

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

RICHARD PETER PASCUCCI
(CRD No. 4819805),

Respondent.

Disciplinary Proceeding
No. 2010025751301

Hearing Officer—LOM

DEFAULT DECISION

April 13, 2012

Respondent is barred from associating with any FINRA member in any capacity for conversion of customer funds in violation of NASD Rule 2330(a), and FINRA Rules 2150(a) and 2010. Respondent also is barred from association with any FINRA member in any capacity for his failure to provide information and documents pursuant to FINRA Rules 8210 and 2010.

Appearances

Andrew T. Beirne, Senior Regional Counsel, New York, New York, for the Department of Enforcement.

No appearance on behalf of Richard Peter Pascucci.

I. Introduction And Origin Of Complaint

This is a FINRA disciplinary proceeding against Respondent, Richard Peter Pascucci, for violation of NASD Rule 2330(a) and FINRA Rules 2150(a), 8210, and 2010 while he was a registered representative with a FINRA member firm, Securities America, Inc. ("Securities America" or the "Firm"). Enforcement alleges that Pascucci converted customer funds for his

own use without the customers' knowledge, authorization, or consent and that he failed to cooperate in an investigation of these events.¹

Securities America employed Pascucci as a registered representative from August 29, 2008, to July 21, 2010. On July 22, 2010, the Firm filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") stating that Pascucci's termination was voluntary. Pascucci has not been employed with a FINRA member firm since then.²

On December 14, 2010, the Firm filed with FINRA a Form 3070(a) reporting that the United States Secret Service had notified the Firm that Pascucci was suspected of having misappropriated or converted the funds of two individuals believed to be his clients.³ The Firm's December 2010 filing caused FINRA staff to open an investigation.⁴ As part of its investigation, the staff sent five requests for information and documents to Pascucci pursuant to FINRA Rule 8010. Pascucci did not respond, much less provide the requested information and documents. However, the staff did receive information from the Firm and the Secret Service.⁵

¹ The Financial Industry Regulatory Authority, Inc. ("FINRA") is responsible for regulatory oversight of securities firms and associated persons who do business with the public. FINRA was formed in July 2007 by the consolidation of NASD and the regulatory arm of the New York Stock Exchange ("NYSE"). FINRA is developing a new "Consolidated Rulebook" of FINRA Rules that includes NASD Rules. The first phase of the new consolidated rules became effective on December 15, 2008. See FINRA Regulatory Notice 08-57 (Oct. 2008). Because the Complaint in this case was filed after December 15, 2008, FINRA's procedural rules apply. The conduct rules that apply are those that existed at the time of the conduct at issue. FINRA's Rules are available at www.finra.org/Rules.

The facts set forth herein are based on the allegations of the Complaint, which, as discussed below, are deemed admitted as a result of Respondent's default, and on a Declaration given by a FINRA Enforcement attorney, Andrew T. Beirne ("Beirne Decl."), and the accompanying 27 exhibits, marked CX-1 through CX-27. Beirne Decl. ¶ 12; CX-6 and CX-10.

² Beirne Decl. ¶¶ 6, 10; CX-1, CX-2.

³ Beirne Decl. ¶ 11.

⁴ *Id.*

⁵ Beirne Decl. ¶¶ 12, 39-71; CX-15 through CX-27.

On April 6, 2011, Pascucci appeared before the United States District Court for the Western District of New York in the matter *United States of America v. Richard Pascucci*, Case No. 1:11-CR-00109-RJA (the “Criminal Proceeding”), and pled guilty to a one-count information charging him with wire fraud in connection with conversion of customer funds belonging to two persons who were his clients at the Firm. On January 23, 2012, the court in the Criminal Proceeding sentenced Pascucci to 30 months in prison and ordered him to pay restitution to the two clients in the total amount of \$261, 000.⁶

Enforcement filed and served the Complaint on November 8, 2011, charging Pascucci with conversion of customer funds in violation of NASD Rule 2330(a) and FINRA Rules 2150(a) and 2010, and a failure to provide information and documents in an investigation in violation of FINRA Rules 8210 and 2010. When Pascucci did not respond, Enforcement served the Complaint a second time on December 7, 2011. Pascucci still did not file an Answer. Enforcement filed and served its Motion For Entry Of Default And Imposition Of Sanctions on February 3, 2012, accompanied by a Declaration and 27 supporting exhibits.⁷

For the reasons set forth below and pursuant to authority granted by FINRA Rule 9269(a), the Hearing Officer finds Pascucci in default, grants Enforcement’s Default Motion, and deems the allegations of the Complaint admitted. Based on the Complaint and other evidence of record, the Hearing Officer issues this Decision barring Pascucci from associating with any FINRA member firm in any capacity.

⁶ Beirne Decl. ¶¶ 36-37; CX-4, CX-14.

⁷ Beirne Decl. ¶¶ 3, 13-27; CX-6, CX-10.

II. Jurisdiction

FINRA has jurisdiction over this disciplinary proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because the Complaint alleges acts of conversion that occurred while Pascucci was a registered representative and failures to respond to information requests pursuant to FINRA Rule 8210 that were issued within two years after Respondent's registration with a FINRA member firm terminated. The Complaint also was filed and served within two years after Respondent's registration with a FINRA member firm terminated.

III. Procedural History And Grant Of Default Motion

On November 8, 2011, Enforcement served the Complaint and Notice of Complaint on Respondent by two methods (certified mail, return receipt requested, and first-class mail) at two addresses: Pascucci's last known residential address as reflected in the Central Registration Depository ("CRD address") and an address thought to belong to his parents, which was provided by a Secret Service agent. In addition, Enforcement sent a copy of the Notice of Complaint by both methods to an attorney who represented Pascucci in the criminal proceeding against him. The papers sent by certified mail to Pascucci's CRD address were returned to Enforcement "unclaimed." The return receipt for the papers sent by certified mail to Pascucci's parents was signed and returned to Enforcement. The signature appears to read "Richard S. Pascucci," but no name is printed on the card. The return receipt for the Notice sent by certified mail to the attorney was returned to enforcement signed by "Justin White." The papers sent by first-class mail were not returned.⁸

⁸ Beirne Decl. ¶¶ 13-18; CX-6 through CX-9.

The Notice of Complaint informed Pascucci that he was required to file an Answer by December 6, 2011. Pascucci failed to Answer.⁹

On December 7, 2011, Enforcement served the Complaint and Second Notice of Complaint in the same manner on Pascucci at Pascucci's CRD address and his parents' address, and sent the Second Notice to Pascucci's attorney in the criminal proceeding. The postal service returned the items sent to Pascucci's CRD address by certified mail marked "unclaimed." The return receipt for the papers sent by certified mail to Pascucci's parents was signed and returned to Enforcement. The signature appears to read "Joseph C Pascucci," but no name is printed on the card. The return receipt for the Notice sent by certified mail to the attorney was returned to Enforcement signed by "J Conti." The papers sent by first-class mail were not returned.¹⁰

The Second Notice of Complaint informed Pascucci that if he failed to file an Answer by December 27, 2011, the allegations of the Complaint might be deemed admitted and a default decision might be entered against him pursuant to FINRA Rule 9269. Pascucci nevertheless failed to file an Answer.¹¹

Under FINRA Rule 9134, service of a complaint is valid if sent to an individual respondent by certified mail at the person's most recent residential address in the CRD, unless the staff has actual knowledge that the CRD address is outdated and knows of a more current address. Alternatively, a complaint may be served on an individual at the CRD address of an entity employing the person.

⁹ Beirne Decl. ¶¶ 19; CX-6.

¹⁰ Beirne Decl. ¶¶ 20-25; CX-10 through CX-13.

¹¹ Beirne Decl. ¶¶ 26-27; CX-10.

In this case, in September 2011 a Secret Service agent suggested that Pascucci's CRD address was out of date. However, the agent supplied an address where he thought that Pascucci might be while he awaited sentencing and identified it as belonging to Pascucci's parents.¹² According to Pascucci's CRD records, he was not then employed or affiliated with any FINRA member firm,¹³ so service could not be accomplished by that alternative. Enforcement sent the Complaint and the two Notices to both the CRD address and the address for Pascucci's parents, and, in addition, sent the Notice to Pascucci's attorney in the criminal proceeding. Enforcement's efforts were sufficient to establish constructive service. Moreover, there is evidence to support actual service, such as the signatures on the return receipts for papers served at the parents' address and the attorney's address, and the fact that none of the papers sent by regular mail were returned in either round of service.

The Hearing Officer finds that the Complaint was validly served and that Pascucci failed to file an Answer. Pursuant to FINRA Rules 9215(f) and 9269(a), the Hearing Officer grants Enforcement's Default Motion and deems the allegations in the attached Complaint admitted.

IV. Findings Of Fact And Conclusions Of Law As To Underlying Violations

A. Respondent's Conversion Of Customer Funds

The misconduct alleged in the first cause of action took place in 2009, when NASD Rule 2330(a) was in effect, and 2010, when FINRA Rule 2150(a) was in effect.¹⁴ Both Rules provide: "No member or person associated with a member shall make improper use of a customer's securities or funds." FINRA Rule 2010 requires the observance of "high standards of

¹² Beirne Decl. ¶¶ 8-9.

¹³ Beirne Decl. ¶ 10; CX-1.

¹⁴ Beirne Decl. ¶ 28 (the first cause of action charges conversion in the period from May 18, 2009, through June 29, 2010).

commercial honor and just and equitable principles of trade.” It is inconsistent with the duties imposed by these Rules to violate other FINRA (and formerly applicable NASD) rules.¹⁵

As the Complaint alleges, Pascucci converted to his own use a total of \$261,000 of customer funds. The money belonged to two customers, H.D. and K.C. Pascucci’s method was simple and was the same in both cases. He obtained from the customers checks payable to him, falsely representing that he would invest the proceeds on their behalf. Instead, Pascucci spent the money for his own purposes. H.D. wrote two checks, one for \$54,000 on May 18, 2009, and the other for \$152,000 on August 26, 2009. K.C. wrote one check for \$55,000 on June 29, 2010.¹⁶

This same misconduct was the subject of Pascucci’s guilty plea in the wire fraud criminal proceeding, where Pascucci signed a plea agreement setting forth the basis for the guilty plea. The Declaration sets forth relevant portions of the plea agreement that detail the misconduct. Pascucci was not only sentenced to 30 months in prison but also ordered to pay the customers a total of \$261,000 in restitution.¹⁷

The Hearing Officer finds that Pascucci violated NASD Rule 2330(a) and FINRA Rules 2150(a) and 2010.

¹⁵ The Securities and Exchange Commission has consistently held that a violation of an NASD rule or regulation is inconsistent with NASD Rule 2110, the identical predecessor of FINRA Rule 2010. *Alvin W. Gebhart*, Exchange Act Rel. No. 53136, 2006 SEC LEXIS 93, at *54 n.75 (Jan. 18, 2006), *rev'd and remanded in part on other grounds sub. nom Gebhart v. SEC*, 2007 U.S. App. LEXIS 27183 (9th Cir. Nov. 21, 2007). *See also Richard F. Kresge*, Exchange Act Rel. No. 55,988, 2007 SEC LEXIS 1407, at *42 (June 29, 2007).

¹⁶ Beirne Decl. ¶¶ 28-38; CX-6 ¶¶ 1, 8-18.

¹⁷ Beirne Decl. ¶¶ 36-37.

B. Respondent's Failure To Provide Information And Documents Requested Pursuant To FINRA Rule 8210

FINRA Rule 8210 requires FINRA members and their associated persons to cooperate with FINRA investigations by providing information when requested by FINRA staff. Pursuant to Rule 8210, FINRA may require an associated person "to provide information orally, in writing, or electronically . . . and to testify at a location specified by FINRA staff, under oath or affirmation" in connection with any investigation. The Rule is crucial to FINRA's ability to oversee and regulate member firms and associated persons because FINRA does not have subpoena power. Instead, FINRA must depend on member firms and associated persons to cooperate fully and promptly with requests for information.¹⁸ A failure to respond promptly and completely to information requests frustrates FINRA's ability to detect misconduct and protect investors and markets.¹⁹

In this case, Enforcement made five separate efforts to obtain information and documents from Pascucci pursuant to FINRA Rule 8210 (by letters dated: December 30, 2010; January 13, 2011; February 1, 2011; October 6, 2011; and October 14, 2011). Each request indicated that a

¹⁸ See, e.g., *Dep't of Enforcement v. Valentino*, No. FPI010004, 2003 NASD Discip. LEXIS 15, at *12 (N.A.C. May 21, 2003), *aff'd*, 2004 SEC LEXIS 330 (Feb. 13, 2004) ("It is well established that because NASD [FINRA's predecessor] lacks subpoena power over its members, a failure to provide information fully and promptly undermines NASD's ability to carry out its regulatory mandate.") (citation omitted); *Joseph G. Chiulli*, 54 S.E.C. 515, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for NASD to effectively conduct its investigations, and emphasizing that NASD members and associated persons must fully cooperate with requests for information). See also *Morton Bruce Erenstein*, 316 Fed. Appx. 865, 871, 2008 U.S. App. LEXIS 19746, at *13 (11th Cir. Sept. 16, 2008) ("[I]t is critically important to the self-regulatory system that members and associated persons cooperate with NASD investigations, especially because the NASD lacks subpoena power."); *Robert Fitzpatrick*, 55 S.E.C. 419, 2001 SEC LEXIS 2185, at *11-12 (Oct. 19, 2001).

¹⁹ *PAZ Sec., Inc.*, 2008 SEC LEXIS 820, at *13 (Apr. 11, 2008), *petition for review denied sub nom. Paz Sec. v. SEC*, 566 F.3d 1172, 2009 U.S. App. LEXIS 11500 (D.C. Cir. May 29, 2009).

failure to respond could lead to disciplinary action, but Pascucci failed to respond to any of them.²⁰

The Hearing Officer finds that Pascucci violated FINRA Rule 8210 by his failure to provide information and documents sought pursuant to that Rule. In addition, the Hearing Officer finds that Respondent violated FINRA Rule 2010. It is well-established that a violation of the duty to cooperate and provide information pursuant to Rule 8210 is also a violation of Rule 2010.²¹

V. Sanctions

The FINRA Sanction Guidelines (“Sanction Guidelines”) recommend a bar for conversion, regardless of the amount involved.²² That sanction is entirely appropriate here for Pascucci’s violations of NASD Rule 2330(a) and FINRA Rules 2150(a) and 2010. Likewise, the Sanction Guidelines state that a bar should be the standard sanction for a complete failure to respond to a request for information pursuant to Rule 8210.²³ That sanction is also appropriate for Pascucci’s separate violation of FINRA Rules 8210 and 2010. The Sanction Guidelines recommend that restitution be ordered if a case involves identifiable customer harm, as this case

²⁰ Beirne Decl. ¶¶ 39-53. The first three requests were sent to Pascucci’s CRD address by certified mail, return receipt requested, and first-class mail.

After the Secret Service agent provided Enforcement with two other addresses for Pascucci (the address believed to belong to his parents and the address of his attorney in the criminal proceeding), Enforcement sent a fourth request to those two addresses and again to Pascucci’s CRD address by the same two U.S. post office services (certified mail, return receipt requested, and first-class mail).

When Pascucci failed to respond to the fourth attempt to obtain information and documents pursuant to FINRA Rule 8210, Enforcement made a fifth attempt by resending the request to all three addresses (Pascucci’s CRD address, his parents’ address, and his attorney’s address) by certified mail, return receipt requested, and first-class mail.

²¹ See *CMG Inst. Trading, LLC*, 2009 SEC LEXIS 215, at *30 (Jan. 30, 2009); *Stephen J. Gluckman*, 54 S.E.C. 175, 1999 SEC LEXIS 1395, at 22 (July 20, 1999).

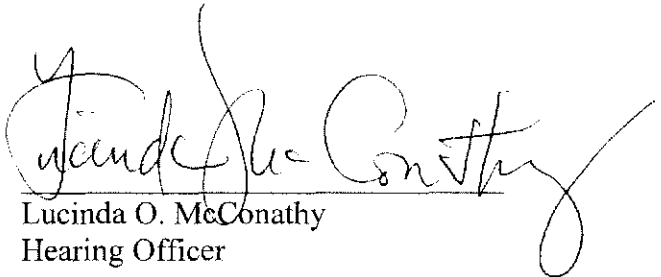
²² Sanction Guidelines at 38.

²³ Sanction Guidelines at 33.

does. However, since restitution was already ordered in the criminal case, Enforcement does not seek that remedy in this proceeding. The Hearing Officer agrees that restitution should not be ordered because it has already been ordered by the federal court.

VI. Order

Enforcement's Default Motion is granted and the allegations of the Complaint are deemed to be true. Respondent Richard Peter Pascucci is barred from association with any FINRA member firm in any capacity for conversion, and separately barred from association with any FINRA member firm in any capacity for his failure to provide information requested pursuant to Rule 8210. The bars shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.



Lucinda O. McConathy
Hearing Officer

Copies to: Richard Peter Pascucci (via first-class mail and overnight courier)
Andrew T. Beirne, Esq. (via first-class and electronic mail)
Mark P. Dauer, Esq. (via electronic mail)
David R. Sonnenberg, Esq. (via electronic mail)