

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2012034386401**

TO: Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

RE: Denise Ellen Roy Malin
~~Registered Representative~~
CRD No. 3145027

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, Denise Ellen Roy Malin ("Malin"), submit this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against me alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. I hereby accept and consent, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

BACKGROUND

On October 10, 1998, Malin joined PFS Investments, Inc. ("PFS" or the "Firm"), a FINRA regulated broker-dealer, and became registered as a Series 63, 6 and 26 licensed representative on February 12, 1999, March 30, 1999, and February 14, 2003, respectively.

Malin's employment was terminated by PFS on October 8, 2012 after a customer alleged that Malin misappropriated funds from the customer's investment accounts. In a Uniform Termination Notice for Securities Industry Registration ("Form U5") dated October 11, 2012, the Firm reported that an internal review was initiated on October 2, 2012 and that Malin was permitted to resign because the Firm "obtained information indicating that the agent may have misappropriated funds from a client's investment account(s)."

Malin has not been associated with a FINRA registered broker-dealer since October 8, 2012. However, pursuant to Article V, Section 4 of FINRA's By-Laws, Malin remains subject to FINRA's jurisdiction until October 7, 2014.

RELEVANT DISCIPLINARY HISTORY

Malin has no prior disciplinary history in the securities industry.

OVERVIEW

Between November 2002 and October 2005, Malin converted approximately \$81,633 from customer VR's mutual fund account and three variable annuities. Malin converted the funds by signing her name on 18 annuity surrender request forms and at least 15 checks, then cashing or depositing these checks in an account over which she had control, and using the funds for her own use and benefit.

FACTS AND VIOLATIVE CONDUCT

Conversion

NASD Rule 2110 states that "[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade." Conversion is "any unauthorized act which deprives an owner of his property permanently or for an indefinite time" or the "unauthorized and wrongful exercise of dominion and control over another's personal property, to exclusion of or inconsistent with rights of the owner."¹

On or about August 29, 2002, customer VR opened three variable annuity accounts and a mutual fund brokerage account with Malin and the Firm. After opening the accounts, VR invested \$16,600 into a mutual fund account and \$65,000 in three variable annuities (\$50,000 in Variable Annuity A, \$10,000 in Variable Annuity B, and \$5,000 in Variable Annuity C). At the time the accounts were opened, Malin had a power of attorney to manage VR's estate and affairs for VR's benefit.

On or about November 11, 2002, Malin began withdrawing funds from VR's brokerage account without VR's authorization. Between November 11, 2002 and October 21, 2005, Malin requested nine withdrawals from VR's brokerage account by logging into the account through the Firm's electronic account system. The nine withdrawals from VR's brokerage account totaled approximately \$16,660. Malin only gave VR \$5,000 of the \$16,660 that she withdrew from VR's brokerage account. Malin converted the remaining \$11,660 for her own

¹ Black's Law Dictionary (5th ed. 1979).

personal use and benefit.

On or about January 24, 2003, Malin also began signing VR's name on annuity surrender request forms and the respective checks issued pursuant to those forms. Between January 24, 2003 and January 22, 2004, Malin signed VR's name on 18 annuity surrender request forms and at least 15 additional checks that Malin received once the surrender forms were processed. There were nine checks issued from Variable Annuity A, four checks issued from Variable Annuity B, and two checks issued from Variable Annuity C. Thereafter, Malin cashed these checks or deposited them into an account over which she had control, and then used the funds for her own benefit, not for VR's benefit.

Malin converted approximately \$69,973 from VR's variable annuities. Specifically, between January 27, 2003 and January 22, 2004, Malin converted approximately \$53,820 from VR's Variable Annuity A. Between April 11, 2003 and January 22, 2004, Malin converted approximately \$11,278 from VR's Variable Annuity B. Between April 24, 2003 and January 22, 2004, Malin converted approximately \$4,875 from VR's Variable Annuity C.

In total, Malin converted approximately \$81,633 from VR's mutual fund brokerage account and her three variable annuities. By virtue of her aforementioned conduct, Malin violated NASD Rule 2110.

B. I consent to the imposition of the following sanction:

A bar from association with any FINRA member in any capacity.

I understand that if I am barred or suspended from associating with any FINRA member, I become subject to a statutory disqualification as that term is defined in Article III, Section 4 of FINRA's By-Laws, incorporating Section 3(a)(39) of the Securities Exchange Act of 1934. Accordingly, I may not be associated with any FINRA member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension (see FINRA Rules 8310 and 8311).

Pursuant to FINRA Rule 8313(e), a bar shall become effective upon approval or acceptance of this AWC.

II.

WAIVER OF PROCEDURAL RIGHTS

I specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

A. To have a Complaint issued specifying the allegations against me;

- B. To be notified of the Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the National Adjudicatory Council ("NAC") and ~~then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.~~

Further, I specifically and voluntarily waive any right to claim bias or prejudgment of the General Counsel, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

I further specifically and voluntarily waive any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

III.

OTHER MATTERS

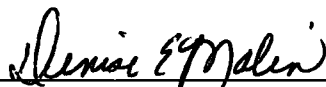
I understand that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against me; and
- C. If accepted:
 - 1. this AWC will become part of my permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against me;

2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about my disciplinary record;
3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
4. I may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, ~~any finding in this AWC or create the impression that the AWC~~ is without factual basis. I may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects my: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I have agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce me to submit it.

10-27-2013
Date


Denise Ellen Roy Malin, Respondent

Accepted by FINRA:

11-12-13
Date

Signed on behalf of the
Director of ODA, by delegated authority


Richard Chin
Chief Counsel
FINRA Department of Enforcement
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New York, New York 10281