

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DARINN DWIGHT KIM
(CRD No. 4029402),

Respondent.

Disciplinary Proceeding
No. 2012033956001

Hearing Officer – AHP

DEFAULT DECISION

February 4, 2014

For conversion of funds from a customer of his member firm, misuse of customer funds, and forgery, in violation of FINRA Rule 2010, Respondent is barred from associating with any FINRA member firm in any capacity. Respondent is also barred for failing to respond to requests for information and documents, in violation of FINRA Rules 8210 and 2010.

Appearances

Kristy M. Tillman, Esq., and Carolyn Craig, Esq, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

The Department of Enforcement (“Enforcement”) filed the four-cause Complaint in this disciplinary proceeding on October 25, 2013. The First Cause of Action charges Respondent Darinn Dwight Kim with converting funds from HJC, a customer of his firm, in violation of FINRA Rule 2010. The Second Cause of Action charges Respondent with misuse of a customer’s funds in violation of FINRA Rule 2010, when he attempted to convert additional funds from customer HJC, but was thwarted when the customer stopped payment on a check that Respondent had ordered to be drawn on HJC’s securities account at another firm. The Third Cause of Action charges Respondent with forging HJC’s signature on the check that Respondent used to convert funds from the customer, as charged in the First Cause of Action. The Fourth

Cause of Action charges Respondent with failure to respond to FINRA's requests for documents and information, in violation of FINRA Rules 8210 and 2010. Respondent did not file an Answer or otherwise respond to the Complaint.

On January 16, 2014, Enforcement filed a Motion for Entry of Default Decision, to which Respondent did not respond. Accordingly, pursuant to FINRA Rules 9215(f) and 9269, Enforcement's motion is granted. The Hearing Officer finds that Respondent has defaulted. The allegations of the Complaint are deemed admitted.¹

I. Respondent and Jurisdiction

Respondent entered the securities industry in 1999, and was registered with FINRA member firms from 2000 until 2012. Respondent was registered with FINRA member firm LPL Financial LLC from February 2004 until October 29, 2012. Respondent is no longer registered with a member firm. Decl. ¶ 6; CX-1.

Although Respondent is not registered with a FINRA member 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 the Complaint was filed within two years after the termination of his registration with a member firm, it charges him with misconduct while he was registered with a member firm, and with failure to respond to requests for documents and information within two years after the termination of his FINRA registration.

II. Respondent's Default

On October 25, 2013, Enforcement served a Notice of Complaint and Complaint on Respondent by certified mail at his residential address, as listed in the Central Registration

¹ The factual determinations in this decision are based on the allegations of the attached Complaint and the materials Enforcement filed with its default motion, which included the Declaration of Kristy Tillman in Support of the Department of Enforcement's Motion for Entry of Default Judgment, and supporting documentation that was submitted with counsel's Declaration. Counsel's Declaration is cited herein as "Decl. ¶ ____." The supporting documentation is cited as "CX-____."

Depository ("CRD"), and at an alternate address found through a LEXIS search. Decl. ¶ 8; CX-1, CX-2. The Postal Service was unable to deliver the mailings, and returned both to FINRA. Decl. ¶ 9; CX-3, CX-4. The Notice informed Respondent that his Answer was due by November 22, 2013. Respondent did not file an Answer by that date. Decl. ¶ 10.

On November 25, 2013, Enforcement served a Second Notice of Complaint and Complaint on Respondent by certified mail at his CRD address and the alternate address. The Postal Service returned the mailing to the CRD address as undeliverable. The Postal Service left the mailing to the alternative address at that address. Decl. ¶ 11; CX-5, CX-6. The Second Notice informed Respondent that he was required to file an Answer by December 12, 2013. Respondent has not filed an Answer or otherwise responded to the Complaint. Decl. ¶ 12.

Despite being properly served with the Complaint, Notice of Complaint, and Second Notice of Complaint, Respondent has not filed an Answer or otherwise responded to the Complaint.² By failing to file an Answer, he defaulted.

III. First Cause of Action: Respondent Violated FINRA Rule 2010 by Converting Customer Funds

In January 2011, Respondent became the registered representative for customer HJC's account at LPL. Through this relationship, Respondent gained access to HJC's other personal securities and non-securities accounts. Complaint ¶¶ 1,7. On or about June 21, 2012, Respondent transferred \$100,000 from HJC's personal, non-securities account at J.P. Morgan Chase Bank to a personal, non-securities account that HJC maintained at Wells Fargo Bank. HJC was unaware of this transfer and did not authorize it. HJC was out of the country when the transfer occurred. Complaint ¶ 8.

² On September 5, 2012, LPL filed a Form 4530(a) and a Form U4 Amendment, both reporting that a firm customer complained that Respondent had committed forgery and engaged in unauthorized transactions in the customer's account. LPL filed a Form U5 for Respondent on November 28, 2012, reporting that Respondent's employment had been terminated for the same conduct. Decl. ¶ 5; CX-1.

On or about June 26, 2012, while HJC was still out of the country, Respondent wrote a check, payable to himself, from HJC's Wells Fargo bank account for \$90,000. Respondent forged HJC's signature on the check. HJC did not know about the check, and did not authorize Respondent to sign her name to the check. Complaint ¶ 9. On or about June 29, 2012, Respondent cashed the check and spent the \$90,000 for his personal use. Complaint ¶ 11.

Conversion 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."³ Conversion of funds, even where the funds do not come from a securities account, violates FINRA Rule 2010.⁴

The allegations of the Complaint, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent violated FINRA Rule 2010 by converting funds from customer HJC.

IV. Second Cause of Action: Respondent Violated FINRA Rule 2010 by Misusing Customer Funds

On June 28, 2012, Respondent electronically transferred \$100,000 from HJC's T.D. Ameritrade securities account to HJC's Well Fargo bank account. HJC did not authorize the transfer. Complaint ¶ 13. On June 28, 2012, Respondent sold \$185,885 in securities from HJC's T.D. Ameritrade account. HJC did not authorize the sale. Complaint ¶ 14. On June 28, 2012, Respondent ordered a \$190,000 check to be drawn on HJC's T.D. Ameritrade securities account, payable to HJC. Respondent instructed T.D. Ameritrade to deliver the check to Respondent's home address. Complaint ¶ 15.

³ *FINRA Sanction Guidelines* at 38 n.2 (2007).

⁴ *John M. Saad*, Exchange Act Rel. No. 62178, 2010 SEC LEXIS 1761 (May 26, 2010), *remanded for reconsideration of sanctions*, 718 F.3d 904 (D.C. Cir. 2013) (misappropriation of member firm's funds by submitting false expense reports); *Dist. Bus. Conduct Comm. v. Vail*, No. C06920051, 1994 NASD Discip. LEXIS 192, at *13 (N.B.C.C. Sept. 22, 1994), *aff'd*, 52 S.E.C. 339, 342 (1995), *aff'd*, 101 F.3d 37 (5th Cir. 1996) (barred for conversion of funds of private political club); *Daniel D. Manoff*, Exchange Act Rel. No. 46708, 2002 SEC LEXIS 2684 (Oct. 23, 2002) (barred for unauthorized use of co-worker's credit card numbers).

HJC was unaware of the transactions described in the previous paragraph, and did not authorize any of the transactions. HJC discovered these transactions upon her return from South Korea in July 2012, and was able to stop payment on the \$190,000 check before it was cashed. Complaint ¶ 16.

A Respondent who misuses customer funds by using the funds for a purpose that was not directed by the customer violates FINRA Rule 2010.⁵ By transferring HJC's funds from HJC's T.D. Ameritrade securities account to her Wells Fargo account without her authorization, selling securities in the amount of \$185,885 in HJC's T.D. Ameritrade securities account without HJC's authorization, and ordering a \$190,000 check drawn on HJC's T.D. Ameritrade securities account without her authorization, Respondent misused HJC's funds in violation of FINRA Rule 2010.

V. Third Cause of Action: Respondent Violated FINRA Rule 2010 by Forging a Customer's Signature on a Check

FINRA Rule 2010 requires that members and associated persons observe "high standards of commercial honor and just and equitable principles of trade." Forgery is inconsistent with just and equitable principles of trade and violates the high standards of commercial honor to which FINRA holds registered individuals.⁶

As found in the discussion of the First Cause of Action, Respondent forged customer HJC's name on the \$90,000 Wells Fargo Bank check without HJC's knowledge or consent. Complaint ¶ 19. The allegations of the Complaint, which are deemed admitted, are sufficient to establish that Respondent violated FINRA Rule 2010 by forging HJC's signature on the \$90,000 Wells Fargo check.

⁵ *Dep't of Enforcement v. West*, No. 2009018076101, 2012 FINRA Discip. LEXIS 58, at *15-16 (N.A.C. July 26, 2012).

⁶ *See Dep't of Enforcement v. Cooper*, No. C0405001, 2007 NASD Discip. LEXIS 15, at *9 (N.A.C. May 7, 2007).

VI. Fourth Cause of Action: Respondent Violated FINRA Rules 8210 and 2010 by Failing to Respond to Requests for Information and Documents

As discussed below, pursuant to FINRA Rule 8210, Enforcement issued three requests for information and documents to Respondent as part of its investigation of Respondent's conversion of HJC's funds and unauthorized transactions while he was registered with LPL. Respondent did not respond to any of the requests. Complaint ¶¶ 21, 25.

On January 17, 2013, Enforcement sent a request for documents and information to Respondent at his CRD address, pursuant to FINRA Rule 8210. Enforcement sent the request by first-class and certified mail. The Postal Service returned the certified mailing to Enforcement as undeliverable; the first-class mailing was not returned. Respondent was required to respond by January 31, 2013. Respondent failed to respond to this request. Complaint ¶ 22.

On February 17, 2013, Enforcement sent a second request for documents and information to Respondent, pursuant to FINRA Rule 8210. Enforcement sent the request to Respondent's CRD address by first-class and certified mail. The Postal Service returned the certified mailing as unclaimed. The first-class mailing was not returned. The Rule 8210 request required Respondent to respond not later than February 21, 2013. Respondent did not respond to the second Rule 8210 request. Complaint ¶ 23.

On April 4, 2013, Enforcement sent a third request for documents and information to Respondent at his CRD address, and at an alternate address identified in a LEXIS search. The mailings were sent by first-class and certified mail. The Postal Service returned both certified mailings to Enforcement, marked as undeliverable. The Postal Service also returned the first-class mailing to Respondent's CRD address as undeliverable, but did not return the first-class mailing to the alternate address. Complaint ¶ 24. Respondent failed to respond to the request for documents and information. Complaint ¶ 25.

FINRA Rule 8210 requires persons subject to FINRA's jurisdiction to provide information requested by FINRA orally or in writing in response to requests for information. "[C]ompliance with Rule 8210 [is] essential to enable NASD to execute its self-regulatory functions."⁷ A violation of FINRA Rule 8210 is also a violation of FINRA Rule 2010.⁸

The allegations of the Complaint, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent failed to provide information and documents despite being properly served with Rule 8210 requests, in violation of FINRA Rules 8210 and 2010.

VII. Sanctions

Because Respondent's conversion, misuse of funds, and forgery were all part of a course of conduct with the purpose of converting customer HJC's funds, a unitary sanction is appropriate for the first three causes of action. For conversion, FINRA's Sanction Guidelines ("Guidelines") recommend a bar regardless of the amount converted.⁹ For improper use of funds, the Guidelines recommend consideration of a bar, unless the improper use resulted from the respondent's misunderstanding of the customer's intended use, or other mitigation exists.¹⁰ For forgery, the Guidelines also recommend a bar in egregious cases. The principal considerations are the nature of the document forged, and whether Respondent had a good-faith, but mistaken, belief that he had authority to sign the documents.

⁷ *Dep't of Enforcement v. Hedge Fund Capital Partners, LLC*, No. 2006004122402, 2012 FINRA Discip. LEXIS 42, at *63-64 (N.A.C. May 1, 2012), quoting *PAZ Sec, Inc.*, Exchange Act Rel. No. 57656, 2008 SEC LEXIS 820, at *12 (Apr. 11, 2008), *aff'd*, 566 F.3d 1172 (D.C. Cir. 2009).

⁸ *Dep't of Enforcement v. Hoeper*, No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (N.A.C. Nov. 2, 2001) (violation of NASD Procedural Rule 8210 was a violation of NASD Conduct Rule 2110).

⁹ FINRA Sanction Guidelines 36 (2011).

¹⁰ *Id.*

Here, a bar is appropriate for all three violations. As charged in the First Cause of Action, Respondent converted the customer's funds, for which a bar is appropriate. Respondent's misuse of his customer's funds, as charged in the Second Cause of Action, was a nearly-successful attempt at conversion, foiled when the customer stopped payment on a check Respondent had ordered from HJC's T.D. Ameritrade account in furtherance of his scheme. Respondent ordered the check to complete his successful scheme to convert her funds, and there is no evidence that he believed he had her authority to receive or cash the check. There are no mitigating factors. Respondent is barred for converting a customer's funds, misusing her funds, and forging her name, all in violation of FINRA Rule 2010.

For a complete failure to respond to a request for information pursuant to FINRA Rule 8210, a bar is standard.¹¹ Here, Respondent failed to supply documents and information. There are no mitigating factors. Respondent is barred for violating Rules 8210 and 2010.

VIII. Conclusion

Respondent Darinn Dwight Kim is barred for conversion of funds, misuse of funds, and forgery, in violation of FINRA Rule 2010. Respondent also is barred for failing to provide documents and information, in violation of FINRA Rules 8210 and 2010. The bars will be effective immediately if this decision becomes FINRA's final disciplinary action in this proceeding.



Andrew H. Perkins
Hearing Officer

Copies to: Darinn Dwight Kim (*via overnight courier and first-class mail*)
Kristy M. Tillman, Esq. (*via electronic and first-class mail*)
Carolyn Craig, Esq. (*via electronic mail*)
Jeffrey D. Pariser, Esq. (*via electronic mail*)

¹¹ FINRA Sanction Guidelines at 33.

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

Department of Enforcement,

Complainant,

v.

Darinn Dwight Kim (CRD No. 4029402),

Respondent.

DISCIPLINARY PROCEEDING
No. 2012033956001

COMPLAINT

The Department of Enforcement (“Enforcement”) alleges:

SUMMARY

1. In June 2012, while registered with FINRA member firm LPL Financial LLC (“LPL” or the “Firm”), Respondent, Darinn Dwight Kim (“Kim”), converted approximately \$90,000 from Firm customer, HJC for his own personal use, in violation of FINRA Rule 2010. Kim converted funds belonging to customer HJC by knowingly: (i) making an unauthorized transfer of funds from HJC’s personal, non-securities bank account at J.P. Morgan Chase to another personal, non-securities bank account that HJC owned at Wells Fargo Bank; (ii) forging a check payable to himself to improperly remove funds from HJC’s Wells Fargo personal bank account; and (iii) cashing the check. HJC was traveling in South Korea at the time and did not know about, or authorize, these transactions.
2. Kim also made an unauthorized transfer from HJC’s T.D. Ameritrade securities account to HJC’s Wells Fargo Bank account. In addition, Kim made an unauthorized sale of securities in HJC’s T.D. Ameritrade account, and ordered a \$190,000 check payable to HJC to be delivered to Kim’s home address. HJC did not know about any of these transactions and did not

authorize them. HJC discovered these transactions when she returned from South Korea in July 2012 and was able to stop payment on the \$190,000 check at that time.

3. Lastly, Kim failed to respond to Enforcement's Rule 8210 requests for information and documents, in violation of FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

4. Kim entered the securities industry in September 1999. He obtained his Series 66 license in October 1999, and his Series 7 license in January 2000. Kim was most recently registered with LPL Financial LLC from February 2004 until his termination on October 29, 2012. Kim is not currently registered or associated with a FINRA member firm.

5. Although Kim is no longer registered or associated with a FINRA member 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 Kim's registration with a FINRA member firm; (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member firm; and (3) the Complaint also charges him with failing to respond to Enforcement's requests for information and documents during the two-year period after the date upon which he ceased to be registered or associated with a FINRA member firm.

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

6. Enforcement re-alleges and incorporates by reference paragraphs 1-5, above.

7. In January 2011, Kim became the registered representative for customer HJC's brokerage account at the Firm. Through this relationship, Kim gained access to HJC's other personal securities and non-securities accounts.

8. On or about June 21, 2012, Kim transferred \$100,000 from HJC's personal, non-securities account at J.P. Morgan Chase Bank to a personal, non-securities Wells Fargo Bank account also owned by HJC. HJC was unaware of this transfer, did not authorize it and was out of the country when it occurred.

9. On or about June 26, 2012, while HJC was still out of the country, Kim wrote a check made payable to himself from HJC's Wells Fargo Bank account in the amount of \$90,000. Kim forged HJC's signature on the check. HJC did not know about this check and did not authorize Kim to sign her name to the check.

10. On or about June 29, 2012, Kim cashed the \$90,000 check that he had forged and used the \$90,000 for his own personal use.

11. By converting funds, in the form of a \$90,000 forged check, belonging to his customer, HJC, for his own benefit and personal use, Kim violated FINRA Rule 2010.

SECOND CAUSE OF ACTION
Misuse of Funds
(Violation of FINRA Rule 2010)

12. Enforcement re-alleges and incorporates by reference paragraphs 1-11, above.

13. On or about June 28, 2012, without authorization, Kim electronically transferred \$100,000 from HJC's T.D. Ameritrade securities account, to HJC's Wells Fargo personal, non-securities bank account.

14. On or about June 28, 2012, Kim made an unauthorized sale of securities in the amount of \$185,885 in HJC's T.D. Ameritrade account.

15. On or about June 28, 2012, Kim electronically ordered a check in the amount of \$190,000 to be drawn from HJC's TD Ameritrade securities account. The check was made payable to HJC, but, at Kim's instruction, was to be delivered to Kim's home address.

16. HJC was not aware of any of the transactions described in paragraphs 13 through 15, and did not authorize any of these transactions. HJC discovered these transactions upon her return from South Korea in July 2012, and was able to stop payment on the \$190,000 check before it was cashed.

17. By transferring HJC's funds from HJC's T.D. Ameritrade securities account to her Wells Fargo bank account without her authorization, by selling securities in the amount of \$185,885 in HJC's T.D. Ameritrade securities account without HJC's authorization, and by ordering a \$190,000 check drawn on HJC's T.D. Ameritrade securities account without her authorization, Kim misused HJC's funds in violation of FINRA Rule 2010.

THIRD CAUSE OF ACTION
Forgery
(Violation of FINRA Rule 2010)

18. Enforcement re-alleges and incorporates by reference paragraphs 1-17, above.

19. As alleged above, Kim forged HJC's name to the \$90,000 Wells Fargo check without HJC's knowledge or consent. The foregoing conduct constitutes forgery and a failure to observe high standards of commercial honor and just and equitable principles of trade. As a result of this conduct, Kim violated FINRA Rule 2010.

FOURTH CAUSE OF ACTION
Failure to Respond to Rule 8210 Requests for Information and Documents
(Violation of FINRA Rules 8210 and 2010)

20. Enforcement re-alleges and incorporates by reference paragraphs 1-19, above.

21. Pursuant to FINRA Rule 8210, Enforcement staff issued three requests for information and documents to Kim as part of its investigation of Kim's conversion of HJC's funds and unauthorized transactions while he was registered with the Firm.

22. On or about January 17, 2013, Enforcement staff sent Kim, at his address of record listed in CRD ("CRD address"), a request for documents and information pursuant to Rule 8210, via certified mail, return receipt requested, and by first class U.S. mail. Kim's response was due on or before January 31, 2013. Kim failed to respond to this request. The certified mail copy of the request was returned to FINRA as "unclaimed," and the first class copy was not returned.

23. On or about February 7, 2012, Enforcement staff sent Kim a second request for the same documents and information, pursuant to Rule 8210. The 8210 request was sent to Kim's CRD address by certified mail, return receipt requested, and by first class U.S. mail. Kim's response was due on or before February 21, 2013. Kim failed to respond to the request. The certified mail copy of the request was again returned to FINRA as "unclaimed," and the copy mailed by first class mail was not returned.

24. On or about April 4, 2013, Enforcement staff sent Kim a third request for the same information and documents, pursuant to Rule 8210. The 8210 request was sent to Kim's CRD address by certified mail, return receipt requested, and by first class U.S. mail. The 8210 request was also sent to Kim's last known publicly available address, found through a LEXIS-NEXIS search, via certified mail, return receipt requested, and by first class U.S. mail. Both certified mail copies of the request were returned to FINRA as "not deliverable as addressed/unable to forward" and "unclaimed." The first class U.S. mail copy sent to Kim's CRD address was returned to FINRA as "return to sender/unable to forward." The first class U.S. mail copy sent to Kim's last known publicly available address was not returned to FINRA.

25. By failing to respond to Enforcement's Rule 8210 requests for information and documents, Kim violated FINRA Rules 8210 and 2010.

RELIEF REQUESTED

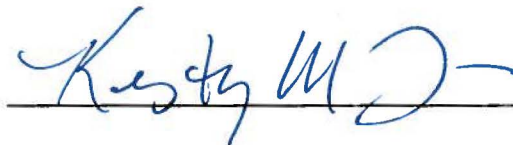
WHEREFORE, Enforcement respectfully requests that the Panel:

- A. Make findings of fact and conclusions of law that Kim committed the violations 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 Kim bear such costs of the proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date:

10/25/13



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FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Darinn Dwight Kim,
CRD No. 4029402,

Respondent.

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No. 2012033956001

Hearing Officer:

CERTIFICATE OF SERVICE

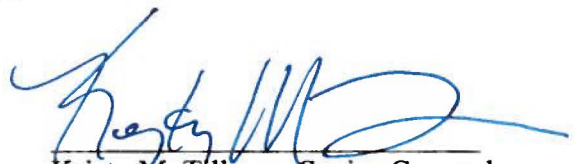
Date: October 25, 2013

I hereby certify that on this 25 day of October, 2013, I caused a copy of the foregoing Complaint and Notice of Complaint to be sent by first class certified mail, return receipt requested to:

Darinn Kim
1568 Vermont Avenue
Rolling Meadows, IL 60008
Certified Receipt No.: 7012 2920 0000 6878 5744

And

Darinn Kim
9725 Woods Drive
Unit 1601
Skokie, IL 60077
Certified Receipt No.: 7012 2920 0000 6878 5751



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