

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

V.

JESSE GIL (CRD No. 5188650),

RESPONDENT.

DISCIPLINARY PROCEEDING
No. 2016051814301

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. In July and August 2016, while associated with a FINRA member firm, Jesse Gil (“Gil”) converted approximately \$2,500 from an 82-year-old widow and former bank customer (“FC”) to whom Gil was providing financial advice away from his member firm. Gil used FC’s two credit cards without her authorization to charge personal expenses. These included spa massages, sporting goods, airline baggage fees and foreign currency cash advances, as well as expenses incurred during an overseas trip to Madrid, Spain, including at a hotel, perfume store, museum and flamenco show. By converting funds from FC, Gil violated FINRA Rule 2010.

2. Beginning on July 18, 2016, Gil held power of attorney over FC. Gil failed to disclose his power of attorney (“POA”) or obtain advance approval from Allstate Financial Services, LLC (“Allstate”) (BD No. 18272), which his firm required, before taking on this role. By becoming FC’s power of attorney without approval by his firm and then by using FC’s credit

cards for his personal benefit, Gil abused a position of trust and confidence and acted unethically in violation of FINRA Rule 2010.

3. Beginning in 2014, Gil began providing financial advice to FC away from his member firms, Merrill Lynch, Pierce, Fenner & Smith, Inc. (“Merrill Lynch”) and later, Allstate. In early 2015, FC agreed to pay Gil for his efforts, and FC did so in 2016. At no time after Gil had a reasonable expectation of compensation did he provide his member firms with notice that he was engaged in an outside business activity. Accordingly, Gil violated FINRA Rules 3270 and 2010.

4. In March 2016, October 2016 and August 2017, Gil provided false answers on compliance certifications concerning acting as power of attorney and providing outside financial advice to FC for compensation. These actions violated FINRA Rule 2010.

5. Finally, Gil violated FINRA Rules 8210 and 2010 by failing to provide information and documents in response to two requests made by FINRA pursuant to FINRA Rule 8210.

RESPONDENT

6. In 2007, Gil first became registered with FINRA as an Investment Company and Variable Contracts Products Representative (“IR”) through Allstate.

7. After registering as an IR and then a General Securities Representative (“GSR”) through two other member firms, Gil became registered as an IR and GSR through Allstate (for the second time) from December 2011 to April 2015.

8. From March 2015 to May 2016, Gil was registered as an IR and GSR through Merrill Lynch. Gil was also employed at that time by Merrill Lynch's banking affiliate Bank of America.

9. Since June 2016, Gil has been registered as a GSR and IR through Allstate (his third association with that firm).

10. Gil is subject to FINRA's jurisdiction for purposes of this proceeding because (1) he is currently associated with a FINRA member; and, (2) the Complaint charges him with misconduct committed while he was registered with a FINRA member.

FACTS

Gil Provides Financial Advice to FC, Obtains Access to Her Credit Cards, and Fails to Disclose to his Employer his Status as FC's Power of Attorney

11. Gil met FC through a friend at a local church. In late 2014, FC, along with this friend, visited Gil at his Allstate office. FC asked Gil to help her organize all of her late husband's finances.

12. Gil had a relationship of trust and confidence with FC, who was elderly and a widow.

13. Over the next two years, from late 2014 until August 2016, Gil, while he was associated with both Allstate and Merrill Lynch, provided financial advice to FC and helped her organize her financial affairs. FC agreed to compensate Gil in early 2015.

14. FC has never been a brokerage customer of Merrill Lynch or Allstate.

15. FC, however, maintained bank accounts at Merrill Lynch's bank affiliate, Bank of America, during the time that Gil was a dual bank/brokerage employee of those entities. Gil

worked in a Bank of America bank branch office, using the same office space and computers for his work with Merrill Lynch and Bank of America. In his capacity as an employee of the Bank of America, Gil helped FC with banking transactions like deposits, withdrawals and transfers to and from her bank account.

16. Gil was terminated by Merrill Lynch effective April 19, 2016 and was unemployed until approximately June 7, 2016. Gil collected unemployment benefits during the period he was unemployed.

17. During this time period, Gil, along with his spouse, had limited liquid assets and substantial liabilities. For example:

- a. Gil was carrying credit card debt on his personal credit cards at a high rate of interest;
- b. His personal savings and checking accounts had no or minimal assets and had incurred overdraft and other charges;
- c. He had unpaid tax liabilities for tax year 2015 in excess of \$30,000; and,
- d. In addition to his mortgage, he had personal and auto loans in excess of \$45,000.

18. In June 2016, Gil induced FC to provide him access to FC's Bank of America credit cards by having her add his name to the credit card accounts and then having cards issued in his name.

19. To induce FC to add him as an authorized user, Gil lied to FC telling her that, according to bank policy, it was necessary step she had to take in order for him to assist her.

20. Approximately one month later, on July 18, 2016, Gil obtained power of attorney authority over FC. Allstate prohibited its associated persons to act as powers of attorney. Gil failed to disclose to Allstate, as required under their procedures, that he held power of attorney over FC.

21. In or about August 2016, Gil told FC that he would accept \$850 as payment for the financial advice he was providing.

22. On August 5, 2016, Gil, with FC's consent, accessed her bank account on-line and transferred \$850 from her savings account at Bank of America to Gil's personal checking account.

23. This payment was intended to, and did, compensate Gil for the financial services he had provided to FC.

Gil Incurs Unauthorized Personal Charges on FC's Credit Cards

24. Between July 30, 2016 and August 20, 2016, while he was associated with Allstate, Gil used FC's two credit cards for his personal expenses.

25. Gil used FC's credit cards for transactions in the United States, such as retail stores and a spa, and in connection with a trip he took to Madrid, Spain with his wife.

26. The charges included airline baggage charges and bank cash advances at the Dallas-Fort Worth airport before leaving the United States, and international charges while abroad, including charges at a Hotel in Madrid, Spain, a museum, a perfume store in Madrid, and a flamenco dance show.

27. In total, Gil charged FC's credit cards \$2,504.59 for his own personal benefit (including fees and interest) in the United States and abroad, as follows:

<u>Date</u>	<u>Description</u>	<u>Amount (\$)</u>	<u>Card Ending</u>
7/30/16	Sporting Goods	519.55	6495
8/1/16	Spa	42.00	6495
8/1/16	Credit Score	32.42	6495
8/2/16	Spa	42.00	6495
8/2/16	Retail Store A	87.68	6495
8/3/16	Retail Store A	14.44	6495
8/7/16	Retail Store B	59.61	1145
8/8/16	Bank Cash Advance	605.46	1145
8/10/16	Perfume store	207.00	1145
8/8–15/16	Misc. Foreign Transaction Fees	39.79	1145
8/14/16	Flamenco Show, Madrid	231.01	1145
8/14/16	Museum, Madrid	84.62	1145
8/14/16	Hotel, Madrid	165.41	1145
8/15/16	Duty Free, Madrid	164.05	1145
8/15/16	Airlines	101.09	1145
8/15/16	Airlines	101.91	6495
8/15/16	Foreign Transaction Fee	3.05	6495
8/20/16	Interest on cash advances	3.50	1145
	Total:	\$2,504.59	

28. On August 15, 2016, after receiving various fraud alerts regarding these credit card charges, FC visited a Bank of America branch office and told bank management that there was unauthorized activity in her credit card accounts.

29. FC did not authorize Gil to use her credit cards for his own personal benefit.

Gil Uses FC's Money to Pay Credit Card Charges He Incurred

30. On August 5, 2016, Gil accessed FC's savings account online and made a payment of \$738.02 to one of FC's credit cards to pay for charges he had incurred to date on that card.

31. FC, who was unaware of Gil's use of that card, did not authorize this payment.

32. In addition, as alleged above, on the same date, Gil transferred \$850 to compensate himself in full for the financial advice he had been providing FC.

33. Thus, as of August 5, 2016, Gil used \$1,588.02 of FC's money to pay himself directly and to pay for charges he had incurred. This amount was well in excess of their agreement regarding the fee for his services.

34. In addition, as alleged above, Gil incurred more than \$1,700 of additional personal charges on FC's credit cards thereafter.

After Discovery of the Improper Charges, Gil Makes Payments to FC's Accounts

35. As alleged above, on August 15, 2016, FC learned of the unauthorized charges made by Gil on her credit cards. That same day, Bank of America removed Gil as an authorized user of the cards.

36. On the next day, August 16, 2016, Gil visited a Bank of America branch and made two payments of FC's credit cards to cover the new charges he had incurred of approximately \$1,700. Gil also made one payment of \$740 to FC's account for the money he had previously taken on August 5, 2016.

37. Gil did not talk or otherwise communicate with FC prior to making the payments discussed above.

Allstate Policies Regarding Power of Attorney

38. Allstate prohibited its registered representatives from acting as power of attorney, for non-customers except for immediate family.

39. To do so, Gil was required to seek prior approval from the firm.

40. Gil and FC were not related and Gil did not obtain prior approval from Allstate before obtaining a power of attorney over FC.

Merrill Lynch and Allstate Outside Business Activity Policies

41. Merrill Lynch maintained policies and procedures regarding disclosure of outside business activities during Gil's association with the firm.

42. Merrill Lynch specifically required prior disclosure and pre-approval of outside business activities and prohibited receipt of compensation from outside business activities.

43. Gil did not disclose to Merrill Lynch his outside business activity of providing financial advice to FC.

44. Allstate's policies and procedures similarly required disclosure of all outside business activities. They further specifically enumerated fee-based financial planning as an example of an OBA requiring disclosure.

45. Gil did not disclose to Allstate his outside business activity of providing financial advice for a fee to FC.

Gil's False Compliance Certifications

46. In a March 2016 Merrill Lynch Annual Certification, the form instructed Gil to have, before making the certification, all relevant information regarding any outside business

activities, including the type of activity, business name, hours per month, and information about any compensation and the status of the activity.

47. Gil answered “no information exists” in the section related to outside business activities.

48. This was false because by March 2016, Gil had been providing outside financial advice to FC with the reasonable expectation of compensation since at least early 2015.

49. On May 24, 2016, Gil signed a Registered Representative Agreement with Allstate in which he agreed, among other things, to notify Allstate of all outside business activities.

50. In a pre-affiliation checklist form, Gil disclosed an OBA to Allstate relating to a church. Gil also completed a training course on Allstate’s policies and procedures manual on June 24, 2016.

51. In an October 14, 2016 Allstate Field Compliance Principal audit, which was conducted as an ordinary part of Allstate’s compliance practices, Gil answered “No” in response to a question “Since the U4 process or the last ACQ [annual compliance questionnaire], have you acted as a trustee, guardian, executor or fiduciary for any party, other than for an immediate family member.”

52. This was false as of the time it was completed in October 2016 because Gil had power of attorney for FC since July 2016, and he acted as a fiduciary when he used, and incurred charges on, her credit cards in July and August 2016.

53. Also, Gil answered “No” in response to a question “Since the last audit, have you received any gifts or compensation of \$100 or more from a customer, 3rd party, or any other business-related individual?”

54. This was false as of the time it was completed in October 2016 because, in August 2016, Gil had received compensation of \$850 from FC for providing financial advice.

55. In an August 24, 2017 Allstate Annual Compliance Questionnaire, Gil answered “no” in response to the question “While associated with [Allstate], have you accepted compensation from any person or entity . . . that is not an [Allstate] approved arrangement and/or has not been previously disclosed on the Outside Business Activities Questionnaire?”

56. This was false because Gil never disclosed his receipt, on August 5, 2016, of compensation from FC.

57. Moreover, Gil answered “no” in response to the question “While associated with [Allstate], have you been in a position where there has been a *reasonable expectation* that you may accept compensation from any person . . . that is not an [Allstate] approved arrangement and/or has not been previously disclosed on the Outside Business Activities Questionnaire?”

58. This was false because Gil did have a reasonable expectation of compensation from FC from at least early 2015 and actually received the compensation in August 2016.

Gil Failed to Provide All Requested Documents and Information

59. After Merrill Lynch filed a Uniform Termination Notice for Securities Industry Registration (“Form U5”) in May 2016 terminating Gil’s registrations, FINRA commenced an investigation into the circumstances of Gil’s termination from the Firm.

60. Gil initially cooperated in the investigation.

61. On April 19, 2019, in connection with its investigation, FINRA staff sent Gil a request for information and documents pursuant to FINRA Rule 8210 (the “April 19 Request”). The April 19 Request was sent to Gil’s counsel. The response was due May 3, 2019.

62. At Gil's counsel's request, FINRA staff granted an extension of time to respond until May 17, 2019.

63. Gil provided a partial response on May 17, 2019. Gil's May 17, 2019 submission failed to provide a full and complete response to the April 19, 2019 Request even after receiving an extension of time to respond. Gil failed to produce numerous categories of documents including credit card statements, a net worth statement, certain electronic communications, phone records, tax records and unemployment records.

64. On May 22, 2019, FINRA staff sent a second request, pursuant to FINRA Rule 8210, seeking the documents and information not provided by Gil in response to the April 19, 2019 Request. The May 22, 2019 second request identified several continuing deficiencies in Gil's production alleged above and directed a response by May 29, 2019.

65. On May 29, 2019, Gil provided a supplemental response. Gil's May 29, 2019 supplemental response only partially responded to the April 19 Request and the May 22, 2019 second request. Specifically, Gil failed to produce several categories of documents and information sought in the April 19 Request: (a) certain credit card statements; (b) phone records; and, (c) proof of payment of 2016 taxes and evidence of tax filing and any payment schedule for his unpaid taxes.

**FIRST CAUSE OF ACTION
CONVERSION
(FINRA RULE 2010)**

66. The Department of Enforcement realleges and incorporates by reference all preceding paragraphs.

67. As alleged above, in July and August 2016, Gil intentionally incurred charges of more than \$2,500 on FC's two credit cards without her authorization and obtained goods and services for his own personal benefit.

68. As alleged above, on August 5, 2016, Gil intentionally used FC's money to make a payment of approximately \$738 to pay for some of those credit card expenses.

69. As alleged above, after his ability to use the cards had been cancelled, Gil, without talking to FC, paid \$740 into one of FC's bank accounts and paid the remaining balance of the credit card charges.

70. FINRA Rule 2010 requires associated persons to "observe high standards of commercial honor and just and equitable principles of trade."

71. Conversion is the intentional and unauthorized taking of and/or exercise of ownership over property by one who neither owns the property nor is entitled to possess it. Conversion is conduct inconsistent with high standards of commercial honor and just and equitable principles of trade.

72. By reason of the conduct described above, including incurring charges on her credit cards without her authorization, Gil violated FINRA Rule 2010.

**SECOND CAUSE OF ACTION
UNETHICAL CONDUCT
(FINRA RULE 2010)
(IN THE ALTERNATIVE TO THE FIRST CAUSE OF ACTION)**

73. The Department of Enforcement realleges and incorporates by reference all preceding paragraphs.

74. This cause of action is plead in the alternative to the First Cause of Action.

75. FINRA Rule 2010 requires associated persons to “observe high standards of commercial honor and just and equitable principles of trade.”

76. Allstate prohibited its associated persons from acting as POA for non-customers.

77. By obtaining a power of attorney for FC without disclosure to or approval by Allstate, Gil violated Allstate’s policies and procedures.

78. By violating Allstate policy on POAs, Gil acted unethically and contrary to high standards of commercial honor and just and equitable principles of trade.

79. In addition, as alleged above, Gil occupied a position of trust and confidence with FC, a vulnerable, elderly widow, who was relying on his advice.

80. By incurring credit card charges for his personal benefit on FC’s credit cards, Gil abused that position of trust and confidence, thereby failing to observe high standards of commercial honor and just and equitable principles of trade.

81. As a result of the foregoing conduct, Gil violated FINRA Rule 2010.

**THIRD CAUSE OF ACTION
FAILURE TO DISCLOSE OUTSIDE BUSINESS ACTIVITY
(FINRA RULES 3270 AND 2010)**

82. The Department of Enforcement realleges and incorporates by all preceding paragraphs.

83. From approximately early 2015 until April 2016, while associated with Merrill Lynch, Gil provided financial advice to FC with a reasonable expectation of compensation.

84. From approximately June 2016 to August 2016, while associated with Allstate, Gil provided financial advice to FC with a reasonable expectation of compensation and, on or about August 5, 2016, received \$850 in compensation.

85. FC was not a customer of Merrill Lynch or Allstate and Gil's financial advice was outside the scope of his business at those firms.

86. Gil did not provide prior written notice to Merrill Lynch or Allstate of this outside business activity prior to assisting FC or accepting \$850 as payment for that assistance.

87. FINRA Rule 3270 provides:

“[n]o registered person may be an employee, independent contractor, sole proprietor, officer, director or partner of another person, or be compensated, or have the reasonable expectation of compensation, from any other person as a result of any business activity outside the scope of the relationship with his or her member firm, unless he or she has provided prior written notice to the member, in such form as specified by the member”

88. By providing financial advice to FC with the reasonable expectation of compensation and then for actual compensation, Gil engaged in an undisclosed outside business activity in violation of FINRA Rule 3270. By virtue of that violation, Gil also violated FINRA Rule 2010.

**FOURTH CAUSE OF ACTION
FALSE COMPLIANCE CERTIFICATIONS
(FINRA RULE 2010)**

89. The Department of Enforcement realleges and incorporates by reference all preceding paragraphs.

90. As described above, while associated with Merrill Lynch, Gil provided a false response on his March 2016 Annual Compliance Certification form.

91. As described above, while associated with Allstate, Gil provided false responses on his October 2016 Audit form and his August 2017 Annual Compliance Questionnaire.

92. FINRA Rule 2010 requires associated persons to “observe high standards of commercial honor and just and equitable principles of trade.”

93. Providing false information on a compliance form is inconsistent with the standards of conduct expected of a securities industry professional and violates FINRA Rule 2010.

94. By providing false compliance certifications to Merrill Lynch and Allstate, Gil violated FINRA Rule 2010.

**FIFTH CAUSE OF ACTION
FAILURE TO PROVIDE INFORMATION AND DOCUMENTS
(FINRA RULES 8210 AND 2010)**

95. The Department of Enforcement realleges and incorporates by reference all preceding paragraphs.

96. FINRA Rule 8210(a) provides that for purposes of an investigation, FINRA staff has the right to require a person subject to FINRA’s jurisdiction to “provide information . . . in writing . . . with respect to any matter involved in the investigation.”

97. FINRA Rule 8210(c) provides that, “[n]o member or person shall fail to provide information . . . pursuant to this Rule.”

98. FINRA Rule 8210(d) specifies that if the person subject to the request is represented by counsel, “then the notice shall be served upon counsel . . . any notice served upon counsel shall be deemed received by the member or person.” As described above, Gil failed to make a complete and full production of information and documents in response to requests made

pursuant to FINRA Rule 8210 served on and received by his counsel. Gil specifically failed to produce (a) certain credit card statements; (b) phone records; and, (c) proof of payment of 2016 taxes and evidence of tax filing and any payment schedule for his unpaid taxes.

99. By failing to provide a full and complete response to a request for information and documents requested pursuant to FINRA Rule 8210, Gil violated FINRA Rule 8210. By virtue of that violation, Gil also violated FINRA Rule 2010.

RELIEF REQUESTED

WHEREFORE, the Department of Enforcement 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), including monetary sanctions, be imposed; and,
- C. 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: August 26, 2019

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