

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

THOMAS THANH DOAN
(CRD No. 4511950),

Respondent.

Disciplinary Proceeding
No. 2009019637001

Hearing Officer – LBB

**HEARING PANEL
DECISION GRANTING
ENFORCEMENT'S
MOTION FOR SUMMARY
DISPOSITION**

September 19, 2011

Respondent Thomas Thanh Doan is barred from associating with any member firm in any capacity for conversion and misappropriation of funds, in violation of FINRA Conduct Rule 2010.

Appearances

Gregory R. Firehock, Esq., Senior Litigation Counsel, for the Department of Enforcement.

Thomas Thanh Doan, *pro se*.

DECISION

I. Procedural History

The Department of Enforcement (“Enforcement”) filed the Complaint in this disciplinary proceeding on February 14, 2011, charging Respondent Thomas Thanh Doan (“Respondent”) with submission of fraudulent invoices to an affiliate of his member firm for reimbursement of expenses he had never actually incurred, thereby wrongfully converting and misappropriating funds from the affiliate, in violation of FINRA Conduct Rule 2010. Respondent filed an answer on March 11, 2011, requesting a hearing and asserting that his employer had treated him unfairly. Respondent filed an amended answer on March 29, 2011, in which he asserted that he

had made a mistake about the invoices he had submitted, but had used the reimbursement money for other business expenses for the benefit of his firm.

The parties filed a set of stipulations on May 11, 2011. Enforcement filed a motion for summary disposition on June 23, 2011, moving for summary disposition on both liability and sanctions. Respondent filed a response on July 20, 2011, in which he did not contest the allegation that he had submitted false invoices, but alleged that he had used the reimbursement funds for office furniture for which his employer had delayed his reimbursement for more than two years.

II. Summary Disposition Standard

Pursuant to FINRA Procedural Rule 9264(e):

The Hearing Panel ... may grant the motion for summary disposition if there is no genuine issue with regard to any material fact and the Party that files the motion is entitled to summary disposition as a matter of law. If a Party files a motion [prior to the commencement of the hearing on the merits], the facts alleged in the pleadings of the Party against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by the non-moving Party, by uncontested affidavits or declarations, or by facts officially noticed pursuant to Rule 9145.

III. Respondent

Respondent was registered as an investment company and variable contracts products representative of FINRA member firm Woodmen Financial Services, Inc. (“Woodmen Financial”) from approximately October 2002 until August 2009, when he was permitted to resign. Stip. 1; CX-1.¹ Respondent was employed by Woodmen of the World Life Insurance

¹ The parties filed a set of factual stipulations on May 11, 2011, which provided the factual basis for much of this decision. References to the stipulations are designated as “Stip. ____.” Enforcement filed the Declaration of Lisa K. Wilcox, a FINRA investigator, in support of its motion. The declaration is cited as “Wilcox Decl.” The exhibits to the declaration are cited as “Wilcox Decl. Ex. ____.” Enforcement also submitted the Central Registration Depository Database Extract for Respondent, which it marked as “CX-1.” The Hearing Panel has considered the factual assertions included in Respondent’s response, although the response was not submitted under oath or with a supporting declaration. The document is cited herein as “Opposition.” The documents submitted with Respondent’s response did not support the existence of any genuine issues of material fact, and therefore are not cited in this order.

Society (“Woodmen Life”), the parent company of Woodmen Financial, from August 1991 until August 13, 2009, when Woodmen Financial permitted Respondent to resign for submitting false invoices. CX-1.

Although Respondent is not registered 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 the Complaint was filed within two years after the termination of his registration with a member firm, and it charges him with a violation while he was registered with a member firm.

IV. Findings of Fact

Between February 2009 and July 2009, Respondent submitted six separate requests to Woodmen Life for reimbursement of expenses to rent a conference room in a condominium complex named Hawaiiki Tower, in Honolulu, Hawaii. Stip. 3. Each of the six reimbursement requests Respondent made to Woodmen Life was supported by an invoice. Stip. 4. The invoices appeared to be issued by Hawaiiki Tower. Wilcox Decl. at 1, and Wilcox Decl. Ex. B.

- The first invoice, dated February 18, 2009, stated that Respondent had reserved the conference room at “Hawaiiki Tower”² for a meeting on February 18, 2009, between 9 a.m. and 12 noon. Stip. 4(a)(i).
- A second invoice, dated March 9, 2009, stated that Respondent had reserved the conference room at “Hawaiiki Tower” for a meeting on March 9, 2009, between 9 a.m. and 1 p.m. Stip. 4(b)(i).
- A third invoice, dated April 20, 2009, stated that Respondent had reserved the conference room at “Hawaiiki Tower” for a meeting on April 20, 2009, between 8 a.m. and 12 noon. Stip. 4(c)(i).
- A fourth invoice, dated May 5, 2009, stated that Respondent had reserved the conference room at “Hawaiiki Tower” for a meeting on May 5, 2009, between 9 a.m. and 12 noon. Stip. 4(d)(i).

² The invoices had letterhead that appeared to be from “Hawaiiki Tower,” but “Hawaiki” is misspelled on each of the invoices. Stip. 4(a)(ii), 4(b)(ii), 4(c)(ii), 4(d)(ii), 4(e)(ii), 4(f)(ii); Wilcox Decl. Ex. B.

- A fifth invoice, dated June 2, 2009, stated that Respondent had reserved the conference room at “Hawaiki Tower” for a meeting on June 2, 2009, between 9 a.m. and 12 noon. Stip. 4(e)(i).
- A sixth invoice, dated July 6, 2009, stated that Respondent had reserved the conference room at “Hawaiki Tower” for a meeting on July 6, 2009, between 9 a.m. and 12 noon. Stip. 4(f)(i).

Each of the six invoices stated that Respondent was charged \$450 for use of the conference room. Stip. 4(a)(iii), 4(b)(iii), 4(c)(iii), 4(d)(iii), 4(e)(iii), 4(f)(iii). Each invoice was stamped “Paid” in a section of the invoice designated for a manager of the Hawaiki Tower. Stip. 4(a)(iv), 4(b)(iv), 4(c)(iv), 4(d)(iv), 4(e)(iv), 4(f)(iv).

Respondent did not reserve and did not use the conference room at Hawaiki Tower on the dates in 2009 stated in the invoices, or on any other day in 2009. Stip. 4(a)(vii), 4(b)(vii), 4(c)(vii), 4(d)(vii), 4(e)(vii), 4(f)(vii). Respondent was not charged any fee by Hawaiki Tower relating to a conference room on the dates stated in the invoices, or on any other day in 2009. Stip. 4(a)(viii), 4(b)(viii), 4(c)(viii), 4(d)(viii), 4(e)(viii), 4(f)(viii).

The invoices were not issued by Hawaiki Tower. Instead, Respondent created the invoices himself. Stip. 4(a)(vi), 4(b)(vi), 4(c)(vi), 4(d)(vi), 4(e)(vi), 4(f)(vi). He stamped the invoices “Paid” and wrote the date of the invoice over the “Paid” notation. Respondent did not pay Hawaiki Tower anything for the rental of the conference room on any day in 2009. Stip. 4(a)(ix), 4(b)(ix), 4(c)(ix), 4(d)(ix), 4(e)(ix), 4(f)(ix).

As a result of his submission of the invoices to Woodmen Life, Respondent received reimbursement from Woodmen Life for each of the first five invoices in the amount of \$450, for a total of \$2,250. Stip. 4(a)(v), 4(b)(v), 4(c)(v), 4(d)(v), 4(e)(v). Respondent did not receive reimbursement from Woodmen Life for expenses sought in regard to the sixth invoice. The company refused to make the requested payment to Respondent after discovering that the invoice was not issued by Hawaiki Tower. Stip. 4(f)(v).

Respondent's response to Enforcement's motion states that the money he received from Woodmen Life was reimbursement for office furniture expenses, for which Woodmen Life had delayed reimbursement for more than two years. Opposition at ¶ 4.

V. Respondent Violated FINRA Conduct Rule 2010

The Complaint charges that Respondent submitted fraudulent claims to Woodmen Life, and that the submission of the fraudulent invoices "constitutes separate and distinct violations of FINRA Rule 2010 by Doan in that he submitted fraudulent invoices and wrongfully converted and misappropriated funds from Woodman Life." Complaint ¶¶ 4-7.

There are no genuine issues of material fact. Respondent has stipulated that he submitted falsified invoices in order to obtain money from his employer, and that he received \$2,250 as reimbursement from his employer for expenses that he never incurred, for rental of a conference room that he did not use. As the Securities and Exchange Commission recently held in a similar case, "[Respondent's] submission of the falsified expense report, and resulting financial benefit, reflects negatively on both [Respondent's] ability to comply with regulatory requirements and his ability to handle other people's money."³

Respondent's misconduct constitutes conversion. 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."⁴ FINRA has regularly found that associated persons have violated FINRA Conduct Rule 2010, and its predecessor NASD Conduct Rule 2110, by

³ *John M. Saad*, Exchange Act Rel. No. 62178, 2010 SEC LEXIS 1761, at *14 (May 26, 2010).

⁴ *FINRA Sanction Guidelines* at 36 n.2 (2011).

converting the funds of non-customers.⁵ The undisputed facts establish the elements of conversion. Respondent took Woodmen Life's property without authorization, and he neither owned the funds nor was entitled to possess the funds.

Respondent's contention that he received the money because he was entitled to reimbursement for office furniture provides no defense. FINRA has rejected this "self-help" defense under very similar circumstances in *Department of Enforcement v. Saad*, saying, "The suggestion that he may have been able to obtain reimbursement for other legitimate expenses if submitted properly does not exonerate or lessen the significance of his unethical conduct."⁶ As the National Adjudicatory Council held in *Saad*, under such circumstances, Respondent's conduct is deceitful, and violates FINRA Conduct Rule 2010.⁷

By submitting the false reimbursement claims and accepting the money from his employer, Respondent violated FINRA Conduct Rule 2010.

VI. Sanctions

The FINRA Sanction Guidelines recommend a bar for conversion. For improper use of funds, the Guidelines recommend consideration of a bar, or a suspension if there are mitigating circumstances.⁸

Respondent's willingness to submit multiple false invoices over an extended period demonstrates a disregard for ethical principles, and suggests that his continued participation in

⁵ *Dist. Bus. Conduct Comm. v. Vail*, No. C06920051, 1994 NASD Discip. LEXIS 192, at *13 (N.B.C.C. Sept. 22, 1994), *aff'd*, *Henry E. Vail*, 52 S.E.C. 339, 342 (1995), *aff'd*, 101 F.3d 37 (5th Cir. 1996) (barred for misappropriation of funds of private political club); *Daniel D. Manoff*, Exchange Act Rel. No. 46708, 2002 SEC LEXIS 2684 (Oct. 23, 2002) (barred for unauthorized use of co-worker's credit card numbers); *Dist. Bus. Conduct Comm. v. Kwikkel-Elliott*, No. C04960004, 1998 NASD Discip. LEXIS 4 (N.B.C.C. Jan. 16, 1998) (barred for converting funds from employer by submission of false expense reimbursement requests).

⁶ *Dep't of Enforcement v. Saad*, 2009 FINRA Discip. LEXIS 29, at *22 (N.A.C. Oct. 6, 2009).

⁷ *Dep't of Enforcement v. Saad*, 2009 FINRA Discip. LEXIS 29, at *20.

⁸ *FINRA Sanction Guidelines* at 36 (2011).

the securities industry poses a risk to the investing public.⁹ His misconduct continued for five months, until it was discovered and his employment was terminated.¹⁰ His misconduct constituted a pattern of submitting monthly fabricated invoices.¹¹ Respondent's submission of fraudulent invoices was for the purpose of financial gain, and resulted in actual financial gain.¹²

There are no mitigating factors. A bar is the appropriate sanction.

VII. Conclusion

Respondent Thomas Thanh Doan is barred from associating with any member firm in any capacity for conversion and misappropriation of funds, in violation of FINRA Conduct Rule 2010. The bar will become effective immediately if this decision becomes FINRA's final disciplinary action in this proceeding.¹³

HEARING PANEL.

Lawrence B. Bernard
Hearing Officer

Copies to: Thomas Thanh Doan (*via overnight courier and first-class mail*)
Gregory R. Firehock, Esq. (*via electronic and first-class mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

⁹ *Dep't of Enforcement v. Saad*, 2009 FINRA Discip. LEXIS 29, at *29.

¹⁰ Principal Consideration No. 9.

¹¹ Principal Consideration No. 8.

¹² Principal Consideration No. 17.

¹³ The Hearing Panel has considered all of the arguments of the parties. They are rejected or sustained to the extent they are inconsistent or in accord with the views expressed herein.