

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

Department of Market Regulation,

Complainant,

v.

John Cherry III (CRD No. 1891720),

Respondent.

Disciplinary Proceeding
No. 20110269351

COMPLAINT

The Department of Market Regulation alleges:

Summary

1. From June 2009 until April 2011, John Cherry III (“Cherry”), while registered at a FINRA member firm, made improper use of, and converted, at least \$374,000 in funds from two customers of his employer firm. Instead of following the customers’ instructions to invest their funds in securities, Cherry, through fraud and deceit, deposited the funds into a bank account controlled by him and converted the customers’ funds to his own use, in violation of NASD Rule 2330(a) (for conduct prior to December 14, 2009), FINRA Rule 2150(a) (for conduct on or after December 14, 2009), FINRA Rules 2020 and 2010, and willful violation of Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 10b-5 thereunder.

2. In furtherance of his fraudulent scheme, Cherry utilized two outside business entities to obtain and convert funds from the customers. Although he was employed by these

entities, Cherry failed to disclose the existence of one of the outside business entities and the outside business activities that he conducted through both outside business entities to his FINRA member employer firm, in violation of NASD Rule 3030 (for conduct prior to December 15, 2010), FINRA Rule 3270 (for conduct on or after December 15, 2010), and FINRA Rule 2010.

Respondent and Jurisdiction

3. Cherry first became registered in the securities industry in February 2002. At all times relevant to this Complaint, Cherry was a registered representative at a FINRA member firm. Cherry's registration with that member firm was terminated on April 18, 2011, by the filing of a Form U-5, which disclosed that Cherry was terminated because he "was not believed to have been fully forthcoming" with his employer firm's investigation of the circumstances surrounding his financial transactions with the customers referenced above, and did not provide the firm with "satisfactory documentation to support his position." Cherry has not been associated with another FINRA member firm since April 18, 2011.

4. Although Cherry 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 Cherry's registration or association with a FINRA member, namely April 18, 2011, and (2) the Complaint charges Cherry with misconduct committed while he was registered or associated with a FINRA member.

First Cause of Action

Misuse of Customer Funds, Conversion, and Fraud (Violations of and NASD Rule 2330(a), FINRA Rules 2150(a), 2020, and 2010, and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder)

5. Market Regulation realleges and incorporates by reference all preceding paragraphs.

6. From at least June 2009 through at least April 2011, Cherry, while registered at a FINRA member firm, made improper use of, and converted, at least \$374,000 in funds from two customers of his employer firm. Instead of following the customers' instructions to invest their funds in securities, Cherry deposited the funds into bank accounts controlled by him and converted the customers' funds to his own use.

7. Customer DD, 43 years old, and her mother, Customer BD, 68 years old, worked together in their family's real estate business until BD's husband died in January 2006. After BD's husband passed away, DD began to pursue other potential areas of employment.

8. In February 2009, DD was introduced to Cherry by her high school friend, who had met Cherry through his association with a FINRA member firm. At Cherry's request, DD met with Cherry to discuss potential employment opportunities at his employer firm. During that initial meeting, which occurred in February 2009, Cherry described the potential opportunities that could be available to DD in the securities industry and at his employer firm. Cherry also solicited financial information from DD about her family's assets, and offered to prepare a "Dream Map" for DD and BD, which would provide information to recommend certain investments for DD and BD. In response, DD informed Cherry that the principal assets of her and her mother consisted of approximately \$350,000

that they received from selling their business property after her father passed away, and that they were interested in investing those funds in safe securities that would generate some income to pay for BD's living expenses.

9. In April 2009, Cherry met with BD to discuss with her the "Dream Map." Cherry told BD during this meeting that he could construct a securities portfolio for the benefit of DD and BD that would generate approximately \$3,200 in monthly income, without putting their principal at risk. Cherry also told BD that any funds deposited with Cherry by DD and/or BD would be used to purchase securities for their benefit. After this April 2009 meeting, Cherry had several other meetings and telephone calls with BD and DD to discuss their investment goals and his recommendations to purchase securities for their benefit.

10. On June 3, 2009, DD completed new account documentation and opened a brokerage account at Cherry's FINRA member firm. On June 12, 2009, at the request of Cherry, BD mailed a check to Cherry, in the amount of \$250,000, made payable to Cherry Group, Unlimited, LLC ("Cherry Group") to be invested in securities through Cherry's employer firm.

11. On June 30, 2009, at the request of Cherry, BD wired another \$74,000 to Cherry Group, which was also intended to be invested in securities through Cherry's employer firm.

12. In December 2010, at the request of Cherry, BD took out a reverse mortgage of approximately \$170,000 on her primary residence, and mailed Cherry another check for \$50,000, also made payable to Cherry Group, which was also intended to be invested in securities through Cherry's employer firm. Cherry recommended the mortgage broker that BD used to obtain the reverse mortgage.

13. Cherry falsely represented to DD and BD that their funds would be invested in securities through his employer firm, but none of the aforementioned funds were deposited into the brokerage account established by DD at Cherry's employer firm or invested in securities.

14. From October 2009 through November 2010, DD and BD received periodic monthly interest payments from either Cherry Group, another entity controlled by Cherry called CAJ Marketing, Inc. ("CAJ Marketing"), or Cherry, individually. The total amount of interest payments made to DD and BD during this time period was approximately \$35,764. In December 2010, the monthly interest payments to DD and BD ceased entirely. When DD called and e-mailed Cherry to inquire about the missing interest payments, he either refused to return those telephone calls or e-mails or offered excuses to them about why their interest payments ceased, including health issues and problems he encountered in receiving payments from his employer firm.

15. Throughout late 2009 and 2010, DD and BD continued to ask Cherry about the status of their investments and made several requests that Cherry return their funds. Cherry continued to give them excuses about the liquidity of their funds, and falsely told the customers that their investments could not be "liquidated prematurely."

16. From June 2009 through April 2011, Cherry converted the approximately \$374,000 that was placed into his custody by DD and BD to his own personal use, including using most of the customers' funds to purchase a house in Kissimmee, Florida in the name of Cherry's wife in August 2009. Cherry used the remainder of the converted funds for various personal expenses.

17. DD and BD did not authorize Cherry to convert any of their funds, or use their funds for either the purchase of a house or for Cherry's personal expenses.

18. As a result of the foregoing, Cherry made improper use of, and converted customer funds and securities, in violation of NASD Rule 2330(a) (for conduct prior to December 14, 2009), FINRA Rule 2150(a) (for conduct on or after December 14, 2009), and FINRA Rule 2010; and further, in connection with the purchase or sale of securities, directly or indirectly, by the use of the means or instrumentalities of interstate commerce, or of the mails, knowingly or recklessly, employed manipulative or deceptive devices, schemes or artifices to defraud; made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and engaged in acts, practices, or a course of business which operated or would operate as a fraud or deceit upon any person, in willful violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and in violation of FINRA Rules 2020 and 2010.

Second Cause of Action

Failure to Disclose Outside Business Activities and Income to his Employer (Violations of NASD Rule 3030 and FINRA Rules 3270 and 2010)

19. Market Regulation realleges and incorporates by reference all preceding paragraphs.

20. From at least June 2009 through at least April 2011, Cherry was employed by, and accepted compensation from, two outside business entities, Cherry Group and CAJ Marketing, for activities that were outside the scope of his relationship with his employer firm. Cherry utilized these two entities, Cherry Group and CAJ Marketing, in his scheme to obtain and convert approximately \$374,000 from customers DD and BD. However, Cherry

did not provide written notice of these outside business activities or the compensation he received from these outside business entities to his FINRA member employer firm. In addition, during this same time period, Cherry failed to provide written notice to his employer of his employment by CAJ Marketing, and falsely told his employer firm that Cherry Group was not an “investment related business.”

21. Based upon the foregoing conduct, Cherry violated NASD Rule 3030 (for conduct prior to December 15, 2010), FINRA Rule 3270 (for conduct on or after December 15, 2010), and FINRA Rule 2010.

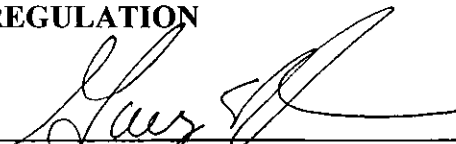
RELIEF REQUESTED

WHEREFORE, Market Regulation respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Cherry committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under Rule 8310(a) be imposed, including that Cherry be required to disgorge all ill-gotten gains and make full and complete restitution, together with interest;
- C. order that Cherry bear such costs of this proceeding as are deemed fair and appropriate under the circumstances in accordance with Rule 8330;
- D. make specific findings that Cherry willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder; and
- E. grant all further relief, legal or equitable, that is warranted under the circumstances.

FINRA DEPARTMENT OF MARKET REGULATION

July 25, 2012



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