

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JOHN M. E. SAAD

(CRD No. 2185911),

Respondent.

Disciplinary Proceeding

No. 2006006705601

**PANEL DECISION**

Hearing Officer – SW

Dated: August 19, 2008

**Respondent is barred in all capacities from associating with any FINRA member for converting the funds of his employer, in violation of NASD Conduct Rule 2110.**

**Appearances**

Gene E. Carasick, Esq., Senior Regional Counsel, and William Brice La Hue, Esq., Regional Counsel, Atlanta, GA, for the Department of Enforcement.

Gregory Bartko, Esq., Atlanta, GA, for Respondent John M. E. Saad.

**DECISION**

**I. PROCEDURAL HISTORY**

**A. Complaint and Answer**

This one-count Complaint alleges that Respondent John M. E. Saad (“Respondent”), while registered with Hornor, Townsend & Kent (“HTK” or the “Firm”), violated NASD Conduct Rule 2110 by converting the funds of the Firm’s insurance affiliate, Penn Mutual Life Insurance Co. (“Penn Mutual”). Respondent converted the funds by submitting a false expense report and false receipts to Penn

Mutual, and accepting reimbursement for \$1,144.63 in expenses for which he was not entitled.

Respondent acknowledged that he submitted a false expense report and false receipts and received money from Penn Mutual based on the false report and receipts, but argued that his actions did not constitute conversion because: (i) he had discretion to use the funds in the bank account, so he did not “convert” the funds he obtained; (ii) he was entitled to the funds he received as reimbursement for other business expenses that he had previously incurred, but not claimed, so the funds he obtained through the false report and receipts amounted to a “wash”; and (iii) the primary reason for submitting the false report and receipts was not to obtain funds, but to mislead Penn Mutual about his travel.

## **B. Hearing**

The Hearing Panel, consisting of two members of the District 7 Committee and a Hearing Officer, conducted a Hearing in Atlanta, GA, on April 16, 2008.<sup>1</sup> The parties subsequently filed post-hearing briefs, which the Hearing Panel reviewed.

The Hearing Panel finds that Enforcement met its burden of showing by a preponderance of the evidence that Respondent violated NASD Conduct Rule 2110 when he submitted a false expense report and false receipts, and accepted reimbursement for \$1,144.63 in expenses to which he was not entitled.

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<sup>1</sup> “Tr.” refers to the transcript of the Hearing held on April 16, 2008; “JX” refers to the exhibits submitted jointly by Enforcement and Respondent; and “RX” refers to the exhibits submitted by Respondent.

## **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **A. Facts**

Respondent joined Penn Mutual as an agent in January 2001. (JX-1, p. 4). Respondent was registered with Penn Mutual's broker-dealer affiliate, HTK, in the following capacities: (i) an investment company and variable contracts products representative on May 22, 2001; (ii) a general securities representative on July 25, 2002; and (iii) a general securities principal on August 21, 2002. (JX-1, p. 5).

At Penn Mutual and HTK, Respondent spent 95% of his time recruiting insurance agents to sell Penn Mutual products as independent contractors, and helping them build their business. (Tr. pp. 78-80, 84). In 2006, Respondent, based in Atlanta, GA, was Penn Mutual's regional director for Georgia, Tennessee, Alabama, North Carolina, and South Carolina. (Tr. p. 82). He supervised approximately 30 registered representatives and approximately 200 independent insurance agents. (Tr. pp. 83-84).

At the beginning of every month, Penn Mutual wired approximately \$6,300 into a bank account in the name of Respondent, as the regional director, to be used to pay the expenses of the region. (Tr. pp. 88-90). Penn Mutual prepaid Respondent, giving Respondent the authority to spend the money as he chose, as long as the money was used for legitimate business expenses. (Tr. p. 89). Respondent's office administrator maintained the accounting for the expense reports. (Tr. p. 90). Upon receipt of Respondent's receipts and expense reports, the office manager prepared checks, signed by Respondent, to pay charges on the company credit card and/or transferred cash reimbursements to Respondent's separate personal account. (Tr. pp. 90, 105, 143-144).

In July 2006, Respondent arranged to meet a potential independent contractor in Memphis, TN. (Tr. pp. 93-94). The meeting was canceled at the last minute. (Tr. p. 95). Respondent testified that he then decided to check into a hotel in Atlanta, GA to work undisturbed. (*Id.*). Respondent's production had dropped off significantly from the end of 2005 to the middle of 2006 because Respondent was focused on the continuing illness of one of his one-year old twin sons. (Tr. p. 87).

Respondent, by his own admission, submitted a false expense reimbursement report and false receipts to Penn Mutual and received: (i) \$478 for round-trip airfare between Atlanta and Memphis from July 9, 2006 to July 11, 2006 (JX-4, p. 2); (ii) \$274.44 for lodging in a Marriott Hotel in Memphis for July 9, and 10, 2006 (JX-4, p. 3); and (iii) \$392.19 for the purchase of a new cell phone on July 14, 2006, to replace Respondent's broken cell phone. (JX-4, p. 6).

Respondent did not (i) incur airfare for travel to and from Memphis on July 9, 2006, (ii) incur hotel expenses in Memphis, or (iii) purchase a cell phone to replace a broken one. (Tr. pp. 130, 133-134). He spent Sunday, July 9, 2006, and Monday, July 10, 2006, at a hotel in Buckhead, a section of Atlanta, GA, which is not far from where Respondent resides. (Tr. pp. 95-96). Respondent did not go into the office on Monday because he did not want his staff to know that he had not traveled to Memphis, TN. (Tr. p. 133).

When Respondent submitted the false expense receipts for plane fare and the Memphis hotel to his office manager, he also submitted a receipt for four drinks at an Atlanta hotel lounge on July 9, 2006, at a time when he was supposedly in Memphis. (JX-4, pp. 2-4; Tr. p. 99).

When Respondent's office manager advised him of the discrepancy, Respondent did not withdraw the false Memphis airline and hotel receipts, but rather he withdrew the \$38.01 expense for the drinks at the Atlanta hotel. (Tr. pp. 107, 139). Respondent's office manager retrieved the \$38.01 expense receipt and reported the discrepancy to the home office, which then conducted an audit of Respondent's expenses. (Tr. pp. 109, 112; JX-4, p. 4).

Effective September 16, 2006, Penn Mutual terminated Respondent for improperly submitting expenses for a business trip that did not occur. (Tr. p. 35; JX-3, p. 3). HTK terminated Respondent's registrations on October 13, 2006.<sup>2</sup> (JX-1, p. 5).

Respondent admitted that he knowingly created and submitted false receipts for the Memphis airfare and hotel. (Tr. pp. 161-162). But Respondent stated that he actually conducted work from the Atlanta hotel and that he had previously incurred legitimate business expenses that had not been reimbursed, so the reimbursement for the hotel and the airfare constituted a "wash." (Tr. p. 186).

In July 2006, Respondent was not having financial difficulties and did not need the money. (Tr. pp. 109, 187). Respondent stated that his intent in submitting the false receipts and the false expense report was to show that he had traveled that month because Penn Mutual monitored his travel through his expense reports. (Tr. pp. 177, 179). Respondent testified that he was under pressure to complete recruiting trips because of the significant drop in his production. (Tr. pp. 102-103, 156, 179).

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<sup>2</sup> Respondent remains subject to FINRA jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of the FINRA By-Laws, because (1) the Complaint was filed within two years after his registrations through HTK were terminated, and (2) the Complaint charges him with misconduct while he was registered.

With respect to the cell phone expense, Respondent purchased the cell phone for a woman, MM, who was starting in the insurance business at AFLAC. (Tr. pp. 55, 125). Respondent characterized the purchase as a legitimate business expense because it was an opportunity to assist a potential independent agent and gain an introduction to sell Penn Mutual products to one of the top AFLAC offices. (*Id.*). Respondent admitted that he thought the expense of a cell phone for an independent agent might be questioned because his production was low and therefore he falsely reported the expense as a replacement for his cell phone. (Tr. pp. 130-131; JX-4, pp. 6-7). When Respondent submitted the cell phone bill for reimbursement, MM's name was blacked out on the receipt. (JX-4, p. 6). Respondent testified that he had purchased business equipment for other independent agents, but he provided no corroborating documents or witnesses. (Tr. pp. 126-127, 144-145). In the absence of corroborating evidence, and having observed Respondent's demeanor while testifying, the Hearing Panel did not find Respondent's claim that this purchase was consistent with previously approved business equipment purchases credible. In any event, the Hearing Panel did not find Respondent's prior equipment purchases material to the charge of submitting a false expense report and receipts to his employer.

#### **B. Respondent Violated Conduct Rule 2110**

The Complaint alleges that Respondent converted Penn Mutual's funds, in violation of NASD Conduct Rule 2110, when he obtained funds from Penn Mutual by submitting a false expense report and false receipts.

Conversion is the wrongful exercise of dominion over the personal property of another.<sup>3</sup> Respondent argued that because Penn Mutual had prepaid the funds to him, he properly exercised dominion and control over the funds and could not be found to have converted them. Respondent also argued that the reimbursement he received was not a conversion, but a “wash” when balanced against other expenses that he had legitimately incurred but for which he had not previously sought reimbursement. Finally, Respondent argued that his intent in submitting the false receipts was to deceive Penn Mutual regarding his travel, not to obtain funds.

The Hearing Panel finds that although Respondent’s name was on the bank account, the funds belonged to Penn Mutual. Respondent received the funds as an employee of Penn Mutual, and was only authorized to spend the funds for legitimate business purposes, as approved by Penn Mutual after submitting accurate documentation. Respondent admitted that he created and submitted false documentation to obtain reimbursement for expenses that he had not incurred. By so doing, Respondent intended to, and did obtain funds from Penn Mutual to which he was not entitled, and thereby converted those funds.

The Hearing Panel also rejects Respondent’s argument that the money he received amounted to a “wash.” If Respondent had other legitimate expenses, he was required to seek reimbursement with appropriate documentation; he is not entitled to a “credit” for expenses that he incurred but did not submit, and which were not verified and approved

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<sup>3</sup> *Dep’t of Enforcement v. Paratore*, No. 2005002570601, 2008 FINRA Discip. LEXIS 1, \*10 (NAC Mar. 7, 2008); see also *FINRA Sanction Guidelines*, p. 38, n.2 (2007), available at <http://www.finra.org/web/groups/enforcement/documents/enforcement/p011038.pdf> (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.”).

by Penn Mutual. Finally, Respondent's motive in submitting the false report and receipts is irrelevant; the effect, as Respondent knew when he submitted the report and receipts, was that he received funds belonging to Penn Mutual to which he was not entitled.

Even where the conversion is not in connection with a securities transaction, it "constitute[s] unethical business-related conduct and calls into question [a respondent's] ability to fulfill his fiduciary duties in handling other people's money."<sup>4</sup> Accordingly, conversion is a violation of NASD Conduct Rule 2110.<sup>5</sup>

The Hearing Panel finds that Respondent converted Penn Mutual's funds, in violation of NASD Conduct Rule 2110, when he obtained reimbursement for fictitious expenses.<sup>6</sup>

### III. SANCTIONS

According to the *FINRA Sanction Guidelines*, a bar is standard for conversion regardless of the amount converted.<sup>7</sup> The Department of Enforcement recommended that Respondent be barred in all capacities. The Hearing Panel finds that there are no mitigating factors that would warrant a sanction less than a bar in all capacities.

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<sup>4</sup> *Daniel D. Manoff*, Exch. Act Rel. No. 46,708, 2002 SEC LEXIS 2684 (Oct. 23, 2002) (unauthorized use of co-worker's credit card numbers).

<sup>5</sup> See, e.g. *District Bus. Conduct Comm. v. Varites*, No. LA-4293, 1991 NASD Discip. LEXIS 16 (DBBC Jan. 22, 1991) (conversion of firm funds to a representative's own use is an intentional disregard of the "high standards of commercial honor and just and equitable principles of trade" mandated by NASD Conduct Rule 2110).

<sup>6</sup> See *District Bus. Conduct Comm. v. Kwikkel-Elliot*, No. C0496004 (NAC Jan. 16, 1998) (NAC barred Ms. Kwikkel-Elliott for cheating on her expense account because her lack of honesty and veracity presented a risk to the investing public); *District Bus. Conduct Comm. v. Bruun*, No. C3B960004 (NAC Jan. 23, 1998) (NAC barred Mr. Bruun for cheating on his expense account).

<sup>7</sup> *Guidelines* at 38 (2007).

The Principal Considerations in Determining Sanctions also support the conclusion that a bar is the appropriate sanction in this case.<sup>8</sup>

Principal Consideration No. 2 is whether the respondent accepted responsibility for and acknowledged the misconduct to his employer or a regulator prior to detection and intervention by the firm or a regulator. Respondent did not. To the contrary, notwithstanding the opportunity to withdraw the false receipts when questioned by his office manager, Respondent failed to do so.

Principal Consideration No. 4 is whether the respondent voluntarily and reasonably attempted, prior to detection and intervention, to pay restitution or otherwise remedy the misconduct. Respondent did not. Respondent did offer to repay Penn Mutual, but not until after Penn Mutual had discovered his misconduct and confronted him with it. (Tr. p. 186).

Principal Consideration No. 13 is whether the respondent's misconduct was the result of an intentional act, recklessness, or negligence. Respondent's misconduct was admittedly intentional. Respondent intended Penn Mutual to believe, falsely, that he had traveled to Memphis and incurred expenses. Respondent intended Penn Mutual to believe, falsely, that the cell phone for which he requested reimbursement was purchased for his use.

Finally, Principal Consideration No. 17 is whether the respondent's misconduct resulted in the potential for his monetary or other gain. Respondent's misconduct resulted in his actual gain of \$1,144.63.

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<sup>8</sup> *Id.* at 6-7.

The Hearing Panel recognized that Respondent was under a great deal of pressure to produce and was under additional pressure due to the illness of his one-year old son. However, at the time that Respondent engaged in this misconduct, he was a registered principal, as well as a registered representative and must have known that he was engaging in misconduct. The Hearing Panel finds that Respondent deliberately decided to deceive his employer in two separate reimbursement transactions, once with the false travel expenses and again with the cell phone.

#### **IV. CONCLUSION**

Respondent John M. E. Saad is barred from associating with any FINRA member in any capacity for conversion of Penn Mutual's funds, in violation of NASD Conduct Rule 2110.

Respondent is also assessed Hearing costs in the total amount of \$2,080, consisting of a \$750 administrative fee and a \$1,330 transcript fee. If this Hearing Panel Decision becomes FINRA's final disciplinary action, the bar shall become effective immediately.<sup>9</sup>

#### **HEARING PANEL.**

By: \_\_\_\_\_  
Sharon Witherspoon  
Hearing Officer

Dated: Washington, DC  
August 19, 2008

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<sup>9</sup> The Hearing Panel has considered all of the arguments of the Parties. They are rejected or sustained to the extent that they are inconsistent or in accord with the views expressed herein.

Copies to:

John M. E. Saad (via FedEx and first class mail)  
Gregory Bartko, Esq. (via facsimile and first class mail)  
Gene E. Carasick, Esq. (via electronic and first class mail)  
William Brice La Hue, 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)