

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Charles Chul Nam (CRD No. 2565046),

Respondent.

DISCIPLINARY PROCEEDING
No. 2011026514001

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Between January 2007 and August 2010 (the "Relevant Period"), Nam in the course of offering and selling securities engaged in a scheme to defraud five investors of funds totaling \$792,750. Nam made untrue statements of material fact, falsely representing that Nam was affiliated with and accepting investor funds on behalf of Wells Real Estate Investment Trust ("Wells REIT"). Wells REIT is a public real estate investment trust company that focuses primarily on the acquisition, management, and development of Class-A office properties in major U.S. markets. Nam made material misrepresentations to deceive investors to provide Nam their investment funds. Based upon this misconduct, Nam wrongly and fraudulently obtained \$792,750 of investor funds, \$352,750 which has not been repaid.

2. To accomplish this scheme, Nam went to great lengths to create an air of legitimacy. In or about June 2007, Nam filed a fictitious business name statement with the State of California that enabled Nam's company, Prime Capital I, LLC, to do business as "Wells REIT." By doing so, Nam had the ability to negotiate checks that investors made payable to Wells REIT.

3. In or about June 2007, Nam also established a "Wells REIT" virtual office in Atlanta, Georgia – the same state where the actual home office for Wells REIT operated. Nam enlisted a telephone answering service to respond to calls and utilized an email account with the address ending with "@wellsfund.com" – a domain name that was similar to the real Wells REIT email address "@wellsref.com." During the Relevant Period, Nam also established and maintained a website for Prime Capital I, LLC at <http://www.primecapital1.com>, which falsely represented its relationship with Wells REIT. The Prime Capital I, LLC website contained a posting that falsely stated:

Prime Capital, LLC will act as a the [sic] full service custodian for Wells REIT to support the safety of Funds and clear operation of distribution of dividend and principals [sic] that are generated by your Wells REIT.

4. Nam's misconduct constituted violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, FINRA Rules 2020 and 2010 and NASD Rules 2120 and 2110 as Nam made fraudulent misrepresentations in connection with the sale of securities; NASD Rules 2330(a) and 2110 and FINRA Rule 2010 as Nam improperly used and converted investor funds. Additionally, Nam violated FINRA Rules 8210 and 2010 in that he failed to respond to Rule 8210 requests or appear at a scheduled on-the-record testimony.

RESPONDENT AND JURISDICTION

5. Nam became registered in the securities industry in November 1994. Nam was a General Securities Representative for Woodbury Financial Services, Inc. ("Woodbury") from May 2006 to July 2007. From June 2007 through May 2009, Nam was a General Securities Representative for MML Investors Services Inc. ("MML" or the "Firm"). Nam's employment was terminated from MML on May 22, 2009 based on his alleged connection to an unapproved private placement offering.
6. Nam has not been associated with any FINRA regulated broker-dealer since May 22, 2009. On January 31, 2011, Woodbury filed an amended Form U5 for Nam reporting that "ATTORNEY, ON BEHALF OF THE CLIENT, ALLEGES THAT THE CLIENT ENTERED INTO TWO SEPARATE PROMISSORY NOTES LOANING \$400,000 TO A BUSINESS ENTITY THAT THE REPRESENTATIVE WAS AFFILIATED WITH AND THAT CLIENT HAS NOT RECEIVED PAYMENTS AS PROMISED."
7. In the subsequent months, several additional Form U5 amendments were filed by firms Woodbury and MML reporting new customer allegations that Nam misappropriated funds.
8. For example, MML filed the following amendments: Form U-5 Amendment, dated February 8, 2011 — reporting on a demand letter sent on behalf of JW and KW to MML alleging that Nam led them to believe that they were investing in a Wells REIT, and alleging that instead he misappropriated their funds, and; Form U-5 Amendment, dated May 10, 2011 — reporting on a written complaint letter sent by JHK to MML alleging that Nam has ceased communicating with her and has not

returned the remaining portion of her total investment in what she believed was Wells REIT.

9. 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 was filed within two years of the original amendment to a Form U5 that disclosed that Nam may have engaged in conduct actionable under applicable statutes, rules, or regulations; and (2) the Complaint charges Nam with misconduct committed while he was registered or associated with a FINRA member, and with failing to respond to FINRA Rule 8210 requests for information and testimony during the two-year period after the date upon which he ceased to be registered or associated with a FINRA member, or after the filing of the original amendment to Form U5.

FIRST CAUSE OF ACTION

Nam's Fraudulent Misrepresentations to Customers

Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder; FINRA Rules 2020 and 2010; NASD Rules 2120 and 2110

10. The Department realleges and incorporates by reference paragraphs 1- 9 above.
11. During the Relevant Period, Nam owned and operated Prime Capital I, LLC, a limited liability company organized and existing under the laws of the State of California, and which Nam was the president.

Investors JW and KW

12. JW and KW are natural persons who, during the Relevant Period, were not customers of MML.

13. In or about January 2008 and thereafter, during the solicitation, offer and sale of Wells REIT securities to JW and KW, Nam made material misrepresentations falsely representing to JW and KW that Nam was an agent for and accepting investments on behalf of Wells REIT. Based upon Nam's false representations, on or about February 27, 2008, KW on behalf of JW wired \$30,000 to Nam to invest in Wells REIT.
14. On or about July 1, 2008, JW provided Nam a cashier's check for \$90,000 from his IRA to Nam for an investment in Wells REIT.
15. Nam used JW's and KW's funds not for an investment in Wells REIT but, rather, for Nam's own uses and purposes.
16. After JW and KW provided funds to Nam, Nam provided false account statements to JW and KW from July 2008 to March 2010 reflecting fictitious positions purportedly held by JW in Wells REIT.
17. Nam engaged in the aforementioned conduct through the use of means or instrumentalities of interstate commerce.
18. JW and KW have not recovered their funds totaling \$120,000.

Customers JJY and SMY

19. JJY and SMY are natural persons who, during the Relevant Period, were customers of MML.
20. In or about October 2007 and thereafter, during the solicitation, offer and sale of Wells REIT securities to JJY and SMY, Nam made material misrepresentations falsely representing to JJY and SMY that he was an agent for and accepting investments on behalf of Wells REIT.

21. Based upon Nam's false representations, on or about November 15, 2007, JJY and SMY provided Nam a personal check in the amount of \$50,000 for an investment in Wells REIT.
22. On or about May 12, 2008 and April 15, 2009, JJY and SMY provided Nam additional funds via personal checks totaling \$51,250 and \$31,500 for an investment in Wells REIT.
23. Nam used JJY's and SMY's funds not for investments in Wells REIT but, rather, for Nam's own uses and purposes.
24. After JJY and SMY provided funds to Nam, Nam provided false account statements to JJY and SMY from February 2008 to August 2010 reflecting fictitious positions held by JJY and SMY in Wells REIT.
25. Nam engaged in the aforementioned conduct through the use of means or instrumentalities of interstate commerce.
26. JJY and SMY have not recovered their funds totaling \$132,750.

Customer JHK

27. JHK is a natural person who, during the Relevant Period, was a customer of MML.
28. In or around January 2007 and thereafter, during the solicitation, offer and sale of Wells REIT securities to JHK, Nam made material misrepresentations falsely representing to JHK that he was an agent for and accepting investments on behalf of Wells REIT.
29. Based upon Nam's false representations, between January 2008 and June 2008, JHK provided \$540,000 to Nam to invest in Wells REIT.

30. Nam used JHK's funds not for an investment in Wells REIT but, rather, for Nam's own uses and purposes.
31. After JHK provided these funds to Nam, Nam provided false account statements to JHK from February 2008 to August 2010 reflecting fictitious positions held by JHK in Wells REIT.
32. Nam engaged in the aforementioned conduct through the use of means or instrumentalities of interstate commerce.
33. On or about November 18, 2009, JHK began requesting from Nam a return of the funds she believed were invested in Wells REIT. After five months of effort, JHK successfully obtained from Nam \$440,000 of her \$540,000 investment.
34. JHK has not recovered the remainder of her funds totaling \$100,000.
35. Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") provides:
- It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national security exchange . . . to use or employ, in connection with the purchase or sale of any security . . . any manipulative or deceptive device or contrivance.
36. Rule 10b-5 of the Exchange Act provides:
- It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange,
- (a) to employ any device, scheme or artifice to defraud,
 - (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

37. FINRA Rule 2020 and NASD Rule 2120 provide that “[n]o member shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance.”

38. FINRA Rule 2010 and NASD Rule 2110 provide that “[a] member, in the conduct of [his] business, shall observe high standards of commercial honor and just and equitable principles of trade.” In addition, a violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and FINRA Rule 2020 constitutes a violation of FINRA Rule 2010. A violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and NASD Rule 2120 occurring before December 15, 2008 constitutes a violation of NASD Rule 2110.

39. Based upon the foregoing misconduct described in paragraphs 1- 38, Nam violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder; FINRA Rules 2020 and 2010; NASD Rules 2120 and 2110 by making material misrepresentations and omissions, and by to engaging in acts, practices, and/or courses of business which operated as a fraud or deceit upon any person.

SECOND CAUSE OF ACTION

Conversion/Misuse of Funds

FINRA Rule 2010 and NASD Rule 2110; NASD Rule 2330(a)

40. The Department realleges and incorporates by reference paragraphs 1- 39 above.

41. NASD Rule 2110 and FINRA Rule 2010 provide “[a] member, in the conduct of [his] business, shall observe high standards of commercial honor and just and equitable principles of trade.”
42. NASD Rule 2330(a) provides that “[n]o member or person associated with a member shall make improper use of a customer’s securities or funds.”
43. Nam unlawfully misappropriated funds from JHK, JJY, SMY, JW and KW through the use of false representations of material fact. Nam did not use the funds obtained from JHK, JJY, SMY, JW and KW for the purposes intended by these investors, but rather for Nam’s own uses and purposes for which he lacked permission or authority; nor did Nam return most of these funds to the investors.
44. By so acting, Nam also improperly used of the funds of JJY, SMY and JHK who, during the Relevant Period, were customers of MML.
45. Based upon the foregoing misconduct, Nam violated FINRA Rule 2010 and NASD Rule 2110; and NASD Rule 2330(a) in that he misappropriated and improperly used investor funds.

THIRD CAUSE OF ACTION
Nam’s Failure to Cooperate
FINRA Rules 8210 and 2010

46. The Department realleges and incorporates by reference paragraphs 1- 45 above.
47. Pursuant to FINRA Rule 8210, on March 11, 2011, FINRA sent a request letter to Nam to his current address as reflected on Central Registration Depository (“CRD”) by certified mail, return receipt requested, and first class mail. The request letter

sought information concerning the Form U5 filing reporting allegations that a customer entered into two promissory notes loaning \$400,000 to Nam. Nam's response was due by March 25, 2011. The United States Postal Service (USPS) online tracking system indicated the status of the certified letter as "mailed" on March 15, 2011. Staff did not receive the return receipt for the certified letter. The letter mailed by first-class was not returned.

48. Nam did not respond to FINRA's letter dated March 11, 2011.

49. On March 25, 2011, FINRA sent a second request to Nam at his CRD address by certified mail, return receipt requested, and first class mail. The second request noted that FINRA had not received a response from Nam to the March 11, 2011 letter and that a response was due no later than April 1, 2011. The USPS online tracking system indicated the status of the certified letter as "mailed" on March 29, 2011. Staff did not receive the return receipt for the certified letter. The letter mailed by first-class was not returned.

50. Nam did not respond to FINRA's letter dated March 25, 2011.

51. FINRA sent Nam a letter pursuant to Rule 8210 dated April 27, 2011 to his CRD address by certified mail, return receipt requested, and first class mail. Enforcement's letter requested a signed, written response from Nam addressing details of a January 31, 2011 Form U5 filing relating to Nam. The response was due by May 16, 2011. The return receipt was signed but illegible. The first-class mail letter was not returned.

52. Nam did not respond to FINRA's written request dated April 27, 2011.

53. FINRA has not received a written statement from Nam in response to any of FINRA's Rule 8210 requests.
54. On June 28, 2011, FINRA sent a letter to Nam by certified mail, return-receipt requested, and first class mail to his CRD address, requesting that Nam appear for testimony on July 15, 2011 pursuant to FINRA Rule 8210. The return receipt was signed but illegible. The first-class mail letter was not returned. Nam did not appear for his scheduled testimony on July 15, 2011 and did not contact staff for an adjournment.
55. Based on the foregoing, Nam violated FINRA Rules 8210 and 2010 in that he failed to cooperate with FINRA's investigation.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent(s) committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed, including that Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest;
- C. order that Respondent(s) 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:

6/20/2012



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