

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ANDRE MITCHELL  
(CRD No. 2145891),

Respondent.

Disciplinary Proceeding  
No. 2013035618602

Hearing Officer–AHP

**DEFAULT DECISION**

September 28, 2015

**Respondent converted customer funds and failed to provide requested testimony, documents, and information in response to Rule 8210 requests. Respondent is barred for each violation.**

*Appearances*

Eric Hansen, Esq., New York, New York, for the Department of Enforcement.

No appearance by or for Respondent Andre Mitchell.

**DECISION**

**I. Introduction**

Andre Mitchell was registered as a general securities representative through FINRA member firm MetLife Securities, Inc. and dually employed by MetLife's affiliated insurance company from June 2008 to December 2012. Shortly after he left MetLife, the firm reported to FINRA that it had begun an internal review into a customer's allegation that Mitchell "was given a cash payment for insurance policy premiums but did not apply the payment toward those premiums." FINRA's ensuing investigation led to this disciplinary proceeding.

To gather information during the investigation, FINRA sent Mitchell requests for information and testimony under Rule 8210. Mitchell did not respond to the requests. FINRA's Department of Enforcement then filed the attached Complaint with the Office of Hearing Officers on April 20, 2015, alleging that Mitchell converted an insurance customer's funds and failed to respond to the requests for information and testimony. Mitchell did not file an Answer to the Complaint.

After Mitchell failed to respond to the Complaint, Enforcement moved for entry of a default decision. Mitchell did not respond to the Motion.

## **II. Findings of Fact and Conclusions of Law**

### **A. Background**

Mitchell was most recently registered with FINRA as a General Securities Representative with MML Investor Services, LLC from April 2013 until March 21, 2014. The Uniform Termination Notice for Securities Industry Registration (Form U5) MML filed on Mitchell's behalf reported that Mitchell's employment was "terminated in connection with FINRA inquiry and due to lack of sufficient production to warrant heightened supervision."<sup>1</sup> Mitchell is not currently associated with a FINRA member firm.

### **B. Jurisdiction**

FINRA retains jurisdiction over Mitchell pursuant to Article V, Section 4(a) of FINRA's By-Laws. Enforcement filed the Complaint within two years after the effective date of termination of his FINRA registration, and the Complaint charges him with misconduct committed while he associated with a FINRA member and with failing to respond to requests for information during the two-year period after the termination of his registration.

### **C. Mitchell Defaulted by Failing to Answer the Complaint**

Enforcement served Mitchell with the Complaint, Notice of Complaint, and Second Notice of Complaint in accordance with FINRA Rules 9131 and 9134. Enforcement served the Complaint and Notice of Complaint on April 20, 2015, by first-class certified mail and by regular first-class mail addressed to his current residential address recorded in the Central Registration Depository ("CRD Address"). Mitchell did not respond to the Complaint.

Enforcement then served Mitchell with a Second Notice of Complaint by first-class certified mail and by regular first-class mail addressed to his CRD Address.<sup>2</sup> Mitchell's Answer was due on or before June 5, 2015.<sup>3</sup> Mitchell did not answer the Complaint or otherwise respond to the Second Notice of Complaint.

Mitchell received valid constructive notice of this proceeding.<sup>4</sup> Thus, I find that Mitchell defaulted by failing to answer the Complaint, and I deem the allegations in the attached Complaint admitted under FINRA Rules 9215(f) and 9269(a).

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<sup>1</sup> Complainant's Exhibit ("CX-\_\_") I.

<sup>2</sup> Declaration of Eric Hansen in Support of Motion for Entry of Default Decision ("Decl.") ¶¶ 22, 24-25, 27-28; CX-16-CX-19.

<sup>3</sup> Decl. ¶¶ 26, 30.

<sup>4</sup> 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), *aff'd*, Exchange Act Release No. 75531, 2015 SEC LEXIS 3080 (July 27, 2015).

#### **D. Mitchell Converted Funds**

In July 2012, while Mitchell was employed by MetLife and its insurance affiliate, customer MM provided Mitchell with approximately \$658 in cash for the purpose of paying her insurance policy premiums. Mitchell understood that the cash was to be used for MM's insurance premiums, but he did not pay the premiums. Instead, without MM's permission or authorization, he used the funds for his own personal use. Mitchell thereby violated Rule 2010.<sup>5</sup>

#### **E. Mitchell Failed to Respond to Requests for Information**

##### **1. The March 5, 2014 Rule 8210 Request**

On March 5, 2014, in connection with its investigation, Enforcement sent Mitchell a letter by certified mail and first-class mail to his CRD address requesting under Rule 8210 that required him to provide testimony, documents, and other information relating to his alleged misconduct. FINRA Rule 8210(a) authorizes FINRA staff, for purposes of an investigation, examination, or proceeding, to require a person subject to FINRA's jurisdiction to provide information and documents with respect to any matter involved in the investigation, examination, or proceeding. The letter stated that the requested documents and information were due on March 19. It also requested that Mitchell appear for an on-the-record interview ("OTR") on April 8, 2014.<sup>6</sup>

On April 7, 2014, Mitchell sent Enforcement an email stating that he would be "unable to attend the meeting as scheduled due to being unable to get the required and requested information" to FINRA and that he was "unable to have counsel representation."<sup>7</sup> Mitchell failed to provide any of the requested documents and information, and he failed to appear at the scheduled OTR.<sup>8</sup>

##### **2. The April 8, 2014 Rule 8210 Request**

On April 8, 2014, Enforcement sent another letter to Mitchell, notifying him that he had not complied with the previous Rule 8210 request letter and directing him, under Rule 8210, to appear for an OTR on April 22. Enforcement sent the letter by certified mail and first-class mail to Mitchell's CRD Address, and by email to the address Mitchell had previously used. Mitchell did not respond or appear for testimony on April 22.<sup>9</sup>

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<sup>5</sup> Mitchell's failure to apply the funds to MM's insurance premiums caused her policies to lapse. Complaint ("Compl.") ¶¶ 12-19.

<sup>6</sup> Compl. ¶¶ 24-25; CX-8; CX-11.

<sup>7</sup> CX-12.

<sup>8</sup> Compl. ¶¶ 26-27.

<sup>9</sup> Compl. ¶¶ 28-29; CX-9; CX-13.

### **3. The September 25, 2014 Rule 8210 Request**

Enforcement sent Mitchell a final Rule 8210 request letter on September 25, 2014, repeating its previous requests for information and documents, and setting a deadline of October 10 for Mitchell to respond. Enforcement also directed Mitchell to appear for testimony on October 16. Enforcement's letter advised Mitchell that failure to comply with could result in disciplinary action. Enforcement sent the September 2014 Rule 8210 request letter to Mitchell's CRD address by certified mail and first-class mail, and by email. Mitchell did not respond to the request or appear for testimony on October 16.<sup>10</sup>

To date, Mitchell has provided no documents, information, or testimony in response to FINRA's requests under Rule 8210.<sup>11</sup> He is therefore in violation of FINRA Rules 8210 and 2010.

### **III. Sanctions**

#### **A. Conversion**

FINRA's Sanction Guidelines for conversion state that a bar should be "standard," regardless of the amount converted.<sup>12</sup> The record discloses no factors that would warrant a lesser sanction. Thus, the Hearing Officer concludes that Mitchell should be barred from associating with any FINRA member in any capacity for violating FINRA Rule 2010.

#### **B. Failure to Respond to Rule 8210 Requests for Information and Testimony**

A violation of Rule 8210 is serious because the rule is a key element in FINRA's oversight function and allows FINRA to carry out its regulatory functions without subpoena power.<sup>13</sup> When an individual fails to provide information, FINRA's ability to perform its regulatory functions is subverted.<sup>14</sup> For these reasons, the Sanction Guidelines recommend a bar when a respondent fails to respond in any manner to a request for information issued pursuant to Rule 8210.<sup>15</sup> Mitchell failed to respond in any manner to four requests for information. There is no evidence of any mitigating facts that would justify a sanction less than a bar. Accordingly, the Hearing Officer concludes that Mitchell should be barred from associating with any FINRA member in any capacity for violating FINRA Rules 8210 and 2010.

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<sup>10</sup> Compl. ¶¶ 30-31; CX-10; CX-14.

<sup>11</sup> Compl. ¶ 32; Decl. ¶ 20.

<sup>12</sup> FINRA Sanction Guidelines ("Guidelines") at 36 (2015), <http://www.finra.org/industry/sanction-guidelines>.

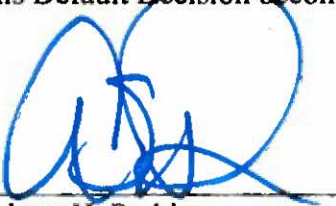
<sup>13</sup> *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at \*13 & n.19 (Nov. 14, 2008); *Joseph G. Chiulli*, 54 S.E.C. 515, 522-23 (2000).

<sup>14</sup> *Joseph P. Hannan*, 53 S.E.C. 854, 858-59 (1998).

<sup>15</sup> Guidelines at 33.

#### **IV. Order**

Andre Mitchell is barred from associating with any FINRA member firm in any capacity for conversion, in violation of FINRA Rule 2010, and for failing to respond to Rule 8210 requests for testimony, documents, and information, in violation of FINRA Rules 8210 and 2010. The bars shall become effective immediately if this Default Decision becomes FINRA's final disciplinary action.



Andrew H. Perkins  
Hearing Officer

Copies to:

Andre Mitchell (via first-class mail)  
Eric Hansen, Esq. (via email and first-class mail)  
Richard Chin, Esq. (via email)  
Jeffrey D. Pariser, Esq. (via email)

**FINANCIAL INDUSTRY REGULATORY AUTHORITY**

**OFFICE OF HEARING OFFICERS**

Department of Enforcement,	
	Complainant,
v.	
André Mitchell (CRD No. 2145891),	
	Respondent.

DISCIPLINARY PROCEEDING  
No. 2013035618602

**COMPLAINT**

The Department of Enforcement (“Enforcement”) alleges:

**SUMMARY**

1. André Mitchell (“Mitchell” or “Respondent”), a former registered representative at MetLife Securities, Inc. (“MetLife” or the “Firm”) a FINRA regulated broker-dealer, converted \$658 in funds given to him by MM, an insurance customer of Mitchell’s, for payment toward her insurance policy premiums, which was never applied.

2. Enforcement initiated an investigation into Mitchell’s alleged misconduct and requested, on three occasions, pursuant to FINRA Rule 8210, that he provide testimony, and requested, on two occasions, that he provide information and documents. Mitchell failed to comply with these requests, in violation of FINRA Rules 8210 and 2010.

**RESPONDENT AND JURISDICTION**

3. Mitchell entered the securities industry in May 1991 when he became associated as a registered representative at a FINRA-registered broker dealer. Between that date and June 2008, Mitchell was associated with six FINRA-registered firms as a registered representative.

4. In June 2008, Mitchell became employed with the Firm. While associated with the Firm, he was registered as a General Securities Representative. Mitchell was dually employed at the Firm's affiliated insurance company (the "Insurance Affiliate").

5. On December 21, 2012, MetLife filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") with FINRA, stating that Mitchell's association with the Firm had ended voluntarily effective December 14, 2012.

6. On or about December 20, 2012, after Mitchell had left MetLife, MM, an insurance customer of Mitchell's called the Firm for details on the status of her two insurance policies for which she had given Mitchell funds to make certain premium payments on her behalf. MM stated she gave Mitchell \$658 in July 2012 for payment towards her policy premiums which was never applied.

7. On January 15, 2013, the Firm filed an amended Form U5 for Mitchell with FINRA, stating that it had initiated an internal review into a customer's allegation that Mitchell "...was given a cash payment for insurance policy premiums but did not apply the payment toward those premiums."

8. In April 2013, Mitchell became associated with Firm 2, another FINRA-registered broker-dealer. While associated with Firm 2, he was registered as a General Securities Representative. Mitchell was discharged from his last employment in the securities industry, with Firm 2, on March 21, 2014.

9. On March 28, 2014 Firm 2 filed a Form U5 which stated that effective March 21, 2014, Mitchell's employment was "terminated in connection with FINRA inquiry and due to lack of sufficient production to warrant heightened supervision."

10. Mitchell is not currently employed in the securities industry. Although he is no longer registered or associated with a FINRA member, 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 after the effective date of termination of Respondent's registration with Firm 2, namely, March 28, 2014, and (2) the Complaint charges him with failing to respond to FINRA requests for information during the two-year period after the date upon which he ceased to be registered or associated with a FINRA member.

#### **FIRST CAUSE OF ACTION**

##### **Conversion Violation of FINRA Rule 2010**

11. The Department realleges and incorporates by reference paragraphs 1 through 10 above.
12. FINRA Rule 2010 states that a member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.
13. In July 2012, while Mitchell was dually employed by the Firm and the Insurance Affiliate, MM provided Respondent with approximately \$658 in cash for the purpose of paying the premiums on her insurance policies issued by the Insurance Affiliate.
14. Respondent understood that the cash with which MM had entrusted him was to be used to pay her insurance premiums and for no other purpose.
15. Respondent did not pay insurance premiums for MM with those funds.
16. Instead of using the \$658 MM had entrusted him with to pay her insurance premiums, Respondent utilized the funds for his own personal use.
17. Respondent lacked permission or authority to use MM's funds for Respondent's own use and benefit, or for any purpose other than making payment on MM's insurance policy premiums.
18. Respondent's failure to apply MM's funds to her insurance policy premiums caused MM's policies to lapse.



19. By the conduct detailed above Respondent converted approximately \$658 from insurance customer MM, in violation of FINRA Rule 2010.

#### SECOND CAUSE OF ACTION

##### **Failure to Respond to FINRA Enforcement's Requests for Information and Documents, and to Appear and Provide Testimony Violation of FINRA Rules 8210 and 2010**

20. The Department realleges and incorporates by reference paragraphs 1 through 19 above.

21. FINRA Rule 8210(a) (1) requires a member, person associated with a member, or any other person subject to FINRA's jurisdiction to provide information orally, in writing, or electronically ... and to testify at a location specified by FINRA staff...with respect to any matter involved in the investigation, complaint, examination, or proceeding....

22. Failure to comply with FINRA Rule 8210 is a violation of FINRA Rule 2010.

23. On January 25, 2013 FINRA opened an investigation into Mitchell's alleged conversion of funds from MM, based upon the Form U5 filed by MetLife.

24. On March 5, 2014 Enforcement sent Mitchell a letter ("March 2014 Letter") requesting, pursuant to Rule 8210, that he provide testimony, documents and additional information regarding his alleged misconduct. In accordance with FINRA Rule 8210(d), the March 2014 Letter was mailed to Mitchell's current address of record as reflected in the Central Registration Depository ("CRD") by both certified mail, return receipt requested, and first class mail. The March 2014 Letter set forth a due date of March 19, 2014 for Mitchell to provide the information and documents including copies of bank statements, credit card statements, personal and/or real property judgements or liens, and copies of any electronic communications with MM, and requested that Mitchell appear for an on the record interview ("OTR") at FINRA's offices at 200 Liberty Street, New York, New York on April 8, 2014 at 9:30am.

25. The March 2014 Letter sent via certified mail to Mitchell's CRD Address was signed for on March 11, 2014 at the Jesse E. Davis Station, U.S. Postal Facility in Brooklyn, New York. The recipient's signature appears to be Mitchell's. The copy of this letter sent by first class mail to Mitchell's CRD Address was not returned.

26. On April 7, 2014, Mitchell responded to Enforcement's March 2014 Letter via e-mail from a personal e-mail address Mitchell had previously used (the "Email Address"). Mitchell stated that he was "unable to attend the meeting as scheduled due to being unable to get the required and requested information" to FINRA and that he is "unable to have counsel representation."

27. Mitchell failed to provide any of the documents and information requested in the March 2014 Letter, and also failed to appear for testimony on April 8, 2014.

28. On April 8, 2014 ("April 2014 Letter") Enforcement sent another letter to Mitchell notifying him that he had not complied with the March 2014 Letter and directed Mitchell, pursuant to Rule 8210, to appear at FINRA's 200 Liberty Street offices to provide sworn testimony on April 22, 2014 at 10:00am. The April 2014 Letter, together with a copy of Enforcement's March 2014 Letter, was sent to Mitchell's CRD Address by certified mail, return receipt requested, and by first class mail. A copy of the April 2014 Letter was also sent via email to the Email Address Mitchell previously used to contact Enforcement.

29. The April 2014 Letter sent via certified mail to Mitchell's CRD Address was returned to Enforcement on June 20, 2014 and marked "Return to Sender – Unclaimed – Unable to Forward." The copy of this letter sent by first class mail to Mitchell's CRD Address was not returned and Mitchell did not respond to Enforcement's e-mail. Mitchell failed to appear for testimony on April 22, 2014.

30. On September 25, 2014, Enforcement sent Mitchell another letter, pursuant to FINRA Rule 8210 (the "September 2014 Letter"), requesting the information and documents that

Enforcement had previously requested in the March 2014 Letter. The September 2014 Letter set forth a due date of October 10, 2014 for Mitchell to provide the information and documents and further directed Mitchell to appear at FINRA's 200 Liberty Street offices to provide sworn testimony on October 16, 2014 at 10:00am. The September 2014 Letter also notified Mitchell that he had not complied with the March 2014 Letter and that failure to comply with FINRA's requests may result in disciplinary proceedings leading to sanctions including a bar. The September 2014 Letter, together with copies of Enforcement's March and April 2014 Letters were sent to Mitchell's CRD Address by certified mail, return receipt requested, and by first class mail. A copy of the September 2014 Letter was also sent via email to the Email Address Mitchell previously used to contact Enforcement.

31. The September 2014 Letter sent via certified mail to Mitchell's CRD Address was delivered and signed for on September 30, 2014. The copy of this letter sent by first class mail to Mitchell's CRD Address was not returned and Mitchell did not respond to Enforcement's e-mail. Mitchell failed to provide any of the documents and information requested in the September 2014 Letter and failed to appear for testimony on October 16, 2014.

32. Enforcement has sent multiple requests for Mitchell to provide documents, information and testimony pursuant to FINRA Rule 8210 to his CRD Address, as described above. To date, Mitchell has failed to provide any documents or information and has failed to appear and provide sworn testimony to Enforcement as requested.

33. The acts, practices and conduct described above demonstrate Mitchell's failure to cooperate with this investigation and constitute violations of 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 Respondent 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; and
- C. order that Respondent 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: 4/20/15

  
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Eric Hansen, Director  
Richard Chin, Chief Counsel  
FINRA Department of Enforcement  
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**FINANCIAL INDUSTRY REGULATORY AUTHORITY**  
**OFFICE OF HEARING OFFICERS**

Department of Enforcement,  Complainant,  v.  Andre Mitchell, CRD No. 2145891  Respondent.
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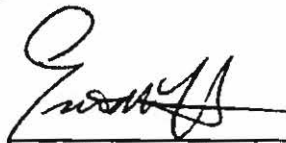
Disciplinary Proceeding  
No. 2013035618602

Hearing Officer \_\_\_\_\_

**CERTIFICATE OF SERVICE**

Date: April 20, 2015

I hereby certify that on this 20<sup>th</sup> day of April, 2015, I caused a copy of the foregoing Complaint and Notice of Complaint to be sent by First class certified mail and First class mail to Andre Mitchell, 477 Midwood Street, Top Floor, Brooklyn, NY 11225.



Eric Hansen, Director  
FINRA Department of Enforcement  
One World Financial Center  
200 Liberty Street, 11<sup>th</sup> floor  
New York, NY 10281