

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

Department of Enforcement,

Complainant,

v.

Sean Michael Refsnider
(CRD No. 4762963),

Respondent.

DISCIPLINARY PROCEEDING
No. 2019063790901

HEARING OFFICER:

COMPLAINT

The Department of Enforcement (“Enforcement”) alleges:

SUMMARY

1. From July 2019 through August 2019 (the “Relevant Period”), while associated with Ameriprise Financial Services, Inc. (“Ameriprise” or the “Firm”), Sean Michael Refsnider (“Refsnider”) converted approximately \$42,000 from his elderly Firm Customer A.

2. At the time, Refsnider’s finances were in disarray. So Refsnider procured a check from Customer A in the amount of \$20,000 and he then used the funds to pay his mortgage and other personal expenses. Without Customer A’s authorization, Refsnider also had the Firm issue a debit card linked to Customer A’s Ameriprise Account and then used the debit card to make approximately 60 separate purchases totaling approximately \$17,317, and to make \$4,300 in cash withdrawals. Refsnider also transferred an additional \$475 in cash from Customer A’s Ameriprise Account to himself using Venmo and PayPal.

3. By converting approximately \$42,000 in funds belonging to his Firm customer, Refsnider violated FINRA Rules 2150(a) and 2010.

4. In connection with FINRA's investigation into his conversion of Customer A's funds, Refsnider also failed to provide FINRA with all of the documents and information that it had requested pursuant to FINRA Rule 8210, in violation of FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

5. Refsnider entered the securities industry in February 2004 when he became associated with Ameriprise. In April 2004, Refsnider became registered with FINRA through Ameriprise as a General Securities Representative ("GSR"). Refsnider left Ameriprise in March 2012, but re-registered with Ameriprise as a GSR in June 2012 where he remained until his termination in August 2019.

6. In a Uniform Termination Notice for Securities Industry Registration ("Form U5") dated September 3, 2019, Ameriprise reported the termination of Refsnider's association after the Firm concluded that he misappropriated client funds.

7. Although Refsnider 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 September 3, 2019, the effective date of the termination of Refsnider's registration with Ameriprise; and (ii) the Complaint charges Refsnider with misconduct committed while he was registered or associated with a FINRA member firm and with failing to respond to FINRA requests for information during the two-year period after the date on which he ceased to be registered or associated with a FINRA member firm.

FIRST CAUSE OF ACTION

Conversion Violation of FINRA Rules 2150(a) and 2010

8. Enforcement realleges and incorporates by reference Paragraphs 1 through 7 above.

9. FINRA Rule 2150(a) prohibits any person associated with a FINRA member firm from making improper use of a customer's securities and funds.

10. 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 and violates FINRA Rule 2150(a).

11. FINRA Rule 2010 requires associated persons to "observe high standards of commercial honor and just and equitable principles of trade."

12. A violation of FINRA Rule 2150(a) constitutes a violation of FINRA Rule 2010.

13. Conversion is also an independent and distinct violation of FINRA Rule 2010.

14. Customer A is an elderly widow who lives alone. She has been an Ameriprise customer since May 1982.

15. In January 2019, the then-broker of record for Customer A's Firm accounts recorded his concerns about Customer A's memory and proposed establishing a power of attorney for her Firm accounts.

16. On July 9, 2019, the Firm assigned Refsnider as the new broker of record for Customer A's Firm accounts: namely, her Ameriprise Account and separate IRA account.

17. As of July 31, 2019, Customer A's Ameriprise Account had a value of approximately \$250,000 and her IRA account was valued at approximately \$83,000.

18. On or about the time that he was appointed broker of record for Customer A's accounts, Refsnider was in financial distress; he was approximately \$50,000 in credit card debt, had a college tuition bill due for his son, and had missed several mortgage payments.

19. After he was designated the broker of record for Customer A's accounts, Refsnider met with Customer A alone at her home on July 9, 2019 and again on July 17, 2019. During the

July 17 meeting, Refsnider learned, among other things, that Customer A had an additional \$60,000 in two personal checking accounts held away from the Firm.

20. On July 18, 2019, Refsnider ordered a debit card and new checks in Customer A's name for her Ameriprise Account. Refsnider did so without Customer A's knowledge or approval.

21. Refsnider also stopped paper or mail delivery of all documents associated with Customer A's Ameriprise Account, including her account statements and trade confirmations. Refsnider arranged for these account documents to be sent to Customer A by e-delivery, even though he knew Customer A would be unable to access and review her account documents.

22. On July 19 and July 23, 2019, Refsnider linked Customer A's Ameriprise Account to the two personal checking accounts Customer A held away from the Firm by electronically signing Customer A's name to the required forms outside of her presence.

23. Customer A did not request any of these changes to her Ameriprise Account. Instead, Refsnider made these changes without her knowledge or approval.

24. On July 19, July 22, and August 5, 2019, Refsnider made four separate transfers of \$7,500 from Customer A's personal checking accounts into her Ameriprise Account. Customer A did not authorize these transfers of funds.

25. On July 31, 2019, Refsnider requested the transfer of \$25,000 from Customer A's Ameriprise Account to his personal bank account. On the wire transfer form, Refsnider identified his wife, using her maiden name, as the intended recipient of Customer A's funds.

26. On August 1, 2019, after Ameriprise requested that Customer A provide verbal authorization for the July 31 wire transfer, Refsnider drove to Customer A's home and, while at her home, obtained a personal check from Customer A in the amount of \$20,000 drawn on her Ameriprise Account.

27. Refsnider then deposited the check into his personal bank account and used the funds for his own personal expenses, including his mortgage, credit card bills and expenses related to his financial practice.

28. On August 2, 2019, Customer A's debit card was activated. Refsnider used the debit card on eight separate occasions between August 5 and August 8, 2019, to withdraw a total of \$4,300 in cash from Customer A's Ameriprise Account for his own personal use.

29. From August 2 through August 7, 2019, Refsnider also used Customer A's debit card to make 62 separate purchases of goods and services for his own personal use. His purchases totaled approximately \$17,317 and were made at various online retailers, including Amazon, and local businesses close to his home.

30. On July 26, August 5 and August 6, 2019, Refsnider also transferred a total of \$475 from Customer A's Ameriprise Account to himself using Venmo and PayPal.

31. When the Firm became aware of Refsnider's actions, it questioned him regarding his use of Customer A's Ameriprise Account.

32. In response, Refsnider falsely represented to the Firm that all of the Amazon purchases on Customer A's debit card were made by Customer A, that he delivered the \$4,300 in cash he withdrew from Customer A's Ameriprise Account to Customer A at her home, and that Customer A set up the Venmo account so she could send him additional cash.

33. Refsnider was not entitled to any of Customer A's funds over which he took ownership and control during the Relevant Period.

34. Refsnider's taking and/or exercise of ownership and use of Customer A's funds was done intentionally and without Customer A's knowledge or consent, so as to deprive A of her ownership and use of her funds.

35. As a result of Refsnider's conduct, Customer A was deprived of the ownership and use of her funds.

36. By converting funds belonging to Firm Customer A, for his personal use and benefit, Refsnider violated FINRA Rule 2150(a). Refsnider's conversion of Customer A's funds also violated FINRA Rule 2010, both by virtue of his violation of Rule 2150 and independently.

SECOND CAUSE OF ACTION

Failure to Provide Documents and Information to FINRA Violation of FINRA Rules 8210 and 2010

37. Enforcement realleges and incorporates by reference Paragraphs 1 through 36 above.

38. FINRA Rule 8210(a) requires a "person associated with a member, or any other person subject to FINRA's jurisdiction to provide information orally, in writing, or electronically ... with respect to any matter involved in [an] investigation...."

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

40. A failure to comply with a request for information pursuant to FINRA Rule 8210 is also a violation of FINRA Rule 2010.

41. On October 18, 2019, Enforcement sent Refsnider a request for documents and information pursuant to FINRA Rule 8210 seeking, among other things: (i) a list of banking and credit card accounts held by Refsnider during the Relevant Period and copies of the account statements; (ii) any electronic communications (*i.e.*, order confirmations or sales receipts) relating to the purchases he made using Customer A's debit card; and (iii) printouts of the order details of purchases made by Refsnider on Amazon during the Relevant Period (the "First 8210 Request"). The First 8210 Request informed Refsnider that his failure to produce the requested documents

and information could subject him to a disciplinary action and the imposition of sanctions, including a bar.

42. The First 8210 Request was sent via certified mail, return receipt requested, and first class mail to Refsnider's residential address of record in FINRA's Central Registration Depository ("CRD Address"), and to the email address Refsnider previously used to communicate with FINRA ("Email").

43. The First 8210 Request sent via certified mail to Refsnider's CRD Address was returned to Enforcement as unclaimed; however, the copy sent by first class mail was not returned to Enforcement.

44. The information and documents Enforcement requested in the First 8210 Request were material to its investigation into Refsnider's conversion of Customer A's funds.

45. On October 18, 2019, via message sent from his Email, Refsnider acknowledged receipt of the First 8210 Request.

46. On October 21, 2019, Refsnider represented via Email to Enforcement that he would timely provide the requested documents and information.

47. Although Refsnider was required to respond and produce the requested documents and information by October 25, 2019, Refsnider did not produce the documents and information as requested and did not request an extension of this deadline.

48. On October 30, 2019, Enforcement sent Refsnider a second request for documents and information pursuant to FINRA Rule 8210 (the "Second 8210 Request"), enclosing the First 8210 Request and again requesting that Refsnider produce copies of his banking and credit card account statements and documentation relating to the purchases he made using Customer A's debit card and on Amazon.

49. The Second 8210 Request also informed Refsnider that his failure to produce the requested documents and information could subject him to a disciplinary action and the imposition of sanctions, including a bar.

50. The Second 8210 Request was sent via certified mail, return receipt requested, and first class mail to Refsnider's CRD Address and to Refsnider's Email.

51. The Second 8210 Request sent via certified mail to Refsnider's CRD Address was delivered on November 4, 2019; the copy sent by first class mail was not returned to Enforcement.

52. Although Refsnider was required to respond and produce the requested documents and information by November 6, 2019, Refsnider did not produce the documents and information as requested and did not request an extension of the deadline.

53. On November 7 and 8 of 2019, via message sent from his Email, Refsnider again represented that he would produce documents responsive to the First and Second 8210 Requests. However, Refsnider did not produce the documents and information requested in the First and Second 8210 Requests and did not request an extension.

54. On December 4, 2019, Refsnider appeared and provided on-the-record ("OTR") testimony at FINRA's district office in Philadelphia, Pennsylvania. At the OTR, despite admitting under oath that he received the First and Second 8210 Requests, Refsnider only provided Enforcement with printouts of the order information regarding certain of the Amazon orders he placed between August 2 and 7, 2019 using Customer A's debit card. Refsnider testified that he would provide outstanding documents and information, including copies of his banking and credit card statements and additional documents providing a complete picture of his internet orders during the Relevant Period, by the end of the day.

55. To date, Refsnider has not provided Enforcement with the banking and credit card statements requested in the First and Second 8210 Requests. Refsnider has also not provided Enforcement with the additional documents and electronic correspondence requested in the First and Second 8210 Requests and relating to his internet purchases he represented was in his possession during his OTR testimony, *e.g.*, order confirmations, sales receipts or associated correspondence.

56. These documents were material to Enforcement's investigation of Refsnider's conversion of funds from Customer A.

57. As a result of his misconduct, Refsnider violated FINRA Rules 8210 and 2010.

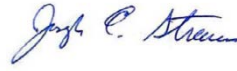
RELIEF REQUESTED

WHEREFORE, Enforcement respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Refsnider committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed, including that Refsnider 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 Refsnider 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: April 28, 2020



Joseph E. Strauss, Senior Counsel
David Monachino, Senior Litigation Counsel
Tiffany A. Buxton, Director
Richard Chin, Chief Counsel
FINRA Department of Enforcement
One Brookfield Place
200 Liberty Street, 11th Floor
New York, New York 10281
Phone: (646) 315-7335 (Strauss)
Fax: (301) 527-4712
Email: joseph.strauss@finra.org