

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

PAUL DAVID ARNOLD
(CRD No. 2278472),

Respondent.

Disciplinary Proceeding
No. 2011029210401

Hearing Officer—Sara Nelson Bloom

DEFAULT DECISION

August 29, 2013

Respondent is barred from associating with any FINRA registered firm in any capacity for misappropriating customer funds, in violation of FINRA Rules 2150(a) and 2010; and failing to appear for testimony, in violation of FINRA Rules 8210 and 2010.

Appearances

Steven F. Korostoff, Esq., for the Department of Enforcement.

No appearance by or on behalf of Paul David Arnold.

DECISION

I. Introduction

The FINRA Department of Enforcement (“Enforcement”) filed the attached Complaint with the Office of Hearing Officers on April 17, 2013. The Complaint charges Respondent Paul David Arnold with: (1) misappropriating \$173,000 from a customer by obtaining checks signed in blank and making them payable to Respondent’s family members, in violation of FINRA Rules 2150(a) and 2010; and (2) failing to appear for testimony, in violation of FINRA Rules 8210 and 2010.

Respondent defaulted by failing to answer or otherwise respond to the Complaint. Accordingly, on July 10, 2013, Enforcement filed a Motion for Entry of Default Decision

("Default Motion"). The Default Motion is supported by the Declaration of Steven F. Korostoff, Esq., ("Decl.") and eleven attached exhibits.¹ Enforcement served Respondent with a copy of the Default Motion by first-class mail and certified mail sent to his CRD address and an address Enforcement obtained from the United States Postal Service (the "Alternate Address").² Respondent did not respond to the Default Motion.

II. Procedural History

On April 17, 2013, Enforcement served the Complaint and the First Notice of Complaint on Respondent by mailing them to his most current residential address recorded in the Central Registration Depository ("CRD") and the Alternate address.³ Enforcement mailed the Complaint and First Notice of Complaint by first-class mail and certified mail, return receipt requested.⁴ The return receipt for the certified mailing to the Alternate address was signed by "D. Arnold" on April 23, 2013.⁵ Respondent did not respond to the Complaint by the deadline specified in the Notice of Complaint.⁶

On May 17, 2013, Enforcement served a Second Notice of Complaint on Respondent by mailing it to his CRD address and the Alternate Address by first-class mail and certified mail, return receipt requested.⁷ The return receipt for the certified mailing to the Alternate address was signed by "D. Arnold" and was undated.⁸ Respondent did not respond to the Complaint by the deadline specified in the Second Notice of Complaint.⁹

¹ Enforcement's exhibits are labeled CX-1 through CX-11.

² Decl. ¶ 26.

³ *Id.* ¶ 17; CX-3.

⁴ *Id.*

⁵ *Id.* ¶ 20; CX-5.

⁶ *Id.* ¶ 24.

⁷ *Id.* ¶ 25; CX-8.

⁸ *Id.* ¶ 27; CX-10.

⁹ *Id.* ¶ 30.

III. Findings of Fact and Conclusions of Law

The Hearing Officer deemed the allegations in the attached Complaint admitted pursuant to FINRA Rules 9215(f) and 9269(a).

A. Respondent

Respondent was first registered with a FINRA member firm in 1992. Between September 1995 and September 2011, he was registered as a General Securities Representative with Raymond James & Associates, Inc. ("Raymond James").¹⁰

On September 6, 2011, Raymond James filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") for Respondent, disclosing that his employment was terminated for failing to cooperate with the Firm's internal review into the improper transfer of funds out of a customer account.¹¹ Respondent has not been associated with a FINRA member firm since Raymond James filed the Form U5.¹²

B. 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 FINRA terminated Respondent's registration, and (2) the Complaint charges him with misconduct that occurred while he was registered with a FINRA member firm, and with failing to respond to Enforcement's requests for testimony made during the two-year period following the termination of his FINRA registration.¹³

¹⁰ CX-1.

¹¹ CX-2.

¹² CX-1.

¹³ 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").

C. Respondent Misappropriated Customer Funds

The first cause of action alleges that Respondent misappropriated customer funds, in violation of FINRA Rules 2150 and 2010. FINRA Rule 2150(a) prohibits associated persons from misappropriating customer securities or funds. A violation of this rule constitutes a violation of FINRA Rule 2010.

Here, the Complaint alleges that between May 2010 and April 2011, Respondent transferred \$242,000 from the brokerage account of his customer, JF, an 88-year-old widower, to a bank account in JF's name. JF trusted Respondent, and authorized him to help handle JF's finances and pay JF's bills.

Following the transfer of the funds, Respondent had JF sign blank checks from the bank account. Respondent then filled in the name of the payee and the amount on each check. JF thought the blank checks were being used to pay his bills. However, many of them were not. Instead, Respondent wrote 13 checks, totaling \$173,000, and made them payable to Respondent's wife and son, without JF's authorization.

The Hearing Officer finds that the foregoing facts establish that Respondent misappropriated \$173,000 in customer funds, in violation of FINRA Rules 2150(a) and 2010.

D. Respondent Failed to Appear for Testimony

The second cause of action alleges that Respondent failed to appear and testify at an on-the-record interview ("OTR"). Enforcement sought his testimony in connection with its investigation of the allegations in the first cause of action regarding misappropriation of customer funds.¹⁴

¹⁴ Compl. ¶ 20.

On December 18, 2012, Enforcement sent Respondent a Rule 8210 request to appear for an OTR on January 4, 2013.¹⁵ Enforcement sent the request letter by first-class mail and first-class certified mail to his CRD address and the Alternate Address.¹⁶ On January 2, 2013, Respondent sent Enforcement an email stating that he would not attend the OTR.¹⁷ Enforcement replied to the email, warning Respondent that a failure to appear and testify would subject him to sanctions, including a possible bar from the securities industry.¹⁸ Respondent did not respond to the email and did not appear for the OTR¹⁹

On January 10, 2013, Enforcement sent a second request to Respondent to appear for an OTR, this time on January 23, 2013.²⁰ Enforcement again sent the request letter by first-class mail and first-class certified mail to his CRD address and the Alternate Address.²¹ The return receipt for the certified mailing to the Alternate address was signed by "D. Arnold" and was dated January 14, 2013.²² Again, Respondent did not appear for the OTR as requested.²³

Based on the foregoing, the Hearing Officer concludes that Respondent violated FINRA Rules 8210 and 2010.

IV. Sanctions

A. Misappropriation of Funds

Respondent misappropriated \$173,000 from customer JF. Respondent acted intentionally, transferring the funds to his family members without customer JF's authorization.

¹⁵ *Id.*

¹⁶ *Id.* ¶ 21.

¹⁷ *Id.* ¶ 23.

¹⁸ *Id.* ¶ 24.

¹⁹ *Id.* ¶ 25.

²⁰ *Id.* ¶ 26.

²¹ *Id.* ¶ 27.

²² *Id.* ¶ 28.

²³ *Id.* ¶ 29.

Although the FINRA Sanction Guidelines (“Guidelines”) do not contain recommended sanctions for “misappropriation” of customer funds, the guideline for “Conversion or Improper Use of Funds or Securities” provides appropriate guidance. The guideline defines conversion “generally [as] 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.”²⁴ Here, Respondent’s intentional and unauthorized taking of customer JF’s funds amounted to conversion. The guideline states that a bar is standard for conversion, regardless of the amount converted.²⁵ There are no mitigating factors in the record that would warrant consideration of a lesser sanction. Accordingly, the Hearing Officer determined that a bar is the appropriate sanction for this violation.

B. Failure to Appear for Testimony

A violation of Rule 8210 is serious because Rule 8210 is a key element in FINRA’s oversight function that allows FINRA to carry out its regulatory functions without subpoena power.²⁶ When an individual fails to provide information, FINRA’s ability to perform its regulatory functions is subverted.²⁷ For these reasons, the Sanction Guidelines recommend a bar when a respondent fails to respond in any manner to Rule 8210 requests to appear for an OTR.²⁸ Here, Respondent failed to appear for an OTR, despite two requests. There is no evidence of any mitigating factors that would justify a sanction less than a bar. Accordingly, the Hearing Officer determined that a bar is the appropriate sanction for this violation.

²⁴ *Guidelines* 36, n.2 (2011), available at www.finra.org/sanctionguidelines.

²⁵ *Id.* at 36.

²⁶ *Howard Brett Berger*, Exchange Act Rel. No. 58950, 2008 SEC LEXIS 3141 (Nov. 14, 2008); *Joseph G. Chiulli*, Exchange Act Rel. No. 42359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000).

²⁷ *Joseph P. Hannan*, Exchange Act Rel. No. 40438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998).

²⁸ *Guidelines* 33.

V. Order

Paul David Arnold is barred from associating with any FINRA member firm in any capacity for misappropriating customer funds, in violation of FINRA Rules 2150(a) and 2010. He is also barred for failing to appear for testimony, in violation of FINRA Rules 8210 and 2010. The bars shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.²⁹


Sara Nelson Bloom
Hearing Officer

Copies to: Paul David Arnold (via electronic and first-class mail)
Steven F. Korostoff, Esq. (via electronic and first-class mail)
Richard Chin, Esq. (via electronic mail)
Mark P. Dauer, Esq. (via electronic mail)
Jeffrey D. Pariser, Esq. (via electronic mail)

²⁹ The Hearing Officer did not order Respondent to pay restitution because the customer has already sought and obtained treble damages from Respondent in arbitration. Although Respondent has not paid the award, the customer currently has a judgment against him, and Respondent has already been suspended from the securities industry for failing to pay the award, pursuant to FINRA Rule 9554.

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Paul David Arnold
(CRD No. 2278472),

Respondent.

DISCIPLINARY PROCEEDING
No. 2011029210401

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. During the period of May 2010 to April 2011 (the "Relevant Period"), while registered with Raymond James & Associates, Inc. (the "Firm"), Paul David Arnold ("Arnold" or "Respondent") misappropriated and misused funds from JF, an elderly customer, by having JF sign blank checks that Arnold later made payable to his own wife and son without authorization from JF. In doing so, Arnold misappropriated and misused \$173,600 in customer funds, in violation of FINRA Rules 2150(a) and 2010.

2. In connection with its investigation into Arnold's misconduct, Enforcement requested pursuant to FINRA Rule 8210 that he appear and provide testimony on two separate occasions. Arnold failed to do so, in violation of FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

3. Arnold first entered the securities industry in 1992. In June 1992, Arnold became employed with a FINRA-regulated firm, where he became registered in October 1992. Arnold remained at that firm until September 1995. At that time, Arnold became employed at the Firm's Largo, Florida branch office and registered with FINRA through the Firm.

4. On September 6, 2011, the Firm filed an initial Form U-5 reporting that Arnold's employment had been terminated on August 9, 2011 for "failure to cooperate with [the] Firm's internal review" in connection with a letter the Firm received alleging that Arnold had colluded with another customer to improperly transfer funds out of JF's account. Arnold has not been registered or associated with a FINRA-regulated firm since the termination of his registration on September 6, 2011.

5. On November 8, 2011, the Firm filed an amended Form U-5 for Arnold disclosing a separate customer complaint alleging unsuitable investment recommendations that was not previously disclosed on his Form U-5 nor related to his termination from the Firm.

6. Although Respondent 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 is being filed within two years after the effective date of termination of Respondent's registration with the Firm, namely, September 6, 2011; and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member and with failing to appear for on-the-record testimony during the two-year period after the date upon which he ceased to be registered or associated with a FINRA member.

FIRST CAUSE OF ACTION
Misappropriation and Misuse of Funds from a Customer of His Firm Employer
(FINRA Rules 2150(a) and 2010)

7. Enforcement realleges and incorporates by reference paragraphs 1 to 6 above.
8. JF, an 88-year-old widower, opened a brokerage account at the Firm (the "RJA Account") in July 2009. Arnold was the broker for the RJA Account.
9. Prior to opening the RJA Account, JF had a brokerage account at Firm A and a bank account at a bank affiliated with Firm A (the "Bank Account").
10. In July 2009, within days after opening his RJA Account, JF transferred securities from the brokerage account at Firm A to his RJA Account.
11. JF trusted Arnold, and during the next two years, authorized Arnold to help him handle his finances, specifically to use the Bank Account to pay JF's bills.
12. During the period of May 2010 to April 2011, approximately \$242,000 was transferred from the RJA Account to the Bank Account.
13. Following these transfers, Arnold had JF sign blank checks from the Bank Account, which Arnold later filled in with the name of the payee and the amount of the check.
14. JF thought the blank checks that Arnold had him sign were being used to pay JF's bills. While some of these checks were used to pay JF's bills, many of them were not. Instead, during the Relevant Period, Arnold made those other checks payable to his own family members without authorization from JF.
15. Nine of the checks totaling \$82,600 were made payable to Arnold's wife, and her name appeared on the back of these checks as the endorsee. Another four checks totaling

\$91,000 were made payable to Arnold's son, and his son's name appeared on the back of these checks as the endorsee.

16. JF did not authorize Arnold to make these 13 checks payable to his wife and son. The total monetary amount of these checks was \$173,600.

17. FINRA Rule 2150(a) states that "[n]o member or person associated with a member shall make improper use of a customer's securities or funds." An associated person improperly uses funds where he or she fails to apply the funds or uses the funds for some purpose other than as directed by the customer. Improper use of customer funds rises to the level of misappropriation when the associated person intends permanently to deprive the customer of the use of his funds. Misappropriation of customer funds also violates FINRA Rule 2010, which requires members and associated persons to "observe high standards of commercial honor and just and equitable principles of trade" in conducting their business.

18. By reason of the foregoing, Arnold misappropriated and misused \$173,600 in customer funds by making each of the 13 checks discussed above payable to his wife or his son without customer JF's authorization. The acts, practices, and conduct described above constitute separate and distinct violations of FINRA Rules 2150(a) and 2010.

SECOND CAUSE OF ACTION

Failure to Comply with One or More Requests to Appear and Provide Testimony (FINRA Rules 8210 and 2010)

19. Enforcement realleges and incorporates by reference paragraphs 1 to 18 above.

20. By a letter dated December 18, 2012 (the "December 18th Letter"), Enforcement requested pursuant to FINRA Rule 8210 that Arnold appear and testify at FINRA's office at One

World Financial Center in New York at 10:00 a.m. on January 4, 2013, in connection with its investigation into the misconduct alleged herein.

21. Enforcement sent the December 18th Letter by certified first-class mail, return receipt requested, and regular first-class mail to Arnold's last known address as reflected in the CRD (the "CRD Address"). In addition, Enforcement sent copies of the letter by certified mail, return receipt requested, and regular first-class mail to Arnold's current address (the "Current Address") according to the U.S. Postal Service ("USPS").

22. The USPS returned the return receipt card for the December 18th Letter sent to Arnold's CRD Address to Enforcement. The return receipt card was signed by D. Arnold and was dated December 27, 2012. The USPS also returned the copy of the December 18th Letter sent to the CRD Address by regular first-class mail, with a label affixed to the envelope indicating that Arnold's correspondence should be addressed to the Current Address. In addition, the USPS returned the copy of the December 18th Letter sent to the Current Address by certified mail, return receipt requested, with a label affixed to the envelope indicating that it was "unclaimed." The copy of the December 18th Letter sent by first-class mail to the Current Address was not returned to Enforcement.

23. In response to Enforcement's December 18th Letter, Arnold sent an e-mail dated January 2, 2013, indicating that he would not be attending the on-the-record interview ("OTR") scheduled for January 4, 2013. In this e-mail, Arnold did not request to reschedule the OTR for another date or time.

24. On January 3, 2013, Enforcement staff responded to Arnold by e-mail, advising him that, since he had not requested and FINRA had not agreed to reschedule the OTR, he was still obligated to appear and provide testimony on January 4, 2013. Staff also advised him that if

he failed to appear and testify on that date and at that time he would be in default and be subject to sanctions, including a possible bar from the securities industry. Furthermore, Enforcement staff indicated that it would be willing to make alternate arrangements to conduct the OTR, but that, unless and until FINRA agreed to reschedule his OTR, he would remain obligated to appear and testify on January 4, 2013.

25. Arnold did not respond to Enforcement's January 3rd e-mail and did not appear or provide testimony on January 4, 2013 as requested.

26. By a letter dated January 10, 2013 (the "January 10th Letter"), Enforcement advised Arnold that he failed to appear and provide testimony as requested in the December 18th Letter and that he was, therefore, in default of a FINRA request for testimony. The January 10th Letter requested pursuant to FINRA Rule 8210 that he appear and provide testimony at FINRA's office at One World Financial Center in New York at 10:00 a.m. on January 23, 2013.

27. Enforcement sent the January 10th Letter by certified first-class mail, return receipt requested, and regular first-class mail to the CRD Address. In addition, Enforcement sent copies of the January 10th Letter by certified mail, return receipt requested, and regular first-class mail to Arnold's Current Address. Enforcement also sent a scanned copy of the January 10th Letter by e-mail to Arnold's e-mail address.

28. The USPS returned the copies of the January 10th Letter sent to the CRD Address by certified mail and first-class mail, with labels affixed to the envelopes indicating that Arnold's correspondence should be addressed to the Current Address. The USPS returned the return receipt card for the copy of the January 10th Letter sent to the Current Address to Enforcement. The return receipt card was signed by D. Arnold and was dated January 14, 2013. The copy of

the January 10th Letter sent by regular first-class mail to the Current Address was not returned to Enforcement.

29. Arnold did not respond to the January 10th Letter and did not appear or provide testimony on January 23, 2013 as requested.

30. FINRA Rule 8210(a) provides, in relevant part, that FINRA "shall have the right to require a member, person associated with a member, or person subject to FINRA's jurisdiction to provide information . . . and to testify at a location specified by FINRA staff . . . with respect to any matter involved in the investigation, complaint, examination, or proceeding."

31. FINRA Rule 8210(c) states that "no member or person shall fail to provide information or testimony or to permit an inspection and copying of books, records, or accounts pursuant to this Rule."

32. By reason of the foregoing, Arnold failed to appear and testify in connection with a FINRA investigation as requested, in violation of FINRA Rules 8210 and 2010.

RELIEF REQUESTED

WHEREFORE, the Department of Enforcement 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), including monetary sanctions, be imposed; and

- 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:

4/17/13


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