

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

NAHUEL RODRIGUEZ  
(CRD No. 5633905),

Respondent.

Disciplinary Proceeding  
No. 2013037144301

Hearing Officer—Andrew H. Perkins

**DEFAULT DECISION**

December 3, 2015

**Former registered representative is barred for converting customers' funds and willfully misrepresenting material facts in connection with the sale of securities.**

For FINRA's Department of Enforcement, Complainant: Michael Choi and Gerard F. Murphy.

No appearance by or on behalf of Nahuel Rodriguez, Respondent.

**DECISION**

**I. Introduction**

The Department of Enforcement instituted this disciplinary action against Respondent Nahuel Rodriguez after his former firm, PFS Investments, Inc. ("PFS"), filed an amended Uniform Termination Notice for Securities Industry Registration (Form U5) that disclosed that Rodriguez may have engaged in wrongful conduct while he was associated with the firm. PFS disclosed that it had received a customer complaint that alleged that Rodriguez had wrongfully taken funds from their securities account.

FINRA investigated the customer complaint and determined that Rodriguez converted funds belonging to four individuals while he was associated with PFS. Enforcement also concluded that Rodriguez obtained the funds through fraudulent misrepresentations. Enforcement then initiated this disciplinary proceeding against Rodriguez. The Complaint charges Rodriguez with three counts of conversion and three counts of securities fraud.

Rodriguez failed to answer or otherwise respond to the Complaint. Thus, Enforcement filed a motion for entry of default decision (“Default Motion”).<sup>1</sup> Respondent did not respond to the Default Motion.

For the reasons set forth below, I find Rodriguez in default and grant Enforcement’s Default Motion.

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

### **A. Rodriguez’s Background**

Rodriguez entered the securities industry in January 2009 when he became associated with PFS. In July 2009, he became registered as an Investment Company and Variable Contracts Products Representative.

PFS discharged Rodriguez in May 2013 because it had obtained information that Rodriguez had “created a fictitious security in order to obtain funds from at least two individuals.”<sup>2</sup> FINRA terminated Rodriguez’s registration effective May 29, 2013.<sup>3</sup>

### **B. Jurisdiction**

FINRA has jurisdiction under Article V, Section 4(a) of FINRA’s By-Laws to bring this disciplinary proceeding. Enforcement filed the Complaint within two years after PFS filed an amended Form U5 that disclosed that Rodriguez may have engaged in conduct actionable under the securities statutes and FINRA’s conduct rules, and the Complaint charges him with misconduct committed while he was associated with PFS.<sup>4</sup>

### **C. Origin of the Investigation**

This proceeding arose from the investigation FINRA initiated in response to the original Form U5 PFS filed on May 29, 2013, that disclosed possible violations of FINRA and NASD Rules.<sup>5</sup>

### **D. Respondent’s Default**

Enforcement served the Complaint on Rodriguez in accordance with FINRA’s rules. On June 12, 2015, Enforcement sent the Complaint and Notice of Complaint to Rodriguez by certified mail to his last known residential address as reflected in the Central Registration

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<sup>1</sup> Enforcement also filed a declaration signed by Gerard Murphy, Esq., with ten attached exhibits. Citations to the declaration are noted as “Decl. ¶ \_\_\_\_,” and citations to the exhibits are noted as “CX-\_\_\_\_.”

<sup>2</sup> CX-3, at 2.

<sup>3</sup> CX-1, at 4.

<sup>4</sup> PFS filed the amended Form U5 on December 6, 2013. CX-3; Decl. ¶ 7.

<sup>5</sup> Decl. ¶ 9.

Depository (“CRD Address”) and to an alternate address Enforcement believed might be more current than his CRD Address.<sup>6</sup> Rodriguez did not file an answer or otherwise respond to the Complaint by the required deadline under Rule 9215(f). Enforcement then served Rodriguez with a Second Notice of Complaint by certified mail sent to both the CRD Address and the alternate address.<sup>7</sup> Rodriguez did not respond to the Second Notice of Complaint. Thus, I find that Respondent defaulted.<sup>8</sup>

#### **E. Rodriguez Converted Funds from Four Customers**

Rodriguez converted<sup>9</sup> funds from three PFS customers—RT, JT, and RO—and another person, FP, who had given Rodriguez funds to open a securities account at PFS.

##### **1. Rodriguez Converted Funds from RT**

In 2010, RT opened an Individual Retirement Account (“IRA”) at PFS. At that time, RT was married to JT, and they were self-employed housekeepers without any investment experience. The firm assigned Rodriguez to RT’s account.<sup>10</sup>

Rodriguez advised RT that she would have to open a new account if she wanted to earn a greater return than her IRA account produced. Rodriguez instructed RT to withdraw the balance in her IRA account and give him a personal check for the entire balance. Rodriguez told RT and JT that he would use the funds to open a new securities account at PFS.<sup>11</sup>

On August 1, 2011, RT withdrew \$10,374.09, the full balance of her IRA, and requested that PFS wire the funds to her personal bank account. RT received the funds a few days later and immediately gave Rodriguez a check for \$10,444. The check was payable to Rodriguez as he had instructed.<sup>12</sup>

Rodriguez cashed the check and took the proceeds for his personal use. He did not open a new account for RT or JT as he had stated he would. Neither RT nor JT authorized Rodriguez to

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<sup>6</sup> Decl. ¶ 10.

<sup>7</sup> Decl. ¶ 12.

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

<sup>9</sup> Conversion is defined 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.” *John Edward Mullins*, Exchange Act Release No. 66373, 2012 SEC LEXIS 464, at \*33 (Feb. 10, 2012).

<sup>10</sup> Compl. ¶¶ 6-7.

<sup>11</sup> Compl. ¶¶ 8-9.

<sup>12</sup> Compl. ¶¶ 10-11.

use the proceeds from RT's IRA for any purpose other than to open a new securities account for them at PFS.<sup>13</sup>

Based on the foregoing facts, I conclude that Rodriguez violated FINRA Rules 2150(a) and 2010 by wrongfully taking \$10,444 that belonged to RT.<sup>14</sup> Rule 2150(a) provides that "[n]o member or person associated with a member shall make improper use of a customer's securities or funds." Rule 2010 provides that a "member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade."

## **2. Rodriguez Converted Funds from RT and JT**

Rodriguez twice converted additional funds from RT and JT in 2013. In or around March 2013, Rodriguez told them that the \$10,440 RT had given him to invest had increased to \$14,000. Relying on this falsehood, RT and JT agreed to invest an additional \$10,000 with PFS by wiring \$5,000 to the firm's affiliated transfer agent (the "Transfer Agent") and giving Rodriguez a check, payable to him, for \$5,000.<sup>15</sup>

On or around April 30, 2013, Rodriguez used the \$5,000 wired to the Transfer Agent to open a joint Roth IRA for RT and JT. A few days later, Rodriguez told them that he had not been able to cash their personal check. He therefore returned the check to RT and JT and directed them to replace the check with \$5,000 in cash. Rodriguez promised he would deposit the cash into their joint IRA.<sup>16</sup> Rodriguez did not deposit the cash as he promised he would. Instead he took the cash for his personal use without RT and JT's authority.<sup>17</sup>

In June 2013, Rodriguez told RT and JT that PFS had inadvertently transferred \$4,406.72 of his funds into their joint IRA. This representation was false. PFS had not transferred any funds belonging to Rodriguez into their joint IRA.<sup>18</sup>

Shortly after Rodriguez told RT and JT about the fictitious erroneous transfer of his funds to their account, Rodriguez called a PFS representative purporting to be JT and requested that PFS liquidate RT and JT's joint IRA and transfer the proceeds to their bank account. PFS followed Rodriguez's instructions, liquidated the securities in the joint IRA, and transferred the proceeds and all remaining funds in the account to RT and JT's bank account.<sup>19</sup>

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<sup>13</sup> Compl. ¶¶ 12-14.

<sup>14</sup> The Complaint alleges that Rodriguez converted funds belonging to RT and her husband, but the evidence does not show that JT had an ownership interest in his wife's IRA account. Thus, I find that Rodriguez converted \$10,444 from RT.

<sup>15</sup> Compl. ¶¶ 15-17.

<sup>16</sup> Compl. ¶¶ 18-19.

<sup>17</sup> Compl. ¶¶ 20-21.

<sup>18</sup> Compl. ¶¶ 22-23.

<sup>19</sup> Compl. ¶ 24.

On June 28, 2013, believing that the additional funds in their joint IRA belonged to Rodriguez, RT and JT gave him a check for \$4,400, which Rodriguez cashed. Rodriguez kept these funds for his own use and benefit.<sup>20</sup>

Based upon the foregoing facts, I conclude that Rodriguez violated FINRA Rules 2150(a) and 2010 by wrongfully taking \$9,400 that belonged to RT and JT.

### **3. Rodriguez Converted Funds from RO**

In April 2010, RO opened an individual securities account at PFS, and Rodriguez was assigned to handle his account. At the time, RO was a self-employed housekeeper with no prior investment experience.<sup>21</sup>

In July 2012, Rodriguez told RO that he could earn more if he moved his investment at PFS to a different account. Based on Rodriguez's advice, RO withdrew \$1,300 from his individual account and gave Rodriguez a check for the entire amount made out to Rodriguez. RO understood that Rodriguez would invest the funds in a different account at PFS that would provide a higher rate of return.<sup>22</sup>

Rodriguez received the check, but he did not invest the funds as he had promised. Instead, Rodriguez cashed the check on July 30, 2012, and kept the proceeds. RO had not given Rodriguez the authority to cash the check or to use the funds for any purpose other than to invest them for RO's benefit.<sup>23</sup>

Based on the foregoing facts, I conclude that Rodriguez violated FINRA Rules 2150(a) and 2010 by wrongfully taking \$1,300 that belonged to RO.

### **4. Rodriguez Converted Funds from FP**

In February 2011, Rodriguez met with FP to discuss his opening a securities account at PFS. At the time, FP was a customer of the firm's affiliated life insurance company, but he had no securities accounts at PFS. FP decided to open a securities account, and he gave Rodriguez a \$5,000 check for that purpose. The check was payable to Rodriguez. Rodriguez then gave FP a fictitious new account form upon which Rodriguez acknowledged receiving "\$5,000 from [FP] for bond."<sup>24</sup>

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<sup>20</sup> Compl. ¶ 25.

<sup>21</sup> Compl. ¶¶ 28-29.

<sup>22</sup> Compl. ¶¶ 30-32.

<sup>23</sup> Compl. ¶¶ 33-35.

<sup>24</sup> Compl. ¶¶ 36-38.

Rodriguez did not use the \$5,000 he received from FP to open a new securities account in his name. Instead, on February 4, 2011, Rodriguez cashed the check and kept the proceeds for his own use and benefit.<sup>25</sup>

Based on the foregoing facts, I conclude that Rodriguez violated FINRA Rules 2150(a) and 2010 by wrongfully taking \$5,000 that belonged to FP.

**F. Respondent Engaged in Securities Fraud to Convert Funds from RT, JT, RO, and FP**

The Complaint further alleges that Rodriguez converted funds from RT, JT, RO, and FP by engaging in securities fraud. In each case, Rodriguez persuaded his victim through fraudulent material misrepresentations to give him money, which he then took for his own use.

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 securities exchange ... [t]o use or employ, in connection with the purchase or sale of any security ... any manipulative or deceptive device or contrivance.”

SEC Rule 10b-5 under 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) [t]o employ any device, scheme, or artifice to defraud, (b) [t]o 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 light of the circumstances under which they were made, not misleading, or (c) [t]o 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.”

I conclude that Rodriguez violated Section 10(b) of the Exchange Act and SEC Rule 10b-5. 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.”<sup>26</sup> Where, as here, Enforcement alleges 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.<sup>27</sup>

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<sup>25</sup> Compl. ¶¶ 39-41.

<sup>26</sup> *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).

<sup>27</sup> *Donner Corp.*, 2006 NASD Discip. LEXIS 4, at \*50; *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)).

Scienter embraces the “intent to deceive, manipulate, or defraud.”<sup>28</sup> A fact is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision.<sup>29</sup> A misrepresentation is made “in connection with” the purchase or sale of a security if it “coincides” with a securities transaction.<sup>30</sup> Additionally, finding a violation of Exchange Act Section 10(b) and SEC Rule 10b-5 requires the use of interstate commerce or the mails.<sup>31</sup>

The facts described above demonstrate Rodriguez’s intent to defraud RT, JT, RO, and FP. When a person represents that funds will be used to purchase securities while intending to convert those funds to his own personal use—as Rodriguez did here—he has plainly misstated and omitted material facts.<sup>32</sup> Moreover, it is well established that when a person accepts payment for securities he intends never to deliver, as Rodriguez did here, the person engages in fraud “in connection with” the purchase of a security.<sup>33</sup>

Thus, I conclude that Rodriguez violated Section 10(b) of the Exchange Act and SEC Rule 10b-5.

I also conclude that Rodriguez 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 SEC Rule 10b-5.”<sup>34</sup> And 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.<sup>35</sup>

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<sup>28</sup> *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 (1976).

<sup>29</sup> *Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988).

<sup>30</sup> *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Dabit*, 547 U.S. 71, 85 (2006).

<sup>31</sup> 15 U.S.C. §§ 77q(a), 78j.

<sup>32</sup> *E.g., Dep’t of Enforcement v. Becerril*, No. 2009018944001, 2012 FINRA Discip. LEXIS 4, at \*19 (OHO Feb. 23, 2012).

<sup>33</sup> *See SEC v. Zandford*, 535 U.S. 813, 819-20 (2002).

<sup>34</sup> *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.

<sup>35</sup> *Joseph Abbondante*, 58 S.E.C. 1082, 1103 (2006), *aff’d*, 209 F. App’x 6 (2d Cir. 2006).

### **III. Sanctions**

Conversion is patently antithetical to the high standards of conduct FINRA seeks to promote.<sup>36</sup> Thus, FINRA's Sanction Guidelines ("Guidelines") direct that the standard sanction for conversion is a bar, regardless of the amount converted.<sup>37</sup>

Here, I conclude that barring Rodriguez for his conversion is supported by the presence of numerous applicable aggravating factors.<sup>38</sup> He engaged in a pattern of deceitful conduct to take advantage of four individuals. He convinced RT to liquidate her IRA by falsely telling her that he would transfer the money to a new account that would produce greater returns. But he never intended to use her money as he stated. Rodriguez also impersonated JT when he directed PFS to liquidate RT and JT's account at PFS. Once PFS transferred the funds, he told RT and JT that PFS mistakenly had wired money from his account into theirs. Through this misrepresentation Rodriguez was able to get RT and JT to turn the money over to him. Rodriguez also lied to RO and FP to obtain funds from them that he converted to his own use. In each instance, Rodriguez enriched himself and harmed his customers.

Rodriguez's violations are so antithetical to the conduct required of securities professionals that I find him unfit to remain in the securities industry. A bar is necessary to protect the investing public. Thus, Rodriguez is barred for converting funds from RT, JT, RO, and FP.

Rodriguez's material misrepresentations made to facilitate his conversion of funds also warrant a bar.<sup>39</sup> But because Rodriguez's fraud violations involved the same course of action as his conversion violations, I find that a unitary sanction is appropriate. Thus, Rodriguez is barred for converting funds from RT, JT, RO, and FP and for the material misrepresentations he made to these individuals to facilitate the conversion of their funds.

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<sup>36</sup> See *Dep't of Enforcement v. Patel*, No. C02990052, 2001 NASD Discip. LEXIS 42, at \*24-25 (NAC May 23, 2001).

<sup>37</sup> FINRA Sanction Guidelines at 36 (2015), <http://www.finra.org/Industry/Sanction-Guidelines>.

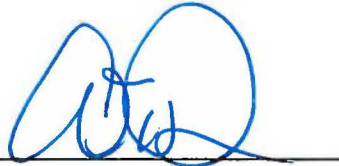
<sup>38</sup> The record reflects no mitigating factors.

<sup>39</sup> See Guidelines at 88 (directing adjudicators to strongly consider barring individuals for intentional fraud).



#### **IV. Order**

Nahuel Rodriguez is barred for converting funds in violation of FINRA Rules 2150(a) and 2010 and for making material misrepresentations to facilitate the conversion of funds in violation of Section 10(b) of the Exchange Act, SEC Rule 10b-5, and FINRA Rules 2020 and 2010. The bar shall become effective immediately if this Default Decision becomes FINRA's final disciplinary action.



Andrew H. Perkins  
Hearing Officer

#### **Copies to:**

Nahuel Rodriguez (via first-class mail)  
Michael Choi, Esq. (via email and first-class mail)  
Gerard F. Murphy, Esq. (via email)  
Jeffrey D. Pariser, Esq. (via email)