

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

CARLTON I. PHELPS
(CRD No. 6403922),

Respondent.

Disciplinary Proceeding
No. 2015044145201

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

May 13, 2016

Respondent is barred from associating with any FINRA member firm in any capacity for conversion, in violation of FINRA Rule 2010.

Appearances

For the Complainant: Erica L. Gerson, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: No Appearance

DECISION

I. Introduction

While Respondent Carlton I. Phelps was associated with Citigroup Global Markets Inc. (“Citigroup”), he engaged in a “check-kiting” scheme whereby he converted funds from Citigroup’s bank affiliate.¹

Citigroup terminated Phelps and filed a Uniform Termination Notice for Securities Industry Registration (Form U5) with FINRA’s Central Registration Depository (“CRD”), disclosing the reason it terminated Phelps. Upon receipt of the Form U5, FINRA began an investigation into Phelps’s suspected check-kiting.

¹ Check-kiting is a crime involving an account holder (i) writing a check on an account (Account A) knowing that there are insufficient funds available to cover the check amount, (ii) depositing the check in a second account (Account B), and then (iii) withdrawing the funds from Account B before the bank has time to clear the check written on Account A.

The Department of Enforcement initiated this disciplinary proceeding by filing a Complaint with the Office of Hearing Officers on October 16, 2015. The Complaint alleges that Phelps violated FINRA Rule 2010 by converting funds through a check-kiting scheme. Phelps did not file an Answer or otherwise respond to the Complaint.

On March 17, 2016, Enforcement filed a motion for entry of default decision (“Default Motion”). The motion is supported by a memorandum of law, the sworn declaration of Erica L. Gerson, and four exhibits.² Phelps did not respond to the motion. For the reasons set forth below, I find Phelps in default and grant Enforcement’s Default Motion.

II. Findings of Fact and Conclusions of Law

A. Respondent’s Background

Phelps was most recently registered with FINRA through Citigroup as a non-registered fingerprint person from July 2013 until December 17, 2014.³ Phelps is not currently registered with FINRA or associated with a FINRA member firm.

B. FINRA’s Jurisdiction

FINRA has jurisdiction over Phelps pursuant to Article V, Section 4(a) of FINRA’s By-Laws. Enforcement filed the Complaint within two years after his association with Citigroup terminated, and the Complaint charges him with misconduct while he was subject to FINRA’s jurisdiction.

C. Respondent’s Default

Enforcement served Phelps with the Complaint, First Notice of Complaint, and Second Notice of Complaint in accordance with FINRA Rules 9131 and 9134. Enforcement served Phelps with the Complaint and First Notice of Complaint on October 16, 2015, and the Complaint and Second Notice of Complaint on November 17, 2015.⁴ After Enforcement learned that the apartment number for Phelps’s CRD address was inadvertently omitted from the Notice of Complaint and Second Notice of Complaint, it served Phelps with an Amended Notice of Complaint and an Amended Second Notice of Complaint. Enforcement also sent copies to Phelps’s current residential address, which he had provided to Enforcement in June 2015.⁵ In each case, Enforcement served Phelps by first-class certified mail addressed to his CRD address

² Citations to Enforcement’s exhibits are noted as “CX-___.”

³ CX-1, at 3.

⁴ Gerson Decl. ¶ 16.

⁵ Gerson Decl. ¶¶ 17-18.

and his current residential address.⁶ Thus, Phelps received valid constructive notice of this proceeding.⁷

Respondent did not file an answer or otherwise respond to the Complaint. Thus, Phelps defaulted.⁸

D. Phelps Engaged in Check-Kiting

From October 2014 through December 14, 2014, Phelps converted funds from Citigroup's affiliate bank, Citibank, N.A., ("Citibank") by means of a check-kiting scheme using personal and business bank accounts at Citibank.⁹ On 14 occasions, Phelps issued a check drawn on one of his Citibank accounts knowing at the time that there were insufficient funds in the account to cover the amount of the checks.¹⁰ He then deposited those checks in other accounts at Citibank.

Phelps artificially inflated the balance in the receiving accounts by making withdrawals when there were insufficient funds in the issuing account. Each deposit was credited immediately to the receiving account, while the funds were not immediately withdrawn from the issuing account. Phelps then withdrew funds from the receiving account for his personal use. Phelps converted approximately \$1,343 from Citibank.¹¹ By continuing to deposit checks drawn on an account with insufficient available funds and then withdrawing funds in the receiving account, Phelps violated FINRA Rule 2010.

FINRA Rule 2010 requires FINRA members to observe high standards of commercial honor and just and equitable principles of trade in connection with the conduct of their business. FINRA Rule 0140 applies this requirement to associated persons such as Phelps. FINRA Rule 2010 "states a broad ethical principle" and is violated when a respondent engages in unethical conduct.¹² "FINRA's authority to pursue disciplinary action for violations of FINRA Rule 2010

⁶ *Id.* Enforcement does not have knowledge of any address for Phelps more recent than the address Phelps provided to FINRA staff on June 10, 2015. Gerson Decl. ¶ 15.

⁷ See, e.g., *Dep't of Enforcement v. Evansen*, No. 2010023724601, 2014 FINRA Discip. LEXIS 10, at *20-21 n.21 (NAC June 3, 2014), *appeal docketed*, SEC Admin. Proc. No. 3-15964 (July 3, 2014).

⁸ Phelps is notified that he may move to set aside the default pursuant to FINRA Rule 9269(c) upon a showing of good cause.

⁹ Mot. at 3.

¹⁰ Complaint ("Compl.") ¶¶ 12-18.

¹¹ Mot. at 3.

¹² *Heath v. SEC*, 586 F.3d 122, 132 (2d Cir. 2009) (citing *Benjamin Werner*, 44 S.E.C. 622 (1971)). See *Dep't of Enforcement v. Taylor*, No. C8A050027, 2007 NASD Discip. LEXIS 11, at *22 (NAC Feb. 27, 2007); *Dep't of Enforcement v. Davenport*, No. C05010017, 2003 NASD Discip. LEXIS 4, at *8 (NAC May 7, 2003).

encompasses unethical business-related misconduct, regardless of whether the misconduct involves a security.”¹³

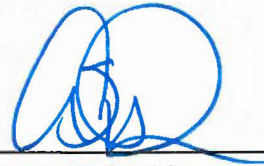
III. Sanctions

Phelps intentionally engaged in a check-kiting scheme by which he converted more than \$1,300 from Citibank. FINRA’s Sanction Guidelines (“Guidelines”) for conversion of funds instruct that a bar is the standard sanction.¹⁴ This case presents no mitigating factors that warrant consideration of a lesser sanction.

IV. Order

Carlton I. Phelps is barred from associating with any FINRA member firm in any capacity for conversion, in violation of FINRA Rule 2010.

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



Andrew H. Perkins
Hearing Officer

Copies to:

Carlton I. Phelps (via email and overnight mail)
Erica L. Gerson, Esq. (via email and first-class mail)
Perry C. Hubbard, Esq. (via email)
Jeffrey D. Pariser, Esq. (via email)

¹³ *Dep’t of Enforcement v. West*, No. 2009018076101, 2014 FINRA Discip. LEXIS 1, at *21 (NAC Feb. 20, 2014).

¹⁴ FINRA Sanction Guidelines at 36 (2015), www.finra.org/Industry/Sanction-Guidelines.