

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JOHN J. MISULIA
(CRD No. 5330650),

Respondent.

Disciplinary Proceeding
No. 2011029262201

Hearing Officer – LBB

DEFAULT DECISION

Dated: January 23, 2014

For conversion of funds from his member firm, in violation of FINRA Rule 2010, Respondent is barred from associating with any FINRA member firm in any capacity.

Appearances

Ellen McCarthy, Esq., and Kevin Pogue, Esq, for the Department of Enforcement.

John J. Misulia, pro se.

DECISION

The Department of Enforcement (“Enforcement”) filed the one-cause Complaint in this disciplinary proceeding on July 15, 2013, charging Respondent with converting \$5,683.31 from his member firm by charging personal items on his corporate credit card, in violation of FINRA Rule 2010. Respondent filed an Answer to the Complaint on September 10, 2013, asserting that he had insufficient information to admit or deny the allegations of the Complaint, denying that he had ever been associated with a FINRA member firm, and requesting a hearing.

When Respondent failed to appear at two pre-hearing conferences, the Hearing Officer asked Enforcement to file a motion for a default decision. Enforcement filed the motion, and Respondent filed an opposition. The Hearing Officer scheduled a third pre-hearing conference, and Respondent again failed to appear. The Hearing Officer held at the pre-hearing conference

that Respondent had defaulted. Accordingly, pursuant to FINRA Rules 9215(f) and 9269, the allegations of the Complaint are deemed admitted.¹

I. Respondent's Employment at Barclays Capital, and FINRA's Jurisdiction

Respondent was associated with FINRA member firm Barclays Capital, Inc. ("Barclays" or the "Firm") as an analyst in the Firm's Investment Banking Division from July 28, 2010, until August 12, 2011. CX-1, CX-2; Decl. ¶¶ 4-5. One month before Respondent became employed by Barclays, on June 28, 2010, the Firm sent an offer letter to Respondent, offering him a position as an analyst. The letter generally described the duties of analysts as "participat[ion] as full members of teams engaged in such projects as company valuation, strategic advisory, execution of debt and equity offerings, and new business generation." The letter specified the responsibilities as including "financial analysis/modeling, industry research, coordination of internal and external processes related to a financing or sale, and assistance in preparation of offering memoranda, proposals, and other written materials." CX-2.

Barclays filed a Uniform Application for Securities Registration (Form U4) on Respondent's behalf on March 24, 2011, indicating that Respondent was seeking to become registered as an Investment Banking Representative (Series 79) and a State Law Uniform Securities Agent (Series 63). Decl. ¶ 6; CX-3. Respondent failed the Series 63 and 79 examinations in July 2011. Decl. ¶ 7; CX-4. Barclays filed a Uniform Termination Notice for Securities Industry Registration (Form U5) dated September 9, 2011, reporting that

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 Ellen McCarthy in Support of Motion for Entry of Default Decision and Imposition of Sanctions, 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-__."

Respondent's employment with Barclays had been terminated on August 12, 2011, for violating Firm policies. Decl. ¶ 8; CX-5.²

Article I, Section (rr) of FINRA's By-Laws defines a "person associated with a member" or "associated person of a member" to include:

(1) a natural person who is registered or has applied for registration under the Rules of the Corporation; (2) a sole proprietor, partner, officer, director, or branch manager of a member, or other natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with the Corporation under these By-Laws or the Rules of the Corporation....

The definition of "associated person" is construed broadly "in order to take regulatory action in circumstances where a person's connection with a member firm implicates the public interest."³

Respondent was an associated person of Barclays both because he applied for FINRA registration, and because his responsibilities as an analyst entailed participation in the investment banking business and the securities business, under the control of a FINRA member firm.

Respondent 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 association with a member firm, and it charges him with misconduct while he was associated with a member firm.

² Enforcement started the investigation that led to the Complaint as a result of the filing of the Form U5 by Barclays, reporting that Respondent's employment had been involuntarily terminated for violating multiple Firm policies that were not related to the securities industry. In addition, the Form U5 disclosed that Barclays was investigating Respondent's use of the Firm's corporate credit card. Barclays filed a Form U5 amendment on November 1, 2011, disclosing that Barclays had concluded an internal review of Respondent's use of the Firm's corporate credit card, and was awaiting reimbursement from Respondent for his inappropriate use of the card. Decl. ¶¶ 38-39; CX-5, CX-17.

³ *Dep't Enforcement v. Hedge Fund Capital Partners, LLC*, No. 2006004122402, 2012 FINRA Discip. LEXIS 42, at *31 (N.A.C. May 1, 2012) (citing *Dist. Bus. Conduct Comm. v. Paramount Invs. Int'l, Inc.*, No. C3A940048, 1995 NASD Discip. LEXIS 248, at *12 (N.B.C.C. Oct. 20, 1995)); *Joseph Patrick Hannan*, 1998 SEC LEXIS 1955, at *1 n.1 (1998) (finding that an unregistered person who received an hourly wage, answered telephones, photocopied, prepared sales reports and received and opened packages was an associated person).

II. Respondent's Default

On July 15, 2013, Enforcement served the Complaint and Notice of Complaint on Respondent at his Central Registration Depository ("CRD") residential address, as well as three alternate addresses, by the U.S. Postal Service Express Mail and certified mail. CX-16; Decl. ¶ 12. Enforcement received a notice from the Postal Service that the mailing sent to an alternate address in Maryland had been delivered, and also received a return receipt for the mailing to Maryland, signed by "Jane Misulia," presumably a relative of Respondent's. CX-6; Decl. ¶ 14. The Postal Service returned the mailings to the other addresses, as undeliverable. Decl. ¶¶ 14-17; CX-6. In addition, Enforcement served the Notice of Complaint and Complaint on Respondent by personal service on July 17, 2013. Decl. ¶ 18; CX-8.

On July 23, 2013, Enforcement served the Notice of Complaint and Revised Notice of Complaint on Respondent by first-class and certified mail at his CRD address and the alternate addresses. The Revised Notice was issued to correct a typographical error in the address in the first Notice. Decl. ¶ 21; CX-10. The return receipt for the certified mailing to the Maryland address was returned to Enforcement, signed by "G. Misulia." Decl. ¶ 22; CX-10. The mailings to the other addresses were returned to Enforcement by the Postal Service. Decl. ¶¶ 23-25; CX-10. The Revised Notice informed Respondent that his answer was due to be filed by August 20, 2013. Respondent did not answer or otherwise respond to the Complaint by August 20, 2013. Decl. ¶¶ 26-27.

On August 21, 2013, Enforcement served the Complaint, Revised Notice, and Second Notice of Complaint to Respondent at his CRD address and the alternate addresses, by first-class and certified mail. Decl. ¶ 28; CX-11. The return receipt for the Maryland address was returned to Enforcement, signed by Jane Misulia. The mailings to the CRD address and one alternate address were returned to Enforcement by the Postal Service as undeliverable. The return receipt

for one of the alternate addresses was returned to Enforcement with an illegible signature.

Decl. ¶¶ 29-32; CX-11. Respondent filed an answer to the Complaint on September 10, 2013.

The FedEx envelope indicated that the Answer had been sent from the alternate address in Maryland. Decl. ¶ 33; CX-12.

By order issued on September 19, 2013, the Hearing Officer scheduled an initial pre-hearing conference for October 17, 2013, at 2 p.m. The Office of Hearing Officers sent the Order to Respondent at his CRD address and the alternate addresses, including the Maryland address from which Respondent had sent his Answer. Decl. ¶ 34; CX-13. In addition, Enforcement forwarded the Order to Respondent at his e-mail address, and attempted to communicate with Respondent concerning the initial pre-hearing conference by telephone and e-mail. Decl. ¶ 35; CX-14. At 6:53 a.m. on the morning of October 17, Respondent sent an e-mail to Enforcement, stating, without explanation, that he would not be able to appear at the pre-hearing conference scheduled for that afternoon. At about 8:40 a.m., Enforcement forwarded Respondent's e-mail to the Case Administrator in the Office of Hearing Officers who was managing the case. Decl. ¶ 35; CX-14.

The Case Administrator contacted Respondent by e-mail in an attempt to establish a new date for the initial pre-hearing conference, but Respondent did not respond. On November 19, 2013, the Hearing Officer issued an Order Rescheduling Initial Pre-Hearing Conference, which was served on Respondent by e-mail, and by regular first-class mail at the CRD address and alternate addresses, including the Maryland address. The Order rescheduled the initial pre-hearing conference for November 25, 2013, at 2 p.m. Enforcement appeared at the pre-hearing conference, but Respondent failed to appear. Decl. ¶ 37; CX-16; Pre-Hearing Conference

Transcript at 3. Accordingly, the Hearing Officer directed Enforcement to file a motion for entry of a default decision. Pre-Hearing Conference Transcript at 5.

On December 6, 2013, Enforcement filed a Motion for Entry of a Default Decision and Imposition of Sanctions. Respondent filed a response on December 24, 2013, in which he asserted that he had been unable to appear at the first pre-hearing conference because he was “kept overtime” in a job interview. He did not explain why he was in a job interview at 6:53 a.m., and apparently already knew that he would be kept overtime at 2 p.m. Respondent also asserted that he “was in the process of rescheduling a pre-hearing call” when Enforcement’s default motion was filed. Respondent did not explain what efforts he had allegedly made to reschedule the pre-hearing conference. He had not contacted the Office of Hearing Officers or Enforcement to reschedule the pre-hearing conference, nor had he responded to multiple communications from both the Case Administrator and Enforcement attempting to schedule the second pre-hearing conference. Respondent did not explain why he had missed the second pre-hearing conference.

After Respondent filed his opposition to the Enforcement’s default motion, the Hearing Officer asked the Case Administrator to contact the parties to find a date before January 10, 2014, to schedule the pre-hearing conference. Enforcement proposed several dates and times at which it could be available. Respondent did not respond, and the Case Administrator sent another e-mail to Respondent asking for a proposal. Respondent responded to this e-mail, saying he could be available on the afternoon of January 10, a date that was not on Enforcement’s list of available dates. The Hearing Officer issued a written notice setting the pre-hearing conference for 1 p.m. on January 10, 2014.

At 12:59 p.m. on January 10, Respondent sent an e-mail to the Case Administrator, asking to postpone the pre-hearing conference until after 4 p.m. because he was on another call. On behalf of the Hearing Officer, the Case Administrator informed Respondent that the conference would not be postponed. He replied by e-mail at 1:05 p.m. that he would join the conference call in about five minutes. He called into the conference call, already late. The court reporter had some difficulty in getting connected, and after waiting for a few minutes for the pre-hearing conference to begin, Respondent sent an e-mail to the Case Administrator at 1:16 p.m. saying he “can’t wait around all day for this,” asking to be informed of when the call could be rescheduled, and hung up. A few minutes later, the court reporter was able to connect, and the pre-hearing conference was convened, with only Enforcement and the Hearing Officer on the line. Enforcement renewed its motion for a default, and the Hearing Officer ruled that Respondent had defaulted.

For failing to appear at pre-hearing conferences on October 17 and November 25, 2013, and January 10, 2014, despite being properly served with notices of the pre-hearing conferences, the Hearing Officer finds, pursuant to FINRA Rules 9241(f) and 9269(a)(1), that Respondent has defaulted.

III. Respondent Violated FINRA Rule 2010 by Converting Funds from His Member Firm

On September 2, 2010, Respondent completed and signed an application for a Barclays corporate credit card. The application stated that the corporate card was to be used for “business charges ONLY.” [emphasis in original]. Respondent applied for and received the corporate card in connection with his employment at Barclays. Complaint ¶ 13. Respondent also signed a Barclays Corporate Card Policy Declaration in which he affirmed that he had “read, understood, and agree[d] to the terms” of Barclays’ corporate card policy, which strictly prohibited the use of

the corporate card for “personal non-business related items.” The declaration also stated, “Personal expenses should generally not be charged to the card. If any personal expenses are charged [Respondent] shall settle this in a timely manner by providing a reimbursement check to the firm.” Complaint ¶ 14.

During the period from September 2010 to July 2011, Respondent improperly used his corporate credit card on 78 occasions to make personal purchases, including food, clothing, electronics, and other personal merchandise, totaling \$5,683.31. Most of the improper charges were incurred during July 2011, when Respondent was on vacation. Complaint ¶¶ 15-16. Barclays never granted permission to Respondent to use the corporate credit card for personal expenses. Complaint ¶ 17. Barclays paid for the personal charges that Respondent incurred on his corporate credit card. Complaint ¶ 19. Despite two written demands from Barclays for reimbursement, Respondent never reimbursed Barclays for the \$5,683.31 of personal expenses. Complaint ¶¶ 20-21; Decl. ¶ 43.

Conversion of funds 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 the funds from Barclays.

IV. Sanctions

For conversion, FINRA’s Sanction Guidelines recommend a bar regardless of the amount converted.⁵ There are no mitigating factors, but there are aggravating factors. Respondent’s dishonest acts occurred over a period of about 10 months, and included 78 false charges.

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) (sanctioned for 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).

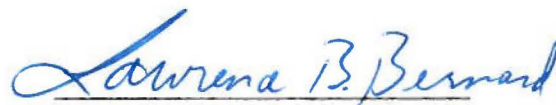
⁵ *FINRA Sanction Guidelines* 36 (2011).

Respondent's actions could not have been unintentional. The large number of transactions, the extended period of the misconduct, the nature of the purchases, the explicit application and acknowledgement he signed that prohibited the use of the corporate card, and his failure to reimburse Barclays for the improper charges, establish that Respondent intended to, and did in fact, convert the funds from Barclays.

Respondent is barred for converting funds from his firm, in violation of FINRA Rule 2010.

V. Conclusion

For conversion of funds, in violation of FINRA Rule 2010, Respondent John J. Misulia is barred from associating with any FINRA member firm in any capacity. The bar will be effective immediately if this decision becomes FINRA's final disciplinary action in this proceeding.



Lawrence B. Bernard
Hearing Officer

Copies to: John J. Misulia (*via overnight courier and first-class mail*)
Ellen McCarthy, Esq. (*via electronic and first-class mail*)
Kevin E. Pogue, Esq. (*via electronic mail*)
Susan Light, Esq. (*via electronic mail*)
Jeffrey D. Pariser, Esq. (*via electronic mail*)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

John J. Misulia (CRD No. 5330650),

Respondent.

DISCIPLINARY PROCEEDING
No. 2011029262201

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. During the period of September 2010 to July 2011 (the Relevant Period), John J. Misulia (Respondent) converted \$5,683.31 from his FINRA-regulated broker-dealer by charging personal expenses on a corporate credit card issued by his firm employer and failing to reimburse the firm for those expenses. By engaging in this misconduct, Respondent violated FINRA Rule 2010.

RESPONDENT AND JURISDICTION

2. Respondent entered the securities industry in April 2007 when he was briefly associated with a FINRA-regulated broker-dealer as a non-registered summer intern.

3. In July 2010, Respondent became dually employed by Barclays Capital, Inc. (Barclays or the Firm), a FINRA-regulated broker-dealer, as well as an affiliated entity.
4. From July 2010 through August 2011, Respondent was employed as a non-registered analyst in the Firm's Investment Banking Division. As an analyst, Respondent was primarily responsible for financial analysis/modeling, industry research, coordination of internal and external processes related to a financing or sale, and assistance in the preparation of offering materials.
5. Barclays filed a Form U4 Uniform Application for Securities Industry Registration dated March 24, 2011 for Respondent indicating that he was seeking registration as an Investment Banking Representative (Series 79) and a State Law Uniform Securities Agent (Series 63). In July 2011, Respondent failed both the Series 79 and 63 securities license examinations.
6. Given the nature of his responsibilities at the Firm and that he applied for securities registration under the rules of FINRA, Respondent was an associated person under Article 1, Section (rr) of FINRA's By-Laws.
7. Barclays filed a Form U5 Uniform Termination Notice for Securities Registration dated September 9, 2011 reporting Respondent's termination on August 12, 2011 for violating multiple non-securities related Firm policies.
8. Although Respondent is no longer 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 is being filed within

two years after the date upon which Respondent ceased to be associated with a FINRA member; and (2) the Complaint charges Respondent with misconduct committed while he was associated with a FINRA member.

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

9. The Department realleges and incorporates by reference paragraphs 1 to 8 above.
10. FINRA Rule 2010 requires all associated persons to observe high standards of commercial honor and just and equitable principles of trade.
11. Conversion occurs when there 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.
12. Conversion of a broker-dealer's funds constitutes a violation of Rule 2010.
13. In connection with his employment at Barclays, on September 3, 2010, Respondent completed and signed an application for the issuance of a corporate credit card. The application expressly stated that the corporate card was to be used for "business charges ONLY [emphasis in the original]."
14. In addition, Respondent signed a Barclays Corporate Card Policy Declaration (the Declaration) in which he affirmed that he had "read, understood and agree[d] to the terms" of the Firm's Corporate Card Policy, which strictly prohibited the use of the corporate card for "personal non-business related items." The Declaration also stated: "Personal expenses should generally not be charged to the card. If any personal

expenses are charged [Respondent] shall settle this in a timely manner by providing a reimbursement check to the firm.”

15. During the Relevant Period, Respondent improperly used his corporate credit card on 78 occasions to make personal purchases, including food, clothing, electronics and other personal merchandise, totaling \$5,683.31. Moreover, of the \$5,683.31 charged, \$3,443.33, or approximately 60 percent, was charged by Respondent on 59 occasions during the month of July 2011 while he was on a Firm-approved vacation.

16. The following chart illustrates certain personal expenses exceeding \$100 that Respondent charged on his corporate credit card:

| Date | Amount | Description |
|----------|----------|-----------------------------|
| 05/14/11 | \$217.68 | Sunglass Hut |
| 05/17/11 | \$324.62 | Charles Tyrwhitt |
| 06/18/11 | \$237.44 | Macy's East |
| 06/19/11 | \$103.98 | Lacoste |
| 06/24/11 | \$199.00 | Charles Tyrwhitt |
| 07/01/11 | \$798.00 | Manhattan Ministorage |
| 07/02/11 | \$762.02 | Bose |
| 07/03/11 | \$388.68 | IKEA |
| 07/04/11 | \$287.47 | Lacoste |
| 07/05/11 | \$163.28 | Urban Outfitters |
| 07/07/11 | \$272.09 | Bed Bath & Beyond |
| 07/30/11 | \$109.25 | M.J. Armstrong's Restaurant |

17. Respondent was never granted permission by Barclays to use the corporate credit card to charge personal expenses.

18. At the time Respondent made the personal charges, he knew, or should have known, that he was prohibited from using the corporate credit card to charge personal expenses.
19. The Firm paid for the personal charges incurred by Respondent on his corporate credit card.
20. By letter dated August 17, 2011, the Firm demanded that Respondent reimburse the Firm for the personal expense that he charged on the corporate credit card.
21. Respondent never reimbursed Barclays for the \$5,683.31 of personal expenses that he charged on his corporate credit card.
22. By improperly using his corporate credit card to charge personal expenses on 78 occasions during the Relevant Period, Respondent misappropriated \$5,683.31 from the Firm, in violation of FINRA Rule 2010.

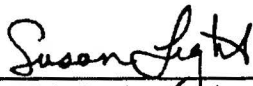
RELIEF REQUESTED

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;
- C. order that Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330; and
- D. grant all further relief, legal or equitable, that is warranted under the circumstances.

FINRA DEPARTMENT OF ENFORCEMENT

Date: July 5, 2013



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