

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

SUMNER JAMES STARBIRD  
(CRD No. 2857200),

Respondent.

Disciplinary Proceeding  
No. 2013038544601

Hearing Officer—Andrew H. Perkins

**DEFAULT DECISION**

April 14, 2015

**Respondent is barred from associating with any FINRA registered firm in any capacity for reversing overdraft fees in his personal account without authorization in violation of FINRA Rule 2010.**

**Appearances**

Lane A. Thurgood, Esq. for the Department of Enforcement.

No appearance by or for Respondent Sumner James Starbird.

**DECISION**

FINRA's Department of Enforcement initiated this disciplinary proceeding against Sumner James Starbird after his firm reported that it had terminated his employment for reversing overdraft fees in his own account without authorization.

Enforcement filed the attached Complaint with the Office of Hearing Officers on September 16, 2014. Starbird did not file an Answer to the Complaint.

On December 11, 2014, Enforcement filed a Motion for Entry of Default Decision, with a Declaration of Lane Thurgood in support of the motion. Enforcement attached five exhibits to the Declaration.<sup>1</sup> In addition, I took official notice of the Registration Summary from Starbird's

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<sup>1</sup> Citations to Enforcement's exhibits are noted as "CX-\_\_\_."

Central Registration Depository (“CRD”) record pursuant to Rule 9145(b).<sup>2</sup> Starbird did not respond to the motion.

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

### **A. Background**

Starbird was associated with Morgan Stanley from June 2009 until September 11, 2013. On October 9, 2013, Morgan Stanley filed a Uniform Termination Notice for Securities Industry Registration (Form U5), which disclosed that the firm had discharged him because of its concerns related to fee reversals in his own account at the firm.<sup>3</sup> Starbird’s FINRA registrations terminated with the filing of the Form U5.

### **B. Jurisdiction**

FINRA has jurisdiction over Starbird 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 registrations, and the Complaint charges him with violations of FINRA Rule 2010 while he was subject to FINRA’s jurisdiction.

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

Enforcement served Starbird 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 September 16, 2014, and the Complaint and Second Notice of Complaint on October 15, 2014.<sup>4</sup> In each case, Enforcement served Starbird by both first-class mail and first-class, certified mail addressed to his current residential address recorded in CRD.<sup>5</sup> Thus, Starbird received valid constructive notice of this proceeding.<sup>6</sup>

Pursuant to Rule 9215, Starbird’s Answer was due within fourteen days of service of the Second Notice of Complaint, plus an additional three days because service was effected by

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<sup>2</sup> Enforcement failed to file a copy of “Respondent’s CRD record that shows Respondent’s address and complete registration and employment history,” as required by Section II(1) of the Order Governing Motion for Entry of Default Decision dated November 13, 2014.

<sup>3</sup> CX-1.

<sup>4</sup> Thurgood Decl. ¶¶ 6, 8.

<sup>5</sup> The certified mailing receipt for the Notice of Complaint was returned to FINRA “unclaimed.” The first-class mailing containing the Notice of Complaint was not returned to FINRA. Thurgood Decl. ¶ 6. Neither the first-class mailing nor the certified mailing receipt for the Second Notice of Complaint was returned to FINRA. Thurgood Decl. ¶¶ 8-9.

<sup>6</sup> 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).

certified mail, or by November 3, 2014. Starbird did not respond to the Complaint and Second Notice of Complaint. Thus, Starbird is in default.<sup>7</sup>

#### **D. Starbird Improperly Reversed Overdraft Fees Charged to His Account at Morgan Stanley**

After receiving the Form U5 that Morgan Stanley filed on Starbird's behalf, FINRA staff began an investigation to determine the facts and circumstances surrounding his dismissal from Morgan Stanley. The staff found that Starbird had been a Customer Service Manager at Morgan Stanley and had maintained a securities account with the firm. Starbird had check writing privileges on this account.

During the month of September 2013, Starbird incurred 24 overdraft charges in his account, totaling \$600. Starbird reversed these charges without authority. On or about September 3, 2013, he attempted to use his work computer to reverse nine overdraft fees totaling \$225. Because Morgan Stanley's system prevented Customer Service Managers from reversing their own overdraft fees, Starbird's request was routed to another Customer Service Manager for approval. The other Customer Service Manager authorized the reversal without knowing that Starbird had initiated the reversals in his own account.

On September 6, 2013, Starbird falsely told a colleague that he was having technical issues with his computer and asked to use her computer. Starbird then reversed 15 overdraft fees using his colleague's computer and login ID to improperly reverse the overdraft fees. Starbird then authorized the reversals from his computer.

Rule 2010 requires FINRA members and persons associated with FINRA members to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. Starbird thereby violated Rule 2010 by improperly reversing the overdraft fees he incurred in his account through deceptive and dishonest means.

## **II. Sanctions**

FINRA's Sanction Guidelines do not specifically address the misconduct at issue in this proceeding. However, the guidelines for conversion or improper use of funds or securities provide relevant guidance.<sup>8</sup> The relevant guideline provides that a bar is the appropriate sanction for conversion. Here, Starbird reversed \$600 in fees he owed Morgan Stanley. Starbird knew his actions were improper, and he acted dishonestly. He lied to his colleague and used her login ID without her knowledge, thereby making it appear that she had authorized some of the reversals. Further, Starbird engaged in this deceptive conduct to benefit himself at his firm's expense. In so

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<sup>7</sup> Starbird is notified that he may move to set aside the default pursuant to FINRA Rule 9269(c) upon a showing of good cause.

<sup>8</sup> FINRA Sanction Guidelines at 36 (2013), [www.finra.org/industry/sanction-guidelines](http://www.finra.org/industry/sanction-guidelines).

doing, Starbird violated his obligation to adhere to the high standards expected of securities professionals.

### **III. Order**

Sumner James Starbird is barred from associating with any FINRA member firm in any capacity for violating FINRA Rule 2010. The bar shall become effective immediately if this Default Decision becomes FINRA's final disciplinary action.



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Andrew H. Perkins  
Hearing Officer

Copies to:

Sumner James Starbird (via first-class mail)  
Lane A. Thurgood, Esq. (via email and first-class mail)  
Jeffrey D. Pariser, Esq. (via email)

**FINANCIAL INDUSTRY REGULATORY AUTHORITY**

**OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

Sumner J. Starbird (CRD No. 2857200),

Respondent.

DISCIPLINARY PROCEEDING  
No. 2013038544601

**COMPLAINT**

The Department of Enforcement alleges:

**SUMMARY**

1. In September 2013 (the "relevant period"), Sumner J. Starbird ("Starbird") incurred \$600 in overdraft fees in his personal account at Morgan Stanley Smith Barney ("Morgan Stanley" or the "Firm").
2. On September 3 and 6, 2013, Starbird improperly reversed those fees. He did so without authorization, in a deceptive manner, to avoid paying the fees.
3. Starbird thereby violated FINRA Rule 2010.

**RESPONDENT AND JURISDICTION**

4. Starbird first became associated with a FINRA member in February 2001 as a General Securities Representative. Starbird worked at four different member firms

prior to joining Morgan Stanley as a registered representative on June 1, 2009.

Morgan Stanley terminated Starbird's registration on September 11, 2013.

5. Although Starbird 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) this Complaint is filed within two years of the effective date of Morgan Stanley's termination of Starbird's registration, namely, October 9, 2013; and (2) this Complaint charges him with misconduct committed while he was registered or associated with a FINRA member.

CAUSE OF ACTION

IMPROPER REVERSAL OF FEES IN PERSONAL ACCOUNT

(FINRA Rule 2010)

6. The Department realleges and incorporates by reference paragraphs 1–5 above.
7. During the relevant period, Starbird was a Customer Service Manager ("CSM") at Morgan Stanley.
8. During the relevant period, Starbird maintained a personal account at Morgan Stanley which had check writing privileges.
9. During the month of September 2013, Starbird's incurred 24 separate overdraft charges, at \$25 apiece, in his personal account. He incurred these fees by drawing checks against the account, which contained insufficient funds. Thus, Starbird owed Morgan Stanley \$600 in overdraft fees.
10. On September 3, 2013, Starbird incurred nine overdraft charges, totaling \$225, in his personal account.

11. On or about September 3, 2013, Starbird was alerted to the \$225 in overdraft fees through an automated alert generated by Morgan Stanley's computer system.
12. On or about that same date, Starbird used his work computer to reverse those fees in Morgan Stanley's computer system.
13. As a CSM, Starbird had the authority to reverse fees charged by the Firm in customer accounts.
14. Starbird did not have the authority to reverse fees for his personal account, and the Firm's computer system prevented CSMs from authorizing reversals of their own overdraft fees. As a result, Starbird's reversal request was sent to another CSM for approval.
15. The other CSM authorized the reversals without knowing that Starbird had made the reversals for his own account.
16. On or about September 6, 2013, Starbird incurred an additional \$375 in overdraft fees for fifteen bounced checks in his personal account.
17. Rather than reverse the fees from his own work computer, Starbird falsely told a colleague that he was having technical issues with his computer and asked to use her computer.
18. Starbird then reversed the fees from his colleague's computer using her Morgan Stanley login ID without her knowledge.
19. Those fee reversals were sent to Starbird for approval. Starbird then used his work computer to authorize the fee reversals.

20. Thus, Starbird improperly reversed \$600 in overdraft fees owed by him in his personal account through deceptive and dishonest means. Starbird thereby violated FINRA Rule 2010.

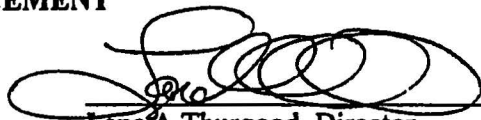
**RELIEF REQUESTED**

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent(s) 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. order that Respondent(s) 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: September 16, 2014



Lane A Thurgood, Director  
Thomas Lawson, Chief Counsel  
FINRA Department of Enforcement  
15200 Omega Drive, Third Floor  
Rockville, MD 20850  
Phone: 301-258-8584 (Thurgood)  
301-258-8581 (Lawson)

Facsimile: 202-721-8326 (Thurgood)  
202-721-8336 (Lawson)

Email: lane.thurgood@finra.org  
Thomas.lawson@finra.org