

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JASON MICHAEL OTTO
(CRD No. 5215431),

Respondent.

Disciplinary Proceeding
No. 2014041319401

Hearing Officer–MJD

DEFAULT DECISION

July 17, 2015

Respondent is barred from associating with any FINRA member firm in any capacity for (i) conversion, in violation of FINRA Rule 2010, and (ii) failing to respond to requests for information and appear for testimony, in violation of FINRA Rules 8210 and 2010.

Appearances

Margaret Tolan for the Department of Enforcement.

No appearance by or for Respondent Jason Michael Otto.

DECISION

Respondent Jason Michael Otto was a broker with Wells Fargo Advisors, LLC (“Wells Fargo” or “the Firm”). He also was employed by Wells Fargo Bank (the “Bank”). Otto converted \$4,346.49 from the Bank by improperly charging off a debit balance in his personal account, in violation of FINRA Rule 2010. Otto also violated FINRA Rules 8210 and 2010 by failing to produce information and documents and provide sworn testimony to FINRA.

Wells Fargo terminated Otto’s registration after the Firm determined that he had issued cashier’s checks drawn on his personal account when he had insufficient funds. FINRA began its investigation after Wells Fargo filed a Uniform Termination Notice for Securities Industry Registration (“Form U5”) with FINRA’s Central Registration Depository (“CRD”), disclosing the reason for termination.

The Department of Enforcement initiated this disciplinary proceeding by filing a Complaint with the Office of Hearing Officers on March 4, 2015. The Complaint alleges that Otto violated FINRA Rule 2010 by converting funds from his Firm’s affiliate bank. It also alleges that he violated FINRA Rules 8210 and 2010 by failing to respond to written requests for

information and by failing to appear for an on-the-record interview. Otto did not file an Answer or otherwise respond to the Complaint.

On May 27, 2015, the Enforcement filed a Motion for Entry of Default Decision. The motion is supported by the Declaration of Margaret Tolan, Senior Trial Counsel (“Tolan Decl.”) and six exhibits (“CX-1” through “CX-6”). Otto did not respond to the Default Motion. Therefore, Enforcement’s motion is granted and the facts alleged in the attached Complaint are deemed admitted pursuant to FINRA Rules 9215(f) and 9269(a).

I. Findings of Fact and Conclusions of Law

A. Background

Otto was most recently registered with FINRA through Wells Fargo as a General Securities Representative from January 2011 until May 23, 2014, when the Firm filed a Form U5 to terminate his Otto’s registration.¹ Otto is not currently registered with FINRA or associated with a FINRA member firm. Otto also worked for the Bank from August 2005 to April 2014.²

B. Jurisdiction

FINRA has jurisdiction over Otto pursuant to Article V, Section 4(a) of FINRA’s By-Laws. Enforcement filed the Complaint within two years after the effective date of termination of his FINRA registration, and the Complaint charges him with misconduct while he was associated with Wells Fargo. The Complaint also charges that Otto failed to provide information requested by FINRA pursuant to Rule 8210 while he was subject to FINRA’s jurisdiction during the two years following the termination of his registration

C. Otto Defaulted by Failing to Answer the Complaint

Enforcement served Otto with the Complaint, First Notice of Complaint, and Second Notice of Complaint in accordance with FINRA Rules 9131 and 9134. Enforcement served the Complaint and First Notice of Complaint on March 4, 2015, and the Complaint and Second Notice of Complaint on April 1, 2015.³ In each instance, Enforcement served Otto by first-class certified mail addressed to his last known residential address recorded in CRD.⁴ Enforcement

¹ CX-2, at 6-7 (Otto’s CRD snapshot, May 25, 2015). In the Form U5, Wells Fargo reported that a Firm review showed that Otto “caused cashier[’s] checks to be issued from his personal bank account against insufficient funds and then charged off the total overdraft caused by issuing the cashier[’s] checks. Mr. Otto resigned during this review. The matter was turned over to the bank’s collections area.” CX-1, at 4 (Form U5, May 23, 2014).

² Complaint (“Compl.”) ¶ 3; Tolan Decl. ¶ 4; CX-2, at 4.

³ Tolan Decl. ¶¶ 7-8.

⁴ *Id.*; CX-4 (unclaimed first-class certified mail receipt for service of March 4, 2015 Complaint and First Notice of Complaint); CX-6 (USPS.com tracking information for service of April 1, 2015 Second Notice of Complaint). Enforcement knew of no other address for Otto besides the address recorded in CRD. Tolan Decl. ¶ 7.

represents that it does not know of any other address for Otto.⁵ Thus, Otto received valid constructive notice of this proceeding.⁶

Pursuant to Rule 9215, Otto's Answer was due by April 20, 2015. Otto did not respond to the Complaint and Second Notice of Complaint. Thus, Otto is in default. On April 27, 2015, the hearing office issued an order finding Otto in default.

D. Otto Converted Money from Wells Fargo Bank

From July 2013 to March 2014, Otto had a personal checking account at the Bank. During that time, Otto purchased nine cashier's checks from his checking account even though he lacked sufficient funds to pay for the checks.⁷ Otto was able to have the cashier's checks issued by the Bank by using other employees' computer log-in passwords to approve payment of the checks using Bank funds, without the employees or the Bank's permission.⁸ The Bank had policies that prohibited its employees from approving overdrafts on their own accounts and abusing banking privileges by writing checks against insufficient funds.⁹

By April 4, 2014, as a result of his purchases of the cashier's checks, Otto's Bank account had a debit balance of \$4,346.49. Otto reversed the \$4,346.49 debit, which cancelled the negative balance in his account, without the Bank's permission or authority. Otto did not repay the Bank.¹⁰ Thus, he converted the funds.

FINRA Rule 2010 requires FINRA members to observe high standards of commercial honor and just and equitable principles of trade in connection with the conduct of their business. FINRA Rule 0140 applies this requirement to associated persons. FINRA Rule 2010 "states a broad ethical principle" and is violated when a respondent engages in unethical conduct.¹¹ "FINRA's authority to pursue disciplinary action for violations of FINRA Rule 2010 encompasses unethical business-related misconduct, regardless of whether the misconduct involves a security."¹² Conversion constitutes a violation of FINRA Rule 2010.¹³

⁵ Tolan Decl. ¶ 7.

⁶ See, e.g., *Dep't of Enforcement v. Evansen*, No. 2010023724601, 2014 FINRA Discip. LEXIS 10, at *21 n.21 (NAC June 3, 2014), *appeal docketed*, SEC Admin. Proc. No. 3-15964 (July 3, 2014).

⁷ Compl. ¶¶ 5, 7.

⁸ Compl. ¶ 8.

⁹ Compl. ¶ 6.

¹⁰ Compl. ¶¶ 9-11.

¹¹ *Heath v. SEC*, 586 F.3d 122, 132 (2d Cir. 2009) (citing *Benjamin Werner*, 44 S.E.C. 622 (1971)). See *Dep't of Enforcement v. Taylor*, No. C8A050027, 2007 NASD Discip. LEXIS 11, at *22 (NAC Feb. 27, 2007); *Dep't of Enforcement v. Davenport*, No. C05010017, 2003 NASD Discip. LEXIS 4, at *8 (NAC May 7, 2003).

¹² *Dep't of Enforcement v. West*, No. 2009018076101, 2014 FINRA Discip. LEXIS 1, at *21 (NAC Feb. 20, 2014).

¹³ *Dep't of Enforcement v. Harari*, No. 2011025899601, 2015 FINRA Discip. LEXIS 2, at *22 (NAC Mar. 9, 2015).

E. Otto Failed to Respond to Requests for Information

Between June 2014 and November 2014, FINRA staff sent Otto multiple Rule 8210 requests seeking information and documents and his on-the-record testimony concerning his conversion of funds from the Bank. Otto responded to the first of these requests, but he neither responded to later requests for information nor attended his requested on-the-record interview.

In the first request for information, dated June 25, 2014, FINRA asked Otto to provide a signed statement about the circumstances surrounding the cashier's checks he purchased. Otto responded by submitting a signed statement on July 8, 2014, admitting that he overdrew his checking account using another employee's computer.¹⁴

On October 29, 2014, FINRA staff sent another letter to Otto at his CRD address, via certified mail, return receipt requested, and via first-class mail. This letter requested, pursuant to FINRA Rule 8210, that Otto provide additional information to FINRA by November 7, 2014. The certified mailing was returned as unclaimed; the first-class mailing was not returned to FINRA. Otto did not provide the information.¹⁵

On November 11, 2014, FINRA renewed its request for the information it sought in its October 29 letter. FINRA staff sent the November 11 letter to Otto at his CRD address, via certified and first-class mail. Pursuant to Rule 8210, the letter requested that Otto provide information to FINRA by November 17, 2014, and appear for an on-the-record interview on the same day. The certified mailing was delivered to Otto; the first-class mailing was not returned to FINRA. Otto failed to appear for testimony on November 17, 2014, and failed to produce any of the requested information.¹⁶

On November 21, 2014, pursuant to Rule 8210, FINRA sent Otto another letter to his CRD address via certified and first-class mail, requesting that he appear for an on-the-record interview on December 4, 2014. The certified mailing was delivered to Otto and the first-class mailing was not returned to FINRA. Otto did not appear for his on-the-record interview on December 4, 2014.¹⁷

Otto never provided the information and documents that were sought in the Rule 8210 request letters dated October 29 and November 11. He also failed to appear for the on-the-record interview as requested pursuant to Rule 8210 in the November 11 and November 21 letters.

FINRA Rule 8210 requires persons subject to FINRA's jurisdiction to provide information requested by FINRA with respect to any matter involved in a FINRA investigation, complaint, examination, or proceeding. Because FINRA lacks subpoena power, it must rely on

¹⁴ Compl. ¶¶ 13-14.

¹⁵ Compl. ¶¶ 15-17.

¹⁶ Compl. ¶¶ 18-20.

¹⁷ Compl. ¶¶ 21-23.

FINRA Rule 8210 “to police the activities of its members and associated persons.”¹⁸ “The failure to respond to [FINRA] information requests frustrates [FINRA’s] ability to detect misconduct and such inability in turn threatens investors and markets.”¹⁹ Members and associated persons must cooperate fully in providing requested information,²⁰ and they “may not ignore [FINRA] inquiries; nor take it upon themselves to determine whether information is material to [a FINRA] investigation of their conduct.”²¹

Otto failed to produce information and documents and failed to attend his on-the-record interview, as the staff requested pursuant to FINRA Rule 8210. Thus, Otto violated FINRA Rules 8210 and 2010.²²

II. Sanctions

A. Conversion

Otto converted \$4,346.49 from Wells Fargo’s bank affiliate. FINRA’s Sanction Guidelines (“Guidelines”) for conversion of funds, regardless of the amount converted, instruct that a bar is the standard sanction.²³ This case presents no mitigating factors that warrant consideration of a sanction other than a bar.

B. Failure to Respond to Requests for Information and Testimony

The Guidelines recommend that, if an individual did not respond in any manner, a bar in all capacities should be standard.²⁴ The Guidelines further provide that a bar is standard when an individual provided a partial response unless the person can demonstrate that the information provided substantially complied with all aspects of the request.²⁵ The Guidelines contain certain Principal Considerations in determining sanctions for a partial but incomplete response: (1) the importance of the information requested but not provided (as viewed from FINRA’s perspective), and whether the information provided was relevant and responsive to the request; (2) the number of requests made, the time the respondent took to respond, and the degree of

¹⁸ *Joseph Patrick Hannan*, 53 S.E.C. 854, 858-859 (1998).

¹⁹ *PAZ Sec., Inc.*, Exchange Act Release No. 57656, 2008 SEC LEXIS 820, at *13 (Apr. 11, 2008), *petition denied*, 566 F.3d 1172 (D.C. Cir. 2009).

²⁰ *Michael David Borth*, 51 S.E.C. 178, 180 (1992).

²¹ *CMG Inst. Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *21 (Jan. 30, 2009) (quoting *General Bond & Share Co. v. SEC*, 39 F.3d 1451, 1461 (10th Cir. 1994)).

²² A violation of Rule 8210 constitutes conduct inconsistent with just and equitable principles of trade and therefore violates Rule 2010. See *Stephen J. Gluckman*, 54 S.E.C. 175, 185 (1999).

²³ FINRA Sanction Guidelines at 36 (2015), <http://www.finra.org/industry/sanction-guidelines>.

²⁴ Guidelines at 33.

²⁵ *Id.*

regulatory pressure required to obtain a response; and (3) whether the respondent thoroughly explained valid reasons(s) for deficiencies in the response.²⁶

Otto responded to FINRA staff's first request for information by submitting a signed statement on July 8, 2014. Thus, the Guidelines for a partial, rather than a complete, failure to respond are appropriate.²⁷

The evidence shows three aggravating factors. First, Otto failed to comply with two written requests FINRA sent him after his initial response. The two requests, dated October 29 and November 11, 2014, asked Otto to provide additional information not requested in the first Rule 8210 request. This information would have been useful to the staff's investigation of Otto's scheme to convert money from the Bank using unapproved cashier's checks.

Second, Otto failed to respond in any manner to the two Rule 8210 requests, dated November 11 and 24, 2014, that sought his attendance at an on-the-record interview.

Finally, the misconduct under investigation was serious. Conversion is "patently antithetical to the 'high standards of commercial honor and just and equitable principles of trade' that underpin the self-regulation of the securities markets."²⁸

There are no mitigating factors present in this case. Accordingly, the appropriate sanction is a bar in all capacities.

III. Order

Jason Michael Otto is barred from associating with any FINRA member firm in any capacity for conversion, in violation of FINRA Rule 2010. He also is barred for failing to respond completely to FINRA Rule 8210 requests for documents, information, and testimony, in violation of FINRA Rules 8210 and 2010.

The bars shall become effective immediately if this Default Decision becomes FINRA's final disciplinary action.


Michael J. Dixon
Hearing Officer

²⁶ *Id.*

²⁷ See *John Joseph Plunkett*, Exchange Act Release No. 69766, 2013 SEC LEXIS 1699, at *55-57 (June 14, 2013) (remanding so that FINRA may analyze respondent's violation of Rule 8210 using its Guideline for a partial response) (citing *Kent M. Houston*, Exchange Act Release No. 66014, 2011 SEC LEXIS 4491, at *27 (Dec. 20, 2011)).

²⁸ *John Edward Mullins*, Exchange Act Release No. 66373, 2012 SEC LEXIS 464, at *73 (Feb. 10, 2012) (internal citations omitted).

Copies to: Jason Michael Otto (*via overnight courier and first-class mail*)
Margaret Tolan, Esq. (*via email and first-class mail*)
Richard R. Best, Esq. (*via email*)
Jeffrey D. Pariser, Esq. (*via email*)

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

Department of Enforcement,

Complainant,

v.

Jason Michael Otto (CRD No. 5215431),

Respondent.

DISCIPLINARY PROCEEDING
No. 20140413194

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Between July 2013 through April 2014 (the “relevant period”), Respondent, a licensed banker with Wells Fargo Bank (“the Bank”), converted funds from the Bank by improperly charging off a \$4,346.49 debit balance in his account. As a result, Respondent violated FINRA Rule 2010 by converting funds from the Bank.

2. Respondent also violated FINRA Rules 8210 and 2010 by failing to provide information and testimony to FINRA.

RESPONDENT AND JURISDICTION

3. Respondent was employed as a licensed banker by the Bank from August 2005 through April 2014. He was also dually employed and registered with Wells Fargo Advisors LLC (“Wells Fargo”) from January 2011 until May 23, 2014. On May 23, 2014, Wells Fargo filed a Uniform Termination Notice for Securities Industry Registration reporting Respondent’s voluntary termination of employment on May 23, 2014 after the Bank determined that he issued

cashier's checks from his account when there were insufficient funds in his account. Respondent has not been associated with any FINRA member firm since the termination of his employment from Wells Fargo.

4. Although Respondent 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 (1) the Complaint was filed within two years after the effective date of termination of Respondent's registration with a FINRA-member firm, namely May 23, 2014 and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member, and with failing to respond to FINRA requests for information and testimony during the two-year period after the date upon which he ceased to be registered or associated with a FINRA member firm.

STATEMENT OF FACTS

Conversion of Bank Funds

5. Between July 2013 and March 2014, Respondent had a personal checking account at the Bank.

6. The Bank's policies prohibited employees from approving overdrafts for their own accounts or abusing checking account privileges by writing non-sufficient checks.

7. Beginning in July 2013 and continuing until March 2014, Respondent purchased nine cashier's checks totaling \$15,655 from his checking account although he had insufficient funds in the account to pay for the checks.

8. Since Respondent did not have sufficient funds in his checking account to cover each check, the Bank would not have issued the cashier's checks. Respondent used computer log-in

credentials assigned to other employees, without permission from the Bank or any of its employees, to improperly approve payment of the checks using Bank funds.

9. By April 4, 2014, as a result of the cashier's check purchases and fees, Respondent's Bank account had a debit balance of \$4,346.49.

10. On April 4, 2014, without permission or authority from the Bank, Respondent charged off the \$4,346.49 debit balance, which cancelled the negative balance in his account.

11. Respondent never repaid these funds to the Bank.

12. As a result, Respondent converted \$4,346.49 from the Bank in violation of FINRA Rule 2010.

Failure to Provide Testimony to FINRA

13. On June 25, 2014, FINRA sent a letter by certified mail and return receipt requested to Respondent at his last known residential address as reflected in the Central Registration Depository (the "CRD Address"). FINRA also sent copies of the letter to the CRD Address by first class mail. The letters requested that Respondent provide a signed statement to FINRA no later than July 9, 2014 regarding allegations that cashier checks were issued to pay his mother's mortgage and that Respondent attempted to have the check amounts credited to his account when there was insufficient funds to pay the checks.

14. In a letter dated July 8, 2014, Respondent provided a signed statement to FINRA admitting that he overdrew his checking account using another employee's computer.

15. On October 29, 2014, FINRA sent a letter by certified mail and return receipt requested to Respondent at the CRD Address which was returned unclaimed to FINRA. FINRA also sent copies of the letter to his CRD address by first class mail which was not returned to FINRA. The

letter requested, pursuant to FINRA Rule 8210 that Respondent provide information to FINRA by November 7, 2014.

16. The letter sent by certified mail to Otto at the CRD address was returned to FINRA. The copy of the letter sent by first class mail was not returned to Enforcement.

17. Respondent failed to provide information to FINRA by November 7, 2014.

18. On November 11, 2014, FINRA sent a letter by certified mail and return receipt requested to Respondent at the CRD address. FINRA also sent copies of the letter to his CRD address by first class mail.. The letter requested, pursuant to FINRA Rule 8210 that Respondent provide information to FINRA by November 17, 2014 and appear and provide testimony before FINRA on November 17, 2014.

19. The letter sent by certified mail and return receipt requested to the CRD Address was delivered. The copy of the letter sent by first class mail to the CRD Address was not returned to FINRA.

20. Respondent failed to appear and provide testimony on November 17, 2014.

21. On November 21, 2014, FINRA sent a letter by certified mail and return receipt requested to Respondent at the CRD Address. FINRA also sent copies of the letter to the CRD Address by first class mail. The letter requested that Respondent appear and provide on-the-record testimony on December 4, 2014.

22. The letter sent by certified mail and return receipt requested to the CRD Address was delivered. The copy of the letter sent by first class mail to the CRD Address was not returned to FINRA.

23. Respondent failed to appear and provide testimony on December 4, 2014.

FIRST CAUSE OF ACTION
Conversion of Bank Funds
(FINRA RULE 2010)

24. The Department realleges and incorporates by reference paragraphs 1 through 19, above.

25. FINRA Rule 2010 states that, "A member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade."

26. Between July 5, 2013 and March 3, 2014, Respondent charged off a \$4,346.49 debit balance in his account, which cancelled the negative balance.

27. Respondent did not have permission or authority from the Bank or any of its employees to charge off the debit balance in his account.

28. Based on the foregoing, Respondent violated FINRA Rules 2010 by converting funds from the Bank.

SECOND CAUSE OF ACTION
Failure to Comply with Requests for Testimony
(FINRA Rules 8210 and 2010)

29. The Department realleges and incorporates by reference paragraphs 1 through 24, above.

30. FINRA Rule 8210 provides that FINRA has the right to require a person subject to FINRA's jurisdiction to provide information with respect to any matter involved in a FINRA investigation, complaint, examination, or proceeding.

31. FINRA Rule 8210 required Respondent to provide testimony to FINRA. Respondent failed to provide the requested information and testimony in connection with FINRA's investigation.

32. By failing to provide information and testimony, Respondent violated FINRA Rules 8210 and 2010.

RELIEF REQUESTED


WHEREFORE, the department respectfully requests that the Panel:

- A. Make findings of fact and conclusions of law that Respondent(s) committed the violations charged and alleges herein;
- B. Order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed;
- 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:

March 4, 2015


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