

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

Brian R. Scarpellini
(CRD No. 6320844),

Respondent.

DISCIPLINARY PROCEEDING
No. 2016048882501

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Respondent Brian R. Scarpellini, while associated with Merrill Lynch, Pierce, Fenner & Smith Inc. ("Merrill Lynch" or the "Firm"), converted funds totaling \$1,158 from Bank of America, Merrill Lynch's bank affiliate, by engaging in a check kiting scheme.

2. Specifically, in August 2015, Scarpellini wrote three checks totaling \$1,167.00 from a personal bank account held at Wells Fargo and deposited those checks into his personal accounts at Bank of America knowing that he had insufficient funds in his Wells Fargo account to cover those checks. He then used the funds generated from cashing the checks for his personal use, overdrawing his Bank of America account by \$1,158. He has not repaid Bank of America, even though he has received funds sufficient to do so. By virtue of the foregoing conduct, Scarpellini violated FINRA Rule 2010.

RESPONDENT AND JURISDICTION

3. Scarpellini first entered the securities industry as a Non-Registered Fingerprint associated person ("NRF") in April 2014.

4. On March 9, 2015, Scarpellini became associated as an NRF with Merrill Lynch, and filed an initial Form U-4 with that firm on June 19, 2015. On October 2, 2015, the Firm filed a Form U-5 terminating his association. Scarpellini is not currently registered or associated with any FINRA member firm.

5. 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 date upon which he ceased to be associated with a FINRA member, and (2) the Complaint charges him with misconduct committed while he was associated with a FINRA member.

CAUSE OF ACTION

Conversion of Funds via Check Kiting (FINRA Rule 2010)

6. The Department realleges and incorporates by reference paragraphs 1 to 5 above.

7. Between July 31, 2015 and October 2, 2015, Scarpellini was associated with and employed by Merrill Lynch.

8. At that time, Scarpellini maintained personal banking accounts at Bank of America, a bank affiliated with Merrill Lynch, and at Wells Fargo.

9. Between August 3 and August 5, 2015, Scarpellini wrote three checks from his Wells Fargo checking account, payable to himself, in the amounts of \$542.00, \$250.00, and \$375.00.

10. At the time he wrote these three checks, Scarpellini knew that he did not have funds in his Wells Fargo checking account to cover those checks.

11. Scarpellini deposited these three checks into his personal accounts at Bank of America shortly after he wrote them.

12. After Scarpellini deposited the three checks into his Bank of America accounts, between August 3 and August 7, 2015, he used those funds for a variety of personal expenses, including, but not limited to: \$243.64 for auto insurance, \$320.75 to a retail jeweler in partial satisfaction of a debt, and ATM cash withdrawals totaling \$920.00. These expenses and cash withdrawals exceeded his account balances by \$1,158.

13. Each of the checks was subsequently returned to Wells Fargo for insufficient funds.

14. As a result, Scarpellini converted funds from Bank of America by intentionally obtaining and using \$1,158.00 of bank funds to which he was not entitled.

15. By virtue of the foregoing conduct, Scarpellini violated FINRA Rule 2010.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

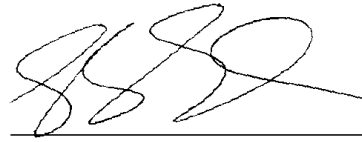
A. make findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;

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, together with interest;

C. order that Respondent bears such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date: February 9, 2017



Tom Kuczajda, Senior Counsel
Jennifer Crawford, Director
FINRA Department of Enforcement
15200 Omega Drive, 3rd Floor
Rockville, MD 20850
(301) 258-8531 (Kuczajda)
(301) 258-8539 (Crawford)
tom.kuczajda@finra.org
jennifer.crawford@finra.org