

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

FRANCISCO RODRIGUEZ
(CRD No. 2784002),

Respondent.

Disciplinary Proceeding
No. 2011027345701

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

November 7, 2011

Respondent is barred from associating with any FINRA registered firm in any capacity for conversion of customer funds, in violation of NASD Conduct Rule 2330 and FINRA Conduct Rule 2010.

Appearances

For the FINRA Department of Enforcement, Complainant, Jonathan Golomb, Washington, DC.

Francisco Rodriguez, Respondent, did not appear.

DECISION

I. Introduction

The FINRA Department of Enforcement (“Enforcement”) filed the attached Complaint with the Office of Hearing Officers on August 1, 2011. The Complaint charges Respondent Francisco Rodriguez (“Rodriguez”) with conversion of customer funds, in violation of NASD Conduct Rule 2330 and FINRA Conduct Rule 2010.¹ Rodriguez did not answer the Complaint.

¹ Following 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 consolidated rules became effective on December 15, 2008. See FINRA Regulatory Notice 08-57, 2008 FINRA LEXIS 74 (Dec. 8, 2008). Because the Complaint in this case was filed after December 15, 2008, the procedural rules that apply are the FINRA rules of procedure. The conduct rules that apply are those that existed at the time of the conduct at issue.

000064312 2011

For the reasons set forth below, the Hearing Officer found Rodriguez in default and granted Enforcement's Default Motion.

II. Background and Procedural History

FINRA's Central Registration Depository ("CRD") shows that Rodriguez first entered the securities industry in February 1996 with PFS Investments, Inc ("PFS").² Rodriguez was associated with PFS from February 1996 until March 1999. He rejoined PFS on June 14, 2000, and was registered with FINRA as an Investment Company and Variable Contracts Products Representative from September 2000 until April 13, 2011.³

PFS discharged Rodriguez on April 13, 2011, as a result of the customer complaint that ultimately led to this proceeding.⁴

On August 1, 2011, Enforcement served the Complaint and Notice of Complaint on Rodriguez by mailing them to him at his most recent residential address recorded in the CRD by first-class certified mail, return receipt requested.⁵ The receipt card for the certified mailing reflects that a person with the last name of Rodriguez accepted delivery of the mailing.⁶ Rodriguez did not respond to the Complaint by the deadline in the Notice of Complaint.

On August 30, 2011, Enforcement served a copy of the Complaint and the Second Notice of Complaint on Respondent by mailing them to him at his CRD address by first-class certified mail, return receipt requested.⁷ Rodriguez received the mailing on September 7, 2011, and signed

² CX-1, at 2.

³ The Hearing Officer took Official Notice of Rodriguez's registration summary in CRD.

⁴ CX-2.

⁵ Decl. ¶ 5.

⁶ CX-3.

⁷ Decl. ¶ 8.

the certified mail receipt card.⁸ Nevertheless, Respondent has not to date answered or otherwise responded to the Complaint.

On September 26, 2011, Enforcement filed a Motion for Entry of Default Decision ("Default Motion"), which is supported by the declaration of Jonathan Golomb ("Decl.") and four exhibits.⁹ Rodriguez did not respond to the Default Motion.

III. Findings of Fact and Conclusions of Law

The Hearing Officer finds Rodriguez in default. Enforcement properly served the Complaint in compliance with Rules 9134(a)(2) and (b)(1), and the record reflects that he received actual notice of this proceeding. Accordingly, the Hearing Officer deems the allegations in the attached Complaint admitted pursuant to Rules 9215(f) and 9269(a).

A. 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 after Rodriguez's last registration with FINRA terminated, and (2) the Complaint charges him with misconduct that occurred while he was associated with PFS, a FINRA member firm¹⁰

B. Conversion of Customer Funds

On or about June 29, 2009, one of Rodriguez's customers withdrew \$10,000 from his brokerage account at PFS and gave the money to Rodriguez to invest in or loan to a construction business operated by Rodriguez's brother. Rodriguez told the customer that he would receive an

⁸ Decl. ¶ 9; CX-4.

⁹ Enforcement's exhibits are labeled CX-1 through CX-4.

¹⁰ 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").

8% annual return on the \$10,000. However, rather than investing or loaning the entire \$10,000 as intended by the customer, Rodriguez kept \$5,000 for his own use.

Based on the allegations in the Complaint, the Hearing Officer finds that Rodriguez converted \$5,000 from his customer in violation of NASD Rule 2330 and FINRA Rule 2010.

IV. Sanctions

The FINRA Sanction Guidelines ("Sanction Guidelines") for "Conversion or Improper Use of Funds or Securities" state that a bar is standard for conversion, regardless of the amount converted.¹¹ The record does not contain any mitigating factors that would warrant a lesser sanction. Therefore, Rodriguez will be barred from associating with any FINRA member firm in any capacity.

V. Order

Francisco Rodriguez is barred from associating with any member firm in any capacity for conversion of customer funds, in violation of NASD Rule 2330 and FINRA Rule 2010.¹² The bar shall become effective immediately if this Default Decision becomes FINRA's final disciplinary action in this proceeding.



Andrew H. Perkins
Hearing Officer

Copies to:

Francisco Rodriguez (*via overnight courier and first-class mail*)
Jonathan Golomb, Esq. (*via electronic and first-class mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

¹¹ FINRA Sanction Guidelines 36 (2011), www.finra.org/sanctionguidelines.

¹² PFS credited the customer with all of the converted funds. Accordingly, the Hearing Officer did not order restitution.

**FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA)
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

**FRANCISCO RODRIGUEZ (CRD No.
2784002),**

RESPONDENT.

**DISCIPLINARY PROCEEDING
No. 2011027345701**

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. In June 2009, a customer of registered representative Francisco Rodriguez gave Rodriguez \$10,000 from his brokerage account to invest in, or make a loan to, a construction firm owned by Rodriguez's brother. Rodriguez kept \$5,000 of the money himself. By converting his customer's funds, Rodriguez violated NASD Rule 2330 and FINRA Rule 2010.

RESPONDENT

2. Francisco Rodriguez (CRD 2784002) is a 44 year old resident of Illinois. He joined the securities industry with PFS Investments, Inc. in February 1996, left the firm in March 1999, rejoined the firm in June 2000, and remained with the firm until he was fired for the conduct described below on April 13, 2011. He has been registered as a Series 6 (Investment Company and Variable Contract Products Representative), Series 26 (Investment Company and Variable Contract Products Principal), and Series 63 (state agent registration).

3. Although Rodriguez has not been associated with a FINRA member firm since April 13, 2011, 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 is being filed within two years after the date upon which he ceased to be associated with a FINRA member and (2) the Complaint charges him with misconduct committed while he was associated with a FINRA member.

FIRST CAUSE OF ACTION

Conversion of Customer Funds (NASD Rule 2330; FINRA Rules 2010)

4. Paragraphs 1-3 are repeated and realleged herein.
5. Prior to or in June 2009, one of Rodriguez's brokerage customers told Rodriguez that he was concerned about the fluctuations in the value of his brokerage account.
6. In or about June 2009, Rodriguez arranged for this customer to take \$10,000 from the customer's brokerage account, and to provide it as a loan to or investment in a construction business operated by Rodriguez's brother.
7. Rodriguez told the customer that he would receive an 8% annual return on the \$10,000.
8. On or about June 29, 2009, the customer withdrew \$10,000 from his brokerage account, and gave the money to Rodriguez. Rodriguez kept \$5,000 of that money for himself instead of providing it to his brother's construction business.
9. By converting his customer's funds to his own use, Rodriguez made improper use of those funds in violation of NASD Rule 2330 (now FINRA Rule 2150), and engaged in conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of FINRA Rule 2010.

SECOND CAUSE OF ACTION

Failure to Adhere to High Standards of Commercial Honor and Just and Equitable Principles of Trade (FINRA Conduct Rule 2010)

10. Paragraphs 1 through 9 are repeated and realleged herein.

11. By converting customer funds to his own use, Rodriguez failed to adhere to high standards of commercial honor and just and equitable principles of trade, thereby violating FINRA Rule 2010.

PRAYER FOR RELIEF

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under FINRA Rule 8310(a) of the FINRA Code of Procedure be imposed, and
- B. order that Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330 of the FINRA Code of Procedure.

FINRA DEPARTMENT OF ENFORCEMENT

Date: August 1, 2011



Jonathan I. Golomb
Senior Special Counsel
FINRA Department of Enforcement
1801 K Street, N.W., 8th Floor
Washington, DC 20006
Phone (202) 974-2804
Facsimile (202) 721-8320
Email: jonathan.golomb@finra.org