

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Nancy Kimball Mellon (CRD No. 1253484),

Respondent.

DISCIPLINARY PROCEEDING
No. 2017052760001

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Between January 2016 and July 2016 (the “Relevant Period”), while registered with FINRA through member firm Wells Fargo Clearing Services, LLC (f/k/a Wells Fargo Advisors, LLC) (“WFCS” or the “Firm”), Respondent Nancy Kimball Mellon caused her assistant, MM, to submit four false expense reports to the Firm on Mellon’s behalf seeking reimbursement for a 2016 Outback Bowl VIP Club Membership.

2. The expense reports were false because Mellon (1) claimed to have paid Outback Bowl when she had not yet paid the expense; (2) submitted misleading supporting documents; and (3) sought reimbursement for \$500 more than she owed.

3. Mellon received \$4,300 in “reimbursements” from the Firm as a result of her false expense reports and used the money to pay personal expenses.

4. Mellon failed to pay the \$3,800 Outback Bowl expense until on or about December 16, 2016 and, to date, she has not repaid WFCS the additional \$500 “reimbursement” to which she was not entitled.

5. In connection with FINRA’s investigation into Mellon’s false expense reports, FINRA staff (“Staff”) requested, pursuant to FINRA Rule 8210, Mellon to produce bank records for January 2016 through October 2016. In response to FINRA’s request, Mellon falsely claimed that she was unable to provide the bank records and attempted to mislead FINRA staff by asserting that the bank refused to provide the records and recommended that she seek legal advice. After lying to FINRA staff and after her on-the-record testimony, Mellon produced the requested bank records.

6. As a result of the foregoing, Mellon converted the Firm’s funds in violation of FINRA Rule 2010, falsified documents in violation of FINRA Rule 2010, caused the Firm to maintain inaccurate books and records in violation of FINRA Rules 4511 and 2010, and provided false and misleading responses to FINRA staff in violation of FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

7. Mellon first entered the securities industry in 1983 when she became associated with a FINRA member and she first became registered as a general securities representative in June 1984. On August 17, 2012, Mellon became registered with FINRA as a general securities representative through her association with WFCS.

8. On January 4, 2017, WFCS filed a Form U5 notice of termination, reporting that the Firm terminated Mellon as of December 7, 2016 after “. . . allegations that Financial Advisor

submitted expenses for reimbursement that were either not business related or not paid by the Financial Advisor.”

9. Although Respondent is no longer registered or associated with a FINRA member, she 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 WFCS, namely, January 4, 2017, and (2) the Complaint charges her with misconduct committed while she was registered or associated with a FINRA member and with providing false and misleading responses to FINRA requests for information during the two-year period after the date upon which she ceased to be registered or associated with a FINRA member.

STATEMENT OF FACTS

WFCS’s Expense Management Systems

10. During the Relevant Period, WFCS maintained two systems through which employees could seek reimbursements for out-of-pocket business expenses they incurred. The first system, Concur, enabled employees to enter out-of-pocket expenses for direct reimbursement from WFCS. The second system, the Financial Advisor Expense Management System (“FAEMS”), enabled employees to be reimbursed for out-of-pocket business expenses from a flexible spending account to which they contributed pre-tax dollars from their compensation (the “FAEMS account”). The employees forfeited any unspent money remaining in the FAEMS account at the end of the year.

11. Mellon had WFCS deduct approximately \$1,667 per month (i.e., \$20,000 per year, pre-tax) from her compensation for credit to her FAEMS account.

Outback Bowl and Related Expense Reports

12. In and around November 2015, after being introduced to Outback Bowl by her client RL, Mellon agreed to purchase an Outback Bowl VIP Club Membership for \$3,800. The membership included, among other things, tickets to the Outback Bowl football game on New Year's Day and admission to related networking events.

13. Mellon and her family, clients, and prospective clients, attended the Outback Bowl in Tampa, Florida on January 1, 2016.

14. On January 27, 2016, MM submitted, pursuant to Mellon's request, a FAEMS expense report on Mellon's behalf for the \$3,800 reimbursement related to Outback Bowl.

15. The Firm required evidence of payment prior to reimbursing a representative; therefore, MM faxed a copy of the front of Mellon's \$3,800 check to Outback Bowl dated January 2, 2016, which unbeknownst to MM, Mellon had not mailed to Outback Bowl.

16. On January 28, 2016, WFCS rejected Mellon's FAEMS expense submission and required proof of payment, such as the front **and back** of a cancelled check.

17. On April 4, 2016, more than two months after WFCS rejected her reimbursement attempt, Mellon provided MM with a copy of the back of the January 2, 2016 check to Outback Bowl, which Mellon mailed on March 18, 2016, and instructed MM to enter the Outback Bowl expense through Concur and to get the branch office to reimburse her.

18. On April 5, 2016, Outback Bowl notified Mellon that the bank returned her check, dated January 2, 2016. Nevertheless, Mellon failed to notify MM or anyone else at WFCS that the Outback Bowl expense remained unpaid.

19. On April 17, 2016, Mellon's branch manager, TS, agreed to provide Mellon with \$2,000 from the Firm's budget, payable at a rate of \$500 per quarter, which she could use for

client entertainment, including a portion of the Outback Bowl VIP Club Membership. As with all other expenses, WCFS required Mellon to pay the expense before she sought reimbursement.

20. On April 18, 2016, despite still not paying Outback Bowl the \$3,800, Mellon directed MM to enter the following two reimbursement requests on Mellon's behalf: (1) \$1,000 through Concur, which represented the first and second quarter budget previously approved by TS; and (2) \$2,800 through FAEMS.

21. MM complied with Mellon's request and revised and re-submitted the FAEMS expense submission that he previously entered on January 27, 2016, using the front and back of the returned check Mellon provided, dated January 2, 2016. Mellon approved the FAEMS expense re-submission just minutes later.

22. On or about April 21, 2016, April 25, 2016, May 3, 2016, and June 3, 2016, WCFS sent a total of \$3,800 in Outback Bowl reimbursements to Mellon's joint account at Financial Institution 1. Mellon did not notify anyone at the Firm that she received expense reimbursements for an expense that she had not paid, and Mellon used the \$3,800 to pay personal expenses.

23. On May 2, 2016, RL notified Mellon that RL was "on the hook" to Outback Bowl and was "holding a bill for \$3,800."

24. On July 6, 2016, MM, at Mellon's direction, entered Mellon's third quarter \$500 client entertainment allowance into Concur as a reimbursement for the Outback Bowl expense, despite the fact that, unbeknownst to MM, Mellon had already received the entire \$3,800 reimbursement that she still had not paid to Outback Bowl.

25. On July 7, 2016, WCFS sent the \$500 reimbursement into Mellon's joint account at Financial Institution 1. Mellon used the \$500 to pay personal expenses.

26. On July 19, 2016, RL emailed Mellon demanding payment for the \$3,800 Outback Bowl expense because Outback Bowl charged RL's credit card for the expense.

27. Mellon responded to RL's demand for payment by asking RL to stop emailing Mellon's WFCS email address, falsely claiming that it "has nothing to do with work. [T]hey did not provide me any support or marketing funds. . . ."

28. In and around August 2016, RL sued Mellon for \$3,800 that she paid Outback Bowl for Mellon's expense.

29. On December 16, 2016, more than five months after she received money from WFCS as "reimbursement" for the expense, months after RL sued Mellon, Mellon paid Outback Bowl \$3,800, which in turn reimbursed RL.

30. To date, Mellon has not repaid the \$500 excess "reimbursement" that she falsely requested and received from the Firm in July 2016.

Mellon's False Responses to FINRA's Requests Pursuant to FINRA Rule 8210

31. On January 5, 2018, pursuant to FINRA Rule 8210, Staff requested that Mellon provide, among other things, copies of her Financial Institution 1 bank statements and cancelled checks, for January 2016 through October 2016. The response was due by January 19, 2018.

32. Staff also requested that if Mellon was unable to obtain access to the documentation from the bank, she should provide a copy of written communications between her and Financial Institution 1 and a description of the steps she took to obtain the documents from the bank.

33. On January 12, 2018, Mellon responded to Staff's January 5, 2018 request by email. However, she did not provide the requested bank records. Instead, Mellon falsely claimed that the ". . . bank statements from [Financial Institution 1] joint account are not

available.” Mellon also claimed that because the account at Financial Institution 1 had been closed, she did not have online access and did not have copies of the statements. However, Mellon did not provide copies of her correspondence with Financial Institution 1, as previously requested pursuant to FINRA Rule 8210.

34. On January 17, 2018, Staff issued Mellon a second request for information and documents, pursuant to FINRA Rule 8210, noting, among other things, that Mellon’s January 12, 2018 email was not responsive. FINRA advised Mellon that she failed to provide her bank records or correspondence between her and Financial Institution 1 demonstrating her attempt to obtain such records. FINRA requested that Mellon respond to the January 17, 2018 request, which incorporated and attached the January 5, 2018 request, by January 24, 2018.

35. Later on January 17, 2018, Mellon responded by email that “[s]ince the [Financial Institution 1] accounts are closed, [she has] no internet/online access. [She has] attempted to recover the documents [she] had saved to [her] cloud accounts, they can[]not be recovered.”

36. In addition, Mellon attempted to mislead staff by stating that, in response to her request for the bank records from Financial Institution 1, MB, who was a Vice President and Commercial Banking Officer at Financial Institution 1, advised her to consult an attorney. However, MB’s suggestion to seek legal counsel was in response to Mellon questioning MB about whether it was illegal for FINRA to request her joint account records and whether the bank could respond as such.

37. In response to Mellon’s January 17, 2018 email, Staff asked Mellon if she intended to provide any of the financial records FINRA requested. Mellon responded by email, “I have provided all I can produce.”

38. However, Mellon admitted during her on-the-record interview that she knew that Financial Institution 1 would provide Mellon's bank records with her authorization or upon her request.

39. Following Mellon's February 7, 2018, on-the-record interview, Staff sent Mellon another request, pursuant to FINRA Rule 8210, for her bank account statements and cancelled checks from January 1, 2016, through October 31, 2016.

40. On February 16, 2018, pursuant to Mellon's request, Financial Institution 1 provided Staff with copies of the joint account statements and cancelled checks.

**FIRST CAUSE OF ACTION
(Conversion — FINRA Rule 2010)**

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

42. FINRA Rule 2010 requires members and associated persons, in the conduct of their business, to "observe high standards of commercial honor and just and equitable principles of trade."

43. Conversion is an 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 inconsistent with high standards of commercial honor and just and equitable principles of trade.

44. Between April 18, 2016 and July 6, 2016, Mellon caused her assistant, MM, to submit four false expense reports on Mellon's behalf so that she could receive \$4,300 in reimbursements for the Outback Bowl expense, a \$3,800 expense she had not yet paid and a \$500 expense she never incurred.

45. Between April 21, 2016 and July 7, 2016, WFCS sent \$4,300 to Mellon's account at Financial Institution 1 as "reimbursements" for a \$3,800 expense Mellon had not yet paid and a \$500 expense she never incurred. Mellon used the money to pay personal expenses.

46. Finally, Mellon did not pay the Outback Bowl expense until on or about December 16, 2016, and to date, Mellon has not repaid the Firm the extra \$500, which she falsely claimed was reimbursement for the Outback Bowl expense.

47. As a result of the foregoing, Mellon converted \$4,300 from WFCS in violation of FINRA Rule 2010.

**SECOND CAUSE OF ACTION
(False Expense Reports — FINRA Rule 2010)**

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

49. A registered person's submission of false firm documents is conduct inconsistent with FINRA Rule 2010's requirement that all individuals associated with FINRA member firms observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business.

50. Between January 27, 2016 and July 6, 2016, Mellon caused her assistant MM to submit four false expense reports to WFCS on her behalf.

51. The expense reports were false for the following reasons: (1) Mellon claimed to have paid the Outback Bowl when in fact she had not yet paid the expense; (2) Mellon used the front and back of a check as support for the payment when she knew that the check had not cleared; and (3) Mellon sought reimbursement for \$500 more than the Outback Bowl invoice.

52. Mellon's actions were inconsistent with high standards of commercial honor and just and equitable principles of trade.

53. As a result of the foregoing, Mellon violated FINRA Rule 2010.

**THIRD CAUSE OF ACTION
(Causing False Books and Records of the Firm —
FINRA Rules 4511 and 2010)**

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

55. FINRA Rule 4511 requires 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 Exchange Act and SEA Rule 17a-3(a)(3) thereunder require broker-dealers to maintain current “[l]edger accounts (or other records) reflecting all assets and liabilities, income and expense and capital accounts.”

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

57. By causing MM to submit four false expense reports on Mellon’s behalf to WFCS between January 27, 2016 and July 6, 2016, Mellon caused the Firm to maintain inaccurate books and records.

58. As a result of the foregoing, Mellon violated FINRA Rules 4511 and 2010.

**FOURTH CAUSE OF ACTION
(Providing False Information in Response to FINRA Rule 8210 Requests —
FINRA Rules 8210 and 2010)**

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

60. Mellon falsely responded to FINRA’s request, pursuant to FINRA Rule 8210, when she wrote that she was unable to provide copies of her bank statements and cancelled checks.

61. Mellon also attempted to mislead FINRA when she suggested to Staff that, in response to her request for the bank records, Financial Institution 1 advised her to seek legal counsel. Instead, she asked MB if Financial Institution 1 could advise her that FINRA's request was illegal.

62. Mellon knew that the bank would provide the records upon her request.

63. The bank statements and cancelled checks were material to FINRA's investigation regarding Mellon's conduct and termination from WFCS.

64. As a result of the foregoing, Mellon violated 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(s) 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, 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 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: 11/9/2018


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