

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,	DISCIPLINARY PROCEEDING
Complainant,	No. 2012034568401
v.	
Gabriel N. Smith, (CRD No. 2950071),	
Respondent.	

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. While associated with MML Investors Services, LLC, Gabriel N. Smith solicited and accepted funds from a firm customer to invest in municipal securities. Instead of investing the funds, Smith deposited the checks into a bank account under his control and converted the funds to his personal use without the customer's knowledge or permission, in violation of FINRA Rules 2150(a) and 2010. Smith also failed to respond to requests for documents and information, in violation of FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

2. Smith entered the securities industry on April 22, 1998, as an Investment Company and Variable Contracts Products Representative of a FINRA member firm. He was

registered in that capacity from March 23, 2010 through October 19, 2012, through an association with FINRA member MML Investors Services, LLC.

3. Although Smith is not currently 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 Smith's registration with MML Investors Services, LLC, namely, October 25, 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 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
Violation of FINRA Rules 2150(a) and 2010
Conversion of Funds**

4. The Department realleges and incorporates by reference paragraphs 2 and 3 above.
5. On or about June 9, 2011, while associated with MML Investors Services, LLC, Smith presented TS, a customer of MML Investors Services, LLC, but not a brokerage client of Smith, with an opportunity to invest in a short-term municipal bond that would guarantee a 15% return.
6. Based on Smith's representations, TS gave Smith a personal check made payable to "Gabriel Smith" in the amount of \$20,000.
7. The check was endorsed by "Gabriel N. Smith."

8. On or about September 22, 2011, Smith contacted TS and offered to extend the life of TS's initial municipal bond investment, and add a bonus to any subsequent investments, in addition to the 15% interest.
9. Based on Smith's representations, TS gave Smith another personal check made payable to "Gabriel Smith" in the amount of \$30,000.
10. The check was endorsed by "Gabriel N. Smith."
11. On or about December 1, 2011 and January 24, 2012, TS gave Smith two more personal checks, each made payable to "Gabriel Smith", in the amounts of \$100,000 and \$50,000, respectively.
12. The \$50,000 check was endorsed by "Gabriel N. Smith."
13. The amount of these checks totaled \$200,000.
14. On or about October 22, 2012, Smith gave TS a personal check in the amount of \$282,273.51, with a memo written notation "Payment for Return of Money."
15. Smith's check was returned by the bank with the notation "Return Reason – D - Closed Account."
16. Instead of investing the funds, Smith deposited the aforementioned checks into a bank account under his control and thereby converted the funds to his personal use without the customer's knowledge.
17. To date, Smith has failed to repay TS any of the funds and TS has not received any return on his investments.
18. As a result of the foregoing conduct, Respondent Smith violated FINRA Rules 2150(a) and 2010.

SECOND CAUSE OF ACTION
Violation of FINRA Rules 8210 and 2010
Failure to Respond

19. The Department realleges and incorporates by reference paragraphs 2 through 18 above.

20. On November 19, 2012, Smith provided an initial response to FINRA's Preliminary Investigation Unit ("PIU") which was inquiring about matters contained on Smith's Uniform Termination Notice for Securities Industry Registration Form U5. Thereafter, PIU referred the matter to the District 5 staff for further investigation.

First Request for Information

21. On or about April 18, 2013, FINRA staff sent Smith a letter (the "First Request"), pursuant to and in accordance with the provisions of FINRA Rule 8210, requesting among other things, information and documentation concerning allegations that while registered with MML Investors Services, LLC, Smith received \$200,000 from TS, failed to invest the funds and to return or to repay the funds to TS.

22. The First Request was sent via first class and certified mail to Smith's Hendersonville, Tennessee address as reflected in the records of the Central Registration Depository (the "CRD address") and to Smith at a more current address that he had earlier provided to the staff (the "Nashville, Tennessee address"). The letters sent by first class mail to both addresses and the letter sent certified mail to Smith at the Nashville, Tennessee address were not returned; and the certified letter sent to the CRD address was returned marked "Returned to Sender – Unclaimed." Smith did not respond to the First Request.

Second Request for Information

23. On May 14, 2013, FINRA staff sent another letter to Smith, pursuant to FINRA Rule 8210, requesting that Smith provide the same information requested in the April 18th Letter (the “Second Request”).
24. The Second Request was sent via first class and certified mail to Smith’s CRD address and to Smith at the Nashville, Tennessee address. The letters sent by first class mail were not returned; the certified letter sent to the CRD address was returned marked “Returned to Sender – Unclaimed” and the certified letter sent to the Nashville, Tennessee address was returned with a label marked “Unclaimed.” Smith did not respond to the Second Request.

Third Request for Information

25. On June 5, 2013, FINRA staff sent another letter to Smith, pursuant to FINRA Rule 8210, requesting that Smith provide the same information requested in the April 18th and May 14th Letters (the “Third Request”).
26. The Third Request was sent via first class and certified mail to Smith’s CRD address and to Smith at the Nashville, Tennessee address. The letters sent by first class mail were not returned; the certified letter sent to the CRD address was returned marked “Returned to Sender – Unclaimed” and the letter sent to the Nashville, Tennessee address was returned with a label marked “Unclaimed.” Smith did not respond to the Third Request.
27. By failing to respond to FINRA staff request letters for documents and information, Smith violated 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 Smith committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed, including that Respondent Smith be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest; and
- C. order that Respondent Smith 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: December 10, 2013



Andrew A. Favret
Senior Regional Counsel
Mark J. Fernandez
Senior Regional Counsel
FINRA Department of Enforcement
Energy Centre
1100 Poydras Street, Suite 850
New Orleans, LA 70163-1108
Phone: 504-522-6527
Fax: 504-581-3699
E-mail: andrew.favret@finra.org

David B. Klafter, Esq.
Regional Chief Counsel
Authorized House Counsel
Member of NY and NJ Bars Only
FINRA -- Department of Enforcement
Crystal Corporate Center
2500 N. Military Trail, Suite 302
Boca Raton, FL 33431-6324
(561) 443-8110; (561) 443-7998 (fax)

E-mail: david.klafter@finra.org