

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

V.

Joseph R. Butler
(CRD No. 244735),

Respondent.

DISCIPLINARY PROCEEDING
No. 2012032950101

FIRST AMENDED COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. From about November 2009, Respondent Joseph R. Butler ("Butler"), while associated with member firm Woodbury Financial Services, Inc. ("WFS" or the "Firm"), knew that LW, his seventy-nine year old customer, suffered from progressive memory loss. Indeed, he had accompanied her to several doctor's visits between 2010 and 2011 where her declining mental condition was discussed and assessed. Eventually, in about December 2011, LW was diagnosed with dementia.
2. Butler, in violation of WFS' supervisory procedures and to benefit himself at LW's expense, was:
 - a. added as the account co-owner and signatory to LW's two bank accounts (a checking account ending in 3288 (the "Checking Account") and money

- market account ending in 7795 (the "MM Account")(collectively "LW's Bank Accounts")) accounts in April 2009;
- b. named LW's attorney-in-fact pursuant to a Power of Attorney ("POA") in June 2010;
 - c. named LW's Personal Representative and the primary beneficiary in her will in June 2010; and
 - d. named the primary beneficiary on LW's variable annuity in May 2011.
3. Butler did not disclose these roles and activities to WFS, which prohibited such roles and activities, and he engaged in unethical behavior by accepting such roles and responsibilities when he knew of LW's declining mental condition.
 4. On or about April 15, 2011, Butler converted \$10,262 from LW when he improperly received \$10,262 from her, by way of a check he drew on one of LW's Bank Accounts, which he used to pay his state income taxes.
 5. On or about June 29, 2010, Butler converted \$18,846.18 from LW when he improperly received \$18,846.18 from her, by way of check he drew on one of LW's Bank Accounts, which he used to pay his federal income taxes.
 6. From on or about September 1, 2009 to January 20, 2012, Butler converted \$119,250 from LW by way of checks payable to cash or himself that he drew (totaling \$114,250) and transfers he effected from LW's Bank Accounts to his personal bank account (totaling \$5,000).
 7. Alternatively, Butler engaged in unethical conduct when he used at least \$26,000 of LW's funds allegedly for her benefit but without retaining any documents accounting for the expenditure of the funds and used an additional \$93,250 of

LW's funds without retaining any documentation showing how he used these funds, as required by Maryland law and in breach of his fiduciary duty to LW.

8. On or about May 20, 2011, Butler submitted a change of beneficiary form to a third-party for the purpose of having himself added as the primary beneficiary on LW's variable annuity and on the form falsely stated that he was her "son."
9. Based on the foregoing, Butler violated FINRA Rule 2010.

RESPONDENT AND JURISDICTION

10. On or about June 25, 1997, Butler first became registered with FINRA as an Investment Company Products/Variable Contracts Representative.
11. From on or about June 25, 1997 to on or about August 2, 2012, Butler was registered with FINRA through an association with WFS.
12. On or about August 2, 2012, WFS filed a Uniform Termination Notice for Securities Industry Registration (Form U5) stating that Butler was terminated for violating Firm policies and procedures by failing to disclose that he was listed as a beneficiary on multiple customer accounts where he was not a family member and was given control over a customer's (LW) personal banking accounts.
13. Since on or about October 17, 2012, Butler has been registered with FINRA through an association with another member firm.
14. As Butler is currently registered, he is subject to FINRA's disciplinary jurisdiction.

BACKGROUND

Butler's Relationship with LW and her Progressive Memory Loss

15. Butler first met LW in around 1984 while she was his neighbor in Brandywine, Maryland.
16. On or about November 14, 2007, LW became a customer of WFS when Butler sold her a \$453,000 variable annuity. LW was 76 years old and a retired children's day-care worker.
17. In late 2009, Butler knew that LW lost her way while driving. He also knew that LW stopped driving in 2010 after being involved in a traffic accident during her last excursion.
18. In 2009, Butler enrolled LW in the Meals-on-Wheels Program. To qualify for this program, a person must be over 60 years old and have a chronic physical or mental disability preventing him or her from shopping and/or preparing food.
19. Butler knew that LW experienced memory loss which became progressively worse in 2010 and 2011. LW, who had no children, became increasingly dependent upon Butler during this period.
20. In 2010 and 2011, Butler brought LW to at least three appointments with her personal physician and discussed with the physician his observations of LW's declining mental condition. After listening to Butler's concerns, the physician performed cognitive testing on LW.
21. In about December 2011, LW was formally diagnosed with dementia.
22. In about February 2012, LW was admitted to a hospital for treatment and has had a fulltime caretaker since that date.

Butler's Expanding Role

23. On or about April 16, 2009, Butler was added as the account co-owner and signatory to LW's Bank Accounts. Butler never deposited his own funds into these accounts.
24. Butler ordered new checks to be printed for one of LW's Bank Accounts with his name added to LW's as the account holders.
25. The account statements for the LW's Bank Accounts were initially mailed to LW's address. In about 2010, Butler arranged for the account statements for LW's Bank Accounts to be sent exclusively to his address.
26. On or about June 9, 2010, Butler brought LW to the office of an attorney who drafted and witnessed LW's signing of a will, a general power of attorney (POA) and a Medical Directive, all under the provisions of Maryland law. The POA appointed Butler as LW's attorney-in-fact with general authority to act as her agent and the will named Butler as LW's Personal Representative (Executor) and the primary beneficiary of her estate.
27. Title 17, Section 17-113 (Duties of agent), of the Maryland General and Limited Power of Attorney Act contains the following provisions:
 - (a) In general – Notwithstanding provisions in the power of attorney, an agent that has accepted appointment shall: ...
 - (2) Act with care, competence, and diligence for the best interest of the principal
 - (b) Additional duties – Except as otherwise provided in the power of attorney, an agent that has accepted appointment shall:
 - (1) Act loyally for the principal's benefit;
 - (2) Act so as not to create a conflict of interest that impairs the agent's ability to act impartially in the principal's best interest;

(3) Keep a record of all receipts, disbursements, and transactions made on behalf of the principal

28. Butler was prohibited under WFS' supervisory procedures from performing the functions for which he was empowered by the documents described above in paragraph 26. Specifically, with respect to its customers, WFS prohibited brokers from acting as an agent or attorney-in-fact pursuant to a POA, acting as an Executor, Administrator, or Personal Representative, and acting as a joint-tenant of a customer account.
29. Further, Butler was aware that WFS did not permit him to act in these capacities. After the POA was executed, Butler signed and submitted Annual Compliance Questionnaires ("ACQs") to the Firm in 2010 and 2011. On both ACQs, Butler acknowledged the following statement: *"I understand that I am prohibited from ... (iii) acting as a Power of Attorney; ... (iv) acting as an executor; (v) acting as an administrator; ... (vii) acting as a personal representative... on [WFS] customer accounts, excluding accounts belonging to immediate family members (i.e., parent, sibling, child, in-law, aunt, uncle)."*
30. WFS's supervisory procedures also prohibited registered representatives from accepting a gift from a customer in excess of \$100 annually.
31. Butler electronically signed and submitted WFS's 2010 and 2011 ACQs in which he confirmed that he understood the following statement: "I may not accept a gift, or gifts, with a collective value in excess of \$100 per Business Partners [name given to a WFS representative] per year."

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

32. The Department realleges and incorporates by reference paragraphs 1 through 31 above.
33. On or about April 15, 2011, Butler drew a check in the amount of \$10,262 on the MM Account payable to the Comptroller of Maryland and delivered the check in payment of taxes that he owed to the State of Maryland.
34. On or about June 29, 2010, Butler drew a check in the amount of \$18,846.18 on the Checking Account payable to the United States Treasury and delivered the check in payment of taxes that he owed to the IRS. At the time he drew the checks, Butler was aware that LW's mental condition had been deteriorating for a few years.
35. Butler converted \$29,108.18 of LW's funds to his own benefit through the checks he drew to cover his state and federal income tax liabilities.
36. Based on the foregoing, Butler violated FINRA Rule 2010.

**SECOND CAUSE OF ACTION
CONVERSION
(FINRA RULE 2010)**

37. The Department realleges and incorporates by reference paragraphs through 36 above.
38. From on or about September 1, 2009 to on or about January 20, 2012, Butler drew fifteen checks on LW's Bank Accounts totaling \$114,250 made payable to "cash"

or "Joseph R. Butler." Butler either cashed these checks or deposited them into a personal bank account in his name. The checks are listed below:

Check No.	Issued from bank account	Amount	Date	Payee	Payor (Check Signed by)
	Checking Account	\$12,750	November 30, 2009	Cash	Butler
	Checking Account	\$6,000	October 22, 2009	Cash	Butler
	Checking Account	\$10,000	April 14, 2010	Joseph R. Butler	Butler
	Checking Account	\$12,000	March 27, 2010	Joseph R. Butler	Butler
	Checking Account	\$12,000	January 6, 2010	Cash	Butler
	Checking Account	\$12,000	December 6, 2010	Cash	Butler
	Checking Account	\$3,000	February 16, 2011	Cash	Butler
	Checking Account	\$3,500	January 20, 2012	Cash	Butler
	Checking Account	\$7,000	May 9, 2011	Cash	Butler
	Checking Account	\$3,000	February 16, 2011	Cash	Butler
	MM Account	\$15,550	September 1, 2009	Cash	Butler
	MM Account	\$6,500	April 21, 2010	Cash	Butler
	MM Account	\$2,000	May 2, 2011	Cash	Butler
	MM Account	\$4,000	May 12, 2011	Cash	Butler
	MM Account	\$5,000	August 5, 2011	Cash	Butler
		TOTAL: \$114,250			

39. Butler falsely claims that he used at least \$21,000 for LW's benefit, for items such as home repairs or to reimburse him for expenses he allegedly incurred on LW's behalf.
40. On or about January 26, 2011, Butler made an electronic transfer of \$5,000 from the MM Account to his personal bank account. Butler falsely claims that this

money was also a reimbursement of expenses he purportedly incurred on LW's behalf.

41. Notwithstanding Maryland law governing POAs, Butler does not have any receipts, bills or any other documentation to support his claims that at least \$26,000 was used to reimburse himself for expenses he allegedly incurred on LW's behalf and does not have any documents showing the purpose of the additional \$93,250 of LW's funds he used by way of checks he drew payable to cash or himself.
42. Butler converted \$119,250 of LW's funds to his own benefit through the checks he drew payable to cash or to himself totaling \$114,250, and electronic transfers to his personal bank account totaling \$5,000.
43. Based on the foregoing, Butler violated FINRA Rule 2010.

**THIRD CAUSE OF ACTION
(ALTERNATIVE TO SECOND CAUSE)
UNETHICAL CONDUCT
(FINRA RULE 2010)**

44. The Department realleges and incorporates by reference paragraphs through 43 above.
45. As stated above, from on or about September 1, 2009 to on or about January 20, 2012, Butler obtained \$119,250 of LW's funds through checks he wrote payable to cash or to himself, and electronic transfers to his personal bank account.
46. Butler claims that he used at least \$26,000 for LW's benefit, for items such as home repairs or to reimburse him for expenses he had allegedly incurred on LW's behalf. Notwithstanding Maryland law governing POAs, he does not have

any receipts, bills or any other documentation to support his claim and does not have any documents showing the purpose of the additional \$93,250 of LW's funds he used through checks he drew payable to cash or himself and electronic transfers to his bank account.

47. Butler engaged in unethical behavior when he improperly used at least \$26,000 of LW's funds without retaining any documents accounting for such expenses and retaining any documents showing how he used an additional \$93,250 of LW's funds, as required by Maryland law and in breach of his fiduciary duty to LW.

48. Based on the foregoing, Butler violated FINRA Rule 2010.

**FOURTH CAUSE OF ACTION
UNETHICAL CONDUCT
(FINRA Rule 2010)**

49. The Department realleges and incorporates by reference paragraphs 1 through 48 above.

50. Butler's various roles in LW's affairs were prohibited by WFS's supervisory procedures. The Firm's procedures contain the following provision:

Woodbury and its Representatives are prohibited from engaging in any dishonest or unethical business practices or from taking unfair advantage of a customer. The list below is a broadly defined limited set of prohibitions. Representatives have an independent duty to evaluate whether certain activities represent a conflict of interest. A conflict of interest occurs when a Representative's private interests are put ahead of a client's interest. Please contact Compliance with any questionable situation. Listed below is a summary of broadly defined prohibitions:

- A Representative being named as a beneficiary of a client account unless the client is an immediate family member

51. The Firm's procedures also contain the following provision: "Woodbury prohibits Representatives from acting as an executor/trix or personal representative , ... or joint tenant of a client account, other than an immediate family member,"
52. Butler was aware that he was prohibited from acting in these roles. As discussed above in paragraph No. 29, he signed and submitted ACQs to the Firm in 2010 and 2011 acknowledging that he was prohibited from acting as a POA, executor or personal representative on customer accounts.
53. On or about April 16, 2009, Butler was added a co-owner of LW's bank accounts.
54. On or about June 9, 2010, Butler was named as the attorney-in-fact for LW, pursuant to a POA.
55. On or about June 9, 2010, Butler was named as the Personal Representative and primary beneficiary in her will.
56. On or about May 20, 2011, Butler was named as the primary beneficiary on LW's variable annuity.
57. Butler did not disclose to WFS that he had received the POA from LW and through the POA was engaging in financial-related activities, such as writing checks. In addition, Butler failed to disclose to WFS that he had been named as a beneficiary on LW's variable annuity and Will, which were prohibited by the Firm.
58. In addition, Butler took unfair advantage of LW by accepting these roles and responsibilities when he knew of her declining mental condition.
59. Based on the foregoing, Butler violated FINRA Rule 2010.

**FIFTH CAUSE OF ACTION
FALSIFICATION
(FINRA Ruled 2010)**

60. The Department realleges and incorporates by reference paragraphs 1 through 59 above.
61. On or about May 20, 2011, Butler completed and submitted a "Hartford Annuity Beneficiary Change Request" form changing the beneficiaries on LW's Hartford Variable Annuity, which she had purchased for \$453,000, to himself as a 90% beneficiary and a charitable organization as a 10% beneficiary.
62. The form was signed by LW as the policy holder.
63. NW and MM, LW's granddaughters, were both originally listed as 50% beneficiaries on the annuity contract.
64. When Butler submitted the annuity change request form, under the "*Relationship to Owner*" section of the form, he falsely stated that his relationship to LW was her "son."
65. Based on the foregoing, Butler violated FINRA 2010.

RELIEF REQUESTED

WHEREFORE, the Department 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 Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest.

- 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: December 20, 2013

A handwritten signature in black ink, appearing to read "David F. Newman", is written over a horizontal line.

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