

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

Department of Enforcement,

Complainant,

v.

Brian R. Scarpellini
(CRD No. 6320844),

Respondent.

DISCIPLINARY PROCEEDING
No. 2016048882501

HEARING OFFICER: KBW

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date:

INTRODUCTION

Disciplinary Proceeding No. 2016048882501 was filed on February 9, 2017, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent Brian R. Scarpellini submitted an Offer of Settlement (Offer) to Complainant dated August 7, 2017. Pursuant to FINRA Rule 9270(e), the Complainant and the National Adjudicatory Council (NAC), a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA) have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to FINRA Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.

Under the terms of the Offer, Respondent has consented, without admitting or denying the allegations of the Complaint, as amended by the Offer of Settlement, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, to the entry of findings and violations consistent with the allegations of the Complaint as amended by the Offer of Settlement, and to the imposition of the sanctions set

forth below, and fully understands that this Order will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA.

BACKGROUND

Scarpellini first entered the securities industry as a Non-Registered Fingerprint associated person ("NRF") in April 2014. On March 9, 2015, Scarpellini became associated as an NRF with Merrill Lynch. 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. 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.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:

FACTS

1. Respondent Brian R. Scarpellini, while associated with Merrill Lynch, Pierce, Fenner & Smith Inc. ("Merrill Lynch" or the "Firm"), engaged 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. By virtue of the foregoing conduct, Scarpellini violated FINRA Rule 2010.

Check Kiting
(FINRA Rule 2010)

3. The Department realleges and incorporates by reference paragraphs 1 to 2 above.
4. Between July 31, 2015 and October 2, 2015, Scarpellini was associated with and employed by Merrill Lynch.
5. At that time, Scarpellini maintained personal banking accounts at Bank of America, a bank affiliated with Merrill Lynch, and at Wells Fargo.
6. 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.
7. 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.
8. Scarpellini deposited these three checks into his personal accounts at Bank of America shortly after he wrote them.
9. 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.
10. Each of the checks was subsequently returned to Wells Fargo for insufficient funds.
11. As a result, Scarpellini obtained and used \$1,158.00 from Bank of America to which he was not entitled.
12. By virtue of the foregoing conduct, Scarpellini violated FINRA Rule 2010.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondent from any future misconduct, and represent a proper discharge by FINRA, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

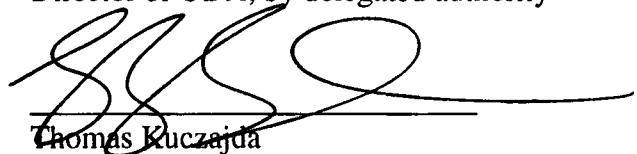
It is ordered that Respondent be fined \$5,000 and suspended from association with any FINRA member in any capacity for a period of two years. The fine shall be due and payable either immediately upon re-association with a member firm, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

SO ORDERED.

FINRA

Signed on behalf of the
Director of ODA, by delegated authority

A handwritten signature in black ink, appearing to read 'TK', is written over a horizontal line.

Thomas Kuczajda
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