

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

**FRANCISCO JOSE ORTIZ
(CRD No. 4677135),**

RESPONDENT.

**DISCIPLINARY PROCEEDING
No. 2016051454501**

HEARING OFFICER—MJD

Date: May 14, 2018

ORDER ACCEPTING OFFER OF SETTLEMENT

INTRODUCTION

Disciplinary Proceeding No. 2016051454501 was filed on March 5, 2018 by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent Ortiz submitted an Offer of Settlement (Offer) to Complainant dated May 8, 2018. 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

Ortiz entered the securities industry in 2003. As relevant here, he was associated as a General Securities Representative with WFA from June 2013 until June 2015, when the firm filed a Form U5 terminating his registrations following his resignation. On September 21, 2016, WFA filed an amended Form U5 in which the firm reported that "[i]n connection with processing a wire transfer, Mr. Ortiz submitted a document to the Firm indicating that the client had orally confirmed the wire instructions, when the client had not done so." After leaving WFA, Ortiz was associated with another FINRA member firm ("Firm A") until November 29, 2016, when Firm A filed a Form U5 terminating his registrations based on the amended Form U5 filed by WFA. Ortiz has not been associated with another FINRA member firm since his termination from Firm A. 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 Firm A, namely, November 29, 2016 and (2) the Complaint charges him with misconduct committed while he was registered with a FINRA member.

FINDINGS AND CONCLUSIONS

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

SUMMARY

In May 2015, Francisco Jose Ortiz processed a customer wire transfer based on email instructions despite knowing that an unknown imposter had compromised the customer's email account and that the wire request was fraudulent. In order to process the wire transfer, Ortiz falsely represented on a Wells Fargo Advisors LLC ("WFA") wire transfer request form that the request had been orally confirmed with the customer causing WFA's books and records to be inaccurate.

RESPONDENT AND JURISDICTION

Ortiz entered the securities industry in 2003. As relevant here, he was associated as a General Securities Representative with WFA from June 2013 until June 2015, when the firm filed a Form U5 terminating his registrations following his resignation. On September 21, 2016, WFA filed an amended Form U5 in which the firm reported that "[i]n connection with processing a wire transfer, Mr. Ortiz submitted a document to the Firm indicating that the client had orally confirmed the wire instructions, when the client had not done so."

After leaving WFA, Ortiz was associated with another FINRA member firm ("Firm A") until November 29, 2016, when Firm A filed a Form U5 terminating his registrations based on the amended Form U5 filed by WFA. Ortiz has not been associated with another FINRA member firm since his termination from Firm A.

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 Firm A, namely, November 29,

2016 and (2) the Complaint charges him with misconduct committed while he was registered with a FINRA member.

FACTS

ORTIZ'S WIRE TRANSFER RESPONSIBILITIES

At WFA Ortiz worked as a registered client associate in a Miami, Florida branch of the firm. In that role, his main duties and responsibilities included assisting more senior financial advisors with carrying out client service requests. As such, one of Ortiz's main responsibilities was to confirm the authenticity of, as well as to process, wire transfer requests on WFA's proprietary wire transfer system.

For most of his tenure at WFA, Ortiz primarily supported one senior financial advisor ("Financial Advisor A"). Ortiz supported Financial Advisor A's book of business that comprised of about 200 clients, mainly from Venezuela.

WFA'S WIRE TRANSFER PROCEDURES

At all times relevant to this complaint, WFA's wire transfer procedures required verbal confirmation, either on the telephone or in person, of written wire requests received from customers. In order to verify the request over the telephone, the WFA employee processing the wire transfer was required to verify the last four digits of the customer's social security number or tax identification number and to verify account-related information, such as account type, account balance, or recent activity.

Once verbal confirmation was completed, WFA's procedures required the preparation of an electronic wire transfer request form on the firm's systems that provided the relevant details of the wire transfer request and documented the customer's verbal confirmation.

ORTIZ PROCESSED A FRAUDULENT WIRE TRANSFER REQUEST AND FALSIFIED FIRM RECORDS

On Thursday, May 7, 2015, an imposter posing as a WFA customer sent an email to Financial Advisor A seeking a wire transfer of \$9,850 from the customer's account to a third party payable to a bank account located in London, England.

Financial Advisor A asked Ortiz to handle the client's wire request. As such, it was Ortiz's responsibility to verbally confirm the authenticity of the wire transfer request with the customer and thereafter process it through the WFA wire transfer system. However, Ortiz did not contact the customer to confirm the wire request after Financial Advisor A instructed him to handle the request.

The following day, at around 5 p.m. on Friday May 8, 2015, as Ortiz was preparing to leave WFA's offices for the weekend, he received a call from the customer who owned the account from which the May 7 wire was request was to be sent. The customer told Ortiz that his email account had been compromised and that the pending wire transfer request was not genuine. Ortiz did not notify anyone within WFA about the call he had received from the customer.

The following Monday, May 11, 2015, Financial Advisor A, unaware of the customer's call to Ortiz the previous Friday, sent an email to Ortiz forwarding the wire request and inquiring about the status of the wire transfer, stating "This [] go out? He needs confirmation[.]" Ortiz, apparently forgetting about the call he had previously received from the customer who owned the account, assumed from this email that Financial Advisor A had spoken to the customer and received authorization for the wire. Ortiz then processed the wire transfer request. In order to process the wire transfer, Ortiz filled out an electronic wire transfer request form including information about the customer requesting the wire and the wire transfer recipient, the recipient's bank information, the amount of the wire transfer and information about the purported

verbal confirmation of the wire. Ortiz electronically submitted the wire transfer request form to WFA shortly before 11 a.m. on May 11, 2015.

Neither Ortiz nor Financial Advisor A verbally had confirmed the wire request with the customer as required by WFA policy. Indeed, as alleged above, the customer who owned the account had previously informed Ortiz that the wire request was *not* genuine. Nonetheless, Ortiz falsely represented on the WFA wire transfer request form that Financial Advisor A had verbally confirmed the request with the customer. Ortiz also falsely represented on the wire transfer request form that Financial Advisor A had confirmed the customer's date of birth and recent account activity with the customer.

After the wire transfer was processed, the actual customer contacted WFA to complain. The firm thereafter recalled the wire and returned the customer's funds. Ortiz was terminated from WFA and his next employer Firm A because of his processing of the wire transfer.

FIRST CAUSE OF ACTION
FALSIFICATION OF A WIRE TRANSFER REQUEST FORM
(FINRA RULE 2010)

FINRA Rule 2010 requires associated persons to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. Falsification of a wire transfer request form is inconsistent with FINRA Rule 2010.

As alleged above, Ortiz falsified a wire transfer request form on May 11, 2015 when he falsely represented that Financial Advisor A had confirmed the wire transfer request as well as the customer's date of birth and recent account activity.

Ortiz submitted the falsified wire transfer request form to WFA as if it was authentic in order to complete the wire transfer. As a result of the submission of a false wire transfer request form, Ortiz made possible a fraudulent transfer of customer funds by an imposter.

By virtue of the foregoing, Ortiz violated FINRA Rule 2010.

**SECOND CAUSE OF ACTION
CAUSING A MEMBER FIRM'S BOOKS AND RECORDS TO BE INACCURATE
(FINRA RULES 4511 AND 2010)**

FINRA Rule 4511 requires member firms to make and preserve books and records in conformity with FINRA rules and Rule 17a-3 and 17a-4 of the Securities Exchange Act. Rule 17a-4(b)(4) of the Exchange Act requires member firms to preserve all communications including inter-office memoranda relating to their business as such. Causing a firm to make and preserve false or inaccurate books and records is a violation of FINRA Rule 4511. It is also inconsistent with high standards of commercial honor and just and equitable principles of trade, and, thus, violates FINRA Rule 2010.

As described above, Ortiz caused WFA's books and records to be inaccurate when he entered false information on the May 11, 2015 wire transfer request form.

By reason of the foregoing, Ortiz violated FINRA Rules 4511 and 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 suspended for one month from association with any FINRA member in all capacities and pay a \$5,000 fine. 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



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