

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JOHAN MARY-LYN AKAL
(CRD No. 4050242),

Respondent.

Disciplinary Proceeding
No. 2011030662501

Hearing Officer – MAD

January 3, 2013

Respondent is barred from associating with any FINRA registered firm in any capacity for (1) converting funds from a bank customer's account, in violation of FINRA Conduct Rule 2010; and (2) failing to respond to requests for information and testimony, in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010.

Appearances

Howard Alan Grinsberg, Esq., and Myles L. Orosco, Esq., for the Department of Enforcement.

No appearance by or on behalf of Johan Mary-Lyn Akal.

DECISION

I. Introduction

The FINRA Department of Enforcement filed the attached Amended Complaint with the Office of Hearing Officers on September 5, 2012. The Amended Complaint charges Respondent Johan Mary-Lyn Akal with: (1) misappropriating funds from the account of a customer of SunTrust Bank by forging the customer's signature on bank withdrawal slips, in violation of FINRA Conduct Rule 2010; and (2) failing to respond to requests for information and testimony

regarding her misappropriation of customer funds, in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010.

Akal defaulted by failing to answer or otherwise respond to the Amended Complaint. Accordingly, on November 15, 2012, Enforcement filed a Motion for Entry of Default Decision and Request for Sanctions (“Default Motion”). The Default Motion is supported by the Affidavit of Howard Alan Grinsberg, Esq. (“Aff.”) and 15 attached exhibits.¹

II. Procedural History

On September 5, 2012, Enforcement served the Amended Complaint and the First Notice of Amended Complaint on Akal by mailing them to her most current residential address recorded in the Central Registration Depository (“CRD”).² Enforcement mailed the Amended Complaint and First Notice of Amended Complaint by first-class and certified mail, return receipt requested.³ The United States Postal Service delivered the certified mailing on September 10, 2012.⁴ Enforcement received the return receipt on September 13, 2012, with an illegible signature.⁵ The first-class mailing was not returned.

On October 5, 2012, Enforcement served a Second Notice of Amended Complaint on Akal by mailing it to her CRD address by first-class and certified mail, return receipt requested.⁶ The Postal Service returned the certified mailing receipt, signed by an agent for Akal.⁷ The

¹ Enforcement’s exhibits are labeled CX-1 through CX-15.

² Aff. ¶ 24.

³ *Id.*

⁴ CX-13.

⁵ Aff. ¶ 26; CX-13.

⁶ Aff. ¶ 29.

⁷ *Id.* ¶ 30; CX-15.

Postal Service did not return the first-class mailing. To date, Akal has not responded to the Amended Complaint.

The Hearing Officer finds that Akal received valid constructive notice of this proceeding. Enforcement properly served Akal with a copy of the Amended Complaint. The Hearing Officer further finds that Akal defaulted by failing to file an Answer or otherwise respond to the Amended Complaint by the deadline set forth in the Second Notice of Amended Complaint. Accordingly, the Hearing Officer grants Enforcement's Default Motion.

III. Findings of Fact and Conclusions of Law

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

A. Background

Akal was a personal banker with SunTrust Bank.⁸ In connection with her employment as a personal banker, she was registered with FINRA as an Investment Company and Variable Contracts Products Representative from February 2002 until November 2011, through SunTrust Investment Securities, Inc. ("SunTrust Investment"), a FINRA-registered firm and an affiliate of SunTrust Bank.⁹ In December 2008, Akal also became registered as a General Securities Representative.¹⁰

On December 1, 2011, FINRA received a Uniform Termination Notice for Securities Industry Registration (Form U5) filed on Akal's behalf by SunTrust Investment. The Form U5

⁸ Aff. ¶ 4.

⁹ *Id.*; CX-1, at 2.

¹⁰ Aff. ¶ 4; CX-1, at 2.

disclosed that SunTrust Bank had terminated Akal's employment on November 2, 2011, because she had misappropriated customer funds.¹¹

Akal has not been registered with FINRA since December 1, 2011.¹² Akal is not currently associated with a FINRA-registered firm.¹³

B. Jurisdiction

FINRA has jurisdiction over this disciplinary proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Amended Complaint was filed within two years after FINRA terminated Akal's registration, and (2) the Amended Complaint charges her with misconduct that occurred while she was associated with a FINRA member firm, and with failing to respond to Enforcement's Rule 8210 requests for information and testimony made during the two-year period following the termination of her FINRA registration.¹⁴

C. Misappropriation of Funds

Akal was a licensed personal banker employed with the SunTrust Bank.¹⁵ From December 2010 through September, 2011, she forged a bank customer's signature on cash withdrawal slips and effected 29 cash withdrawals from the customer's account, totaling \$47,186.58.¹⁶ Akal did not have permission or authority from the customer or SunTrust Bank to sign the customer's name on the cash withdrawal slips or withdraw funds from the customer's account.¹⁷

¹¹ Aff. ¶ 5; CX-2.

¹² CX-1, at 2.

¹³ *Id.*; Aff. ¶ 6.

¹⁴ 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").

¹⁵ Aff. ¶ 7.

¹⁶ *Id.* ¶¶ 7, 8, 10.

¹⁷ *Id.* ¶ 9.

On November 2, 2011, SunTrust Bank terminated Akal's employment.¹⁸ SunTrust Bank later reimbursed the customer in full.¹⁹

The Hearing Officer finds that the foregoing facts establish that Akal misappropriated \$47,186.58 from the SunTrust Bank customer, in violation of FINRA Conduct Rule 2010, which rule requires members and associated persons to observe high standards of commercial honor and just and equitable principles of trade. Rule 2010 is sufficiently broad to encompass any unethical business-related misconduct, regardless of whether it involves a security.²⁰

D. Failure to Provide Information

When investigating Akal's misappropriation of funds, Enforcement sent requests for information and testimony to Akal. On April 23, 2012, FINRA sent a letter, via email, to Akal, requesting that she provide a written response to allegations that she had converted funds from SunTrust Bank customer accounts.²¹ Respondent did not respond to FINRA's April 23, 2012 information request.²²

On May 10, 2012, pursuant to Rule 8210, FINRA sent a letter to Akal requesting that she appear and testify on June 5, 2012.²³ The letter advised her that failure to testify as requested could expose her to sanctions, including a bar from the securities industry.²⁴ On May 17, 2012,

¹⁸ *Id.* ¶ 5.

¹⁹ *Id.* ¶ 11.

²⁰ *Department of Enforcement v. Saad*, No. 2006006705601, 2009 FINRA Discip. LEXIS 29, at *11 (NAC Oct. 6, 2009) (finding that a registered person's submission of false expense reimbursement requests and receipts to his broker-dealer violated Rule 2110 (now Rule 2010)), *aff'd*, Exchange Act Rel. No. 62178, 2010 SEC LEXIS 1761 (May 26, 2010).

²¹ *Aff.* ¶ 13.

²² *Id.* ¶ 14.

²³ *Id.* ¶ 15.

²⁴ *Id.* ¶ 16.

Akal notified FINRA that she would not appear and testify before FINRA at any time and acknowledged that her failure to cooperate would result in a bar from the securities industry.²⁵

On May 21, 2012, pursuant to Rule 8210, FINRA sent a letter to Akal requesting that she provide a written response to the allegations that she had converted funds from SunTrust Bank customer accounts.²⁶ The letter stated that she was required to respond no later than May 29, 2012.²⁷ On May 29, 2012, Akal wrote to FINRA and stated that she was “declining to answer these or any other interrogatories.”²⁸ She acknowledged that her failure to cooperate would result in a bar from the securities industry.²⁹

Akal failed to provide the requested information and testimony in response to FINRA’s Rule 8210 requests, which were sent in connection with its investigation of her conversion of funds from a customer’s account at SunTrust Bank.³⁰ The Hearing Officer finds that the foregoing facts establish that Akal violated FINRA Rules 8210 and 2010 by failing to respond to the Rule 8210 requests for information and testimony.

IV. Sanctions

A. Misappropriation of Funds

Akal converted funds from a SunTrust Bank customer. She forged the customer’s signature on 29 cash withdrawal slips and obtained the customer funds without authorization. The FINRA Sanction Guidelines (“Guidelines”) for “Conversion or Improper Use of Funds or

²⁵ *Id.* ¶ 17.

²⁶ *Id.* ¶ 19.

²⁷ *Id.*

²⁸ *Id.* ¶ 20.

²⁹ *Id.*

³⁰ *Id.* ¶¶ 18, 21.

Securities” state that a bar is standard for conversion, regardless of the amount converted.³¹ 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 Respond to Requests for Information

A violation of Rule 8210 is serious because Rule 8210 is a key element in FINRA’s oversight function and allows FINRA to carry out its regulatory functions without subpoena power.³² When an individual fails to provide requested information, FINRA’s ability to perform its regulatory functions is subverted.³³ For these reasons, the Guidelines recommend a bar when a respondent fails to respond in any manner to a request for information issued pursuant to Rule 8210.³⁴ Although Akal contacted Enforcement upon her receipt of the requests, she stated that she would not be providing any information to FINRA. There is no evidence of any mitigating facts that would justify a sanction less than a bar. Accordingly, the Hearing Officer determined that a bar is the appropriate sanction for this violation.

V. Order

Johan Mary-Lyn Akal is barred from associating with any member firm in any capacity for misappropriating a bank customer’s funds, in violation of FINRA Conduct Rule 2010; and for failing to respond to requests for information and testimony, in violation of FINRA

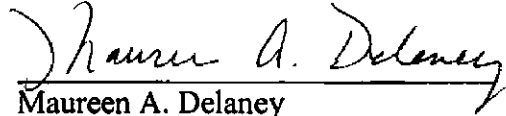
³¹ FINRA Sanction Guidelines 36 (2011), available at www.finra.org/sanctionguidelines.

³² *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).

³³ *Joseph P. Hannan*, Exchange Act Rel. No. 40438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998).

³⁴ Guidelines 33.

Procedural Rule 8210 and FINRA Conduct Rule 2010. The bars shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.³⁵


Maureen A. Delaney
Hearing Officer

Copies to: Johan Mary-Lyn Akal (via overnight mail)
Howard Alan Grinsberg, Esq. (via electronic and first-class mail)
Myles L. Orosco, Esq. (via electronic mail)
David R. Sonnenberg, Esq. (via electronic mail)

³⁵ The Hearing Officer did not order Akal to pay restitution because SunTrust Bank reimbursed the bank customer. Aff. ¶ 11.

**FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA)
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

**JOHAN MARY-LYN AKAL
(CRD No. 4050242)**

RESPONDENT.

DISCIPLINARY PROCEEDING
No. 2011030662501

FIRST AMENDED COMPLAINT

AMENDED COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. From December 2010 through September, 2011 (the "Relevant Period"), Johan Mary-Lyn Akal ("Akal" or "Respondent"), a licensed personal banker employed with SunTrust Bank (the "Bank"), violated FINRA Rule 2010 by misappropriating \$47,186.58 from a customer's account at the Bank.

2. Additionally, Akal violated FINRA Rules 8210 and 2010 by failing to respond to requests for information and testimony.

RESPONDENT AND JURISDICTION

3. Akal entered the securities industry in October 1999 as an investment representative with a FINRA regulated firm. In June 2000, Akal obtained a Series 6 registration. In February 2002, Akal joined SunTrust Investment Securities, Inc., a FINRA regulated firm, (the "Firm"), which held her securities registrations, and became employed as a licensed personal banker in

the Bank's Sarasota, Florida branch office. In December 2008 Akal obtained a Series 7 registration and in May 2009, she obtained Series 63 and 65 registrations.

4. In a Uniform Termination Notice for Securities Industry Registration ("Form U5") dated December 1, 2011, the Firm reported to FINRA that on November 2, 2011, Akal's employment had been terminated after she admitted to withdrawing funds from the accounts of two Bank clients without their authorization.

5. Although Respondent 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 Respondent's registration with the Firm, namely, November 2, 2011, and (2) the Complaint charges her with misconduct committed while she was registered or associated with a FINRA member and with failing to respond to FINRA requests for information and on-the-record testimony during the two-year period after the date upon which she ceased to be registered or associated with a FINRA member.

FIRST CAUSE OF ACTION
CONVERSION OF BANK CUSTOMER'S FUNDS
(FINRA Rule 2010)

6. The Department realleges and incorporates by reference paragraphs 1 through 5 above.

7. FINRA Rule 2010 requires that registered representatives observe "high standards of commercial honor and just and equitable principles of trade."

8. During the Relevant Period, Akal, without permission or authority, forged SL's signature on Bank cash withdrawal slips and effected 29 cash withdrawals from SL's Bank account.

9. Akal did not have permission or authority from SL or the Bank to sign SL's name on the cash withdrawal slips or withdraw funds from SL's account.

10. By so doing, Akal converted for her own use and benefit \$47,186.58 from SL's Bank account.

11. On November 14, 2011, the Bank reimbursed \$47,186.58 to SL.

12. Akal violated FINRA Rule 2010 by misappropriating funds from SL's Bank account.

**SECOND CAUSE OF ACTION
FAILURE TO PROVIDE WRITTEN RESPONSES AND TESTIMONY
(FINRA RULES 8210 AND 2010)**

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

14. FINRA Rule 8210(a)(1) requires "a member, person associated with a member, or person subject to the Association's jurisdiction to provide information orally, in writing, or electronically (if the requested information is, or is required to be, maintained in electronic form) and to testify at a location specified by Association staff, under oath or affirmation administered by a court reporter or a notary public if requested, with respect to any matter involved in the investigation, complaint, examination, or proceeding."

15. On April 23, 2012, pursuant to FINRA Rule 8210, FINRA sent an email to Akal, requesting that she provide a written response to allegations that she had misappropriated funds from Bank customer accounts. FINRA requested that Akal respond no later than May 7, 2012.

16. Akal did not respond to FINRA's April 23, 2012 information request.

17. On May 10, 2012, FINRA sent a letter by certified mail, return receipt requested and a copy by first class mail to Akal at her last residential address as reflected in the Central

Registration Depository (the “CRD Address”). The letter requested, pursuant to FINRA Rule 8210, that Akal appear and testify on Tuesday, June 5, 2012 at FINRA’s office at 200 Liberty Street, 12th floor in New York City. In the letter, Enforcement staff advised Akal that if the requested date and time for her testimony was inconvenient, she should contact Enforcement staff no later than Tuesday, May 22, 2012 to reschedule the proceeding to a mutually convenient time.

18. The letter further advised Akal that failure to testify as requested could expose her to sanctions, including a permanent bar from the securities industry.

19. By letter dated May 17, 2012, Akal responded to FINRA’s May 10, 2012 letter. Akal stated that she would not appear before FINRA at any time to give testimony and acknowledged that, pursuant to FINRA Rule 8210, her failure to cooperate would result in a permanent bar from the securities industry.

20. To date, Akal has not appeared before FINRA to provide testimony.

21. On May 21, 2012, FINRA sent a letter to Akal by first class and certified mail, return receipt requested and a copy by first class mail to the CRD Address. The letter requested, pursuant to Rule 8210, that Akal provide a written response to allegations that she had misappropriated funds from Bank customer accounts. The letter further advised Akal that she was required to respond no later than May 29, 2012 and that her failure to comply with the request could expose her to sanctions, including a permanent bar from the securities industry.

22. On May 29, 2012, Akal provided a written response to FINRA’s May 21, 2012 request for information. In the letter, Akal asserted that she was “declining to answer these or any other interrogatories” and acknowledged that, pursuant to FINRA Rule 8210, her failure to cooperate would result in a bar from the securities industry.

23. To date, Akal has not provided FINRA with written a response to the information requested in FINRA's May 21, 2012 information request.

24. Akal's failures to provide written responses and appear and testify as requested constitute a violation of FINRA Rules 8210 and 2010.

RELIEF REQUESTED

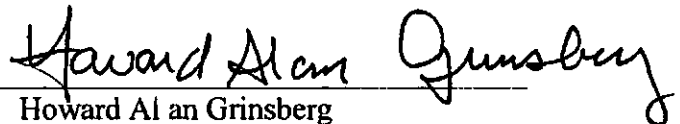
WHEREFORE, the Department respectfully requests that the Panel:

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

B. order that the 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: September 5, 2012



Howard Alan Grinsberg
Senior Counsel
FINRA Department of Enforcement
One World Financial Center
200 Liberty Street 11th Floor
New York, New York 10281-1003
Phone: 646-315-7383 Fax: 202-689-3440
howard.grinsberg@finra.org

Myles L. Orosco, Enforcement Director
FINRA Department of Enforcement
Myles.orosco@finra.org