

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

William Charlton Mays
(CRD No. 2693626),

Respondent.

DISCIPLINARY PROCEEDING
No. 2013036238801

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. During the period of January 2011 to November 2011 (the “Relevant Period”), while registered with SWS Financial Services Inc. (“SWS Financial Services” or the “Firm”), William Charlton Mays (“Respondent”) converted and misused at least \$30,968 of a Firm customer’s funds, in violation of FINRA Rules 2150(a) and 2010.

2. During the Relevant Period, Respondent also engaged in an outside business activity—Mays Financial Group, LLC (“Mays Financial Group”)—that he did not disclose to the Firm, in violation of FINRA Rules 3270 and 2010.

3. During March to September 2007, while he was associated with LPL Financial Corporation (“LPL Financial”), Respondent willfully failed to amend his Uniform Application for Securities Industry Registration (“Form U-4”) to timely disclose an unsatisfied federal tax

lien, in violation of Article V, Section 2(c) of the NASD By-Laws (until July 29, 2007) and the FINRA By-Laws (after July 29, 2007), NASD Rule 2110, and NASD IM-1000-1.

4. Furthermore, in connection with FINRA's investigation into the foregoing misconduct, Respondent failed to provide documents and information requested pursuant to FINRA Rule 8210 on two occasions, in violation of FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

5. Respondent entered the securities industry in November 1995 and became a general securities registered representative in August 1996. During the period of November 1995 to November 2011, he was associated and registered with nine different FINRA-regulated firms, including LPL Financial and SWS Financial Services. Respondent was associated and registered with LPL Financial from September 2004 to April 2009. Most recently, he was associated and registered with SWS Financial Services from January 2011 to November 2011.

6. On November 1, 2011, SWS Financial Services filed a Form U-5 ("Uniform Termination Notice for Securities Industry Registration") for Respondent, disclosing that he voluntarily terminated his employment with the Firm on the previous day. Respondent has not been associated or registered with any FINRA-regulated firm since November 1, 2011.

7. Although Respondent 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 Respondent's registration with the Firm, namely, November 1, 2011, 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
Conversion and Misuse of Customer Funds
(FINRA Rules 2150(a) and 2010)

8. Enforcement realleges and incorporates by reference paragraphs 1 to 7 above.

9. JH was a customer of the Firm during the Relevant Period. While Respondent was associated and registered with the Firm, he served as JH's broker for his Firm account.

10. In or about August 2011, Respondent solicited JH to invest \$50,000 for a period of one year. Respondent told JH that his money would be invested in stocks and commodities. Respondent also told JH that, after one year, JH would be able to have his principal returned to him or to obtain a partnership interest in the investment program.

11. On September 5, 2011, JH presented Respondent with a check for \$50,000 drawn against JH's bank account, to be invested in stocks and commodities as Respondent had represented. At Respondent's instruction, JH had made the check payable directly to Respondent.

12. Respondent deposited JH's check into a bank account (the "Bank Account") for Mays Financial Group, a business that Respondent controlled, on September 6, 2011.

13. At the close of business on September 5, 2011, the Bank Account had a balance of only \$401.42. Other than the check from JH, Respondent only deposited \$1,730 into the Bank Account from September 5, 2011 to October 7, 2011.

14. On September 15, 2011 and September 30, 2011, Respondent wrote two checks, each in the amount of \$550, drawn against the Bank Account to his ex-wife purportedly for child support. These checks were debited from the Bank Account on September 19, 2011 and October 5, 2011, respectively.

15. Furthermore, on October 6, 2011, Respondent wrote a check drawn against the Bank Account for \$32,000 to his father purportedly for a “loan repayment.” The check was debited from the Bank Account on October 7, 2011.

16. During September and October 2011, Respondent gave his own family members \$33,100 from the Bank Account. Approximately \$2,131.42 can be attributed to funds deposited into the account from sources other than JH. The remainder of the \$33,100 came from the funds invested by JH. As such, Respondent gave at least \$30,968.58 of JH’s money to his own family members.

17. When JH gave Respondent the check, he believed that his money would be used to invest in stocks and commodities. He did not authorize Respondent to give any of his funds to Respondent’s family members.

18. In or about October 2011, JH requested that Respondent return his investment. After Respondent initially told JH that he would not be able to return his money, he repaid JH approximately \$40,000. Respondent has not returned the rest of JH’s funds.

19. FINRA Rule 2150(a) states that “[n]o member or person associated with a member shall make improper use of a customer’s securities or funds.” An associated person improperly uses funds where he or she fails to apply the funds or uses the funds for some purpose other than as directed by the customer. Improper use of customer funds rises to the level

of conversion when the associated person intends permanently to deprive the customer of the use of his funds. Conversion and misuse of customer funds also violates FINRA Rule 2010, which requires members and associated persons to “observe high standards of commercial honor and just and equitable principles of trade” in conducting their business.

20. By reason of the foregoing, Respondent converted and misused at least \$30,968 in customer funds by providing funds to his ex-wife and his father without customer JH’s authorization.

21. The acts, practices, and conduct described above constitute separate and distinct violations of FINRA Rules 2150(a) and 2010.

SECOND CAUSE OF ACTION

Failure to Disclose an Outside Business Activity to His Firm (FINRA Rules 3270 and 2010)

22. Enforcement realleges and incorporates by reference paragraphs 1 to 21 above.

23. Respondent engaged in an unapproved outside business activity, involving Mays Financial Group, while he was associated with the Firm.

24. Respondent filed Articles of Organization, forming Mays Financial Group as a limited liability company under the laws of Texas, on September 13, 2004. According to the Articles, Respondent was the entity’s registered agent and sole member. He also served as the president and a director of Mays Financial Group while he was associated with the Firm.

25. Respondent maintained an active bank account for Mays Financial Group during the period of January 2011 to November 2011. During this time, payments were made from the Bank Account and deposits were received into the Bank Account, including two checks from

investors made payable to Mays or Mays Financial Group. Respondent also wrote checks from the Bank Account during this period.

26. Respondent never disclosed to the Firm his outside business activities with Mays Financial Group.

27. FINRA Rule 3270 provides that “[n]o registered person may be an employee, independent contractor, sole proprietor, officer, director or partner of another person, or be compensated, or have the reasonable expectation of compensation, from any other person as a result of any business activity outside the scope of the relationship with his or her member firm, unless he or she has provided prior written notice to the member, in such form as specified by the member.” A violation of FINRA Rule 3270 is also a violation of FINRA Rule 2010.

28. By reason of the foregoing, Respondent participated in an outside business activity during the Relevant Period without providing prior written notice of such activity to the Firm, in violation of FINRA Rules 3270 and 2010.

THIRD CAUSE OF ACTION

Willful Failure to Timely Amend Form U-4 to Disclose an Unsatisfied Federal Tax Lien (Article V, Section 2(c) of the NASD By-Laws until July 29, 2007 and the FINRA By-Laws after July 29, 2007, NASD Rule 2110, and NASD IM-1000-1)

29. Enforcement realleges and incorporates by reference paragraphs 1 to 28 above.

30. On September 13, 2004, Respondent signed a Relicensing Form U-4, which LPL Financial filed on September 20, 2004. He answered “No” to Question 14M on this Form U-4, which asked whether he had any unsatisfied judgments or liens against him.

31. Thereafter, on March 26, 2007, the Internal Revenue Service filed a Notice of Federal Tax Lien in the amount of approximately \$67,032.57 against Respondent and his ex-

wife. Respondent became aware of the lien approximately 10 days after the lien was filed. He was employed by LPL Financial and registered with FINRA when the lien was filed and when he received notice of the lien. Respondent did not satisfy the lien until September 2007.

32. Article V, Section 2(c) of the NASD By-Laws, which was in effect until July 29, 2007, required that “[e]very application for registration filed with the NASD shall be kept current at all times by supplementary amendments” and that “[s]uch amendment to the application shall be filed with the NASD not later than 30 days after learning of the facts or circumstances giving rise to the amendment.” On July 30, 2007, Article V, Section 2(c) of the NASD By-Laws was superseded by Article V, Section 2(c) of the FINRA By-Laws, which imposes identical obligations on the registered representative.

33. The “General Instructions” for the Form U-4 state that individuals are “under a continuing obligation to amend and update information required by Form U-4 as changes occur.”

34. Respondent was required to amend his Form U-4 to disclose the unsatisfied lien within 30 days after he learned of the lien. Accordingly, he was required to amend his Form U-4 by approximately May 4, 2007.

35. Respondent did not disclose the lien to LPL Financial until approximately September 11, 2007 and did not amend his Form U-4 to disclose the lien until September 19, 2007, which was almost six months after he received notice that the lien was filed and almost five months late.

36. The existence of an unsatisfied lien is a material fact. Given that Respondent was aware of the lien, his failure to disclose the lien was a willful failure to disclose material information on his Form U-4.

37. NASD IM-1000-1, which was in effect during throughout 2007, stated “[t]he filing with the [NASD] of information with respect to membership or registration as a Registered Representative which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or the failure to correct such filing after notice thereof, may be deemed to be conduct inconsistent with just and equitable principles of trade and when discovered may be sufficient cause for appropriate disciplinary action.”

38. Conduct that was violative of the NASD By-Laws, FINRA By-Laws, or NASD IM-1000-1 prior to December 15, 2008 was conduct that was inconsistent with just and equitable principles of trade and violative of NASD Rule 2110.¹

39. By reason of the foregoing, Respondent willfully failed to amend his Form U-4 to timely disclose the foregoing lien, in violation of Article V, Section 2(c) of the NASD By-Laws (until July 29, 2007) and the FINRA By-Laws (after July 29, 2007), NASD Rule 2110, and NASD IM-1000-1.

FOURTH CAUSE OF ACTION

Failure to Comply with Two Requests for Documents and Information in connection with a FINRA Investigation (FINRA Rules 8210 and 2010)

40. Enforcement realleges and incorporates by reference paragraphs 1 to 39 above.

41. On May 7, 2013, Enforcement sent a letter (the “May 7th Letter”) to Respondent, requesting pursuant to FINRA Rule 8210 that he provide certain information and documents in connection with its investigation by May 21, 2013.

¹ On December 15, 2008, NASD Rule 2110 was superseded by FINRA Rule 2010, which imposes identical obligations on associated persons.

42. The May 7th Letter advised Respondent that his failure to provide the requested information and documents could subject him to sanctions, which could include a bar from the securities industry.

43. Enforcement sent the May 7th Letter by certified first-class mail, return receipt requested, and regular first-class mail to Respondent's last known residential address as reflected in the Central Registration Depository (the "CRD Address") and to his last known Firm branch office address as reflected in the CRD (the "Business Address"), which also is identified as a business address for Mays Financial Group on documents associated with that entity.

44. The U.S. Postal Service (the "USPS") returned to Enforcement the return receipt card for the May 7th Letter sent to Respondent's Business Address by certified mail. The return receipt card was signed by someone other than Respondent and was dated May 13, 2013.

45. The USPS returned to Enforcement the copy of the May 7th Letter sent to the CRD Address by certified mail, with a label affixed to the front of the envelope identifying an address in Fort Worth, Texas as Respondent's current address (the "Current Address"). In addition, the USPS returned the copy of the May 7th Letter sent to the Business Address by regular first-class mail, with a label affixed to the front of the envelope identifying Respondent's Current Address.

46. The copy of the May 7th Letter sent to Respondent's CRD Address by first-class mail was not returned to Enforcement.

47. On May 15, 2013, Respondent called Enforcement and made an oral request for an extension to respond to the May 7th Letter. Enforcement staff granted Respondent a 10-day extension until May 31, 2013, which he accepted.

48. Respondent did not respond to the May 7th Letter by May 31, 2013.

49. On June 4, 2013, Enforcement sent a second letter (the “June 4th Letter”) to Respondent, advising him that Enforcement had not received his response to the May 7th Letter.

50. In the June 4th Letter, Enforcement asked Respondent pursuant to FINRA Rule 8210 to provide the information and documents requested in the May 7th letter by June 14, 2013. The letter further advised Respondent that his failure to provide the requested information and documents could subject him to sanctions, which could include a bar from the securities industry.

51. Enforcement sent the June 4th Letter by certified first-class mail, return receipt requested, and regular first-class mail to Respondent’s CRD Address, his Business Address, and his Current Address. Enforcement also sent the letter by e-mail to Respondent’s e-mail address (the “E-mail Address”), which he provided to Enforcement during the telephone conversation on May 15, 2013.

52. The USPS returned to Enforcement the return receipt card for the June 4th Letter sent to Respondent’s Current Address by certified mail. The return receipt card was signed by someone other than Respondent and was dated June 8, 2013.

53. The USPS also returned to Enforcement the copies of the June 4th Letter sent to the CRD Address and the Business Address by certified mail, with labels affixed to the front of the envelopes indicating that delivery was not able to be completed because there was “no mail receptacle” and that the USPS was “unable to forward” the letter. In addition, the USPS returned the copy of the June 4th Letter sent to the Business Address by regular first-class mail, with a label affixed to the front of the envelope identifying Respondent’s Current Address.

54. The copies of the June 4th Letter sent to the CRD Address and the Current Address by first-class mail were not returned to Enforcement.

55. Respondent did not respond to the June 4th Letter by June 14, 2013.

56. To date, Respondent has not provided the information and documents that Enforcement requested in the May 7th and June 4th Letters.

57. FINRA Rule 8210 provides, in relevant part, that FINRA staff “shall have the right to require a member, person associated with a member, or any other person subject to FINRA’s jurisdiction to provide information... with respect to any matter involved in [an] investigation.” A violation of FINRA Rule 8210 is also a violation of FINRA Rule 2010.

58. By reason of the foregoing, Respondent failed to provide specific documents and information requested in connection with a FINRA investigation, in violation of FINRA Rules 8210 and 2010.

59. The acts, practices, and conduct described above constitute separate and distinct violations of FINRA Rules 8210 and 2010.

RELIEF REQUESTED

WHEREFORE, the Department of Enforcement 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 Respondent 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 Respondent's conduct, as alleged in the Third Cause of Action, was willful; the omitted information was material; and the omission to state material facts was on a Form U-4 application.

FINRA DEPARTMENT OF ENFORCEMENT

Date:

10/4/13



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