

**FINANCIAL INDUSTRY REGULATORY AUTHORITY**

**OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

Oscar Nunez (CRD No. 6014411),

Respondent.

DISCIPLINARY PROCEEDING  
No. 2017055553002

**COMPLAINT**

The Department of Enforcement alleges:

**SUMMARY**

1. From January 2016 through December 2016, while associated with J.H. Darbie & Co., Inc. (“J.H. Darbie” or the “Firm”), Respondent Oscar Nunez converted \$7,000 from an elderly customer, HZ. To convince HZ to give him the funds, Nunez told HZ that the funds were for upfront “commissions” on her J.H. Darbie accounts. In fact, HZ owed no commissions on her accounts, and regardless, any commissions would be payable to the Firm at the time incurred, not in advance or to Nunez. Rather than use HZ’s funds to pay commissions, Nunez deposited the funds into his personal bank account and put the funds to personal use. By converting \$7,000 of customer funds, Nunez violated FINRA Rules 2150 and 2010.

2. In January 2017, Nunez requested and received a loan of \$4,000 from NM, another of his J.H. Darbie customers. Nunez failed to disclose the loan to J.H. Darbie and provided a false statement to the Firm in September 2017 stating that he had “not taken or received any other cash or gift compensation exceeding the \$100 limit, from any of [his] other

clients [other than HZ].” By accepting a \$4,000 loan from NM and failing to disclose that loan to J.H. Darbie, Nunez violated FINRA Rules 3240 and 2010.

3. On November 30, 2017, in response to a request for documents and information issued by FINRA staff pursuant to FINRA Rule 8210, Nunez knowingly provided a written response in which he falsely stated he had received no funds from Firm customers other than a \$2,000 check from HZ in December 2016. Contrary to Nunez’s statement to FINRA staff, he had received an additional \$5,000 from HZ and the \$4,000 loan from NM. By knowingly providing false and misleading information in response to a request issued pursuant to FINRA Rule 8210, Nunez violated FINRA Rules 8210 and 2010.

#### **RESPONDENT AND JURISDICTION**

4. Nunez was first associated with a FINRA member from March 2012 to December 2012. Between April 2013 and October 2015, Nunez was registered with seven other FINRA members.

5. From November 2015 to September 2017, Nunez was registered with J.H. Darbie as a General Securities Representative. J.H. Darbie terminated Nunez’s registration by filing a Form U5 on September 11, 2017 disclosing that Nunez had been permitted to resign after the Firm discovered that he “accepted a \$2000.00 personal check from a client for his personal use, in violation of Firm policy.”

6. From July 2018 to September 2018, Nunez was registered with another FINRA member.

7. Nunez is not currently registered with a FINRA member.

8. Although Nunez 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 a FINRA member, namely, September 27, 2018; and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member and with providing false responses to FINRA requests for information 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**  
**(FINRA Rules 2150 and 2010)**

9. The Department of Enforcement realleges and incorporates by reference paragraphs 1 through 8 above.

10. Nunez met HZ in or about January 2016 while Nunez was working at a retail store. At the time, HZ was 88 years old and suffered from memory problems.

11. During the encounter at the retail store, Nunez struck up a conversation with HZ regarding her assets, and he eventually met HZ at a later date to transfer her brokerage accounts to J.H. Darbie, where Nunez also worked and was registered at the time.

12. In order to facilitate the transfer of HZ's accounts to J.H. Darbie, Nunez later visited HZ in her home on two occasions.

13. The first time Nunez visited HZ in her home, she did not initially remember who he was.

14. On or about January 22, 2016, HZ signed new account paperwork to open her brokerage account at J.H. Darbie. The brokerage account was valued at \$10,000.

15. During the second meeting at HZ's home, which took place on or about January 27, 2016, HZ signed paperwork to open a retirement account and effectuate the transfer to J.H. Darbie of her IRA, which was valued at approximately \$22,000. At that meeting, Nunez told HZ to pay \$5,000 in upfront commissions on her accounts for 2016 and accepted a check from HZ made out to Nunez personally for \$5,000. HZ wrote in the "notes" field of the check, "Flat fee for 2016."

16. Nunez deposited the \$5,000 check into his personal checking account on January 27, 2016. At the time, Nunez's checking account was overdrawn by \$80.93, and he had just \$10 in his savings account.

17. Nunez then put HZ's funds to personal use. After depositing the \$5,000 check from HZ into his personal checking account, Nunez immediately withdrew \$500 in cash from that account. On January 29, 2016, he withdrew another in \$2,300 cash from his checking account and transferred \$1,000 from his checking account to his personal savings account.

18. During 2016, no trading occurred in HZ's accounts at J.H. Darbie, and HZ incurred no commissions.

19. On December 14, 2016, Nunez accepted a second check from HZ, this one for \$2,000. This check, like the earlier one for \$5,000, was made payable to Nunez personally. Like in January 2016, Nunez told HZ to pay upfront "commissions" on her accounts at J.H. Darbie, this time for the year 2017.

20. Nunez deposited the \$2,000 check into his personal savings account on December 14, 2016. At the time, Nunez's savings account was overdrawn by \$423.99, and he had just \$16.83 in his checking account.

21. Nunez then put the funds to personal use. After depositing the \$2,000 check from HZ into his personal savings account, Nunez transferred \$500 to his checking account on December 23, 2016 and wrote a check for \$500 on December 27, 2016. He also withdrew \$1,000 cash on December 27, 2016.

22. During 2017, no trading occurred in HZ's accounts at J.H. Darbie, and HZ incurred no commissions.

23. J.H. Darbie's Written Supervisory Procedures ("WSPs") prohibited registered representatives from charging fees or assessing other charges to customers unless expressly permitted by the Firm.

24. The Firm was not aware that Nunez had instructed HZ to pay him any "upfront commissions" and never approved of such an arrangement.

25. If HZ had incurred commissions in her J.H. Darbie accounts, those fees would have been payable to the Firm, not to Nunez.

26. After learning of the \$2,000 check HZ wrote to Nunez, the Firm instructed Nunez to pay back the funds, which he did in August 2017.

27. The Firm was not aware of the \$5,000 check from HZ and, therefore, did not instruct Nunez to repay those funds. Nunez never repaid the \$5,000 to HZ.

28. 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."

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

30. By converting \$7,000 of HZ’s funds, Nunez violated FINRA Rules 2150 and 2010.

**SECOND CAUSE OF ACTION**  
**Accepting a Loan from a Customer**  
**(FINRA Rules 3240 and 2010)**

31. The Department of Enforcement realleges and incorporates by reference paragraphs 1 through 30 above.

32. In January 2017, Nunez approached one of his customers, NM, to ask for a loan of \$4,000. At the time, Nunez and NM had a strictly broker-customer relationship.

33. NM agreed to loan Nunez the money and gave him \$4,000 in January 2017. Nunez signed no loan agreement, and no terms exist regarding the loan.

34. To date, Nunez has repaid no more than \$1,200 of the loan amount, and his last payment to NM was in August 2018 for \$20.

35. At no time did Nunez disclose to J.H. Darbie that he accepted a loan from NM.

36. To the contrary, on September 11, 2017, Nunez met with J.H. Darbie’s Chief Compliance Officer and told the CCO that he had received no funds from any customer other than HZ. During that meeting, Nunez signed an attestation stating in part “By signing this attestation, I confirm that I have not taken or received any other cash or gift compensation exceeding the \$100 limit, from any of my other clients, at any time while working at JH Darbie & Co., Inc.”

37. At the time he signed the attestation, Nunez understood that it was untrue because he had accepted the \$4,000 loan from NM in January 2017.

38. J.H. Darbie's WSPs prohibited employees from borrowing from or lending to customers except in certain limited circumstances, none of which applied to the loan Nunez received from NM. The Firm's WSPs also required that any proposed loan with a customer of an associated person be pre-approved by the Firm's Chief Compliance Officer. Nunez did not seek or obtain such pre-approval for his loan from NM.

39. FINRA Rule 3240 prohibits registered persons from borrowing from or lending money to customers unless: (i) the member firm has written procedures allowing the borrowing of money from customers of the member; and (ii) the borrowing or lending arrangement meets certain specified conditions, none of which apply to the loan Nunez received from NM.

40. By accepting a \$4,000 loan from NM, in violation of the Firm's policies, Nunez violated FINRA Rules 3240 and 2010.

**THIRD CAUSE OF ACTION  
Knowingly Providing False and Misleading Information to FINRA  
(FINRA Rules 8210 and 2010)**

41. The Department of Enforcement realleges and incorporates by reference paragraphs 1 through 4030 above.

42. On September 22, 2017, after J.H. Darbie filed the Form U5 terminating Nunez's registration with the Firm, FINRA staff sent Nunez a request for documents and information pursuant to FINRA Rule 8210. In that request, the staff asked Nunez if, other than the \$2,000 check from HZ, he had "receive[d] any other funds from Firm customers" and, if so, to provide the customer's name, a description of the funds, the purpose of the transaction, the dollar amount, and other details.

43. On November 30, 2017, Nunez provided a written response that stated, “NO OTHER FUNDS WERE RECEIVED FROM THE FIRMS [sic] CUSTOMERS.”

44. That response was false because Nunez had received \$5,000 from HZ and a loan of \$4,000 from Firm customer NM. Nunez knew his response was false at the time he submitted it.

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

46. By knowingly providing false and misleading information in response to a request issued pursuant to FINRA Rule 8210, Nunez violated FINRA Rules 8210 and 2010.

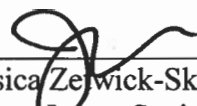
#### **RELIEF REQUESTED**

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

- A. make findings of fact and conclusions of law that Respondent 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 Nunez 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: 5/21/2019

  
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