

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

GEORGE WAYNE HOFFMAN
(CRD No. 5068220),

Respondent.

Disciplinary Proceeding
No. 2012032922101

Hearing Officer—KBW

DEFAULT DECISION

October 6, 2014

Respondent is barred from associating with any member firm in any capacity for (1) violating FINRA Rules 2150 and 2010 by converting customer funds, (2) violating FINRA Rule 2010 and NASD Rule 3110 by falsifying letters of authorization, (3) violating FINRA Rules 3240 and 2010 by borrowing funds from the customer without obtaining prior approval from his firm, and (4) violating FINRA Rules 8210 and 2010 by failing to provide information and testimony in connection with a related FINRA investigation.

Appearances

Clarence E. Sanders, Jr., and Michael S. Choi, for the Department of Enforcement.

No appearance by or on behalf of George Wayne Hoffman.

DECISION

I. Introduction

The FINRA Department of Enforcement ("Enforcement") filed the attached Complaint with the Office of Hearing Officers on May 19, 2014. The Complaint charges that Respondent George Wayne Hoffman ("Hoffman") (1) violated FINRA Rules 2150 and 2010 by converting \$17,000 from an elderly customer, (2) violated FINRA Rule 2010 and NASD Rule 3110 by falsifying letters of authorization ("LOAs") submitted in connection with the conversion,

(3) violated FINRA Rules 3240 and 2010 by borrowing funds from the customer without obtaining prior approval from his firm, H. Beck, Inc. ("HBI") and (4) violated FINRA Rules 8210 and 2010 by failing to provide information and testimony in connection with a related FINRA investigation.

Hoffman failed to answer or otherwise respond to the Complaint. On August 14, 2014, Enforcement filed a Motion for Entry of Default Decision ("Default Motion") with the Office of Hearing Officers.¹ Enforcement requests that Hoffman be barred from associating with any FINRA-regulated firm in any capacity.² Hoffman did not respond to the Default Motion.

II. Findings of Fact and Conclusions of Law

A. Hofmann's Background

Hoffman entered the securities industry in 2005.³ From March 2010 until July 5, 2012, Hoffman was a General Securities Representative ("GSR") at HBI.⁴ On July 5, 2012, HBI filed a Form U5, Uniform Termination Notice for Securities Industry Registration identifying as the "Termination Explanation," "FAILURE TO COMMUNICATE."⁵

B. Jurisdiction

FINRA has jurisdiction over this disciplinary 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 his registration with a member firm, namely July 5, 2012, and (2) three causes of action charge him with misconduct that commenced while he was associated with a

¹ The Default Motion was supported by a Declaration in Support of Motion for Entry of Default Decision ("Sanders Decl.") and 19 attached exhibits labeled CX-1 through CX-19.

² Enforcement did not request restitution because HBI reimbursed the customer for the converted and loaned funds. Sanders Decl., at 13.

³ CX-1.

⁴ Sanders Decl. ¶ 5.

⁵ CX-2, at 2.

FINRA registered firm and the fourth cause of action charges him with failing to respond to requests for information during the two-year period after the termination of his registration.⁶

C. Origin of the Investigation

In response to the Form U5 that HBI filed on July 5, 2012, Enforcement commenced an investigation into allegations that Hoffman may have accepted an unapproved \$36,000 loan from MRB, an elderly customer of HBI.⁷

D. Service of the Complaint and Hoffman's Default

On May 19, 2014, Enforcement served the Complaint and Notice of Complaint on Hoffman (collectively, the "First Notice") by mailing them to his most current residential address recorded in the Central Registration Depository ("CRD"). Enforcement mailed the First Notice by first-class mail and by certified mail, return receipt requested.⁸ Enforcement also served the First Notice at three alternative street addresses and two email addresses known to Enforcement.⁹

Both mailings of the First Notice to the CRD Address were returned to Enforcement marked "Unable to Forward."¹⁰ The U.S. Postal Service returned to Enforcement both mailings of the First Notice to one of the alternative addresses marked, "Attempted-Not Known," both mailings to another alternative address marked, "Not Deliverable as Addressed," and both mailings to the third alternative address marked, "Unable to Forward."

⁶ See Article V, Section 4(a), FINRA By-Laws, available at www.finra.org/Rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: By-Laws").

⁷ Sanders Decl. ¶ 8.

⁸ Sanders Decl. ¶ 12.

⁹ Sanders Decl. ¶ 12, CX-4.

¹⁰ Sanders Decl. ¶ 14.

¹¹ The Notice of Complaint required Hoffman to file an Answer with the Office of Hearing Officers no later than June 16, 2014.¹² Hoffman did not serve or file an Answer or other response to the First Notice.¹³

On June 20, 2014, Enforcement served a Second Notice of Complaint and the First Notice (collectively, the "Second Notice") on Hoffman by mailing it to his CRD address by first-class mail and by certified mail, return receipt requested.¹⁴ Enforcement also mailed the Second Notice to three alternative street addresses by first-class mail and by certified mail, return receipt requested and sent the Second Notice to two email addresses known to Enforcement.¹⁵

Both mailings of the Second Notice to the CRD Address were returned to Enforcement marked "Unable to Forward."¹⁶ Of the copies of the Second Notice mailed to alternative addresses, the Postal Service did not return the copies mailed to one address, returned the copies mailed to another address marked, "Not Deliverable As Addressed," and returned the copies mailed to the third address marked, "Unable to Forward."¹⁷

The Second Notice of Complaint required Hoffman to file an Answer with the Office of Hearing Officers on or before July 7, 2014.¹⁸ Hoffman did not answer or otherwise respond to the Second Notice.¹⁹

¹¹ Sanders Decl. ¶ 14, CX-4.

¹² CX-3, at 2.

¹³ Sanders Decl. ¶ 15.

¹⁴ Sanders Decl. ¶ 16.

¹⁵ Sanders Decl. ¶ 16.

¹⁶ Sanders Decl. ¶ 18.

¹⁷ Sanders Decl. ¶ 18, CX-6.

¹⁸ CX-5, at 1.

¹⁹ Sanders Decl. ¶ 19.

The Hearing Officer finds that Enforcement properly served Hoffman with a copy of the Complaint and Hoffman received valid constructive notice of this proceeding. The Hearing Officer further finds that Hoffman defaulted by failing to file an Answer or otherwise respond to the Complaint by the deadline set forth in the Second Notice of Complaint. Accordingly, the Hearing Officer grants Enforcement's Default Motion and deems the allegations in the attached Complaint admitted pursuant to Rules 9215(f) and 9269(a).

E. First Cause of Action – Conversion

Between March 24, 2011 and March 28, 2011, while a GSR with HBI, a FINRA member firm, Hoffman caused a total of \$17,000 to be withdrawn from MRB's account without MRB's knowledge or authorization.²⁰ On March 24, 2011, Hoffman submitted a falsified LOA to HBI, without MRB's knowledge or authorization, causing HBI to transfer \$8,500 from MRB's securities account to the bank account of Hoffman's landlord.²¹ At Hoffman's request, the landlord retained \$2,187 (for Hoffman's rent, security deposit, repayment of a loan that Hoffman owed to the landlord, and wiring fees) and wired the remaining \$6,313 to Hoffman's personal bank account.²² On March 28, 2011, Hoffman submitted a second falsified LOA to HBI, without MRB's knowledge or authorization, to transfer another \$8,500 from MRB's securities account at HBI to the landlord's bank account.²³ At Hoffman's request, the landlord wired the funds (less \$32 in wiring fees) to Hoffman's bank account.²⁴

The first cause of action alleges that Hoffman "converted" \$17,000 from MRB in violation of FINRA Rules 2150 and 2010. FINRA Rule 2150 states that "[n]o member or person

²⁰ Sanders Decl. ¶ 20.

²¹ Sanders Decl. ¶ 21, Complaint ("Compl.") ¶ 9.

²² Sanders Decl. ¶¶ 22-23.

²³ Sanders Decl. ¶ 24, Compl. ¶ 15.

²⁴ Sanders Decl. ¶¶ 25-26.

associated with a member shall make improper use of a customer's securities or funds." FINRA Sanction Guidelines state that "[c]onversion generally 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 possess it."²⁵

Here, Hoffman took \$17,000 from MRB's securities account without her authorization or knowledge. Hoffman accomplished this by using false documents to cause HBI to transfer money from MRB's account at the firm to his landlord. Thereafter, Hoffman applied the funds to pay his personal debts and expenses.

Hoffman's taking of MBR's money was intentional as evidenced by the fact that he took several steps, including using his landlord as a middleman, to accomplish the transfers for his ultimate benefit. By directing the transfers to his landlord, Hoffman sought to avoid detection by his firm of the true purpose of the transfers. Consequently, the Hearing Officer concludes that Hoffman violated FINRA Rules 2150(a) and 2010²⁶ by converting MRB's funds for his own benefit.

F. Second Cause of Action - Falsifying LOAs and Causing HBI to Maintain False Books and Records

Hoffman created two false LOAs purporting to authorize the transfer of funds from MRB's securities account. Hoffman submitted the falsified LOAs to HBI, causing HBI to maintain inaccurate books and records in violation of NASD Rule 3110 and FINRA Rule 2010.

²⁵ FINRA Sanctions Guidelines at 36 n.2 (2013), available at www.finra.org/sanctionguidelines. See also *Dep't of Enforcement v Olson*, Complaint No. 2010023349601, 2014 FINRA Disc. LEXIS 7, at *9 n. 7 (FINRA Board of Governors May 9, 2014), *appeal docketed*, No. 3-15916 (SEC June 9, 2004) (quoting *John Edward Mullins*, Exchange Act Rel. No. 66373, 2012 SEC LEXIS 464, at *33 (SEC Feb. 10, 2012)(quoting FINRA Sanctions Guidelines, at 38 (2007))).

²⁶ Rule 2010 is FINRA's ethical standards rule that requires a registered person to observe high standards of commercial honor and just and equitable principles of trade in the conduct of that person's business.

The Hearing Officer concludes that Hoffman violated NASD Rule 3110. NASD Rule 3110(a) required member firms to make and preserve accurate books and records:

Each member shall make and preserve books, accounts, records, memoranda, and correspondence in conformity with all applicable laws, rules, regulations and statements of policy promulgated thereunder and with the Rules of this Association and as prescribed by Exchange Act Rule 17a-3.

Causing a firm to enter false information in its books or records violates NASD Rule 3110.²⁷ In violating NASD Rule 3110, Hoffman also violated FINRA Rule 2010.²⁸

G. Third Cause of Action - Improperly Borrowing from a Customer

HBI had written policies prohibiting its associated persons from borrowing money from a customer without first obtaining written approval from HBI.²⁹ In April 2011, Hoffman accepted a personal loan of \$36,000 from MRB.³⁰ The loan was not memorialized in a written agreement, and Hoffman did not request or receive approval from HBI to accept the loan.³¹ Hoffman asked a personal friend to receive a wire transfer in his personal account for \$36,000 and to wire the funds to Hoffman's account at a third-party bank.³² On April 21, 2011, Hoffman submitted an LOA to HBI requesting a wire transfer of \$36,000 from MRB's HBI account to the friend. HBI wired the funds to the friend who then wired the funds (minus \$25 in wiring fees) to Hoffman's account at the third-party bank. Hoffman has not repaid any of the loan funds to MRB.³³

²⁷ *Dep't of Enforcement, v. Mielke*, Complaint No. 2009019837302, 2014 FINRA Discip. LEXIS 24, at *35-36 (FINRA NAC July 18, 2014).

²⁸ *Id.* at *35 n.33 ("An associated person's failure to comply with NASD Rule 3110 violates FINRA Rule 2010's requirement that members observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business.")

²⁹ Sanders Decl. ¶ 35.

³⁰ Sanders Decl. ¶ 36.

³¹ Sanders Decl. ¶¶ 36, 43.

³² Sanders Decl. ¶ 37.

³³ Sanders Decl. ¶¶ 36-42.

The Hearing Officer concludes that Hoffman violated FINRA Rules 3240 and 2010 by borrowing from MRB without obtaining the written permission of HBI. FINRA Rule 3240 provides, in part, that “[n]o person associated with a member in any registered capacity may borrow money from or lend money to any customer of such person unless . . . the member has written procedures allowing the borrowing and lending of money between such registered persons and customers of the member.” By borrowing from MRB without first obtaining HBI’s written approval, Hoffman violated HBI’s written policies and therefore violated FINRA Rule 3240. In violating FINRA Rule 3240, Hoffman violated FINRA Rule 2010.

H. Fourth Cause of Action - Failing to Respond to Enforcement Requests for Information, Documents, and Testimony

In March 2013, Enforcement sent three letters to Hoffman pursuant to FINRA Rule 8210. Hoffman did not respond to any of the letters.

On March 11, 2013, Enforcement sent a letter (the “First Letter”) to Hoffman requesting that, pursuant to FINRA Rule 8210, Hoffman provide written statements, information, and certain financial records to Enforcement by March 22, 2013. Enforcement sent copies of the First Letter by certified mail and return receipt requested and by first-class mail to Hoffman at the CRD Address and an alternate street address and by email to an email address known to Enforcement.³⁴

The copy of the First Letter sent by certified mail and return receipt requested to the CRD address was returned to Enforcement marked, “Unable to Forward.”³⁵ The Postal Service did not return the copies of the First Letter that Enforcement had sent by first-class mail to the CRD

³⁴ Sanders Decl. ¶ 46.

³⁵ Sanders Decl. ¶ 47.

address and the alternate address.³⁶ The Postal Service returned to Enforcement marked, “Unclaimed,” the copy of the First Letter that Enforcement had sent by certified mail and return receipt requested to the alternate address.³⁷ Hoffman did not respond to the First Letter.³⁸

On March 25, 2013, Enforcement sent to the CRD address and to an alternate address by certified mail and return receipt requested and by first-class mail copies of a second letter (the “Second Letter”) requesting, pursuant to FINRA Rule 8210, the same written statements, information, and financial records as the First Letter had requested. Enforcement also sent copies of the Second Letter to two email addresses known to Enforcement.³⁹ The Second Letter stated that a failure to respond as requested could expose Hoffman to sanctions, including a bar from the securities industry.⁴⁰

The Postal Service returned to Enforcement marked, “Unable to Forward,” the copies of the Second Letter that Enforcement had sent by certified mail and return receipt to the CRD Address and the alternate address and the copy of the Second Letter that Enforcement had sent by first-class mail to the alternate address. The Postal Service did not return to Enforcement the copy of the Second Letter that Enforcement had sent by first-class mail to the CRD address.⁴¹ Hoffman did not respond to the Second Letter.⁴²

On March 28, 2013, Enforcement sent copies of the third letter (the “Third Letter”) by certified mail and return receipt requested and by first-class mail to both the CRD address and an

³⁶ Sanders Decl. ¶ 47.

³⁷ Sanders Decl. ¶ 47.

³⁸ Sanders Decl. ¶ 48.

³⁹ Sanders Decl. ¶ 49.

⁴⁰ Sanders Decl. ¶ 51.

⁴¹ Sanders Decl. ¶ 50.

⁴² Sanders Decl. ¶ 51.

alternate address and to the two email addresses known to Enforcement.⁴³ The Third Letter requested that, pursuant to FINRA Rule 8210, Hoffman appear and provide testimony on April 11, 2013, at One World Financial Center.⁴⁴ The Third Letter stated that a failure to appear as requested and to answer Enforcement's questions could expose Hoffman to sanctions, including a bar from the securities industry.⁴⁵

The Postal Service returned to Enforcement, marked "Unable to Forward," the copies of the Third Letter that Enforcement had sent by certified mail and return receipt requested to the CRD address and the alternate address and by first-class mail to the alternate address.⁴⁶ The Postal Service did not return to Enforcement the copy of the Third Letter that Enforcement had sent by first-class mail to Hoffman at the CRD address.⁴⁷

Hoffman did not appear and testify on April 11, 2013, as requested by the March 28th letter.⁴⁸

FINRA Rule 8210 specifies that "notice under this Rule shall be deemed received by the member or currently or formerly registered person to whom it is directed by mailing or otherwise transmitting the notice to the last known business address of the member or the last known residential address of the person as reflected in the Central Registration Depository."⁴⁹

Accordingly, the Hearing Officer deems Hoffman to have received each of the three letters. The Hearing Officer concludes that Hoffman violated FINRA Rule 8210 by not responding to

⁴³ Sanders Decl. ¶ 52.

⁴⁴ Sanders Decl. ¶ 52.

⁴⁵ Sanders Decl. ¶ 54.

⁴⁶ Sanders Decl. ¶ 53.

⁴⁷ Sanders Decl. ¶ 53.

⁴⁸ Sanders Decl. ¶ 55.

⁴⁹ FINRA Rule 8210(d).

FINRA's requests for information. Enforcement properly served Hoffman with multiple requests for information and documents. In violating FINRA Rule 8210, Hoffman violated FINRA Rule 2010.

III. Sanctions

A. First Cause of Action – Improperly Using Customer Funds

The FINRA Sanction Guidelines provide that “[c]onversion generally 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 possess it.” The SEC has stated that conversion “is extremely serious and patently antithetical to the ‘high standards of commercial honor and just and equitable principles of trade.’”⁵⁰ For cases involving conversion, the FINRA Sanction Guidelines instruct adjudicators to impose a “[b]ar... regardless of the amount converted.”⁵¹ In affirming a bar imposed on an associated person found to have engaged in conversion, the FINRA Board of Governors stated that the Sanction Guidelines for conversion “is expressed in remarkably specific terms and instructs that adjudicators “[b]ar the respondent regardless of [the] amount converted.”⁵²

The Hearing Officer bars Hoffman from associating with any FINRA member in any capacity for violating FINRA Rules 2150 and 2010.

B. Second Cause of Action - Falsifying LOAs and Causing His Firm to Maintain False Books and Records

For cases involving forgery and/or falsification of records, the Guidelines advise Adjudicators to consider suspending a respondent in any and all capacities for up to two years in

⁵⁰ *John Edward Mullins*, Exchange Act Rel. No. 66373, 2012 SEC LEXIS 464, at *73 (Feb. 10, 2012) (quoting *Wheaton D. Blanchard*, 46 S.E.C. 365, 366 (1976)).

⁵¹ FINRA Sanctions Guidelines at 36.

⁵² *Olson*, 2014 FINRA Discip. LEXIS 7, at *11 (quoting FINRA Sanctions Guidelines 36 (2013)).

cases where mitigating factors exist and to consider a bar in egregious cases.⁵³ This is an egregious case. The falsified documents were instrumental to the conversion. The falsified documents were letters of authorization directing funds from the securities account of an elderly customer to individuals who then forwarded all or much of those funds to Hoffman.

Accordingly, the Hearing Officer bars Hoffman from associating with any FINRA member in any capacity for violating FINRA Rule 2010 and NASD Rule 3110.

C. Third Cause of Action - Improperly Borrowing from a Customer

Although the Sanction Guidelines do not contain specific recommendations for violations of FINRA Rule 3240, the General Principles Applicable to All Sanction Determinations direct adjudicators to impose sanctions that are designed to deter future misconduct and improve the overall business standards in the securities industry.⁵⁴ Hoffman did not document the loan from MRB, obtained the proceeds of the loan (minus wiring transaction fees), and has not repaid the loan. Accordingly, the Hearing Officer bars Hoffman from associating with any FINRA member in any capacity for violating FINRA Rules 3240 and 2010.

D. Fourth Cause of Action - Failing to Respond to Enforcement Requests for Information, Documents, and Testimony

For cases involving failure to respond to a FINRA Rule 8210 Request, the Guidelines advise that, if an individual did not respond in any manner to a FINRA Rule 8210 request, “a bar should be standard.”⁵⁵ Hoffman did not respond in any manner to any of Enforcement’s requests.

There are no mitigating factors and some aggravating factors. The guidelines direct adjudicators to consider the importance of the information requested as viewed from FINRA’s

⁵³ Guidelines at 37.

⁵⁴ Guidelines at 2.

⁵⁵ Guidelines at 33.

perspective.⁵⁶ Enforcement investigated the possibility that Hoffman had engaged in conversion of customer funds, falsified letters of authorization, and borrowed from a customer without written approval from HBI. Hoffman's failure to respond to Enforcement's requests for information and testimony impeded Enforcement's ability to determine whether the conduct at issue constituted violations of NASD or FINRA rules or federal securities laws and rules and regulations promulgated thereunder.⁵⁷

The Guidelines also direct adjudicators to consider the number of requests made. Here, Enforcement made an initial request for Hoffman to provide written statements, information, and certain financial records, then reiterated that request, and then requested that Hoffman appear and provide testimony pursuant to FINRA Rule 8210. Hoffman did not respond in any manner to any of these requests.

Accordingly, the Hearing Officer bars Hoffman from associating with any FINRA member in any capacity for violating FINRA Rules 8210 and 2010.

IV. Order

George Wayne Hoffman violated FINRA Rules 2010, 2150, 3240, and 8210 and NASD Rule 3110 by converting \$17,000 from MRB, falsifying letters of authorization, borrowing \$36,000 from MRB without obtaining prior written permission from HBI, and failing to respond to requests by Enforcement for information and testimony. For each violation, Hoffman is

⁵⁶ Guidelines at 33.

⁵⁷ Sanders Decl. ¶ 56.

barred from associating with any member firm in any capacity. The bars will become effective immediately if this decision becomes FINRA's final disciplinary action in this proceeding.


Kenneth Winer
Hearing Officer

Copies to:

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