

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

Department of Enforcement,

Complainant,

v.

Marc Anthony Last
CRD No. 6366775,

Respondent.

Disciplinary Proceeding
No. 2016052434001

Hearing Officer JLC

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: November 1, 2018

INTRODUCTION

Disciplinary Proceeding No. 2016052434001 was filed on September 17, 2018, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent Marc Anthony Last submitted an Offer of Settlement (Offer) to Complainant dated October 25, 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, 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, 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

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.

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.

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.

FINDINGS AND CONCLUSIONS

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

SUMMARY

In November 2016, while registered with NYLIFE Securities LLC (“NYLIFE” or the “Firm”), a FINRA-regulated broker-dealer, Respondent Last 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.

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

1. 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.”
2. 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.”

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

4. 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.

5. 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.

6. 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.

7. 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)**

8. 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.

9. 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)**

10. 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.

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

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

13. 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.

14. 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)**

15. 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.”

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

The First 8210 Request

17. 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.

18. 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”).

19. 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”).

20. 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.”

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

22. 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”).

23. 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”.

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

25. 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.

26. 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.

27. 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”.

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

The Second Rule 8210 Request

29. 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.”

30. 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.

31. 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.”

32. 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.

33. 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.

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

35. 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.

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

Based on the foregoing, Respondent violated FINRA Rules 2150, 4511, 8210 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 barred from association with any FINRA member in all capacities.

The sanctions imposed herein shall be effective on a date set by FINRA staff. A bar or expulsion shall become effective upon approval or acceptance of this Order.

SO ORDERED.

FINRA

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



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