

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

CHARLES CHUL NAM
(CRD No. 2565046),

Respondent.

Disciplinary Proceeding
No. 2011026514001

Hearing Officer – AWL

DEFAULT DECISION

November 14, 2012

Respondent is barred from associating with any FINRA member firm in any capacity for (1) making fraudulent misrepresentations in connection with the sale of securities, in violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, NASD Rules 2120 and 2110, and FINRA Rules 2020 and 2010; (2) converting investor funds and misusing customer funds for his own use and purposes, in violation of FINRA Rule 2010, and NASD Rules 2110 and 2330(a); and (3) failing to provide information and failing to appear and provide testimony, in violation of FINRA Rules 8210 and 2010. Respondent is also ordered to pay restitution.

Appearances

Chun Li, Esq., for the Department of Enforcement, Complainant.

No appearance by or on behalf of Charles Chul Nam, Respondent.

DECISION

I. Introduction

FINRA's Department of Enforcement ("Enforcement") filed the attached Complaint with the Office of Hearing Officers on June 20, 2012. The Complaint charges Respondent Charles Chul Nam ("Nam") with: (1) fraudulent misrepresentations in connection with the sale of securities, in violation of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder, NASD Rules 2120

and 2110, and FINRA Rules 2020 and 2010; (2) conversion and misappropriation of the funds of five investors,¹ in violation of FINRA Rule 2010, and NASD Rules 2110 and 2330(a); and (3) failure to respond to FINRA requests to provide information and testimony, in violation of FINRA Rules 8210 and 2010.²

Nam did not answer or otherwise respond to the Complaint. Consequently, on September 11, 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 Chun Li in Support of Motion for Entry of Default Decision ("Decl.") and ten attached exhibits.³ Respondent did not respond to the Default Motion.

II. Procedural History

On June 20, 2012, Enforcement served the Notice of Complaint and Complaint on Nam by certified mail, return receipt requested, at his residential address as recorded in FINRA's Central Registration Depository ("CRD Address").⁴ The receipt was signed illegibly on June 23, 2012, and returned to Enforcement.⁵ The Notice of Complaint required Nam to file an Answer with the Office of Hearing Officers on or before July 18,

¹ Three of the five investors were customers of the firm where Nam worked.

² Following the consolidation of NASD and the member regulation, enforcement, and arbitration functions of NYSE Regulation into FINRA, FINRA began developing a new "Consolidated Rulebook" of FINRA rules. The first phase of the new consolidated rules became effective on December 15, 2008. *See FINRA Regulatory Notice 08-57*, 2008 FINRA LEXIS 50 (Oct. 2008). As part of the first phase of that process, NASD Conduct Rule 2110 was adopted without material change as FINRA Conduct Rule 2010. Because the complaint in this case was filed after December 15, 2008, the procedural rules that apply are those that became effective on December 15, 2008. The conduct rules that apply are those that existed at the time of the conduct at issue. They are available at www.finra.org/Industry/Regulation/FINRARules.

³ Enforcement's exhibits are labeled C-1 through C-10.

⁴ Enforcement also mailed the Complaint and Notice of Complaint by regular first-class mail, and such mailing was not returned. Decl. ¶¶ 14, 16; C-7.

⁵ C-8.

2012. However, Nam did not answer or otherwise respond to the Notice of Complaint and Complaint.⁶

On July 20, 2012, Enforcement served a Second Notice of Complaint together with the Complaint and Notice of Complaint on Nam by certified mail, return receipt requested, at his CRD Address.⁷ The certified delivery receipt was signed illegibly on July 23, 2012, and returned to Enforcement.⁸ The Second Notice of Complaint required Nam to file an Answer with the Office of Hearing Officers on or before August 6, 2012. Respondent failed to answer or otherwise respond to the Second Notice of Complaint and Complaint.⁹

The Hearing Officer finds that Nam received valid constructive notice of this proceeding.¹⁰ Enforcement properly served Nam with the Complaint. The Hearing Officer further finds that Nam defaulted by failing to file an Answer or otherwise respond to the Complaint by the deadline set forth in the Second Notice of Complaint. Accordingly, the Hearing Officer grants Enforcement's Default Motion.

III. Findings of Fact and Conclusions of Law

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

⁶ Decl. ¶ 17.

⁷ Enforcement also mailed the Second Notice of Complaint, Complaint and Notice of Complaint to Nam by regular first-class mail, and such mailing was not returned. Decl. ¶¶ 18, 20; C-9. Further, Enforcement states in its Default Motion that a LexisNexis search reflected the CRD Address as the most current. *See* Default Motion 3.

⁸ Decl. ¶ 19; C-10 (Decl. states July 20 but C-10 shows the receipt was signed on the 23rd).

⁹ Decl. ¶ 21.

¹⁰ *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 (during period of continuing jurisdiction, disciplinary complaints are mailed to the last CRD address and considered received at that address, whether or not the individual actually receives them; individuals cautioned to update their addresses or potentially suffer a default decision).

A. Background

Nam first became registered in the securities industry in November 1994. After working for several other member firms, Nam associated with Woodbury Financial Services, Inc. ("Woodbury") as a General Securities Representative from May 17, 2006, to July 11, 2007. MML Investors Services Inc. ("MML") employed Nam in the same capacity from June 18, 2007, to May 22, 2009.¹¹ MML terminated Nam on May 22, 2009, for his "connection with an unapproved private placement offering."¹² Nam has not been associated with a FINRA member firm since May 22, 2009.

On January 31, 2011, Woodbury filed an amended Uniform Termination Notice for Securities Industry Registration ("Form U5") on Nam's behalf. The amended Form U5 disclosed a customer complaint regarding two promissory notes for a \$400,000 loan, made to a business with which Nam was affiliated, and the lack of payment as promised.¹³

On February 8, 2011, MLL filed an amended Form U5 on Nam's behalf. The amended Form U5 disclosed a complaint by JW and KW that Nam misrepresented their investment in a real estate investment and misappropriated their funds.¹⁴ On May 10, 2011, MML filed another amended Form U5 on Nam's behalf, disclosing customer JHK's allegations that she was unable to obtain return of her remaining investment in a real estate investment trust and that Nam had ceased communicating with her.¹⁵

¹¹ Decl. ¶ 4; Compl. ¶ 5; C-1, C-2. Nam's CRD shows the dates of his registration with MLL to be July 5, 2007, through May 22, 2009.

¹² C-2, at 2; C-3, at 2.

¹³ Compl. ¶ 6.

¹⁴ *Id.* ¶ 8; C-2, at 10.

¹⁵ Compl. ¶ 8; C-3, at 10.

FINRA's Central Review Group conducted a preliminary investigation of Nam's misconduct based on the amended Forms U5. In April 2011, Enforcement began its investigation of Nam's conduct from January 2007 to August 2010 ("Relevant Period") and, as a result of such investigation, filed this Complaint.¹⁶

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 of Woodbury and MML's filing their amended Form U5s, disclosing investor claims that Respondent may have engaged in conduct actionable under applicable statutes, rules, or regulations; and (2) the Complaint charges Nam with misconduct that occurred while he was associated with a FINRA member firm, and with failing to respond to FINRA Rule 8210 requests for information and testimony served by Enforcement during the two-year period after the termination of his FINRA registration.¹⁷

C. Fraudulent Misrepresentations

In the First Cause of Action, Enforcement charges that, during the Relevant Period, Nam engaged in a scheme to defraud five investors in connection with the offer and sale of securities of Wells Real Estate Investment Trust ("Wells REIT"),¹⁸ a public real estate investment company that focuses on the acquisition, management, and development of Class-A office properties in major U.S. markets.¹⁹ Nam falsely represented that he was affiliated with and accepting investor funds on behalf of Wells

¹⁶ Decl. ¶ 9.

¹⁷ See Article V, Sec. 4(a), FINRA By-Laws, *available at* www.finra.org/Rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: By-Laws").

¹⁸ Compl. ¶¶ 1, 12, 19, 27.

¹⁹ *Id.* ¶ 1.

REIT.²⁰ Through his wrongful conduct, Nam fraudulently obtained \$792,750 from the five investors, \$352,750 of which he has not repaid.²¹

Nam carried out his fraudulent scheme by filing a fictitious business name with the State of California to enable Prime Capital I, LLC, a company Nam owned and operated, to do business as “Wells REIT.”²² By doing so, Nam obtained the ability to receive wires and checks made payable to Wells REIT.²³ Nam also established a telephone answering service, Internet site, and email address that falsely represented that Nam and Prime Capital had a bona fide relationship to Wells REIT.²⁴ For example, Nam used the email address of “@wellsfund.com” to communicate about Wells REIT, which address was similar to Wells REIT’s real email address of “@wellsref.com.”²⁵ Additionally, Nam posted false information on Prime Capital’s website about its relationship with Wells REIT and the advantages of investing in Wells REIT through Prime Capital.²⁶

Between November 2007 and April 15, 2009, Nam obtained investment funds from JW, KW, JJY, SMY, and JHK²⁷ through material misrepresentations and omissions as to the fictitious nature of Prime Capital’s relationship with the Wells REIT. JW and KW invested a total of \$120,000; JJY and SMY invested \$132,750; and JHK invested

²⁰ *Id.*

²¹ *Id.*

²² *Id.* ¶ 2.

²³ *Id.*

²⁴ *Id.* ¶ 3.

²⁵ *Id.*

²⁶ *Id.*; C-6.

²⁷ JJY, SMY, and JHK were MML customers; JW and KW were not. Compl. ¶¶ 12, 19, 27.

\$540,000.²⁸ All of the investors directed the funds to be invested in Wells REIT.²⁹ Nam thereafter sent false account statements to all five investors to mislead them into believing that their funds were invested in Wells REIT.³⁰ Nam, however, never invested any of the funds in the actual Wells REIT and misappropriated the funds for his own uses and purposes.³¹ Nam has not returned any of JW, KW, JJY, or SMY's funds.³² JHK received \$440,000, but is still owed \$100,000.³³

Section 10(b) of the Exchange Act makes it "unlawful for any person to use or employ, in connection with the purchase or sale of any security, . . . any means or instrumentality of interstate commerce or of the mails, or of any facility of any national security exchange . . . any manipulative or deceptive device or contrivance."³⁴ Exchange Act Rule 10b-5, promulgated under Section 10(b), further provides investor protection from fraud.³⁵ A violation of Rule 10b-5 requires that Respondent: (1) made misrepresentations or omissions of material facts; (2) acted with scienter; (3) made such misrepresentations or omissions in connection with the purchase or sale of a security; and

²⁸ Compl. ¶¶ 12-34.

²⁹ *Id.*, ¶¶ 13-14, 21-22, 29.

³⁰ *Id.*, ¶¶ 16, 24, 31; C-5.

³¹ Compl. ¶¶ 15, 23, 30.

³² *Id.*, ¶¶ 18, 26.

³³ *Id.*, ¶¶ 33-34.

³⁴ 15 U.S.C. § 78j(b).

³⁵ 17 C.F.R. § 240.10b-5 (unlawful in connection with the purchase or sale of security (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).

(4) used a means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange.³⁶

(1) Misrepresentations or Omissions of Material Facts. Whether Nam's misrepresentations and omissions were material "depends on the significance the reasonable investor would place on the . . . information."³⁷ "A fact is material if there is a substantial likelihood that a reasonable investor would have considered the misstated or omitted fact important in making an investment decision, and if disclosure of the misstated or omitted fact would have significantly altered the total mix of information available to the investor."³⁸ Nam's misrepresentations and omissions, including those made through his company Prime Capital, were material. A reasonable investor would clearly consider important the fact that Nam did not have the relationship with Wells REIT that he represented and that he did not intend to invest the funds in Wells REIT.

(2) Scienter. Scienter in securities fraud cases is the "intent to deceive, manipulate or defraud."³⁹ Scienter may be established by proof of conscious behavior or extreme recklessness on the part of the respondent.⁴⁰ Here, the admitted allegations of the Complaint strongly support the finding of scienter. Nam's fraudulent scheme

³⁶ *Dep't of Enforcement v. Kaweske*, No. C07040042, 2007 NASD Discip. LEXIS 5, at *25-26 (N.A.C. Feb. 12, 2007); *Dep't of Enforcement v. Frankfort*, No. C02040032, 2007 NASD Discip. LEXIS 16, at *21 (N.A.C. May 24, 2007); 17 C.F.R. § 240.10b-5; see *SEC v. Softpoint, Inc.*, 958 F. Supp. 846, 865 (S.D.N.Y. 1997) (finding that the jurisdictional requirements of the federal antifraud provisions are broadly construed), *aff'd*, 159 F.3d 1348 (2d Cir. 1998).

³⁷ *Basic Inc. v. Levinson*, 485 U.S. 224, 240 (1988).

³⁸ *Eric J. Brown*, Exchange Act Rel. No. 66469, slip. op. at 12 (Feb. 27, 2012), citing *Basic, Inc. v. Levinson*, 485 U.S. at 231-32 (1988), and *TSC Indus. Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976).

³⁹ *Irfan Mohammed Amanat*, Exchange Act Rel. No. 54708, 2007 SEC LEXIS 2558, at *35 (Nov. 3, 2007), *aff'd*, 269 F. App'x 217 (3d Cir. 2008), citing *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n.12 (1976); *Kesner*, 2010 FINRA Discip. LEXIS 2, at *30.

⁴⁰ *Gebhart v. SEC*, 595 F.3d 1034, 1040-41 (9th Cir. 2010); *Irfan Mohammed Amanat*, 2007 SEC LEXIS 2558, at *35. See also, *The Rockies Fund, Inc. v. SEC*, 428 F.3d 1088, 1093 (D.C. Cir. 2005) (citing *Steadman v. SEC*, 967 F.2d 636, 641-42 (D.C. Cir. 1992).

establishes that Nam intended to defraud investors by falsely representing that he would invest their money in Wells REIT.⁴¹

(3) Misrepresentations and Omissions in Connection with the Purchase or Sale of Securities. The requirement for material misrepresentations “in connection with the purchase or sale of any security” is construed broadly, and “[i]t is enough that the scheme to defraud and the sale of securities coincide.”⁴² “A central purpose of the securities laws is to protect investors and would-be investors in the securities markets against misrepresentations. An elementary form of such misrepresentation is misrepresenting an interest as a security when it is nothing of the kind.”⁴³ Here, Nam accepted payment for securities he never intended to deliver with the intent to misappropriate the proceeds. Such conduct violates Section 10(b) of the Exchange Act and Rule 10b-5.

(4) Used a Means or Instrumentality of Interstate Commerce. Nam used telephone lines and the Internet to perpetuate his fraud. His misconduct meets the requirement of using a means or instrumentality of interstate commerce.⁴⁴

FINRA’s antifraud rule, Rule 2020, and its predecessor, NASD Rule 2120, are similar to Rule 10b-5.⁴⁵ NASD Rule 2120 and FINRA Rule 2020 state that “No 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.” Further, “[i]t is well established that a violation of a Commission or NASD rule or regulation is

⁴¹ *Steadman v. SEC*, 967 F.2d at 642 (1992).

⁴² *SEC v. Zandford*, 535 U.S. 813, 822 (2002).

⁴³ *SEC v. Lauer*, 52 F.3d 667, 670 (7th Cir. Ill. 1995) (citations omitted).

⁴⁴ Decl. ¶10; C-5 (Internet) and C-6 (facsimile transmissions via telephone lines).

⁴⁵ *Dep’t of Enforcement v. Kirlin Sec.*, No. EAF0400300001, 2009 FINRA Discip. LEXIS 2, at *39 (N.A.C. Feb. 25, 2009), *aff’d*, Exchange Act Rel. No. 61135, 2009 SEC LEXIS 4168, at *42 (Dec. 10, 2009).

inconsistent with just and equitable principles of trade, and is therefore also a violation of Rule 2110.”⁴⁶

Nam’s misrepresentations were willful. Under the securities laws, willfulness means that Nam voluntarily committed the acts that constituted the violation, and does not require proof of intent to violate the laws or rules.⁴⁷ The finding that Nam acted with scienter supports a finding that his violations were willful.

Accordingly, the Hearing Officer finds that Respondent violated Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder, as well as NASD Rules 2120 and 2110 and FINRA Rules 2020 and 2010.

D. Conversion and Misuse of Funds

The Second Cause of Action charges Nam with failing to use the funds as authorized by JW, KW, JJY, SMY, and JHK, and instead, converting the funds for Nam’s own uses and purposes.⁴⁸ As discussed above, Nam did not invest the funds as represented and instead used the investors’ funds for his own purposes, violating FINRA Rule 2010 and NASD Rule 2110.

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.”⁴⁹ “Improper use rises to the level of conversion ‘when the associated person intends permanently to

⁴⁶ *Kirlin Sec.*, 2009 SEC LEXIS 4168, at *59-60, n.81 (Dec. 10, 2009). FINRA Conduct Rule 2010 applies to Respondent through Rule 0140, which requires persons associated with a FINRA member to have the same duties and obligations as the member.

⁴⁷ *Dep’t of Enforcement v. Zayed*, No. 2006003834901, 2010 FINRA Discip. LEXIS 13, at *13 n.11 (N.A.C. Aug. 19, 2010); *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000).

⁴⁸ Compl. ¶¶ 15, 23, 30.

⁴⁹ Decl. ¶ 11; Compl. ¶¶ 43-44.

deprive' the customer of the use of his funds or securities."⁵⁰ Nam's misuse of customer JJY, SMY, and JHK's funds violates NASD Rule 2330(a) in addition to NASD Rule 2110 and FINRA Rule 2010.⁵¹

The Hearing Officer finds that Respondent violated FINRA Rule 2010 and NASD Rules 2110 and 2330(a) by wrongfully taking investors' funds, including the funds of three customers, for Nam's own use.

E. Failure to Provide Information and Failure to Appear

The Third Cause of Action charges Respondent with failing to respond to requests for information and failing to appear for testimony in violation of FINRA Rules 8210 and 2010. FINRA staff mailed three Rule 8210 requests for information, via certified mail, return receipt requested, to Respondent at his CRD Address on March 11, 2011, March 25, 2011, and April 27, 2011.⁵² Respondent, however, failed to provide any response or any of the information that Enforcement requested.⁵³

On June 28, 2011, FINRA staff mailed a request by certified mail, return receipt requested, to Nam's CRD Address for him appear for on-the-record testimony on July 15, 2011.⁵⁴ Respondent, however, did not appear or request an adjournment.⁵⁵

⁵⁰ *Dep't of Enforcement v. Mullins*, Nos. 20070094345 and 20070111775, 2011 FINRA Discip. LEXIS 61, at *21 (N.A.C. Feb. 24, 2011), *aff'd*, 2012 SEC LEXIS 464 (Feb. 10, 2012); *Dep't of Enforcement v. Patel*, No. C02990052, 2001 NASD Discip. LEXIS 42, at *24-25 (N.A.C. May 23, 2001) (improper use of customer funds occurs when respondent failed to apply the funds (or uses them for some purpose other than) as directed by the customer); *see also, Dist. Bus. Conduct Comm. v. Westberry*, No. C07940021, 1995 NASD Discip. LEXIS 225 (N.B.C.C. Aug. 11, 1995) (using customer funds improperly violates the fundamental relationship with the customer and undermines the integrity of the securities industry).

⁵¹ *Patel*, 2001 NASD Discip. LEXIS at *24-25 (2001); *Dep't of Enforcement v. Thomas*, No. C10030082, 2004 NASD Discip. LEXIS 49, at *6 n.10 (O.H.O. June 30 2004).

⁵² Decl. ¶ 12; Compl. ¶¶ 47-51. FINRA staff confirmed that the CRD Address was still Respondent's current address through a LexisNexis search and also mailed the requests via first-class mail to Respondent's CRD Address. The first-class or certified mailings were not returned.

⁵³ Decl. ¶ 12; Compl. ¶¶ 48, 50, 52-53.

⁵⁴ Decl. ¶ 12; Compl. ¶ 54.

⁵⁵ *Id.*

Members and associated persons must cooperate with Rule 8210 requests since FINRA does not have subpoena power.⁵⁶ The Rule “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.”⁵⁷

Accordingly, the Hearing Officer finds that Respondent, by failing to cooperate and respond to numerous requests for information or to appear for testimony, violated FINRA Rules 8210 and 2010.⁵⁸

IV. Sanctions

A. Fraudulent Misrepresentations

The FINRA Sanction Guidelines (“Guidelines”)⁵⁹ regarding intentional or reckless misrepresentations or material omissions of fact recommend a fine of \$10,000 to \$100,000 and a suspension of up to two years unless egregious factors call for consideration of a bar.⁶⁰ Here, Nam made misrepresentations and omissions of material facts to investors about his involvement with Wells REIT. Establishing a fictitious name for his company in order to receive wires and negotiate checks intended for Wells REIT, as well as posting false information on his company’s website, demonstrates the devious nature of Nam’s conduct and extent of his fraudulent scheme. No mitigating factors exist

⁵⁶ *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).

⁵⁷ *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).

⁵⁸ *Dep’t of Enforcement v. Hoepfer*, No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (N.A.C. Nov. 2, 2001) (violation of Rule 8210 also was violation of [FINRA] Rule [2010]).

⁵⁹ See <http://www.finra.org/Industry/Enforcement/SanctionGuidelines> (2011).

⁶⁰ Guidelines 88.

that would justify a sanction less than a bar. Accordingly, the Hearing Officer determines that a bar is the appropriate sanction for this violation.

B. Conversion and Misuse of Funds

The Guidelines provide that a bar is standard for conversion, regardless of the amount converted.⁶¹ Nam converted funds from five investors. Nam's intentional and unauthorized taking of and exercise of ownership over property that he neither owned nor was entitled to possess is egregious.⁶² No mitigating factors exist in the record that would warrant consideration of a lesser sanction. Accordingly, the Hearing Officer determines that a bar is the appropriate sanction for this violation.

C. Failure to Provide Information and Failure to Appear

A violation of Rule 8210 is serious because Rule 8210 is a key element in FINRA's oversight function and allows FINRA to carry out its regulatory functions without subpoena power.⁶³ For these reasons, the Guidelines recommend a bar when a respondent fails to respond in any manner to a request issued pursuant to Rule 8210 to provide information or to appear and give testimony.⁶⁴ Nam failed to respond in any manner to three requests for information and one request for testimony. No evidence of any mitigating facts exists that would justify a sanction less than a bar. Accordingly, the Hearing Officer determines that a bar is the appropriate sanction for this violation.

⁶¹ Guidelines 36.

⁶² *Id.*

⁶³ *Howard Brett Berger*, 2008 SEC LEXIS 3141, at *13 (2008); *Joseph G. Chiulli*, Exchange Act Rel. No. 42359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000).

⁶⁴ Guidelines 33. *See also*, *PAZ Sec., Inc.*, Exchange Act Rel. No. 57656, 2008 SEC LEXIS 820, at *10 (Apr. 11, 2008), *pet. denied*, *PAZ Sec. v. SEC*, 566 F.3d 1172, 2009 U.S. App. LEXIS 11500 (D.C. Cir. 2009) (complete failure renders violator unfit for securities industry because self-regulatory system cannot function without compliance with Rule 8210).

D. Restitution

Enforcement requests restitution for the affected investors. Nam wrongfully obtained \$792,750 in investor funds and, to date, has failed to repay \$352,750.⁶⁵ The Guidelines encourage the ordering of restitution “to restore the status quo ante where a victim otherwise would unjustly suffer loss.”⁶⁶ Therefore, restitution is an appropriate remedy, and the Hearing Officer orders Respondent to pay the principal amounts of: (1) \$120,000 to JW and KW; (2) \$132,750 to JJY and SMY; and (3) \$100,000 to JHK. All restitution payments shall be paid to the investors with interest from the date of their investments until they are paid in full.

V. Order

Respondent Charles Chul Nam is barred from associating with any FINRA member firm in any capacity for (1) making fraudulent misrepresentations in connection with the sale of securities, in violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, NASD Rules 2120 and 2110, and FINRA Rules 2120 and 2010; (2) converting investor and customer funds, in violation of FINRA Rule 2010, and NASD Rules 2110 and 2330(a); and (3) failing to respond to requests for information and failing to appear and provide testimony, in violation of FINRA Rules 8210 and 2010.

In addition, Nam is also ordered to pay restitution to:

(1) JW and KW in the principal amounts of (i) \$30,000, plus interest thereon at the rate established under Section 6621(a)(2) of the Internal Revenue Code from February 27, 2008, until paid, and (ii) \$90,000, plus interest thereon at the rate

⁶⁵ Decl. ¶ 10. JHK is still owed \$100,000 of her investment; JJY and SMY are jointly owed \$132,750; and JW and KW are owed \$120,000. See Compl.¶¶ 18, 26, 34.

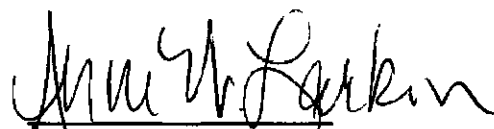
⁶⁶ Guidelines 4 (General Principles Applicable to All Sanction Determinations ¶ 5).

established under Section 6621(a)(2) of the Internal Revenue Code from July 1, 2008, until paid;⁶⁷

(2) JJY and SMY in the principal amounts of (i) \$50,000, plus interest thereon at the rate established under Section 6621(a)(2) of the Internal Revenue Code from November 15, 2007, until paid, (ii) \$51,250, plus interest thereon at the rate established under Section 6621(a)(2) of the Internal Revenue Code from May 12, 2008, until paid, and (iii) \$31,500, plus interest thereon at the rate established under Section 6621(a)(2) of the Internal Revenue Code from April 15, 2009, until paid;⁶⁸ and

(3) JHK in the principal amount of \$100,000, plus interest thereon at the rate established under Section 6621(a)(2) of the Internal Revenue Code from July 1, 2008, until paid.⁶⁹

If this Default Decision becomes FINRA's final disciplinary action, the bars shall be effective immediately. Restitution shall be payable on a date set by FINRA, but not less than 30 days after this decision becomes FINRA's final disciplinary action in this matter.⁷⁰



Anne W. Larkin
Hearing Officer

⁶⁷ 26 U.S.C. § 662(a)(2). The interest rate, which is used by the Internal Revenue Service to determine interest due on underpaid taxes, is adjusted each quarter and reflects market conditions.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ The Addendum to this decision identifies the customers receiving restitution and is served only on the parties.

Copies to: Charles Chul Nam (*via overnight courier and first-class mail*)
Chun Li, Esq. (*via electronic and first-class mail*)
Mark P. Dauer, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

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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