

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ROBERT DURANT TUCKER (CRD No.
1725356)

Respondent.

DISCIPLINARY PROCEEDING
No. 2012034923001

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. On or about May 18, 2012, while registered with FINRA through an association with ICM Capital Markets Ltd. (n/k/a Lampert Capital Markets Inc.) ("ICM"), Respondent Robert Durant Tucker ("Tucker") received \$33,400.00 from one of his ICM customers, DY, for a purported investment that was associated with a celebrity chef and entrepreneur. In connection with the sale of this security, Tucker intentionally omitted to disclose material information and intentionally misrepresented the nature of the investment in violation of Section 10(b) of the Securities Exchange Act of 1934, SEC Rule 10b-5, and FINRA Rules 2020 and 2010.
2. Tucker did not invest DY's \$33,400.00 in a security for a start-up business related to a celebrity chef and entrepreneur. Instead, on or about May 22, 2012, Tucker caused DY's \$33,400.00 to be deposited in the checking account of a pizzeria in which he has an

ownership interest. Tucker then used DY's funds for his own benefit and the benefit of his pizzeria without the consent or knowledge of DY. Accordingly, Tucker misused and converted DY's \$33,400.00 in violation of FINRA Rules 2150(a) and 2010.

3. Tucker participated in a private securities transaction from which he received selling compensation away from ICM. Tucker did not provide written notice to, or obtain approval from, ICM before participating in DY's \$33,400.00 investment in violation of NASD Conduct Rule 3040 and FINRA Rule 2010.

RESPONDENT AND JURISDICTION

4. In October 1991, Tucker first became registered with a member firm as a corporate securities representative.
5. Tucker has been registered with over twenty-five member firms. Between January 13, 2010 and November 29, 2012, Tucker was registered with ICM as a corporate securities representative.
6. On March 18, 2013, Tucker's last employer firm filed with FINRA a Termination Notice for Securities Industry Registration (Form U5). Tucker was registered with that firm between December 5, 2012 and March 18, 2013 as a corporate securities representative.
7. Although Tucker 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 his registration with his last employer firm and (2) the Complaint charges Tucker with misconduct committed while he was registered or associated with a FINRA member.

FIRST CAUSE OF ACTION
(MISREPRESENTATIONS AND MATERIAL OMISSIONS OF FACT)
(SECTION 10(B) OF THE SECURITIES EXCHANGE ACT OF 1934,
SEC RULE 10B-5 THEREUNDER, AND FINRA RULES 2020 AND 2010)

8. The Department realleges and incorporates by reference paragraphs 1 through 7.
9. DY resides and works in North Carolina. He is the owner of a local car repair and maintenance body shop.
10. On or about July 26, 2010, DY opened a brokerage account with ICM. Tucker was the registered representative assigned to DY's brokerage account.
11. On November 18, 2011, Tucker submitted and executed an Outside Business Activities form, in which he disclosed to ICM that he is the President of Lenox Pizzeria LLC ("Lenox").
12. Lenox is a domestic limited liability company formed under the laws of New York State. Lenox operates a pizza parlor in New York, New York.
13. Tucker has a 1/3 ownership interest in Lenox. Tucker has two partners who evenly own the remaining 2/3 of Lenox.
14. On or about October 7, 2011, Tucker and his two partners each individually signed a 10-year lease agreement as tenants for the premises where Lenox operates a pizza parlor.
15. Under the terms of the agreement, Tucker and his partners agreed to pay \$5,500 per month for rent during the period October 7, 2011 through October 6, 2012. The lease agreement contains a schedule reflecting annual rent increases for the 10-year term of the lease.
16. Lenox maintains a business checking account with Bank A.

17. At all relevant times, Tucker had access and was a signatory to Lenox's account with Bank A. He used a debit card associated with Lenox's account with Bank A to, among other things, withdraw cash.
18. Lenox deposited its revenue in its account with Bank A. Between January 1, 2012 and May 1, 2012, there was one deposit for \$702.00 made in Lenox's account with Bank A.
19. Lenox's Bank A account had a *negative* balance of \$84.33 on May 1, 2012.
20. In May 2012, Tucker and his partners owed \$27,000 to Lenox's landlord for five months of back rent.
21. In sum, Tucker needed money to fund his pizza parlor.
22. On or about May 18, 2012, in order to procure money for Lenox, Tucker fraudulently obtained \$33,400.00 from customer DY. That day, Tucker recommended that DY invest \$33,400.00 in a security issued by an entity involved with opening a new restaurant sponsored by a specific, well-known celebrity chef and entrepreneur. However, no such investment opportunity existed.
23. On May 18, 2012, in connection with the sale of the non-existent security, Tucker misrepresented the following material facts to DY in a phone call: (a) a specific, well-known celebrity chef and entrepreneur was raising capital for a new restaurant in Atlantic City, New Jersey; (b) the investment in the restaurant would pay interest ranging between 8% and 11% annually; and (c) the maturity date of the investment was two years.
24. In connection with the sale of the non-existent security, Tucker omitted to disclose the following material facts to DY: (a) some or all of DY's \$33,400.00 would be used by Tucker for the operations of Lenox; (b) some or all of DY's \$33,400.00 would be used by Tucker for

his personal benefit; (c) Tucker had a 33% ownership stake in Lenox; (d) DY's \$33,400.00 would be deposited into a checking account that held Tucker's personal money and was under Tucker's control; and (e) Lenox was experiencing financial difficulties and its bank account had a negative balance in May 2012.

25. Based on Tucker's misrepresentations, on or about May 18, 2012, DY agreed to invest \$33,400.00 in a security for a new venture sponsored by the celebrity chef.
26. To execute the investment, on or about May 18, 2012, Tucker caused a document to be typed containing wire instructions that authorized ICM's clearing firm to transfer \$33,400.00 from DY's brokerage account to Lenox's account with Bank A, but the document made no reference to "Lenox" as the owner of the receiving account. Tucker faxed the wire instructions to DY's body shop in North Carolina. DY signed the document and faxed it back to Tucker. These instructions were not executed by ICM's clearing firm because it would not execute third party wires.
27. Consequently, Tucker instructed DY to revise the wire instructions to have ICM's clearing firm transfer \$33,400.00 from DY's ICM brokerage account to DY's personal bank account held at Bank B. Following Tucker's instructions, DY prepared and signed the revised instructions and faxed them to Tucker on May 18, 2012. That same day, Tucker emailed DY's revised wire instructions to ICM's clearing firm for execution.
28. On May 22, 2012, ICM's clearing firm executed the revised instructions. That same day, DY authorized Bank B to wire \$33,400.00 from his account to Lenox's account with Bank A. The wire transfer receipt for this transaction identified "Lenox Pizzeria" as the "beneficiary name" of the Bank A account.

29. On May 22, 2012, Tucker verbally communicated with DY and his bank concerning the status of the wire transfer. Tucker verbally misrepresented to DY that “Lenox Pizzeria” was the name of the account for the investment sponsored by the celebrity chef.
30. On May 22, 2012, the \$33,400.00 wire transfer from DY’s bank account was deposited in the Lenox account with Bank A. That same day, Tucker withdrew \$27,000 from the Bank A account to pay back rent owed to Lenox’s landlord, and he made additional withdrawals from, and debit purchases against, the account over the next several days for his benefit and the benefit of Lenox as further detailed below.
31. DY has not received any interest payments from his \$33,400.00 investment to date.
32. In connection with the sale of the purported security, Tucker intentionally, or at a minimum recklessly, by the use of means of interstate commerce or the mails, including the aforementioned telephone conversations, facsimiles, and wire transfers, made the aforementioned untrue statements of material fact and omitted to state the aforementioned material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.
33. By reason of the foregoing, Tucker willfully violated Section 10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b-5 thereunder, and also violated FINRA Rules 2020 and 2010.

SECOND CAUSE OF ACTION
(CONVERSION)
(FINRA RULES 2150(A) AND 2010)

34. The Department realleges and incorporates by reference paragraphs 1 through 33.

35. On or about May 22, 2012, Tucker took possession and control of DY's \$33,400.00 through false pretenses.
36. Tucker had unfettered access to funds in Lenox's account with Bank A.
37. On May 1, 2012, Lenox's account with Bank A had a *negative* balance of \$84.33.
38. The \$33,400.00 wire transfer from DY executed on May 22, 2012 was the only deposit recorded in Lenox's account with Bank A between May 22, 2012 and July 12, 2012.
39. By July 31, 2012, Tucker had used DY's entire \$33,400.00 as the ending balance of Lenox's July 2012 bank account statement was *negative* \$154.35. Specifically:
- a. During the last week of May 2012, Tucker used \$29,099.40 of DY's \$33,400.00, including (a) \$27,000 to pay back rent owed to Lenox's landlord, (b) \$200.00 via ATM withdrawal on May 22, 2012, (c) \$340.00 via ATM withdrawal on May 23, 2012, (d) \$101.75 via ATM withdrawal on May 23, 2012, (e) \$60.00 via ATM withdrawal on May 23, 2012, (f) \$200.00 via ATM withdrawal on May 24, 2012, (g) \$201.75 via ATM withdrawal on May 29, 2012, and (h) \$80.00 via ATM withdrawal on May 29, 2012.
 - b. The beginning balance of Lenox's account with Bank A on June 1, 2012 was \$4,096.27. No deposits were made in Lenox's bank account for the month of June 2012. Tucker made additional withdrawals and debit purchases totaling \$3,054.51 from the account including a "debit card purchase" for \$12.50 payable to FINRA. The ending balance on June 30, 2012 was \$1,081.76.

- c. Between July 1, 2012 and July 12, 2012, *no* deposits were made in Lenox's account with Bank A and Tucker withdrew and charged an additional \$705.15 to the account. The account balance was \$376.61 on July 12, 2012.
- d. On July 13, 2012, a deposit of \$836.14 was recorded to Lenox's account with Bank A. The account balance was \$993.17 on July 13, 2012. After several subsequent debit card purchases charged against the account between July 13, 2012 and July 31, 2012, the ending balance for July 2012 was *negative* \$154.35.
40. DY did not authorize, or give consent to, Tucker to use his funds for Tucker's personal or business expenses. Indeed, Tucker spent DY's funds for those purposes, without DY's knowledge.
41. By intentionally using funds that did not belong to him for personal and business purposes, without DY's authorization, Tucker converted DY's funds.
42. Tucker has not returned any of the \$33,400.00 to DY despite demand by DY for the return of his money.
43. By reason of the foregoing, Tucker violated FINRA Rules 2150(a) and 2010.

THIRD CAUSE OF ACTION
(IMPROPER USE OF CUSTOMER FUNDS)
(FINRA RULES 2150(A) AND 2010)

44. The Department realleges and incorporates by reference paragraphs 1 through 43.
45. By using DY's funds for business and personal purposes, without DY's authorization, Tucker improperly used DY's funds.
46. As a result of the foregoing, Tucker violated FINRA Rules 2150(a) and 2010.

FOURTH CAUSE OF ACTION
(SELLING AWAY (PRIVATE SECURITIES TRANSACTION))
(NASD CONDUCT RULE 3040 AND FINRA RULE 2010)

47. The Department realleges and incorporates by reference paragraphs 1 through 46.
48. Tucker, acting outside the course and scope of his employment with his employing member firm ICM, participated in the aforementioned private securities transaction involving DY.
49. Prior to participating in the transaction, Tucker did not provide written notice to ICM about the transaction, his proposed role in it, or the selling compensation that he may receive from it.
50. Under NASD Conduct Rule 3040(c), Tucker was required to obtain written permission from ICM prior to participating in the transaction.
51. Because ICM was unaware of the transaction, it could not, and therefore did not, provide approval to Tucker to participate in it.
52. By reason of the foregoing, Tucker violated NASD Conduct Rule 3040 and FINRA Rule 2010.

RELIEF REQUESTED

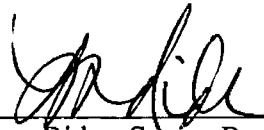
WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Tucker 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 Tucker be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest;

- C. order that Tucker bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330; and
- D. make specific findings that Tucker willfully violated Section 10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b-5 thereunder.

FINRA DEPARTMENT OF ENFORCEMENT

Date: June 21, 2013



Lynn Rider, Senior Regional Counsel
David Jaffe, AVP & Regional Chief Counsel
FINRA, Enforcement
District 10
One World Financial Center
200 Liberty Street
New York, New York 10281
Phone: (646) 315-7403; Fax: (202) 721-8394
lynn.rider@finra.org