FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. WILLIAM D. MATTES, Sr. (CRD No. 3251539), Respondent.	Disciplinary Proceeding No. 2006005936701 Hearing Officer – LBB **HEARING PANEL DECISION** November 6, 2007

For conversion of customer funds in violation of Conduct Rule 2110, Respondent is barred in all capacities.

Appearances:

Dale A. Glanzman, Esq., and Kevin G. Kulling, Esq., for the Department of Enforcement.

William D. Mattes, Sr., *pro se*

DECISION

I. Introduction and Procedural History.

The Department of Enforcement filed this one-cause complaint on February 26, 2007, charging the Respondent with 13 acts of conversion in violation of Conduct Rule 2110. The Respondent filed an Answer on May 2, 2007. A hearing was held in Chicago, Illinois on September 18, 2007, before a Hearing Panel consisting of one current and one former member of the District 8 Committee and the Hearing Officer.

II. Findings of Fact.

A. Respondent.

Respondent William D. Mattes, Sr. was registered as an Investment Company/Variable Contracts Products Representative with FINRA member Chase Investment Services Corporation ("CISC") between July 2005 and August 2006. Mr. Mattes first registered with a FINRA member in July 1999. Mr. Mattes is not currently registered with a FINRA member. CX-8 at 2-3.[1]

B. Respondent Made Unauthorized Withdrawals from the Bank Accounts of a Customer of the Member's Banking Affiliate.

There is no dispute about the material facts in this case. In April 2006, Respondent created an ATM card in the name of one of his customers without the customer's knowledge and used the card on 13 occasions over a two-month period to withdraw funds from the customer's accounts. Each of these withdrawals was without the authorization or knowledge of the customer.

On April 22, 2006, Respondent created an ATM card that permitted him to access the bank accounts that J.T. had at JP Morgan Chase Bank ("Chase"), where Respondent's office was located. CX-1 at 17; Tr. 73-74. According to Respondent's handwritten statement, Respondent "improperly issue[d] an ATM card for accessing the account of [J.T.]" CX-1 at 24-25. J.T. was 88 years old. Tr. 11. Respondent describes J.T. as "a good customer" to whom Respondent provided personal banking services for at least four years. Tr. 69, 78. Respondent chose J.T. as the customer from whose accounts he would make unauthorized withdrawals because J.T. "had

1 References to the testimony set forth in the transcripts of the Hearing will be designated as "Tr. __." References to the exhibits provided by the Department of Enforcement are designated as "CX-___" and Respondent's exhibits are designated as "RX-___." Exhibits CX-1 through CX-8, RX-1 and RX-2, were admitted into evidence.

considerable wealth, considerable balances in his accounts. I guess I thought he was vulnerable and I would be able to do it …." Tr. 78.

Only an authorized person could create an ATM card, and the Chase computer required a password from an authorized user. Tr. 32. Respondent did not use his own password to create an ATM card to access J.T.'s accounts. Instead, when Respondent noticed that a previous user had walked away from an active computer, he created the ATM card without having to log in to the computer. Tr. 84.

On 13 separate occasions from April 24 to June 26, 2006, Respondent withdrew $300 from J.T.'s accounts. These withdrawals were not authorized by J.T. CX-1 at 5-6, CX-7; Tr. 72-73. He "continued to take money out of the accounts until it was revealed to [him] that fraud was suspected and reported." CX-1 at 24.

On June 28, 2006, J.T. contacted Chase to dispute several ATM withdrawals from his accounts. CX-1 at 5-6; Tr. 27-28. J.T. completed and signed Chase's dispute report, and also reported the incidents to the local police department. CX-1 at 5-6, 21-22; Tr. 28-29.

Respondent learned almost immediately from a co-worker that Chase was investigating fraudulent ATM withdrawals from J.T.'s accounts. Tr. 77-78. On July 2, after learning of Chase's fraud investigation, Respondent told his wife what he had done, and borrowed $3,900 from her so that he could repay the customer. CX-1 at 24; Tr. 75. On July 2 or July 3, Respondent and his wife met with the customer. Respondent confessed to J.T. that he "did the pilfering" and repaid the funds that Respondent had withdrawn from J.T.'s accounts. CX-1 at 19; RX-2; Tr. 29-30, 75-76.

On July 5, J.T. went to the bank to make a deposit, and informed a teller that he had been reimbursed and wanted to withdraw his complaint. Tr. 11-12, 36. On July 6, a Chase fraud

investigator contacted J.T., who said that he had been reimbursed and did not want to identify the person who had made the unauthorized withdrawals. CX-1 at 19; Tr. 11-12, 29. While declining to identify the person, J.T. said that he would visit the person at his office. J.T. went to the bank on July 6, 2006, and visited Mr. Mattes in his office. Chase used its digital video recording system to identify the person whom J.T. visited as Respondent. CX-1 at 19; Tr. 11-13.

When Chase interviewed Respondent on July 11, he admitted that he had made the unauthorized withdrawals. CX-1 at 19, CX-3; Tr. 19, 29-30. At the request of the Chase investigators, Respondent wrote out a handwritten statement, admitting that he had created the ATM card and made the unauthorized withdrawals. CX-1 at 24-25; Tr. 19-20.

FINRA[2] commenced an investigation of Respondent as a result of the receipt of a Notice of Termination of Registration. CX-1, CX-2; Tr. 54-56.

C. Evidence Concerning Stress and Depression, the Likelihood of Future Acts of Dishonesty, and Remorse.

Beginning in about October 2005, Respondent and his wife both experienced a number of medical and financial problems that caused him to be depressed. CX-6; RX-1, RX-2; Tr. 69-70. Respondent had suffered from depression, and had been taking medication for his condition for several years, first under the care of Dr. D.M., a psychiatrist, then under the care of his primary care physician. Respondent's wife was suffering from serious, potentially life-threatening medical problems; he and his wife were experiencing financial problems; and other related issues added to his level of stress and depression. CX-1 at 24-25; RX-1, RX-2; Tr. 69-70.

Respondent's dishonest acts began after the advent of the serious medical and financial issues. A number of statements by Respondent, as well as the opinion of Dr. D.M., suggest that

2 As of July 30, 2007, NASD consolidated with the member firm regulation functions of NYSE and began operating under a new corporate name, the Financial Industry Regulatory Authority (FINRA). References in this decision to FINRA include, where appropriate, NASD.

stress and depression caused by the accumulation of setbacks were the cause of his behavior. CX-1 at 24, CX-2 at 4-6; RX-1, RX-2; Tr. 69-70. A statement to FINRA suggests that financial pressures were also a motivating factor. "Fearing a significant loss of income from the undetermined length of care she was facing, and the pressures on me because of this, I committed the referenced unauthorized withdrawals." CX-6.

Eight days after Chase interviewed him, Respondent returned to the care of Dr. D.M. He told Dr. D.M. that he had taken money from a customer's accounts but had repaid the money. Respondent told Dr. D.M. that he knew that the conduct was wrong but had felt desperate. RX-1; Tr. 41-42. Dr. D.M. attributed Respondent's conduct to the accumulation of the medical and financial problems that had occurred recently. RX-1; Tr. 42-43, 50-51. Dr. D.M. predicts that the Respondent will not engage in similar conduct again, but also acknowledges that there are no data that would support the ability of the medical profession to make such predictions. RX-1; Tr. 48-49.

Respondent has expressed remorse for his conduct on numerous occasions. He has apologized to J.T., and expressed his remorse and shame to Chase and CISC, his wife, his psychiatrist, and to the Hearing Panel. CX-1 at 24-25, CX-6; RX-1, RX-2; Tr. 75.

III. Conclusions of Law.

A. FINRA Has Jurisdiction Over Respondent.

Although Respondent is not currently associated with any FINRA member, he remains subject to FINRA jurisdiction for purposes of this proceeding, pursuant to Art. V, § 4 of FINRA's By-Laws, because the Complaint was filed within two years after the termination of his last registration, and it charges him with misconduct while registered.

B. Respondent Converted Customer Funds in Violation of Conduct Rule 2110.

Conversion is "an intentional and unauthorized taking of and/or exercise of ownership over property by one who neither owns the property nor is entitled to possess it." FINRA Sanction Guidelines at 38 n.2 (2007). The misuse of customer funds violates Conduct Rule 2110 because such conduct is inconsistent with high standards of commercial honor and just and equitable principles of trade that FINRA seeks to promote. Dep't of Enforcement v. Shailesh B. Patel, Complaint No. C02990052, 2001 NASD Discip. LEXIS 42 at *24 (NAC May 23, 2001), citing Joel Eugene Shaw, Exchange Act Rel. No. 34509, 51 S.E.C. 1224, 1226-27 (Aug. 10, 1994); see also Dep't of Enforcement v. Kendzierski, Complaint No. C9A980021, 1999 NASD Discip. LEXIS 40 at **6-9 (NAC Nov. 12, 1999). Even where the conversion is not in connection with a securities transaction, it "constitute[s] unethical business-related conduct and calls into question [Respondent's] ability to fulfill his fiduciary duties in handling other people's money." Daniel D. Manoff, Exchange Act Rel. No. 46708, 2002 SEC LEXIS 2684 (Oct. 23, 2002) (unauthorized use of co-worker's credit card numbers); see also Dep't of Enforcement v. Michael G. Grimes, Complaint No. C05010033, 2002 NASD Discip. LEXIS 45 (OHO Mar. 25, 2002) (conversion of funds intended for the purchase of a life insurance product from the Member company's parent company).

To prevail on the charge of conversion, Enforcement had to prove by a preponderance of the evidence that Respondent Mattes converted customer J.T.'s funds. Respondent has admitted that he created an unauthorized ATM card that enabled him to withdraw funds from the accounts of J.T. He has admitted that he withdrew $300 from J.T.'s accounts on 13 separate occasions, without authorization from J.T. Thus, there is no dispute that Respondent engaged in "an intentional and unauthorized taking of and/or exercise of ownership over property by one who

neither owns the property nor is entitled to possess it." The Hearing Panel concludes that the Respondent converted customer funds in violation of Rule 2110 of the NASD Rules of Conduct.

IV. Sanctions.

The Sanction Guidelines recommend a bar for the offense of conversion, regardless of the amount converted. FINRA Sanction Guidelines at 38 (2007). There are no material mitigating factors, but there are several aggravating factors. Accordingly, the Hearing Panel finds that the appropriate sanction is a bar in all capacities.[3]

Respondent knowingly victimized an 88-year-old customer who was, in Respondent's own words, "vulnerable." Respondent did not accept responsibility or make restitution prior to detection or intervention by his firm. He admits that he "continued to take money out of the accounts until it was revealed to me that fraud was suspected and reported." Respondent cooperated with FINRA's investigation, but he had already been caught and confessed to Chase. While his cooperation is commendable, this is not a case in which the cooperation of the Respondent could have materially advanced FINRA's investigation.

Respondent repaid all of the converted funds to the customer, but the repayment is not a mitigating factor. Respondent repaid the customer only after he learned that the customer had complained about unauthorized withdrawals and that Chase was investigating. He should have "voluntarily and reasonably attempted, prior to detection and intervention, to pay restitution or otherwise remedy the misconduct." Dep't of Enforcement v. Jeffrey L. Farley, Complaint No. C9A000038, 2001 NASD Discip. LEXIS 51 (OHO Oct. 2, 2001); see also Daniel D. Manoff, Exchange Act Rel. No. 46708, 2002 SEC LEXIS 2684 at **17-18 (Oct. 23, 2002) ("Neither

3 Because Respondent is in bankruptcy, the Department of Enforcement does not seek any form of monetary relief. Tr. 86-87. The Hearing Panel does not impose fines, costs, or restitution in this case because the Respondent is in bankruptcy. See Dep't of Enforcement v. Wanda P. Sears, Complaint No. C07050042, 2007 NASD Discip. LEXIS 26 at *25 n.11, (NAC Sept. 24, 2007); see also 11 U.S.C. § 362(b)(26)(B).

[Respondent's] repayment of the funds nor his lack of a disciplinary record justifies [his acts of conversion]").

Respondent's conduct, involving the creation of an unauthorized card and 13 acts of conversion, constitutes numerous acts and a pattern of misconduct under Principal Consideration No. 8. While the transactions were not large in terms of the dollars involved, they were numerous and unquestionably dishonest. Indeed, Respondent admitted to his psychiatrist that "even as he was taking the money, he not only knew that it was not a viable solution he also knew it was wrong." RX-1 at 3.

The Hearing Panel has considered the evidence offered by the Respondent concerning his emotional condition. There is some authority for consideration of extreme emotional distress as a mitigating factor. See Dist. Bus. Conduct Comm. for Dist. No. 2 v. Lawrence R. Klein, Complaint No. C02940041, 1995 NASD Discip. LEXIS 229 (NBCC June 20, 1995). In cases of serious misconduct such as this, however, even severe emotional problems have not been held to be sufficient to overcome the presumption that a bar is the appropriate remedy. Id.; see also Joel Eugene Shaw, Exchange Act Rel. No. 34509, 1994 SEC LEXIS 2493, 51 S.E.C. 1224 (Aug. 10, 1994) (extreme emotional stress as a result of severe financial problems and his parents' and children's ill health insufficient to justify conversion of customer funds); Dist. Bus. Conduct Comm. for Dist. No. 4 v. Tammy S. Kwikkel-Elliott, 1998 NASD Discip. LEXIS 4 (Jan. 16, 1998) (conduct not excused by personal and work-related stress; no indication that personal or work-related circumstances caused conduct).

In this case, the evidence does not support a finding that Respondent's emotional condition is a mitigating factor. While Respondent undoubtedly was undergoing an extremely stressful period, the stress does not justify the conversion of customer funds. Respondent's

conduct was planned and deliberate. He targeted an elderly customer, created an ATM card in the customer's name, then misappropriated his customer's funds on 13 separate occasions over a two-month period. His misconduct stopped only when it became apparent that he was going to be found out. To the extent that there might be circumstances in which psychological or emotional problems might be a mitigating factor, those circumstances are, at most, of minimal persuasive value in this case.

The telephonic testimony of Respondent's psychiatrist does not support any reduction of the sanctions. Although the doctor attributes Respondent's conduct to the stress and depression caused by the accumulation of adverse events, his testimony also confirms that Respondent knew that his conduct was wrong. Although the psychiatrist predicts that Respondent will not repeat his misconduct, the doctor candidly admits that his opinion cannot be supported by any evidence that psychiatrists' predictions of such behavior are reliable. Especially given the extremely serious nature of Respondent's misconduct, the Hearing Panel finds that the psychiatrist's testimony does not support any deviation from the Sanction Guidelines.

Upon consideration of all the evidence, the Hearing Panel finds that the appropriate sanction is a bar in all capacities. The Sanction Guidelines recommend a bar as the presumptive sanction for the conversion of customer funds. There are no mitigating factors that would form a basis for a sanction below the level recommended in the Sanction Guidelines, but there are several aggravating factors that reinforce the appropriateness of a bar.

V. Conclusion.

Respondent William D. Mattes, Sr. is barred from associating with any FINRA member in any capacity for conversion of customer funds, in violation of Rule 2110.[4] If this decision becomes FINRA's final disciplinary action, the bar shall become effective immediately.

HEARING PANEL

_____

By: Lawrence B. Bernard
Hearing Officer

Copies to: William D. Mattes, Sr. (*via overnight and first-class mail*)
Dale A. Glanzman, Esq. (*via electronic and first-class mail*)
Kevin G. Kulling, Esq. (*via electronic and first-class mail*)
Mark P. Dauer, Esq. (*via electronic and first-class mail*)
David R. Sonnenberg, Esq. (*via electronic and first-class mail*)

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