FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. ERIK PATRICK PICA (CRD No. 4829533), Respondent.	Disciplinary Proceeding No. 2019061947501 Hearing Officer–RES **DEFAULT DECISION** March 6, 2020

Respondent is barred from associating with any FINRA member in any capacity for converting and misusing customer funds; providing false and misleading information to a customer, to a FINRA member firm, and to FINRA staff; testifying falsely in on-the-record testimony under FINRA Rule 8210; and failing to respond to two written requests for documents and information issued under FINRA Rule 8210. Respondent is also ordered to pay $200,000 in restitution plus prejudgment interest.

Appearances

For Complainant: Melissa J. Turitz, Esq., Lisa M. Colone, Esq., Jeff Fauci, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For Respondent: No appearance

DECISION

I. Introduction

The Department of Enforcement filed a Complaint on October 25, 2019, consisting of seven causes of action against Respondent Erik Patrick Pica, formerly a registered representative. The Complaint described, first, an alleged scheme to convert and misuse a customer's funds. The first cause of action alleged that in February 2019, Respondent converted $200,000 from an elderly customer ("Customer A") by depositing Customer A's check into his personal bank account, when Customer A intended the check to be deposited into Customer A's brokerage account at Respondent's employer firm, Joseph Stone Capital L.L.C. ("Firm"). The second cause of action alleged that, by this same conduct, Respondent misused customer funds.

The remaining causes of action alleged that Respondent engaged in a cover-up of his conversion and misuse of customer funds. The third cause of action alleged that Respondent provided false and misleading information to Customer A about what he had done with Customer A's $200,000. The fourth cause of action alleged that Respondent provided similar false and misleading information to the Firm. The fifth cause of action alleged that Respondent gave false and misleading information to FINRA staff during an onsite examination of the Firm's branch office ("Branch Office"), falsely representing that he had not entered the Branch Office or his personal office the previous evening while FINRA staff was absent. The sixth cause of action alleged that Respondent provided false and misleading on-the-record ("OTR") testimony on several subjects, including that Respondent had not communicated with anyone from the Firm to determine when FINRA staff left the Branch Office on the first evening of the onsite examination. The seventh cause of action alleged that Respondent failed to produce documents and information sought in two FINRA Rule 8210 requests including the mortgage application Respondent submitted to a mortgage company in connection with a home he and his spouse purchased using Customer A's $200,000.

The Complaint alleged that, by the foregoing conduct, Respondent violated FINRA Rules 2010, 2150, and 8210.

After Enforcement served him with the Complaint, the First Notice of Complaint, and the Second Notice of Complaint, Respondent failed to file an Answer. At my direction, Enforcement filed a motion for entry of default decision ("Default Motion"). Respondent did not file an opposition or otherwise respond to the Default Motion. For the reasons stated below, I find Respondent in default, deem admitted all allegations in the Complaint, grant the Default Motion, and issue this Default Decision.

II. Jurisdiction

Erik Patrick Pica became registered as a General Securities Representative through an association with a FINRA member firm in October 2004.[1] From April 2015 through November 7, 2019, and at all times relevant to the Complaint, Respondent was registered with FINRA as a General Securities Representative through the Firm.[2] On November 7, the Firm filed a Uniform Termination Notice for Securities Industry Registration (Form U5) reporting that the Firm had discharged Respondent because of Enforcement's allegations that Respondent (1) provided inaccurate information to the Firm and FINRA staff with regard to the disposition of customer funds, (2) provided misleading testimony in an on-the-record interview under FINRA Rule 8210, and (3) failed to comply with a FINRA Rule 8210 request for the production of documents.[3]

[1] Declaration of Melissa J. Turitz in Support of the Department of Enforcement's Motion for Entry of Default Decision ("Decl.") ¶ 13.

[2] Decl. ¶ 13.

[3] Decl. ¶ 14.

Respondent has not been registered or associated with a FINRA member firm since the Firm discharged him on November 7, 2019.[4]

Although Respondent is no longer registered or associated with a FINRA member firm, he remains subject to FINRA's jurisdiction under Article V, Section 4 of FINRA's By-Laws for purposes of this proceeding because (1) the Complaint was filed while he was registered with FINRA and associated with a FINRA member firm; and (2) the Complaint charges him with misconduct committed while he was registered and associated with a FINRA member firm.[5]

III. Origin of the Investigation

The investigation originated from a regulatory tip that Respondent may have been manipulating Customer A and depleting Customer A's account at the Firm.[6]

IV. Respondent's Default

Enforcement served Respondent with the Complaint and the First and Second Notices of Complaint by first-class and certified mail on Respondent's last known residential address as reflected in FINRA's Central Registration Depository ("CRD"), in accordance with FINRA Rule 9134(a)(2) and (b)(1).[7] Respondent failed to file an Answer by December 12, 2019, as required by FINRA Rule 9215, or otherwise respond to the Complaint.[8] Based on these circumstances, I find that Respondent defaulted.

FINRA Rule 9269 authorizes the Hearing Officer to issue a default decision against a respondent who fails to file an Answer to the Complaint within the time afforded by FINRA Rule 9215.[9] Respondent had the opportunity to file an Answer but he did not. I therefore find a default decision against Respondent is warranted.[10] Once I find a respondent in default, I am authorized by FINRA Rules 9215(f) and 9269 to treat the allegations of the Complaint as admitted. As described below, I find that Respondent committed the violations charged in the Complaint, bar him from associating in any capacity with any FINRA member firm, and order him to pay $200,000 in restitution plus prejudgment interest.

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[4] Decl. ¶ 15.

[5] Decl. ¶ 17; FINRA By-Laws, Art. V, Sec. 4.

[6] Decl. ¶ 5.

[7] Decl. ¶¶ 21, 35.

[8] Decl. ¶¶ 29, 41-42.

[9] FINRA Rule 9269(a).

[10] Respondent is notified that he may move to set aside this Default Decision under FINRA Rule 9269(c) if he can show good cause.

V. Findings of Fact

A. Respondent's Relationship with Customer A

In early 2016, Respondent became the registered representative of record for an Individual Retirement Account ("IRA Account") at the Firm belonging to Customer A, who was 76 years old and retired.[11] Thereafter, Respondent solicited Customer A to transfer assets from several broker-dealers to the Firm.[12] Respondent served as Customer A's registered representative until May 2019, when Customer A transferred his brokerage accounts to another broker-dealer.[13]

B. Respondent Converts and Misuses $200,000 from the IRA Account

In January 2019, Respondent recommended that Customer A invest in a private placement involving pre-IPO shares of a technology company.[14] Respondent advised Customer A that, in order to make funds available to invest in the private placement, Customer A needed to transfer funds from his IRA Account to his personal bank account ("Bank Account").[15] Accordingly, on January 25, Customer A requested a distribution of $200,000 from his IRA Account to his Bank Account.[16] Respondent instructed Customer A to wire $200,000 from the Bank Account to a bank account for Light Capital Group, which Respondent controlled.[17]

Following Respondent's instructions, Customer A went to his bank to request a wire transfer of $200,000 to the Light Capital Group bank account.[18] On February 4, 2019, Customer A's bank refused to process the wire.[19] On February 7, Customer A told Respondent this by telephone and stated that he had decided not to invest in the private placement.[20] Respondent told Customer A that he would drive from New York, where he worked, to meet Customer A in Maryland, where Customer A lived.[21]

Respondent and Customer A met that same day (February 7, 2019). Respondent instructed Customer A to write a check for $200,000 payable to Light Capital Group, which he

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[11] Complaint ("Compl.") ¶¶ 10-11. In November 2016, Customer A opened a second brokerage account at the Firm, an individual, non-qualified account.

[12] Compl. ¶ 13.

[13] Compl. ¶ 14.

[14] Compl. ¶ 15.

[15] Compl. ¶ 15.

[16] Compl. ¶ 16.

[17] Compl. ¶ 17. Respondent wholly owned Light Capital Group. Compl. ¶ 1.

[18] Compl. ¶ 18.

[19] Compl. ¶ 18.

[20] Compl. ¶ 19.

[21] Compl. ¶ 19.

did.[22] Customer A intended that his $200,000 be returned to his IRA Account.[23] In fact, Customer A wrote the account number for his IRA Account on the memo line of the check.[24]

When Respondent returned to New York, he did not inform the Firm that Customer A had decided not to invest in the private placement.[25] Instead, Respondent requested that AG, his supervisor, send a private placement memorandum to Customer A.[26] Shortly after that, Respondent told AG that Customer A had decided not to invest in the private placement, and that Customer A had given Respondent a $200,000 check made payable to Light Capital Group.[27] Respondent told AG that he had not cashed the $200,000 check but, instead, he had returned the check to Customer A.[28] In truth, Respondent deposited the $200,000 check into the Light Capital Group bank account on February 8, 2019.[29]

C. Respondent Uses Customer A's $200,000 to Purchase a Home

On March 1, 2019, Respondent wire transferred $199,000 from the Light Capital Group bank account to Respondent's personal bank account.[30] Prior to this transfer, Respondent's personal bank account had a balance of $1,808.[31] On March 25, Respondent transferred $209,000 from his personal bank account to pay the down payment and closing costs for the purchase of a home in Little Silver, New Jersey ("Little Silver Home").[32]

Respondent had entered into a purchase and sale agreement for the Little Silver Home about seven months earlier.[33] The purchase price was $985,000, and Respondent had paid $20,000 as an initial deposit.[34] Respondent did not have sufficient funds to make the down payment due at closing, and thus was in danger of losing the Little Silver Home and his $20,000 initial deposit.[35] Thus, Respondent used Customer A's $200,000 for the down payment on the Little Silver Home.

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[22] Compl. ¶ 20.

[23] Compl. ¶ 21.

[24] Compl. ¶ 21.

[25] Compl. ¶ 22.

[26] Compl. ¶ 22.

[27] Compl. ¶ 23.

[28] Compl. ¶ 23.

[29] Compl. ¶ 24.

[30] Compl. ¶ 25.

[31] Compl. ¶ 25. All monetary amounts in this Default Decision are rounded to the nearest dollar.

[32] Compl. ¶ 26.

[33] Compl. ¶ 27.

[34] Compl. ¶ 27.

[35] Compl. ¶ 28.

D. Respondent Lies about What He Has Done with Customer A's $200,000

Respondent lied to both Customer A and the Firm about what he had done with Customer A's $200,000. Respondent had a telephone conversation with Customer A (which Respondent recorded) on May 1, 2019. In that conversation, Customer A asked Respondent what had happened to the $200,000.[36] Respondent answered, "We moved it back in."[37] Respondent stated that the purported movement of the $200,000 "back in" was "how the value of the [IRA Account] is $1.5 million."[38] In truth, Respondent did not move Customer A's $200,000 back into the IRA Account.[39]

On the morning of May 3, 2019, Customer A called AG to inquire about the $200,000.[40] On that call (which AG recorded), Customer A told AG that the Firm had transferred $200,000 from his IRA Account to his Bank Account so that he could invest in a private placement, but he had chosen not to make the investment.[41] Customer A told AG that he had written a check for $200,000 in order to return the funds to the IRA Account, but "for some reason, I don't seem to have a statement that would show that [the $200,000] came back in."[42] AG ended the call by telling Customer A that he would do "a little homework" to see if he could determine what had happened to the $200,000.[43]

AG called Customer A back that afternoon, with Respondent present for portions of the call (which AG recorded).[44] Customer A told AG that he had written a $200,000 check to Respondent, and the check had been cashed.[45] AG told Customer A that the "check was sent back to you."[46] Customer A stated that the check had been cashed in Maryland and the "64,000 question" was who had cashed it.[47] Respondent told AG, and AG told Customer A, that the check had been "sent back" since the Firm "[c]ouldn't use it because it was made out to Light

[36] Compl. ¶ 33.

[37] Compl. ¶ 33.

[38] Compl. ¶ 33.

[39] Compl. ¶ 34.

[40] Compl. ¶ 35.

[41] Compl. ¶ 35.

[42] Compl. ¶ 35.

[43] Compl. ¶ 35.

[44] Compl. ¶ 36.

[45] Compl. ¶ 36.

[46] Compl. ¶ 36.

[47] Compl. ¶ 37.

Capital."[48] When Customer A stated it was his belief that Respondent took the check and cashed it at a bank in Maryland, AG responded: "I am insulted. I am insulted."[49]

In a telephone conversation on May 6, 2019, Customer A told AG that he had handed Respondent a $200,000 check made out to Light Capital Group, which was deposited in Maryland.[50] In response, AG told Customer A that "[w]hen [Respondent] was down there visiting, you handed him a check made out to Light Capital and he handed it right back to you."[51] AG stated that his knowledge of these purported facts was based on "conversations I had with [Respondent]."[52]

From February through May 2019, Respondent falsely represented to the Firm that he had returned the $200,000 check to Customer A.[53] Respondent finally admitted under oath, in an OTR with FINRA staff, that he had deposited the check into the Light Capital bank account and then used the funds toward the purchase of the Little Silver Home.[54] Respondent has not returned Customer A's funds.[55]

E. FINRA Conducts an Examination of the Firm's Branch Office

On May 15, 2019, FINRA staff initiated an onsite examination of the Branch Office.[56] Respondent was not in the Branch Office that day, and the door to his personal office was locked.[57] FINRA staff requested immediate access to the personal office; however, representatives of the Firm stated Respondent was the only person who had a key.[58] Representatives of the Firm communicated with Respondent and informed him that FINRA staff had requested access to his office.[59] That evening, Respondent called and sent multiple text messages to AG, whom Respondent knew was at the Branch Office with FINRA staff while they were conducting the examination, to determine when they were no longer on the premises.[60]

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[48] Compl. ¶ 37.

[49] Compl. ¶ 37.

[50] Compl. ¶ 38.

[51] Compl. ¶ 38.

[52] Compl. ¶ 38.

[53] Compl. ¶ 40.

[54] Compl. ¶ 41. Respondent then sought to show that the $200,000 transfer was a loan for the purpose of acquiring the Little Silver Home. Compl. ¶¶ 60-61, 63-64.

[55] Compl. ¶ 42.

[56] Compl. ¶ 43.

[57] Compl. ¶ 43.

[58] Compl. ¶ 44.

[59] Compl. ¶ 45.

[60] Compl. ¶ 46.

Later that evening, AG let Respondent into the Branch Office, at which time Respondent entered the personal office.[61]

F. Respondent Provides False or Misleading Information to FINRA Staff about Whether He Had Entered the Branch Office

On the morning of May 16, 2019, FINRA staff returned to the Branch Office to continue the onsite examination.[62] FINRA staff observed that someone had entered Respondent's personal office the night before and had rearranged and removed items from his desk.[63] When Respondent came to the Branch Office that evening, he told FINRA staff that he had not gone to the Branch Office or entered the personal office.[64] In truth, Respondent had entered the Branch Office after hours on May 15—once he had confirmed with AG that FINRA staff had left.[65]

G. Respondent Fails to Produce Documents Relating to the Purchase of the Little Silver Home

In FINRA's investigation, Respondent presented documents calculated to show that Customer A willingly provided the $200,000 as a loan toward the purchase of the Little Silver Home. For example, Respondent provided a document, dated February 8, 2018, stating that the Light Capital Group promised to pay Customer A $220,000 plus interest within one year.[66] Respondent also produced three affidavits, purportedly bearing Customer A's signature, stating that Customer A was aware that the $200,000 was being used to acquire the Little Silver Home.[67]

Accordingly, FINRA staff issued two FINRA Rule 8210 requests seeking documents and information relating to the Little Silver Home and Respondent's use of Customer A's $200,000 as a loan as opposed to converted funds. On July 25, 2019, FINRA staff sent to Respondent's counsel a FINRA Rule 8210 request requiring Respondent to provide documents relating to the purchase of the Little Silver Home, including the mortgage application and any other documents Respondent had submitted to the mortgage company.[68] In his response, Respondent objected to the FINRA Rule 8210 request on the following grounds: (1) referring to his spouse, "ownership of the property . . . includes an individual other than Erik Pica who is not now, nor has she ever, been associated with FINRA"; (2) Respondent's spouse objected to the production of the mortgage application; (3) the Little Silver Home had no connection to Respondent's securities

[61] Compl. ¶¶ 47-48.

[62] Compl. ¶ 50.

[63] Compl. ¶ 50.

[64] Compl. ¶ 51.

[65] Compl. ¶ 52.

[66] Compl. ¶ 60.

[67] Compl. ¶ 63.

[68] Compl. ¶ 65.

business; and (4) Customer A had agreed to the transaction.[69] On August 2, FINRA staff sent a second FINRA Rule 8210 request to Respondent's counsel, again requesting that Respondent provide documents relating to the purchase of the Little Silver Home.[70]

Although Respondent was properly served with the two FINRA Rule 8210 requests, he failed to produce to FINRA staff the requested documents relating to the purchase of the Little Silver Home.[71] The FINRA Rule 8210 requests sought information that was material to FINRA's investigation of Respondent because the mortgage application was likely to include representations about whether Respondent borrowed money from a third party to finance his purchase of the Little Silver Home.[72]

H. Respondent Provides False and Misleading Testimony to FINRA Staff

In response to a FINRA Rule 8210 request, Respondent appeared on September 10, 2019, and gave OTR testimony.[73] Respondent falsely testified that he never told Customer A that the $200,000 had been returned to the IRA Account.[74] In particular, when FINRA staff asked Respondent whether there was any reason he would have told Customer A that the $200,000 was back in the IRA Account, Respondent testified: "I didn't tell him that."[75] Respondent's testimony was false and misleading.[76] Respondent did tell Customer A that his $200,000 had been returned to his IRA Account.[77]

Respondent falsely testified that he had not told anyone at the Firm, including AG, that he had returned Customer A's $200,000.[78] In fact, Respondent told AG several times that he had returned the $200,000 to Customer A.[79]

Respondent testified that he had not communicated with anyone from the Firm to determine when FINRA staff had left the Branch Office on May 15, 2019.[80] For example, FINRA staff asked Respondent whether he "tr[ied] to communicate with [AG] to make sure that FINRA staff left the office by the time you went back to the office on the night of May 15th?"

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[69] Compl. ¶ 67.

[70] Compl. ¶ 68.

[71] Compl. ¶ 69.

[72] Compl. ¶ 70.

[73] Compl. ¶ 53.

[74] Compl. ¶ 54.

[75] Compl. ¶ 54.

[76] Compl. ¶ 55.

[77] Compl. ¶ 55.

[78] Compl. ¶ 57.

[79] Compl. ¶ 57.

[80] Compl. ¶ 58.

Respondent answered, "No."[81] Respondent also answered "no" when asked if he "made an effort to make sure FINRA staff was not there before [he] went into the office?"[82] Respondent's testimony was false and misleading.[83] In truth, Respondent did ask AG to tell him when FINRA staff had left the Branch Office, and Respondent did not return to the Branch Office until after AG told him that FINRA staff had left.[84]

VI. Conclusions of Law

Based on the facts set forth above, as alleged in the Complaint and deemed to be true, I now consider the law governing this proceeding.

A. Respondent Converted Funds, in Violation of FINRA Rules 2150 and 2010 (First Cause of Action)

In the first cause of action, Enforcement charges Respondent with violating FINRA Rules 2150 and 2010 by converting $200,000 from Customer A. FINRA Rule 2010 requires that "[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade."[85] Conduct that reflects poorly on an associated person's ability to comply with regulatory requirements fundamental to the securities industry is inconsistent with such standards and principles.[86] FINRA Rule 2010 proscribes all unethical, business-related conduct, even if it is not in connection with securities or a securities transaction.[87] The Rule prohibits a wide variety of misconduct that may operate as an injustice to investors or other participants in the securities markets.[88]

Conversion is the intentional and unauthorized taking of, or exercise of ownership over, property by one who neither owns the property nor is entitled to possess it.[89] Conversion is antithetical to high standards of commercial honor and just and equitable principles of trade.[90] It

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[81] Compl. ¶ 58.

[82] Compl. ¶ 58.

[83] Compl. ¶ 59.

[84] Compl. ¶ 59.

[85] FINRA Rules "apply to all members and persons associated with a member," and associated persons "have the same duties and obligations as a member under the Rules." FINRA Rule 0140(a).

[86] *Dep't of Enforcement v. Vedovino*, No. 2015048362402, 2019 FINRA Discip. LEXIS 20, at *19-20 (NAC May 15, 2019).

[87] *Dep't of Enforcement v. Seol*, No. 2014039839101, 2019 FINRA Discip. LEXIS 9, at *39-40 (NAC Mar. 5, 2019).

[88] *Dep't of Enforcement v. Akindemowo*, No. 2011029619301, 2015 FINRA Discip. LEXIS 58, at *15 (NAC Dec. 29, 2015), *aff'd*, Exchange Act Release No. 79007, 2016 SEC LEXIS 3769 (Sept. 30, 2016).

[89] FINRA Sanction Guidelines ("Guidelines") at 36 n.2 (2019), http://www.finra.org/industry/sanction-guidelines; *Dep't of Enforcement v. Casas*, No. 2013036799501, 2017 FINRA Discip. LEXIS 1, at *20 (NAC Jan. 13, 2017).

[90] *Dep't of Enforcement v. Olson*, No. 2010023349601, 2014 FINRA Discip. LEXIS 7, at *8 (Bd. of Governors May 9, 2014), *aff'd*, Exchange Act Release No. 75838, 2015 SEC LEXIS 3629 (Sept. 3, 2015).

is extremely serious misconduct and is one of the gravest violations that a securities industry professional can commit.[91] It violates FINRA Rule 2010.[92]

FINRA Rule 2150 provides that "[n]o member or person associated with a member shall make improper use of a customer's securities or funds."[93] An associated person converts customer funds in violation of FINRA Rule 2150 when he fails to use the funds as directed by the customer, and instead uses the funds for his own purposes.[94]

The Complaint alleges that in February 2019, Respondent directed Customer A to write a check for $200,000 to Light Capital Group.[95] Customer A did so and handed the check to Respondent.[96] At the time, Customer A intended and understood that the $200,000 would go back to his IRA Account.[97] Despite knowing that the $200,000 belonged to Customer A and that Customer A intended the funds to be deposited into his IRA Account, Respondent deposited the funds into the Light Capital Group bank account and later transferred the funds into his personal bank account.[98] Respondent then used Customer A's $200,000 for the down payment on the Little Silver Home.[99] Respondent was not entitled to any portion of the $200,000, of which he took ownership.[100]

By virtue of this conduct, Respondent converted funds, in violation of FINRA Rules 2150 and 2010, and also committed an independent and distinct violation of FINRA Rule 2010.

B. Respondent Misused Customer Funds, in Violation of FINRA Rules 2150 and 2010 (Second Cause of Action)

In the second cause of action, Enforcement charges Respondent with violating FINRA Rules 2150 and 2010 by misusing customer funds. The Complaint alleges that by taking ownership of $200,000 belonging to Customer A, Respondent used the funds for purposes not

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[91] *Dep't of Enforcement v. Grivas*, No. 2012032997201, 2015 FINRA Discip. LEXIS 16, at *28 (NAC July 16, 2015), *aff'd*, Exchange Act Release No. 77470, 2016 SEC LEXIS 1173 (Mar. 29, 2016).

[92] *Casas*, 2017 FINRA Discip. LEXIS 1, at *20; *Kenny Akindemowo*, Exchange Act Release No. 79007, 2016 SEC LEXIS 3769, at *23-25 (Sept. 30, 2016).

[93] FINRA Rule 2150(a).

[94] *Dep't of Enforcement v. Taboada*, No. 2012034719701, 2017 FINRA Discip. LEXIS 29, at *35-36 (NAC July 24, 2017), *appeal dismissed*, Exchange Act Release No. 82970, 2018 SEC LEXIS 823 (Mar. 30, 3018).

[95] Compl. ¶ 77.

[96] Compl. ¶ 77.

[97] Compl. ¶ 77.

[98] Compl. ¶ 78.

[99] Compl. ¶ 79.

[100] Compl. ¶ 80.

directed by Customer A and also commingled them with non-customer funds.[101] This conduct constituted an improper use of customer funds.[102]

By virtue of this conduct, Respondent violated FINRA Rules 2150 and 2010, and also committed an independent and distinct violation of FINRA Rule 2010.[103]

C. Respondent Provided False and Misleading Information to a Customer, in Violation of FINRA Rule 2010 (Third Cause of Action)

In the third cause of action, Enforcement charges Respondent with violating FINRA Rule 2010 by providing false and misleading information to a customer. An associated person who makes material misrepresentations to a customer engages in unethical conduct that is inconsistent with just and equitable principles of trade, in violation of FINRA Rule 2010.[104]

The Complaint alleges that on May 1, 2019, Customer A asked Respondent what happened to the check for $200,000 that he had given to Respondent.[105] Respondent told Customer A that he had put the $200,000 back into the IRA Account.[106] On May 3, Customer A asked Respondent and AG what Respondent had done with the $200,000 check.[107] Respondent answered that he had not cashed the check.[108] Respondent's statements to Customer A were false and misleading.[109] In truth, Respondent had deposited the $200,000 into the Light Capital Group bank account, transferred the funds into his personal bank account, and used the funds to purchase the Little Silver Home.[110]

By virtue of Respondent's false and misleading statements to Customer A, Respondent violated FINRA Rule 2010.

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[101] Compl. ¶ 89.

[102] Compl. ¶ 89.

[103] Misuse of customer funds is a violation of FINRA Rule 2010. *Dep't of Enforcement v. Springsteen-Abbott*, No. 2011025675501, 2017 FINRA Discip. LEXIS 23, at *44 (NAC July 20, 2017), *aff'd*, Exchange Act Release No. 88156, 2020 SEC LEXIS 394 (Feb. 7, 2020).

[104] *Dep't of Enforcement v. Braeger*, No. 2015045456401, 2019 FINRA Discip. LEXIS 55, at *29 (NAC Dec. 16, 2019).

[105] Compl. ¶ 92.

[106] Compl. ¶ 92.

[107] Compl. ¶ 93.

[108] Compl. ¶ 93.

[109] Compl. ¶ 94.

[110] Compl. ¶ 94.

D. Respondent Provided False and Misleading Information to a FINRA Member Firm, in Violation of FINRA Rule 2010 (Fourth Cause of Action)

In the fourth cause of action, Enforcement charges Respondent with violating FINRA Rule 2010 by providing false and misleading information to a FINRA member firm. FINRA Rule 2010 requires an associated person to be truthful when disclosing material information to his employer firm.[111]

The Complaint alleges that Respondent told AG, his supervisor at the Firm, that he had returned the $200,000 check to Customer A and that he had not taken Customer A's funds.[112] Respondent's statements to AG were false and misleading.[113] In truth, Respondent had deposited the $200,000 into the Light Capital Group bank account, transferred the funds to his personal bank account, and used the funds to purchase the Little Silver Home.[114]

By virtue of Respondent's false and misleading statements to AG, Respondent violated FINRA Rule 2010.

E. Respondent Provided False and Misleading Information to FINRA Staff, in Violation of FINRA Rule 2010 (Fifth Cause of Action)

In the fifth cause of action, Enforcement charges Respondent with violating FINRA Rule 2010 by making false and misleading statements to FINRA staff. Providing false and misleading information to FINRA is unethical conduct that violates FINRA Rule 2010.[115]

The Complaint alleges that on May 16, 2019, FINRA staff asked Respondent whether he had entered the Branch Office the night before.[116] Respondent stated that he had not entered the Branch Office.[117] This statement was false and misleading.[118] In truth, Respondent entered the Branch Office after hours on May 15, once he had confirmed with AG that FINRA staff had left.[119] Additionally, Respondent provided a false and misleading document stating that Light Capital Group promised to pay to Customer A $220,000 plus interest within one year.[120] This caused FINRA to expend time and resources needlessly writing and seeking Respondent's

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[111] *Seol*, 2019 FINRA Discip. LEXIS 9, at *40-41.

[112] Compl. ¶ 97.

[113] Compl. ¶ 98.

[114] Compl. ¶ 98.

[115] *Dep't of Enforcement v. Elgart*, No. 2013035211801, 2017 FINRA Discip. LEXIS 9, at *32-33 (NAC Mar. 16, 2017), *aff'd*, Exchange Act Release No. 81779, 2017 SEC LEXIS 3097 (Sept. 29, 2017).

[116] Compl. ¶ 101.

[117] Compl. ¶ 101.

[118] Compl. ¶ 102.

[119] Compl. ¶ 102.

[120] Compl. ¶ 60.

response to two FINRA Rule 8210 requests for the production of the mortgage application and other documents relating to the purchase of the Little Silver Home, in order to test Respondent's assertion that the conversion of the $200,000 was a loan from Customer A.

By virtue of Respondent's false and misleading information to FINRA staff, Respondent violated FINRA Rule 2010.

F. Respondent Provided False and Misleading Information to FINRA in Testimony Taken under FINRA Rule 8210, in Violation of FINRA Rules 8210 and 2010 (Sixth Cause of Action)

In the sixth cause of action, Enforcement charges Respondent with violating FINRA Rules 8210 and 2010 by providing false and misleading information to FINRA in testimony taken under FINRA Rule 8210. False and misleading testimony to FINRA in an OTR is a violation of FINRA Rules 8210 and 2010.[121]

The Complaint alleges that in an OTR on September 10, 2019, Respondent falsely testified that he never told Customer A that the $200,000 had been returned to his IRA Account or that the $200,000 check had been given back to him.[122] This testimony was false and misleading.[123] In truth, Respondent told Customer A that the $200,000 had been returned to the IRA Account.[124] Respondent also told Customer A that he gave the check for $200,000 back to Customer A.[125] Respondent falsely testified that he never told AG that he had returned the check for $200,000 back to Customer A.[126] In truth, Respondent told AG several times that he had returned the check to Customer A.[127]

By virtue of Respondent's false and misleading testimony in his OTR, Respondent violated FINRA Rules 8210 and 2010.

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[121] *Dep't of Enforcement v. Taddonio*, No. 2015044823501, 2019 FINRA Discip. LEXIS 3, at *77 (NAC Jan. 29, 2019), *appeal docketed*, No. 3-19012 (SEC Feb. 28, 2019). Truthful testimony is important because FINRA Rule 8210 is the principal means by which FINRA obtains information from its member firms and their associated persons. *Merrimac Corp. Sec., Inc.*, Exchange Act Release No. 86404, 2019 SEC LEXIS 1771, at *6-7 (July 17, 2019).

[122] Compl. ¶ 107.

[123] Compl. ¶ 108.

[124] Compl. ¶ 108.

[125] Compl. ¶ 108.

[126] Compl. ¶ 109.

[127] Compl. ¶ 110.

G. Respondent Failed to Respond to Written Requests for Documents and Information Issued under FINRA Rule 8210, in Violation of FINRA Rules 8210 and 2010 (Seventh Cause of Action)

In the seventh cause of action, Enforcement charges Respondent with violating FINRA Rules 8210 and 2010 by failing to respond to two written requests for documents and information under FINRA Rule 8210. A violation of FINRA Rule 8210 occurs when an associated person fails to provide full and prompt cooperation to FINRA in response to a request for documents and information.[128] Additionally, FINRA is not precluded from requesting purportedly confidential and private information.[129] Associated persons are not allowed to thwart FINRA's investigation by claiming that FINRA Rule 8210 requests are irrelevant or unrelated to their brokerage activities.[130]

The Complaint alleges that in the first FINRA Rule 8210 request, FINRA staff directed Respondent to produce documents relating to the purchase of the Little Silver Home, including the mortgage application and any other documents Respondent submitted to the mortgage company.[131] Respondent refused to produce the requested documents, asserting spurious objections.[132] In a second FINRA Rule 8210 request, FINRA staff again requested that Respondent produce documents relating to the purchase of the Little Silver Home.[133] Respondent objected to the second FINRA Rule 8210 request and again refused to produce the requested documents.[134] One of the objections was premised on the factually false assertion that Customer A had agreed to the transaction.[135]

By virtue of this conduct, Respondent violated FINRA Rules 8210 and 2010.

VII. Sanctions

Having found that Respondent violated FINRA Rules 2010, 2150, and 8210, I now consider the sanctions to be imposed for those violations.

According to FINRA's Sanction Guidelines, the purpose of the disciplinary process is to protect the investing public, support and improve overall business standards in the securities industry, and decrease the likelihood of recurrence of misconduct by the disciplined

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[128] *Dep't of Enforcement v. Reifler*, No. 2016050924601, 2019 FINRA Discip. LEXIS 44, at *10 (NAC Sept. 30, 2019), *appeal docketed*, No. 3-19589 (SEC Oct. 15, 2019).

[129] *Dep't of Enforcement v. N. Woodward Fin. Corp.*, No. 2010021303301, 2014 FINRA Discip. LEXIS 32, at *43 (NAC July 21, 2014), *aff'd*, Exchange Act Release No. 74913, 2015 SEC LEXIS 1867 (May 8, 2015).

[130] *Reifler*, 2019 FINRA Discip. LEXIS 44, at *16.

[131] Compl. ¶ 118.

[132] Compl. ¶ 119.

[133] Compl. ¶ 120.

[134] Compl. ¶ 121.

[135] Compl. ¶ 67.

respondent.[136] The Guidelines contain General Principles Applicable to All Sanction Determinations, Principal Considerations in Determining Sanctions, and Guidelines applicable to specific violations.

The imposition of a unitary, aggregated sanction may be appropriate where the respondent's violations are based on related misconduct.[137] I have decided it is appropriate to aggregate certain causes of action of the Complaint for sanction purposes and to impose a single sanction on Respondent for those aggregated causes of action. In doing so, I find that Respondent's violations derived from the same underlying problem and arose from a continuous, related course of misconduct. I aggregate (1) the first and second causes of action (conversion and misuse of customer funds); and (2) the fifth and sixth causes of action (false and misleading statements to FINRA staff in an onsite examination and in testimony taken under FINRA Rule 8210).

I address the sanctions (both aggregated and separate) for each of Respondent's violations below.

A. Respondent's Conversion and Misuse of Customer Funds, in Violation of FINRA Rules 2150 and 2010 (First and Second Causes of Action)

I aggregate the sanctions for the first and second causes of action because Respondent's conversion and misuse of customer funds constituted related misconduct that derived from the same underlying problem. The Sanction Guideline for Conversion or Improper Use of Funds or Securities recommends that, in the case of conversion, adjudicators should "[b]ar the respondent regardless of amount converted."[138] The Guideline does not recommend a fine "since a bar is standard."[139]

For improper use of funds, the Sanction Guideline recommends a fine of $2,500 to $77,000. The adjudicator should consider a bar.[140]

Several aggravating factors confirm that a bar is the appropriate sanction for Respondent's conversion and misuse of customer funds. First, Respondent did not accept responsibility for or acknowledge his conversion and misuse of customer funds to the Firm or

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[136] FINRA Sanction Guidelines ("Guidelines") at 2 (General Principle No. 1) (2019), http://www.finra.org/industry/sanction-guidelines

[137] *Dep't of Enforcement v. McNamara*, No. 2016049085401, 2019 FINRA Discip. LEXIS 29, at *23 (NAC July 30, 2019); *Dep't of Enforcement v. Mielke*, No. 2009019837302, 2014 FINRA Discip. LEXIS 24, at *55-56 (NAC July 18, 2014), *aff'd*, Exchange Act Release No. 75981, 2015 SEC LEXIS 3927 (Sept. 24, 2015).

[138] Guidelines at 36; *Dep't of Enforcement v. Harari*, No. 201125899601, 2015 FINRA Discip. LEXIS 2, at *34-35 (NAC Mar. 9, 2015). This approach reflects the judgment that, absent mitigating factors, conversion poses so substantial a risk to investors and the markets as to render the violator unfit for employment in the securities industry. *Stephen Grivas*, Exchange Act Release No. 77470, 2016 SEC LEXIS 1173, at *25 (Mar. 29, 2016).

[139] Guidelines at 36.

[140] Guidelines at 36.

FINRA before detection and intervention.[141] Second, Respondent has not paid restitution or made any effort to remedy his misconduct.[142] Third, by falsely denying conversion and misuse of Customer A's $200,000, Respondent tried to conceal his misconduct and deceive both the Firm and FINRA.[143] Fourth, the misconduct resulted in financial harm to Customer A.[144] Fifth, by failing to produce to FINRA documents and information relating to the Little Silver Home, and by testifying falsely, Respondent attempted to delay FINRA's investigation and conceal information.[145] Sixth, Respondent's misconduct was intentional.[146] Seventh, Respondent's misconduct resulted in his monetary gain.[147]

There are no mitigating factors. Although the Firm terminated Respondent's employment, I do not find his termination to be mitigating because he has not shown it has materially reduced the likelihood of misconduct in the future.[148]

Considering the applicable Sanction Guideline and the aggravating factors, I find Respondent unfit for employment in an industry that depends on the honesty and integrity of its members and associated persons. For Respondent's conversion and misuse of customer funds, in violation of FINRA Rules 2150 and 2010, I bar him from associating with any FINRA member firm in any capacity. Consistent with the Guideline, I do not impose a fine.

The Sanction Guidelines provide that an adjudicator should order restitution when an identifiable person has incurred a quantifiable loss proximately caused by a respondent's misconduct.[149] Customer A incurred a quantifiable loss of $200,000 directly caused by

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[141] Guidelines at 7 (Principal Consideration No. 2: Whether the respondent accepted responsibility for and acknowledged the misconduct prior to detection and intervention by the firm or a regulator).

[142] Guidelines at 7 (Principal Consideration No. 4: Whether the respondent voluntarily and reasonably attempted, prior to detection and intervention, to pay restitution or otherwise remedy the misconduct).

[143] Guidelines at 7 (Principal Consideration No. 10: Whether the respondent attempted to conceal his misconduct or to mislead or deceive regulatory authorities or the member firm with which he was associated).

[144] Guidelines at 7 (Principal Consideration No. 11: Whether the respondent's misconduct resulted directly or indirectly in injury to the investing public).

[145] Guidelines at 8 (Principal Consideration No. 12: Whether the respondent attempted to delay FINRA's investigation, to conceal information from FINRA, or to provide inaccurate or misleading testimony to FINRA).

[146] Guidelines at 8 (Principal Consideration No. 13: Whether the respondent's misconduct was the result of an intentional act, recklessness or negligence).

[147] Guidelines at 8 (Principal Consideration No. 16: Whether the respondent's misconduct resulted in the potential for his monetary or other gain).

[148] Guidelines at 5 (General Principle No. 7).

[149] Guidelines at 4 (General Principle No. 5: "Where appropriate to remediate misconduct, Adjudicators should order restitution. . . . Adjudicators may order restitution when an identifiable person . . . has suffered a quantifiable loss proximately caused by a respondent's misconduct"); *see also* FINRA Rule 8310(a)(7) (FINRA may impose "any other fitting sanction."); *Dep't of Enforcement v. McGee*, No. 2012034389202, 2016 FINRA Discip. LEXIS 33, at *79 (NAC July 18, 2016) (ordering restitution where the customer's losses "were the foreseeable, direct, and proximate result of McGee's misconduct"), *aff'd*, Exchange Act Release No. 80314, 2017 SEC LEXIS 987 (Mar. 27, 2017); *Joseph R. Butler*, Exchange Act Release No. 77984, 2016 SEC LEXIS 1989, at *37 (June 2, 2016) ("Ordering Butler to pay [the customer] for the amount he converted plus prejudgment interest is neither excessive

Respondent's conversion of funds, as alleged in the first cause of action. Accordingly, Respondent shall pay Customer A $200,000 in restitution, plus prejudgment interest calculated at the rate in Section 6621(a)(2) of the Internal Revenue Code.[150] The prejudgment interest shall run from February 7, 2019, the date of Customer A's loss, to the date full payment of the $200,000 restitution is made.

B. Respondent's False and Misleading Information to a Customer, in Violation of FINRA Rule 2010 (Third Cause of Action)

There is no Sanction Guideline applicable to a respondent's false and misleading information to a customer, in violation of FINRA Rule 2010. The closest analogy is the Guideline for Fraud, Misrepresentations, or Material Omissions of Fact.[151] That Guideline recommends a fine of $2,500 to $77,000 for negligent misconduct.[152] The adjudicator should suspend the respondent in all capacities for 31 calendar days to two years.[153] For intentional or reckless misconduct, the Guideline recommends a fine of $10,000 to $155,000, and the adjudicator should strongly consider a bar.[154]

Several aggravating factors confirm a bar is the appropriate sanction for Respondent's false and misleading information to Customer A. Respondent did not accept responsibility for his misconduct or attempt to remedy it.[155] His misconduct was intentional and part of an elaborate effort to conceal his conversion and misuse of Customer A's $200,000.[156] The misconduct resulted in Respondent's financial gain.[157]

Considering the analogous Sanction Guideline and the aggravating factors, for Respondent's false and misleading information provided to a customer, in violation of FINRA Rule 2010, I bar Respondent from associating with any FINRA member firm in any capacity. Because of the bar for this cause of action, I do not impose a fine.

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nor oppressive, is remedial and not punitive, and is necessary for the protection of investors."); *Alfred P. Reeves, III*, Exchange Act Release No. 76376, 2015 SEC LEXIS 4568, at *20 (Nov. 5, 2015) ("Ordering Reeves to pay restitution to [his former firm] for the [converted] amount that he has not yet repaid, together with prejudgment interest on that amount, is neither excessive nor oppressive.").

[150] 26 U.S.C. § 6621(a)(2).

[151] Guidelines at 89.

[152] Guidelines at 89.

[153] Guidelines at 89.

[154] Guidelines at 89.

[155] Guidelines at 7 (Principal Consideration No. 2).

[156] Guidelines at 8 (Principal Consideration No. 13).

[157] Guidelines at 8 (Principal Consideration No. 16).

C. Respondent's False and Misleading Information to a FINRA Member Firm, in Violation of FINRA Rule 2010 (Fourth Cause of Action)

There is no Sanction Guideline applicable to a respondent's false and misleading information to a FINRA member firm, in violation of FINRA Rule 2010. As the closest analogy, I follow the Guideline for Fraud, Misrepresentations, or Material Omissions of Fact which is described in Section VII.B. immediately above.[158] The same aggravating factors as above confirm that a bar is the appropriate sanction for Respondent's false and misleading information to the Firm.

Considering the analogous Sanction Guideline and the aggravating factors, for Respondent's false and misleading information provided to a FINRA member firm, in violation of FINRA Rule 2010, I bar Respondent from associating with any FINRA member firm in any capacity.[159] Because of the bar for this cause of action, I do not impose a fine.

D. Respondent's False and Misleading Information to FINRA in an Onsite Examination and in Testimony Taken under FINRA Rule 8210, in Violation of FINRA Rules 8210 and 2010 (Fifth and Sixth Causes of Action)

I aggregate the sanctions for the fifth and sixth causes of action because Respondent's false information to FINRA in the onsite examination and false OTR testimony constitute related misconduct. There is no Sanction Guideline applicable to a respondent's false and misleading information to FINRA in an onsite examination, in violation of FINRA Rule 2010. The closest analogy to this violation is the Sanction Guideline for testifying falsely in an OTR taken under FINRA Rule 8210 which, as it happens, applies to the sixth cause of action. That Guideline recommends a fine of $25,000 to $77,000.[160] The single consideration specific to this violation is the importance of the information requested as viewed from FINRA's perspective.[161]

In the OTR taken on September 10, 2019, Respondent provided false and misleading information to FINRA on three subjects. Specifically:

- Respondent testified that he never told Customer A that the $200,000 had been returned to the IRA Account or otherwise given back to Customer A when, in fact, Respondent had told him those lies.[162]

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[158] Guidelines at 89.

[159] An associated person's dishonesty to his employer firm reflects directly on his inability to abide by his firm's policies, many of which are designed to protect the investing public and the firm. *Mielke*, 2014 FINRA Discip. LEXIS 24, at *73.

[160] Guidelines at 33.

[161] Guidelines at 33.

[162] Compl. ¶¶ 54-55.

- Respondent testified that he never told anyone from the Firm that he had returned the $200,000 to Customer A when, in fact, Respondent had told AG that he had given Customer A's $200,000 check back to him.[163]

- Respondent testified that he had not communicated with anyone from the Firm on May 15, 2019, about whether FINRA staff had left the Branch Office but, in fact, Respondent had sent communications to AG to find out when FINRA staff was leaving the Branch Office.[164]

These subjects were central to FINRA's investigation of Respondent and important from FINRA's perspective. For example, Respondent's representations to Customer A were important in light of his assertions to FINRA that Customer A had intended for the $200,000 to be a loan used toward the purchase of the Little Silver Home.

Considering the applicable Sanction Guideline and the aggravating factors, for Respondent's false and misleading information to FINRA in the onsite examination, and his false and misleading testimony to FINRA, in violation of FINRA Rules 8210 and 2010, I bar Respondent from associating with any FINRA member firm in any capacity.[165] Because of the bar for these two causes of action, I do not impose a fine.

E. Respondent's Failure to Respond to Written Requests for Documents and Information Issued under FINRA Rule 8210, in Violation of FINRA Rules 8210 and 2010 (Seventh Cause of Action)

The Sanction Guideline for Failure to Respond to a Written Request for Documents and Information Issued under FINRA Rule 8210 recommends a fine of $25,000 to $77,000.[166] If the respondent did not respond in any manner, a bar should be standard.[167] The single specific consideration is the importance of the information requested as viewed from FINRA's perspective.[168]

The subjects about which Respondent failed to provide documents and information in response to the two FINRA Rule 8210 requests were important as viewed from FINRA's perspective. The investigation centered on whether Respondent had converted $200,000 of

[163] Compl. ¶¶ 56-57.

[164] Compl. ¶¶ 58-59.

[165] An associated person's untruthfulness in OTR testimony shows his inability to serve in the securities industry, which depends on the integrity of its members and associated persons. *Dep't of Enforcement v. Wiley*, No. 2011028061001, 2015 FINRA Discip. LEXIS 21, at *35 (NAC Feb. 27, 2015), *aff'd*, Exchange Act Release No. 76558, 2015 SEC LEXIS 4952 (Dec. 4, 2015).

[166] Guidelines at 33.

[167] Guidelines at 33; *Dep't of Enforcement v. Evansen*, No. 201002372460, 2014 FINRA Discip. LEXIS 10, at *47 (NAC June 3, 2014), *aff'd*, Exchange Act Release No. 75531, 2015 SEC LEXIS 3080 (July 27, 2015).

[168] Guidelines at 33.

Customer A's funds. Seeking to refute Customer A's allegation that the $200,000 had been converted, Respondent took the position that Customer A had willingly provided the $200,000 toward the purchase of the Little Silver Home. According to Enforcement, the requested documents "were of vital importance to FINRA's investigation into whether Pica had converted $200,000 of Customer A's funds, particularly in light of Pica's (fabricated) defense that Customer A had willingly provided the money to Pica."[169]

Considering the applicable Sanction Guideline and the aggravating factors, for Respondent's failure to respond to two FINRA Rule 8210 requests, in violation of FINRA Rules 8210 and 2010, I bar Respondent from associating with any FINRA member firm in any capacity. Because of the bar for this cause of action, I do not impose a fine.

VIII. Order

With regard to the first and second causes of action of the Complaint, Respondent Erik Patrick Pica converted and misused customer funds, in violation of FINRA Rules 2150 and 2010, for which he is barred from associating with any FINRA member firm in any capacity. With regard to the third cause of action, Respondent provided false and misleading information to a customer, in violation of FINRA Rule 2010, for which he is barred from associating with any FINRA member firm in any capacity. With regard to the fourth cause of action, Respondent provided false and misleading information to a FINRA member firm, in violation of FINRA Rule 2010, for which he is barred from associating with any FINRA member firm in any capacity. With regard to the fifth and sixth causes of action, Respondent provided false and misleading information to FINRA in an onsite examination, and provided false and misleading information to FINRA in testimony taken under FINRA Rule 8210, in violation of FINRA Rules 8210 and 2010, for which he is barred from associating with any FINRA member firm in any capacity. With regard to the seventh cause of action, Respondent failed to respond to written requests for documents and information issued under FINRA Rule 8210, in violation of FINRA Rules 8210 and 2010, for which he is barred from associating with any FINRA member firm in any capacity. The bars shall be effective immediately.

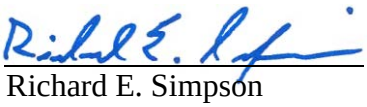
For Respondent's conversion of funds, as alleged in the first cause of action, he is ordered to pay $200,000 in restitution to Customer A,[170] plus interest at the rate set in 26 U.S.C. § 6621(a)(2),[171] from February 7, 2019, until paid in full. If this Default Decision becomes FINRA's final disciplinary action, payment of restitution shall be due within 60 days of the date of this Default Decision. In the event that Customer A cannot be located, unpaid restitution plus

[169] Decl. ¶ 47.

[170] The customer is identified in Addendum A to this Default Decision, which is served only on the parties.

[171] The interest rate in 26 U.S.C. § 6621(a)(2) is used by the Internal Revenue Service to determine interest due on underpaid taxes and is adjusted each quarter.

accrued interest should be paid to the appropriate escheat, unclaimed-property, or abandoned-property fund for the state of Customer A's last known address.



Richard E. Simpson
Hearing Officer

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