

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Kenneth Andrew Mauchin
(CRD No. 2366345),

Respondent.

DISCIPLINARY PROCEEDING
No. 2011028452701

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Between June 2009 and April 2010 (“the relevant time period”), Respondent Kenneth Andrew Mauchin (“Respondent”) misappropriated \$23,750 from the securities accounts of three elderly customers. He did so by withdrawing funds from the customers’ bank accounts, converting those funds to cashier’s checks and depositing those checks into a bank account he controlled. In so doing, Respondent violated NASD Rule 2330¹ and FINRA Rules 2150 and 2010.
2. Additionally, Respondent caused the books and records of his firm to be false by falsely listing his work address as the customers’ mailing address. He did so without

¹ FINRA Rule 2150 replaced NASD Rule 2330 effective December 14, 2009. Respondent is alleged to have violated NASD Rule 2330 for misconduct within the relevant time period that predates the rule change.

the customers' knowledge or authorization. In so doing, Respondent violated NASD Rule 3110 and FINRA Rule 2010.

3. Finally, Respondent failed to appear for two on-the-record interviews requested by FINRA staff pursuant to Rule 8210, thereby violating FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

4. Respondent entered the securities industry in 1993 and associated with several member firms over the ensuing years. In June 2007, Respondent began working for SunTrust Investment Services, Inc. ("SunTrust Investments" or "the firm"). SunTrust Investments was affiliated with SunTrust Bank. Respondent worked in various SunTrust Bank branches.
5. Respondent was involuntarily terminated from SunTrust Investments on June 14, 2011, and is not currently registered with any FINRA member firm. Respondent remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws.

FIRST CAUSE OF ACTION

Misappropriation of Customer Funds

(NASD Rule 2330, FINRA Rules 2150 and 2010)

6. The Department realleges and incorporates by reference paragraphs 1-5 above.
7. During the relevant time period, Respondent misappropriated \$23,750 from the accounts of three elderly customers. He did so by converting their funds to cashier's checks and depositing those checks in the account of an entity he controlled, the Central Florida Police Pipe Band (hereafter "CFPPB"). According to the records of

the state of Florida, CFPPB is a non-profit corporation incorporated in that state.

Respondent is a director of that organization.

Customer MK

8. MK is a resident of New Smyrna Beach, Florida. She is 85 years old.

9. In August 2008, respondent sold MK a deferred variable annuity contract.

Respondent prepared the application and falsely listed his bank branch office address as MK's mailing address. Respondent did so without MK's knowledge or consent.

Respondent knew the information to be false.

10. On or about September 1, 2009, MK requested that \$1,500 be withdrawn from her variable annuity. However, Respondent altered MK's surrender request and instead submitted a request for \$7,500 from MK's variable annuity.

11. The annuity sponsor processed the request and electronically transferred the \$7,500 from MK's variable annuity to MK's checking account at the bank branch where Respondent worked.

12. On September 4, 2009, without MK's knowledge or authorization, Respondent requested bank personnel to prepare a bank account debit form to withdraw \$6,000 from MK's checking account and prepare a \$6,000 cashier's check made payable to "CFPPB." Respondent caused this check to be deposited in an account in CFPPB's name at another bank.

13. Subsequently, on January 26, 2010, without MK's knowledge or authorization, Respondent submitted an annuity surrender request form for \$5,000 from MK's

variable annuity to the annuity sponsor. The surrender request form requested a check payable to MK and that the check be sent to Respondent's home address.

14. Respondent received the \$5,000 payable to MK and deposited the funds into MK's checking account at the bank branch where Respondent worked. On February 3, 2010, Respondent requested bank personnel to prepare a bank account debit form to withdraw \$5,000 from MK's checking account and prepare a cashier's check payable to CFPPB. Respondent caused this check to be deposited into an account in CFPPB's name he controlled at another bank.
15. On February 1, 2010, Respondent submitted an annuity surrender form for \$6,500 from MK's variable annuity. The form requested that the funds be deposited into MK's SunTrust Bank checking account. Respondent utilized MK's signature that had been photocopied from another document.
16. On February 4, 2010, without MK's knowledge or authorization, Respondent requested bank personnel to prepare a bank account debit form to withdraw \$5,000 from MK's checking account. Respondent then instructed bank personnel to prepare a cashier's check payable to CFPPB. Respondent caused this check to be deposited into an account in CFPPB's name he controlled at another bank.

Customers ER & GR

17. Customers ER and GR are a married couple and residents of New Smyrna Beach. They were customers of Respondent during the relevant time period. ER and GR are 81 and 80 years old respectively.

18. On April 15, 2010, without the customers' knowledge or authorization, Respondent requested that bank personnel prepare a bank account debit form to withdraw \$5,000 from ER & GR's joint bank account and prepare a cashier's check for \$5,000 payable to CFPPB. Respondent caused this check to be deposited into an account in CFPPB's name he controlled at another bank.

Customer IF

19. Customer IF is a 78 year-old retired resident of Edgewater, Florida.
20. In early June, 2009, IF met with Respondent and purchased a variable annuity.
21. On June 12, 2009, Respondent received a \$42,750 personal check from IF made payable to the product sponsor to purchase the variable annuity.
22. Respondent instructed bank personnel to create a \$40,000 cashier's check payable to the product sponsor and a \$2,750 cashier's check payable to CFPPB. The \$2,750 cashier's check was created without IF's knowledge or authorization. Respondent caused the check to be deposited to the CFPPB account he controlled at another bank.
23. As set forth above, Respondent misappropriated \$23,750 from customers MK, ER and GR, and IF. Respondent thereby violated NASD Rule 2330 and FINRA Rules 2150 and 2010.

SECOND CAUSE OF ACTION

Causing the Books and Records of the Firm to be False

(NASD Rule 3110 and FINRA Rule 2010)

24. The Department realleges and incorporates by reference paragraphs 1-23 above.

Customer MK

25. As set forth above, in August 2008, Respondent prepared MK's application for a variable annuity. Respondent falsely listed his bank branch office address as MK's mailing address. Respondent knew this information to be false. The application became part of the books and records of his firm.

Customer BN

26. Customer BN is a resident of Edgewater, Florida. She is 72 years old and retired.
27. On October 23, 2009, BN applied for a Premiere Select IRA brokerage account with SunTrust Investments. Without BN's knowledge or authorization, Respondent falsely listed his bank branch office address as BN's mailing address. Respondent knew this information to be false. The application became part of the firm's books and records.
28. During the relevant period, NASD Rule 3110(a) required firms to comply with the recordkeeping requirements of Rule 17a-3 under the Securities Exchange Act of 1934. Rule 17a-3(a)(9) required, among other things, that firms maintain records "in respect of each cash and margin account . . . indicating (i) the name and address of the beneficial owner of such account...." Rule 17a-3(a)(17) required firms to maintain records "[f]or each account with a natural person as a customer or owner" reflecting, among other things, each customer's address.
29. As described above, Respondent caused firm records reflecting customer addresses to be false.

30. By virtue of the foregoing, Respondent caused his firm's books and records to be false, thereby violating NASD Rule 3110 and FINRA Rule 2010.

THIRD CAUSE OF ACTION

Failure to Appear for On-The-Record Testimony (FINRA Rules 8210 and 2010)

31. The Department realleges and incorporates by reference paragraphs 1-30 above.
32. On January 10, 2012, FINRA's Enforcement staff sent a request to Respondent at his CRD address requesting that he appear for on-the-record testimony at 10 a.m. on January 24, 2012 at FINRA's Washington, DC, Enforcement office. The request was sent via first class mail, certified mail return receipt requested and FedEx.
33. The certified mailing was returned as "unclaimed," but FedEx confirmed delivery to the residence.
34. On January 24, 2012, Respondent failed to appear for his on-the-record testimony.
35. On February 2, 2012, FINRA's Enforcement staff sent a second request to Respondent's CRD address for Respondent to appear for on-the-record testimony at 10 a.m. on February 23, 2012 at FINRA's Washington, DC, Enforcement office. The request was sent via first class mail, certified mail return receipt requested and FedEx.
36. The certified mailing was returned "unclaimed," but FedEx confirmed delivery to the residence.
37. On February 23, 2012, Respondent failed to appear for his on-the-record testimony.
38. By failing to appear and provide testimony as requested, Respondent violated FINRA Rules 8210 and 2010.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent 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 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:

November 2, 2012



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