

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

Department of Enforcement,

Complainant,

v.

Darinn Dwight Kim (CRD No. 4029402),

Respondent.

DISCIPLINARY PROCEEDING
No. 2012033956001

COMPLAINT

The Department of Enforcement ("Enforcement") alleges:

SUMMARY

1. In June 2012, while registered with FINRA member firm LPL Financial LLC ("LPL" or the "Firm"), Respondent, Darinn Dwight Kim ("Kim"), converted approximately \$90,000 from Firm customer, HJC for his own personal use, in violation of FINRA Rule 2010. Kim converted funds belonging to customer HJC by knowingly: (i) making an unauthorized transfer of funds from HJC's personal, non-securities bank account at J.P. Morgan Chase to another personal, non-securities bank account that HJC owned at Wells Fargo Bank; (ii) forging a check payable to himself to improperly remove funds from HJC's Wells Fargo personal bank account; and (iii) cashing the check. HJC was traveling in South Korea at the time and did not know about, or authorize, these transactions.

2. Kim also made an unauthorized transfer from HJC's T.D. Ameritrade securities account to HJC's Wells Fargo Bank account. In addition, Kim made an unauthorized sale of securities in HJC's T.D. Ameritrade account, and ordered a \$190,000 check payable to HJC to be delivered to Kim's home address. HJC did not know about any of these transactions and did not

authorize them. HJC discovered these transactions when she returned from South Korea in July 2012 and was able to stop payment on the \$190,000 check at that time.

3. Lastly, Kim failed to respond to Enforcement's Rule 8210 requests for information and documents, in violation of FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

4. Kim entered the securities industry in September 1999. He obtained his Series 66 license in October 1999, and his Series 7 license in January 2000. Kim was most recently registered with LPL Financial LLC from February 2004 until his termination on October 29, 2012. Kim is not currently registered or associated with a FINRA member firm.

5. Although Kim is no longer registered or associated with a FINRA member firm, 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 Kim's registration with a FINRA member firm; (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member firm; and (3) the Complaint also charges him with failing to respond to Enforcement's requests for information and documents during the two-year period after the date upon which he ceased to be registered or associated with a FINRA member firm.

FIRST CAUSE OF ACTION **Conversion of Customer Funds** **(Violation of FINRA Rule 2010)**

6. Enforcement re-alleges and incorporates by reference paragraphs 1-5, above.

7. In January 2011, Kim became the registered representative for customer HJC's brokerage account at the Firm. Through this relationship, Kim gained access to HJC's other personal securities and non-securities accounts.

8. On or about June 21, 2012, Kim transferred \$100,000 from HJC's personal, non-securities account at J.P. Morgan Chase Bank to a personal, non-securities Wells Fargo Bank account also owned by HJC. HJC was unaware of this transfer, did not authorize it and was out of the country when it occurred.

9. On or about June 26, 2012, while HJC was still out of the country, Kim wrote a check made payable to himself from HJC's Wells Fargo Bank account in the amount of \$90,000. Kim forged HJC's signature on the check. HJC did not know about this check and did not authorize Kim to sign her name to the check.

10. On or about June 29, 2012, Kim cashed the \$90,000 check that he had forged and used the \$90,000 for his own personal use.

11. By converting funds, in the form of a \$90,000 forged check, belonging to his customer, HJC, for his own benefit and personal use, Kim violated FINRA Rule 2010.

SECOND CAUSE OF ACTION
Misuse of Funds
(Violation of FINRA Rule 2010)

12. Enforcement re-alleges and incorporates by reference paragraphs 1-11, above.

13. On or about June 28, 2012, without authorization, Kim electronically transferred \$100,000 from HJC's T.D. Ameritrade securities account, to HJC's Wells Fargo personal, non-securities bank account.

14. On or about June 28, 2012, Kim made an unauthorized sale of securities in the amount of \$185,885 in HJC's T.D. Ameritrade account.

15. On or about June 28, 2012, Kim electronically ordered a check in the amount of \$190,000 to be drawn from HJC's TD Ameritrade securities account. The check was made payable to HJC, but, at Kim's instruction, was to be delivered to Kim's home address.

16. HJC was not aware of any of the transactions described in paragraphs 13 through 15, and did not authorize any of these transactions. HJC discovered these transactions upon her return from South Korea in July 2012, and was able to stop payment on the \$190,000 check before it was cashed.

17. By transferring HJC's funds from HJC's T.D. Ameritrade securities account to her Wells Fargo bank account without her authorization, by selling securities in the amount of \$185,885 in HJC's T.D. Ameritrade securities account without HJC's authorization, and by ordering a \$190,000 check drawn on HJC's T.D. Ameritrade securities account without her authorization, Kim misused HJC's funds in violation of FINRA Rule 2010.

THIRD CAUSE OF ACTION
Forgery
(Violation of FINRA Rule 2010)

18. Enforcement re-alleges and incorporates by reference paragraphs 1-17, above.

19. As alleged above, Kim forged HJC's name to the \$90,000 Wells Fargo check without HJC's knowledge or consent. The foregoing conduct constitutes forgery and a failure to observe high standards of commercial honor and just and equitable principles of trade. As a result of this conduct, Kim violated FINRA Rule 2010.

FOURTH CAUSE OF ACTION
Failure to Respond to Rule 8210 Requests for Information and Documents
(Violation of FINRA Rules 8210 and 2010)

20. Enforcement re-alleges and incorporates by reference paragraphs 1-19, above.

21. Pursuant to FINRA Rule 8210, Enforcement staff issued three requests for information and documents to Kim as part of its investigation of Kim's conversion of HJC's funds and unauthorized transactions while he was registered with the Firm.

22. On or about January 17, 2013, Enforcement staff sent Kim, at his address of record listed in CRD ("CRD address"), a request for documents and information pursuant to Rule 8210, via certified mail, return receipt requested, and by first class U.S. mail. Kim's response was due on or before January 31, 2013. Kim failed to respond to this request. The certified mail copy of the request was returned to FINRA as "unclaimed," and the first class copy was not returned.

23. On or about February 7, 2012, Enforcement staff sent Kim a second request for the same documents and information, pursuant to Rule 8210. The 8210 request was sent to Kim's CRD address by certified mail, return receipt requested, and by first class U.S. mail. Kim's response was due on or before February 21, 2013. Kim failed to respond to the request. The certified mail copy of the request was again returned to FINRA as "unclaimed," and the copy mailed by first class mail was not returned.

24. On or about April 4, 2013, Enforcement staff sent Kim a third request for the same information and documents, pursuant to Rule 8210. The 8210 request was sent to Kim's CRD address by certified mail, return receipt requested, and by first class U.S. mail. The 8210 request was also sent to Kim's last known publicly available address, found through a LEXIS-NEXIS search, via certified mail, return receipt requested, and by first class U.S. mail. Both certified mail copies of the request were returned to FINRA as "not deliverable as addressed/unable to forward" and "unclaimed." The first class U.S. mail copy sent to Kim's CRD address was returned to FINRA as "return to sender/unable to forward." The first class U.S. mail copy sent to Kim's last known publicly available address was not returned to FINRA.

25. By failing to respond to Enforcement's Rule 8210 requests for information and documents, Kim violated FINRA Rules 8210 and 2010.

RELIEF REQUESTED

WHEREFORE, Enforcement respectfully requests that the Panel:

- A. Make findings of fact and conclusions of law that Kim committed the violations 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 Kim bear such costs of the proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date: 10/25/13

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