

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Nahuel Rodriguez
(CRD No. 5633905),

Respondent.

DISCIPLINARY PROCEEDING
No. 2013037144301

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Between approximately August 4, 2011 and June 28, 2013 (the "Relevant Period"), Nahuel Rodriguez ("Respondent") converted approximately \$26,144 in assets owned by four different individuals, RT, JT, RO and FP (collectively, the "Investors") by misrepresenting to them that he would invest their funds in accounts at the Firm. Three of these individuals (RT, JT and RO) were customers of Respondent's FINRA-regulated employer PFS Investments, Inc. (the "Firm"). While the fourth individual investor, FP, did not maintain an account at the Firm, Respondent, in converting FP's assets, misrepresented to FP that Respondent would use FP's assets to open a new account at the Firm and then failed to do so. Respondent did not have permission or authority from any of the Investors to use their funds for his personal use and benefit. Moreover, Respondent did not have permission to use the Investors' funds for any purpose other than making investments at the Firm. Respondent intentionally took and exercised

control over the Investors' funds in a manner that was never authorized by them, and Respondent thereby converted their funds.

2. By converting funds from RT, JT and RO, Respondent violated FINRA Rules 2150 and 2010. In addition, Respondent violated FINRA Rule 2010 by converting funds from FP.

3. By making material misrepresentations related to the purchase or sale of securities, Respondent also willfully violated Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 thereunder, and FINRA Rules 2020 and 2010.

RESPONDENT AND JURISDICTION

4. Respondent entered the securities industry on January 13, 2009 when he became associated with the Firm in a non-registered capacity. On July 9, 2009, Respondent became registered with the Firm as an Investment Company and Variable Contracts Products Representative. Respondent's association with the Firm was terminated on May 24, 2013. Respondent is not currently associated with any FINRA-regulated entity.

5. Although Respondent is no longer registered or associated with a FINRA-regulated entity, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because the Complaint was filed within two years after the filing of an amendment to Rodriguez's Uniform Termination Notice for Securities Industry Registration, namely, December 6, 2013; and (2) the Complaint charges Respondent with misconduct committed while he was registered with a FINRA member.

BACKGROUND AND FACTS

Respondent Converted Funds from RT and JT

6. RT and JT, a married couple, were self-employed housekeepers. Neither RT nor JT had any prior investment experience before RT opened an account at Respondent's firm in 2010.

7. On April 8, 2010, RT opened an individual retirement account ("IRA") at the Firm, with an initial investment of \$10,000. Respondent was assigned to handle the account.

8. In or about July 2011, Respondent advised RT and her husband, JT, that in order to realize a larger investment gain, they would have to invest their money in a different account at the Firm.

9. Respondent told them to withdraw the balance of RT's IRA and to use these funds to provide Respondent with a personal check made out to him, and misrepresented to them that he would use these funds to open the new account at the Firm.

10. On August 1, 2011, based upon Respondent's instructions, RT withdrew the full balance of her IRA, which was \$10,374.09. RT requested that the Firm wire the funds to her personal bank account.

11. On or about August 4, 2011, RT received the funds from the IRA. On the same day, RT and JT met with Respondent and gave him a check for \$10,444 (the "August Check") made payable to Respondent. Respondent misrepresented to RT and JT that this money would be invested in a higher yielding account at the Firm.

12. Respondent did not have permission or authority from RT or JT to use the funds from the August Check for any purpose other than to open a joint account on their behalf at the Firm.

13. Despite this fact, Respondent failed to open a joint account at the Firm for RT and JT and failed to deposit the funds from the August Check in any account (joint or individual) at the Firm in RT and/or JT's names.

14. Instead, on or about August 4, 2011, Respondent cashed the \$10,444 August Check at a check cashing institution, wrongfully converting these funds, and failing to apply

these funds as directed by RT and JT. Respondent never returned any of these funds to RT and JT.

15. Respondent also made misrepresentations to RT and JT about their funds and the purported (but non-existent) joint account at the Firm. For example in or about March 2013, Respondent met with RT and JT and misrepresented to them that the \$10,444 “investment” – which RT and JT believed had been made at the Firm from their August Check and which, instead, had been converted by Respondent – had grown to approximately \$14,000.

16. Based upon these misrepresentations by Respondent, RT and JT agreed to invest an additional \$10,000 with the Firm by wiring \$5,000 to the Firm’s affiliated transfer agent (the “Transfer Agent”) and giving Respondent a separate check for \$5,000 (the “April Check”) that, at Respondent’s direction, was made payable to Respondent.

17. Respondent misrepresented to RT and JT that he would use the \$10,000 to open an investment account at the Firm.

18. On April 30, 2013, Respondent used the \$5,000 that RT and JT wired to the Firm to open a joint Roth individual retirement account (the “Joint Account”) on their behalf at the Firm.

19. On or about May 2, 2013, Respondent advised RT and JT that he was unable to cash the April Check. Following the directions of Respondent, and after Respondent returned the April Check to them, RT and JT subsequently withdrew \$5,000 in cash from their personal bank account, and provided the \$5,000 in cash to Respondent so that, as he falsely promised RT and JT he would do, Respondent could deposit the \$5,000 cash into the Joint Account at the Firm.

20. Respondent did not deposit the \$5,000 cash he received from RT and JT into the Joint Account at the Firm. Instead, Respondent converted the \$5,000 in cash and failed to apply these funds in the manner directed by RT and JT.

21. Respondent did not have permission or authority from RT or JT to use these funds for any purpose other than to deposit these funds into the Joint Account at the Firm.

22. On or about June 24, 2013, Respondent contacted RT and JT and misrepresented to them that the Firm inadvertently transferred Respondent's personal funds into the Joint Account and that the \$4,406.72 currently held in that account belonged to him.

23. This representation by Respondent to RT and JT was false since the Firm did not transfer any funds belonging to Respondent into the Joint Account. To the contrary, as Respondent was aware, all of the funds in the Joint Account belonged solely to RT and JT, and none of the funds in the account belonged to Respondent.

24. On June 24, 2013, Respondent called the Firm purporting to be JT and requested that the securities in the Joint Account be liquidated and the funds transferred to JT and RT's outside bank account. On or about that date, the Firm liquidated the securities in the Joint Account and thereafter transferred all of the remaining funds in the account (including the proceeds from the securities liquidations) to RT and JT's outside bank account.

25. On June 28, 2013, believing that the funds in the Joint Account belonged to Respondent, and based on Respondent's false representations to them on this point, JT and RT gave Respondent a check made payable to Respondent for \$4,400 (the "June Check"). Respondent subsequently cashed the June Check, converting the entire \$4,400 in funds for his own use and benefit and failing to apply these funds in the manner directed by RT and JT.

26. In total, between August 4, 2011 and June 28, 2013, as alleged above, Respondent converted \$19,844 in assets owned by RT and JT. Respondent was able to carry out this conversion by intentionally making misrepresentations to RT and JT about their accounts and transactions at the Firm.

27. On November 4, 2013, Respondent sent JT and RT a letter in which he offered to repay JT and RT the funds that he had wrongfully converted. Despite his offer, Respondent did not repay JT and RT the funds that he had converted.¹

Respondent Converted Funds from RO

28. RO is a self-employed housekeeper with no prior investment experience.

29. On April 8, 2010, RO opened an individual account at the Firm, and Respondent was assigned to handle the account.

30. In or about July 2012, RO's individual account was valued at approximately \$1,300. Respondent misrepresented to RO that he could invest these funds in a different account at the Firm that would yield a higher rate of return.

31. Based on Respondent's misrepresentation, on July 27, 2012 and August 7, 2012, RO withdrew the \$1,300 held in his individual account.

32. On July 30, 2012, RO gave Respondent a \$1,300 check (the "July 30 Check") that, based on Respondent's instructions to RO, was made payable to Respondent. RO understood from Respondent that Respondent would invest the funds in an account at the Firm that would provide a higher yield.

33. On or about July 30, 2012, Respondent cashed the July 30 Check, converting the \$1,300 and failing to apply the funds in the manner directed by RO.

¹ The Firm remediated RT and JT \$14,844.

34. Respondent did not deposit the funds from the July 30 Check into an account owned by RO or return the funds to him.

35. Respondent did not have permission or authority from RO to use the funds for any purpose other than to invest them at the Firm.²

Respondent Converted Funds from FP

36. On February 4, 2011, Respondent visited FP, a customer of the Firm's affiliated life insurance company, and discussed opening an individual account at the Firm.

37. Based on Respondent's misrepresentations regarding his intention to use FP's funds to open an individual account at the Firm, FP gave Respondent a \$5,000 check that was dated February 4, 2011 (the "February Check") and made payable to Respondent. Respondent and FP agreed that the funds would be used to open an individual account at the Firm.

38. Respondent provided FP with a falsified Firm "new account form" upon which he acknowledged receiving "\$5,000 from [FP] for bond."

39. On or about February 4, 2011, Respondent cashed the February Check, converting the \$5,000 in cash from the February Check for Respondent's own use and benefit and failing to apply these funds in the manner that FP had directed.

40. Respondent did not deposit the funds from the July 30 Check into an account owned by FP or return the funds to FP.

41. Respondent did not have permission or authority from FP to use these funds for any purpose other than to open an individual account at the Firm.³

² The Firm remediated RO \$1,300.

³ Respondent repaid \$800 to FP. The Firm remediated the remaining \$4,200.

FIRST CAUSE OF ACTION
Conversion as to RT and JT
(FINRA Rules 2150 and 2010)

42. The Department realleges and incorporates by reference paragraphs 1 through 41, above.

43. FINRA Rule 2150(a) provides that “no member or person associated with a member shall make improper use of a customer’s securities or funds.”

44. FINRA Rule 2010 states that a “member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade.”

45. During the Relevant Period, as alleged above, Respondent wrongfully obtained and converted \$19,844 of RT and JT’s funds, converting these funds for Respondent’s own use and benefit and failing to apply these funds in the manner that RT and JT had directed. This total conversion of \$19,844 in RT and JT funds included (1) \$15,444 in checks and cash from RT and JT that were to be invested at the Firm and that Respondent instead failed to so invest as directed, and (2) an additional \$4,400 in funds from RT and JT that Respondent wrongfully obtained and converted after falsely telling RT and JT that these funds were personal funds of Respondent that had been inadvertently transferred into their account at the Firm.

46. Respondent did not have permission or authority from RT or JT to use their funds for his own purposes.

47. Respondent failed to return any of these wrongfully converted funds to RT and JT.

48. Accordingly, Respondent violated FINRA Rules 2150 and 2010 by converting at least \$19,844 from RT and JT.

SECOND CAUSE OF ACTION
Willful Misrepresentations of Material Facts in Connection
with the Sale of Securities as to RT and JT
(Section 10(b) of the Exchange Act and Rule 10b-5 thereunder;
FINRA Rules 2020 and 2010)

49. The Department realleges and incorporates by reference paragraphs 1 through 48, above.

50. Section 10(b) of the Exchange Act prohibits “any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce of the mails, or of any facility of any national security exchange ... [t]o use or employ, in connection with the purchase or sale of any security ... any manipulative or deceptive device or contrivance.

51. Rule 10b-5 of the Exchange Act prohibits “any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, (a) to employ any device, scheme or artifice to defraud, (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.”

52. FINRA Rule 2020 provides that “[n]o member shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance.”

53. A violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and FINRA Rule 2020, constitutes a violation of FINRA Rule 2010.

54. During the Relevant Period, as alleged above, Respondent wrongfully obtained and converted \$19,844 of RT and JT's funds by (1) misrepresenting to them that he would invest their funds in an account at the Firm; (2) misrepresenting to them that their account had grown in value and thereby inducing them to invest additional funds; and (3) misrepresenting to them that their funds were personal funds of Respondent that had been inadvertently transferred into their account at the Firm.

55. By cashing RT and JT's checks and using the funds intended by RT and JT to be invested at the Firm for his personal use, Rodriguez used means of interstate commerce, including checks drawn on United States banks.

56. Based upon the foregoing conduct, Rodriguez made material misrepresentations in connection with the sale of securities to RT and JT.

57. Based upon the foregoing conduct, Rodriguez willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and FINRA Rules 2020 and 2010.

THIRD CAUSE OF ACTION
Conversion as to RO
(FINRA Rules 2150 and 2010)

58. The Department realleges and incorporates by reference paragraphs 1 through 57, above.

59. During the Relevant Period, Respondent wrongfully converted \$1,300 of RO's funds in a manner that was not authorized or intended by RO. Respondent was given a \$1,300 check from RO to invest at the Firm. However, Respondent failed to invest the money in the manner in which RO instructed him and failed to deposit the \$1,300 for RO's benefit at the Firm. Instead, Respondent cashed the \$1,300 check from RO, wrongfully converting the \$1,300 in cash

for Respondent's own use and benefit and failing to apply the funds as directed by RO. Respondent never returned these converted funds to RO.

60. Respondent did not have permission or authority from RO to use his funds for his own purposes.

61. Accordingly, Respondent violated FINRA Rules 2150 and 2010 by converting \$1,300 from RO.

FOURTH CAUSE OF ACTION
Willful Misrepresentations of Material Facts in Connection
with the Sale of Securities as to RO
(Section 10(b) of the Exchange Act and Rule 10b-5 thereunder;
FINRA Rules 2020 and 2010)

62. The Department realleges and incorporates by reference paragraphs 1 through 61, above.

63. During the Relevant Period, as alleged above, Respondent wrongfully obtained and converted \$1,300 of RO's funds by misrepresenting to him that he would invest his funds in an account at the Firm.

64. By cashing RO's check and using the funds intended by RO to be invested at the Firm for his personal use, Rodriguez used means of interstate commerce, including checks drawn on United States banks.

65. Based upon the foregoing conduct, Rodriguez made material misrepresentations in connection with the sale of securities to RO.

66. Based upon the foregoing conduct, Rodriguez willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and FINRA Rules 2020 and 2010.

FIFTH CAUSE OF ACTION

Conversion as to FP

(FINRA Rule 2010)

67. The Department realleges and incorporates by reference paragraphs 1 through 66, above.

68. During the Relevant Period, Respondent wrongfully converted \$5,000 of FP's funds in a manner that was not authorized intended by FP. Respondent was given a \$5,000 check from FP to invest at the Firm. However, Respondent failed to invest the money in the manner in which FP instructed him and did not return FP's \$5,000. Respondent never opened an account for FP at the Firm and, instead, cashed FP's \$5,000 check, wrongfully converting all of the proceeds for Respondent's own use and benefit and failing to apply the funds as directed by FP.

69. Respondent did not have permission or authority from FP to use FP's funds for Respondent's own purposes. Accordingly, Respondent violated FINRA Rule 2010 by converting \$5,000 from FP.

SIXTH CAUSE OF ACTION

Willful Misrepresentations of Material Facts in Connection

with the Sale of Securities as to FP

(Section 10(b) of the Exchange Act and Rule 10b-5 thereunder;

FINRA Rules 2020 and 2010)

70. The Department realleges and incorporates by reference paragraphs 1 through 69, above.

71. During the Relevant Period, as alleged above, Respondent wrongfully obtained and converted \$5,000 of FP's funds by misrepresenting to him that he would invest his funds in

an account at the Firm, and providing FP with a document that falsely indicated that FP opened a securities account at the Firm.

72. By cashing FP's check and using the funds intended by FP to be invested at the Firm for his personal use, Rodriguez used means of interstate commerce, including checks drawn on United States banks.

73. Based upon the foregoing conduct, Rodriguez made material misrepresentations and omitted material facts in connection with the sale of securities to FP.

74. Based upon the foregoing conduct, Rodriguez willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and FINRA Rules 2020 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) be imposed, including that Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution to both the Firm (reimbursing the Firm for its remediation payments made by the Firm to the Investors) and the Investors (for any uncompensated losses), together with interest;

- C. make specific findings that Rodriguez willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder; and
- D. order that 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: June 12, 2015



Michael Choi
Director
FINRA Department of Enforcement
One World Financial Center, 11th Floor
200 Liberty Street
New York, NY 10281-1003
Phone: (646) 315-7323;
Fax: (202) 689-3430
E-Mail: michael.choi@finra.org