

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

MICHAEL A. LAMBOY
(CRD No. 5058677),

Respondent.

Disciplinary Proceeding
No. 2011026468501

Hearing Officer—LOM

DEFAULT DECISION

July 26, 2012

Respondent is barred from associating with any FINRA member in any capacity for conversion of customer funds in violation of FINRA Rule 2010. Respondent also is barred from association with any FINRA member in any capacity for his failure to provide testimony in violation of FINRA Rules 8210 and 2010.

Appearances

Gino F. Ercolino, Senior Counsel, Myles L. Orosco, Enforcement Director, New York, New York, for the Department of Enforcement.

No appearance on behalf of Michael A. Lamboy.

I. Introduction And Origin Of Complaint

This is a FINRA disciplinary proceeding against Respondent, Michael A. Lamboy, for violation of FINRA Rules 2010 and 8210.¹ Enforcement alleges that Lamboy was a dual

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'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, Gino F. Ercolino ("Ercolino Decl."), and the accompanying 28 exhibits, marked CX-1 through CX-28.

employee of FINRA member firm Chase Investment Services Corp. (“Chase” or the “Firm”) and J.P. Morgan Chase Bank, N.A. (“the Bank”) at the time of the alleged misconduct, which occurred from approximately November 2010 to December 2010. On February 11, 2011, the Firm submitted to FINRA a Uniform Termination Notice of Securities Industry Registration and Transfer (“Form U5”), reporting that Respondent’s employment had been terminated on January 25, 2011, for conversion of bank customers’ funds.² Respondent has not been associated with a FINRA member firm since he was terminated by Chase.³

Enforcement alleges that while Respondent was dually registered he converted bank customer funds for his own use without the customers’ knowledge, authorization, or consent in violation of FINRA Rule 2010. It cites a January 18, 2011, written “interview statement” Respondent provided to the Bank in which Respondent admitted withdrawing Bank customers’ funds “totaling \$1,860.”⁴ Enforcement further alleges that in the course of investigating the matter it made three separate requests for Respondent’s testimony pursuant to FINRA Rule 8210 to no avail. Respondent failed to appear, the last time leaving a voice mail informing the staff that he would not appear for testimony. Enforcement alleges that the failure to cooperate in the investigation violated FINRA Rules 8210 and 2010.⁵

Enforcement filed and served the Complaint on March 15, 2012. When Respondent did not file an Answer or otherwise respond, Enforcement served the Complaint a second time on April 13, 2012. Respondent still did not file an Answer or responsive pleading. Enforcement filed and served the Department Of Enforcement’s Motion For Entry Of Default Decision And

² Compl. ¶ 4; CX-2.

³ Compl. ¶ 5.

⁴ Compl. ¶ 11.

⁵ Compl. ¶¶ 16-21.

Request For Sanctions (“Default Motion”) on May 31, 2012, accompanied by the Ercolino Declaration and 28 supporting exhibits.

For the reasons set forth below and pursuant to authority granted by FINRA Rule 9269(a), the Hearing Officer finds Lamboy 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 Lamboy from associating with any FINRA member firm in any capacity.

II. Jurisdiction

FINRA has jurisdiction over this disciplinary proceeding, pursuant to Article V, Section 4 of FINRA’s By-Laws, because the alleged conversion occurred while Lamboy was registered with FINRA through the Firm,⁶ and the Complaint was filed within two years after Respondent’s registration was terminated.⁷ FINRA also has jurisdiction as to the failure to provide investigative testimony because that misconduct occurred in the two-year period after Respondent ceased to be associated with a FINRA member.⁸

III. Procedural History And Grant Of Default Motion

On March 15, 2012, 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: (i) Lamboy’s last known residential address as reflected in the Central Registration Depository (“CRD address”) [REDACTED] and (ii) a second address that Lamboy provided to FINRA’s Central Review Group (“CRG”) when he responded

⁶ Ercolino Decl. ¶¶ 1-2; CX-1; CX-2.

⁷ Ercolino Decl. ¶ 3.

⁸ Ercolino Decl. ¶ 3.

to CRG's request for documents and information [REDACTED] (the "66th Street address").⁹ The return receipt for the papers sent by certified mail to Lamboy's CRD address was returned to Enforcement with the signature of "Lamboy."¹⁰ The return receipt for the papers sent by certified mail to the 66th Street address was returned with an illegible signature.¹¹ The papers sent by first-class mail were not returned to Enforcement.¹² Lamboy did not file an Answer or responsive pleading.¹³

On April 13, 2012, Enforcement served the Complaint and Second Notice of Complaint in the same manner on Lamboy at his CRD address and the 66th Street address. The postal service returned the items sent to Lamboy's CRD address by certified mail marked "Unclaimed."¹⁴ The return receipt for the papers sent by certified mail to the 66th Street address was returned to Enforcement marked "Attempted Not Known."¹⁵ The papers sent to Lamboy's CRD address by first-class mail were not returned.¹⁶ The papers sent to the 66th Street address by first-class mail were returned marked "Attempted Not Known."¹⁷

The Second Notice of Complaint informed Lamboy that if he failed to file an Answer by April 30, 2012 (within 17 days), the allegations of the Complaint might be deemed admitted and

⁹ Ercolino Decl. ¶ 29; CX-23.

¹⁰ Ercolino Decl. ¶ 33; CX-24.

¹¹ Ercolino Decl. ¶ 34; CX-24.

¹² Ercolino Decl. ¶ 35.

¹³ Ercolino Decl. ¶ 37.

¹⁴ Ercolino Decl. ¶¶ 40-41; CX-26.

¹⁵ Ercolino Decl. ¶ 42; CX 27.

¹⁶ Ercolino Decl. ¶ 43.

¹⁷ Ercolino Decl. ¶ 44; CX-28.

a default decision might be entered against him pursuant to FINRA Rule 9269.¹⁸ Lamboy nevertheless failed to file an Answer or responsive pleading.¹⁹

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.²⁰ Enforcement states, upon information and belief, that Lamboy never updated or corrected his CRD address after his termination.²¹ During Enforcement's investigation, Lamboy indicated that his CRD address was his father's residential address, and not his.²² Enforcement sent the Notice and Complaint to both the CRD address and the address Lamboy had provided as his correct address, the 66th Street address.

Under Rule 9134, Enforcement's efforts were sufficient to establish constructive service. Moreover, there is evidence to support actual service, such as the "Lamboy" signature on the return receipt for the Notice and Complaint initially served at the 66th Street address by certified mail, return receipt requested, and the fact that none of the papers sent by regular mail in the first attempt at service was returned. Lamboy himself provided the 66th Street address, first to the CRG²³ and then to Enforcement staff.²⁴

¹⁸ Ercolino Decl. ¶ 45.

¹⁹ Ercolino Decl. ¶ 46.

²⁰ Ercolino Decl. ¶ 3; CX-1. In this case, Lamboy was not employed or affiliated with any FINRA member firm after Chase terminated him. This meant that Enforcement could not use as an alternative service address the address of a FINRA member firm employing the Respondent.

²¹ Ercolino Decl. ¶ 22 n.2.

²² *Id.*

²³ Ercolino Decl. ¶ 11.

²⁴ Ercolino Decl. ¶ 23.

The Hearing Officer finds that the Complaint was validly served and that Lamboy 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 In Violation Of FINRA Rule 2010

In the first cause of action, the Complaint alleges that during November and December 2010, while Lamboy was registered with FINRA through Chase, Lamboy improperly converted customer funds to his own use without authorization. Lamboy admitted to the Bank in January 2011, when it initially investigated, that he had converted to his own personal use at least \$1,860 from the bank accounts of at least three Bank customers.²⁵ Lamboy withdrew customer funds in two different ways: (i) by filling out withdrawal slips, and (ii) by issuing and using an automated teller machine card with a personal identification number that he created.²⁶

Conversion is "an intentional and unauthorized taking of and/or exercise of ownership over property by one who neither owns the property nor is entitled to possess it."²⁷ In more colloquial terms, it is stealing. Lamboy's conduct constituted conversion.

FINRA Rule 2010 requires the observance of "high standards of commercial honor and just and equitable principles of trade." It is inconsistent with the duties imposed by this Rule to steal money. FINRA has found that associated persons violate FINRA Rule 2010 (and its

²⁵ Compl. ¶ 11; Ercolino Decl. ¶ 4 and n.1. The Firm suspected Lamboy of having stolen additional monies but the Complaint limits the allegations to the sums that Lamboy admitted to the Bank that he had withdrawn from customer accounts. Ercolino Decl. ¶¶ 4 and n.1, 7, 8; CX-3, CX-4, CX-5, CX-6, CX-7, CX-8, CX-9.

²⁶ Ercolino Decl. ¶ 6.

²⁷ FINRA Sanction Guidelines (2011), available at www.finra.org/oho (then follow "Enforcement" hyperlink to "Sanction Guidelines") at 38 n.2 (2007).

predecessor, NASD Rule 2110) by conversion, even where funds are stolen from non-customers.²⁸

The Hearing Officer finds that Lamboy violated FINRA Rule 2010.

B. Respondent's Failure To Provide Testimony 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.²⁹ A failure to respond promptly and

²⁸ *Dist. Bus. Conduct Comm. v. Vail*, No. C06920051, 1994 NASD Discip. LEXIS 192, at *13 (N.B.C.C. Sept. 22, 1994), *aff'd*, *Henry E. Vail*, 52 S.E.C. 339, 342 (1995), *aff'd*, 101 F.3d 37 (5th Cir. 1996) (barred for misappropriation of funds of private political club); *Daniel D. Manoff*, Exchange Act Rel. No. 46708, 2002 SEC LEXIS 2684 (Oct. 23, 2002) (barred for unauthorized use of co-worker's credit card numbers); *Dist. Bus. Conduct Comm. v. Kwikkel-Elliott*, No. C04960004, 1998 NASD Discip. LEXIS 4 (N.B.C.C. Jan. 16, 1998) (barred for converting funds from employer by submission of false expense reimbursement requests); *Dep't of Enforcement v. Farley*, No. C9A000038, 2001 NASD Discip. LEXIS 51 (O.H.O. Oct. 2, 2001) (respondent barred for keeping and spending firm funds deposited into his account by girlfriend).

²⁹ 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*, Exchange Act. Rel. No. 44956, 55 S.E.C. 419, 2001 SEC LEXIS 2185, at *11-12 (Oct. 19, 2001).

completely to information requests frustrates FINRA's ability to detect misconduct and protect investors and markets.³⁰

In this case, Enforcement made three separate efforts to obtain Lamboy's testimony pursuant to FINRA Rule 8210. The first time Enforcement used the 66th Street address Lamboy had previously given CRG when he was responding to CRG's requests for documents and information. The second and third times Enforcement used both the CRD address and the 66th Street address. Each time Enforcement sent the request for testimony both by first-class mail and by certified mail, return receipt requested. The last time Enforcement added a FedEx delivery to both addresses.³¹

Lamboy did not appear for testimony.³² In response to the second request, he sent Enforcement an e-mail stating that he believed there was no reason he should provide testimony because he had already confessed to misdemeanor charges and was paying restitution.³³ In response to the third request, Lamboy advised Enforcement by voice message that he would not appear for testimony.³⁴

The Hearing Officer finds that Lamboy violated FINRA Rule 8210 by his failure to provide testimony sought pursuant to that Rule. In addition, the Hearing Officer finds that

³⁰ *PAZ Sec., Inc.*, Exchange Act. Rel. No. 57656, 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).

³¹ Ercolino Decl. ¶¶ 10-16, 18-21.

³² Ercolino Decl. ¶¶ 10, 17, 22, and 28.

³³ Ercolino Decl. ¶ 17.

³⁴ Ercolino Decl. ¶ 22.

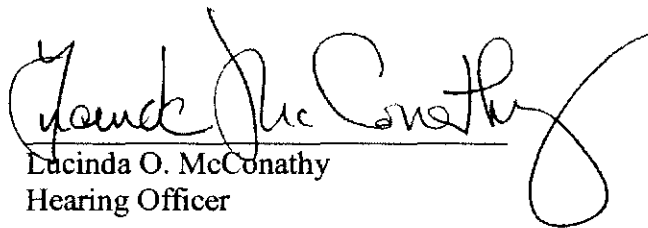
Respondent violated FINRA Rule 2010. It is well-established that a violation of the duty to cooperate and provide information pursuant to Rule 8210 is also a violation of Rule 2010.³⁵

V. Sanctions

The FINRA Sanction Guidelines (“Sanction Guidelines”) recommend a bar for conversion, regardless of the amount involved.³⁶ That sanction is entirely appropriate here for Lamboy’s conversion of customer funds in violation of FINRA Rule 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 or testimony pursuant to FINRA Rule 8210.³⁷ That sanction is also appropriate for Lamboy’s separate violation of FINRA Rules 8210 and 2010.

VI. Order

Enforcement’s Default Motion is granted and the allegations of the Complaint are deemed to be true. Respondent Michael A. Lamboy 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 testimony 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

³⁵ See *CMG Inst. Trading, LLC*, Exchange Act Rel. No. 59325, 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).

³⁶ Sanction Guidelines at 36.

³⁷ Sanction Guidelines at 33.

Copies to: Michael A. Lamboy (via first-class mail and overnight courier)
Gino F. Ercolino, Esq. (via first-class and electronic mail)
Myles L. Orosco, Esq. (via electronic mail)
David R. Sonnenberg, Esq. (via electronic mail)