments from insurance customers that belonged to the Affiliate and failed to deposit them in a bank account maintained so that the Affiliate could access the payments electronically. During approximately September to November 2010, when his association with the Firm ended, Madero withheld approximately \$29,000 in customer premium payments that were supposed to be deposited into that bank account.

RESPONDENT AND JURISDICTION

2. From July 2008 to November 2010, Madero was associated with the Firm as a Series 6 Investment Company Products/Variable Contracts Representative and an independent contract insurance agent with the Affiliate. Madero maintained his office in North Haven, Connecticut.

3. On November 17, 2010, the Firm filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") notifying FINRA that on November 11, 2010, it had terminated Madero's association as a registered representative, based on concerns about his business practices as an insurance agent. Madero has not been associated with a FINRA member firm since November 2010. Madero continued to work as an agent of the Affiliate until December 31, 2010, when the Affiliate declined to renew his agency contract.

4. Although Respondent is no longer registered or associated with a FINRA member, he 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 is being filed within two years after the effective date of termination of Respondent's registration with the Firm, namely, November 17, 2010; and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member.

FACTS

5. State Farm insurance agents are required to maintain a Premium Fund Account ("PFA"). A PFA is a non-interest bearing bank account used by agents solely to deposit insurance premium payments (in the form of cash, checks and money orders) that they receive from customers. State Farm permits agents to open PFAs in their names at the banks of their

choice, with the condition that State Farm is given access to the funds so that it can electronically process premium payments. Premium payments accepted by the agent belong to the Affiliate.

6. An agent is supposed to record customer premium payments into State Farm's system at the close of the business day on which he receives the payments. This entry triggers the process by which electronic funds are transferred ("swept") to the Affiliate. The Affiliate generally sweeps a PFA three business days after an agent records that he received customer premium payments into State Farm's system. State Farm credits customers for making premium payments as soon as the agent records receipt of the payments into the system.

7. Madero maintained a PFA at ABC Bank. During the Relevant Period, he received funds from customers for premium payments, removed them from his office and never deposited them into the PFA.

8. On four occasions during September to November 2010, the Affiliate attempted to sweep premium payments from Madero's PFA and found that there were insufficient funds in the account. On each occasion, there was a discrepancy between amounts of premium payments that Madero recorded that he received from customers and the actual PFA balance. The dates of the failed funds transfers, totaling \$28,957.89, and the shortage in the PFA on each date are shown in the chart below:

Date of Sweep	Amount of Shortage
09/03/10	\$4,087.50
09/15/10	\$9,696.81
10/08/10	\$9,291.45
11/09/10	\$5,882.13

9. Madero failed to deposit additional customer payments into the PFA after the Firm terminated his securities registration but while he was still an insurance agent with the Affiliate. On December 6, 2010, the Affiliate attempted to make another sweep from the PFA, but that transfer failed because the account was short by \$5,217.66.

10. The total dollar shortage in Madero's PFA was \$34,170.36

11. The Affiliate obtained reimbursement of the funds missing from the PFA by withholding Madero's bonus payments.

12. No customer insurance policies lapsed or were cancelled as a result of Madero's failure to deposit premium payments into the PFA.

* * * * *

CAUSE OF ACTION

Misappropriation of Funds [Violation of FINRA Rule 2010]

13. The Department re-alleges and incorporates by reference paragraphs 1-10, above.

14. FINRA Rule 2010 requires an associated person, in the conduct of his business, to "observe high standards of commercial honor and just and equitable principles of trade."

15. During the period September 2010 to November 2010, when he was a registered representative of the Firm, Madero misappropriated insurance premium payments that he received from State Farm customers from the Affiliate.

16. As a State Farm agent, Madero was required to collect and promptly remit monies due to State Farm from its insurance customers.

17. Under State Farm's procedures, an agent must prepare receipts for all premium payments received from customers. When an agent collects premiums for insurance business, he

is supposed to enter the payments into State Farm's system and deposit the premium payments into the PFA maintained for that purpose.

18. Madero received premium payments from customers, and recorded them into State Farm's system, but failed to deposit them into the PFA.

19. By reason of the foregoing conduct, Madero engaged in misappropriation, and thus failed to adhere to high standards of commercial honor and just and equitable principles of trade, in violation of 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), including monetary sanctions, be imposed;
- C. order that Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date: 10/22/12


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