

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

RICHARD PETER PASCUCCI (CRD No.
4819805),

Respondent.

DISCIPLINARY PROCEEDING
No. 2010025751301

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. From in or about May 2009 through June 2010, Respondent Richard Peter Pascucci ("Respondent" or "Pascucci") converted a total of \$261,000 from two customers by obtaining from them checks payable to him on the false representation and pretense that he would invest the proceeds for them. Rather than investing the proceeds of those checks, however, Pascucci kept the proceeds and converted them for his own purposes without the customers' knowledge, authorization, or consent. This conduct violated NASD Conduct Rule 2330(a) and FINRA Rules 2150(a) and 2010.
2. On December 30, 2010, January 13, 2011, February 1, 2011, October 6, 2011, and October 14, 2011, FINRA staff (the "Staff") sent Pascucci letters requesting

information and documents, pursuant to and in accordance with FINRA Rule 8210.

Pascucci, however, failed to respond to these requests. This conduct violated FINRA Rules 8210 and 2010.

RESPONDENT(S) AND JURISDICTION

3. Respondent Pascucci entered the securities industry in March 2004, when he became associated with a FINRA member firm. While associated with that firm, Respondent became registered as a General Securities Representative ("GSR") on or about October 4, 2004.
4. On or about November 18, 2005, Respondent became associated with Banc of America Investment Services, Inc. ("BOA") and was registered with FINRA as a GSR through that association.
5. On or about August 29, 2008, Respondent became associated with Securities America, Inc. ("Securities America" or the "Firm") and was registered with FINRA as a GSR through that association.
6. On July 22, 2010, Securities America filed with FINRA a Uniform Termination Notice for Securities Industry Registration ("Form U5") terminating Respondent's registration with the Firm as of July 21, 2010. The Form U5 stated that Respondent's termination was voluntary.
7. Although Respondent has not been associated with a FINRA member firm since July 21, 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 (1) the Complaint was filed within two years after the date upon which he ceased to be

associated with a FINRA member and (2) the Complaint charges him with misconduct committed while he was associated with a FINRA member and with failing to respond to FINRA requests for information during the two-year period after the date upon which he ceased to be associated with a FINRA member.

FIRST CAUSE OF ACTION
(Conversion of Customer Funds)

Violation of NASD Conduct Rule 2330(a) and FINRA Rules 2150(a) and 2010

8. The Department realleges and incorporates by reference paragraphs 1 through 7 above.
9. During the time that Respondent was associated with BOA, he came to know customer H.D. (a.k.a. E.D.).
10. After Respondent became associated with Securities America, H.D. entrusted to him funds drawn on her securities accounts.
11. On or about May 18, 2009, Respondent presented to H.D. for her signature a check made payable to him, in the amount of \$54,000.00. That check was drawn on H.D.'s account at BOA. Respondent represented to H.D. that he would invest her funds for her benefit through a licensed, registered company.
12. Respondent did not invest H.D.'s \$54,000.00 for her benefit. His representation to H.D. that he would invest her money for her benefit was false and was a pretense to obtain her money. Without H.D.'s knowledge, authorization, or consent, Respondent converted her \$54,000.00 for his own purposes.

13. On or about August 26, 2009, Respondent presented to H.D. for her signature a second check made payable to him, in the amount of \$152,000.00. This second check was drawn on one of H.D.'s securities accounts. As he did with respect to the first check, for \$54,000.00, Respondent represented to H.D. that he would invest her funds from this second check, for \$152,000.00, for her benefit through a licensed, registered company.
14. Respondent did not invest H.D.'s \$152,000.00 from the second check for her benefit. His representation to H.D. that he would invest her money for her benefit was false and was a pretense to obtain an additional \$152,000.00 from her. Without H.D.'s knowledge, authorization, or consent, Respondent converted her \$152,000.00 from the second check for his own purposes.
15. During the time that Respondent was associated with BOA, customer K.C. was a client of his.
16. In or about June 2010, Respondent advised K.C. that she could earn greater returns if she placed her money in an investment product he had found.
17. On or about June 29, 2010, K.C. signed a check made payable to Respondent, in the amount of \$55,000.00. Respondent represented to K.C. that he would invest her funds for her benefit.
18. Respondent did not invest KC's \$55,000.00 for her benefit. His representation to K.C. that he would invest her money for her benefit was false and was a pretense to obtain her money. Without K.C.'s knowledge, authorization, or consent, Respondent converted her \$55,000.00 for his own purposes.

19. On April 6, 2011, in the matter *United States of America v. Richard Pascucci*, Case No. 1:11-CR-00109-RJA, in the United States District Court for the Western District of New York, in connection with his scheme to defraud and obtain \$206,000.00 from H.D. (a.k.a. E.D.) and \$55,000.00 from K.C., Respondent pled guilty to a one-count Information charging him with wire fraud, in violation of Title 18, United States Code, Section 1343 (the “Criminal Proceeding”).
20. Respondent wrongfully converted the funds of customers H.D. (a.k.a. E.D.) and K.C.
21. As a result, Respondent’s conduct violated NASD Conduct Rule 2330(a) and FINRA Rules 2150(a) and 2010.

SECOND CAUSE OF ACTION

(Failure To Respond to Requests Made Pursuant to FINRA Rule 8210)

Violation of FINRA Rules 8210 and 2010

22. The Department realleges and incorporates by reference paragraphs 1 through 21 above.
23. As part of its investigation into whether the funds of customers H.D. and K.C. had been converted, on December 30, 2010, the Staff sent Respondent a letter, pursuant to and in accordance with FINRA Rule 8210, requesting certain information and documents (the “First Request”).
24. The Staff sent the First Request to Respondent at his residential address of record in FINRA’s Central Registration Depository (“CRD”), [REDACTED] [REDACTED] (the “CRD Address”), via the United States Postal Service (the “USPS”) by First Class Mail and Certified Mail, Return-Receipt Requested.

25. The First Request asked Respondent to provide a written statement concerning the allegations surrounding H.D.'s and K.C.'s funds, documents concerning those allegations, and information about any other customer complaints against Respondent.
26. The First Request stated that a response was required by "January 13, 2010," rather than January 13, 2011.
27. The envelope containing the First Request sent to Respondent by Certified Mail, Return-Receipt Requested, was returned to the Staff by the USPS unclaimed. To date, the First Request sent to Respondent by First Class Mail has not been returned to the Staff.
28. Respondent did not respond to the First Request.
29. After discovering that the First Request mistakenly set a response deadline of a date that had already passed, on January 13, 2011, the Staff sent Respondent a second letter, pursuant to and in accordance with FINRA Rule 8210, requesting that he provide the same information and documents that were requested in the First Request (the "Second Request").
30. The Staff sent the Second Request to Respondent at his CRD Address via the USPS by First Class Mail and Certified Mail, Return-Receipt Requested.
31. The Second Request required a response by January 20, 2011.
32. The Return Receipt for the Second Request sent to Respondent by Certified Mail was returned to the Staff by the USPS, but the signature on the Return-Receipt card is

illegible. To date, the Second Request sent to Respondent by First Class Mail has not been returned to the Staff.

33. Respondent did not respond to the Second Request.

34. On February 1, 2011, the Staff sent Respondent a third letter, pursuant to and in accordance with FINRA Rule 8210, requesting that he provide the same information and documents that were requested in the First and Second Requests (the "Third Request").

35. The Staff sent the Third Request to Respondent at his CRD Address via the USPS by First Class Mail and Certified Mail, Return-Receipt Requested.

36. The Third Request required a response by February 8, 2011.

37. To date, the Third Request sent to Respondent by Certified Mail, Return-Receipt Requested, has not been returned to the Staff. Also to date, the Third Request sent to Respondent by First Class Mail has not been returned to the Staff.

38. Respondent did not respond to the Third Request.

39. In or about September 2011, the Staff learned that Respondent's CRD Address, which remains Respondent's residential address of record in CRD, may be out of date. The Staff learned that Respondent's residential address may be [REDACTED] [REDACTED] (the "Lancaster Address").

40. On October 6, 2011, the Staff sent Respondent a fourth letter, pursuant to and in accordance with FINRA Rule 8210, requesting that he provide a written statement concerning the allegations surrounding H.D.'s and K.C.'s funds, documents concerning those allegations, information about any other customer complaints

against Respondent, and any other information that may be helpful to the investigation (the "Fourth Request").

41. The Staff sent the Fourth Request to Respondent at his CRD Address and the Lancaster Address via the USPS by First Class Mail and Certified Mail, Return-Receipt Requested.
42. The Staff also sent the Fourth Request to Respondent's counsel in the Criminal Proceeding, at counsel's business address, via the USPS by First Class Mail and Certified Mail, Return-Receipt Requested.
43. The Fourth Request required a response by October 13, 2011.
44. The Return Receipt for the Fourth Request sent to Respondent by Certified Mail at his CRD Address was returned to the Staff by the USPS, and the signature on the Return-Receipt card appears to read "R P Pascucci," though the name is not printed on that card. The Return Receipt for the Fourth Request sent to Respondent at the Lancaster Address by Certified Mail was returned to the Staff by the USPS, but the signature on the Return-Receipt card is illegible. To date, the copies of the Fourth Request sent to Respondent at his CRD Address and the Lancaster Address by First Class Mail have not been returned to the Staff.
45. The Return Receipt for the Fourth Request sent to Respondent's counsel in the Criminal Proceeding by Certified Mail was returned to the Staff by the USPS, but the signature on the Return-Receipt card is illegible. To date, the Fourth Request sent to Respondent's counsel in the Criminal Proceeding by First Class Mail has not been returned to the Staff.

46. Respondent did not respond to the Fourth Request.
47. On October 14, 2011, the Staff sent Respondent a fifth letter, pursuant to and in accordance with FINRA Rule 8210, requesting that he provide the same information and documents that were requested in the Fourth Request (the "Fifth Request").
48. The Staff sent the Fifth Request to Respondent at his CRD Address and the Lancaster Address via the USPS by First Class Mail and Certified Mail, Return-Receipt Requested.
49. The Staff also sent the Fifth Request to Respondent's counsel in the Criminal Proceeding, at counsel's business address, via the USPS by First Class Mail and Certified Mail, Return-Receipt Requested.
50. The Fifth Request required a response by October 21, 2011.
51. To date, the copies of the Fifth Request sent to Respondent at his CRD Address and the Lancaster Address by Certified Mail, Return-Receipt Requested, have not been returned to the Staff. Also to date, the copies of the Fifth Request sent to Respondent at his CRD Address and the Lancaster Address by First Class Mail have not been returned to the Staff.
52. The Return Receipt for the Fifth Request sent to Respondent's counsel in the Criminal Proceeding by Certified Mail was returned to the Staff by the USPS, and the signature on the Return-Receipt card reads "Christine Kiffer." To date, the Fifth Request sent to Respondent's counsel in the Criminal Proceeding by First Class Mail has not been returned to the Staff.
53. Respondent did not respond to the Fifth Request.

54. By failing to respond to the Staff's letters seeking information and documents,
Respondent violated FINRA Rules 8210 and 2010.

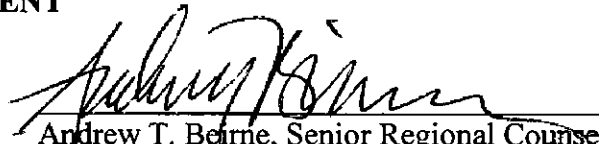
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under FINRA Rule 8310(a),
including monetary sanctions, be imposed; and
- B. order that the 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: November 8, 2011


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