

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

CHARLES SCOTT BURFORD
(CRD No. 1658201),

Respondent.

Disciplinary Proceeding
No. 2019064656601

Hearing Officer–BEK

**HEARING
PANEL DECISION**

July 7, 2022

Respondent is fined \$10,000 and suspended from associating with any FINRA member in any capacity for six months for executing unauthorized trades in, and facilitating unauthorized withdrawals from, his deceased customer’s account.

Appearances

For the Complainant: Corinna Provey, Esq., and John Baraniak, Jr., Esq, Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Charles Scott Burford, pro se

DECISION

I. Introduction

FINRA’s Department of Enforcement filed a Complaint against Respondent Charles Scott Burford on September 22, 2021. The Complaint’s sole cause of action charges Burford with executing unauthorized trades in, and facilitating unauthorized withdrawals from, the account of his deceased customer, LR, in violation of FINRA Rule 2010. In his Answer, Burford denies he violated Rule 2010 because LR’s surviving wife, PR, was the named executor and primary beneficiary in LR’s will. Burford asserts that PR was authorized to direct transactions in LR’s account. Burford also contends that all the transactions he effected in LR’s account after LR’s death were on instructions from PR and in PR’s best interests.¹

¹ Burford’s initial Answer was a general denial. He supplemented this with an Amended Answer that addressed each allegation in the Complaint. All references to Burford’s Answer are to his Amended Answer (“Ans.”).

Key facts are not in dispute. Burford executed trades in, and facilitated withdrawals from, LR's account after LR's death. He did so on instructions from PR. Although PR was the named executor and primary beneficiary in LR's will, she did not submit LR's will for probate until more than two years after LR's death and she was never issued letters testamentary.² Burford followed her instructions before LR's will was probated and legal distribution of the assets was determined.

The Hearing Panel finds that Enforcement proved the Complaint's allegations by a preponderance of the evidence. As explained below, we impose a six-month suspension in all capacities and a \$10,000 fine for Burford's violation of FINRA Rule 2010.

II. Respondent and Jurisdiction

Burford registered with FINRA in 1990 as a General Securities Representative and General Securities Principal. From 1995 until November 1, 2019, he was associated with Hilltop Securities Independent Network, Inc. ("Hilltop").³ On November 19, 2019, Hilltop filed a Uniform Termination Notice of Securities Industry Registration (Form U5) stating that Burford had been terminated for failing to follow Hilltop's policy regarding deceased customers' accounts.⁴ Burford has not associated with a FINRA member since his termination from Hilltop.⁵

Although Burford is no longer registered or associated with any FINRA member firm, he remains subject to FINRA's jurisdiction for the purposes of this disciplinary proceeding. This is because (1) Enforcement filed the Complaint within two years after November 19, 2019, the effective date of Burford's termination, and (2) the Complaint charges Burford with misconduct committed while he was registered with FINRA.⁶

III. Findings of Fact

A. Customer LR

LR was Burford's wife's first cousin. LR married PR in 2012. It was his second marriage. He had an adult daughter, AD, from his first marriage.⁷ In 2013, LR opened two accounts with Hilltop for which Burford was the registered representative. One was an IRA account with PR as

² "Letters testamentary" is an "official exemplification of the appointment of an executor by the court. Letters issued by a court of probate to a person as evidence of his authority and office as the executor of a deceased person's estate." Ballentine's Law Dictionary (3rd ed. 2010).

³ Complaint ("Compl.") ¶¶ 2-3; Ans. ¶¶ 2-3; Joint Stipulations ("Stip.") ¶¶ 1-2; Complainant's Exhibit ("CX-") 4, at 3. Hilltop is now known as Momentum Independent Network, Inc. Compl. ¶ 1; Hearing Transcript ("Tr.") 127.

⁴ CX-5, at 2. FINRA's investigation originated after Hilltop filed the Form U5 on November 19, 2019. CX-4, at 13. This disciplinary proceeding followed.

⁵ Compl. ¶ 3; Ans. ¶ 3; Stip. ¶ 2.

⁶ See FINRA By-Laws, Article V, Section 4.

⁷ Stip. ¶¶ 4, 7.

the named beneficiary. The other was a non-discretionary individual brokerage account for which there was no named beneficiary. The unauthorized transactions alleged in the Complaint occurred in the latter account.⁸

LR passed away on October 6, 2016. PR was the primary beneficiary under her husband's will. She also was the named executor.⁹ But she did not file the will for probate until February 20, 2019, more than two years after her husband's death.¹⁰ It is not clear why she waited so long to file the will, but Burford testified that she was disorganized and had trouble finding the original will.¹¹ Timewise, PR filed for probate after Burford learned in January 2019 that AD planned to challenge the will.¹²

In June 2019, AD contested the will, and the parties entered into a settlement agreement that was filed with the probate court on February 18, 2020.¹³ The will was then admitted to probate, and the probate court issued letters testamentary on April 23, 2020.¹⁴ Pursuant to the settlement agreement and the probate court's order, PR retained the funds in LR's IRA account and the funds already distributed or withdrawn from LR's individual brokerage account.¹⁵ AD received the remaining assets, including the remaining funds in LR's individual brokerage account.¹⁶ Additionally, the probate court issued the letters testamentary to AD and appointed her as an independent executor of LR's will.¹⁷

LR's will was probated in Texas.¹⁸ Under Texas law, the right to inherit under a will is not effective until the will has been admitted to probate.¹⁹ Thus, prior to April 23, 2020, when

⁸ Stip. ¶¶ 9, 22, 30.

⁹ Tr. 116; Stip. ¶ 11.

¹⁰ Tr. 49-50; CX-1; CX-30.

¹¹ Tr. 116, 139-40; CX-36.

¹² Stip. ¶ 32; CX-1; CX-30.

¹³ Stip. ¶¶ 35, 38; CX-31; Joint Exhibit ("JX-") 2.

¹⁴ Stip. ¶ 39; CX-33, at 1-2.

¹⁵ Stip. ¶ 38; CX-33; JX-2, at 3-4.

¹⁶ JX-2, at 3.

¹⁷ Stip. ¶ 39; CX-33, at 2.

¹⁸ CX-30; CX-31; CX-33.

¹⁹ Tex. Estates Code § 256.001, Will Not Effective Until Probated. ("[A] will is not effective to prove title to, or the right to possession of, any property disposed of by the will until the will is admitted to probate."); *In re Estate of Silverman*, 579 S.W.3d 732, 737 (Tex. App. 2019) ("Construction of a purported will's property disposition typically occurs after the writing has been determined to be a will and has been admitted to probate.").

the probate court admitted LR's will for probate and issued letters testamentary, no one had authority to direct transactions in LR's individual brokerage account.²⁰

B. Burford Effected Unauthorized Transactions in LR's Account

From October 2016 until January 2019, Burford executed nine sales transactions totaling \$129,972.03 in LR's account and facilitated eight withdrawals for PR totaling \$84,669.87.²¹ He executed and facilitated these transactions on instruction from PR before LR's will was probated.²²

C. Burford Concealed His Unauthorized Transactions from Hilltop

Hilltop's written supervisory procedures ("WSPs") required that upon the death of a customer, the registered representative should immediately notify Hilltop, cancel all open orders, and consider the assets in the account frozen until legal distribution of the assets had been determined and necessary legal or other documents were received by the firm.²³ Burford knew this.²⁴ He also knew of LR's death when it occurred and attended LR's funeral.²⁵ Yet Burford ignored Hilltop's WSPs and concealed his unauthorized transactions.

Burford did not submit LR's death certificate to Hilltop until December 21, 2017, over 14 months after LR's death.²⁶ Prior to submitting the death certificate, from October 21, 2016, through December 19, 2017, he executed five of the nine unauthorized trades totaling \$70,176.12 and facilitated three of the eight unauthorized withdrawals totaling \$55,000 in LR's individual brokerage account on instructions from PR.²⁷ On December 21, 2017, Burford finally submitted LR's death certificate to Hilltop, but he did so only when it was necessary to permit PR to take the required minimum distribution from LR's beneficiary IRA account, which required opening an account for PR.²⁸ When Burford submitted the death certificate for this purpose, he failed to

²⁰ Before his death, LR signed a Trading Authorization Agreement ("TAA") authorizing his wife, PR, to direct trades in the individual brokerage account; however, this authorization terminated upon LR's death. Stip. ¶¶ 11, 26; CX-13.

²¹ Compl. ¶ 1; Stip. ¶¶ 22, 30; CX-1; CX-2; CX-3.

²² Tr. 100, 106; Stip. ¶¶ 22, 30, 39; CX-1.

²³ Stip. ¶ 14; JX-1.

²⁴ Stip. ¶¶ 14-17. Burford argued that Hilltop's WSPs were discretionary. Tr. 26-27. But the Vice President of Hilltop testified that the WSPs were not discretionary, and Burford admitted at the hearing that he violated Hilltop's WSPs and knew he was taking a risk when doing so. Tr. 25, 111, 116-17, 126, 134-35, 152, 179.

²⁵ Tr. 94; Stip. ¶ 11.

²⁶ Stip. ¶¶ 18, 27.

²⁷ Stip. ¶ 22; CX-1; CX-2; CX-3.

²⁸ Tr. 100-02, 104-05, 116-17; Stip. ¶¶ 19, 27-28.

inform Hilltop that LR's individual brokerage account remained open and active.²⁹ And, from December 21, 2017 through November 29, 2018, he executed four additional trades totaling \$59,795.91 and five withdrawals totaling \$29,669.87.³⁰

It was not until January 2019, when Burford learned that AD planned to contest LR's will, that Burford finally ceased activity in LR's individual brokerage account and asked Hilltop to freeze the assets in it.³¹ Even then, Burford failed to inform Hilltop that he had improperly effected any transactions in LR's individual brokerage account until AD's attorney informed Burford in October 2019 that Hilltop might be liable for any unauthorized distributions from LR's accounts.³²

IV. Conclusions of Law

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."³³ The purpose of the Rule "is to protect investors from unethical behavior, and it is well settled that [FINRA's] disciplinary authority under Rule [2010] is broad enough to cover a wide range of unethical conduct."³⁴ Executing or facilitating transactions for a customer without authorization constitutes "a serious breach of the duty to observe high standards of commercial honor and just and equitable principles of trade," going to "the heart of the trustworthiness of a securities professional."³⁵

In his Answer, Burford denies that PR lacked authority to direct activity in LR's individual brokerage account,³⁶ but he presented no evidence to support his denial. Indeed, he knew that LR's will had not been probated prior to April 23, 2020.³⁷ He also knew and agreed with Enforcement that he could only take instructions from a customer,³⁸ and he admitted that PR was not his customer with regard to LR's individual brokerage account.³⁹ But, this

²⁹ Stip. ¶ 28.

³⁰ Stip. ¶¶ 29-30; CX-1; CX-2; CX-3.

³¹ Tr. 106; Stip. ¶¶ 32-33.

³² Tr. 106-110; Stip. ¶ 36; CX-35.

³³ FINRA Rules apply to all members and persons associated with a member. FINRA Rule 0140.

³⁴ *Dep't of Enforcement v. Shelley*, No. C3A050003, 2007 NASD Discip. LEXIS 8, at *12 (NAC Feb. 15, 2007).

³⁵ *Wanda P. Sears*, Exchange Act Release No. 58075, 2008 SEC LEXIS 1521, at *6 (July 1, 2008) (internal quotations omitted).

³⁶ Ans. ¶¶ 1, 11, 30, 31.

³⁷ Tr. 100; Stip. ¶¶ 20-21, 31.

³⁸ Tr. 14-15, 23.

³⁹ Tr. 99.

knowledge did not stop him from executing unauthorized trades in, and facilitating unauthorized withdrawals from, his deceased customer's account.

Burford also argued that he did not violate FINRA Rule 2010 because he acted in the best interests of PR, had no personal gain, and did no harm to others.⁴⁰ However, these are not defenses to a Rule 2010 violation.⁴¹

Here, Burford admits that he executed nine trades in, and facilitated eight withdrawals from, LR's individual brokerage account after LR died and on the instructions of PR. Yet, PR had no authority over that account. The Panel thus finds that Burford violated FINRA Rule 2010 by executing unauthorized transactions and facilitating unauthorized withdrawals.

V. Sanctions

A. FINRA's Sanction Guidelines

FINRA's Sanction Guidelines ("Guidelines") state that the "purpose of FINRA's disciplinary process is to protect the investing public, support and improve the overall business standards in the securities industry, ... decrease the likelihood of recurrence of misconduct by the disciplined respondent [,] ... and deter others from engaging in similar misconduct."⁴² The Guidelines also instruct that we tailor any sanction to the misconduct.⁴³ And, specifically for unauthorized transactions, the Guidelines recommend we consider assessing a fine of \$5,000 to \$116,000 and suspending individual respondents for a period of one month to two years. Where aggravating factors predominate, the Guidelines recommend strong consideration of a bar.⁴⁴

The principal considerations in determining sanctions for unauthorized trading are (1) whether the respondent reasonably misunderstood his or her authority or the terms of the customer's orders; (2) whether the respondent acted in bad faith, i.e., whether the respondent knew he or she was acting without authorization or was acting as a result of a reasonable misunderstanding; (3) the number of customers affected and the magnitude of the customer's losses, if any; (4) the number and dollar value of unauthorized transactions or failures to execute buy or sell orders; (5) whether the respondent attempted to conceal the trading or to evade

⁴⁰ Ans. ¶ 1; Ans. 3; Tr. 179, 182-83.

⁴¹ See *Dep't of Enforcement v. Correro*, No. E102004083702, 2008 FINRA Discip. LEXIS 29, at *16 (NAC Aug. 12, 2008) (finding that a goal to benefit a customer is not a defense to a violation of NASD Rule 2110, the predecessor to FINRA Rule 2010); *Dep't of Enforcement v. Sears*, No. C07050042, 2009 FINRA Discip. LEXIS 4, at *3-6, 11 (NAC July 23, 2009) (Rule 2010 violation found for unauthorized trading even though there was no evidence that respondent "acted in bad faith ... gained any commissions on the [] unauthorized trades, or was otherwise motivated by selfish interests.").

⁴² FINRA Sanction Guidelines at 2 (2021) (General Principle No. 1), <https://www.finra.org/sanctionguidelines>.

⁴³ *Id.* at 3 (General Principle No. 3).

⁴⁴ *Id.* at 100.

regulatory investigative efforts; and (6) whether the unauthorized transactions were made in furtherance of or in connection with another violation (e.g., conversion, improper use of funds, churning, etc.).⁴⁵

Additional considerations relevant here are (1) whether the respondent engaged in numerous acts and misconduct over an extended period; (2) whether the respondent tried to conceal his or her misconduct or to lull into inactivity, mislead, or deceive the member firm with which he or she is/was associated; (3) whether the respondent provided substantial assistance to FINRA in its investigation of the misconduct; and (4) the number, size and character of the transactions at issue.⁴⁶

B. The Parties' Arguments as to Sanctions

Burford argues that if he is found liable, no sanction should be imposed because his actions did not rise to the level of necessitating the imposition of a sanction.⁴⁷ In support, Burford cites (1) his many years in the industry with no disciplinary action; (2) the fact that he acted in what he thought were the best interests of his customer without personal gain or harm to others; and (3) a belief that the settlement and probate of LR's will proved – in his opinion – that he was right to take the actions he took.⁴⁸

Enforcement notes that Burford was polite, respectful, and cooperative during the investigation and throughout the proceeding, but it also notes the seriousness of unauthorized trading. Enforcement points out that Burford acted intentionally to effect transactions of significant value in his deceased customer's account on multiple occasions, over an extended period of time.⁴⁹ It also argues that Burford attempted to shift blame for his actions to Hilltop's failure to have a system that automatically froze all customer accounts when notified of a customer's death.⁵⁰ Enforcement argues for a fine of \$10,000 and a three-month suspension in all capacities.

C. Sanctions Conclusions

We acknowledge that Burford has no disciplinary history and that there is no evidence that his misconduct caused customer harm. There also is no evidence that Burford gained

⁴⁵ *Id.*

⁴⁶ *Id.* at 7-8 (Principal Consideration Nos. 8, 9, 10, 12, and 17).

⁴⁷ Tr. 23-24.

⁴⁸ Tr. 180-83.

⁴⁹ Tr. 167, 172-74, 184-85.

⁵⁰ Tr. 160-61 (Burford testifying that Hilltop's current policy of routinely cross-checking death records and freezing accounts of deceased customers automatically would have saved him from the disciplinary process).

monetarily from his actions. But these are not mitigating factors.⁵¹ We acknowledge Enforcement's recognition that Burford was polite, respectful, and cooperative during the investigation and throughout the proceeding, but this too is not a mitigating factor. Substantial assistance to FINRA during the investigation is required to establish mitigation, and there is no evidence that Burford provided such assistance.⁵² We further acknowledge that Burford was trying to help PR and believed he was acting in furtherance of LR's wishes, but these also are not mitigating. PR was not Burford's customer with regard to LR's individual brokerage account and it was not Burford's place to fulfill the terms of a will before it has been probated.⁵³ Finally, we reject Burford's argument that the probate of LR's will proved that he was right to take the actions he took. Contrary to the will's terms, the negotiated settlement and court approval of that settlement resulted in AD receiving all the funds remaining in LR's individual brokerage account, and AD, not PR, being appointed executor.

We find several aggravating factors. Burford intentionally effected or facilitated numerous unauthorized transactions over a three-year period.⁵⁴ The total value of these transactions was high, more than \$200,000.⁵⁵ Burford also concealed his actions from Hilltop.⁵⁶ He did not submit LR's death certificate to Hilltop until December 21, 2017, over 14 months after LR's death.⁵⁷ And he did so only when necessary to take the required minimum distribution from LR's beneficiary IRA account without mentioning LR's individual brokerage account.⁵⁸ When Burford finally ceased activity in LR's individual brokerage account and asked Hilltop to freeze the assets in it, Burford did so only because he learned LR's will was likely to be contested.⁵⁹ Even then, he failed to inform Hilltop that he had effected any transactions in his

⁵¹ *Howard Braff*, Exchange Act Release No. 66467, 2012 SEC LEXIS 620, at *26 & n.25 (Feb. 24, 2012) ("The absence of monetary gain or customer harm is not mitigating, 'as our public interest analysis focus[es] ... on the welfare of investors generally.'" (citation omitted); *John B. Busacca, III*, Exchange Act Release No. 63312, 2010 SEC LEXIS 3787, at *65 n.77 (Nov. 12, 2010) ("[L]ack of a disciplinary history is not a mitigating factor." (citation omitted), *aff'd*, 449 F. App'x. 886 (11th Cir. 2011)).

⁵² Guidelines at 8 (Principal Consideration No. 12). *See also Dep't of Enforcement v. Keyes*, No. C02040016, 2005 NASD Discip. LEXIS 9, at *29 (NAC Dec. 28, 2005), *remanded*, Exchange Act Release No. 54723, 2006 SEC LEXIS 2631 (Nov. 8, 2006), *sanctions modified*, No. C02040016, 2007 NASD Discip. LEXIS 22 (NAC Jul. 25, 2007).

⁵³ *Dep't of Enforcement v. Noard*, No. 2012034936101, 2017 FINRA Discip. LEXIS 15, at *29-30 (NAC May 12, 2017) (A respondent's misguided attempt to act in a customer's best interest may be mitigating.).

⁵⁴ Guidelines at 7-8 (Principal Consideration Nos. 8, 17).

⁵⁵ Guidelines at 8 (Principal Consideration No. 17).

⁵⁶ Guidelines at 7 (Principal Consideration No. 10).

⁵⁷ Stip. ¶¶ 18, 27.

⁵⁸ Tr. 100-02, 104-05, 116-17; Stip. ¶¶ 19, 27-28.

⁵⁹ Tr. 106; Stip. ¶¶ 32-33.

deceased customer's account until AD's attorney informed Burford that Hilltop might be liable for any unauthorized distributions from LR's accounts⁶⁰

We do not credit Enforcement's argument that Burford has not accepted responsibility for his actions because he tried to shift blame to Hilltop for not automatically freezing LR's account. Burford stated several times that he accepted responsibility for his actions,⁶¹ and we find his testimony about Hilltop's current procedure of automatically freezing accounts of deceased customers to be his wishful thinking of how he might have avoided the situation he now faces. On the other hand, we find that his acceptance of responsibility is primarily a willingness to accept the consequences of his actions and not assurance that he would not so act in the future under similar circumstances. Indeed, while stating he accepted responsibility, Burford also stated that he believed he did the right thing and was in compliance with FINRA Rule 2010, not in violation of it.⁶²

Additionally, while Enforcement presented no proof of customer harm, Burford's assertion that no harm came to others fails to appreciate that his actions exposed Hilltop (and himself) to potential legal risk. Thus, we find that while Burford is willing to accept the consequences of his actions, he has not yet fully understood the seriousness of his misconduct.

We reject Burford's plea for no sanctions. Our failure to impose sanctions would be outside the Guidelines and would provide little or no deterrence to his or others' future misconduct. While we find Enforcement's suggestion of a \$10,000 fine to be a significant deterrent, we find its suggestion of a three-month suspension to be insufficient to deter Burford from repeating his misconduct in the future. This is because we find that although Burford accepts the consequences of his actions, he still believes that his actions were justified and not a violation of FINRA Rule 2010. Without a stronger deterrent, we find no assurance that he will not repeat his misconduct under similar circumstances in the future.

We find that a \$10,000 fine combined with a six-month suspension would give Burford a strong reason and sufficient time to weigh his actions. It will allow him to fully recognize that executing unauthorized trades in, and facilitating unauthorized withdrawals from, a deceased customer's account is a violation of FINRA Rule 2010. This combined sanction will also serve to protect the investing public and deter others from engaging in similar misconduct.

VI. Order

Respondent Charles Scott Burford is fined \$10,000 and suspended from associating with any FINRA member in any capacity for six months for executing unauthorized trades in, and

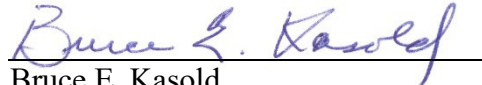
⁶⁰ Tr. 106-07, 110.

⁶¹ Tr. 175, 179.

⁶² Tr. 179.

facilitating unauthorized withdrawals from, his deceased customer's account. Burford also is assessed hearing costs in the amount of \$2,207.30, which includes an administrative fee of \$750.

If this decision becomes FINRA's final disciplinary action, Respondent's suspension will begin with the opening of business on Tuesday, September 6, 2022. The fine and assessed costs shall be due on a date set by FINRA, but not sooner than 30 days after this decision becomes FINRA's final action.⁶³


Bruce E. Kasold
Hearing Officer
For the Hearing Panel

Copies to:

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⁶³ The Hearing Panel has considered and rejects without discussion all other arguments of the parties.