

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

RANDY WILLIS HAYES III
(CRD No. 5361647),

Respondent.

Disciplinary Proceeding
No. 2011026546701

Hearing Officer – David R. Sonnenberg

DEFAULT DECISION

June 25, 2013

Respondent is barred from associating with any FINRA member firm in any capacity for: (i) converting customers' funds, in violation of FINRA Conduct Rule 2010; (ii) forging customers' names to effectuate the conversions, in violation of FINRA Conduct Rule 2010; and (iii) failing to appear and provide testimony and written information, in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010.

Appearances

For the Department of Enforcement, Complainant: Naveen Zaidi, Esq.

For Randy Willis Hayes III, Respondent: no appearance.

DECISION

Randy Willis Hayes III was formerly registered with FINRA and associated as an Investment Company and Variable Contracts Products Representative at FINRA member firm Wells Fargo Advisors, LLC (f/k/a Wachovia Securities LLC) from August 2007 through February 2011. Until January 2011, Hayes was also employed at Wachovia Bank, N.A. ("Bank") as a registered personal banker. He resigned from Wells Fargo during a Bank investigation that implicated him in alleged unauthorized withdrawals from Bank customers' accounts. Thereafter, FINRA staff began investigating Hayes's conduct related to those alleged unauthorized withdrawals. Based on its investigation, FINRA staff concluded that Hayes converted Bank

customers' funds and forged their signatures to accomplish the conversions. Also, in connection with the investigation, FINRA staff sent Hayes several requests, pursuant to FINRA Rule 8210, for an on-the-record interview and a request for written information. He failed to provide the requested testimony or written information.

As a result, Enforcement filed a Complaint with the Office of Hearing Officers, charging Hayes with conversion and forgery in violation of FINRA Rule 2010. This Rule requires persons associated with FINRA member firms to observe high standards of commercial honor and just and equitable principles of trade. The Complaint also charges Hayes with failing to provide testimony and written information in violation of FINRA Rules 8210 and 2010. FINRA Rule 8210 grants FINRA staff the right to require a person subject to FINRA's jurisdiction to provide information with respect to any matter involved in an investigation, complaint, examination, or proceeding.

Hayes did not answer the Complaint. Accordingly, Enforcement filed a motion for entry of a default decision. The motion is supported by the Declaration of Naveen Zaidi and 35 exhibits. Hayes did not respond to the motion. For the reasons discussed below, the Hearing Officer grants Enforcement's motion and bars Hayes from associating with any FINRA member firm in any capacity.

I. Jurisdiction

FINRA has jurisdiction over this proceeding pursuant to Article V, Section 4 of FINRA's By-Laws¹ because (1) the Complaint was filed within two years after Hayes's last registration with FINRA terminated,² and (2) the Complaint charges him with misconduct that occurred

¹ 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").

² FINRA terminated his last registration effective February 10, 2011. CX-1, at 4.

while he was associated with a FINRA registered firm, and with failing to appear for testimony and respond to a request for information that FINRA staff issued during the two-year period following the termination of his FINRA registration.

II. Enforcement's Motion for Entry of a Default Decision Is Granted

Enforcement filed the attached Complaint with the Office of Hearing Officers on January 30, 2013. That same day, Enforcement served Hayes with a copy of the Notice of Complaint and Complaint by Express Mail and by first-class certified mail, return receipt requested, at his address as reflected in the Central Registration Depository ("CRD Address")³ and to a more recent residential address Hayes provided to the staff during the investigation ("Alternate Address").⁴ Hayes did not answer the Complaint by February 27, 2013, the deadline set in the Notice of Complaint.⁵

Accordingly, on March 1, 2013, Enforcement served Hayes with a copy of the Second Notice of Complaint and Complaint by Express Mail and certified mail, return receipt requested, at the CRD Address and Alternate Address.⁶ The Second Notice of Complaint required Hayes to file an answer with the Office of Hearing Officers on or before March 18, 2013.⁷ To date, Hayes

³ Declaration of Naveen Zaidi in Support of Motion for Entry of Default Decision and Imposition of Sanctions ("Decl.") ¶ 95; CX-33.

⁴ Decl. ¶¶ 46, 95; CX-21; CX-33. The Notice of Complaint and Complaint sent by Express Mail to the CRD Address and Alternate Address were returned. Decl. ¶ 97; CX-33. The Notice of Complaint and Complaint sent by certified mail, return receipt requested, to the CRD Address were returned, stamped "Attempted, Not Known." Decl. ¶ 98; CX-33. The Notice of Complaint and Complaint sent by certified mail, return receipt requested, to the Alternate Address were returned "Unclaimed." Decl. ¶ 99; CX-33.

⁵ CX-33.

⁶ Decl. ¶ 100; CX-34. The Second Notice of Complaint and Complaint sent by Express Mail to the CRD Address were returned with the handwritten notation, "Not at this Address." Decl. ¶ 105; CX-34. The Second Notice of Complaint and Complaint sent by Express Mail to the Alternate Address were received and signed "S. Hayes." Decl. ¶ 103; CX-34. The Second Notice of Complaint and Complaint sent by certified mail, return receipt requested, to the CRD Address were returned, stamped, "Not Deliverable As Addressed, Unable to Forward," with the handwritten notations "UKN" and "Not At This Address." Decl. ¶ 104; CX-34. The Second Notice of Complaint and Complaint sent by certified mail, return receipt requested, to the Alternate Address were received and signed, "S. Hayes." Decl. ¶ 103; CX-34.

⁷ CX-34.

has not answered the Complaint.⁸ On April 25, 2013, Enforcement filed a motion for entry of default decision with the Office of Hearing Officers. Hayes did not respond to the motion.

The Hearing Officer concludes that Hayes received valid constructive service of this proceeding in accordance with the provisions of FINRA Rules 9134(a)(2) and (b)(1),⁹ and he therefore defaulted by failing to answer the Complaint. Accordingly, the Hearing Officer grants Enforcement's motion for entry of a default decision.

III. Findings of Fact

The Hearing Officer treats the allegations in the attached Complaint as admitted (with one exception),¹⁰ pursuant to FINRA Rules 9215(f) and 9269(a).

A. Randy Willis Hayes III

Hayes began his career in the securities industry at Wells Fargo where, from August 14, 2007, until February 10, 2011, he was registered as an Investment Company and Variable Contracts Representative.¹¹ Until January 12, 2011, he was employed as a registered personal banker at the Bank and Wells Fargo.¹² On that date, Hayes voluntarily resigned from Wells Fargo during the Bank's investigation of multiple customers' claims alleging unauthorized withdrawals.¹³ He has not thereafter associated with a FINRA-registered firm.¹⁴

⁸ On March 12, 2013, Hayes contacted the Department of Enforcement and, for the first time, told Enforcement that he was represented by counsel and that Enforcement should direct all correspondence to that counsel. Decl. ¶¶ 106–107. But when Enforcement contacted the attorney purportedly representing Hayes, he denied that he was or would be representing Hayes in this proceeding. Decl. ¶ 108. To date, no attorney has entered an appearance on Hayes's behalf.

⁹ The Hearing Officer also concludes that Hayes received actual notice of the Second Notice of the Complaint and Complaint, as evidenced by his communication with Enforcement on March 12, 2013. *See* n.8, above.

¹⁰ *See* p.8, n.47, below.

¹¹ CX-1.

¹² Compl. ¶ 3; Decl. ¶ 5.

¹³ Compl. ¶ 5; Decl. ¶ 6; CX-2.

¹⁴ Compl. ¶ 6; Decl. ¶ 7; CX-2.

B. Hayes Withdrew, or Failed to Credit, Bank Customers' Funds, Without Authority and Permission, and Forged Their Signatures

As discussed below, Hayes withdrew, or failed to credit, over \$22,000 in funds from the Bank accounts of the following Bank customers: ML and HL (husband and wife),¹⁵ LH, and MW. He did so without their permission or the Bank's and by forging the customers' signatures.

1. Customers ML and HL

On June 18, 2010, Hayes withdrew \$1,191 from ML's Bank IRA account xx06 without permission or authority.¹⁶ On June 18 and 22, 2010, Hayes deposited a total of \$1,080 into his personal account at another bank ("Hayes Account").¹⁷ On October 25, 2010, Hayes withdrew \$900 from ML's Bank IRA account xx50 without permission or authority.¹⁸ On November 3, 2010, Hayes deposited \$700 into the Hayes Account.¹⁹ On December 2, 2010, Hayes withdrew \$5,500 from ML's Bank IRA Account xx06; \$1,200 from IRA Account xx17; and \$1,200 from IRA Account xx50 without permission or authority.²⁰ To accomplish these unauthorized withdrawals from ML's Bank IRA accounts, Hayes forged ML's signature on five separate Wachovia Bank, N.A. "General Ledger-Retirement Account Withdrawal Confirmation" forms ("Bank Withdrawal Forms").²¹

¹⁵ Compl. ¶ 8; Decl. ¶ 8.

¹⁶ Compl. ¶ 9; Decl. ¶ 10.

¹⁷ Compl. ¶ 9; Decl. ¶ 11.

¹⁸ Compl. ¶ 10; Decl. ¶ 12.

¹⁹ Compl. ¶ 10; Decl. ¶ 13.

²⁰ Compl. ¶ 11; Decl. ¶ 14.

²¹ Compl. ¶ 27; Decl. ¶ 32.

On December 2, 2010, Hayes withdrew \$1,500 from HL's Bank IRA Account xx69, without permission or authority.²² On that date, Hayes effectuated the withdrawal from HL's Bank IRA account by forging HL's signature on a Bank Withdrawal Form.²³

2. Customer LH

On or about September 11, 2010, and without permission or authority, Hayes closed LH's "Preferred Savings Account" at the Bank.²⁴ At that time, the account held \$50,881.23.²⁵ On September 11, 2010, Hayes transferred, without permission or authority, \$41,000 to open a High Performance Money Market Account in LH's name ("LH's New Bank Account").²⁶ Hayes did not credit LH's New Bank Account with the \$9,881.23 difference.²⁷ On that date, Hayes forged LH's signature on a Bank form requesting the closure of LH's account.²⁸ The forgery allowed Hayes to effect the unauthorized withdrawal from LH's Bank account.²⁹ From September 13, 2010, through September 22, 2010, Hayes deposited \$6,378 into the Hayes Account.³⁰

3. Customer MW

On October 21, 2010, Hayes withdrew \$800 from MW's certificate of deposit held at the Bank, without MW's or the Bank's permission or authority.³¹ On that same day, Hayes deposited

²² Compl. ¶ 12; Decl. ¶ 15.

²³ Compl. ¶ 28; Decl. ¶ 34.

²⁴ Compl. ¶ 16; Decl. ¶ 19.

²⁵ Compl. ¶ 16; Decl. ¶ 19.

²⁶ Compl. ¶ 17; Decl. ¶ 20.

²⁷ Compl. ¶ 17; Decl. ¶ 21.

²⁸ Compl. ¶ 29; Decl. ¶ 36. (Decl. ¶ 36 references and incorporates CX-9. The exhibit that contains the forgery, however, is CX-11).

²⁹ Compl. ¶ 29; Decl. ¶ 37.

³⁰ Compl. ¶ 18; Decl. ¶ 22.

³¹ Compl. ¶ 24; Decl. ¶ 29.

\$500 into the Hayes Account.³² To accomplish the unauthorized withdrawal, on October 21, 2010, Hayes forged MW's signature on a Bank Withdrawal Form.³³

C. Hayes Failed to Appear for Testimony and to Provide Written Information

On February 10, 2011, Wells Fargo filed a Form U5 on Hayes's behalf stating that "it appeared that Mr. Hayes might have some possible involvement [in connection with the alleged unauthorized withdrawals], which he denied."³⁴ Thereafter, FINRA staff began an investigation into these allegations.³⁵ As part of that investigation, on February 16, 2012, FINRA staff sent Hayes, pursuant to Rule 8210, a request for information seeking his current contact information, including his current home address.³⁶ The February 16, 2012, request referenced an April 15, 2011, letter in which, according to FINRA staff, Hayes had "responded to the allegations of [Wells Fargo that he had] effected unauthorized fund withdrawals from the accounts of at least three customers."³⁷ In his response to the February 16, 2012, request, Hayes provided the requested information, including the Alternate Address.³⁸

On April 3, 2012, pursuant to Rule 8210, the staff sent Hayes a letter requesting that he appear and provide on-the-record testimony on May 1, 2012.³⁹ The staff sent the letter to Hayes's CRD Address⁴⁰ but not to the Alternate Address.⁴¹ The certified mail receipt from the mailing to

³² Compl. ¶ 24; Decl. ¶ 30.

³³ Compl. ¶ 30; Decl. ¶¶ 38–39.

³⁴ CX-2.

³⁵ CX-20.

³⁶ Compl. ¶ 33; Decl. ¶ 41; CX-20. The February 16, 2012, request does not specify whether Respondent's April 15 letter responded to a Rule 8210 request.

³⁷ CX-20.

³⁸ Compl. ¶ 34; Decl. ¶ 46; CX-21

³⁹ Compl. ¶ 35; Decl. ¶¶ 47–48.

⁴⁰ Compl. ¶ 35; Decl. ¶ 47.

⁴¹ Compl. ¶ 35; Decl. ¶ 50.

the CRD Address was returned to FINRA staff bearing the signature “Randy Hayes” dated April 20, 2012.⁴² Hayes failed to appear and testify as requested on May 1, 2012.⁴³

On May 16, 2012, pursuant to Rule 8210, FINRA sent Hayes a letter requesting that he appear and provide testimony on May 25, 2012.⁴⁴ The staff sent the letter to his CRD Address⁴⁵ but, again, did not send it to his Alternate Address. Federal Express delivered the request to his CRD Address on May 17, 2012.⁴⁶ The certified mail receipt returned to FINRA staff contained a partially illegible signature as well as the hand printed name “Hayes” dated May 26, 2012.⁴⁷ Hayes failed to testify as requested on May 25, 2012.⁴⁸

On June 18, 2012, pursuant to Rule 8210, FINRA staff sent a letter to Hayes’s CRD Address and Alternate Address requesting that he appear and provide testimony on June 25, 2012.⁴⁹ After receiving the letter, Hayes sent the staff an email on June 22 informing it that he would not appear on June 25 (because of a prior commitment) and requested that it reschedule his testimony.⁵⁰ In his email, Hayes stated that the June request was the only request he had received in advance of the appearance date and reminded the staff that he had earlier provided an updated mailing address.⁵¹ The staff then requested that Hayes confirm his intent to appear and

⁴² Compl. ¶ 36; Decl. ¶ 51; CX-22.

⁴³ Compl. ¶ 37; Decl. ¶ 53.

⁴⁴ Compl. ¶ 38; Decl. ¶ 54.

⁴⁵ Compl. ¶ 38; Decl. ¶ 54.

⁴⁶ Compl. ¶ 39; Decl. ¶ 58; CX-24.

⁴⁷ CX-24. The Complaint and Declaration state that the return receipt contained Hayes’s signature. Compl. ¶ 39; Decl. ¶ 59. But because the signature is partially illegible, the Hearing Officer declines to deem that allegation as admitted.

⁴⁸ Compl. ¶ 40; Decl. ¶ 61.

⁴⁹ Compl. ¶ 41; Decl. ¶ 62.

⁵⁰ Compl. ¶ 43; Decl. ¶ 71; CX-27.

⁵¹ Compl. ¶ 43; Decl. ¶ 71; CX-27.

provide testimony. Hayes responded that he would testify following a hearing in his criminal case scheduled for September 2012.⁵²

On November 30, 2012, pursuant to Rule 8210, FINRA staff sent Hayes two letters (in the same envelope) to his CRD Address and Alternate Address.⁵³ One letter requested that Hayes provide written information relating to the customers' allegations by December 4, 2012, and the other requested that he appear for testimony on December 7, 2012.⁵⁴

Hayes failed to respond to the request for written information by December 4, 2012.⁵⁵ The next day, he informed the staff that on advice of counsel, he would not provide any testimony to the staff as it would interfere with his criminal case.⁵⁶ He represented, however, that when his case concluded, he would contact the staff regarding his availability.⁵⁷ Hayes did not appear for his scheduled testimony on December 7, 2012.⁵⁸

IV. Conclusions of Law

A. Hayes Violated FINRA Rule 2010 by Engaging in Conversion (Count one) and Forgery (Count two)

Over a period of six months, from June 2010 through December 2010, Hayes deprived four Bank customers of over \$22,000 by making unauthorized withdrawals (or failing to credit funds) from their Bank accounts. This conduct constitutes conversion. Conversion is "an intentional and unauthorized taking of and/or exercise of ownership over property by one who

⁵² Compl. ¶¶ 44–46; Decl. ¶¶ 72–81.

⁵³ Compl. ¶ 47; Decl. ¶¶ 82–83.

⁵⁴ Compl. ¶ 47; Decl. ¶¶ 84–85.

⁵⁵ Compl. ¶ 49; Decl. ¶ 91.

⁵⁶ Compl. ¶ 50; Decl. ¶ 92.

⁵⁷ Compl. ¶ 50; Decl. ¶ 92.

⁵⁸ Compl. ¶ 52; Decl. ¶ 94.

neither owns the property nor is entitled to possess it.”⁵⁹ FINRA has found that associated persons violate FINRA Rule 2010 (and its predecessor, NASD Rule 2110) by conversion, even where funds are stolen from non-brokerage firm customers,⁶⁰ such as bank customers.⁶¹ FINRA Rule 2010 requires the observance of “high standards of commercial honor and just and equitable principles of trade.” Accordingly, the Hearing Officer concludes that Hayes engaged in conversion and thereby violated FINRA Rule 2010. Hayes accomplished the conversions by signing the customers’ names to Bank documents without their authority. This conduct constituted forgery and also violated FINRA Rule 2010.⁶²

B. Hayes Violated FINRA Rules 8210 and 2010 by Failing to Appear for Testimony and to Provide Written Information

Beginning in April 2012, pursuant to Rule 8210, FINRA staff tried to take Hayes’s on-the-record testimony in connection with Bank customers’ allegations of improper withdrawals from their Bank accounts. FINRA staff sent Hayes four requests for testimony and one request for written information pertaining to the customers’ allegations. At the time the staff sent the first

⁵⁹ FINRA Sanction Guidelines (2011), available at www.finra.org/sanctionguidelines at 36 n.2.

⁶⁰ *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, 55 S.E.C. 1155, at *162 and n.8 (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, at *6-7 (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).

⁶¹ *See Dep’t of Enforcement v. Fitzgerald*, No. 20100242409, 2012 FINRA Discip. LEXIS 38 (O.H.O. April, 17, 2012) (barring respondent for converting bank customer funds in violation of Rule 2010).

⁶² *Dep’t of Enforcement v. Kirlin Secs., Inc.*, No. EAF0400300001, 2009 FINRA Discip. LEXIS 2, at *57 (N.A.C. Feb. 25, 2009) (“It is well established that signing a customer’s name to documents, without authority, is forgery and is inconsistent with just and equitable principles of trade and violates the high standards of commercial honor set forth in NASD Rule 2110.”), *aff’d*, Exchange Act Rel. No. 61135, 2009 SEC LEXIS 4168 (Dec. 10, 2009). *See also Eliezer Gurfel*, 54 S.E.C. 56 (1999), *petition denied*, 205 F.3d 400 (D.C. Cir. 2000) (finding broker violated NASD Rule 2110 where record evidence, including other witness’s testimony, demonstrated that applicant signed documents without permission despite his denial of wrongdoing, and where doing so resulted in conversion of funds due his firm).

two requests—April 3 and May 16, 2012—it was on notice that the CRD Address was not current.⁶³ Yet, it failed to also send the requests to the Alternate Address. Thus, Hayes is not deemed to have received constructive notice of those requests.⁶⁴ Nor does the record demonstrate that Hayes received actual notice of those requests.⁶⁵ Nevertheless, Hayes did have actual knowledge of the last three requests—the June 18, 2012, request and the two November 30, 2012, requests—as he contacted the staff after receiving them to say he would not provide testimony.⁶⁶

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

⁶³ See CX-21, Hayes’s February 22, 2012, response to the staff’s February 16, 2012, Rule 8210 request.

⁶⁴ See Rule 8210(d).

⁶⁵ The record is conflicting and inconclusive as to whether Hayes received actual notice of the April 3 and May 16 requests. Regarding the April 3 request, the signature “Randy Hayes” appears on the certified mail receipt, dated April 20, 2012. Compl. ¶ 36; Decl. ¶ 51; CX-22. But the receipt was addressed to, and signed, “Randy Hayes,” not “Randy Hayes III,” the name of the Respondent. As to the May 16 request, the signature on the certified mail receipt is partially illegible. CX-24. Additionally, Hayes emailed the staff on June 22 and said that he had not received notice of the pre-June requests in advance of the testimony dates. CX-27. Therefore, the Hearing Officer declines to conclude that Hayes violated Rule 8210 as a result of his failure to appear for testimony based on the April 3 and May 16, 2012, Rule 8210 requests.

⁶⁶ Compl. ¶ 43; Decl. ¶ 71; CX-27; Compl. ¶ 50; Decl. ¶ 92; CX-31. Hayes also received constructive notice of the requests because the staff sent them to both his CRD and Alternate Addresses. See Rule 8210(d).

cooperate fully and promptly with requests for information.⁶⁷ A failure to cooperate in an investigation frustrates FINRA's ability to detect misconduct and protect investors and markets.⁶⁸ It is well established that a violation of the duty to cooperate and provide information pursuant to Rule 8210 also violates Rule 2010.⁶⁹ Accordingly, based on his failures to respond to requests for testimony and the request for written information, the Hearing Officer concludes that Hayes violated FINRA Rules 8210 and 2010.

V. Sanctions

A. Hayes is Barred for Conversion and is Also Barred for Forgery

The FINRA Sanction Guidelines recommend a bar for conversion, regardless of the amount converted.⁷⁰ Accordingly, Hayes is barred for converting funds from Bank customers' accounts. For forgery, and/or falsification of record, the Sanction Guidelines recommend a fine of \$5,000 to \$100,000, and a suspension in any or all capacities for up to two years in cases where mitigating factors exist. In egregious cases, the Guidelines recommend a bar.⁷¹ The Guidelines instruct adjudicators to consider, in addition to the principal considerations and general principles applicable to all violations, the nature of the document forged and whether respondent had a good-faith, but mistaken, belief of express or implied authority.⁷²

⁶⁷ 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). See also *Morton Bruce Erenstein*, 316 Fed. App'x 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.").

⁶⁸ *PAZ Sec., Inc.*, 2008 SEC LEXIS 820, at *13 (Apr. 11, 2008), *petition for review denied sub nom. Paz Sec. v. SEC*, 566 F.3d 1172, 2009 U.S. App. LEXIS 11500 (D.C. Cir. May 29, 2009).

⁶⁹ See *CMG Inst. Trading, LLC*, Exchange Act Rel. No. 59325, 2009 SEC LEXIS 215, at *30 (Jan. 30, 2009).

⁷⁰ Sanction Guidelines at 36.

⁷¹ Sanction Guidelines at 37.

⁷² *Id.*

Applying the Guidelines, the Hearing Officer finds that Hayes's forgeries were egregious. He forged multiple Bank documents to perpetrate conversions totaling over \$22,000 from four Bank customers. The forged documents were essential to his conversion scheme. Further, there is no evidence in the record that he had a good-faith but mistaken belief of express or implied authority. Accordingly, Hayes is barred for forgery in violation of FINRA Rule 2010.

B. Hayes is Barred for Failing to Appear for Testimony and to Provide Written Information

In connection with FINRA staff's investigation, Hayes responded to the February 16, 2012, request for contact information. And that request, in turn, referenced Hayes's April 15, 2011, response to Wells Fargo's allegations. Because Hayes provided some information in connection with the staff's investigation, it is appropriate, for sanctions purposes, to treat Hayes's violative conduct as an incomplete response, rather than a complete failure to respond.⁷³ Under the Sanction Guidelines, a bar should be standard if the response is partial but incomplete, unless the individual demonstrates that the information provided substantially complied with all aspects of the request.⁷⁴ And, if mitigation exists or the response was untimely, the adjudicator should consider a suspension for up to two years.⁷⁵

Additionally, the Sanction Guidelines list a number of principal considerations for adjudicators to assess in determining appropriate sanctions for a partial response: (1) the importance of the information requested that was not provided as viewed from FINRA's perspective, and whether the information provided was relevant and responsive to the request;

⁷³ See *John Joseph Plunkett*, Exchange Act Rel. No. 69766, 2013 SEC LEXIS 1699, at *55 (June 14, 2013) (Remanding case to FINRA to analyze Rule 8210 violation under Sanction Guideline for partial response because Plunkett had "complied with several earlier Rule 8210 requests made during the course of the same investigation"). See also, *Kent M. Houston*, Exchange Act Rel. No. 66014, 2011 SEC LEXIS 4491 (Dec. 20, 2011).

⁷⁴ Sanction Guidelines at 33.

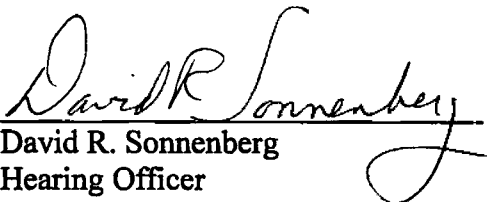
⁷⁵ *Id.*

(2) the number of requests made, the time the respondent took to respond, and the degree of regulatory pressure required to obtain a response; and (3) whether the respondent thoroughly explains valid reasons for the deficiencies in the response.⁷⁶

Applying the relevant foregoing principles to this case, the Hearing Officer concludes that a bar from associating with any FINRA member firm in all capacities is an appropriately remedial sanction. The information sought, but not provided, was important. The staff was investigating conversion and forgery allegations involving Hayes and sought to question him about these allegations and to obtain written information about them, as well. Finally, the record does not disclose any mitigating factors that would warrant permitting Hayes to remain in the securities industry. Accordingly, the Hearing Officer finds that a bar is the appropriate sanction for Hayes's failure to appear and provide testimony and provide written information.

VI. Order

Randy Willis Hayes III is barred from associating with any member firm in any capacity for conversion and forgery, in violation of FINRA Rule 2010, and for failing to provide testimony and written information, in violation of FINRA Rules 8210 and 2010.⁷⁷ The bars shall become effective immediately if this Default Decision becomes FINRA's final action in this disciplinary proceeding.


David R. Sonnenberg
Hearing Officer

⁷⁶ *Id.*

⁷⁷ The Hearing Officer does not award restitution because Enforcement represents that the Bank and Hayes reimbursed the customers. Motion 12.

Copies to:

Randy Willis Hayes III (*via overnight courier and first-class mail*)

Naveen Zaidi, Esq. (*via electronic mail and first-class mail*)

Richard R. Best, Esq. (*via electronic mail*)

Jeffrey D. Pariser, Esq. (*via electronic mail*)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Randy Willis Hayes III (CRD No. 5361647),

Respondent.

DISCIPLINARY PROCEEDING
No. 2011026546701

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Between June 2010 and December 2010, while dually employed as a Series 6 registered personal banker at Wachovia Bank, N.A. (the "Bank") and Wells Fargo Advisors, LLC ("Wells Fargo" or the "Firm" f/k/a/ Wachovia Securities LLC), Randy Willis Hayes III ("Hayes") violated FINRA Rule 2010 by forging the signatures of Bank customers on numerous Bank documents and converting approximately \$22,172.23 from four Bank customers' accounts.
2. Additionally, Hayes violated FINRA Rules 8210 and 2010 by failing to comply with requests to provide information and testimony to FINRA.

FIRST CAUSE OF ACTION
Conversion of Bank Customers' Funds
FINRA Rule 2010

- 7 The Department realleges and incorporates by reference paragraphs 1 through 6 above.

Hayes Converted Funds from the Bank Accounts of ML and HL

8. ML and HL are married. In 2010, ML maintained three individual retirement accounts ("IRAs") at the Bank. HL owned at least one individual Bank IRA.
9. On June 18, 2010, Hayes withdrew, without ML or the Bank's permission or authority, \$1,191 from ML's Bank IRA Account xx06. On June 18, 2010 and June 22, 2010, Hayes deposited \$1,080 into his personal account at another bank, Account XX04 (the "Hayes Account").
10. On October 25, 2010, Hayes withdrew, without ML or the Bank's permission or authority, \$900 from ML's Bank IRA Account xx50. On November 3, 2010, Hayes deposited \$700 into the Hayes Account.
11. On December 2, 2010, Hayes withdrew, without ML or the Bank's permission or authority, the following amounts from ML's Bank IRAs: \$5,500 from IRA Account xx06, \$1,200 from IRA Account xx17, and \$1,200 from IRA Account xx50, for a total of \$7,900.
12. On December 2, 2010, Hayes, without HL or the Bank's permission or authority, withdrew \$1,500 from HL's Bank IRA Account xx69.

RESPONDENT AND JURISDICTION

3. Hayes entered the securities industry in 2007 and until January 12, 2011, was dually employed as a registered personal banker at the Bank and Wells Fargo.
4. On or about February 10, 2011, Wells Fargo filed a Uniform Termination Notice For Securities Industry Registration ("Form U5"), reporting Hayes's January 12, 2011 voluntary resignation.
5. From January 3, 2011 through January 31, 2011, the Bank internally reviewed multiple customers' claims alleging unauthorized withdrawals from their Bank accounts. Hayes voluntarily resigned during the Bank's internal investigation. The Bank referred the matter to the Palm Beach, Florida Sheriff's office and reimbursed the customers.
6. 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 after the effective date of termination of Respondent's registration with Wells Fargo, namely, February 10, 2011; and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member and with failing to appear for on-the-record testimony during the two-year period after the date upon which he ceased to be registered or associated with a FINRA member.

13. Thus, on December 2, 2010, Hayes withdrew \$9,400 from HL and ML's Bank IRA accounts.

14. In total, Hayes converted \$11,491 from ML and HL's Bank IRAs.

Hayes Converted Funds from the Bank Account of LH

15. In September 2010, LH maintained a "Preferred Savings Account" at the Bank.

16. On or about September 11, 2010, Hayes closed LH's Preferred Savings Account without LH or the Bank's permission or authority. At the time the Preferred Savings Account was closed, it held \$50,881.23.

17. On or about September 11, 2010, Hayes transferred, without LH or the Bank's permission or authority, \$41,000 to open a High Performance Money Market Account in LH's name ("LH's New Bank Account"). Hayes did not credit LH's New Bank Account with the \$9,881.23 difference.

18. During September 13, 2010 through September 22, 2010, Hayes deposited \$6,378 into the Hayes Account.

19. From September 27, 2010, through December 1, 2010, LH complained to the Bank and to Hayes about the unauthorized withdrawal of funds from his Bank account. Hayes informed LH that he would address the issue.

20. On December 3, 2010, two days after LH complained to the Bank about the unauthorized withdrawals from his accounts, Hayes credited \$9,400 to LH's Bank account.

21. The transfer into LH's accounts was one day after Hayes transferred the same amount from ML and HL's Bank IRAs, as described above in paragraphs 11-13.

22. On December 6, 2010, Hayes credited an additional \$500 to LH's Bank account, bringing the total amount credited to LH's account to just over the \$9,881.23 amount that Hayes converted from LH's Bank account.

Hayes Converted Funds from the Bank Account of MW

23. In October 2010, MW maintained a certificate of deposit at the Bank.
24. On October 21, 2010, Hayes, without MW's or the Bank's permission or authority, withdrew \$800 from MW's certificate of deposit. On that same day, Hayes deposited \$500 into the Hayes Account.

Conclusion

25. Based on the foregoing, Hayes violated FINRA Rule 2010 by converting a total of \$22,172.23 from the accounts of four Bank customers, which includes the \$9,400 credited to customer LH. Even though Hayes returned the money he took from LH, the initial taking of \$9,881.23 was nonetheless an act of conversion, which violated FINRA Rule 2010.

SECOND CAUSE OF ACTION
Forgery of Customer Signatures
FINRA Rule 2010

26. The Department realleges and incorporates by reference paragraphs 1 through 25 above.
27. On or about June 18, 2010, October 25, 2010, and December 2, 2010, Hayes forged Bank customer ML's signature on five separate Wachovia Bank, N.A. "General Ledger-Retirement Account Withdrawal Confirmation" forms ("Bank Withdrawal

Forms"). Hayes's forgery allowed him to effect five unauthorized withdrawals from ML's IRAs at the Bank, as discussed above in paragraphs 9 through 12.

28. On or about December 2, 2010, Hayes forged HL's signature on a Bank Withdrawal Form. Hayes's forgery allowed him to effect one unauthorized withdrawal from HL's Bank IRA, as discussed above in paragraph 12.

29. On or about September 11, 2010, Hayes forged Bank customer LH's signature on a Bank request to close LH's account form. Hayes forgery allowed him to effect an unauthorized withdrawal from LH's Bank account, as discussed above in paragraphs 15 through 20.

30. On or about October 21, 2010, Hayes forged MW's signature on a Bank Withdrawal Form. Hayes's forgery allowed him to effect an unauthorized withdrawal from MW's Bank account, as discussed above in paragraphs 23 and 24.

31. Based on the foregoing, Hayes violated FINRA Rule 2010 by forging Bank customers' signatures on Bank forms to effect unauthorized withdrawals and fund transfers.

THIRD CAUSE OF ACTION

Failure to Appear for Testimony and Failure to Provide Information

FINRA Rule 8210 and 2010

32. The Department realleges and incorporates by reference paragraphs 1 through 31 above.

33. On February 16, 2012, FINRA sent Hayes a request for information, pursuant to FINRA Rule 8210, with a response date of February 24, 2012. The letter was sent via certified mail and return receipt requested to Hayes's address as reflected in the

Central Registration Depository (the "CRD address"). A copy of the letter was sent by first class mail to the same address. FINRA received a return receipt with Hayes's signature dated March 1, 2012. The copy of the letter sent by first class mail was not returned to FINRA.

34. On February 22, 2012, Enforcement received an email from Hayes. In the email, Hayes acknowledged receiving Enforcement's correspondence "forwarded from my old address," and provided a new residential address (the "Alternate Address") to FINRA.
35. On April 3, 2012, pursuant to Rule 8210, FINRA sent Hayes a letter, via certified mail and return receipt requested, at the CRD address. The letter requested that Hayes appear on May 1, 2012 at a court reporting service office in West Palm Beach, Florida and provide testimony to FINRA. A copy of the letter was sent to the CRD Address by first class mail. The letter was not sent to Hayes's Alternate Address.
36. FINRA received the return receipt with Hayes's signature dated April 20, 2012. The copy of the letter sent by first class mail was not returned to FINRA.
37. Hayes failed to appear and testify as requested on May 1, 2012.
38. On May 16, 2012, pursuant to Rule 8210, FINRA sent Hayes a letter, via certified mail and return receipt requested, to Hayes's CRD address. The letter requested that Hayes appear on May 25, 2012 at a court reporting service office in West Palm Beach, Florida and provide testimony to FINRA. Copies of the letter were also sent to the same address by Federal Express and first class mail. The letter was not sent to Hayes's Alternate Address.

39. Federal Express records reflect that the letter sent by Federal Express was delivered on May 17, 2012. FINRA received a return receipt with Hayes's signature dated May 26, 2012. The letter sent via first class mail was not returned to FINRA.
40. Hayes failed to appear and testify as requested on May 25, 2012.
41. On June 18, 2012, pursuant to Rule 8210, FINRA sent Hayes a letter, via certified mail, return receipt requested, to Hayes's CRD address and a copy to Hayes's Alternate Address. The letter requested that Hayes appear on June 25, 2012 at a court reporting service office in West Palm Beach, Florida and provide testimony to FINRA. Copies of the letter were also sent to Hayes's CRD address and Alternate Address via Express Mail. In addition, copies of the letter were sent to both addresses by first class mail.
42. FINRA received the return receipt for the copy sent to Hayes's CRD address stamped June 29, 2012, and signed, "S Hayes." The letter mailed via first class mail to Hayes's CRD address was returned. The letter sent to Hayes's Alternate Address via Express Mail was returned. The letter mailed via Express Mail to Hayes's CRD address was not returned. The letters sent to Hayes's Alternate Address via certified mail and return receipt requested and first class mail were not returned.
43. On June 22, 2012, Hayes sent an email to FINRA stating he would not appear on June 25, 2012 and requested an alternate date on which to appear and testify. In his email, Hayes asserted that the only instance in which he received advance notice of a requested appearance was FINRA's letter dated June 18, 2012.

44. On June 25, 2012, pursuant to Rule 8210, FINRA sent Hayes a letter, via certified mail return receipt, to Hayes's CRD address and a copy to Hayes's Alternate Address. The letter requested that Hayes submit a written statement of his intent to appear and provide testimony to FINRA on future dates. Copies of the letter were also sent to Hayes, via Express Mail to Hayes's CRD address and Alternate Address. In addition, copies of the letter were sent to both addresses by first class mail. Hayes's response was due by June 29, 2012.

45. FINRA received the return receipt for the copy of the letter sent to Hayes's Alternate Address, signed by Hayes, and stamped June 30, 2012. The letter sent via certified mail return receipt requested to Hayes's CRD address was returned. Copies of the letter sent to Hayes's CRD address via first class mail and Express Mail were not returned. Copies of the letters sent to Hayes's Alternate Address via Express Mail and first class mail were not returned.

46. On June 29, 2012, Hayes sent an email to FINRA stating that he would appear and testify for FINRA after a hearing in connection with his criminal case that was scheduled for September 2012.

47. On November 30, 2012, pursuant to FINRA Rule 8210, FINRA sent Hayes two letters, in the same envelope. The letters were sent via certified mail return receipt requested, to Hayes's CRD address. One letter requested that Hayes appear and testify on December 7, 2012, at FINRA's Dispute Resolution office in Boca Raton, Florida. The other letter requested all written information in Hayes's possession relating to the allegations by ML, HL, LH and MW. The documents were due by December 4, 2012. Copies of the letters were also sent to Hayes, via Express Mail to

Hayes's CRD address and Alternate Address. In addition, copies of the letters were sent to both addresses by first class mail.

48. FINRA received the return receipt for the copy of the letter sent to the Alternate address, signed by "Jayla Patton" and stamped December 8, 2012. The letters that were sent to Hayes's CRD address via certified mail return receipt, Express Mail and first class mail were returned. The letters that were sent to Hayes's Alternate Address via Express Mail were also returned. The letters that were sent to Hayes's Alternate Address via first class mail were not returned.
49. Hayes failed to respond to FINRA's November 30, 2012 request for information.
50. On December 5, 2012, Hayes sent FINRA an email stating, "[a]fter consulting with my lawyer I was advised not to give any testimony as it would interfere with my current criminal proceedings. I will let you know when this criminal case is resolved and my availability to move forward with your investigation."
51. On December 5, 2012, FINRA sent an email to Hayes, advising him that his failure to appear and testify would constitute a failure to cooperate, in violation of Rule 8210.
52. On December 7, 2012, Hayes failed to appear for his scheduled testimony.
53. By virtue of the foregoing, Hayes violated FINRA Rules 8210 and 2010 by failing to appear and testify and failing to provide information as requested.

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), including monetary sanctions, be imposed including that Respondent be required to disgorge fully any and all ill-gotten gains;
- 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: 11/30/2013

Naveen Zaidi

Naveen Zaidi, Senior Counsel
FINRA Department of Enforcement
One World Financial Center
200 Liberty Street, 11th Floor
New York, New York 10281
Phone: 646-315-7422 Fax: 202-689-3477
Email: naveen.zaidi@finra.org
Richard Best, Chief Counsel
Email: richard.best@finra.org