

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

HUGH R. HUNSINGER, JR.
(CRD No. 2179745),

Respondent.

Disciplinary Proceeding
No. 2011030045101

Hearing Officer—RLP

DEFAULT DECISION

October 15, 2013

Respondent is barred from associating with any FINRA member in any capacity for each of the following violations: (i) converting customer funds, in violation of NASD Rules 2330(a) and 2110, and FINRA Rules 2150 and 2010; (ii) engaging in securities fraud, in violation of Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 thereunder, NASD Rules 2120 and 2110, and FINRA Rules 2020 and 2010; and (iii) failing to provide requested information, in violation of FINRA Rules 8210 and 2010. Respondent is also ordered to pay restitution to his customers.

Appearances

M. Catherine Cottam, Esq., Rockville, MD, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

I. Introduction

Respondent Hugh R. Hunsinger's employer firm filed a Uniform Termination Notice for Securities Industry Registration (Form U5) in early November 2011, notifying FINRA of Hunsinger's termination for failing to provide bank account and tax return information requested as part of an internal investigation. Thereafter, on December 2, 2011, the firm filed an

amendment to the Form U5 reflecting receipt of a customer complaint. As a result of an ensuing investigation, FINRA's Department of Enforcement initiated this proceeding on June 6, 2013.¹

In its complaint, Enforcement pleads three causes of action. The first cause of action charges that Hunsinger converted funds from the accounts of two customers in violation of NASD Rules 2330(a) and 2110, and FINRA Rules 2150 and 2010. The second cause of action charges that Hunsinger recommended to the customers that they sell securities from their accounts and use the proceeds to purchase a deferred combination variable and fixed annuity, when, although Hunsinger caused securities to be sold, he never caused an annuity to be purchased. As a consequence, Hunsinger allegedly engaged in willful violations of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), Rule 10b-5 thereunder, NASD Rules 2120 and 2110, and FINRA Rules 2020 and 2010. The third cause of action charges that Hunsinger violated FINRA Rules 8210 and 2010 by failing to respond to information requests.

Hunsinger did not answer or otherwise respond to the complaint. Consequently, on August 30, 2013, Enforcement filed a motion for entry of a default decision and request for sanctions, together with the declaration of M. Catherine Cottam and 10 exhibits. Hunsinger did not respond to the motion.²

II. Jurisdiction

Hunsinger first became registered with FINRA as an Investment Company and Variable Contracts Products Representative in 1991, and, in 1994, he registered as a General Securities Representative. From 2002 through November 3, 2011, when his association was terminated,

¹ M. Catherine Cottam's Declaration in Support of Motion for a Default Decision ("Cottam Decl."), ¶¶ 6, 7, 18, 19; Complainant's Exhibit ("CX")-1, at 1; CX-2. On September 30, 2013, Enforcement supplemented its motion and the Cottam Declaration with the Declaration of Mark Bernstein ("Bernstein Decl.") and the declaration of one of Hunsinger's customers ("HRH Decl.").

² Given that Respondent is in default as detailed below, the factual determinations in this decision are based on allegations in the attached complaint, which are deemed admitted, together with the Cottam, Bernstein, and HRH Declarations and their attached exhibits.

Hunsinger was registered with FINRA in those capacities through member firm Lincoln Financial Advisors Corporation. Hunsinger has not subsequently been associated with any FINRA member.³

Although Hunsinger is not currently associated with a FINRA member firm, FINRA has jurisdiction over this disciplinary proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because the complaint (1) was filed within two years after the December 2, 2011 filing of the Form U5 amendment that disclosed possible actionable misconduct, and (2) charges Hunsinger with misconduct that occurred while he was associated with Lincoln Financial and with failing to respond to information requests issued within two years after the termination of his registration.⁴

III. Respondent's Default

On June 6, 2013, Enforcement served the notice of complaint and complaint on Hunsinger by directing certified mail to his residential address as reflected in the Central Registration Depository ("CRD address") and to an alternate address. Although the envelope and certified mail receipt for the mailing sent to the CRD address was returned to FINRA marked "unclaimed," the certified mail receipt for the mailing sent to the alternate address was returned signed "HUNSINGER" and dated June 26, 2013. Hunsinger did not respond to the complaint by the July 5, 2013 due date.⁵

Enforcement then sent a second notice of complaint, together with the complaint, by certified mail to Hunsinger's CRD and alternate addresses on July 9, 2013. The second notice warned Hunsinger that if he failed to answer the complaint by July 26, 2013, a default decision

³ Complaint ¶ 3; Cottam Decl. ¶¶ 5-6; CX-1.

⁴ See Article V, Sec. 4, FINRA By-Laws, available at www.finra.org/Industry/Regulation/FINRARules/ (then follow "FINRA Manual" hyperlink to "Corporate Organization: By-Laws").

⁵ Cottam Decl. ¶¶ 10, 11; CX-3 – CX-5.

could be entered against him. The mailing to the CRD address was returned marked “not deliverable as addressed — unable to forward.” The mailing to the alternate address was not returned.⁶

On July 26, 2013, Enforcement staff received a telephone call from a woman identifying herself as Hunsinger’s wife. During that call, the caller stated that: (1) she had obtained the staff person’s name and telephone number from the notice of complaint; (2) she and her husband lived in the same house; and (3) her husband had received the notice of complaint and complaint. The staff person told the caller that: (1) a response to the first notice of complaint had been due on July 5; (2) Enforcement had sent a second notice of complaint, together with the complaint; and (3) an answer to the second notice was to have been filed that day (July 26, 2013). The caller said that she would speak with her husband about the matter.⁷ However, Hunsinger did not file an answer with the Office of Hearing Officers.

Based on the foregoing, the Hearing Officer concludes that Hunsinger received both actual and constructive notice of these proceedings and, therefore, the Hearing Officer finds that Hunsinger has defaulted by failing to answer the complaint.⁸

⁶ Cottam Decl. ¶¶ 12-13; CX-6 – CX-8. Service of the complaint was complete with the mailing of the second notice of complaint. Thereafter, on August 20, 2013, Enforcement received the returned mailings to the CRD address. The returned envelope and receipt for the first mailing reflected that it had been forwarded to another address (“third address”). Cottam Decl. ¶ 15; CX-4. Accordingly, on August 20, Enforcement sent Hunsinger a third notice of complaint (including the second notice of complaint together with the complaint) to the third address. CX-9. The receipt for the mailing was returned signed “Hugh Hunsinger” and dated August 22, 2013. Cottam Decl. ¶ 16; CX-10.

⁷ Cottam Decl. ¶ 14.

⁸ See FINRA Rules 9134(a)(2), (b)(1), and (b)(3); *Dep’t of Enforcement v. Moore*, No. 2008015105601, 2012 FINRA Discip. LEXIS 45, at *19-21 (NAC July 26, 2012) (respondent had constructive notice of complaint mailed to his CRD address); *see also* Notice to Members 99-77 (Sept. 1999), available at www.finra.org/Industry/Regulation/Notices/1999/P004087.

IV. Findings of Fact and Conclusions of Law

A. Hunsinger Converted Customer Funds.

The first cause of action charges that Hunsinger converted funds from the brokerage accounts of two customers, Hunsinger's parents, HRH and MLH, in violation of NASD Rules 2330(a) and 2110, and FINRA Rules 2150 and 2010. In the spring of 2002, on Hunsinger's recommendation, his parents established four accounts at Lincoln Financial—an Individual Retirement Account ("IRA") for each, a joint account, and an individual account for MLH. Respondent was the account representative for the accounts. A few months later, Hunsinger arranged for a third party investment adviser to provide investment management and evaluation services for the assets held in the IRA accounts. Hunsinger, however, continued to serve as account representative for the accounts.⁹

In September 2002, in connection with the investment management and evaluation arrangement, Hunsinger caused six IRA accounts to be established at Fidelity Investments, and most of the assets in his parents' IRA accounts at Lincoln Financial were transferred to the new accounts. Hunsinger was responsible for all communications with the investment adviser, who directed trading in the Fidelity accounts, and Hunsinger had the authority to request that the investment adviser periodically transfer funds from the Fidelity accounts.¹⁰

Beginning in 2002, Hunsinger embarked on a series of transfers from his parents' accounts to bank accounts in his name or for his benefit. Accordingly, on or around December 3, 2002, Hunsinger caused \$50,000 to be transferred from HRH's and MLH's joint account at Lincoln Financial to an account at Lakeland Bank in Fairfield, New Jersey, for the benefit of

⁹ Complaint ¶ 5.

¹⁰ Complaint ¶¶ 6-7.

Hunsinger and his wife. Neither HRH nor MLH had an account at Lakeland Bank, and neither one authorized a transfer of \$50,000 to Hunsinger or his wife, or to the Lakeland Bank account.¹¹

Then, between January 31, 2005, and July 8, 2011, Hunsinger caused more than 80 transfers of funds from his parents' Fidelity IRA accounts to two accounts in Hunsinger's name at TD Bank, f/k/a Commerce Bank, in New Jersey. As reflected in schedules attached to the complaint, the majority of the funds were transferred from two of the Fidelity IRA accounts, primarily in increments of \$15,000, and generally on a monthly basis. In total, Hunsinger transferred \$1,402,503.57 from his parents' Fidelity accounts to the bank accounts in his name. Neither HRH nor MLH had an account at Commerce Bank or at TD Bank, and neither HRH nor MLH authorized the transfer of funds from any of their Fidelity accounts to their son or to accounts at Commerce Bank or TD Bank.¹²

FINRA's Sanction Guidelines define conversion 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."¹³ It is well established that conversion of a customer's property can constitute the "improper use of a customer's securities or funds" prohibited by NASD Rule 2330(a) and its successor, FINRA Rule 2150.¹⁴ It also is conduct inconsistent with high standards of commercial honor and just and equitable principles of trade.¹⁵ Based on the

¹¹ Complaint ¶ 9; Cottam Decl. ¶ 22.

¹² Complaint ¶¶ 10-11; Cottam Decl. ¶ 22.

¹³ FINRA Sanction Guidelines at 36, n.2 (2011), available at www.finra.org/Industry/Enforcement/Sanctionguidelines.

¹⁴ See *Dep't of Enforcement v. Mullins*, Nos. 20070094345, 20070111775, 2011 FINRA Discip. LEXIS 61, at *21-23 (NAC Feb. 24, 2011), *aff'd in part*, *John Edward Mullins*, Exchange Act Rel. No. 66373, 2012 SEC LEXIS 464 (Feb. 10, 2012). Although Hunsinger was not the account representative for the Fidelity accounts, his parents were his customers at Lincoln Financial and, therefore, his misappropriations of their funds fall within the ambit of NASD Rule 2330(a) and FINRA Rule 2150.

¹⁵ See *Mullins*, 2012 SEC LEXIS 464, at *33.

foregoing, the Hearing Officer concludes that Hunsinger violated NASD Rules 2330(a) and 2110, and FINRA Rules 2150 and 2010, by converting customers' funds.¹⁶

B. Hunsinger Engaged in Securities Fraud.

The complaint's second cause of action alleges that Hunsinger willfully violated Section 10(b) of the Exchange Act, Rule 10b-5 thereunder, NASD Rules 2120 and 2110, and FINRA Rules 2020 and 2010.¹⁷ The charge centers on allegations that Hunsinger's parents accepted his recommendation that they sell securities from their Lincoln Financial and Fidelity accounts and have him use the proceeds to purchase another investment on their behalf. Hunsinger, however, allegedly did not purchase another investment and instead converted some of the sales proceeds.

Around February 2006, Hunsinger telephoned his father to recommend that his parents invest in a deferred combination variable and fixed annuity to be issued by ING. According to Hunsinger, the annuity would pay his parents \$15,000 a month for the rest of their lives and would have a significant death benefit. Hunsinger also provided HRH and MLH with documents that purported to be designed for HRH and that contained information, based on an historical illustration, about withdrawals, contract values, cash surrender, average annual returns, and standard death benefits. HRH and MLH agreed to the recommendation and believed, based on what their son told them, that their securities would be sold over time to purchase the annuity in a series of payments. Accordingly, HRH filled out an application for the ING annuity his son had mailed to him, and mailed it back around the end of February.¹⁸

Around the same time, Hunsinger began making a series of requests, sent by telefax from his office in New Jersey to his parents' investment adviser in Colorado, that funds be distributed

¹⁶ FINRA Rule 2010 superseded NASD Rule 2110 on December 15, 2008, and FINRA Rule 2150 superseded NASD Conduct Rule 2330 on December 14, 2009.

¹⁷ NASD Rule 2120 was superseded by FINRA Rule 2020 on December 15, 2008.

¹⁸ HRH Decl. ¶¶ 2, 3; Complaint ¶ 14; Cottam Decl. ¶ 24.

from his parents' accounts at Fidelity. Shortly after each request, securities were sold from one or more of the accounts to satisfy the requests. Some of the distributions were made to HRH's and MLH's bank account and others went to Hunsinger's bank accounts in accordance with Hunsinger's request. None of the requests ever directed that funds be sent to ING, and no distribution was ever made to ING or otherwise to purchase an ING annuity. Thus, for example, on March 28, 2006, Hunsinger requested that a "one-time" distribution of \$15,000 from HRH's IRA account be wired to Hunsinger's Commerce Bank account. Thereafter, on March 29, 2006, \$15,300 of Fidelity Cash Reserves Fund shares were sold, \$15,000 was wired to Hunsinger's bank account, and \$30 was applied to the wire fee. Similarly, on April 25, 2006, Hunsinger requested a distribution of \$18,000 to be wired to his Commerce Bank account. On the same day, a University of New Mexico Subordinate Lien System Revenue Bond (Series 2003 C) was sold, yielding \$14,325 that was swept into the Cash Reserves Fund. The next day, \$18,000 of Cash Reserves Fund shares were sold and the same amount was wired to Hunsinger's Commerce Bank account. By early June 2006, Hunsinger had caused more than \$150,000 in proceeds from periodic sales of his parents' securities to be distributed from his parents' accounts at Fidelity. More than \$50,000 of that amount was wired to his bank account.¹⁹

In June 2006 and September 2006, Hunsinger falsely confirmed to his parents that he had purchased the ING annuity. He also represented that securities in their accounts would continue to be sold and money from the sales would continue to be transferred into the annuity over time. Although Hunsinger did not purchase an ING annuity for his parents, he continued to make disbursement requests as before, securities continued to be sold to satisfy those requests, and the proceeds continued to be distributed to Hunsinger's or his parents' bank accounts according to

¹⁹ Bernstein Decl. ¶¶ 4-8; Exhibit A to Bernstein Decl. & Tabs 3, 7; Complaint ¶ 15; Cottam Decl. ¶ 24.

Hunsinger's direction. Between late June 2006 and September 30, 2006, Hunsinger caused more than \$96,000 in sales proceeds to be distributed from his parents' accounts at Fidelity. About half of that amount was wired to his bank account.²⁰

From October 2006 through July 2011, Hunsinger made additional distribution requests, securities were sold, and sales proceeds were distributed as before. During this period, although the H's received what they understood to be annuity payments,²¹ HRH nevertheless inquired about the annuity on multiple occasions. Each time, Hunsinger falsely affirmed that he had purchased the annuity, that the payments his parents were receiving were attributable to the annuity, and that proceeds from securities sales were being transferred into the annuity. By July 2011, the balances in his parents' securities accounts were at or near zero. By the fall of 2011, the "annuity payments" stopped. When Hunsinger's sibling confronted him, Hunsinger admitted that he had not purchased an ING annuity for his parents.²²

Based on the foregoing, the Hearing Officer concludes that Hunsinger engaged in securities fraud, in violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. These antifraud provisions are "designed to ensure that members of the securities industry fulfill their obligation to the public to be complete and accurate when making statements about securities."²³ Where, as here, Enforcement has alleged that a Respondent's fraud took the form of affirmative misrepresentations, a finding of a violation requires a showing that a person (i) acting with scienter (ii) misrepresented material facts (iii) in connection with the purchase or sale

²⁰ Complaint ¶ 15; Cottam Decl. ¶ 24; HRH Decl. ¶ 4; Bernstein Decl. ¶¶ 7-8 & Ex. A.

²¹ HRH Decl. ¶ 5. Hunsinger had told his parents that their monthly payments would begin in 2007. His parents did receive monthly payments they believed were from ING, but the amount varied. Hunsinger stated that if his parents did not need \$15,000, the difference would be reinvested. *Id.* ¶¶ 4-5.

²² Complaint ¶ 15; Bernstein Decl. ¶ 14; HRH Decl. ¶¶ 6-9.

²³ *Dep't of Enforcement v. Donner Corp. Int'l*, No. CAF020048, 2006 NASD Discip. LEXIS 4, at *50 (NAC Mar. 9, 2006) (citations omitted), *vacated and remanded in part on other grounds*, *Donner Corp. Int'l*, Exchange Act Rel. No. 55313, 2007 SEC LEXIS 334 (Feb. 20, 2007).

of any security.²⁴ Scierer embraces the “intent to deceive, manipulate, or defraud”²⁵ and may be established by a showing of recklessness involving an “extreme departure from the standards of ordinary care, . . . which presents a danger of misleading buyers or sellers that is either known to the [actor] or is so obvious that the actor must have been aware of it.”²⁶ A fact is material if there is a substantial likelihood that a reasonable investor would have considered it important in making an investment decision.²⁷ A misrepresentation is made “in connection with” the purchase or sale of a security if it “coincides” with a securities transaction.²⁸

The facts adequately establish that Hunsinger acted with scierer. He convinced his parents to agree to sell securities to purchase an annuity, even though he intended to, and did, use the sales proceeds for other purposes. Then, he made repeated false statements to his parents, both orally and in writing, that the investment had been made, when, in fact, it had not been made and, to a significant extent, he was stealing their funds. This shows intent to deceive or defraud. The facts also demonstrate that Hunsinger misstated material facts. When a person represents that a customer’s securities will be sold to purchase another investment all the while intending instead to put the funds to another use—as Hunsinger did here—he has plainly misstated material facts.²⁹ Finally, given that Hunsinger repeatedly represented to his parents that securities would be sold over time to purchase the annuity in a series of payments, and

²⁴ *Id.*; see also *Dep’t of Market Regulation v. Burch*, No. 2005000324301, 2011 FINRA Discip. LEXIS 16, at *25 (NAC July 28, 2011) (citing *SEC v. First Jersey Sec., Inc.*, 101 F.3d 1450, 1467 (2d Cir. 1996)).

²⁵ *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 (1976).

²⁶ *E.g., The Rockies Fund, Inc. v. SEC*, 428 F.3d 1088, 1093 (D.C. Cir. 2005) (citing *Steadman v. SEC*, 967 F.2d 636, 641-42 (D.C. Cir. 1992) (quoting *Sundstrand Corp. v. Sun Chemical Corp.*, 553 F.2d 1033, 1044-45 (7th Cir. 1977))).

²⁷ *Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988).

²⁸ *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Dabit*, 547 U.S. 71, 85 (2006).

²⁹ *Cf. e.g., Dep’t of Enforcement v. Becerril*, No. 2009018944001, 2012 FINRA Discip. LEXIS 4, at *19 (OHO Feb. 23, 2012).

securities were, in fact, sold over time, Hunsinger made his misstatements “in connection with” sales of securities.³⁰

FINRA Rule 2020, like its predecessor, NASD Rule 2120, is FINRA’s antifraud rule and, as pertinent here, its elements and those of its predecessor are the same as those required to establish a violation of Section 10(b) and Rule 10b-5.³¹ Therefore, based on the foregoing, the Hearing Officer concludes that Hunsinger willfully³² violated FINRA Rule 2020 and NASD Rule 2120 and, further, that his conduct ran afoul of the high ethical standards required by FINRA Rule 2010 and its predecessor, NASD Rule 2110.³³

C. Hunsinger Failed to Provide Information Requested by FINRA.

On November 23, 2011, pursuant to Rule 8210, FINRA staff requested Hunsinger to provide information and documents related to its investigation of this matter by December 7, 2011. The request was sent by certified mail, return receipt requested, among other means, to Hunsinger’s CRD address. A returned receipt reflected that Hunsinger received the request on November 26, 2011. Nevertheless, Hunsinger failed to respond to the request by December 7.³⁴

Accordingly, on December 12, 2011, the staff sent a second request for the information and documents previously requested. The December 12 request directed Hunsinger to respond

³⁰ A violation of Section 10(b) also must involve the use of “any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,” an element satisfied here given that Hunsinger made misrepresentations to his father over the telephone, mailed documents to his parents, and requested funds distributions via telefax.

³¹ *E.g.*, *Burch*, 2011 FINRA Discip. LEXIS 16, at *23-25 & n.18; *Market Regulation Comm. v. Shaughnessy*, No. CMS950087, 1997 NASD Discip. LEXIS 46, at *24 (NBCC June 5, 1997), *aff’d*, *Kevin Eric Shaughnessy*, 53 S.E.C. 692 (1998).

³² In this context, willfulness means intentionally committing the act constituting the violation. *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000). The finding that Hunsinger acted with scienter necessarily leads to the conclusion that he acted willfully.

³³ This holds true both because fraud is a serious breach of Rule 2010’s ethical standards and because a violation of other rules constitutes a violation of Rule 2010. *See Stephen J. Gluckman*, Exchange Act Rel. No. 41628, 54 S.E.C. 175, 185 (1999). Although Rule 2010 applies by its terms only to members, Rule 0140(a) provides that persons associated with a member “have the same duties and obligations as a member under the Rules.”

³⁴ Complaint ¶¶ 19, 20; Cottam Decl. ¶ 25.

no later than December 27, 2011. Again, the request was sent by certified mail, return receipt requested, among other means, to Hunsinger's CRD address. A receipt was returned to the staff reflecting that Hunsinger received the request on December 15, 2011. Hunsinger failed to provide the requested information.³⁵

FINRA Rule 8210(c) sets forth an unequivocal requirement that registered persons comply with FINRA information requests, providing that "[n]o member or person shall fail to provide information" requested pursuant to the Rule. Hunsinger failed to respond in any manner to requests for information. Accordingly, the Hearing Officer finds that Hunsinger violated Rule 8210. His violation of Rule 8210 is also a violation of Rule 2010.³⁶

V. Sanctions

A. Conversion

Without his parents' knowledge or authorization, Hunsinger caused funds from his parents' securities accounts to be transferred to bank accounts in his name or for his benefit. As stated, this amounts to conversion. Such conduct is patently antithetical to the high standards of conduct FINRA seeks to promote³⁷ and, therefore, the Sanction Guidelines recommend a bar, regardless of the amount converted.³⁸ In the absence of any demonstrable mitigating circumstances, and in the presence of a number of aggravating factors, including that Hunsinger engaged in numerous acts of misconduct over an extended period of time, made numerous

³⁵ Complaint ¶¶ 21, 22; Cottam Decl. ¶ 25.

³⁶ See *Michael A. Rooms*, Exchange Act Rel. No. 51467, 2005 SEC LEXIS 728, at *13-14 & n.14 (Apr. 1, 2005) (holding that efforts to impede NASD (now FINRA) investigations violate high standards of commercial honor and just and equitable principles of trade), *aff'd*, *Rooms v. SEC*, 444 F.3d 1208 (10th Cir. 2006).

³⁷ See *Dep't of Enforcement v. Patel*, No. C02990052, 2001 NASD Discip. LEXIS 42, at *24-25 (NAC May 23, 2001).

³⁸ Sanction Guidelines 36.

lulling statements, and acted with a high degree of culpability,³⁹ Hunsinger will be barred from associating with any FINRA member firm in any capacity for converting customers' funds, in violation of NASD Rules 2330(a) and 2110, and FINRA Rules 2150 and 2010.

Enforcement has also requested, and the Hearing Officer will order, Hunsinger to pay restitution to his parents. Restitution is appropriate "when an identifiable person . . . has suffered a quantifiable loss proximately caused by a respondent's misconduct."⁴⁰ Here, HRH and MLH suffered a \$1,452,503.57 loss, proximately caused by Hunsinger's misconduct. Accordingly, the Hearing Officer will order Hunsinger to pay restitution to HRH and MLH in the amount of \$1,452,503.57, plus interest from July 8, 2011 (the date of the last unauthorized withdrawal from his parents' Fidelity accounts) until paid in full.⁴¹

B. Securities Fraud

The Sanction Guideline for misrepresentations or material omissions of fact recommends a bar in egregious cases.⁴² Hunsinger's violations were egregious. He led his parents to believe that the proceeds of sales of their securities would be invested in an annuity, when, in fact, he never intended to invest in an annuity and directed a significant amount of the proceeds to his bank accounts. Thereafter, he lulled his parents into a false sense of security about their investments by repeatedly misrepresenting that the annuity was one of their assets. Accordingly, and in the absence of any evident mitigating circumstances, Hunsinger will be barred from associating with any FINRA member firm in any capacity for engaging in securities fraud, in

³⁹ Sanction Guidelines 6-7 (Principal Considerations 8, 9, 10, 13).

⁴⁰ Sanction Guidelines 4 (General Principle 5).

⁴¹ To the extent that Hunsinger's payment of all or part of the \$1,354,496.44 judgment rendered against him by the Superior Court of New Jersey (Bernstein Decl., Ex. B) compensates for the loss Hunsinger caused his parents by converting their funds as described in this decision, the amount due under this order shall be reduced accordingly.

⁴² Sanction Guidelines 88; *see Burch*, 2011 FINRA Discip. LEXIS 16, at *44.

violation of Exchange Act Section 10(b), Rule 10b-5 thereunder, NASD Rules 2120 and 2110, and FINRA Rules 2020 and 2010.

C. Failure to Provide Information

A violation of Rule 8210 is serious because the rule “provides a means, in the absence of subpoena power, for [FINRA] to obtain from its members information necessary to conduct investigations.”⁴³ The rule thus “is at the heart of the self-regulatory system for the securities industry” and when members delay their responses or neglect entirely their responsibilities under the rule, they “undermine the ability of [FINRA] to . . . protect the public interest.”⁴⁴ For these reasons, the Sanction Guidelines recommend a bar when an individual does not respond in any manner to requests for information or testimony.⁴⁵

Hunsinger failed to respond in any manner to two requests for information. There is no evidence of any mitigating factors that would justify a sanction less than a bar. Accordingly, the Hearing Officer concludes that Hunsinger should be barred from associating with any FINRA member in any capacity for violating FINRA Rules 8210 and 2010.

VI. Order

Hunsinger is barred from associating with any FINRA member in any capacity for each of the following violations: (i) converting customer funds, in violation of NASD Rules 2330(a) and 2110, and FINRA Rules 2150 and 2010; (ii) engaging in securities fraud, in violation of Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 thereunder, NASD Rules 2120 and 2110, and FINRA Rules 2020 and 2010; and (iii) failing to provide requested information, in violation of FINRA Rules 8210 and 2010.

⁴³ *Richard J. Rouse*, 51 S.E.C. 581, 584, 1993 SEC LEXIS 1831, at *7 (1993).

⁴⁴ *Howard Brett Berger*, Exchange Act Rel. No. 58950, 2008 SEC LEXIS 3141, at *13 (Nov. 14, 2008), *petition denied*, 347 F. App'x 692 (2d Cir. 2009).

⁴⁵ Sanction Guidelines 33.

Additionally, Hunsinger is ordered to pay restitution to HRH and MLH, or, if one should predecease the other, to the survivor, in the principal amount of \$1,452.503.57, plus interest from July 8, 2011, until paid in full. Interest shall accrue at the rate set in 26 U.S.C. § 6621(a)(2).⁴⁶ If this decision becomes FINRA's final disciplinary action, the bars shall take effect immediately.⁴⁷

Rada Lynn Potts
Rada Lynn Potts
Hearing Officer

Copies to:

Hugh R. Hunsinger (*via overnight courier and first-class mail*)
M. Catherine Cottam, Esq. (*via email and first-class mail*)
Jeffrey D. Pariser, Esq. (*via email*)

⁴⁶ The interest rate set in Section 6621(a)(2) of the Internal Revenue Code is used by the Internal Revenue Service to determine interest due on underpaid taxes and is adjusted each quarter.

⁴⁷ In the event that HRH or MLH cannot be located, unpaid restitution (with interest) should be paid to the appropriate escheat, unclaimed-property, or abandoned-property fund for the state of the Hs' last known address. Satisfactory proof of payment of the restitution (with interest), or of reasonable and documented efforts undertaken to effect restitution (with interest), shall be provided to the staff of FINRA's Department of Enforcement no later than 90 days after the date when this decision becomes final. The customers identified here by their initials are identified by name in an addendum to this decision that is served only on the parties.

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Hugh R. Hunsinger, Jr. (CRD No. 2179745),

Respondent.

DISCIPLINARY PROCEEDING
No. 2011030045101

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. From about December 2002 to about July 2011, Hugh R. Hunsinger, Jr. ("Respondent") misappropriated a total of \$1,452,503.57 from the accounts of two customers, HRH and MLH, his elderly and unsophisticated parents. To hide his misappropriation, Respondent told his parents that he was selling securities they owned to invest in new insurance or securities products; in fact, he deposited the funds into bank accounts he controlled. Respondent's conduct violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder, as well as NASD Rules 2330(a), 2120 and 2110, and FINRA Rules 2020, 2150, and 2010.

2. On November 23, 2011 and December 12, 2011, FINRA staff sent Respondent a written request for information pursuant to FINRA Rule 8210. Respondent failed to respond. This conduct violated FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

3. Respondent first became registered with FINRA as an Investment Company and Variable Contracts Products Representative in 1991, and first became registered as a General Securities Representative in 1994. From January 2002 to November 3, 2011, Respondent was registered as both an Investment Company and Variable Contracts Products Representative and as a General Securities Representative through FINRA member Lincoln Financial Advisors Corporation ("LFA").

4. Respondent is not currently associated with a FINRA member firm. He remains subject to FINRA's jurisdiction pursuant to Article V, Section 4, of the FINRA By-Laws, in that: a) this Complaint was filed within two years after a December 2, 2011 amendment to the notice of termination (which in turn was filed within two years of his termination) that discloses possible misconduct actionable under applicable statutes, rules, and regulations; and b) this Complaint charges Respondent with misconduct committed while he was registered or associated with a FINRA member, and with failing to respond to FINRA requests for information sent during the two-year period after he ceased to be registered or associated with a FINRA member.

BACKGROUND

5. In or around spring 2002, at Respondent's recommendation, HRH and MLH established four accounts at LFA – an Individual Retirement Account ("IRA") for each, a joint account, and an individual account for MLH. In or around August and September 2002, Respondent arranged for a third party (the "Investment Advisor") to provide investment management and evaluation services for the assets HRH and MLH held in their IRA accounts. Respondent, however, remained the Financial Advisor for the accounts.

6. In September 2002, in connection with the investment management and evaluation arrangement, Respondent caused six IRA accounts to be established at Fidelity for HRH and/or MLH and caused most of the assets in HRH's and MLH's IRA accounts at LFA to be transferred to the Fidelity accounts.

7. Respondent was responsible for all communications with the Investment Advisor, who directed trading in the Fidelity accounts, and Respondent had the authority to request that the Investment Advisor periodically transfer funds from the Fidelity accounts.

FIRST CAUSE OF ACTION
(Misappropriation and Conversion of funds in violation of
NASD Rules 2330 and 2110 and FINRA Rules 2150 and 2010)

8. The Department realleges and incorporates by reference paragraphs 1 through 7, above.

9. On or around December 3, 2002, Respondent caused \$50,000 to be transferred from HRH's and MLH's joint account at LFA to an account at Lakeland Bank in Fairfield, NJ, for the benefit of Respondent and his wife. Neither HRH nor MLH ever had an account at Lakeland Bank and neither authorized a transfer of \$50,000 to Respondent or his wife, or to the Lakeland Bank account.

10. On 83 occasions, between around January 31, 2005 and around July 8, 2011, Respondent caused \$1,402,503.57 to be transferred from his parents' Fidelity IRA accounts to two accounts in Respondent's name at TD Bank, f/k/a Commerce Bank, in New Jersey, as reflected on the attached schedules in Exhibit A.

11. Neither HRH nor MLH has ever had an account at Commerce Bank or at TD Bank and neither HRH nor MLH ever authorized the transfer of funds from any of their Fidelity accounts to Respondent or to accounts at Commerce Bank or TD Bank.

12. As a result of the foregoing conversion and misappropriation, Respondent violated NASD Rules 2330(a) and 2110, and FINRA Rules 2150 and 2010.

SECOND CAUSE OF ACTION
(Misrepresentations in connection with the purchase or sale of securities
in violation of Section 10(b) of the Exchange Act and
Rule 10b-5 thereunder, NASD Rules 2120 and 2110, and FINRA Rules 2020 and 2010)

13. The Department realleges and incorporates by reference paragraphs 1 through 7, and 9 through 12, above.

14. In or around February 2006, Respondent recommended that HRH and MLH invest in a deferred combination variable and fixed annuity to be issued by ING (the "ING Annuity"). He provided HRH and MLH with documents that purported to be designed for HRH and that contained information, based on an historical illustration, concerning withdrawals, contract values, cash surrender, average annual returns, and standard death benefit. HRH and MLH agreed to Respondent's recommendation and believed that Respondent was selling securities from their LFA and Fidelity accounts to purchase the ING Annuity.

15. During meetings in 2006 and 2009, Respondent reiterated to HRH and MLH, both orally and in writing, that he had purchased the ING Annuity. In or around 2010, Respondent also provided HRH and MLH with additional documents reflecting the purported initial premium for the ING Annuity. Respondent caused securities to be sold in his parents' Fidelity accounts, but never purchased an ING Annuity on behalf of HRH or MLH. Instead, he caused some of the proceeds from the sales to be deposited into his Commerce Bank and TD Bank accounts, as alleged above in the First Cause of Action.

16. Respondent acted with scienter in falsely representing that he had purchased the ING Annuity on behalf of HRH and MLH.

17 As a result of the foregoing, Respondent willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, NASD Rules 2120 and 2110 and FINRA Rules 2020 and 2010.

THIRD CAUSE OF ACTION
(Failure to respond in violation of FINRA Rules 8210 and 2010)

18. The Department realleges and incorporates by reference paragraphs 1 through 7, 9 through 12 and 14 through 17, above.

19. On November 23, 2011, pursuant to FINRA Rule 8210, FINRA staff ("staff") requested that Respondent provide information and documents related to its investigation by December 7, 2011 (the "November 23 request"). The November 23 request was mailed by certified mail, return receipt requested, and by first class mail to the last known residential address of Respondent as reflected in the Central Registration Depository ("CRD").

20. A receipt was returned to the staff reflecting that Respondent received the November 23 request on November 26, 2011. Respondent failed to respond to the November 23 request.

21. On December 12, 2011, the staff sent a second request notifying Respondent that he had not responded to the request for the information and documents previously sent on November 23, 2011 (the "December 12 request"). The December 12 request stated that the documents and information should be provided to the staff no later than December 27, 2011. The December 12 request was mailed by certified mail, return receipt requested, and by first class mail to the last known residential address of Respondent as reflected in CRD.

22. A receipt was returned to the staff reflecting that Respondent received the December 12 request on December 15, 2011.

23. Respondent failed to respond and has not yet provided any information or documents to the staff.

24 As a result of the foregoing, Respondent violated FINRA Rules 8210 and 2010.

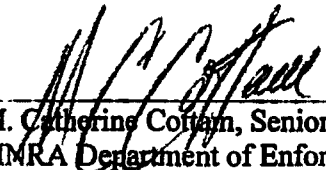
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent(s) 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;
- D. make specific findings that Respondent Hugh R. Hunsinger, Jr. willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

FINRA DEPARTMENT OF ENFORCEMENT

Date: 4/6/13


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