

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JOSE J. MARTINEZ, JR.
(CRD No. 5590432),

Respondent.

Disciplinary Proceeding
No. 2012034384101

Hearing Officer -MC

DEFAULT DECISION

October 16, 2013

For converting customer funds, in violation of FINRA Rule 2010, and failing to provide information to FINRA, in violation of FINRA Rules 8210 and 2010, Respondent Jose J. Martinez, Jr. is barred from associating with any FINRA member firm in any capacity.

Appearances

Howard Alan Grinsberg, Esq., New York, New York, for the Department of Enforcement.

No appearance by or for Respondent Jose J. Martinez, Jr.

DECISION

I. Background

Respondent Jose J. Martinez, Jr. was employed as the manager of a branch office of a bank affiliated with a FINRA member firm. An elderly customer left his bank debit card on Martinez's desk. Martinez took the card and used it to access the customer's accounts to pay for his personal expenses and to obtain cash. Martinez admitted his misconduct to a bank investigator. However, he did not respond to subsequent FINRA requests for information, documents and testimony.

The Department of Enforcement filed and served the attached two-cause Complaint upon Martinez on June 3, 2013. The first cause of action charges him with conversion of customer

funds in violation of FINRA Rule 2010. The second charges him with failure to comply with requests for information and testimony, in violation of Rules 8210 and 2010.

Martinez 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 Howard Alan Grinsberg, Esq. and 20 exhibits. Martinez did not respond to the Motion.

Martinez’s 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

Martinez registered with FINRA as an Investment Company Products/Variable Contracts Representative through Chase Investment Services Corp. (“Chase” or the “Firm”) in September 2008, when the Firm’s affiliate bank, JPMorgan Chase Bank (the “Bank”) hired him as a personal banker.³ Between March and August 2012 (the “relevant period”), Martinez was manager of a Bank branch office in Phoenix, Arizona.⁴

On September 14, 2012, the Firm’s successor, J.P. Morgan Securities LLC (“JP Morgan”), terminated Martinez for misappropriating customer funds.⁵ Martinez is no longer registered with FINRA. Pursuant to Article V, Section 4 of FINRA’s By-Laws, however,

¹ *Department 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), Enforcement’s Motion, the Declaration of Howard Allen Grinsberg, Esq. (“Grinsberg Decl.”), and Enforcement’s exhibits CX-1 through CX-20.

³ Grinsberg Decl. ¶ 4; CX-1, at 2.

⁴ Compl. ¶ 8.

⁵ Grinsberg Decl. ¶ 5; CX-2.

Martinez is subject to FINRA's jurisdiction for the purposes of this disciplinary proceeding because Enforcement filed the Complaint less than two years after the termination of his registration, and because the Complaint charges him with misconduct that occurred during his association with Chase and within two years of the termination of his registration with FINRA.⁶

B. Martinez Defaulted

Enforcement served the Complaint and Notice of Complaint on Martinez on May 13, 2013, by certified and first-class mail at the two addresses for Martinez known to Enforcement: his last residential address reflected in the Central Registration Depository ("CRD address") and another address the staff found by doing a computer search ("alternate address").⁷ Both mailings sent to Martinez's CRD address and the certified mailing sent to the alternate address were returned with markings indicating they were unclaimed. The Postal Service did not return the first-class mailing sent to the alternate address.⁸

Also on May 13, Enforcement discovered a typographical error in the Notice of Complaint. Enforcement corrected the error and sent another Complaint and Notice of Complaint to Martinez by certified and first-class mail to the same two addresses. Both mailings to the CRD address were returned with markings indicated delivery was attempted but unsuccessful. The certified mailing to the alternate address was returned with a similar marking indicating the Postal Service was unable to forward it. The first-class mailing to the alternate address was not returned.⁹

⁶ Compl. ¶ 5.

⁷ Grinsberg Decl. ¶ 15.

⁸ Grinsberg Decl. ¶¶ 23-25.

⁹ Grinsberg Decl. ¶¶ 26-28.

When Martinez did not file an Answer by the deadline, Enforcement served him with the Complaint and a Second Notice of Complaint by certified and first-class mail to both addresses. The mailings to the CRD address were returned to Enforcement with markings indicating delivery was unsuccessful and the Postal Service was unable to forward them. The certified mailing to the alternate address was returned with similar markings, but the first-class mailing to the alternate address was not returned.¹⁰ Martinez has not filed an Answer or responded to the Complaint.¹¹

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

C. Martinez Misappropriated Customer Funds

FINRA Rule 2010 imposes on all registered persons the responsibility to conform their conduct to "high standards of commercial honor and just and equitable principles of trade." Conversion, "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" is a violation of that responsibility.¹²

As stated above, during the relevant period, between March and August 2012, Martinez was manager of a Bank branch office in Phoenix, Arizona. When an elderly customer who used the Phoenix branch to do his banking left his debit card on Martinez's desk, Martinez took it. He

¹⁰ Grinsberg Decl. ¶¶ 29-32.

¹¹ Grinsberg Decl. ¶ 34.

¹² *FINRA Sanction Guidelines* 36 n.2 (2011).

then used the card to make cash withdrawals, pay personal bills and other expenses, causing unauthorized withdrawals of at least \$1,500.¹³

By these actions, Martinez wrongfully converted the customer's funds and violated FINRA Rule 2010.

D. Martinez Failed to Provide Information

FINRA Rule 8210 imposes upon persons associated with member firms the obligation to provide information upon being requested to do so by FINRA staff in the course of an investigation or examination.

To investigate the circumstances of Martinez's termination by JP Morgan, Enforcement sent a letter pursuant to Rule 8210 to Martinez on January 10, 2013, requesting him to provide a written statement in response to the allegation that he converted a Bank customer's funds. Enforcement sent the letter by certified and first-class mail to both of Martinez's addresses. All of the mailings were returned to Enforcement with markings indicating that the Postal Service had attempted to deliver them unsuccessfully and was unable to forward them. Martinez did not respond.¹⁴

On February 1, 2013, Enforcement repeated its effort, again sending a letter pursuant to Rule 8210 with the same request, directed to Martinez at the same addresses, by the same means. Both certified mailings and the first-class mailing sent to the CRD address were returned to Enforcement with markings indicating that the Postal Service was unable to deliver them to the addresses to which they were directed or forward them. The Postal Service did not return the

¹³ Compl. ¶¶ 11, 12; CX-3, at 3. The Bank investigation concluded that Martinez actually converted over \$7,000 from several of the customer's accounts and also withdrew funds from the customer's IRA. The Complaint, however, alleges conversion of only "at least \$1,500." Compl. ¶ 12.

¹⁴ Compl. ¶¶ 19-21.

first-class mailing to the alternate address. Martinez provided no response.¹⁵ His failure to do so violated FINRA Rules 8210 and 2010.

III. Sanctions

FINRA's Sanction Guidelines recommend a bar from the industry as a standard sanction for conversion of customer funds regardless of the amount converted.¹⁶ By its nature, conversion of customer assets "is extremely serious 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."¹⁷ It "poses so substantial a risk to investors ... as to render the violator unfit for employment in the securities industry."¹⁸ Here, Martinez, holding a responsible position as manager of a branch bank, took advantage of a forgetful elderly customer who left his debit card on Martinez's desk. These circumstances are egregious, and a bar is warranted.

Similarly, FINRA's Sanction Guidelines state that when an individual completely fails to respond to a Rule 8210, "a bar should be standard."¹⁹ The first of the Principal Considerations in Determining Sanctions enumerated in the Guidelines for Rule 8210 violations is the importance to FINRA of the information requested.²⁰ Here, FINRA sought information essential to pursue an investigation into the serious allegations relating to Martinez's termination by JP Morgan. Lacking subpoena power, FINRA must rely on Rule 8210 to fulfill its regulatory responsibility

¹⁵ Compl. ¶¶ 22-26.

¹⁶ *Guidelines* at 36.

¹⁷ *John Edward Mullins*, Exchange Act Rel. No. 66373, 2012 SEC LEXIS 464, at *42, 73 (Feb. 10, 2012) (quoting *Wheaton D. Blanchard*, 46 S.E.C. 365, 366 (1976)).

¹⁸ *Mullins*, 2012 SEC LEXIS 464, at *73 (quoting *Charles C. Fawcett IV*, Exchange Act Rel. No. 56770 (Nov. 8, 2007), 91 SEC Docket 3147, 3157 n.27.

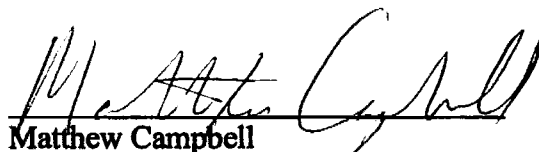
¹⁹ *Guidelines* at 33.

²⁰ *Id.* at 33.

to police the activities of members and associated persons.²¹ “The rule is at the heart of the self-regulatory system for the securities industry” and imposes an “unequivocal responsibility” to comply with information requests.²² Martinez’s complete failure to respond, an abdication of his obligation to cooperate with FINRA, was “fundamentally incompatible” with FINRA’s self-regulatory function. In the absence of any mitigating factors, the appropriate sanction is a bar.²³

IV. Order

For each violation, converting customer funds in violation of FINRA Rule 2010, and failing to respond in any manner to requests that he provide information in the course of an investigation in violation of FINRA Rules 8210 and 2010, Respondent Jose J. Martinez, Jr. is barred from associating with any FINRA member firm in any capacity. The bars will be effective immediately if this Default Decision becomes FINRA’s final disciplinary action in this proceeding.


Matthew Campbell
Hearing Officer

²¹ *CMG Institutional Trading, LLC*, Exchange Act Rel. No. 59325, 2009 SEC LEXIS 215, at *15 (Jan. 30, 2009).

²² *Howard Brett Berger*, Exchange Act Rel. No. 58950, 2008 SEC LEXIS 3141, at*13 (Nov. 14, 2008).

²³ *Joseph Ricupero*, Exchange Act Rel. No. 62891, 2010 SEC LEXIS 2988, at *21 (Sept. 10, 2010), *aff’d*, 436 F. App’x 21, (2d Cir. 2011) (citing *Paz Securities, Inc.*, Exchange Act Rel. No. 57656, 2008 SEC LEXIS 820, at *9 (April 11, 2008) (quoting *Charles C. Fawcett, IV*, Exchange Act Rel. 56770, 2007 SEC LEXIS 2598, at *21-22 (Nov. 8, 2007))). Because the Bank made the customer whole, Enforcement does not seek restitution. Grinsberg Decl. ¶ 13.

Copies to:

Jose J. Martinez, Jr. *(via overnight courier and first-class mail)*
Howard Alan Grinsberg, Esq. *(via electronic and first-class mail)*
Janice A. Payne, Esq. *(via electronic mail)*
Jeffrey D. Pariser, Esq. *(via electronic mail)*

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Department of Enforcement,

Complainant,

v.

Jose J. Martinez, Jr.
(CRD No. 5590432)

Respondent.

Disciplinary Proceeding
No. 2012034384101

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Between March 2012 and August 2012 (the "Relevant Period"), while dually employed as a registered personal banker at JPMorgan Chase ("Chase Bank") and Chase Investment Services Corp. (the "Firm"), Jose J. Martinez, Jr. ("Martinez" or "Respondent"), violated FINRA Rule 2010 by converting at least \$1,500 from Chase Bank customer GM.

2. Martinez also violated FINRA Rules 8210 and 2010 by failing to comply with requests to provide a written statement to FINRA.

RESPONDENT AND JURISDICTION

3. Martinez became registered with FINRA in September 2008, when he joined the Firm's affiliate bank, Chase Bank, as a personal banker. Martinez remained registered with the Firm until October 2, 2012.

4. On October 12, 2012, the Firm's successor, J.P. Morgan Securities LLC ("JP Morgan"), filed a Uniform Notice for Securities Industry Termination ("Form U5") reporting that Martinez had been terminated by Chase Bank on September 14, 2012, after admitting to "misappropriating \$1,500, through debits and ATM withdrawals, from a bank client's account for personal use."

5. Although Martinez 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 Martinez's registration with the Firm, namely October 12, 2012, and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member and with failing to respond to FINRA's requests for information 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
CONVERSION OF A 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, Martinez was manager of a Chase Bank branch office located in Phoenix, Arizona (the "Phoenix Branch Office").

9. GM maintained accounts at Chase Bank and conducted banking transactions at the Phoenix Branch Office.

10. During a visit to the Phoenix Branch Office, GM left his debit card, which had the personal identification number written on the back, on Martinez's desk.

11. Martinez did not return the debit card to GM. Instead, on multiple occasions during the Relevant Period, Martinez used GM's debit card to withdraw cash and pay for personal expenses.

12. Martinez's unauthorized debit card transactions totaled at least \$1,500.

13. Martinez used GM's debit card to withdraw the funds from GM's account without GM's or Chase Bank's knowledge or authorization.

14. On September 29 and October 1, 2012, Chase Bank reimbursed GM by posting credits to his account.

15. Martinez's conversion of at least \$1,500 from GM for his own use and benefit violated FINRA Rule 2010.

SECOND CAUSE OF ACTION
Failure to Provide Information
(FINRA Rules 8210 and 2010)

16. The Department realleges and incorporates by reference paragraphs 1 through 15 above.

17. 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."

18. On January 10, 2013, Enforcement sent Martinez a letter pursuant to FINRA Rule 8210, requesting that he provide a written statement to Enforcement no later than January 31, 2013, responding to allegations that he converted funds from Chase Bank customer GM.

19. Enforcement sent the letter by certified mail, return receipt requested and first class mail to [REDACTED] which was Martinez's last residential address as

reflected in the Central Registration Depository (the "CRD Address"). The letter was also sent to [REDACTED] which was a possible alternative address obtained from Lexis-Nexis (the "Alternate Address").

20. The letters sent to Martinez on January 10, 2013, by certified mail, return receipt requested and first class mail to the CRD Address and the Alternate Address were returned to Enforcement. All four envelopes were marked "RETURN TO SENDER-ATTEMPTED NOT KNOWN-UNABLE TO FORWARD."

21. Martinez did not respond to FINRA's January 10, 2013 request for information.

22. On February 1, 2013, Enforcement sent Martinez a letter pursuant to FINRA Rule 8210, requesting that he provide a written statement to Enforcement no later February 15, 2013, responding to allegations that he converted funds from Chase Bank customer GM.

23. Enforcement sent the February 1, 2013 letter by certified mail, return receipt requested and first class mail to the CRD Address and the Alternate Address. The letter advised Martinez that a failure on his part to comply with the request could expose him to sanctions, including a permanent bar from the securities industry.

24. The letters sent to Martinez on February 1, 2013, by certified mail, return receipt requested and first class mail to the CRD Address were returned to Enforcement. The certified mail envelope was marked "RETURN TO SENDER-NOT DELIVERABLE AS ADDRESSED-UNABLE TO FORWARD." The first class envelope was marked "RETURN TO SENDER-ATTEMPTED NOT KNOWN-UNABLE TO FORWARD."

25. The letter sent to Martinez on February 1, 2013, by certified mail, return receipt requested at the Alternate Address was returned to Enforcement. The envelope was marked "RETURN TO SENDER-UNDELIVERABLE AS ADDRESSED." The February 1, 2013 letter sent by first class mail to Martinez at the Alternate Address was not returned to Enforcement.

26. Martinez did not respond to FINRA's February 1, 2013 information request.

27. Martinez's failures to provide written responses constitute a violation of 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;
- C. 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: May 3, 2013



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