

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

BENJAMIN FRANKLIN WEST
(CRD No. 5445026),

Respondent.

Disciplinary Proceeding
No. 20110260321

Hearing Officer – AWL

DEFAULT DECISION

December 6, 2012

Respondent is barred from associating with any FINRA registered firm in any capacity for (1) converting funds from customers, in violation of FINRA Rule 2010; and (2) failing to provide information and failing to appear and provide testimony, in violation of FINRA Rules 8210 and 2010.

Appearances

Steven F. Korostoff, Esq., and Susan Light, Esq., for the Department of Enforcement, Complainant.

No appearance by or on behalf of Benjamin Franklin West, Respondent.

DECISION

I. Introduction

The FINRA Department of Enforcement filed the attached Complaint with the Office of Hearing Officers on June 29, 2012. The Complaint charges Respondent Benjamin Franklin West with (1) misappropriating funds from the accounts of two customers of Farmers Insurance Group (“FIG”), an affiliate of Farmers Financial Solutions LLC (“Farmers Financial”), in violation of FINRA Rule 2010; and (2) failing to respond to requests for information and testimony, in violation of FINRA Rules 8210 and 2010.

West failed to file an answer or otherwise respond to the Complaint. Consequently, on September 25, 2012, Enforcement filed a Motion for Entry of Default Decision and Request for Sanctions (“Default Motion”). The Default Motion is supported by the Declaration of Steven F. Korostoff, Esq., (“Decl.”) and 11 attached exhibits, labeled CX-1 through CX-11. West did not respond to the Default Motion.

II. Procedural History

On June 29, 2012, Enforcement served the Notice of Complaint and Complaint on West by certified mail, return receipt requested, at his most current residential address recorded in the Central Registration Depository (“CRD Address”).¹ The Notice of Complaint required West to file an Answer with the Office of Hearing Officers on or before July 27, 2012. The United States Postal Service returned the certified mailing to the CRD Address as undeliverable on July 30, 2012.² West failed to answer or otherwise respond as required in the Notice of Complaint.³

On August 2, 2012, Enforcement served a Second Notice of Complaint, together with copies of the Notice of Complaint and the Complaint, on West by certified mail, return receipt requested, at his CRD Address.⁴ FINRA did not receive by return mail either the return receipt or the certified mailing addressed to West’s CRD Address.⁵ The Second Notice of Complaint required West to file an Answer with the Office of Hearing Officers on or before August 20,

¹ Decl. ¶ 27; CX-1, at 1. Enforcement also mailed a copy of the Complaint and the Notice of Complaint to an alternate updated address obtained through LexisNexis (“Updated Address”) by both certified mail, return receipt requested, and first-class mail. See CX-3. FINRA received the return receipt for the certified mailing to the Updated Address, dated July 5, 2012, although the signature is illegible. Decl. ¶ 30; CX-7.

² Decl. ¶ 31. The first-class mailing to the CRD Address was also returned as undeliverable.

³ Decl. ¶ 32.

⁴ Decl. ¶ 33. Enforcement also served West with copies of the Second Notice of Complaint, Complaint and Notice of Complaint by first-class mail to his CRD Address and by first-class and certified mail to the Updated Address.

⁵ Decl. ¶ 34. As to the additional service copies, the first-class mailing to the CRD Address and the certified mailing to the Updated Address were returned to FINRA, but the first-class mailing to the Updated Address was not returned. Decl. ¶ 35.

2012. West failed to answer or otherwise respond to the Second Notice of Complaint and Complaint.⁶

The Hearing Officer finds that Enforcement properly served West with a copy of the Complaint and that West received valid constructive notice of this proceeding.⁷ West defaulted by failing to file an Answer or otherwise respond to the Complaint by either of the deadlines set forth in the Notices. Accordingly, the Hearing Officer grants Enforcement's Default Motion.

III. Findings of Fact and Conclusions of Law

Based on West's default, the Hearing Officer deemed the allegations in the attached Complaint admitted, pursuant to Rules 9215(f) and 9269(a).

A. Background

West was an independent contractor, associated with Farmers Financial and registered with FINRA as an Investment Company and Variable Contracts Products Representative (Series 6), and Agent (Series 63).⁸ On January 3, 2011, Farmers Financial filed a Uniform Termination Notice for Securities Industry Registration ("Form U5"), reporting that it terminated West on December 27, 2010, after notice from its affiliate that West used customer insurance premiums for his personal use.⁹ West has not associated with any other member firm since his termination from Farmers Financial.¹⁰

⁶ Decl. ¶ 36.

⁷ Constructive notice to the CRD Address is sufficient. *Dep't of Enforcement v. Moore*, No. 200801510561, 2012 FINRA Discip. LEXIS 45, at *19-21 (N.A.C. July 26, 2012) (Respondent has constructive notice of complaint when mailed to CRD address). See also Notice to Members 99-77, available at www.finra.org/Industry/Regulation/Notices/1999/P004087 (disciplinary complaints mailed to the last CRD address are considered received at that address, whether or not the individual actually receives them; individuals are cautioned to update their addresses or potentially suffer a default decision).

⁸ Compl. ¶ 3; Decl. ¶ 4; CX-1, at 6.

⁹ Compl. ¶ 4; Decl. ¶ 5; CX-2, at 6.

¹⁰ Decl. ¶ 6; CX-1, at 6.

Following receipt of the Form U5, FINRA staff commenced an investigation, which led to Enforcement filing this proceeding.¹¹

B. Jurisdiction

FINRA has jurisdiction over this disciplinary proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years after FINRA terminated West's registration, and (2) the Complaint charges him with misconduct that occurred while he was associated with a FINRA member firm, and with failing to respond to Enforcement's Rule 8210 requests for information made during the two-year period following the termination of his FINRA registration.¹²

C. Misappropriation of Funds

In July 2010, customer RB wrote a check payable to FIG for the renewal premiums of four commercial property insurance policies, totaling \$5,466.58.¹³ Instead of depositing RB's check in a FIG bank account pursuant to FIG's procedures, West deposited RB's check into his personal account on July 28, 2010, and used the funds for his own expenses.¹⁴ In October, 2010, RB contacted FIG and filed a complaint with the Tennessee Department of Commerce and Insurance regarding RB's insurance policies.¹⁵ Subsequently, on November 1, 2010, West deposited \$6,300 of his personal funds into FIG's bank account to pay for the premiums on RB's renewal policies.¹⁶

¹¹ Decl. ¶ 7.

¹² Article V, Sec. 4(a), FINRA By-Laws, *available at* www.finra.org/Rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: By-Laws").

¹³ Compl. ¶ 11.

¹⁴ *Id.*

¹⁵ *Id.* ¶ 12.

¹⁶ *Id.* ¶ 12.

In October 2010, customer PB wrote a check payable to FIG for \$809.50 for an insurance policy and gave it to West.¹⁷ West did not deposit the check into the FIG bank account, according to FIG procedures, but instead deposited the check into his own account and used the funds for his personal expenses.¹⁸ FIG received a complaint from customer PB on December 5, 2010, and West deposited \$995 of his personal funds into FIG's bank account on December 6, 2010, to pay the premium for PB's policy.¹⁹

FINRA Rule 2010 requires a high standard of commercial honor and just and equitable principles of trade of its member firms and associated persons.²⁰ The Rule is sufficiently broad to encompass unethical business-related misconduct, regardless of whether it involves a security or a securities customer.²¹ "The test is thus whether the representative's misconduct 'reflects directly on [his] ability to comply with regulatory requirements fundamental to the securities business and to fulfill his fiduciary responsibilities in handling other people's money.'"²² Thus, FINRA registered persons have been disciplined for financial misconduct when acting in the capacity of insurance agents.²³ Accordingly, the Hearing Officer finds that West violated FINRA Rule 2010 by misappropriating \$6,276.08 of customer insurance premiums.

¹⁷ *Id.* ¶ 13.

¹⁸ *Id.*

¹⁹ *Id.* ¶ 14.

²⁰ FINRA Rule 2010 applies to West through Rule 0140, which places the same duties and obligations on persons associated with a FINRA member as are required of the member.

²¹ See, e.g., *Dep't of Enforcement v. Saad*, No. 2006006705601, 2009 FINRA Discip. LEXIS 29, at *11 (N.A.C. Oct. 6, 2009) (submission of false expense reimbursement requests and receipts to broker-dealer violated rule); *Dep't of Enforcement v. Shelley*, No. C3A050003, 2007 NASD Discip. LEXIS 8, at *12 (N.A.C. Feb. 15, 2007) (disciplinary authority under Rule [2010] is broad enough to cover a wide range of unethical conduct); *Vail v. SEC*, 101 F.3d 37, 39 (5th Cir. 1996) (rule prohibits conduct that does not directly involve securities or the violation of specific securities law).

²² *Dep't of Enforcement v. Manoff*, No. C9A990007, 2001 NASD Discip. LEXIS 4, at *21 (Apr. 26, 2001) (citations omitted).

²³ See, e.g., *Thomas E. Jackson*, 45 S.E.C. 771, 772 (1975); *Howard B. Labow*, 48 S.E.C. 134 (1985).

D. Failure to Provide Information

West failed to respond to three requests from FINRA staff to provide information and to appear and provide testimony concerning the misappropriation of customer funds, in violation of FINRA Rules 8210 and 2010.

On April 27, 2011, Enforcement sent its first Rule 8210 request to West at his CRD Address, via first-class and certified mail, return receipt requested.²⁴ The request sought documents and information and West's appearance to provide testimony on June 15, 2011.²⁵ Both the first-class and certified mailings were returned as undeliverable.²⁶ Enforcement then sent an email to West on June 10, 2011,²⁷ using an email address that he used earlier to provide information to FINRA staff on March 17, 2010. Enforcement advised West of the attempts to contact him and the need for a current residential address.²⁸ West, however, did not respond to the email or provide any response to the April 27 request.²⁹

On June 15, 2011, Enforcement sent a second Rule 8210 request to West, via first-class and certified mail, return receipt requested, to his CRD Address and Updated Address.³⁰ This request sought documents and information from West by June 29, 2011, and West's appearance for testimony on July 7, 2011.³¹ Both mailings to the CRD Address were returned as undeliverable, and the certified mailing to the Updated Address was returned as unclaimed.³²

²⁴ Compl. ¶ 21.

²⁵ *Id.*

²⁶ *Id.*

²⁷ Decl. ¶ 14.f.

²⁸ Compl. ¶ 22.

²⁹ *Id.* ¶¶ 21-22.

³⁰ *Id.* ¶ 23.

³¹ *Id.*

³² *Id.*; Decl. ¶ 14.h.

The first-class mailing to the Updated Address, however, was not returned.³³ FINRA did not receive any response from West to the June 15 request.³⁴

On July 13, 2011, Enforcement mailed a third Rule 8210 request to West via first-class mail and certified mail, return receipt requested, at both West's CRD Address and the Updated Address. Enforcement sought information and documents from West by July 27, 2011, and that he appear and provide testimony on August 11, 2011.³⁵ Both mailings to the CRD address were returned to FINRA as undeliverable, and the certified mailing to the Updated Address was returned as unclaimed.³⁶ The first-class mailing to the Updated Address was not returned, but West did not respond to the July 13 request.³⁷

FINRA Rule 8210 "is at the heart of the self-regulatory system for the securities industry," and, when members delay their responses or neglect entirely their responsibilities under the Rule, they "undermine the ability of [FINRA] to ... protect the public interest."³⁸ To date, West has failed to respond to Enforcement's Rule 8210 requests.³⁹ Accordingly, West violated FINRA Rules 8210 and 2010, by failing to provide information and failing to appear and provide testimony, as requested by Enforcement.

³³ Compl. ¶ 23; Decl. ¶ 14.h.

³⁴ Compl. ¶ 23.

³⁵ *Id.* ¶ 24.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Howard Brett Berger*, Exchange Act Rel. No. 58950, 2008 SEC LEXIS 3141, at *13 (Nov. 14, 2008), *pet. denied*, 347 Fed. App'x. 692 (2d Cir. 2009).

³⁹ Compl. ¶ 25.

IV. Sanctions

A. Misappropriation of Funds

The FINRA Sanction Guidelines (“Guidelines”) for conversion or improper use of funds state that a bar is standard, regardless of the amount converted.⁴⁰ No mitigating factors exist that warrant consideration of a lesser sanction. Accordingly, a bar is the appropriate sanction for this violation.⁴¹

B. Failure to Respond to Requests for Information and Testimony

FINRA Rule 8210 is a key element in FINRA’s oversight function and assists FINRA in carrying out its regulatory functions without subpoena power.⁴² When an individual fails to provide information, FINRA’s ability to perform its regulatory functions is subverted.⁴³ For these reasons, the Sanction Guidelines recommend a bar when a respondent fails to respond in any manner to a Rule 8210 request for information.⁴⁴ Here, West failed to respond in any manner to three requests for information and testimony. No evidence of any mitigating facts exists to justify consideration of a sanction less than a bar. Accordingly, a bar is the appropriate sanction for this violation.

V. Order

Benjamin Franklin West is barred from associating with any member firm in any capacity for (1) misappropriating customer funds, in violation of FINRA Rule 2010; and (2) failing to provide information and to appear and provide testimony, in violation of FINRA Rules 8210 and

⁴⁰ FINRA Sanction Guidelines 36 (2011), available at www.finra.org/sanctionguidelines.

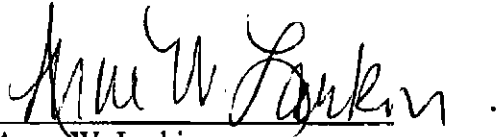
⁴¹ Restitution was not sought since West restored the insurance premiums at issue.

⁴² *Berger*, 2008 SEC LEXIS 3141, at *13; *Joseph G. Chiulli*, Exchange Act Rel. No. 42359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000).

⁴³ *Joseph P. Hannan*, Exchange Act Rel. No. 40438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998) (lack of subpoena power requires reliance on Rule 8210 to regulate its members and associated persons).

⁴⁴ Guidelines 33.

2010. The bars shall become effective immediately if this Default Decision becomes FINRA's final disciplinary action.


Anne W. Larkin
Hearing Officer

Copies to:

Benjamin Franklin West (*via overnight courier and first-class mail*)
Steven F. Korostoff, Esq. (*via electronic and first-class mail*)
Susan Light, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Benjamin Franklin West
(CRD No. 5445026),

Respondent

DISCIPLINARY PROCEEDING
No. 20110260321

COMPLAINT

The Department of Enforcement ("Enforcement") alleges:

SUMMARY

I. During the period from July 2010 to October 2010, Benjamin Franklin West ("West") violated FINRA Rule 2010 by misappropriating \$6,246 of insurance premiums paid by two customers of his insurance company employer. At the time, he was an independent contractor registered representative employed by Farmers Financial Solutions LLC ("Farmers Financial" or the "Firm"), a FINRA registrant. West was also an insurance agent for the Farmers Insurance Group ("FIG"), an affiliate of Farmers Financial at all times relevant herein. West failed to deposit the premiums into an FIG bank account or remit the customers' insurance premiums to FIG. Instead, he misappropriated the funds by depositing the premiums into his own account and withdrawing money and making other personal payments.

2. In addition, West violated FINRA Rules 8210 and 2010 by failing to respond to FINRA's requests for information and testimony.

RESPONDENT AND JURISDICTION

3. From March 16, 2009 to December 27, 2010, West was an independent contractor registered with FINRA at Farmers Financial as an Investment Company and Variable Contracts Products Representative (Series 6) and Agent (Uniform State Law Examination) (Series 63).

4. On January 3, 2011, Farmers Financial filed a Form U-5 ("Uniform Termination Notice for Securities Industry Registration") reporting that FIG alleged that West used property and casualty insurance premiums for personal use and he was terminated on December 27, 2010.

5. West remains subject to FINRA's jurisdiction pursuant to Article V, Section 4 of FINRA's By-Laws, because this Complaint is being filed within two years of the termination of his association with a FINRA registrant. FINRA has jurisdiction over West until at least December 26, 2012.

FIRST CAUSE OF ACTION

Misappropriation of Funds [Violation of FINRA Rule 2010]

6. Enforcement realleges and incorporates by reference paragraphs 1 to 5, above.

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

8. During the period July 2010 to October 2010, West misappropriated insurance premium payments made by FIG customers.

9. As an FIG agent, West was required to collect and promptly remit monies due to FIG from its insurance customers.

10. Under FIG's procedures, a receipt must be prepared for all premium payments accepted by its agents. When an agent collects a premium for insurance business, he is supposed to enter the payment into Farmers Insurance's Agent's Credit Advice (ACA) program, place the business with one of FIG's insurance companies, and deposit the premium payment into a FIG bank account to which the agent has deposit access only.

Customer RB

11. In July 2010, one of West's customers, RB, wrote a check payable to FIG for \$5,466.58 for four different renewal commercial property insurance policies at FIG and gave the check to West. West did not enter the payment into the ACA system and he did not deposit the premiums into the FIG bank account. Instead, on or about July 28, 2010, he deposited the check into his own account and subsequently withdrew money and made various payments of personal expenses.

12. FIG became aware of this matter in October 2010, when RB contacted FIG and also filed a complaint with the Tennessee Department of Commerce and Insurance. Subsequently, on or about November 1, 2010, West deposited \$6,300 from his personal funds to FIG's bank account to make payment of the premiums for RB's four renewal policies at FIG. West's conduct did not result in any lapse of insurance coverage for RB.

Customer PB

13. In October 2010, another of West's customers, PB, wrote a check payable to FIG for \$809.50 for an insurance policy and gave the check to West. West did not enter the payment into the ACA system and he did not deposit the premium into the FIG bank account. Instead, he deposited the check into his own account and subsequently withdrew money and made various payments of personal expenses.

14. On or about December 5, 2010, PB filed a complaint with FIG. West deposited \$995 cash into FIG's bank account on December 6, 2010 toward a new insurance policy for PB. West's conduct did not result in any lapse of insurance coverage for PB.

15. By reason of the foregoing conduct involving premiums from RB and PB, West 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.

SECOND CAUSE OF ACTION

Failure to Provide Information and Testimony [Violation of FINRA Rules 8210 and 2010]

16. Enforcement realleges and incorporates by reference paragraphs 1 – 15, above.

17. FINRA Rule 8210(a) states that "For the purpose of an investigation, complaint, examination or proceeding authorized by the FINRA By-Laws or rules, an Adjudicator or FINRA staff shall have the right to: (1) require a member, person associated with a member, or person subject to FINRA's jurisdiction to provide information orally, in writing, or electronically...and to testify at a location specified by FINRA staff, under oath or affirmation administered by a court reporter or a notary public if requested, with respect to any matter involved in the investigation, complaint, examination, or proceeding..."

18. On February 1, 2011 and on March 3, 2011, FINRA's Central Review Group (the "CRG") sent an initial letter, pursuant to FINRA Rule 8210, and a follow up letter, pursuant to FINRA Rule 8210, respectively, to West at his address of record as indicated in the Central Registration Depository (the "CRD address"), via certified mail, return receipt requested, with copies sent by first class mail, requesting that he submit a signed statement and copies of certain records concerning the matter involved herein. The February 1st letter, sent certified mail was returned to FINRA marked "Return to Sender, Not Deliverable as Addressed, Unable to

Forward.” The March 3rd letter, sent certified mail was returned by the Postal Service to FINRA’s offices. The regular first class copies of the letters were not returned to FINRA.

19. On March 3, 2011, the CRG also sent a letter to West, pursuant to FINRA Rule 8210, at an additional address that it located (the “Updated Address”), requesting that he submit a written statement and certain documents. The letter sent to the Updated Address was delivered on March 8, 2011.

20. On March 17, 2010, West provided an email response to CRG’s request for information.

21. On April 27, 2011, Enforcement sent a letter to West, pursuant to FINRA Rule 8210, at his CRD Address, via certified mail, return receipt requested, with a copy by regular first class mail, requesting that he provide documents and information and that he appear and provide testimony before Enforcement on June 15, 2011. The letter sent certified mail and the copy sent regular first class mail were returned to FINRA marked “Return to Sender, Not Deliverable as Addressed, Unable to Forward.” FINRA did not receive a response from West to the April 27th letter.

22. On June 6, 2011, Enforcement sent an email to West, at the email address from which he responded to CRG on March 17, 2010, notifying him that Enforcement had been attempting to contact him in order to send him correspondence, but that Enforcement’s letters were being returned. Enforcement requested that he provide his current residential address to Enforcement. West did not respond to Enforcement’s email.

23. On June 15, 2011, Enforcement sent letters to West, pursuant to FINRA Rule 8210, at the CRD Address and the Updated Address, via certified mail, return receipt requested, with copies by regular first class mail, requesting documents and information by June 29, 2011

and that he appear and provide testimony before Enforcement on July 7, 2011. The June 15, 2011 letter, sent certified mail and the copy sent regular first class mail, were returned to FINRA marked "Return to Sender, Not Deliverable as Addressed, Unable to Forward." The letter sent to West's Updated Address by certified mail was returned to FINRA marked "Unclaimed." The regular first class copy of the letter sent to West's Updated Address was not returned to FINRA. FINRA did not receive a response from West to the June 15th letter.

24. On July 13, 2011, Enforcement sent letters to West, pursuant to FINRA Rule 8210, at the CRD Address and the Updated Address, via certified mail, return receipts requested, with copies by regular first class mail, requesting documents and information by July 27, 2011 and that he appear and provide testimony before Enforcement on August 11, 2011. The letter to West's CRD Address, sent certified mail and the copy sent regular first class mail were returned to FINRA marked "Return to Sender, Not Deliverable as Addressed, Unable to Forward." The letter sent to West's Updated Address by certified mail was returned to FINRA marked "Unclaimed." The regular first class copy of the letter sent to West's Updated Address was not returned to FINRA. FINRA did not receive a response from West to the July 13th letter.

25. To date, West has not provided documents and information or appeared and testified as requested in Enforcement's April 27th, June 15th, and July 13th letters in this matter.

26. As a result of the conduct described in paragraphs 16 through 25 above, West violated FINRA Rule 8210 and FINRA Rule 2010.

RELIEF REQUESTED

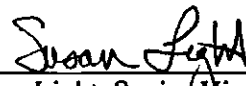
WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed.

- 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: June 29, 2012



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