

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

BARRY LEE ENGEN  
(CRD No. 1613162),

Respondent.

Disciplinary Proceeding  
No. 2012033634301

Hearing Officer—Carla Carloni

**DEFAULT DECISION**

May 21, 2014

**Respondent converted insurance funds and failed to respond to two requests for information and documents. For this misconduct, the Hearing Officer bars Respondent in all capacities.**

**Appearances**

Seema Chawla, Esq., Dean M. Jeske, Esq., Mark A. Koerner, Esq., for the Department of Enforcement, Complainant.

No appearance by or for Barry Lee Engen, Respondent.

**DECISION**

**I. Introduction**

The Department of Enforcement (“Enforcement”) filed the attached Complaint on January 3, 2014. Cause One of the Complaint alleges that Respondent Barry Lee Engen (“Engen”) converted insurance company funds to his own use, in violation of NASD Rule 2110 and FINRA Rule 2010. Cause Two of the Complaint alleges that Engen failed to respond to two 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, including current and retired NASD Rules, are available at [www.finra.org/rules](http://www.finra.org/rules).

Enforcement served Engen in accordance with FINRA's Code of Procedure, and Engen did not answer or otherwise respond to the Complaint. Consequently, on March 28, 2014, Enforcement filed a Motion for Entry of Default Decision ("Default Motion"), the Declaration of Seema Chawla, Esq., in Support of the Default Motion ("Chawla Decl."), and six exhibits (hereafter referred to as "CX-1" through "CX-6"). Engen did not respond to the Default Motion.

For the reasons set forth below, the Hearing Officer finds Engen 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. Engen's Background**

Engen entered the securities industry in December 1986 as a general securities representative.<sup>2</sup> Most recently, Engen was registered as a general securities representative and associated with FINRA member firm Feltl & Company ("Feltl") from April 30, 2007, through August 10, 2012.<sup>3</sup> On August 10, 2012, Feltl filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") to terminate Engen's association.<sup>4</sup>

### **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 Engen's registration on August 10, 2012; and (2) the Complaint alleges that Engen converted insurance company funds while associated

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<sup>2</sup> CX-1.

<sup>3</sup> *Id.*

<sup>4</sup> CX-2.

with member firm Feltl 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>5</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 Feltl filed on August 10, 2012, stating that it had terminated Engen's employment because of conduct that resulted in a \$320,000 civil judgment against Engen.<sup>6</sup>

**D. Engen's Default**

On January 3, 2014, Enforcement served Engen with a Notice of Complaint and the Complaint by certified mail at the most current residential address listed for Engen in the Central Registration Depository (hereafter the "CRD Address").<sup>7</sup> The United States Postal Service ("USPS") website indicated that it processed the certified mailing on January 9, 2014.<sup>8</sup> The USPS did not provide Enforcement with a certified mail delivery receipt.<sup>9</sup> Enforcement also mailed a copy of the Complaint and Notice of Complaint to the CRD Address by first-class mail.<sup>10</sup> Engen did not respond to the Complaint.<sup>11</sup>

On February 3, 2014, Enforcement served Engen with a Second Notice of Complaint and the Complaint by certified mail at the CRD Address.<sup>12</sup> On February 6,

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<sup>5</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").

<sup>6</sup> Chawla Decl. ¶ 14.

<sup>7</sup> Chawla Decl. ¶¶ 7, 8.

<sup>8</sup> Chawla Decl. ¶ 8.

<sup>9</sup> Chawla Decl. ¶¶ 7, 8.

<sup>10</sup> Chawla Decl. ¶ 7.

<sup>11</sup> Chawla Decl. ¶ 9.

<sup>12</sup> Chawla Decl. ¶¶ 10, 11.

2014, the USPS provided Enforcement with a certified mail delivery receipt that was unsigned.<sup>13</sup> Enforcement also mailed a copy of the Complaint and Second Notice of Complaint to the CRD Address by first-class mail.<sup>14</sup> The USPS did not return the first-class mailing.<sup>15</sup> Thereafter, Enforcement conducted a computer-based search to determine if it could locate a more current address for Engen.<sup>16</sup> Enforcement was unable to locate a better address.<sup>17</sup> The Second Notice of Complaint required Engen to file an answer to the Complaint by February 20, 2014.<sup>18</sup> To date, Engen has not filed an answer or otherwise responded to the Complaint.<sup>19</sup>

FINRA Rule 9134(b) provides for service on a natural person at the person's residential address as indicated in the Central Registration Depository. The Hearing Officer finds that Engen received constructive notice of this proceeding.<sup>20</sup> Accordingly, the Hearing Officer finds that Engen defaulted by failing to answer or otherwise respond to the Complaint.

#### **E. Cause One—Conversion**

On October 6, 1986, Kansas City Life Insurance Company ("Kansas City Life") issued a single-premium immediate annuity ("SPIA") to Engen's father, LEE.<sup>21</sup> Under the terms of the SPIA, LEE paid a lump sum of \$332,396 to Kansas City Life in

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<sup>13</sup> Chawla Decl. ¶ 11, CX-4.

<sup>14</sup> Chawla Decl. ¶ 10.

<sup>15</sup> *Id.*

<sup>16</sup> Chawla Decl. ¶ 13.

<sup>17</sup> *Id.*

<sup>18</sup> Chawla Decl. ¶ 12.

<sup>19</sup> *Id.*

<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).

<sup>21</sup> Complaint ("Compl.") ¶ 5. A SPIA is an annuity product for which an individual annuitant makes a single, lump-sum payment in exchange for guaranteed monthly payments for a stated period. *Id.*

exchange for monthly payments of \$3,183.40 for the remainder of his life or ten years, whichever was longer.<sup>22</sup> If LEE died within 10 years of the issuance of the SPIA, the remaining balance would be paid to LEE's identified beneficiaries.<sup>23</sup> If LEE died after the ten-year period, Kansas City Life would not pay LEE's beneficiaries after his death.<sup>24</sup>

Kansas City Life paid LEE monthly by depositing checks directly into a checking account that LEE held with his wife, EME, at the Home Federal Savings and Loan Association of Sioux Falls, South Dakota n/k/a Home Federal Bank.<sup>25</sup> EME died on February 23, 2003.<sup>26</sup> Three months later, on May 15, 2003, LEE added Engen to the Home Federal Bank account.<sup>27</sup>

LEE died on September 21, 2005, nearly 19 years after the issuance of the SPIA.<sup>28</sup> Kansas City Life, therefore, would not have been contractually bound to pay LEE's beneficiaries after his death. Engen failed to notify Kansas City Life of LEE's death, and Kansas City Life continued to make monthly payments into the Home Federal Bank checking account that LEE and Engen jointly held.<sup>29</sup> In December 2011, Kansas City Life discovered, through an internet search, that LEE had died.<sup>30</sup> Between September 21, 2005, when LEE actually died, and December 2011, when Kansas City Life learned of LEE's death, Kansas City Life deposited \$238,755 (or 75 monthly

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<sup>22</sup> Compl. ¶ 6.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> Compl. ¶ 7.

<sup>26</sup> Compl. ¶ 8.

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

<sup>28</sup> Compl. ¶ 9.

<sup>29</sup> Compl. ¶¶ 9, 10.

<sup>30</sup> Compl. ¶ 9.

payments of \$3,183.40) into the Home Federal Bank checking account that Engen held with his father.<sup>31</sup>

Under the terms of the SPIA, neither Engen nor his father's estate were entitled to receive the funds that Kansas City Life deposited into the Home Federal Bank checking account after LEE died. This notwithstanding, Engen wrote numerous checks drawn from the account during this period of overpayment. Engen wrote several checks to cover funeral and related expenses and an income tax bill for his father.<sup>32</sup> On October 22, 2007, Engen wrote a check payable to the LEE Trust for \$24,480.<sup>33</sup> Between July 10, 2009, and November 8, 2011, Engen wrote 39 checks payable to himself totaling \$199,720.<sup>34</sup> Engen has not repaid Kansas City Life.<sup>35</sup>

The Hearing Officer concludes that Engen converted Kansas City Life's funds. "Conversion is the wrongful exercise of dominion over the personal property of another."<sup>36</sup> Engen allowed Kansas City Life to make monthly deposits that should have ended when LEE died and to which Engen was not entitled. Engen allowed the deposits to continue into his account and used the funds for his own purposes.

The allegations of the Complaint, which are deemed admitted, are sufficient to prove that Engen converted Kansas City Life's funds to his own use and benefit, in violation of NASD Rule 2110 and FINRA Rule 2010.

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<sup>31</sup> *Id.*

<sup>32</sup> Compl. ¶ 10.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> Compl. ¶ 11.

<sup>36</sup> *Dep't of Enforcement v. Paratore*, Complaint No. 2005002570601, 2008 FINRA Discip. LEXIS 1, at \*10 (FINRA NAC Mar. 7, 2008).



## **F. Cause Two—Failure to Respond**

On November 20, 2012, Enforcement issued a written request pursuant to FINRA Rule 8210 to Engen for information and documents regarding Engen's suspected conversion of funds from Kansas City Life.<sup>37</sup> Enforcement sent the Rule 8210 request letter to Engen at his CRD Address by certified and first-class mail.<sup>38</sup> The USPS website indicated that it processed the certified mailing on November 23, 2012.<sup>39</sup> The USPS did not return the certified or first-class mailing, and did not provide Enforcement with a certified mail delivery receipt.<sup>40</sup> Engen did not respond.<sup>41</sup>

On December 10, 2012, Enforcement sent a second Rule 8210 request for the same information and documents to Engen at the CRD Address by certified and first-class mail.<sup>42</sup> On January 7, 2013, the USPS returned the certified mailing to Enforcement marked "unclaimed."<sup>43</sup> The USPS did not return the first-class mailing.<sup>44</sup> Engen did not respond.<sup>45</sup>

The Hearing Officer finds that Enforcement properly served Engen with two requests for information and documents at Engen's CRD Address.<sup>46</sup> Engen failed to

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<sup>37</sup> Chawla Decl. ¶ 26; CX-5. On February 17, 2012, Kansas City Life filed a civil action against Engen to recover its overpayment of benefits under the SPIA. Compl. ¶ 14. Engen failed to file a responsive pleading and, on April 25, 2012, Kansas City Life obtained a default judgment against Engen. *Id.* Thereafter, on July 5, 2012, Kansas City Life served a garnishment summons on Feltl. Compl. ¶ 15.

<sup>38</sup> Chawla Decl. ¶ 26.

<sup>39</sup> Chawla Decl. ¶ 27.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> Chawla Decl. ¶ 28; CX-6.

<sup>43</sup> Chawla Decl. ¶ 29; CX-5.

<sup>44</sup> Chawla Decl. ¶ 29.

<sup>45</sup> *Id.*

<sup>46</sup> 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 8210(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. Enforcement conducted a computer-based

respond to both requests. Accordingly, the Hearing Officer concludes that Engen violated FINRA Rules 8210 and 2010.<sup>47</sup>

### III. Sanctions

For the misconduct at issue in each of the two Causes of the Complaint, the Hearing Officer bars Engen from associating with any member firm in any capacity.

The FINRA Sanction Guidelines for conversion of funds recommend a bar, regardless of the amount converted.<sup>48</sup> Here, there is no evidence of any mitigating factors that would justify a lesser sanction. Furthermore, Engen's conversion of a significant amount of money, refusal to cooperate with Enforcement's investigation, and receipt of significant ill-gotten gains aggravate his misconduct.<sup>49</sup> Thus, the Hearing Officer bars Engen for the misconduct alleged in Cause One of the Complaint.

The Sanction Guidelines also recommend a bar where a respondent fails to respond in any manner to a request for information issued pursuant to FINRA Rule 8210.<sup>50</sup> Here, Enforcement sent two requests for information to Engen's CRD Address. Engen failed to respond to either request. The Sanction Guidelines recommend consideration of the importance of the information requested from FINRA's perspective.<sup>51</sup> Engen's failure to respond impeded Enforcement's investigation of Engen

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search in an attempt to locate a more current address for Engen other than the CRD Address and reports that it was unable to locate another address. Chawla Decl. ¶ 32.

<sup>47</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>48</sup> FINRA Sanction Guidelines at 36 (2013), available at <http://www.finra.org/web/groups/industry/@ip/@enf/@sg/documents/industry/p011038.pdf>. 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." *Id.* at 36, n.2.

<sup>49</sup> Sanction Guidelines at 6-7 (Principal Considerations Nos. 17, 18).

<sup>50</sup> Guidelines at 33.

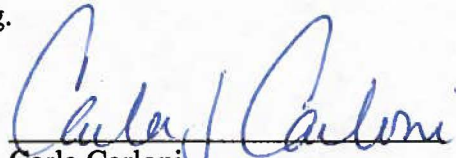
<sup>51</sup> *Id.*



and prevented FINRA from completing its regulatory responsibility to investigate potential rule violations.<sup>52</sup> This aggravates Engen's misconduct, and there are no mitigating factors. The Hearing Officer therefore also bars Engen for the misconduct alleged in Cause Two of the Complaint.

#### **IV. Order**

For violating NASD Rule 2110 and FINRA Rule 2010 by converting insurance company funds, as alleged in Cause One, Respondent Barry Lee Engen is barred in all capacities. For violating FINRA Rules 8210 and 2010 by failing to respond to FINRA requests for information and documents, as alleged in Cause Two, Engen is barred in all capacities. The bars will become effective immediately if this decision becomes FINRA's final disciplinary action in this proceeding.

  
Carla Carloni  
Hearing Officer

Copies to: Barry Lee Engen (*by overnight courier and first-class mail*)  
Seema Chawla, Esq. (*by first-class and electronic mail*)  
Dean M. Jeske, Esq. (*by electronic mail*)  
Mark A. Koerner, Esq. (*by electronic mail*)  
Jeffrey D. Parisier, Esq. (*by electronic mail*)

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<sup>52</sup> Chawla Decl. ¶ 30.

# **EXHIBIT A**

**FINANCIAL INDUSTRY REGULATORY AUTHORITY**

**OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

Barry Lee Engen (CRD No. 1613162),

Respondent.

DISCIPLINARY PROCEEDING  
No. 2012033634301

**COMPLAINT**

The Department of Enforcement alleges:

**SUMMARY**

1. From October 2005 through December 2011, Barry Lee Engen violated FINRA Rule 2010, and its predecessor, NASD Rule 2110, when he converted over \$200,000 in annuity proceeds paid in error to his deceased father by Kansas City Life Insurance Company ("Kansas City Life"). Additionally, Engen violated FINRA Rules 8210 and 2010 when he failed to respond to Staff's requests for information pursuant to FINRA Rule 8210.

**RESPONDENT AND JURISDICTION**

2. Engen entered the securities industry in December 1986. From April 2007 to August 2012, Engen was registered with Feltl & Company ("Feltl" or the "Firm") as a general securities representative. Feltl terminated Engen on August 10, 2012. He is not currently registered with a FINRA-registered firm.

3. Although Engen is no longer registered with a FINRA 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 after the effective date of termination of Engen's registration with Feltl, namely August 10, 2012; and (2) the Complaint charges Engen with misconduct committed while he was registered with a FINRA firm, and with failing to respond to FINRA requests for information during the two-year period after he ceased to be registered with a FINRA member.

#### FIRST CAUSE OF ACTION

#### (Conversion – NASD Rule 2110 and FINRA Rule 2010)

4. The Department realleges and incorporates by reference paragraphs 1-3 above.
5. On October 6, 1986, Kansas City Life issued a single-premium immediate annuity (the "SPIA") to Engen's father, LEE. A SPIA is an annuity product for which an individual (the applicant or annuitant) makes a single, lump-sum payment in exchange for guaranteed monthly payments for a stated period of time, including the remainder of the individual's life.
6. In accordance with the terms of the SPIA, LEE made a single up-front payment of \$332,396.48 to Kansas City Life in exchange for monthly payments of \$3,183.40 for the remainder of his life or ten years, whichever period was longer. If LEE died within 10 years of the issuance of the SPIA, the remaining balance of the up-front payment would be made to his designated beneficiaries. If, however, LEE died on or after October 6, 1996 (ten years after the SPIA was issued), the payments would continue until his death, but no payments would be made to his beneficiaries after his death.

7. Kansas City Life agreed to deposit the monthly payments directly into the checking account of LEE and his wife, EME, at the Home Federal Savings and Loan Association of Sioux Falls, South Dakota n/k/a Home Federal Bank.
8. EME died on February 23, 2003. Approximately three months later, on May 15, 2003, LEE added his son, Engen, to the Home Federal Bank checking account. Kansas City Life continued to deposit monthly annuity payments into that checking account.
9. LEE passed away on September 21, 2005, at the age of 84. Kansas City Life was not notified of LEE's death and continued to make monthly deposits into the Home Federal Bank checking account. The payments stopped in December 2011 when Kansas City Life discovered that LEE had died through an internet search. Kansas City Life deposited \$238,755.00 (i.e., 75 payments of \$3,183.40 each) more than required by the terms of the SPIA into LEE and Engen's checking account.
10. Engen did not inform Kansas City Life at any time between September 2005 and December 2011 that LEE had died. Engen had no legal right to the funds deposited in the Home Federal Bank checking account, yet he wrote several checks following LEE's death to pay for funeral and related expenses, as well as income taxes attributable to LEE. On October 22, 2007, Engen wrote a check to the LEE Trust in the amount of \$24,480.00. From July 10, 2008 to November 8, 2011, Engen wrote 39 checks payable to "Barry L. Engen," totaling \$199,720.00.
11. To date, Engen has not repaid Kansas City Life for the funds he converted.
12. By converting the Kansas City Life annuity payments made to his father in error, Engen engaged in activity inconsistent with high standards of commercial honor, and

just and equitable principles of trade, in violation of NASD Rule 2110 and FINRA Rule 2010.

**SECOND CAUSE OF ACTION**

**(Failure to Provide Information and Documents – FINRA Rules 8210 and 2010)**

13. The Department realleges and incorporates by reference paragraphs 1-12 above.
14. On or about February 17, 2012, Kansas City Life filed a civil action against Engen to recover its overpayment of benefits under the SPIA. Engen failed to file an answer or other responsive pleading and, consequently, Kansas City Life obtained a default judgment against Engen on April 25, 2012.
15. On or about July 5, 2012, Kansas City Life filed a Garnishment Summons, which was then served on Feltl. The Firm investigated Engen's conduct and decided to terminate him.
16. Based upon a Form U5 filed by Feltl in which it disclosed that it had terminated Engen because he engaged in inappropriate conduct, FINRA initiated an examination regarding Engen's possible violations of securities laws and FINRA and NASD Rules in connection with the converted SPIA payments made following LEE's death.
17. On or about November 20, 2012, pursuant to FINRA Rule 8210, FINRA issued a written request to Engen to provide information and documents relating to its investigation of Engen's conversion of annuity proceeds ("First Rule 8210 Request"), via first class and certified mail, return receipt requested, to his residential address of record in the FINRA Central Registration Directory ("CRD Address"). The First Rule 8210 Request required a response by December 5, 2012. Neither the certified



mailing nor the first class mailing was returned. To date, FINRA has not received a response from Engen to the First Rule 8210 Request.

18. On or about December 10, 2012, pursuant to FINRA Rule 8210, FINRA issued a second written request to Engen to provide information and documents relating to its investigation of Engen's conversion of annuity proceeds, via first class and certified mail, return receipt requested, to his CRD Address ("Second Rule 8210 Request"). The Second Rule 8210 Request required a response by December 24, 2012. The certified mailing was returned as unclaimed; the first class mailing was not returned. To date, FINRA has not received a response from Engen to the Second Rule 8210 Request.

19. By failing to provide information and documents requested pursuant to FINRA Rule 8210, Engen violated both FINRA Rule 8210, as well as FINRA Rule 2010.

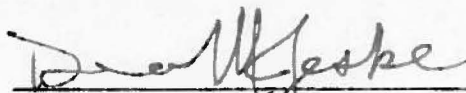
#### **RELIEF REQUESTED**

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent Engen 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 Engen 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: January 3, 2014



Seema Chawla, Principal Regional Counsel  
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**FINANCIAL INDUSTRY REGULATORY AUTHORITY**

**OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

Barry Lee Engen (CRD No. 1613162),

Respondent.

Disciplinary Proceeding  
No. 2012033634301

Hearing Officer

CERTIFICATE OF SERVICE

Date: January 3, 2014

I hereby certify that on this 3rd day of January, 2014, I caused an original and three copies of the foregoing Complaint and Notice of Complaint to be sent by First Class mail to Courtney Reynolds, Case Administrator Manager, FINRA Office of Hearing Officers, 1735 K Street, NW, 2nd Floor, Washington, DC 20006-1506 and a PDF copy by electronic mail to [OHOfcasefilings@finra.org](mailto:OHOfcasefilings@finra.org). A copy of the Complaint and Notice of Complaint to be sent by certified mail, return receipt requested and first class mail to Barry Lee Engen, 603 Summit Avenue, St. Paul, MN 55102.



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