

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Marc Anthony Last
(CRD No. 6366775),

Respondent.

DISCIPLINARY PROCEEDING
No. 2016052434001

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. In November 2016, while registered with NYLIFE Securities LLC (“NYLIFE” or the “Firm”), a FINRA-regulated broker-dealer, Respondent Marc Anthony Last (“Last” or “Respondent”) converted \$5,000 from one of his customer’s variable annuity accounts, in violation of FINRA Rules 2150 and 2010. Last accomplished this by forging the customer’s signature on a partial withdrawal form and directing the transfer of \$5,000 to his personal bank account, which Last misrepresented as belonging to the customer, thereby violating FINRA Rule 2010. This misconduct also caused the Firm to make and preserve inaccurate books and records, in violation of FINRA Rules 4511(a) and 2010. Furthermore, during FINRA’s investigation into allegations of conversion and forgery of customer signatures, Last failed to provide documents and testimony requested pursuant to FINRA Rule 8210, in violation of FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

2. In November 2014, Last became associated with the Firm. In February 2016, Last became registered with the Firm as an Investment Company Products/Variable Contracts Representative after passing the Series 6 Examination.

3. On December 9, 2016, the Firm filed a Form U-5 (“Uniform Termination Notice for Securities Industry Registration”) for Last, disclosing that it terminated Last’s employment on November 11, 2016, for “violating company policy by failing to witness clients sign traditional life insurance policy documents.” In December 2016, FINRA opened an investigation into Last’s alleged misconduct reported in the Form U-5 filed by the Firm. During the course of FINRA’s investigation of this matter, additional allegations surfaced, including a complaint from Customer JP alleging that Last converted funds from him. Last has not been associated or registered with any FINRA-regulated firm since the termination of his employment with the Firm.

4. Although Last 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 the Firm, namely, December 9, 2016, and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member and with failing to respond to FINRA requests for information and testimony during the two-year period after the date upon which he ceased to be registered or associated with a FINRA member.

**FIRST CAUSE OF ACTION
CONVERSION OF CUSTOMER FUNDS
(FINRA Rules 2150 and 2010)**

5. The Department realleges and incorporates by reference paragraphs 1 through 4 above.

6. FINRA Rule 2150 states that “[n]o member or person associated with a member shall make improper use of a customer’s securities or funds.”

7. FINRA Rule 2010 states that “[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.”

8. A violation of FINRA Rule 2150 is also a violation of FINRA Rule 2010.

9. In or about March 2016, Last sold to Customer JP, a NYLIFE Flexible Premium Variable Annuity III issued by New York Life Insurance and Annuity Corporation (the “VA”). Customer JP paid the initial premium of approximately \$76,475.36 for the VA through a rollover of his IRA held at another broker-dealer.

10. On or about November 2016, Last forged Customer JP’s signature on a New York Life Insurance and Annuity Corporation partial withdrawal form directing the disbursement of \$5,000 from Customer JP’s VA to a bank account represented as belonging to JP, that was actually held in Last’s name.

11. The forged partial withdrawal form resulted in the unauthorized \$5,000 electronic transfer of funds from Customer JP’s VA to Last’s personal bank account.

12. By the conduct detailed above, Last converted \$5,000 from Customer JP without his knowledge or authorization, in violation of FINRA Rules 2150 and 2010.

**SECOND CAUSE OF ACTION
FORGERY
(FINRA RULE 2010)**

13. The Department realleges and incorporates by reference Paragraphs 1 through 12.

14. As described above, Last forged the signature of Customer JP on the partial withdrawal form directing the transfer of funds from Customer JP's VA to Last's bank account, without Customer JP's knowledge or authorization.

15. By forging Customer JP's signature on the partial withdrawal form, Last engaged in conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of FINRA Rule 2010.

**THIRD CAUSE OF ACTION
CAUSING THE CREATION AND PRESERVATION
OF INACCURATE BOOKS AND RECORDS
(FINRA RULES 4511 AND 2010)**

16. The Department realleges and incorporates by reference Paragraphs 1 through 15.

17. FINRA Rule 4511(a) requires FINRA members to "make and preserve books and records as required under the FINRA rules, the Exchange Act and the applicable Exchange Act rules". Section 17(a) of the Securities Exchange Act of 1934 requires that broker dealers make and preserve certain books and records. SEA Rule 17a-3(a)(6), promulgated thereunder, requires broker-dealers to "make and keep current . . . "[a] memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted." The partial withdrawal form is a record encompassed by this provision, as it is an instruction received by the Firm for the sale of securities relating to its VA business. The

obligation to make and keep records current pursuant to SEA Rule 17a-3 also includes a requirement that such records be accurate.

18. Causing a member firm to make and preserve inaccurate books and records is a violation of FINRA Rule 4511.

19. A violation of FINRA Rule 4511 is also a violation of FINRA Rule 2010.

20. Last made inaccurate entries on the partial withdrawal form by falsely representing that the bank account receiving the \$5,000 wire transfer from Customer JP's VA belonged to Customer JP, and adding Customer JP's forged signature.

21. By causing the Firm to make and preserve inaccurate books and records in violation of Section 17(a) of the Exchange Act and SEA Rule 17a-3(a)(6), promulgated thereunder, Last violated FINRA Rules 4511 and 2010.

**FOURTH CAUSE OF ACTION
FAILURE TO COMPLY WITH TWO FINRA REQUESTS FOR
DOCUMENTS AND TESTIMONY
(FINRA RULES 8210 AND 2010)**

22. The Department realleges and incorporates by reference Paragraphs 1 through 21 above.

23. FINRA Rule 8210 provides, in relevant part, that FINRA staff "shall have the right to require a member, person associated with a member, or any other person subject to FINRA's jurisdiction to provide information . . . with respect to any matter involved in [an] investigation."

24. A violation of FINRA Rule 8210 is also a violation of FINRA Rule 2010.

The First 8210 Request

25. On April 26, 2018, Enforcement sent a letter pursuant to FINRA Rule 8210, requesting that Last appear and provide testimony at 10:00 a.m. on May 17, 2018 at FINRA's offices in Philadelphia, Pennsylvania (the "First Rule 8210 Request"). The First Rule 8210 Request also requested that Last complete and return to Enforcement staff an enclosed pre-testimony questionnaire (the "Questionnaire") by May 9, 2018.

26. The First Rule 8210 Request enclosed a document entitled "Supplemental Information for Testimony Requests Pursuant to FINRA Rule 8210" (the "Supplemental Information") stating that "failure to provide any information requested by [Enforcement] staff, could violate Rule 8210 and could be the basis for the initiation of a disciplinary proceeding that could lead to the imposition of sanctions, including a bar from the industry, suspension, censure and/or fine." Enforcement sent the First Rule 8210 Request, by regular first-class mail to Last's last known residential address as reflected in the Central Registration Depository (the "CRD Address").

27. Enforcement also sent an electronic copy of the First Rule 8210 Request to an email address that Last previously used to communicate with Enforcement (the "Last Email Address").

28. The copy of the First Rule 8210 Request sent by first-class mail to the CRD Address was returned to Enforcement by the United States Post Service ("USPS") with the notation "Return to Sender, insufficient address, unable to forward."

29. The copy of the First Rule 8210 Request sent to the Last Email Address was not returned to Enforcement as undeliverable.

30. By cover letter dated May 4, 2018, Enforcement sent Last another copy of the First Rule 8210 Request, enclosing the Questionnaire and Supplemental Information (the “May 4 Cover Letter”).

31. The May 4 Letter was sent to the CRD Address by certified mail, return receipt requested, and by regular first-class mail. Both copies were returned to Enforcement by the USPS for “insufficient address”.

32. Last failed to return his completed Questionnaire to Enforcement by the May 9, 2018 deadline.

33. On May 10, 2018, Enforcement sent an email to Last at the Last Email address, asking “will you be appearing on May 17th, 2018 and will you be represented?” Last did not respond to this email, which was not returned to Enforcement as undeliverable.

34. On May 11, 2018, another copy of the First Rule 8210 Request was sent to Last by Federal Express, at the CRD Address with the added apartment number 201, located through a LEXIS search. On May 14, 2018, Federal Express informed Enforcement staff by telephone that Last had moved from the CRD Address.

35. On May 15, 2018, Enforcement sent two copies of the First Rule 8210 Request by Federal Express, addressed to Last at a newly-discovered address identified for Last (the “Glenside Address”). Both deliveries were accepted by an individual, who signed the Federal Express receipts as “B. Last”.

36. On May 17, 2018, Last failed to appear for testimony, as requested.

The Second Rule 8210 Request

37. On May 18, 2018, Enforcement sent a second letter to Last, pursuant to FINRA Rule 8210 (the “Second Rule 8210 Request”). The Second 8210 Request noted that Last had

failed to contact FINRA staff regarding his testimony, and requested that Last appear and provide testimony at 9:30 a.m. on June 1, 2018 at FINRA's offices in Rockville, Maryland. It also informed Last "[i]f you fail to appear on the date scheduled for your testimony or do not obtain our agreement to reschedule your testimony for another date, time, or location, you will be in violation of FINRA Rule 8210."

38. Enforcement sent the Second Rule 8210 Request by certified mail, return receipt requested, and regular first-class mail, to both the CRD Address and the Glenside Address.

39. The Second Rule 8210 Request sent by certified mail to the CRD Address was delivered on May 21, 2018, and signed for with the first name Tyrone, and an illegible last name. The copy sent by regular first-class mail to the CRD Address was returned by the USPS with notation: "Return to Sender, Insufficient Address, Unable to Forward."

40. The certified copy of the Second Rule 8210 Request sent to the Glenside Address was returned by the USPS, marked as "Return to Sender, Unclaimed, Unable to forward". The copy sent by regular first-class mail to the Glenside Address has not been returned.

41. Last failed to complete and return his Questionnaire by the May 9, 2018 deadline set forth in the First Rule 8210 Request, and failed to appear and provide testimony on May 17, as requested by the First Rule 8210 Request. Last also failed to appear and provide testimony on June 1, 2018, as requested by the Second Rule 8210 Request.

42. To date, Last has not provided a completed Questionnaire nor appeared for testimony as requested by the First and Second Rule 8210 Requests.

43. By reason of the foregoing, Last failed to provide the documents and information and the testimony requested in connection with a FINRA investigation, in violation of FINRA Rules 8210 and 2010.

44. The acts, practices, and conduct described above constitute separate and distinct violations of FINRA Rules 8210 and 2010.

RELIEF REQUESTED

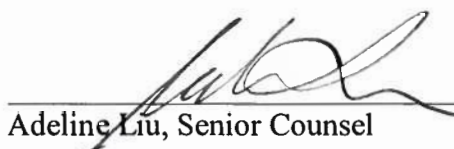
WHEREFORE, the Department of Enforcement respectfully requests that the Panel:

- 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) 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: _____

9/17/18



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