

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

PHILIP LEONARD GRASSO
(CRD No. 1164783),

Respondent.

Disciplinary Proceeding
No. 20140409066-01

Hearing Officer—MC

DEFAULT DECISION

May 13, 2015

Respondent is barred from associating with any FINRA member in any capacity for each of the following violations: (i) misusing and converting customer funds, in violation of FINRA Rules 2150(a) and 2010; (ii) engaging in securities fraud, in violation of Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 thereunder, and FINRA Rules 2020 and 2010; and (iii) failing to complete on-the-record testimony, in violation of FINRA Rules 8210 and 2010.

Appearances

Mirella deRose, Esq. for the Department of Enforcement.

No appearance by or for Respondent Philip Leonard Grasso.

DECISION

Respondent Philip Leonard Grasso¹ previously was registered as an Investment Company and Variable Contracts Products Representative with Allstate Financial Services, LLC, a FINRA member firm. In April 2014, the Securities and Exchange Commission (“SEC”) referred a customer complaint to FINRA for investigation. The complaint alleged that Grasso had misused funds belonging to two customers of Allstate Financial’s parent insurance company. Upon receipt of the SEC referral, FINRA staff initiated an investigation into Grasso’s alleged misconduct.

FINRA’s Department of Enforcement initiated this disciplinary proceeding against Grasso on December 3, 2014, by filing a Complaint with FINRA’s Office of Hearing Officers.

¹ In FINRA’s Central Registration Depository, Grasso also is known as Philip Leonard Grasso, Jr.

The Complaint contains three causes of action. The first cause of action charges that Grasso misused and converted customers' funds in violation of FINRA Rules 2150(a) and 2010 by depositing their funds into his own bank and brokerage accounts and using the funds for his own personal expenses, such as mortgage payments and stock purchases. The second cause of action charges Grasso with willful misrepresentations and omissions of material facts in connection with the sale of securities in violation of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), Rule 10b-5 thereunder, and FINRA Rules 2020 and 2010, by providing the customers with false account documents to conceal his conversion; depositing his customers' checks into his personal checking account; and wiring funds to his brokerage account to purchase securities for himself. The third cause of action charges that Grasso violated FINRA Rules 8210 and 2010 by failing to complete on-the-record ("OTR") testimony.

Enforcement served Grasso with the Complaint in accordance with FINRA's Code of Procedure, and he failed to file an Answer or otherwise respond. Accordingly, on March 2, 2015, Enforcement filed a motion for entry of a default decision. The motion is supported by the declaration of Mirella deRose and 14 exhibits.²

The Hearing Officer finds Grasso in default, grants Enforcement's motion, and deems the allegations of the attached Complaint admitted pursuant to FINRA Rules 9215(f) and 9269(a).

I. Jurisdiction

Grasso first became registered with FINRA in 1988 and remained registered until April 2002. In August 2010, Grasso became registered again as an Investment Company and Variable Contracts Products Representative through Allstate Financial.³ Allstate Financial terminated Grasso's employment and filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") on May 30, 2014, disclosing that Allstate Financial discharged Grasso for commingling customer funds with his personal funds. Since then Grasso has not been associated with any FINRA member or registered with FINRA.⁴

FINRA has jurisdiction over this disciplinary proceeding pursuant to Article V, Section 4 of FINRA's By-Laws because the Complaint (1) was filed within two years after his FINRA registration terminated and (2) the Complaint charges Grasso with misconduct that occurred while he was associated with Allstate Financial and with failing to fully respond to requests for testimony issued within two years after the termination of his registration.⁵

² Citations to Enforcement's exhibits are noted as "CX-__."

³ deRose Decl. ¶ 5; CX-1.

⁴ deRose Decl. ¶¶ 6-7; CX-1; CX-2.

⁵ See Article V, Sec. 4, FINRA By-Laws, <http://finra.complanet.com> (then "By-Laws" hyperlink under "Corporate Organization").

II. Respondent's Default

On December 3, 2014, Enforcement sent the Notice of Complaint and Complaint to Grasso at his residential address reflected in the Central Registration Depository ("CRD address") by first-class mail and certified mail, return receipt requested. Enforcement also sent the Notice of Complaint and Complaint by first-class mail and certified mail, return receipt requested, to the attorney who represented Grasso during the investigation. Enforcement received the return receipt for the certified mailing it sent to the CRD address, which Grasso signed on December 4, 2014. Enforcement also received the return receipt for the certified mailing sent to Grasso's attorney, signed on December 9 by "N. Hamilton." Grasso did not respond to the Complaint by the December 31, 2014 deadline required by the Notice of Complaint.⁶

On January 6, 2015, Enforcement sent a Second Notice of Complaint and the Complaint to Grasso at his CRD address by first-class mail and certified mail, return receipt requested. Enforcement also sent the Second Notice of Complaint and Complaint by first-class mail and certified mail, return receipt requested, to Grasso's attorney. Enforcement received the return receipt for the certified mailing to the CRD address, which Grasso signed on January 9, 2015. Grasso did not respond to the Complaint by the January 23, 2015 deadline required by the Second Notice of Complaint.⁷

Grasso received actual and constructive notice of these proceedings.⁸ Accordingly, the Hearing Officer finds that Grasso has defaulted by failing to answer or otherwise respond to the Complaint.⁹

III. Findings of Fact and Conclusions of Law

A. Grasso Misused and Converted Customer Funds

The first cause of action charges Grasso with misusing and converting customer funds, in violation of FINRA Rules 2150(a) and 2010. AG and PG, who were 89 and 91, respectively, met Grasso in or around February 2013. On April 17, 2013, Grasso executed a power of attorney and a healthcare proxy for each customer. Each proxy designated Grasso as successor agent.¹⁰

In December 2013, AG and PG followed Grasso's recommendation that they surrender or liquidate various annuities and life insurance policies to invest approximately \$227,150 through

⁶ deRose Decl. ¶¶ 15-16, 18; CX-10; CX-11.

⁷ deRose Decl. ¶¶ 19-20, 22; CX-13.

⁸ See, e.g., *Dep't of Enforcement v. Evansen*, No. 2010023724601, 2014 FINRA Discip. LEXIS 10, at *20 n.21 (NAC June 3, 2014), *appeal docketed*, SEC Admin. Proc. No. 3-15964 (July 3, 2014).

⁹ Grasso is notified that he may move to set aside the default pursuant to FINRA Rule 9269(c) upon a showing of good cause.

¹⁰ Complaint ("Compl.") ¶¶ 1, 13-14.

a brokerage account in their names. They received \$14,327.96 from the surrender of a life insurance policy and deposited the funds in their checking account. At Grasso's recommendation, on or about December 27, 2013, AG and PG then gave him a check. Although AG signed the check, Grasso filled it out in the customers' presence. Grasso wrote "for Inv/Stock Acct" in the memo section and made out the check for \$35,000. He made the check payable to "Cash" but in the customers' check register Grasso entered a name commonly understood to be that of a broker-dealer. Contrary to the recommendations he made to the customers and to his customers' instructions to him, Grasso endorsed the check and deposited it into his personal bank account. On or about January 2, 2014, Grasso gave the customers a document that falsely stated that they owned stock worth \$32,300 in a brokerage account in PG's name at a broker-dealer. Grasso had opened no such account.¹¹

On or about January 8, 2014, AG and PG followed Grasso's recommendation that they surrender an annuity contract for a payout of \$192,148.79, which was wired into their checking account the next day. At Grasso's recommendation, on or about January 13, 2014, AG and PG gave him another check. PG signed the check, but Grasso filled it out in the customers' presence. Grasso made out the check for \$192,150 and wrote "Investment" in the memo section. He made the check payable to "Cash," but in their check register, Grasso again wrote in a name commonly understood to be that of a broker-dealer. Again, contrary to the recommendations he made to the customers and to his customers' instructions to him, Grasso endorsed the check and deposited it into his personal bank account on January 14, 2014. On or about January 16, 2014, Grasso provided the customers a document that falsely stated that they owned stock worth \$224,450 in a brokerage account in PG's name at a broker-dealer. There was no such account.¹²

Subsequent to Grasso's December 27, 2013 deposit of AG's check for \$35,000, Grasso used \$5,823.56 of their funds to pay personal expenses such as mortgage payments, life insurance premiums, and credit card bills. On January 15, 2014, one day after depositing PG's check for \$192,150, Grasso wired \$180,000 from his personal bank account to his own brokerage account held at a broker-dealer. Grasso used another \$24,196.62 of AG and PG's funds to pay for personal expenses, including mortgage, life insurance, and credit card payments, groceries, physical therapy, gasoline, cable bills, and landscaping. As of February 19, 2014, Grasso had used \$204,196.62 of AG and PG's \$227,150 for his own personal benefit. The remaining funds sat in Grasso's personal bank account, available to him but not to his customers.¹³

FINRA's Sanction Guidelines generally define conversion as "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."¹⁴ It is well established that conversion of a customer's

¹¹ Compl. ¶¶ 15-19.

¹² Compl. ¶¶ 20-22, 25.

¹³ Compl. ¶¶ 23-24, 26.

¹⁴ FINRA Sanction Guidelines at 36 n.2 (2015), <http://finra.org/industry/sanctionguidelines>.

property can constitute the “improper use of a customer’s securities or funds” prohibited by FINRA Rule 2150.¹⁵ It also is conduct inconsistent with high standards of commercial honor and just and equitable principles of trade.¹⁶ Accordingly, the Hearing Officer concludes that Grasso violated FINRA Rules 2150 and 2010 by misusing and converting customers’ funds.

B. Grasso Made Willful Misrepresentations and Omissions of Material Facts in Connection with the Sale of Securities to the Customers

The second cause of action alleges that Grasso willfully violated Section 10(b) of the Exchange Act, Rule 10b-5 thereunder, and FINRA Rules 2020 and 2010.¹⁷ As explained above, Grasso convinced AG and PG to liquidate their assets and purchase securities. He then deposited and wired their money into accounts of his own and made personal use of the funds. To conceal his misconduct, Grasso provided AG and PG with two documents that falsely stated that they maintained a brokerage account in PG’s name at a FINRA-regulated broker-dealer and that the account contained assets. The January 2, 2014 document stated that the account contained stock worth \$32,300. The January 16, 2014 document stated that the account contained stock worth \$224,450. This account did not exist.¹⁸

The Hearing Officer concludes that Grasso engaged in securities fraud, in violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. These antifraud provisions are “designed to ensure that members of the securities industry fulfill their obligation to the public to be complete and accurate when making statements about securities.”¹⁹ Where, as here, Enforcement alleged that a respondent’s fraud took the form of affirmative misrepresentations, a finding of a violation requires a showing that a person (i) acting with scienter (ii) misrepresented material facts (iii) in connection with the purchase or sale of any security.²⁰

Scienter embraces the “intent to deceive, manipulate, or defraud,”²¹ and may be established by a showing of recklessness involving an “extreme departure from the standards of ordinary care, ... which presents a danger of misleading buyers or sellers that is either known to

¹⁵ See *Dep’t of Enforcement v. Mullins*, Nos. 20070094345, 20070111775, 2011 FINRA Discip. LEXIS 61, at *21-23 (NAC Feb. 24, 2011), *aff’d in part*, Exchange Act Release No. 66373, 2012 SEC LEXIS 464 (Feb. 10, 2012).

¹⁶ See *Mullins*, 2012 SEC LEXIS 464, at *33.

¹⁷ NASD Rule 2120 was superseded by FINRA Rule 2020 on December 15, 2008.

¹⁸ Compl. ¶¶ 33-35.

¹⁹ *Dep’t of Enforcement v. Donner Corp. Int’l*, No. CAF020048, 2006 NASD Discip. LEXIS 4, at *50 (NAC Mar. 9, 2006) (citations omitted), *vacated and remanded in part on other grounds*, Exchange Act Release No. 55313, 2007 SEC LEXIS 334 (Feb. 20, 2007).

²⁰ *Id.*; see also *Dep’t of Mkt Regulation v. Burch*, No. 2005000324301, 2011 FINRA Discip. LEXIS 16, at *25 (NAC July 28, 2011) (citing *SEC v. First Jersey Sec., Inc.*, 101 F.3d 1450, 1467 (2d Cir. 1996)).

²¹ *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 (1976).

the [actor] or is so obvious that the actor must have been aware of it.”²² A fact is material if there is a substantial likelihood that a reasonable investor would have considered it important in making an investment decision.²³ A misrepresentation is made “in connection with” the purchase or sale of a security if it “coincides” with a securities transaction.²⁴ Additionally, a violation of Exchange Act Section 10(b) and Rule 10b-5 requires the use of interstate commerce or the mails.²⁵

The Hearing Officer also concludes that Grasso willfully²⁶ violated FINRA Rules 2020 and 2010. “FINRA Rule 2020 is FINRA’s antifraud rule and is similar to, yet broader than, Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5.”²⁷ Conduct that violates other SEC or FINRA rules is inconsistent with high standards of commercial honor and just and equitable principles of trade, and violates FINRA Rule 2010.²⁸

The facts establish that Grasso acted with scienter. First, he convinced AG and PG to surrender or liquidate a life insurance policy and invest their funds in stock in a brokerage account that he never opened. He then converted their funds. To conceal his misconduct, he fabricated an account statement. Then he repeated the process with the customers’ annuity contract. These facts demonstrate intent to deceive or defraud.

Further, Grasso misstated material facts when he represented to his customers that their funds would be used in connection with purchases of securities as he wrote their blank checks out to “Cash” rather than to a brokerage firm.²⁹ He omitted to tell the customers that he had made the checks out to “Cash” and that he had used their money for personal expenses and for purchases of securities for himself. By depositing his customers’ checks into his personal bank

²² E.g., *The Rockies Fund, Inc. v. SEC*, 428 F.3d 1088, 1093 (D.C. Cir. 2005) (citing *SEC v. Steadman*, 967 F.2d 636, 641-42 (D.C. Cir. 1992) (quoting *Sundstrand Corp. v. Sun Chemical Corp.*, 553 F.2d 1033, 1044-45 (7th Cir. 1977))).

²³ *Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988).

²⁴ *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Dabit*, 547 U.S. 71, 85 (2006).

²⁵ 15 U.S.C. §§ 77q(a), 78j.

²⁶ In this context, willfulness means intentionally committing the act constituting the violation. *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000). The finding that Grasso acted with scienter necessarily leads to the conclusion that he acted willfully.

²⁷ *Dep’t of Enforcement v. Scholander*, No. 2009019108901, 2014 FINRA Discip. LEXIS 33, at *29 (NAC Dec. 29, 2014), *appeal docketed*, SEC Admin. Proc. No. 3-16360 (Jan. 28, 2015). Pursuant to FINRA Rule 0140(a), FINRA’s Conduct Rules that apply to members also apply to associated persons.

²⁸ *Joseph Abbondante*, 58 S.E.C. 1082, 1103 (2006), *aff’d*, 209 F. App’x 6 (2d Cir. 2006).

²⁹ Cf. e.g., *Dep’t of Enforcement v. Becerril*, No. 2009018944001, 2012 FINRA Discip. LEXIS 4, at *18-19 (OHO Feb. 23, 2012).

account and wiring funds into his personal brokerage account, Grasso used means of interstate commerce, including electronic transfers and checks drawn on United States banks.³⁰

These facts establish that Grasso violated Section 10(b) of the Exchange Act, Rule 10b-5 thereunder, and FINRA Rules 2020 and 2010.

C. Grasso Failed to Provide Testimony Requested by FINRA

The third cause of action alleges that Grasso failed to provide testimony requested by FINRA, in violation of FINRA Rules 8210 and 2010. On May 19, 2014, pursuant to Rule 8210, FINRA Staff served a written request for testimony on Grasso requiring him to appear on May 22, 2014, in connection with the investigation in this matter.

FINRA Rule 8210 requires persons subject to FINRA's jurisdiction to provide information requested by FINRA with respect to any matter involved in a FINRA investigation, complaint, examination, or proceeding. Because FINRA lacks subpoena power, it must rely upon Rule 8210 "to police the activities of its members and associated persons."³¹ "The failure to respond to [FINRA] information requests frustrates [FINRA's] ability to detect misconduct, and such inability in turn threatens investors and markets."³²

Members and associated persons must cooperate fully in providing requested information.³³ An associated person's refusal to respond to a request made pursuant to FINRA Rule 8210 also violates FINRA Rule 2010.³⁴

On May 22, Grasso appeared with his attorney to provide sworn testimony. Grasso began his OTR at 10:08 a.m. At 2:55 p.m., Grasso's attorney asked for a break to speak with Grasso. When Grasso returned from the break, Grasso's attorney advised the Staff that Grasso would not continue his testimony. The Staff informed Grasso that they had additional questions and that Grasso could be subject to disciplinary action if he did not answer them, but Grasso refused to answer any further questions. On June 9, 2014, the Staff telephoned Grasso's attorney to provide Grasso with another opportunity to complete his OTR. Grasso's attorney confirmed that Grasso would not appear and would not provide any additional testimony.

Grasso's attendance for part of his OTR in response to FINRA's request for testimony did not fulfill his obligation to cooperate fully with FINRA's investigation. Therefore, Grasso violated Rules 8210 and 2010.

³⁰ Compl. ¶¶ 34-35.

³¹ *Joseph Patrick Hannan*, 53 S.E.C. 854, 858-59 (1998).

³² *PAZ Sec., Inc.*, Exchange Act Release No. 57656, 2008 SEC LEXIS 820, at *13 (Apr. 11, 2008), *petition denied*, 566 F.3d 1172 (D.C. Cir. 2009).

³³ *See Michael David Borth*, 51 S.E.C. 178, 180 (1992).

³⁴ *See Dep't of Enforcement v. Reichman*, No. 200801201960, 2011 FINRA Discip. LEXIS 18, at *28-29 (NAC July 21, 2011).

IV. Sanctions

A. Conversion

Grasso converted AG and PG's funds. Such conduct is patently antithetical to the high standards of conduct FINRA seeks to promote³⁵ and, therefore, FINRA's Sanction Guidelines recommend a bar, regardless of the amount converted.³⁶ The Guidelines provide principal considerations in determining sanctions, including whether the respondent engaged in numerous acts or a pattern of misconduct; whether the respondent sought to conceal his misconduct or mislead customers; whether the respondent's misconduct resulted in customer harm, and the extent of the harm; whether the respondent's misconduct was intentional; and the level of sophistication of the injured customers.

These aggravating factors are all present here. Grasso intentionally engaged in a pattern of deceiving AG and PG and taking their money. He concealed his misconduct by presenting fabricated account statements, resulting in substantial harm to unsophisticated, elderly customers.³⁷ There are no mitigating factors here. Grasso therefore will be barred from associating with any FINRA member firm in any capacity for converting customers' funds, in violation of FINRA Rules 2150 and 2010.³⁸

B. Securities Fraud

The Sanction Guideline for misrepresentations or material omissions of fact advises adjudicators to strongly consider a bar in egregious cases unless mitigating factors predominate.³⁹ Grasso's violations were egregious. He led his elderly customers to believe that their liquidated assets would be invested in securities and he intentionally directed the proceeds to his own bank and brokerage accounts and used the money for himself. Thereafter, he concealed his misconduct by presenting false account statements that showed that AG and PG's funds were invested in stock. In the absence of any mitigating circumstances, Grasso will be barred from associating with any FINRA member firm in any capacity for engaging in securities fraud, in violation of Exchange Act Section 10(b), Rule 10b-5 thereunder, and FINRA Rules 2020 and 2010.

³⁵ See *Dep't of Enforcement v. Patel*, No. C02990052, 2001 NASD Discip. LEXIS 42, at *24-25 (NAC May 23, 2001).

³⁶ Guidelines at 36.

³⁷ Guidelines at 6-7 (Principal Considerations 8, 10, 11, 13, 19).

³⁸ Enforcement did not seek restitution in this matter. The SEC informed the Staff that the customers had been repaid although there is no indication of who made the payment. See CX-3.

³⁹ Guidelines at 88; see *Burch*, 2011 FINRA Discip. LEXIS 16, at *44.

C. Failure to Provide Testimony

For failing to respond in any manner to a Rule 8210 request for information, the FINRA Sanction Guidelines provide that a bar should be the standard sanction.⁴⁰ When an associated person provides a partial but incomplete response to a FINRA request for information, the Sanction Guidelines provide that “a bar is standard unless the person can demonstrate that the information provided substantially complied with all aspects of the request.”⁴¹ Because Grasso appeared for part of the requested testimony, before he later that day refused to continue and subsequently refused to return for additional testimony, the Hearing Officer applies the Sanction Guidelines for a partial, but incomplete, response.

For providing a partial but incomplete response to a FINRA Rule 8210 request, the Sanction Guidelines direct adjudicators to consider, in addition to the principal considerations and general principles applicable to all violations, the importance of the information requested that was not provided from FINRA’s perspective and whether the information that was provided was relevant and responsive to the request; the number of requests made, the time the respondent took to respond, and the degree of regulatory pressure required to obtain a response; and whether the respondent thoroughly explained valid reasons for the deficiencies in the response.⁴²

Here, the information requested was extremely important to FINRA. The Staff was investigating serious allegations of conversion and fraud. And Grasso lacked a valid reason for refusing to complete his on-the-record interview. Indeed, he appeared to offer no reason at all. Accordingly, the Hearing Officer bars Grasso in all capacities for his violation of FINRA Rules 8210 and 2010.

V. Order

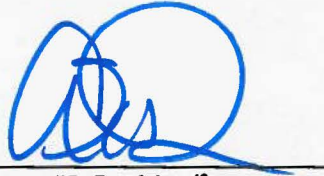
Respondent is barred from associating with any FINRA member in any capacity for each of the following violations: (i) misusing and converting customer funds, in violation of FINRA Rules 2150(a) and 2010; (ii) engaging in securities fraud, in violation of Section 10(b) of the Exchange Act, Rule 10b-5 thereunder, and FINRA Rules 2020 and 2010; and (iii) failing to complete on-the-record testimony, in violation of FINRA Rules 8210 and 2010.

⁴⁰ Guidelines at 33.

⁴¹ *Id.* The Sanction Guidelines also recommend a fine of \$10,000 to \$73,000. However, in light of the bar, no fine will be imposed.

⁴² Guidelines at 33.

The bars shall become effective immediately if this Default Decision becomes FINRA's final action in this disciplinary proceeding.



Andrew H. Perkins⁴³
Chief Hearing Officer

Copies to:

- Philip L. Grasso (via first-class mail)
- Mirella deRose, Esq. (via email and first-class mail)
- Elissa Meth Kestin, Esq. (via email)
- Susan Light, Esq. (via email)
- Jeffrey D. Pariser, Esq. (via email)

⁴³ Pursuant to Rule 9235(b) the Chief Hearing Officer signs this Default Decision in Hearing Officer Campbell's absence.

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Philip Leonard Grasso (CRD No.1164783)

Respondent.

DISCIPLINARY PROCEEDING
No. 20140409066-01

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Beginning in or around February 2013, while on a medical leave of absence from FINRA regulated broker-dealer Allstate Financial Services, LLC (the Firm), Respondent Philip Leonard Grasso inserted himself into the lives of 91 and 89 year-old customers PG and AG in order to defraud them of their funds. Between December 2013 and January 2014 (the Relevant Period), after convincing the Customers to liquidate the various life insurance policies and annuities they held and to invest approximately \$227,150 of their funds through a brokerage account in the Customers' names, Grasso deposited \$227,150 of the Customers' funds into his own bank and brokerage accounts and used the funds for his own personal expenses such as mortgage payments and stock purchases.

2. During the Relevant Period, in an attempt to conceal his misconduct, Grasso provided the Customers with false account documents listing an investment account in Customer PG's name when no such account existed.
3. By engaging in that misconduct, Grasso willfully violated Section 10(b) of the Securities Exchange Act of 1934 (the Exchange Act) and Rule 10b-5 thereunder, and FINRA Rules 2020, 2150(a), and 2010.
4. Grasso also failed to respond fully to FINRA's requests for information by refusing to complete an on-the-record interview (OTR). Grasso's refusal to continue the OTR and his refusal to respond to FINRA staff's multitude of remaining questions violated FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

5. Grasso entered the securities industry in August of 1988 when he became registered with FINRA as an Investment Company and Variable Contracts Products Representative (IR) through an association with a FINRA regulated broker-dealer. Between August 1988 and April 2002, Grasso was registered with FINRA as an IR through consecutive associations with eight different FINRA regulated broker-dealer firms.
6. In August 2010, Grasso became registered with FINRA as an IR through his association with the Firm. Grasso remained at Allstate until his registration with the Firm was terminated on May 30, 2014. On May 30, 2014, the Firm filed a Uniform Termination Notice for Securities Industry Registration (Form U5) reporting that Grasso's employment was terminated due to allegations that he commingled the Customers' funds.

7. Although Grasso is no longer registered or associated with a FINRA regulated broker-dealer 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 (1) the Complaint was filed within two years of the effective date of termination of Grasso's registration with a FINRA regulated broker-dealer firm, namely, May 30, 2014; and (2) the Complaint charges him with misconduct committed while he was registered with a FINRA regulated broker-dealer and with failing to continue his OTR testimony while he was registered with FINRA and during the two year period after the date upon which he ceased to be registered or associated with a FINRA regulated broker-dealer.

**FIRST CAUSE OF ACTION
(Misuse of Customer Funds and Conversion of Customer Funds)
FINRA Rules 2150(a) and 2010**

8. The Department re-alleges and incorporates by reference paragraphs 1 through 7 above.
9. FINRA Rule 2150(a) provides that "no member or person associated with a member shall make improper use of a customer's securities or funds."
10. FINRA Rule 2010 requires members and associated persons, in the conduct of their business, to "observe high standards of commercial honor and just and equitable principles of trade."
11. A violation of FINRA Rule 2150(a) constitutes a violation of FINRA Rule 2010.
12. During the Relevant Period, the Customers were customers of the Firm's parent property and casualty insurance company.
13. AG and PG first met Grasso in or around February 2013. At the time that the Customers met Grasso, AG was 89 years old and her husband PG was 91 years old.

14. On April 17, 2013, Grasso executed a Power of Attorney and a Healthcare Proxy for each of the Customers. Each proxy designated Grasso as successor agent.
- 15. In or around December 2013, the Customers followed Grasso's recommendation that Grasso invest approximately \$227,150 of the Customers' funds through a brokerage account in the Customers' names. In order to make \$227,150 in funds available for investment, Grasso recommended that the Customers surrender and/or liquidate the various annuities and life insurance policies they held.
16. On or about December 20, 2013, the Customers deposited the \$14,327.96 they received from the surrender of a life insurance policy into their checking account.
17. On or about December 27, 2013, pursuant to Grasso's recommendation, the Customers provided a check to Grasso from their checking account. Grasso filled out the check in the Customers' presence. He made the check payable to "Cash" and wrote in the amount of \$35,000. Grasso also wrote "for Inv/Stock Acct." in the memo section of the check. AG signed the check, and Grasso wrote in the Customers' check register that the check was made out to a name commonly understood as that of a broker-dealer.
18. On or about December 27, 2013, contrary to Grasso's representations to the Customers and the Customers' instructions to Grasso, Grasso endorsed the Customers' \$35,000 check and deposited it into his personal bank account.
19. On or about January 2, 2014, Grasso presented the Customers with a document dated January 2, 2014 that falsely stated that the Customers owned "stock" worth \$32,300 in a brokerage account at a broker-dealer in PG's name. At the time that Grasso presented this document to the Customers, Grasso had not opened a brokerage account in either of

the Customers' names and had already deposited the \$35,000 check into his personal bank account.

20. On or about January 8, 2014, pursuant to Grasso's recommendation, the Customers surrendered an annuity contract they held for a payout of \$192,148.79, which was wired to the Customers' checking account on January 9, 2013.
21. On or about January 13, 2014, pursuant to Grasso's recommendation, the Customers provided Grasso with a check from their checking account. In the Customers' presence, Grasso filled out the check. He made the check payable to "Cash" and wrote in the amount of \$192,150. Grasso also wrote "Investment" in the memo section of the check. PG signed the check, and Grasso again wrote in the Customers' check register that the check was made out to a name commonly understood as that of a broker-dealer.
22. Again, contrary to Grasso's representations to the Customers and the Customers' instructions to Grasso, Grasso endorsed the \$192,150 check and deposited it into his personal bank account on January 14, 2014.
23. From December 27, 2013, subsequent to Grasso's deposit of the Customers' \$35,000 check, to January 14, 2013, prior to Grasso's deposit of the Customers' \$192,150 check, Grasso used approximately \$5,823.56 of the Customers' funds to pay personal expenses such as mortgage payments, life insurance premiums, and credit card bills.
24. On January 15, 2014, Grasso wired \$180,000 from his personal bank account to his own brokerage account held at a broker-dealer.
25. On or about January 16, 2014, Grasso presented the Customers with a document dated January 16, 2014 that falsely stated that the Customers owned "stock" worth \$224,450 in a brokerage account at a broker-dealer in PG's name. At the time that Grasso presented

this document to the Customers, Grasso had not opened a brokerage account in either of the Customers' names and had already deposited the entire \$227,150 he received from the Customers into accounts in his name, under his control, and to which the Customers did not have access.

26. As of February 19, 2014, Grasso used \$24,196.62 of the Customers' funds to pay personal expenses. While Grasso used the bulk of the Customers' funds to make mortgage, life insurance and credit card payments, he also used them for expenses such as groceries, physical therapy, gasoline, cable bills, and landscaping. Combined with the \$180,000 Grasso transferred into his brokerage account on January 15, 2014, as of February 19, 2014, Grasso used \$204,196.62 of the Customers' \$227,150 for his own personal benefit. The remainder of the Customers' funds sat in Grasso's personal bank account and was available for his personal expenditures.
27. Based upon the foregoing misconduct, Grasso misused and converted the \$227,150 that the Customers gave him to invest through a brokerage account in the Customers' names to his own personal use in violation of FINRA Rules 2150(a) and 2010.

SECOND CAUSE OF ACTION
(Willful Misrepresentations and Omissions of Material Facts in Connection with the Sale of Securities to the Customers)
Section 10(b) of the Exchange Act and Rule 10b-5 thereunder;
FINRA Rules 2020 and 2010

28. The Department re-alleges and incorporates by reference paragraphs 1 through 27 above.
29. Section 10(b) of the Exchange Act prohibits "any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national security exchange ... [t]o use or employ, in connection with the

purchase or sale of any security ... any manipulative or deceptive device or contrivance.”

30. Rule 10b-5 of the Exchange Act prohibits “any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, (a) to employ any device, scheme or artifice to defraud, (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.”

31. FINRA Rule 2020 provides that “[n]o member shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance.”

32. A violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and FINRA Rule 2020, constitutes a violation of FINRA Rule 2010.

33. During the Relevant Period, Grasso provided the Customers with two documents that falsely stated that the Customers maintained a brokerage account in PG’s name located at a FINRA regulated broker-dealer firm and that the account contained assets. The document dated January 2, 2014 falsely stated that the account contained “stock” worth \$32,300. The document dated January 16, 2014 falsely stated that the account contained “stock” worth \$224,450. At the time that Grasso presented those fictitious documents to the Customers, Grasso had not opened any brokerage account for the customers or made any investments for the Customers.

34. During the Relevant Period, contrary the Customers' instructions to Grasso and without informing the Customers, Grasso endorsed two of the Customers' checks totaling \$227,150, deposited the entirety of the \$227,150 in funds that the Customers provided to him into accounts in his name, under his control, and to which the Customers did not have access, and used the majority of the Customers' funds to pay personal expenses and to purchase securities in his own name.
35. By depositing the Customers' checks into his personal bank account, and transferring the Customers' funds into his personal brokerage account thereafter, Grasso used means of interstate commerce, including electronic transfers and checks drawn on United States banks.
36. Based upon the foregoing conduct, Grasso made material misrepresentations and omitted material facts in connection with the sale of securities to the Customers.
37. Based upon the foregoing conduct, Grasso knew, or was reckless in not knowing, that he made these material misrepresentations and omissions of material facts.
38. Based upon the foregoing conduct, Grasso willfully violated of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and FINRA Rules 2020 and 2010.

**THIRD CAUSE OF ACTION
(Failure to Provide Testimony)
FINRA Rules 8210 and 2010**

39. The Department re-alleges and incorporates by reference paragraphs 1 through 38 above.
40. FINRA Rule 8210 authorizes FINRA, in the course of its investigations, to require persons associated with a FINRA member to "provide information orally, in writing, or electronically ... and to testify at a location specified by FINRA staff, under oath or

affirmation ... with respect to any matter involved in the investigation.” Failing to provide testimony requested by FINRA pursuant to FINRA Rule 8210 violates FINRA Rule 2010.

41. On May 19, 2014, FINRA Staff served a written request upon Grasso, pursuant to FINRA Rule 8210, which required him to appear for testimony on May 22, 2014 in connection with FINRA’s investigation into this matter.

42. On May 22, 2014, Grasso appeared with his attorney at FINRA’s New York office, to provide sworn testimony. The Grasso OTR commenced at approximately 10:08 a.m. and Grasso began providing testimony at that time.

43. At approximately 2:55 p.m., Grasso’s attorney asked for a break to speak with Grasso.

44. When Grasso returned from the break, Grasso’s attorney advised the Staff that Grasso would not continue his testimony. The Staff then informed Grasso that the Staff still had additional questions, had not concluded the OTR and that Grasso’s refusal to answer additional questions could result in disciplinary action. At that point, Grasso reiterated that he would not answer any further questions.

45. On June 9, 2014, the Staff contacted Grasso’s attorney by telephone in order to provide Grasso with another opportunity to complete his OTR. On that date, Grasso’s attorney confirmed once again that Grasso would not appear and would not provide any additional testimony on any future date.

46. Based on the foregoing misconduct, Grasso violated FINRA Rules 8210 and 2010.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Grasso committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed;
- C. make specific findings that Grasso willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder; and
- D. order that Grasso bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330;

FINRA DEPARTMENT OF ENFORCEMENT

Date: December 3, 2014

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