

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

CECILIA SAWYER (a/k/a
Cecilia Villanueva)
(CRD No. 2549482),

Respondent.

Disciplinary Proceeding
No. 2011030621501

Hearing Officer – SNB

DEFAULT DECISION

March 28, 2013

Respondent is barred for misappropriating variable annuity death benefit proceeds, in violation of FINRA Rule 2010, and for failing to respond to requests for information, in violation of FINRA Rules 8210 and 2010.

Appearances

Gary M. Lisker, Esq., for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

I. Introduction

The Department of Enforcement (“Enforcement”) filed the attached two-cause Complaint in this disciplinary proceeding on August 17, 2012, charging Respondent Cecilia Sawyer a/k/a Cecilia Villanueva (“Respondent”) with misappropriating variable annuity death benefit proceeds, in violation of FINRA Rule 2010, and failing to respond to FINRA’s requests for information, in violation of FINRA Rules 8210 and 2010.

Respondent did not answer the Complaint. Accordingly, on November 5, 2012, Enforcement filed a Motion for Entry of Default Decision and Request for Sanctions (“Default Motion”). The Default Motion is supported by the Declaration of Gary M. Lisker, Esq. (“Decl.”), four exhibits, along with a supplement and four additional exhibits filed on January 14, 2013. Respondent has not responded to Enforcement’s Default Motion.

II. Procedural History

On August 17, 2012, Enforcement served Respondent with a Notice of Complaint and Complaint by certified and regular mail at her address of record as listed in the Central Registration Depository (“CRD”). The certified mailing was returned unclaimed. CX-3. The regular mailing was not returned. Decl. ¶ 7. Respondent did not file an answer to the Complaint.

Enforcement served a Second Notice of Complaint and Complaint on Respondent at her CRD address by certified and regular mail on September 17, 2012. The certified mailing was returned unclaimed. CX-4. The regular mailing was not returned. Decl. ¶8. Respondent did not file an answer to the Complaint. Decl. ¶ 9.

Enforcement provided Respondent with valid constructive notice of this proceeding. Respondent defaulted by failing to answer the Complaint by the deadline specified in the Second Notice of Complaint.

III. Findings of Fact and Conclusions of Law

Based upon Respondent's default, the Hearing Officer deemed the allegations in the attached Complaint admitted pursuant to Rules 9215(f) and 9269.

A. Jurisdiction

Respondent first registered with a FINRA member firm in 1994. CX-1. She was registered with member firm PFS Investments Inc. (the "Firm") between September 1994 and December 2011, when she was permitted to resign. CX-1, CX-2. She has not been associated with a member firm since that time. CX-1.

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 her registration with a member firm, and the Complaint charges her with violations that occurred while she was registered with a member firm, and with failure to respond to requests for information issued while she was registered with a member firm, and within two years after the termination of her registration with a member firm.

B. Respondent Misappropriated Variable Annuity Death Benefit Proceeds, in Violation of FINRA Rule 2010

In November 2002, customers IN and YO opened an account with Respondent at the Firm, by purchasing a variable annuity for \$30,000 with IN as the annuitant. In 2003, they invested an additional \$100,000 in this annuity.

In 2005, IN passed away, triggering the death benefit. In the same year, YO and CO (the beneficiary of the death benefit) divorced. No annuity claim to recover the death benefit was filed at that time.

Over three years later, in April 2009, Respondent made a claim for the death benefit and directed that the benefit be mailed to a postal address that Respondent

controlled. Specifically, on April 29, 2009, Respondent opened a UPS Store mailbox. CX-5. On April 30, 2009, Respondent filed a death benefit claim form directing that the proceeds should be mailed to CO at the UPS Store mailbox. CX-6.

Consistent with Respondent's request, a \$148,361 check payable to CO, representing the full amount of the variable annuity death claim proceeds, was mailed to Respondent's UPS Store mailbox.

Respondent exercised control of the \$148,361 check by depositing it in a checking account that she opened in CO's name, without CO's knowledge or consent.¹ Respondent and her husband then withdrew funds from this account for their own benefit. CX-8. In addition, Respondent purchased an \$83,000 variable annuity for YO, CO's former wife. CO, the beneficiary, had no knowledge of these activities and received no death benefit proceeds.

The allegations of the Complaint, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent violated FINRA Rule 2010, by misappropriating variable annuity death benefit proceeds.

C. Respondent Failed to Respond to Requests for Information, in Violation of FINRA Rules 8210 and 2010

On December 29, 2011, FINRA Staff ("Staff") requested, pursuant to FINRA Rule 8210, that Respondent provide a written statement regarding the misappropriation of the death benefit discussed above. The letter was sent to Respondent's CRD address by certified and first-class mail. Respondent acknowledged receipt of the letter and directed further inquiries to her attorney. Staff then contacted the attorney, who stated that he no longer represented Respondent. Respondent did not respond to Staff's request.

¹ Supplemental Filing in Support of Motion for Entry of Default Decision signed by Counsel for Enforcement.

On May 3, 2012, Staff sent another Rule 8210 request, this time for documents as well as information. The request was sent to Respondent's CRD address by certified and first-class mail. Respondent signed the certified mail receipt and sent a facsimile to Staff identifying a new attorney. However, that attorney informed Staff he did not represent Respondent in connection with this matter. Respondent did not respond to the request.

By letter dated May 29, 2012, Staff sent a third Rule 8210 request for documents and information. The request was sent by certified and first-class mail to Respondent's CRD address. The certified letter sent to Respondent's CRD address was returned unclaimed and the first-class mailing was not returned. Respondent did not respond.

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent failed to provide information, in violation of FINRA Rules 8210 and 2010.²

IV. Sanctions

The FINRA Sanction Guidelines ("Guidelines") recommend a bar as the standard sanction for misappropriation.³ There are no mitigating factors. Accordingly, a bar is the appropriate sanction for Respondent's misappropriation of variable annuity death benefit proceeds, in violation of FINRA Rule 2010. Enforcement did not seek restitution because it was unable to determine whether CO received restitution of his funds.

The Guidelines recommend a bar where a respondent fails to respond in any manner to a request for information issued pursuant to FINRA Rule 8210.⁴ Where

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

³ *FINRA Sanction Guidelines* 36 (2011).

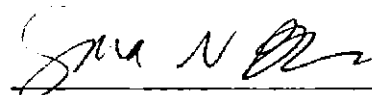
⁴ *Guidelines* 33.

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.

V. Conclusion

Respondent is barred for misappropriating variable annuity death benefit proceeds, in violation of FINRA Rule 2010, and for failing to respond to requests for information, in violation of FINRA Rules 8210 and 2010.

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



Sara Nelson Bloom
Hearing Officer

Copies to: Cecilia Sawyer (*via overnight courier and first-class mail*)
Gary Lisker, Esq. (*via electronic and first-class mail*)
Thomas B. Lawson, Esq. (*via electronic mail*)
Mark P. Dauer, Esq. (*via electronic mail*)
Susan Schroeder, Esq. (*via electronic mail*)

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

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT.

v.

**CECILIA SAWYER A/K/A
CECILIA VILLANUEVA (CRD No. 2549482),**

RESPONDENT.

**DISCIPLINARY PROCEEDING
No. 2011030621501**

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Respondent Cecilia Sawyer, a/k/a Cecilia Villanueva, participated in the misappropriation of \$148,361 in variable annuity death benefit funds. Sawyer also failed to provide documents and information requested by FINRA staff in its investigation of the misappropriation.

RESPONDENT AND JURISDICTION

2. Sawyer entered the securities industry in September 1994 with PFS Investments Inc. She first became registered as an Investment Company and Variable Products Representative with PFS in 1996.

3. Sawyer was permitted to resign from PFS on December 6, 2011, and has not been associated with any FINRA member since that time.

4. Although Sawyer is no longer registered or associated with a FINRA member, she 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 was filed within two years after the effective date of termination of Sawyer's registration with PFS, namely, December 6, 2011; and (2) the Complaint charges Sawyer with misconduct while she was registered or associated with a FINRA member, and with failing to respond to FINRA requests for information during the two-year period after the date upon which she ceased to be registered or associated with a FINRA member.

BACKGROUND

5. In November 2002, customers IN and YO opened an account at PFS with Sawyer as the registered representative on the account. They opened the account by purchasing a Travelers variable annuity with an initial payment of \$30,000. On the annuity application, IN and YO were listed as joint owners, IN was the annuitant, and the sole primary beneficiary was YO's husband, CO. IN and YO invested an additional \$100,000 in the annuity in or around March 2003.

6. YO and CO divorced in or around 2005.

7. IN passed away in December 2005.

8. Three years later, CO purportedly signed and submitted an annuity claim form dated April 30, 2009, seeking a lump sum payment of death benefits with no federal income tax withholding on the Travelers variable annuity. Sawyer provided an original death certificate to MetLife with a cover letter dated July 24, 2009 in connection with that claim.

9. MetLife paid the death claim in full with a check dated July 30, 2009, payable to CO in the amount of \$148,361. The check was mailed to the address listed on the claim form, [REDACTED]

10. CO did not submit the annuity claim. He had no knowledge of it and did not receive any portion of the proceeds.

FIRST CAUSE OF ACTION

**MISAPPROPRIATION OF INVESTOR FUNDS
Violation of FINRA Rule 2010**

11. The Department of Enforcement re-alleges and incorporates by reference Paragraphs 1 through 10 above.

12. The death benefit paid by MetLife in July 2009 was not received by CO and was misappropriated. Sawyer participated in the misappropriation of those funds. That participation included the facts alleged below.

13. Sawyer submitted the death benefit claim, along with a death certificate, to MetLife.

14. Sawyer also set up a mailbox where the check containing the misappropriated funds would be sent. The address listed on the annuity claim form was a mailbox at a UPS Store. The application for that mailbox was submitted and signed by Cecilia Cabasco. Sawyer's full name is Cecilia Cabasco Villanueva.

15. The address on the claim form is the same as Sawyer's mailing address in the Central Registration Depository. The account application was signed by Sawyer's husband, MS, who has the same address as Sawyer.

16. Sawyer received funds from the misappropriated death benefit, including a \$6,000 payment in August of 2009. Sawyer's husband received \$9,000 from the misappropriated death benefit, on the same day in August of 2009 that Sawyer received the \$6,000 payment.

17. Sawyer also acted as the account representative for a variable annuity purchased by YO with funds from the misappropriated death benefit. On or about September 24, 2009, YO opened a PFS account and purchased a MetLife variable annuity for \$83,000. Sawyer was the selling agent for that investment.

18. Sawyer's participation in the misappropriation of the death benefit funds, as described above, violated FINRA Rule 2010.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE DOCUMENTS AND INFORMATION Violation of FINRA Rules 8210 and 2010

19. The Department of Enforcement re-alleges and incorporates by reference Paragraphs 1 through 18 above.

20. On or about December 29, 2011, FINRA staff sent a letter requesting a written statement from Sawyer concerning this matter pursuant to FINRA Rule 8210. The letter was sent by certified mail, return receipt requested, and first class mail to the residential address for Sawyer reflected in the Central Registration Depository. In a written response dated January 12, 2012, Sawyer acknowledged receipt of the letter and asked the staff to direct its inquiries to her attorney, for whom she provided contact information. FINRA staff subsequently contacted the attorney, who stated that he no

longer represented Sawyer. Sawyer did not provide the information requested by the December 29, 2011 8210 request.

21. On or about May 3, 2012, FINRA staff sent another request for documents and information pursuant to FINRA Rule 8210 via certified mail, return receipt requested, and first class mail to Sawyer's CRD address. The staff received the return receipt, signed by Cecilia Sawyer.

22. On May 21, 2012, the day the information was due in response to the 8210 request dated May 3, 2012, Sawyer sent the staff a fax response identifying a new attorney in Seattle, Washington who she claimed represented her in connection with the request. That attorney subsequently informed the staff that he did not represent Sawyer in connection with this matter. Sawyer did not provide the information requested by the May 3, 2012 8210 request.

23. On or about May 29, 2012, FINRA staff sent a third Rule 8210 request for documents and information to Sawyer at her CRD address. The letter requested a response on or before June 8, 2012, and was sent via certified mail, return receipt requested, and via first class mail. The certified mailing was returned unclaimed, and the first class mailing was not returned. To date, Sawyer has not responded to the request.

24. By failing to provide documents and information requested by FINRA staff, Sawyer violated FINRA Rules 8210 and 2010.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

A. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed; and

B. order that the Respondent bears such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

8/17/2012
Date



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