

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JON P. HORVATH
(CRD No. 3019022),

Respondent.

Disciplinary Proceeding
No. 2011027352701

Hearing Officer – MC

DEFAULT DECISION

November 20, 2012

Respondent Jon P. Horvath misappropriated funds in violation of FINRA Rule 2010; failed to appear for on-the-record testimony, in violation of FINRA Rules 8210 and 2010; and failed to disclose tax liens in a timely manner, in violation of NASD Rule 2110, NASD IM-1000-1, Article V, Section 2 of NASD'S By-Laws, FINRA Rules 1122 and 2010, and Article V, Section 2 of FINRA's By-Laws. For these violations, he is barred from associating with any FINRA member in any capacity.

Appearances

Thomas B. Lawson, Chief Counsel, and Kelly A. McCormick, Principal Counsel,
for the Department of Enforcement.

No appearance by or on behalf of Respondent.

DECISION

I. Introduction

The Department of Enforcement filed a Complaint with three causes of action alleging that Respondent Jon P. Horvath committed serious violations of NASD and FINRA rules.¹

¹ As of July 30, 2007, NASD consolidated with the member regulation and enforcement functions of NYSE Regulation and began operating under a new corporate name, the Financial Industry Regulatory Authority (FINRA). References in this decision to FINRA include, where appropriate, NASD. Following consolidation, FINRA began developing a new FINRA Consolidated Rulebook. The first phase of the new consolidated rules became effective on December 15, 2008, including certain conduct rules and procedural rules. See Regulatory Notice 08-57 (Oct. 2008). This decision relies on the NASD and FINRA Conduct Rules in effect at the time of the alleged misconduct. The applicable rules are available at www.finra.org/rules.

Despite being served with the Complaint, Notice of Complaint, and Second Notice of Complaint, Horvath has not filed an Answer or otherwise responded to the Complaint.

On September 21, 2012, Enforcement filed a Motion for Entry of Default Decision and Imposition of Sanctions supported by the Declaration of Kelly A. McCormick in Support of Motion for Entry of Default Decision and three exhibits.² For the reasons set forth below, the Default Motion is granted. Horvath is liable for the violations alleged in the Complaint and is barred.

II. Findings of Fact and Conclusions of Law

A. Jurisdiction

Horvath first became registered with a FINRA member firm in February 1998. From May 2009 through April 2011, he was registered as a General Securities Representative, State Securities Agent, and Investment Advisor with member firm LPL Financial, LLC (“LPL”). LPL filed a Uniform Termination Notice for Securities Registration (“Form U5”) for Horvath on April 18, 2011. In it, LPL reported the termination of Horvath’s employment for altering a check payable to the firm, in violation of LPL policies and procedures regarding reimbursements. Horvath is not currently associated with any member firm.³

Nonetheless, FINRA has jurisdiction over Horvath for the purposes of this disciplinary proceeding pursuant to Article V, Section 4 of FINRA’s By-Laws because (i) the Complaint alleges that Horvath engaged in misconduct while he was registered with a FINRA member firm and that he failed to comply with a request to appear to provide testimony issued within two

² The factual determinations in this decision are based on the allegations of the attached Complaint and the materials Enforcement filed with its Default Motion, which included the Declaration of Kelly A. McCormick in Support of Motion for Entry of Default Decision and the exhibits attached to the Declaration. The Declaration will be referred to as “Decl.” or “McCormick Decl.,” the exhibits as “CX-.”

³ Compl. ¶¶ 4, 5.

years after the date FINRA terminated his registration, and (ii) Enforcement filed the Complaint less than two years after FINRA terminated Horvath's registration.⁴

B. Default

On June 22, 2012, Enforcement served the Complaint and Notice of Complaint upon Horvath by certified mail at his residential address in Ohio as it appears in the Central Registration Depository ("CRD address") and at an additional address in Kentucky that Horvath had informed LPL was his residential address.⁵ The Postal Service returned the certified mail receipt for the mailing to Horvath's CRD address. It was signed by Horvath's mother. The Postal Service returned the mailing sent to the Kentucky address, marked "RETURN TO SENDER UNABLE TO FORWARD."⁶ Horvath did not file an Answer.

On July 24, 2012, Enforcement served the Complaint and Second Notice of Complaint upon Horvath, again by certified mail, at both the CRD and Kentucky addresses. The Postal Service returned the receipt for the mailing sent to the CRD address, signed by Horvath, indicating that he received it on July 26, 2012. The Postal Service returned the mailing to the Kentucky address marked "RETURN TO SENDER UNABLE TO FORWARD."⁷

By serving the Complaint and Notices of Complaint by certified mail upon Horvath at his CRD address, Enforcement complied with the requirements of Rule 9134 and provided him with constructive notice that the Complaint had been filed.⁸ The return receipt which appears to have been signed and dated by Horvath is evidence that he received actual notice of the Complaint.

⁴ Compl. ¶ 6.

⁵ Decl. ¶¶ 3, 4, 7.

⁶ Decl. ¶ 7; CX-2.

⁷ Decl. ¶ 9; CX-3.

⁸ *Dep't of Enforcement v. Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at *5 n.1 (N.A.C. Dec. 9, 2003) (Rule 9134(b)(1) allows for constructive notice by mailing a complaint to the respondent's most recent CRD address) (*citing Lubeck v. SEC*, 1998 U.S. App. LEXIS 18849, at *20 (9th Cir. Aug. 12, 1998)).

Despite being served with the Complaint, Horvath has not filed an Answer.⁹ Horvath has therefore defaulted. Accordingly, pursuant to Rules 9215(f) and 9269(a)(2), and for the reasons set forth below, the Default Motion is granted.

C. Horvath Converted Funds

FINRA Rule 2010 requires members and associated persons to adhere to a high standard of business conduct. It states:

A member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.

Sometimes referred to as the “just and equitable” conduct rule, Rule 2010 articulates a “broad ethical principle” that prohibits “all unethical business-related conduct.” A Rule 2010 violation is committed if a respondent’s misconduct (i) occurs in the course of his business, and (ii) violates just and equitable principles of trade.¹⁰

The Rule imposes ethical standards as well as legal obligations. The Rule may be violated when a member engages in misconduct in the course of conducting securities business. It may also be violated when a member engages in unethical conduct that is not securities-related¹¹ if the conduct reflects on the person’s “ability both to comply with regulatory requirements fundamental to the securities business and to fulfill his fiduciary responsibilities in handling other people’s money.”¹²

⁹ Decl. ¶ 10.

¹⁰ *Dep’t of Enforcement v. Shvarts*, No. CAF980029, 2000 NASD Discip. LEXIS 6, at *18 (N.A.C. June 2, 2000).

¹¹ *Id.* at *16 (“Conduct Rule 2110 is not limited to securities-related conduct; instead it covers all unethical business-related conduct.”).

¹² *Id.* at *35 (quoting *James A. Goetz*, Exchange Act Rel. No. 39796, 1998 SEC LEXIS 499, at *11 (Mar. 25, 1998)).

Conversion is “an intentional and unauthorized taking of and/or exercise of ownership over property by one who neither owns the property nor is entitled to possess it.”¹³

Misappropriating or converting funds entrusted by another,¹⁴ and submitting a false expense reimbursement request to an employer,¹⁵ are examples of this species of misconduct.

Cause One of the Complaint describes Horvath’s misconduct as conversion and misappropriation. It sets out how Horvath, in the course of conducting his securities business, blatantly violated Rule 2010 by fraudulently altering a \$1,000 check made payable to LPL, and misappropriated the funds by converting them to his own use.

While he was registered through LPL, Horvath operated his own securities and insurance businesses, known as JP Horvath & Associates. In 2010, Horvath conducted an investment seminar that took place on a riverboat cruise. Horvath invited a wholesaler working for a mutual fund distribution company to co-sponsor the seminar and to make a presentation during the cruise. Afterward, the wholesaler gave Horvath a personal check for \$1,000 made payable to LPL to pay for the wholesaler’s co-sponsorship of the cruise. Horvath did not turn the check over to LPL. Instead, Horvath altered the check to make it payable to “JP Horvath,” wrote “Reimbursement Boat Event” on the face of the check, and endorsed it “For Deposit only; LPL Financial; JP Horvath & Associates.” He then deposited the check into his business checking account.¹⁶

¹³ *FINRA Sanction Guidelines* 36 n.2 (2011).

¹⁴ *Dist. Bus. Conduct Comm. v. Vail*, No. C06920051, 1994 NASD Discip. LEXIS 192 (N.B.C.C. Sept. 22, 1994, *aff’d*, 52 S.E.C. 339 (1995), *aff’d*, 101 F.3d 37 (5th Cir. 1996) (misappropriation of funds of private political club by associated person who was the club’s treasurer violated Article III, Section 1 of the NASD Rules of Fair Practice, predecessor of NASD Rule 2110 and FINRA Rule 2010).

¹⁵ *Dist. Bus. Conduct Comm. v. Kwikkel-Elliott*, No. C04960004, 1998 NASD Discip. LEXIS 4 (N.B.C.C. Jan. 16, 1998) (converting funds from employer by submitting false expense reimbursement requests violates Fair Practice Rules).

¹⁶ Compl. ¶¶ 8-12.

Shortly thereafter, the wholesaler obtained a copy of the cancelled check to request reimbursement from the mutual fund distributor. When he did so, he noticed the alterations on the check. He provided the copy of the altered check and his original check to the compliance officer of his company, who forwarded them to LPL. LPL then terminated Horvath's employment for altering the check and violating LPL's policies and procedures governing reimbursements.¹⁷

These facts, as alleged in Cause One of the Complaint, establish for the purposes of this default decision that Horvath engaged in unethical business-related conduct, in violation of Rule 2010.

D. Horvath Failed to Disclose Tax Liens in a Timely Manner

As noted above, Horvath first registered with FINRA from in 1998 and maintained his registered status through April 2011. Article V, Section 2(c) of FINRA's By-Laws requires applicants for registration to complete and sign a Uniform Application for Securities Industry Registration or Transfer ("Form U4"). FINRA Rule 1122 and its predecessor, NASD IM-1000-1, proscribe filing incomplete or misleading information and require registered persons to complete or correct filed information when they learn that what they have filed is incomplete or misleading. Furthermore, the By-Laws require registered persons to keep their Forms U4 current by making supplementary amendments no later than 30 days after they learn of a fact calling for an amendment.

¹⁷ Compl. ¶¶ 13-14.

One fact registered persons are required to disclose by amending the Form U4 is the filing of an unsatisfied judgment or lien. During the entire time Horvath was registered, question 14M on Form U4 asked: “Do you have any unsatisfied judgments or liens against you?”¹⁸

On October 3, 2004, the State of Kentucky filed a tax lien against Horvath for \$5,936. The tax lien remained in place until released on August 23, 2011. However, Horvath did not amend his Form U4 to disclose the Kentucky tax lien until May 5, 2009, when he indicated he was participating in a payment program to satisfy the lien.¹⁹

On September 24, 2010, the State of Ohio filed a tax lien against Horvath for \$11,701. The lien was not released until October 31, 2011. Horvath failed to disclose the Ohio lien on his Form U4 until April 15, 2011.²⁰

These facts, as Cause Two of the Complaint alleges, establish for the purposes of this default decision, that Horvath: (i) violated NASD Rule 2110, NASD IM-1000-1, Article V, Section 2 of NASD’s By-Laws, FINRA Rules 2110 and 2010, and Article V, Section 2 of FINRA’s By-Laws by failing to report the Kentucky tax lien between November 3, 2004, and May 4, 2009; and (ii) violated FINRA Rules 1122 and 2010, and Article V, Section 2 of FINRA’s By-Laws by failing to report the Ohio tax lien between October 24, 2010, and April 14, 2011.

E. Horvath Failed to Appear to Provide Testimony

FINRA Rule 8210 requires persons subject to FINRA jurisdiction, upon request, to appear and provide testimony at a location specified by FINRA staff. The Rule specifies that

¹⁸ Compl. ¶ 20.

¹⁹ Compl. ¶¶ 21-23.

²⁰ Compl. ¶¶ 24-26.

notice to do so shall be deemed received by the person when it is sent to the person's CRD address.

FINRA initiated its investigation in this matter in April 2011 after LPL, as noted above, filed a Form U5 disclosing that it had terminated Horvath's employment for violating the firm's policies relating to reimbursement and for altering a check. On January 9, 2012, FINRA staff sent a letter addressed to Horvath's CRD address requesting him to appear for testimony on January 27, 2012, pursuant to Rule 8210. On January 24, 2012, the staff attempted to contact Horvath by telephone at a number associated with his CRD address. A person identifying herself as Horvath's mother advised the staff that Horvath no longer lived at the address. She refused to provide the staff with Horvath's new address, but stated she had forwarded the January 9 letter to Horvath. Horvath did not appear to provide testimony on January 27, 2012.²¹

On January 27, 2012, FINRA staff sent another letter to Horvath at his CRD address requesting him to appear and provide testimony on February 17, 2012. He did not respond or appear.²²

FINRA staff properly transmitted notice to Horvath's CRD address. The staff had no knowledge of a more current address for Horvath. Therefore, Horvath is deemed to have received notice to appear and to testify on the dates and at the location designated by FINRA staff. His failures to do so violated FINRA Rules 8210 and 2010.

III. Sanctions

FINRA's Sanction Guidelines recommend imposing a bar for conversion, regardless of the amount converted. Enforcement recommends a bar for Horvath.²³ As Enforcement notes,

²¹ Compl. ¶¶ 30-32.

²² Compl. ¶¶ 33-34.

²³ Default Mot. at 2.

there are no mitigating factors present in this case. Horvath did not repay the funds to LPL or to the wholesaler.²⁴ The fundamental dishonesty of Horvath's alteration of the check and misappropriation of the funds reflect "directly on [his] ability both to comply with regulatory requirements fundamental to the securities business and to fulfill his fiduciary responsibilities in handling other people's money" and require the imposition of a bar.²⁵

In the absence of mitigating circumstances, the Sanction Guidelines also regard a bar as the standard appropriate sanction for a failure to respond in any manner to a request from FINRA staff to provide information or testimony. This is because FINRA lacks subpoena power, and therefore must rely on Rule 8210 to fulfill its regulatory responsibility to police the activities of members and associated persons. "The rule is at the heart of the self-regulatory system for the securities industry" and imposes an "unequivocal" responsibility to comply with information requests.²⁶ Here, Horvath failed to respond in any manner to repeated requests by FINRA staff to appear and to provide testimony to enable the staff to properly investigate the serious misconduct that led to this disciplinary proceeding. For these reasons, a bar is the appropriate sanction.

For failure to report tax liens in a timely fashion, the Sanction Guidelines recommend a fine in the range of \$2,500 to \$50,000 and suspension in any or all capacities for up to six months.²⁷ In this case, in light of the bars imposed for Horvath's conversion of funds and failure to provide testimony, it is unnecessary to impose additional sanctions for his failures to report his tax liens in a timely manner.

²⁴ Enforcement notes that LPL recouped the funds by deducting \$1,000 from Horvath's paycheck in December 2010. Compl. ¶ 12.

²⁵ *James A. Goetz*, 53 S.E.C. 472, 477 (1998).

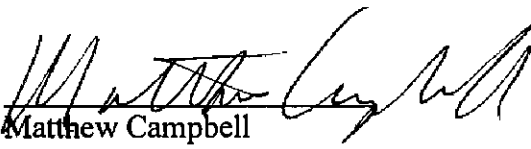
²⁶ *Howard Brett Berger*, Exchange Act Rel. No. 58950, 2008 SEC LEXIS 3141, at *13 (Nov. 14, 2008).

²⁷ *Guidelines*, at 45.

IV. Conclusion

Respondent Jon P. Horvath is barred for misappropriating funds in violation of FINRA Rule 2010, and for failing to provide testimony when requested to do so by FINRA staff in violation of FINRA Rules 8210 and 2010. In light of the bars, no further sanctions are imposed upon Horvath for his failure to disclose liens in a timely fashion, in violation of NASD Rule 2110, IM-1000-1, Article V, Section 2 of NASD's By-Laws, FINRA Rules 1122, 2010, and Article V, Section 2 of FINRA's By-Laws.

If this default decision becomes FINRA's final action in this disciplinary proceeding, the bars shall become effective immediately.


Matthew Campbell
Hearing Officer

Copies to:

Jon P. Horvath (*via overnight courier and first-class mail*)
Kelly A. McCormick, Esq. (*via electronic and first-class mail*)
Thomas B. Lawson, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)