

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JAMES HENRY BISCHOFF III
(CRD No. 2468603),

Respondent.

Disciplinary Proceeding
No. 2011028975801

Hearing Officer – LBB

DEFAULT DECISION

September 27, 2012

Respondent is barred for conversion of customer funds, in violation of FINRA Rules 2150(a) and 2010. Respondent is also barred for failure to provide documents and information requested by FINRA, in violation of FINRA Rules 8210 and 2010. In light of the bars, no additional sanction is imposed for engaging in private securities transactions without providing written notice to his firm or receiving written approval from his firm, in violation of NASD Rule 3040 and FINRA Rule 2010.

Appearances

Kristy Tillman, Esq., Principal Counsel, Rockville, Maryland, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

The Department of Enforcement filed the three-cause Complaint in this disciplinary proceeding on May 10, 2012. The First Cause of Action charges Respondent James H. Bischoff III ("Respondent") with conversion of customer funds, in violation of FINRA Rules 2150(a) and 2010. The Second Cause of Action charges Respondent with engaging in undisclosed private securities transactions (selling away), in violation of NASD Rule 3040 and FINRA Rule 2010. The Third Cause of Action charges Respondent with failure to provide documents and information requested by FINRA, in violation of FINRA Rules 8210 and 2010.

Despite being served with the Notice of Complaint, Complaint, and Second Notice of Complaint, Respondent did not answer or otherwise respond to the Complaint. By failing to respond, Respondent defaulted.

Enforcement filed a Motion for Entry of Default Judgment and Imposition of Sanctions on August 20, 2012. Respondent has not filed a response to Enforcement's motion. Accordingly, pursuant to FINRA Procedural Rules 9215(f) and 9269, Enforcement's motion is granted, and the allegations of the Complaint are deemed admitted.¹

I. Jurisdiction

Respondent was first registered with a FINRA member firm in 1994. He was registered with member firm Commonwealth Financial Network ("Commonwealth") from January 2009 until August 2011. On August 16, 2011, FINRA received a Form U5 reporting that on August 12, 2011, Commonwealth had terminated Respondent's employment because he had "solicited clients to invest in a private placement not approved by the firm." Commonwealth filed amendments to the Form U5 on September 15, 2011, and February 8, 2012, reporting a complaint from a client, resulting in a determination by Commonwealth that Respondent had misappropriated customer funds. Respondent has not been associated with a member firm since Commonwealth terminated his employment on August 12, 2011. Decl. ¶ 5; CX-1, CX-3.

Pursuant to Article V, Section 4 of FINRA's By-Laws, Respondent is subject to FINRA's jurisdiction because the Complaint was filed within two years after the termination of his registration with a member firm, and the Complaint charges him with violations that occurred

¹ 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 Kristy Tillman in Support of the Department of Enforcement's Motion for Entry of Default Decision, and supporting documentation that was attached to counsel's declaration. Counsel's declaration is cited herein as "Decl. ¶ ____." The supporting documentation is cited as "CX-____."

while he was registered with a member firm, and with failure to respond to requests for information issued within two years after the termination of his registration with a member firm.²

II. Respondent's Default

On May 10, 2012, Enforcement served a Notice of Complaint and Complaint on Respondent by first-class and certified mail at his residential address, as listed in the Central Registration Depository ("CRD"), and at an alternative address provided by Respondent to Enforcement in February 2012. Postal Service records indicate that both certified mailings were delivered, although Enforcement did not receive return receipts. Decl. ¶¶ 8-11; CX-1, CX-2, CX-4. Respondent did not answer the Complaint by June 7, 2012, the date on which the Notice indicated that an answer was required. Decl. ¶ 10.

On June 15, 2012, Enforcement served a Second Notice of Complaint and Complaint on Respondent at his CRD address and the alternative address he had provided, by first-class and certified mail. Respondent signed and returned the return receipt for the mailing to his CRD address, and another person signed for the delivery to the alternative address. Decl. ¶ 11; CX-5. The Second Notice informed Respondent that his answer was due by July 2, 2012. Respondent has not filed an answer or otherwise responded to the Complaint. Decl. ¶ 12.

Enforcement served the Complaint and the Notices of Complaint on Respondent in accordance with FINRA Procedural Rule 9134, giving him actual and constructive notice of this proceeding. By failing to respond, he defaulted.

² Although Respondent is subject to FINRA's jurisdiction based on the last date of his FINRA registration, FINRA's jurisdiction was extended by the filing of amendments to Respondent's Form U5. FINRA By-Laws, Article V, Section 4.

III. Violations

A. Conversion of Customer Funds

On or about April 14, 2011, Commonwealth customer K.B. gave Respondent a check for \$120,000, made payable to Northpoint Wealth Management, for an investment in a money market account. Complaint ¶ 6. While Respondent was registered with Commonwealth, he did business under the name Northpoint Wealth Management.³ Respondent did not invest the \$120,000 in a money market account for the customer. Instead, he deposited the check into a bank account that he had opened for his personal use in the name of Northpoint Wealth Management, and converted the funds to his own use.⁴ Complaint ¶ 7.

FINRA Rule 2150(a) provides that “[n]o member or person associated with a member shall make improper use of a customer’s securities or funds.” “An associated person makes improper use of customer funds where he or she fails to apply the funds (or uses them for some purpose other than) as directed by the customer.”⁵ “Improper use rises to the level of conversion ‘when the associated person intends permanently to deprive’ the customer of the use of his funds or securities.”⁶ A violation of FINRA Rule 2150 is also a violation of FINRA Rule 2010. Conversion of customer funds in violation of FINRA Rule 2150 also violates FINRA Rule 2010.⁷ The allegations of the Complaint, which are deemed admitted, are sufficient to establish,

³ Commonwealth describes Northpoint Wealth Management as Respondent’s “d/b/a.” CX-3 (amended Form U5 filed September 15, 2011).

⁴ In the amended Form U5 filed September 15, 2011, Commonwealth stated that it had no record of an investment in a money market fund for the client. CX-3. Commonwealth amended Respondent’s Form U5 on February 8, 2012, reporting that Respondent had reimbursed the client, in the amount of \$120,000. CX-3.

⁵ *Dep’t of Enforcement v. Patel*, No. C02990052, 2001 NASD Discip. LEXIS 42, at *24-25 (N.A.C. May 23, 2001).

⁶ *Dep’t of Enforcement v. Mullins*, Nos. 20070094345 and 20070111775, 2011 FINRA LEXIS 61, at *21 (N.A.C. Feb. 24, 2011), *aff’d*, 2012 SEC LEXIS 464 (Feb. 10, 2012).

⁷ *Dep’t of Enforcement v. Thomas*, No. C10030082, 2004 NASD Discip. LEXIS 49, at *6 n.10 (O.H.O. June 30, 2004); *Patel*, 2001 NASD Discip. LEXIS 42, at *24-25 (affirming the Hearing Panel decision barring a representative for misuse of customer funds by depositing customer funds into his own account rather than investing them as directed by the customers).

for purposes of this default decision, that Respondent converted customer funds, in violation of FINRA Rules 2150 and 2010.

B. Respondent Engaged in Private Securities Transactions

In 2009, Respondent began to solicit several of Commonwealth's customers to invest in a company called NuQuest, Inc. ("NuQuest"), an investment that was not approved by Commonwealth. Complaint ¶ 10. In November 2009, Respondent's client, E.M., invested \$40,000 in NuQuest Convertible Debentures, a security, through a private placement initiated by Respondent. In March 2010, E.M. made a second investment in NuQuest. On or about June 6, 2010, Respondent's clients T.Y. and M.S. each purchased 60,000 shares of NuQuest stock for \$15,000 through a private placement that Respondent facilitated. Complaint ¶ 11. For his efforts with these and other customers, Respondent received 120,000 shares of NuQuest stock, and warrants to purchase an additional 250,000 shares. Complaint ¶ 12. Respondent did not disclose any of his activities in the NuQuest offerings to Commonwealth, nor did he receive Commonwealth's approval to participate in the NuQuest offerings. Complaint ¶ 13.

NASD Rule 3040 provides that no associated person "shall participate in any manner in a private securities transaction" except in accordance with the requirements of the Rule. NASD Rule 3040 defines a "private securities transaction" as "any securities transaction outside the regular course or scope of an associated person's employment with a member, including, though not limited to, new offerings of securities [that] are not registered with the Commission." The Rule requires an associated person to provide his employer with written notice of private securities transactions before the transactions take place.⁸ If the associated person receives selling compensation, the associated person must receive prior approval of his firm before

⁸ See NASD Conduct Rule 3040(b).

engaging in the transaction.⁹ A violation of NASD Conduct Rule 3040 is a violation of FINRA Rule 2010.¹⁰

The allegations of the Complaint, which are deemed admitted, are sufficient to establish that Respondent engaged in private securities transactions without notifying his firm, or receiving prior approval from his firm, thereby violating NASD Rule 3040 and FINRA Rule 2010.

C. Respondent Violated FINRA Rules 8210 and 2010 by Failing to Provide Documents and Information

On December 1, 2011, FINRA staff sent Respondent a request for documents and information pursuant to FINRA Rule 8210. The request was sent to Respondent's CRD address by certified and first-class mail. Respondent failed to respond to this request. Complaint ¶ 16.

On January 12, 2012, FINRA staff sent Respondent a second request for the same documents and information, pursuant to FINRA Rule 8210. The request was sent to Respondent's CRD address by certified and first-class mail. Respondent failed to respond to this request. Complaint ¶ 17.

FINRA staff spoke to Respondent the telephone in February 2012, advising him of his obligation to respond to the requests for documents and information. Respondent stated that he would respond, but has failed to do so. Complaint ¶ 19.

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent failed to provide documents and information, in violation of FINRA Rules 8210 and 2010.¹¹

⁹ NASD Conduct Rule 3040(c)(1).

¹⁰ *Harry Friedman*, Exchange Act Rel. No. 64486, 2011 SEC LEXIS 1699, at *23 (May 13, 2011); *Dep't of Enforcement v. Frankfort*, No. C02040032, 2007 NASD Discip. LEXIS 16, at *39 n.25 (N.A.C. May 24, 2007).

IV. Sanctions

The FINRA Sanction Guidelines ("Guidelines") recommend a bar as the standard sanction for conversion.¹² There are no mitigating factors. Accordingly, a bar is the appropriate sanction for Respondent's conversion of customer funds, in violation of FINRA Rules 2150 and 2010. Enforcement is not seeking restitution because Respondent made full restitution to customer K.B.

The Guidelines recommend a bar where a respondent fails to respond in any manner to a request for information issued pursuant to Procedural Rule 8210.¹³ Where mitigation exists, the Guidelines recommend consideration of a suspension in all capacities of up to two years. Respondent failed to respond to three requests for information. There are no mitigating factors. A bar is the appropriate sanction.

Enforcement has not sought sanctions for Respondent's violation of NASD Rule 3040 and FINRA Rule 2010, by engaging in undisclosed private securities transactions, because Enforcement requested bars in the First and Third Causes of Action. No sanction is imposed for this violation.

V. Conclusion

Respondent James H. Bischoff III is barred for conversion of customer funds, in violation of FINRA Rules 2150(a) and 2010. Respondent is also barred for failure to provide documents and information requested by FINRA, in violation of FINRA Rules 8210 and 2010. In light of the bars, no additional sanction is imposed for engaging in private securities transactions without

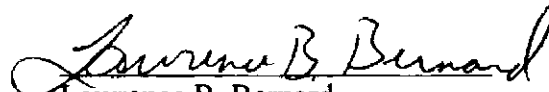
¹¹ A violation of FINRA Rule 8210 is also a violation of FINRA Rule 2010. *Dep't of Enforcement v. Hoepfer*, No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (N.A.C. Nov. 2, 2001) (violation of NASD Procedural Rule 8210 was a violation of NASD Conduct Rule 2110).

¹² *FINRA Sanction Guidelines* 36 (2011).

¹³ *Guidelines* 33 (2011).

providing written notice to his firm or receiving written approval from his firm, in violation of NASD Rule 3040 and FINRA Rule 2010.

The bars will become effective immediately if this Decision becomes FINRA's final disciplinary action in this proceeding.


Lawrence B. Bernard
Hearing Officer

Copies to: James Henry Bischoff, III (*via overnight courier and first-class mail*)
Kristy Tillman, Esq. (*via electronic and first-class mail*)
Carolyn Craig, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)