

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

Department of Enforcement,

Complainant,

v.

Andrew Manuel Garcia (CRD No. 6715172),

Respondent.

DISCIPLINARY PROCEEDING
No. 2017054899801

HEARING OFFICER:

COMPLAINT

The Department of Enforcement (“Enforcement”) alleges:

SUMMARY

1. From April 27, 2017 until June 14, 2017 (the “Relevant Period”), while associated with Charles Schwab & Co., Inc. (“Schwab” or the “Firm”), a FINRA-regulated broker-dealer, Respondent Andrew Manuel Garcia (“Garcia”) converted approximately \$3,392 belonging to SR, a Firm customer.

2. Specifically, SR’s 2016 federal and state tax refunds were deposited into Garcia’s Firm brokerage account (“Firm Account”) after Garcia provided SR with the routing and account numbers for Garcia’s Firm Account. Although Garcia was presented on multiple occasions with information indicating the funds did not belong to him, Garcia used the funds during the Relevant Period to conduct brokerage trades in his Firm Account and to fund transfers to his other personal banking and brokerage accounts held away from Schwab.

3. In addition, during Schwab’s investigation into Garcia’s misconduct, Garcia made false statements to the Firm about his attempts to confirm that the funds belonged to him.

4. By converting customer funds, Garcia violated FINRA Rules 2150(a) and 2010.

5. In addition, by making false statements to his member Firm employer during an internal investigation, Garcia violated FINRA Rule 2010.

RESPONDENT AND JURISDICTION

6. Garcia entered the securities industry in October 2016 when he became associated with a FINRA-regulated broker-dealer as a Non-Registered Fingerprint individual (“NRF”). On January 3, 2017, Garcia became associated with Schwab as an NRF and Customer Service Representative responsible for assisting customers who called the Firm’s customer help-line. As a Customer Service Representative, Garcia had access to and used customer account information to assist the Firm’s customers with inquiries regarding their brokerage accounts. In May 2017, Garcia registered to take the Series 7 and 63 exams, which he passed in June 2017, at which time, he became associated with Schwab as a General Securities Representative.

7. In a Uniform Termination Notice for Securities Industry Registration (“Form U5”) dated July 11, 2017, the Firm reported Garcia’s termination for his “[f]ailure to adhere to ... [and] violation of Schwab’s Business Conduct Policy.”

8. Although Garcia is no longer registered or associated with a FINRA member firm, he remains subject to FINRA’s jurisdiction for purposes of this proceeding pursuant to Article V, Section 4 of FINRA’s By-Laws, because (i) the Complaint was filed within two years after the effective date of termination of Garcia’s registration with Schwab, namely, July 11, 2017; and (ii) the Complaint charges Garcia with misconduct committed while he was registered or associated with a FINRA member firm.

FIRST CAUSE OF ACTION

Conversion

Violation of FINRA Rules 2150(a) and 2010

9. Enforcement realleges and incorporates by reference Paragraphs 1 through 8 above.

10. FINRA Rule 2150(a) provides that “[n]o member or person associated with a member shall make improper use of a customer’s securities or funds.” FINRA Rule 2010 requires FINRA members and their associated persons to “observe high standards of commercial honor and just and equitable principles of trade.”

11. Conversion is the intentional and unauthorized taking of, and/or exercise of ownership of, property by one who neither owns the property nor is entitled to possess it. A registered person who engages in conversion of customer funds violates FINRA Rules 2150(a) and 2010.

12. While associated with Schwab, Garcia was a Customer Service Representative responsible for assisting customers who called the Firm’s customer help-line.

13. In April 2017, Garcia filed a federal tax return for 2016 seeking a refund of \$391. As a resident of Florida, Garcia was not required to and did not file a personal state tax return.

14. On April 18, 2017, customer SR called the Firm’s help-line and asked for his routing and account numbers so his tax refunds could be direct deposited into his Firm brokerage account. Garcia took SR’s call and provided SR with the routing and account numbers for his Firm Account instead of SR’s.

15. On April 27, 2017, SR’s federal tax refund for 2016 of approximately \$2,988 was electronically deposited in Garcia’s Firm Account.

16. On May 19, 2017, SR’s state tax refund for 2016 of approximately \$404 was electronically deposited in Garcia’s Firm Account.

17. Garcia was not entitled to possess the approximately \$3,392 deposited into his Firm Account (the “Funds”). The Funds belonged to SR and Garcia knew that SR intended for the Funds to be deposited into SR’s Firm account for SR’s use.

18. Garcia also knew that the Funds did not belong to him.

- a. On April 27, 2017, when SR’s \$2,988 was deposited in Garcia’s Firm Account, Garcia’s father advised him that his expected federal tax refund for 2016 was approximately \$396 and told him to contact the family’s accountant to verify the amount.
- b. On May 16, 2017, Garcia received a check in the amount of \$391 from the Internal Revenue Service (“IRS”), representing his 2016 federal tax refund.
- c. On May 19, 2017, SR’s state tax refund in the amount of \$404 was deposited in Garcia’s Firm Account by an entity described as the “Franchise Tax” Board.
- d. As noted above, however, Garcia did not expect to receive a second or state tax refund.

19. Despite this information, Garcia took no steps to verify that the Funds belonged to him and were properly deposited into his Firm Account.

20. Instead, Garcia used the Funds for his personal benefit, placing approximately \$1200 worth of securities trades in his Firm Account and transferring \$2000 from his Firm Account to his personal banking and brokerage accounts held away from the Firm during the Relevant Period.

21. Garcia could not have engaged in these transactions without using SR’s Funds because, prior to receiving the Funds, Garcia had only \$27 in his Firm Account and an average balance of approximately \$800 in his personal checking account.

22. On June 12, 2017, after SR called the Firm inquiring about the status of his tax refund deposits, the Firm reversed the deposits and credited the Funds to SR's account.

23. By converting funds belonging to SR, a Firm customer, for his personal use and benefit, Garcia violated FINRA Rules 2150(a) and 2010.

SECOND CAUSE OF ACTION

False Statements to FINRA Member Firm Employer Violation of FINRA Rule 2010

24. Enforcement realleges and incorporates by reference Paragraphs 1 through 23 above.

25. 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." Rule 2014(b) states that "persons associated with a member shall have the same duties and obligations as a member under ... [FINRA] Rules." Making false and inaccurate statements to a member-firm employer violates FINRA Rule 2010.

26. On June 8, 2018, Firm customer SR called Schwab inquiring why the Funds had not been credited to his account. On June 13, 2017, as part of its internal investigation into SR's complaint, Schwab interviewed Garcia.

27. During that interview, Garcia stated that when the first deposit of approximately \$3000 occurred on April 27, 2017, his father confirmed that the deposited amount was consistent with his expected federal tax return.

28. Garcia's statement to the Firm was false. As alleged herein, Garcia's father told Garcia in a text message that his expected federal tax refund was approximately \$396.

29. By making false statements to his member Firm employer during an internal investigation, Garcia violated FINRA Rule 2010.

RELIEF REQUESTED

WHEREFORE, Enforcement respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Garcia 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 Garcia bear such costs of this proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT



Date: February 4, 2019

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