

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Michael LoStracco (CRD No. 2953217),

Respondent.

DISCIPLINARY PROCEEDING
No. 2012031063101

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Between July 2000 and March 2007 (the "Relevant Period"), while registered with a member firm, Respondent Michael LoStracco ("Respondent" or "LoStracco") misappropriated approximately \$153,000 from two non-FINRA member companies, thereby violating NASD Rule 2110.
2. On June 19, 2013, during the two-year period after the date upon which he ceased to be registered with a FINRA member, Respondent failed to appear for on-the-record testimony requested in accordance with FINRA 8210, thereby violating FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

3. Respondent was registered as an Investment Company & Variable Contracts Products Representative (Series 6) with FINRA-member AXA Advisors, LLC (“AXA”) from November 11, 1998 to July 25, 2007. From July 25, 2007 to September 7, 2011, Respondent was registered as an Investment Company & Variable Contracts Products Representative (Series 6) with FINRA-member Cambridge Investment Research, Inc. (“Cambridge”).
4. Cambridge terminated Respondent by a Form U5 filed on September 8, 2011.
5. 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 was filed within two years after the effective date of termination of Respondent’s registration with Cambridge, namely September 8, 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 (NASD Rule 2110)

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

7. NASD Rule 2110, in effect during the Relevant Period, requires associated persons to observe high standards of commercial honor and just and equitable principles of trade.
8. Misappropriation of funds and the intentional creation of false documents and records are violations of NASD Rule 2110.
9. During the Relevant Period, while he was registered with AXA, Respondent, who was also a certified public accountant, performed accounting services for two related entities: Veneesa Construction Company, Inc. (“Veneesa”) and Mechanical Maintenance Repair Service, Inc. (“Mechanical”).
10. Respondent was also the corporate Secretary and Treasurer of Veneesa.
11. During the Relevant Period, Respondent misappropriated funds from Veneesa and Mechanical by:
 - a. Improperly using \$106,436 from Veneesa’s bank accounts to fund unauthorized salary payments to himself, payments to others for his personal benefit, and payments for additions to his personal residence;
 - b. Improperly using \$31,980 from Mechanical’s bank accounts for his personal benefit; and,
 - c. Improperly failing to remit not less than \$14,599 in employee 401K contributions to Veneesa’s 401K plan.
12. To effectuate his misconduct, Respondent made, or caused to be made, false financial statements, false reports, and false check entries in connection with Veneesa’s accounts and accounting system.

13. For example, on at least 90 occasions during the Relevant Period, LoStracco made false check entries into Veneesa's accounting system and improperly classified costs associated with the addition to his personal residence as legitimate business expenses of Veneesa.
14. During the Relevant Period, LoStracco also failed to record checks in the system payable to himself or others for his benefit -- at times posting those entries as subcontractor expenses.
15. In or about March 2007, the majority owner of Veneesa reported to the police that Respondent and another individual had been taking funds without authorization from the company.
16. In or around March 2009, the Bucks County, Pennsylvania, District Attorney's Office engaged the services of a forensic firm to conduct an independent investigation.
17. On or about June 17, 2011, the forensic firm issued a report which concluded that Respondent had misappropriated funds from Veneesa and Mechanical and had created false documents and records.
18. On or about August 31, 2011, LoStracco was charged by criminal complaint filed in the Court of Common Pleas of Bucks County, PA with six felony counts: theft by unlawful taking, theft by deception by creating a false impression, theft by deception by failing to correct a false impression, receiving stolen property, criminal conspiracy, and theft by failure to make required disposition of funds.
19. On or about September 8, 2011, LoStracco was permitted to resign from Cambridge.
20. On or about December 2, 2011, LoStracco was formally arraigned by the Commonwealth of Pennsylvania for the above-mentioned charges.

21. On or about June 18, 2012, LoStracco pled nolo contendere to two of the felony charges: criminal conspiracy and theft by failing to make required disposition of funds.
22. On or about March 4, 2013, LoStracco was sentenced and, *inter alia*, ordered to make restitution.
23. Because Respondent converted funds that were not his own and created false documents and records, he violated NASD Rule 2110.

SECOND CAUSE OF ACTION

Failing to Appear For Testimony (FINRA Rules 8210 and 2010)

24. The Department realleges and incorporates by reference paragraphs 1 – 23 above.
25. FINRA Rule 8210 requires that persons subject to FINRA's jurisdiction testify at a location specified by FINRA staff, under oath or affirmation administered by a court reporter or a notary public if requested.
26. On May 30, 2013, pursuant to Rule 8210, Enforcement served a request on LoStracco to appear and to provide oral testimony under oath on June 19, 2013 at FINRA's offices in Rockville, Maryland.
27. The request letter was sent by certified mail and first class mail to LoStracco's home address listed in the Central Registration Depository ("CRD") System maintained by FINRA.
28. FINRA staff members also knew the CRD address to be a valid address for Respondent based on communications they had with Respondent.
29. On or about June 1, 2013, the certified mail copy of Enforcement's 8210 request dated May 30, 2013 was delivered to LoStracco's home address. The green return

receipt card was signed and returned to Enforcement, acknowledging LoStracco's receipt of the May 30 letter.

30. LoStracco failed to respond to Enforcement's May 30 request and failed to appear and provide oral testimony under oath on June 19, 2013.

31. By failing to appear and to provide testimony as requested by Enforcement pursuant to Rule 8210, LoStracco violated FINRA Rules 8210 and 2010.

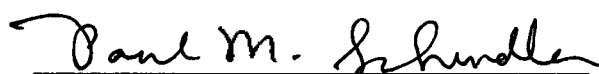
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent 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: July 12, 2013



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