

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ANTHONY CLIVE LAZARUS
(CRD No. 5713015),

Respondent.

Disciplinary Proceeding
No. 2012031150702

Hearing Officer – MC

AMENDED DEFAULT DECISION

June 24, 2014

Respondent is barred from associating with any FINRA member firm in any capacity for converting customer funds in violation of FINRA Rule 2010.

Appearances

Lane A. Thurgood, Esq., Rockville, Maryland, for the Department of Enforcement.

No appearance by or for Respondent Anthony Clive Lazarus.

DECISION

I. Background

Respondent Anthony Clive Lazarus, employed by a bank affiliated with a FINRA member firm, surreptitiously gained access to funds in the bank accounts of two elderly bank customers and converted more than \$27,000. The member firm filed a Uniform Termination Notice for Securities Industry Termination ("Form U5") stating that Lazarus admitted he used customer funds for his own purposes. This brought the matter to FINRA's attention and caused an investigation to be initiated.

Subsequently, on January 21, 2014, the Department of Enforcement filed and served the attached single-cause Complaint upon Lazarus, charging him with conversion of customer funds in violation of FINRA Rule 2010.

Lazarus did not file an Answer or otherwise respond to the Complaint. Consequently, Enforcement filed and served a Second Notice of Complaint. Because it, too, went unanswered, Enforcement filed a Motion for Entry of Default Decision ("Motion") supported by the Declaration of Lane A. Thurgood and three exhibits. Lazarus did not respond to the Motion, and his failure to file an Answer to the Complaint constitutes a default.¹ Accordingly, for the reasons set forth below, Enforcement's Motion is granted.²

II. Findings of Fact and Conclusions of Law

A. Jurisdiction

Lazarus became registered with FINRA through member firm Chase Investment Services Corp. ("CISC") when he associated with its affiliate, Chase Bank, as a personal banker in Jamaica, New York, in September 2009.³ CISC terminated Lazarus' registration by filing the Form U5, effective on January 25, 2012. Since then, Lazarus has not been registered or associated with any FINRA member firm. However, Lazarus is subject to FINRA's jurisdiction for the purposes of this proceeding pursuant to Article V, Section 4 of FINRA's By-Laws because (i) the misconduct described in the Complaint occurred while he was registered through CISC; and (ii) Enforcement filed the Complaint on January 21, 2014, within two years after the effective date of CISC's termination of his registration.

B. Respondent's Default

Enforcement served the Complaint and Notice of Complaint on Lazarus by certified and first-class mail at two addresses: his last known residential address shown in the Central

¹ *Dep't of Enforcement v. Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at *5 (N.A.C. Dec. 9, 2003).

² The factual determinations in this Decision are based on the allegations in the Complaint, which are deemed admitted pursuant to FINRA Rule 9269(a)(2), the Declaration of Lane A. Thurgood ("Thurgood Decl."), and Enforcement's exhibits CX-1 through CX-3.

³ Thurgood Decl. ¶¶ 4-5.

Registration Depository ("CRD"); and a second address Lazarus disclosed when he responded to a FINRA Rule 8210 information request.

The Postal Service returned both certified mailings. The notation on the certified mailing to Lazarus' CRD address stated "Return to Sender. Unable to Forward." The certified mailing to the second address was marked "Return to Sender. Unclaimed." The Postal Service did not return the first-class mailings.⁴

When Lazarus failed to file an Answer by the deadline set in the Notice of Complaint, Enforcement served a Second Notice of Complaint by certified and first-class mail to both addresses. An illegibly signed receipt confirmed that the certified mailing to Lazarus' CRD address was successfully delivered. The Postal Service returned the certified mailing to the second address marked "Return to Sender. Unable to Forward." The Postal Service did not return the first-class mailings.⁵ As before, Lazarus did not file an Answer or otherwise respond to the Complaint.

Enforcement complied with FINRA Rule 9134 by mailing the Complaint and Notices of Complaint to Lazarus' CRD address, thereby giving him constructive notice of this proceeding. By failing to file an Answer, Lazarus defaulted. Accordingly, pursuant to Rules 9215(f) and 9269(a)(2), the allegations in the Complaint are deemed admitted.

C. Violations

FINRA's definition of conversion is "an intentional and unauthorized taking of and/or exercise of ownership over property by one who neither owns the property nor is entitled to

⁴ *Id.* ¶ 7.

⁵ *Id.* ¶ 9.

possess it.”⁶ Conversion occurs when a person uses another’s funds for personal benefit, instead of for the purpose for which the funds are intended.⁷ It is well established that conversion violates the “high standards of commercial honor and just and equitable principles of trade” required by FINRA Rule 2010.⁸

1. Lazarus Converted More Than \$13,000 from Customer A

Between March and December 2011, Lazarus converted more than \$13,000 from Customer A’s Chase Bank account. At the time, Customer A was 86 years old. Lazarus obtained the funds in three ways. First, Lazarus gained online access to the customer’s account and, without the customer’s knowledge or consent, transferred more than \$3,000 to his own credit card account. Second, Lazarus obtained a debit card for Customer A’s account and used it to make unauthorized ATM withdrawals from the account, totaling more than \$9,000. Third, Lazarus made over-the-counter withdrawals of more than \$1,000 from the account.⁹

2. Lazarus Converted More Than \$14,000 from Customer B

Between April and December 2011, Lazarus converted more than \$14,000 from Customer B’s Chase Bank account. At the time, Customer B was 90 years old. In this instance, Lazarus employed only a single means of accessing the funds. Without permission, he

⁶ *Dep’t of Enforcement v. Smith*, No. 2011029152401, 2014 FINRA Discip. LEXIS 2, at *12 (N.A.C. Feb. 21, 2014) (citing *FINRA Sanction Guidelines* 36 n.2 (2011)). The most recent 2013 edition of the Guidelines retains this definition.

⁷ *John Edward Mullins*, Exchange Act Rel. No. 66373, 2012 SEC LEXIS 464, at *33, *37 (Feb. 10, 2012) (citing *Mission Sec. Corp.*, Exchange Act Rel. No. 63453, 2010 SEC LEXIS 4053 (Dec. 7, 2010)) (finding conversion when persons intentionally deprived the owner of property, even though they made efforts to return it after an investigation began).

⁸ *Mullins*, 2012 SEC LEXIS 464, at *32.

⁹ Thurgood Decl. ¶¶ 13-16.

transferred the funds from Customer B's savings account to her checking account, and then made online bill payments to his credit card account from Customer B's checking account.¹⁰

Lazarus had no entitlement to the funds of Customers A and B, and therefore "no right to exercise ownership over these funds."¹¹ Lazarus' conduct, as set forth above and described in the Complaint, clearly violated FINRA Rule 2010.

III. Sanctions

Registered persons routinely assume the serious responsibilities incumbent upon those who handle the funds of clients. Because conversion violates the fundamental trust implicit in the nature of such work, it is among "the most grave violations committed by a registered representative ... and patently antithetical to the 'high standards of commercial honor and just and equitable principles of trade' that underpin the self-regulation of the securities markets."¹² Thus, in the absence of mitigating factors, conversion "poses so substantial a risk to investors and/or the markets as to render the violator unfit for employment in the securities industry, and a bar is therefore an appropriate remedy."¹³

There are no mitigating factors present in this case. It has been recognized in other cases that by its nature, conversion reflects upon a person's honesty and veracity, and demonstrates unfitness to remain in the securities industry.¹⁴ In this case, protection of the public requires imposition of a bar.

¹⁰ *Id.* ¶¶ 17-18.

¹¹ *Smith*, 2014 FINRA Discip. LEXIS 2, at *12-13 (respondent converted funds when he had "no right to exercise ownership" over the funds, and used them "for his own benefit").

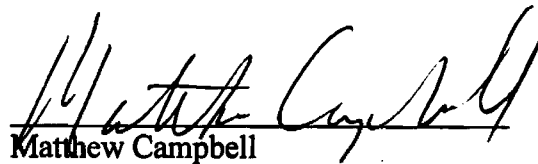
¹² *Mullins*, 2012 SEC LEXIS 464, at *73 (citing *Wheaton D. Blanchard*, 46 S.E.C. 365, 366 (1976)).

¹³ *Id.* at *74 (quoting *Charles C. Fawcett IV*, Exchange Act Rel. No. 56770, 2007 SEC LEXIS 2598, at *22 n.27 (Nov. 8, 2007)).

¹⁴ *Dist. Bus. Conduct Comm. v. Kwikkel-Elliott*, No. C04960004, 1998 NASD Discip. LEXIS 4, at *20 (N.B.C.C. Jan. 16, 1998).

IV. Order

For converting customer funds, in violation of FINRA Rule 2010, Respondent Anthony Clive Lazarus is barred from associating with any FINRA member firm in any capacity. The bar will be effective immediately if this Default Decision becomes FINRA's final disciplinary action in this proceeding.



Matthew Campbell
Hearing Officer

Copies to:

Anthony C. Lazarus (*via overnight courier and first-class mail*)

Lane A. Thurgood, Esq. (*via electronic and first-class mail*)

Jeffrey D. Pariser, Esq. (*via electronic mail*)