

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ANGELO BARCELO III  
(CRD No. 4394074),

Respondent.

Disciplinary Proceeding  
No. 2012034046801

Hearing Officer – CC

**DEFAULT DECISION**

May 2, 2014

**Respondent is barred in all capacities for converting firm funds and failing to respond to multiple requests for information and documents, in violation of FINRA Rules 8210 and 2010.**

**Appearances**

Christina Kang, Esq., Lara Thyagarajan, Esq., for the Department of Enforcement, Complainant.

No appearance by or for Angelo Barcelo III, Respondent.

**DECISION**

**I. Introduction**

FINRA's Department of Enforcement ("Enforcement") filed the Complaint on December 20, 2013. Cause One alleges that Angelo Barcelo III ("Barcelo") converted firm funds by creating a fictitious account, fabricating a credit balance in the account, and withdrawing funds that belonged to a member firm from the account, in violation of FINRA Rule 2010. Cause Two of the Complaint alleges that Barcelo failed to respond to numerous FINRA requests for information and documents, in violation of FINRA Rules 8210 and 2010.<sup>1</sup>

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<sup>1</sup> FINRA's Rules are available at [www.finra.org/rules](http://www.finra.org/rules).

Enforcement served Barcelo in accordance with FINRA's Code of Procedure, and Barcelo did not answer or otherwise respond to the Complaint. Consequently, on March 18, 2014, Enforcement filed a Motion for Entry of Default and Imposition of Sanctions ("Default Motion"), the Declaration of Lynn M. Rider, Esq., in support of Default Motion ("Rider Decl."), and three exhibits (hereafter referred to as "EX-1 through EX-3").

Barcelo did not respond to the Default Motion.

For the reasons set forth below, the Hearing Officer finds Barcelo in default, grants Enforcement's Default Motion, and deems the allegations of the attached Complaint admitted, pursuant to FINRA Rules 9215(f) and 9269(a).

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

### **A. Barcelo's Background**

Barcelo entered the securities industry in April 2005 as a general securities representative.<sup>2</sup> Most recently, Barcelo registered with FINRA as a general securities representative and principal and associated with FINRA member firm Wang Investment Associates, Inc., ("Wang") from December 2010 through September 2012.<sup>3</sup> On September 13, 2012, Wang filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") to terminate Barcelo's association.<sup>4</sup> Wang reported on the Form U5 that it permitted Barcelo to resign after an internal investigation disclosed that Barcelo created a credit balance in a fictitious account and withdrew funds from the account.<sup>5</sup> Barcelo is not currently associated with a member firm.<sup>6</sup>

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<sup>2</sup> Rider Decl. ¶ 6; EX-1.

<sup>3</sup> Rider Decl. ¶ 7; EX-1.

<sup>4</sup> Rider Decl. ¶ 8; EX-1.

<sup>5</sup> *Id.*

<sup>6</sup> Rider Decl. ¶ 9; EX-1.

**B. FINRA's Jurisdiction**

FINRA has jurisdiction over this disciplinary proceeding, pursuant to Article V, Section 4(a) of FINRA's By-Laws, because (1) Enforcement filed the Complaint within two years of FINRA's termination of Barcelo's registration on September 13, 2012; and (2) the Complaint alleges that Barcelo converted funds while associated with Wang and that he failed, while subject to FINRA's jurisdiction during the two years following the termination of his registration, to provide information requested by FINRA pursuant to FINRA Rule 8210.<sup>7</sup>

**C. Origin of the Underlying Investigation**

FINRA commenced the investigation that led to the Complaint in this proceeding in response to the Form U5 that Wang filed on September 13, 2012, stating that Barcelo created a fictitious account and withdrew funds purportedly belonging to the fictitious account.<sup>8</sup>

**D. Barcelo's Default**

In December 2013, the Central Registration Depository ("CRD") indicated that Barcelo resided in St. Louis, Missouri (the "CRD Address").<sup>9</sup> In August 2012, Barcelo advised Wang's clearing firm of an address for the fictitious account that matched the CRD Address, but included the addition of "Apartment 201" (hereafter "Apt. 201 Address").<sup>10</sup> On December 20, 2013, Enforcement served Barcelo with Notice of the Complaint and the Complaint by first-class and certified mail at the CRD Address and the

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<sup>7</sup> See Article V, Sec. 4(a), FINRA By-Laws, *available at* [www.finra.org/Rules](http://www.finra.org/Rules) (then follow "FINRA Manual" hyperlink to "Corporate Organization: By-Laws"); Rider Decl. ¶ 10.

<sup>8</sup> Rider Decl. ¶ 11.

<sup>9</sup> Rider Decl. ¶ 14; EX-1.

<sup>10</sup> Rider Decl. ¶ 8.

Apt. 201 Address.<sup>11</sup> On December 28, 2013, the United States Postal Service (“USPS”) returned both certified mailings to Enforcement marked “return to sender.”<sup>12</sup> The USPS did not return the first-class mailings.<sup>13</sup> Barcelo did not respond to the Complaint.<sup>14</sup>

On January 27, 2014, Enforcement served Barcelo with the Second Notice of the Complaint and the Complaint by first-class and certified mail at the CRD Address and the Apt. 201 Address.<sup>15</sup> On February 24, 2014, the USPS returned both certified and first-class mailings to Enforcement marked “return to sender.”<sup>16</sup> The Second Notice of Complaint required Barcelo to file an answer to the Complaint by February 13, 2014.<sup>17</sup> To date, Barcelo has not filed an answer or otherwise responded to the Complaint.<sup>18</sup>

Enforcement represents that it is unaware of any other address for Barcelo.<sup>19</sup> FINRA Rule 9134(b) provides for service on a natural person at the person’s residential address as indicated in CRD. Thus, the Hearing Officer finds that Barcelo received constructive notice of this proceeding.<sup>20</sup> Accordingly, the Hearing Officer finds that Barcelo defaulted by failing to answer or otherwise respond to the Complaint.

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<sup>11</sup> Rider Decl. ¶ 14; EX-2.

<sup>12</sup> Rider Decl. ¶ 16; EX-2.

<sup>13</sup> Rider Decl. ¶ 16.

<sup>14</sup> Rider Decl. ¶ 17.

<sup>15</sup> Rider Decl. ¶ 18; EX-3.

<sup>16</sup> EX-3.

<sup>17</sup> Rider Decl. ¶ 19; EX-3. The Second Notice of the Complaint states that Barcelo must answer by February 13, 2013. EX-3. Because the date on the Second Notice of the Complaint is January 27, 2014, however, it is clear that the 2013 date is a typographical error.

<sup>18</sup> Rider Decl. ¶ 21.

<sup>19</sup> Rider Decl. ¶ 22.

<sup>20</sup> See *Dep’t of Enforcement v. Moore*, Complaint No. 2008015105601, 2012 FINRA Discip. LEXIS 45, at \*21 (FINRA NAC July 26, 2012) (finding constructive notice of a complaint served on respondent at his last known residential address, as indicated in CRD, by first-class and certified mail).

**E. Cause One -- Conversion of Funds**

On August 7, 2012, Barcelo created a fictitious account under the name AM (hereafter the "Fictitious Account").<sup>21</sup> On August 8, 2012, Barcelo sent a change of address request to Wang's clearing firm, asking that it change the address on the Fictitious Account to the Apt. 201 Address (which was Barcelo's CRD Address plus the notation "Apt. 201").<sup>22</sup> Between August 8 and 10, 2012, Barcelo made a series of journal entries in the Fictitious Account to create a fabricated credit balance of \$5,796.<sup>23</sup> On August 10, 2012, Barcelo created a \$5,771 check distribution order funded by the Fictitious Account.<sup>24</sup> Wang issued the \$5,771 check, mailed it to the Apt. 201 Address, and charged the Fictitious Account a \$25 check fee.<sup>25</sup>

Barcelo cashed the \$5,771 check on August 13, 2012.<sup>26</sup> He subsequently used the funds to pay past due rent, child support, and other personal expenses.<sup>27</sup> Because the account that Barcelo created was fictitious, the funds that he converted belonged to the firm.

FINRA's Sanction Guidelines state "conversion generally is 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."<sup>28</sup> The allegations of the Complaint,

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<sup>21</sup> Complaint ("Compl.") ¶ 7.

<sup>22</sup> Compl. ¶ 8.

<sup>23</sup> Compl. ¶ 9.

<sup>24</sup> Compl. ¶ 10.

<sup>25</sup> *Id.*

<sup>26</sup> Compl. ¶ 11.

<sup>27</sup> *Id.*

<sup>28</sup> FINRA Sanction Guidelines at 36, n. 2 (2013), *available at* <http://www.finra.org/web/groups/industry/@ip/@enf/@sg/documents/industry/p011038.pdf>.

which are deemed admitted, are sufficient to prove that Barcelo converted Wang's funds to his own use and benefit. By doing so, Barcelo violated FINRA Rule 2010.<sup>29</sup>

**F. Cause Two -- Failure to Respond to Requests for Information and Documents**

On November 15, 2012, Enforcement sent its first Rule 8210 request for information and documents to Barcelo at the Apt. 201 Address by certified and first-class mail.<sup>30</sup> The USPS returned the certified mailing marked "return to sender," "unclaimed," and "unable to forward."<sup>31</sup> The USPS did not return the first-class mailing.<sup>32</sup> Barcelo did not respond.<sup>33</sup>

On December 10, 2012, Enforcement sent a second Rule 8210 request to Barcelo at the CRD Address and the Apt. 201 Address by certified and first-class mail.<sup>34</sup> The USPS returned the certified mailing that Enforcement sent to Barcelo's CRD Address marked "insufficient address – return to sender."<sup>35</sup> The USPS provided Enforcement with a certified mail delivery receipt for the certified mailing that Enforcement sent to Barcelo's Apt. 201 Address signed by an unidentified individual.<sup>36</sup> The USPS did not return either first-class mailing.<sup>37</sup> Barcelo did not respond.<sup>38</sup>

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<sup>29</sup> See *John Edward Mullins*, Exchange Act Rel. No. 66373, 2012 SEC LEXIS 464, at \*73 (Feb. 10, 2012) ("conversion is generally among the most grave violations committed by a registered representative . . . [and] is extremely serious and patently antithetical to the 'high standards of commercial honor and just and equitable principles of trade' that underpin the self-regulation of the securities markets.") (internal citations omitted).

<sup>30</sup> Compl. ¶ 14.

<sup>31</sup> Compl. ¶ 15.

<sup>32</sup> Compl. ¶ 16.

<sup>33</sup> Compl. ¶ 17.

<sup>34</sup> Compl. ¶ 18.

<sup>35</sup> Compl. ¶ 19.

<sup>36</sup> Compl. ¶ 20.

<sup>37</sup> Compl. ¶ 21.

<sup>38</sup> Compl. ¶ 22.



On September 12, 2013, Enforcement sent a third Rule 8210 request for the same information and documents to Barcelo at the CRD Address by certified and first-class mail.<sup>39</sup> The USPS returned the certified mailing marked “insufficient address – return to sender.”<sup>40</sup> The USPS did not return the first-class mailing.<sup>41</sup> Barcelo did not respond.<sup>42</sup>

The Hearing Officer finds that Enforcement properly served Barcelo with three requests for information and testimony by serving one to the CRD Address, one to the Apt. 21 Address, and one to both addresses. Barcelo failed to respond to any of the three requests. FINRA Rule 8210(d) states that notice under Rule 8210 shall be deemed received if it is sent by mail or other transmission to the CRD Address. Rule 8219(d) further provides that, if FINRA staff has actual knowledge that the CRD Address is inaccurate, then a copy of the notice shall be mailed or transmitted to the CRD Address and any more current address known to staff. Accordingly, the Hearing Officer finds that Barcelo violated FINRA Rules 8210 and 2010.<sup>43</sup>

### **III. Sanctions**

The FINRA Sanction Guidelines for conversion of funds recommend a bar, regardless of the amount converted.<sup>44</sup> Here, there is no evidence of any mitigating factors that would justify a lesser sanction. Furthermore, Barcelo’s refusal to respond to Enforcement’s information requests hindered Enforcement’s ability to investigate Barcelo’s actions and aggravated Barcelo’s misconduct under Cause One. For this

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<sup>39</sup> Compl. ¶ 23.

<sup>40</sup> Compl. ¶ 24.

<sup>41</sup> Compl. ¶ 25.

<sup>42</sup> Compl. ¶ 26.

<sup>43</sup> A violation of FINRA Rule 8210 constitutes conduct inconsistent with just and equitable principles of trade and therefore violates FINRA Rule 2010. See *CMG Inst. Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at \*30 (Jan. 30, 2009).

<sup>44</sup> FINRA Sanction Guidelines at 36.

misconduct, the Hearing Officer bars Barcelo from associating with any member firm in any capacity.

The Sanction Guidelines also recommend a bar where a respondent fails to respond in any manner to a request for information issued pursuant to Procedural Rule 8210.<sup>45</sup> Here, Enforcement sent three requests for information to Barcelo – one to the CRD Address, one to the Apt. 201 Address (which is the CRD Address with an added apartment number), and one to both addresses. Barcelo failed to respond to any of the requests. The Sanction Guidelines recommend consideration of the importance of the information requested from FINRA's perspective.<sup>46</sup> This factor aggravates Barcelo's misconduct. Enforcement sought information related to its investigation of serious misconduct by Barcelo – his opening of a fictitious account and conversion of more than \$5,000 of Wang's funds. Barcelo's answers would have been an important part of Enforcement's investigation.<sup>47</sup> There are no mitigating factors. For Barcelo's misconduct under Cause Two, the Hearing Officer bars Barcelo from associating with any member firm in any capacity.

As discussed above, the Hearing Officer finds that the facts and circumstances of this case warrant bars. Accordingly, the Hearing Officer bars Barcelo from associating with any FINRA member firm in any capacity.

#### **IV. Order**

The Hearing Officer bars Respondent Angelo Barcelo III from associating with any FINRA member firm in any capacity for converting firm funds, in violation of

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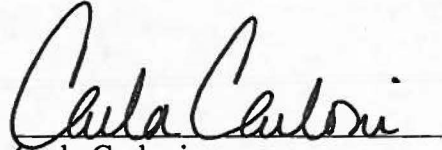
<sup>45</sup> Guidelines at 33.

<sup>46</sup> *Id.*

<sup>47</sup> See *Dep't of Enforcement v. Sahai*, Complaint No. C9B020032, 2004 NASD Discip. LEXIS 14, at \*19-20 (NASD NAC 2004) (finding that an individual who fails to respond to FINRA information requests subverts FINRA's regulatory responsibilities).



FINRA Rule 2010, and for failing to respond to FINRA requests for information, in violation of FINRA Rules 8210 and 2010. The bars will become effective immediately if this decision becomes FINRA's final disciplinary action in this proceeding.

A handwritten signature in cursive script, reading "Carla Carloni", written in black ink.

Carla Carloni  
Hearing Officer

Copies to:     Angelo Barcelo III (*by overnight courier and first-class mail*)  
                   Christina Kang, Esq. (*by first-class and electronic mail*)  
                   Lara Thyagarajan, Esq. (*by electronic mail*)  
                   Lynn M. Rider, Esq. (*by electronic mail*)  
                   Jeffrey Pariser, Esq. (*by electronic mail*)

# **EXHIBIT A**

**FINANCIAL INDUSTRY REGULATORY AUTHORITY**

**OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

Angelo Barcelo III  
(CRD No. 4394074),

Respondent.

DISCIPLINARY PROCEEDING  
No. 2012034046801

**COMPLAINT**

The Department of Enforcement alleges:

**SUMMARY**

1. Angelo Barcelo III ("Barcelo") converted \$5,796.00 from a fictitious account that he created. He also failed to respond to FINRA Staff's requests for information. This conduct violated FINRA Rules 2010 and 8210.

**RESPONDENT AND JURISDICTION**

2. Barcelo first became registered with FINRA as a General Securities Representative on April 5, 2005.
3. From December 13, 2010 through September 13, 2012, Respondent was registered as a General Securities Representative and General Securities Principal through an association with Wang Investment Associates, Inc. (BD No. 17912) ("Wang"), which was his last association with a member firm.

4. On September 13, 2012, Wang filed with FINRA's Central Registration Depository ("CRD") a Uniform Termination Notice for Securities Industry Registration ("Form U5") stating that Barcelo was terminated and his last date of employment was August 17, 2012.
5. Although Barcelo 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 Barcelo's registration with Wang, namely, September 13, 2012, and (2) the Complaint charges Barcelo with misconduct committed while he was registered or associated with a FINRA member and with failing to respond to FINRA requests for information during the two-year period after the date of the Form U5 filed on September 13, 2012 by Wang.

**FIRST CAUSE OF ACTION**  
**Conversion of Funds**  
**(FINRA Rule 2010)**

6. The Department realleges and incorporates by reference paragraphs 1-5 above.
7. On August 7, 2012, Barcelo created a fictitious account under the name of customer AM ("fictitious account").
8. On August 8, 2012, Barcelo sent a request directly to Wang's clearing firm to change the address on the fictitious account to Apartment 201 at Barcelo's residential address per CRD ("Apt. 201 Address").
9. Between August 8, 2012 and August 10, 2012, Barcelo made a series of journal entries in the fictitious account to create a credit balance of \$5,796.00.

10. On or about August 10, 2012, Barcelo created a \$5,771 check disbursement order that was funded by the fictitious account. The \$5,771 check was issued and sent to the Apt. 201 address. A \$25 fee was charged to the fictitious account due to a "Saturday check fee."
11. On August 13, 2012, Barcelo cashed the check distributed from the fictitious account and subsequently used the funds to pay for past due rent, child support and other personal expenses, such as his car loan and cell phone bill.
12. By converting \$5,796.00 from Wang, Barcelo failed to observe high standards of commercial honor and just and equitable principles of trade in violation of FINRA Rule 2010.

**SECOND CAUSE OF ACTION**  
**Failure to Respond to FINRA's Written Requests for Information**  
**(FINRA Rules 8210 and 2010)**

13. The Department realleges and incorporates by reference paragraphs 1-12 above.

*The First Request for Information*

14. On November 15, 2012, FINRA Staff sent a letter to Barcelo to the Apt. 201 Address. The letter requested, pursuant to FINRA Rule 8210, that Barcelo provide information and documents regarding, among other things, the circumstances surrounding the creation of a fictitious account and conversion of funds from Wang. The letter, which requested a response by December 6, 2012, was sent via first class mail and certified mail.
15. The November 15th certified mailing was returned to the Staff stamped, "Return to Sender," "Unclaimed," and "Unable to Forward."
16. The November 15th first class mailing was not returned to the Staff.

17. Barcelo failed to respond to the Staff's request for information.

*The Second Request for Information*

18. On December 10, 2012, FINRA staff sent a letter to Barcelo at his CRD Address and Apt. 201 Address. The letter requested, pursuant to FINRA Rule 8210, that Barcelo provide information regarding, among other things, the circumstances surrounding the creation of a fictitious account and misappropriation of funds from Wang. The letter, which requested a response by January 2, 2013, was sent via first-class and certified mail and warned Barcelo that his failure to respond could subject him to disciplinary action.

19. The December 10th certified mailing to Barcelo's CRD Address was returned to the Staff stamped, "Insufficient Address - Return to Sender."

20. The certified mailing receipt for the December 10<sup>th</sup> mailing to the Apt. 201 Address certified mailing was returned to the Staff bearing a signature.

21. The December 10th first class mailings sent to the Apt. 201 Address and CRD Address were not returned to Staff.

22. Barcelo, again, failed to respond to the Staff's request for information.

*The Third Request for Information*

23. On September 12, 2013, the Staff sent a letter to Barcelo's CRD Address. The letter requested, pursuant to FINRA Rule 8210, that Barcelo provide information regarding, among other things, the circumstances surrounding the creation of a fictitious account and misappropriation of funds from Wang. The letter, which requested a response by September 20, 2013, was sent via first class mail and certified mail.



24. The September 12th certified mailing to Barcelo's CRD Address was returned to the Staff stamped, "Insufficient Address - Return to Sender."
25. The September 12th first class mailing was not returned to the Staff.
26. To date, Barcelo has failed to respond to the Staff's request for information.
27. The Staff is not aware of any other current residential or business addresses for Barcelo.
28. By failing to respond to the Staff's information requests, Barcelo violated FINRA Rules 8210 and 2010.

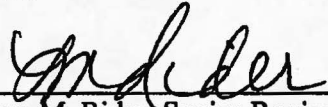
### **RELIEF REQUESTED**

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that 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**

Dated: December 20, 2013

  
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