

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

Department of Enforcement,

Complainant,

v.

Michael Joseph Clarke (CRD No. 1078211),
Municipal Securities Representative,

Respondent.

Disciplinary Proceeding
No. 2016050938301

Hearing Officer:

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. From October 2015 to April 2016, Respondent Michael J. Clarke (“Clarke” or “Respondent”) made multiple misrepresentations to induce securities industry contacts, including his colleagues at broker dealer MARV Capital Inc. (“MARV”), to provide him with nearly \$600,000. He converted the money. To induce these people to give him money, Clarke falsely stated he would use the money to purchase various tickets through his approved outside ticket brokering business that he would resell for a profit, place a portion of the funds in an escrow account, and repay his colleagues, with interest, by a specific date. But the tickets did not exist, the deposit into escrow was fictitious, and Clarke did not intend to repay the money. Instead, he used the funds to pay off other loans and for personal expenses. To date, Respondent has not repaid nearly \$590,000, or paid any interest. Clarke violated FINRA Rule 2010 by converting the funds of his

colleagues, supervisors, and the entities they controlled. He separately violated FINRA Rule 2010 by making multiple misrepresentations to induce the so-called loans.

2. Between February 2013 and August 2016, Clarke wrote 46 checks totaling \$473,431 to various payees and creditors that failed to clear, due to insufficient funds in his bank accounts. During the same period, Clarke authorized an additional 14 electronic payments, totaling more than \$6,400, that also failed to clear. Clarke knew or should have known that he lacked sufficient funds in his bank accounts to cover these withdrawals. Clarke therefore violated FINRA Rule 2010.

RESPONDENT AND JURISDICTION

3. Clarke entered the securities industry in 1982 by associating with a FINRA member firm. In 1986, Clarke obtained his Series 52 license (Municipal Securities Representative), the only license he holds.
4. Since 1982, Clarke has been associated with 13 FINRA-regulated broker-dealers, including: (a) Tradition Asiel Securities Inc. ("Tradition"), in New York, New York, from November 2010 through September 2015; and (b) MARV, in New York, New York, from October 2015 through July 2016. At both firms, Clarke was registered as a Municipal Securities Representative and served as a broker's broker of municipal bonds.
5. In July 2016, MARV terminated Clarke's employment. In the Uniform Termination Notice for Securities Industry Registration ("Form U5") filed on August 9, 2016, MARV disclosed that it fired Clarke because he was involved in a "scheme to defraud firm principals and firm customers, Affinity Fraud, and violated several regulatory and company polic[ies]." The Form U5 also disclosed that Clarke was "[i]ssuing bad checks

on a closed bank account, and [m]isappropriating funds to be deposited in an Escrow Account.”

6. Clarke is currently registered as a Municipal Securities Representative through an association with Avatar Capital Group LLC (“Avatar”) in Jersey City, New Jersey, where he has been associated since July 2016. Because Clarke is currently registered, he remains subject to FINRA’s jurisdiction pursuant to Article V, Section 2 of FINRA’s By-Laws.

FACTS

A. **Clarke Made Misrepresentations and Converted Nearly \$600,000**

9. During the period October 2015 to April 2016, Clarke made multiple misrepresentations to induce industry colleagues to give him money. Clarke falsely stated: (1) he would use the money to buy event tickets, (2) he would safeguard certain funds by placing them in an escrow account, and (3) he would promptly repay the funds with a high rate of return. But Clarke did none of those things.
10. As a result, six people and entities gave Clarke almost \$600,000. See Exhibit A (schedule of funds given to Clarke). He converted the funds and used the proceeds to repay other loans and for personal expenses.

Clarke Owed \$300,000 to PO

11. In February 2015, Clarke owed at least \$300,000 to a former colleague, PO. On February 10, 2015, PO emailed Clarke:

Clarke, I have no more patience. I am going to file an action against you as well as alert FINRA as well as Tradition of your ticket brokering. Included will also be the IRS for income not reported.

12. At that time, Clarke had not disclosed his outside ticket brokering business to his firm, Tradition, or to FINRA.

Clarke Converts Money from MARV Principal MA

13. In the fall of 2015, after Clarke became associated with MARV and disclosed his outside ticket business, Clarke approached MARV principal MA and asked him for a loan. Clarke falsely represented to MA that he would use the funds to buy concert tickets, resell them for a profit, and use the profits to repay MA, plus interest. In fact, Clarke intended to use the funds to repay part of his debt to PO, rather than purchase concert tickets, and did not intend to repay MA.
14. MA agreed to lend Clarke \$61,500 in two payments.
15. On October 23, 2015, MA transferred \$37,500 to Clarke's account ending -8465. On October 26, 2015, MA transferred an additional \$24,000 to the same account.
16. The terms of the arrangement were memorialized after the transfers and after Clarke failed to timely repay the funds, in a document titled "Personal Loan" (the "Loan Agreement").
17. Both Clarke and MA signed the Loan Agreement and affirmed that the terms were "true and correct."
18. The Loan Agreement states that MA transferred \$37,500 to Clarke on October 23, 2015, and that Clarke agreed to repay the principal with \$6,000 in agreed interest on January 1, 2016.
19. The Loan Agreement also states that MA transferred \$24,000 to Clarke three days later, on October 26, 2015, and that Clarke agreed to repay the principal with \$4,000 in agreed interest on December 1, 2015.

20. Further, the Loan Agreement states that if “all the money is not paid by March 16, 2016,” an event of default would be triggered, giving MA “recourse over Michael Clarke’s assets to recover the amounts.”
21. Contrary to his representations to MA, Clarke did not use the funds he received from MA to purchase tickets. Rather, Clarke used the funds to repay PO.
22. On October 26, 2015, the same day he received \$24,000 from MA, Clarke used the funds to wire \$130,000 from account ending -8465 to PO.
23. Without the money from MA, Clarke would not have been able to send \$130,000 to PO.
24. In February 2016, Clarke paid \$10,000 to MA. To date, Clarke has not paid the remaining \$51,500 in principal owed, nor any of the \$10,000 in agreed interest.

Clarke Converts Money from MARV Principal VR, RN, AG, RBCA, Inc., and AARILR, LLC

25. At the same time Clarke was soliciting funds from MA, he approached another MARV principal, VR, for money. Clarke falsely represented to VR that he would use the money to purchase premium box tickets for popular sporting events and concerts, including World Series baseball tickets and music performances at Madison Square Garden, then resell them for a profit. Clarke promised he would share profits with VR and any other interested parties.
26. Believing Clarke’s misstatements to be true, VR agreed to loan \$217,900 to Clarke on behalf of five persons or entities: himself; his wife, RN; MARV advisory client AG; and RBCA Inc. and AARILR LLC (the “VR Entities”), two entities controlled by VR (collectively, the “MARV Financers”).
27. The MARV Financers transferred \$37,500 on October 19, 2015, \$121,200 on October 26, 2015, and \$59,200 on October 28, 2015 to Clarke.

28. The terms of the agreement were memorialized after the funds were transferred and after Clarke failed to timely repay the funds, in a letter agreement dated February 1, 2016 (the “Letter Agreement”).
29. Clarke, VR, RN, and AG signed the Letter Agreement and affirmed that the terms were “true and correct.”
30. The Letter Agreement provided that \$33,590 in interest was due on February 3, 2016, and that the entire principal amount was due no later than February 5, 2016.
31. In addition to the above funds provided for tickets, VR, RN, and the VR Entities further agreed to transfer to Clarke \$312,000 based on Clarke’s misrepresentations that he could obtain US Tennis Association lifetime premium season tickets (the “USTA Licenses”) for them.
32. Clarke falsely stated that he would deposit the funds into an escrow account pending the transaction.
33. The Letter Agreement incorporates the above misrepresentations and states:

Michael Clarke affirms that the \$312,000 has been deposited in a mutual escrow IOLA account with Attorney JM. The entire amount is to the benefit of VR and will be returned to VR, immediately, in case the transaction is not completed by February 12, 2016.
34. Accordingly, under the Letter Agreement, the \$312,000 should only have been removed from escrow to purchase the USTA Licenses as agreed.
35. On November 12, 2015, VR sent \$312,000 to a personal checking account in Clarke’s name, ending in -8465, to be deposited into escrow for the acquisition of the USTA Licenses.

36. Clarke's statements were untrue. The USTA Licenses do not exist and were never offered for sale by the USTA.
37. Clarke never placed the funds received, \$312,000, into an escrow account.
38. Rather, the same day Clarke received the \$312,000 to his account ending -8465, Clarke wired \$255,000 to PO.
39. Instead of using the proceeds of the loans from the MARV Financers for tickets, as he represented, Clarke also used the money for daily living expenses, including purchases at pharmacies and liquor stores, two expensive dinners at New York steakhouses, and payment of an insurance bill. He also used the proceeds to pay another creditor, JG, \$43,000 on October 28, 2015. JG had loaned hundreds of thousands of dollars to Clarke.
40. In April 2016, Clarke gave VR a check for \$218,600 to repay the October 2015 loan. The check was drawn from a third checking account ending -5820 in the name of Clarke's business, MJC7 LLC.
41. When VR attempted to deposit the check, it failed to clear.
42. Clarke to date has not repaid the MARV Financers the principal of \$217,900 or the interest as provided in the Letter Agreement.
43. Clarke to date has not repaid any of the \$312,000 VR, RN, and the VR Entities loaned him.
- B. Clarke Wrote and Tendered 46 Checks that Failed to Clear, and Authorized 14 Additional Electronic Payments that Failed to Clear**
44. From at least 2013 through 2016, Clarke maintained personal checking accounts at JPMorgan Chase Bank, N.A. ("Chase"), Bank of America, N.A. ("Bank of America") and Wells Fargo Bank, N.A. ("Wells Fargo").

45. From February 2013 through August 2016, Clarke wrote and tendered 46 checks for more than \$473,000 from five bank accounts, including three accounts at Chase, one at Wells Fargo, and one at Bank of America, that failed to clear due to insufficient funds. See Exhibit B (schedule of failed checks and payments).
46. During this same period, Clarke also authorized 14 additional electronic payments for more than \$6,400 from his Chase checking account ending in -8465, that also failed to clear due to insufficient funds (together with the 46 checks that failed to clear, the “60 Failed Payments”). See Exhibit B.
47. The 60 Failed Payments involved payments to dozens of individuals and businesses to whom Clarke owed money. For example, one of the Failed Payments was the check for \$218,600 delivered to VR described in paragraphs 40-41 above that did not clear. Other of the 60 Failed Payments were made to multiple payday lenders; car loan providers; the university where Clarke’s daughter attended college; his father; coworkers; and bond traders who had loaned him money.
48. At the time Clarke wrote, tendered, or authorized the 60 Failed Payments, Clarke knew or should have known he had insufficient funds in his bank accounts to cover the transactions.
49. The banks returned each of the 60 Failed Payments to Clarke due to insufficient funds. See Exhibit B.

FIRST CAUSE OF ACTION
Conversion of Funds (FINRA Rule 2010)

50. The Department realleges and incorporates by reference paragraphs 1 through 49 above.
51. FINRA Rule 2010 provides that “[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.”

52. Conversion of funds is a violation of Rule 2010.
53. Between October 2015 and April 2016, Clarke persuaded MA to provide him with \$61,500 for the purchase of concert tickets.
54. Clarke persuaded VR and the MARV Financers to provide him with \$217,900 for the purchase and resale of tickets to various sporting and entertainment events in connection with Clarke's outside ticket brokering business.
55. He persuaded VR, RN and the VR Entities to provide him with \$312,000 to purchase non-existent USTA Licenses.
56. Clarke deposited all of these funds in his personal bank accounts.
57. Clarke converted these funds, using them to pay for personal expenses and to repay other creditors.
58. As a result of the foregoing conduct, Clarke failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of FINRA Rule 2010.

SECOND CAUSE OF ACTION
Misrepresentation (FINRA Rule 2010)

59. The Department realleges and incorporates by reference paragraphs 1 through 58 above.
60. FINRA Rule 2010 requires registered persons to observe high standards of commercial honor and just and equitable principles of trade.
61. From October 2015 through April 2016, Clarke made material misrepresentations to induce colleagues and the entities they controlled to provide him with nearly \$600,000 in funds. Specifically, he convinced MA and the MARV Financers to provide him with \$279,400 in October and November 2015, based upon false statements he made that the funds would be used to purchase event tickets in connection with his outside ticket

brokering business, that he would repay the money by a specific date, and that he would pay significant amounts of interest.

62. Clarke reiterated these false statements to MA and the MARV Financers in the Loan Agreement associated with the funds he received from MA and the MARV Financers.
63. Clarke made additional misrepresentations to VR, RN, and the VR Entities that induced them to provide him with \$312,000 that he falsely stated would be used to acquire USTA Licenses. Further, he convinced them that their money would be safe by attesting that the money provided would go into an escrow account with his attorney.
64. Clarke reiterated these false statements to VR, RN, and the VR Entities concerning how he would use the \$312,000 in February 2016, when the parties memorialized the loan in the Letter Agreement.
65. None of these statements was true.
66. Contrary to Clarke's representations, the funds from MA and the MARV Financers were not used to purchase event tickets or USTA licenses, which do not exist. Instead, Clarke immediately used the money to repay other creditors and pay for personal expenses. The funds were never returned to MA or the MARV Financers (with the exception of a single \$10,000 payment to MA, constituting less than two percent of the entire amount owed), no interest was ever paid, and the money was never placed in escrow.
67. At the time Clarke made the misrepresentations that the funds would be used to purchase event tickets and USTA licenses, that they would be returned on the agreed-upon dates and with interest, and that \$312,000 would be secured in an escrow account, he knew the statements were false because the licenses did not exist, he had not deposited the funds

into escrow, and he immediately used the funds to pay off other creditors and provide for personal expenses.

68. By means of the foregoing, Clarke violated FINRA Rule 2010.

THIRD CAUSE OF ACTION
60 Failed Payments (FINRA Rule 2010)

69. The Department realleges and incorporates by reference paragraphs 1 through 68 above.
70. FINRA Rule 2010 provides that “[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.” A registered representative who writes checks and authorizes electronic checking transactions that fail to clear due to insufficient funds and who knows or should know that he has insufficient funds to cover the transactions, violates Rule 2010.
71. From February 2013 through August 2016, Clarke made 60 Failed Payments totaling \$479,883.
72. At the time that Clarke wrote, tendered, or authorized each of the 60 Failed Payments, he knew or should have known that there were insufficient funds in his account.
73. When each of the various payees attempted to deposit or process the checks and electronic transactions, each of the 60 Failed Payments was returned or rejected for insufficient funds and insufficient overdraft protection. The 60 Failed Payments totaled \$479,883.
74. By writing and tendering checks and authorizing electronic payments that Clarke knew or should have known would not clear, Clarke failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of FINRA Rule 2010.

RELIEF REQUESTED

WHEREFORE, the Department of Enforcement respectfully requests that the Panel:

- A. make findings of facts 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; and
- C. order that the 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: 6/15/18

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EXHIBIT A

EXHIBIT A
Schedule of Funds Given to Clarke

	Provider	Amount of Funds (\$)	Date of Agreement	Terms	Repayment Due Date	Clarke's Repayment (\$)	Date of Repayment	Amount Owed to Date (\$)
1	MARV Financers	37,500	10/19/2015	Loan interest of \$5,250 due 2/3/2016	2/5/2016	0		37,500
2	MA	37,500	10/23/2015	Loan interest of \$6,000	1/1/2016	10,000	2/4/2016	27,500
3	MARV Financers	121,200	10/26/2015	Loan interest of 16% due 2/3/2016	2/5/2016	0		121,200
4	MA	24,000	10/26/2015	Loan interest of \$4,000	12/1/2015	0		24,000
5	MARV Financers	59,200	10/28/2015	Loan interest of 16% due 2/3/2016	2/5/2016	0 (218,600 returned NSF)	4/25/2016	59,200
6	VR and VR Entities	312,000	11/12/2015	\$102,000 to be repaid by 2/12/2016	2/12/2016	0		312,000
	Total:	\$591,400						\$581,400

EXHIBIT B

EXHIBIT B
Schedule of Failed Checks and Payments
(Returned Item Transactions in Clarke's Personal Bank Accounts)

	Bank/ Acct No.	Check No.	Date of Notification (not transaction)	Amount (\$)	Transaction Type	Payee	Payee Type
1	Chase -8465	235	2/25/2013	900.00	Check	CASH	Unavailable
2	-8465	5874	3/26/2013	1,200.00	Check	CO	Individual
3	-8465		4/3/2013	325.00	Electronic withdrawal	CJ	Online payday lender
4	-8465	5878	5/20/2013	10,000.00	Check	GM	Individual
5	-8465	395	6/3/2013	10,000.00	Check	GM	Individual
6	-8465	355	6/11/2013	650.00	Check	CASH	Unavailable
7	-8465	396	6/12/2013	200.00	Check	Unavailable	Unavailable
8	-8465		6/14/2013	550.00	Electronic withdrawal	AL	Online payday lender
9	-8465	400	6/14/2013	300.00	Check	(Illegible)	N/A
10	-8465		6/14/2013	90.00	Electronic withdrawal	HG	Online payday lender
11	-8465		6/17/2013	70.00	Electronic withdrawal	EL	Online payday lender
12	-8465		6/19/2013	262.50	Electronic withdrawal	CJ	Online payday lender
13	-8465	434	6/26/2013	500.00	Check	RCP LLC	Parking lot
14	-8465	399	6/26/2013	350.00	Check	IZ	Individual
15	-8465	5875	7/1/2013	9,000.00	Check	JW	Individual
16	-8465		7/15/2013	90.00	Electronic withdrawal	PMG	Online payday lender
17	-8465		7/22/2013	267.50	Electronic withdrawal	CJ	Online payday lender
18	-8465	398	7/29/2013	3,500.00	Check	Unavailable	Unavailable
19	-8465		8/2/2013	116.02	Electronic Withdrawal	Chase Receivable Preauthpmt	Unavailable
20	-8465	509092	8/9/2013	19.95	Check	Unavailable	Unavailable
21	-8465		8/15/2013	255.00	Electronic withdrawal	CJ	Online payday lender
22	-8465	365	8/20/2013	400.00	Check	CASH	Unavailable
23	-8465	414	1/28/2014	4,000.00	Check	Unavailable	Unavailable
24	-8465	521	7/28/2014	1,000.00	Check	CASH	Unavailable
25	-8465	533	9/23/2014	5,000.00	Check	TU	Individual
26	-8465	545	10/23/2014	19,500.00	Check	JJ	Individual
27	-8465	547	10/27/2014	10,000.00	Check	P LLC	Clearing Firm
28	-8465		12/24/2014	636.83	Electronic withdrawal	COAC	Bank loan
29	-8465	7441	12/29/2014	11,000.00	Check	JOC	Individual
30	-8465	8805	12/29/2014	500.00	Check	CASH	Unavailable
31	-8465		12/31/2014	636.83	Electronic withdrawal	COAC	Bank loan
32	-8465	8812	1/2/2015	1,000.00	Check	CASH	Unavailable
33	-8465	576	1/8/2015	1,000.00	Check	MC	Individual
34	-8465	8808	1/9/2015	2,000.00	Check	Tradition	Firm

	Bank/ Acct No.	Check No.	Date of Notification (not transaction)	Amount (\$)	Transaction Type	Payee	Payee Type
35	-8465	8809	1/14/2015	3,200.00	Check	RC	Individual
36	-8465	7444	1/28/2015	2,400.00	Check	Check	Unavailable
37	-8465	579	2/3/2015	2,400.00	Check	EP	Individual
38	-8465	1687	3/18/2015	5,000.00	Check	U of S	Educational institution
39	-8465	108	3/11/2015	610.87	Check	Unavailable	Unavailable
40	-8465	612	6/19/2015	3,500.00	Check	CASH	Unavailable
41	-8465	620	7/9/2015	3,200.00	Check	CASH	Unavailable
42	-8465	658	9/21/2015	30,000.00	Check	CASH	Unavailable
43	-8465	584	9/28/2015	5,200.00	Check	RT	Individual
44	-8465		10/16/2015	1,310.00	Electronic withdrawal	WFDF&P	Bank loan
45	-8465	619	3/3/2016	19,500.00	Check	Cash	Unavailable
46	-8465	643	3/11/2016	10,000.00	Check	Cash	Unavailable
47	-8465	642	3/14/2016	10,000.00	Check	Cash	Unavailable
48	-8465		4/18/2016	1,385.46	Electronic withdrawal	CAL	Bank loan
49	-8465	101	4/19/2016	500.45	Check	ACM LLC	Debt collection company
50	-8465		5/31/2016	456.67	Electronic withdrawal	WFDF&P	Bank loan
51	Wells Fargo -4983	125	7/11/2016	2,800.00	Check	MG	Individual
52	-4983	126	7/11/2016	26,000.00	Check	JMC	Individual
53	-4983	101	7/22/2016	8,700.00	Check	Tradition	Firm
54	-4983	129	7/26/2016	6,500.00	Check	FD	Individual
55	-4983	149	8/3/2016	3,000.00	Check	RT	Individual
56	-4983	4	8/9/2016	3,000.00	Check	Unavailable	Unavailable
57	-4983	173	8/17/2016	5,300.00	Check	Unavailable	Unavailable
58	Chase -5820	98	9/9/2016	218,600.00	Check	VR	Individual
59	-5820	195	9/8/2016	10,000.00	Check	MR	Individual
60	BOA -2641	91	9/12/2016	2,000	Check	Unavailable	Unavailable