FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. NATHAN LORNE (CRD No. 3277561), Respondent.	Disciplinary Proceeding No. 2006005523401 Hearing Officer – LBB **HEARING PANEL DECISION** February 10, 2009

Respondent is barred from associating with any FINRA member firm for converting funds from an organization of which he was treasurer, in violation of Conduct Rule 2110. Respondent is also assessed costs. In light of the bar, no additional sanctions are imposed for Respondent's failure to notify his firm of outside business activities, in violation of Conduct Rules 3030 and 2110, or his false statement to his employer concerning outside business activities, in violation of Conduct Rule 2110.

Appearances

For the Department of Enforcement, Robin W. Sardegna, Senior Litigation Counsel, Washington, D.C., and Heather Hawker, Senior Regional Counsel, Denver, Colorado

For Respondent, D. Elizabeth Wills, Denver, Colorado

DECISION

I. Introduction and Procedural History

The Department of Enforcement filed the Complaint in this matter on February 20, 2008, asserting four causes of action against Respondent Nathan Lorne ("Respondent").[1] The First Cause of Action charged Respondent with conversion of customer Colorado Restaurant

[1] The parties stipulated that the Complaint was filed on February 15, 2008, but it was not received by the Office of Hearing Officers until February 20, 2008.

Association's ("CRA") funds, in violation of Conduct Rules 2330 (improper use of customer funds) and 2110 (standards of commercial honor and principles of trade). The Second Cause of Action, in the alternative, charged Respondent with the same conduct as the First Cause of Action, but asserted only that it violated Conduct Rule 2110. The Third Cause of Action charged Respondent with violating Conduct Rules 3030 (outside business activities) and 2110 by failing to notify his firm in writing of his role as treasurer of the CRA's Mile High Chapter and his role with the IQ Zone Corporation ("IQ Zone"). The Fourth Cause of Action charged Respondent with violating Conduct Rule 2110 by making false statements to his firm with respect to his roles with the Mile High Chapter and IQ Zone.

A hearing was held in Denver, Colorado, on September 22 – 23, 2008. As a result of rulings on motions for summary disposition and Enforcement's amendment of the Complaint, the sole issues for the hearing were the appropriate sanctions for Respondent's (1) conversion of funds from the Mile High Chapter, but only under Rule 2110; (2) failure to notify his firm in writing of his position with IQ Zone; and (3) misrepresentations to his firm concerning his role with IQ Zone.

II. Findings of Fact[2]

A. Respondent

Respondent was registered with FINRA member firm Waddell & Reed, Inc. ("W&R") from February 12, 2003, through June 5, 2006, as a General Securities Representative, until he resigned from W&R on or about May 31, 2006. Stip. 1, 37; CX-1. He was registered with FINRA member firm ING Financial Partners, Inc. ("ING") from June 27 through July 20, 2006,

[2] References to the testimony set forth in the transcripts of the hearing are designated as "Tr. __." References to the exhibits provided by the Department of Enforcement are designated as "CX-___" and Respondent's exhibits are designated as "RX-___." References to joint exhibits are designated as "JX-___." References to "Stip. __" refer to the parties' stipulations of fact, filed on August 29, 2008.

as a General Securities Representative. Stip. 2; CX-1. He has not been registered or associated with a member firm since July 20, 2006. Stip. 3; CX-1.

B. Respondent Converted Funds from the Mile High Chapter of the Colorado Restaurant Association

1. Respondent's Involvement with the CRA and the Mile High Chapter

The Mile High Chapter is one of 18 chapters of the Colorado Restaurant Association, a non-profit membership trade group. Respondent became a member of the Mile High Chapter's board of directors in 2003. He became involved because of his "passion" for the restaurant business, and because his membership had the potential for business development. In fact, the CRA became Respondent's customer of as a result of his association with the Mile High Chapter. Tr. 346 – 347; Stip. 52, 53.

On July 8, 2004, Respondent opened accounts for the CRA at W&R. The CRA was Respondent's customer at W&R until late April or early May 2006, when W&R removed him as the representative on the accounts. Stip. 21, 34, 42; Tr. 81, 275 – 279. The Mile High Chapter did not have a brokerage account in its own name at W&R. Stip. 43.

Respondent became treasurer of the Mile High Chapter on July 1, 2005, and resigned on April 30, 2006. As treasurer, Respondent was able to write checks and conduct other banking transactions on the Chapter's behalf, and was the sole signatory on the Chapter's bank account. Stip. 21 – 24, 37; Tr. 87, 141.

2. Respondent's Misappropriation of Funds from the Chapter's Bank Account

From approximately July 1, 2005, to April 30, 2006, Respondent made 44 cash withdrawals totaling $7,875 and wrote seven checks to himself totaling $4,226 from the Chapter's bank account. Stip. 17; Tr. 190. The withdrawals were not authorized by the Mile High Chapter's president, the Chapter's board of directors, or the CRA's board of directors.

Stip. 27. Respondent never discussed the amounts he intended to withdraw, or had withdrawn, with the Chapter's president. Stip. 29, 30; JX-18. Respondent used the money that he withdrew from the Chapter's bank account for personal purposes, except for a small amount that was for legitimate expense reimbursement. Stip. 18; Tr. 127 – 129, 142, 155.

Respondent concealed the withdrawals and the checks he wrote to himself from the Chapter's president and board of directors. He entered checks for expense reimbursement in the check register, but he did not enter checks for money he was using for personal expenses. Tr. 203 – 204; RX-5 (check nos. 3992, 3995). Respondent also concealed his misuse of the Mile High Chapter's funds by providing false financial reports to the Chapter. Stip. 32, 33; Tr. 343.

3. The CRA's Discovery of the Conversion, Termination of Respondent as Its Account Representative, and Respondent's Replacement of the Money

An anonymous letter, dated March 31, 2006, and postmarked April 3, 2006, was sent to C.M., the Mile High Chapter's president, stating that it would be in the CRA's best interest to audit the Mile High Chapter's books. Stip. 19, 29; JX-15. C.M. sent an e-mail to Respondent on April 12, informing him that she wanted to be added as a signatory on the Chapter's bank account. Tr. 85; RX-6. On April 13, Respondent deposited $10,895.84, representing the withdrawals he had made, minus the expenses for which he was entitled to reimbursement, into the Chapter's bank account. JX-17; Tr. 84, 153, 155, 357. Thus, when Respondent met with C.M. on April 18, he had already returned the money to the Chapter. RX-8; RX-18; Tr. 149. He gave her the Chapter's checkbook a week later. Tr. 156 – 157. Upon reviewing the checking account records, C.M. determined that Respondent had made unauthorized withdrawals from the account, and she informed the CRA of her findings. CX-3; CX-50; CX-51.

Respondent resigned as the treasurer of the Mile High Chapter on or about April 30, 2006. Stip. 37. At a May 9, 2006, meeting of the Mile High Chapter's board of directors,

Respondent admitted to "borrowing" funds from the Mile High Chapter and apologized for his actions. Stip. 36; CX-18; Tr. 105, 160 – 161.

4. Respondent's Guilty Plea to Felony Theft

On August 25, 2006, the District Attorney's Office for the Second Judicial District of Colorado filed a criminal complaint against Respondent for felony theft for his unauthorized withdrawals of the Mile High Chapter's funds. Stip. 5; CX-4; Tr. 115 – 116. On February 15, 2007, Respondent entered into a plea agreement with the District Attorney's Office, pleading guilty to one Class Four Felony Theft charge. Stip. 6; CX-7. At his plea agreement hearing, Respondent admitted that he had committed felony theft from the Colorado Restaurant Association and to the elements of that crime. Stip. 11; CX-10 at 5 ("Guilty"); CX-11 (¶11).

The plea agreement provided for a two-year supervised deferred judgment and payment of $1,282.03 in restitution. If Respondent complies with all the terms of the plea agreement, the deferred term will expire on February 13, 2009. Stip. 7 – 8; CX-7; CX-9; CX-10. Under Colorado law, if Respondent complies with the terms of the plea agreement, "the plea of guilty previously entered shall be withdrawn and the charge upon which the judgment and sentence of the court was deferred shall be dismissed with prejudice." Colo. Rev. Stat. §18-1.3-102(2).

C. Respondent's Pattern of Dissembling About His Conversion of Funds, Investigations and His Criminal Conviction

In support of his request for a sanction less than the sanction recommended by the Sanction Guidelines for conversion, Respondent asserts that he has accepted responsibility for his actions since the day the Chapter president asked to be a signatory on the account. Far from accepting responsibility for his wrongdoing, he engaged in a pattern of deception that continued through his testimony at the hearing.

1. Respondent Conceals the Matter from W&R

On April 25, 2006, after the CRA learned of Respondent's unauthorized withdrawals, a trustee of the CRA's retirement plan called Rick Harris, Respondent's supervisor at W&R, asking that Respondent be removed as the advisor on the CRA's accounts. The trustee did not explain the reason for the request. Stip. 34; CX-17; Tr. 275. When Harris asked Respondent about the situation, Respondent told him that there were disagreements about the level of detail in the quarterly reports that he had provided to the client. He did not tell Harris that he had withdrawn funds from the Chapter's bank account. CX-17; Tr. 105 – 106, 276, 321.

Harris first learned the CRA's reasons for demanding the removal of Respondent from its W&R accounts when he spoke by telephone with P.M., the CRA's president, on May 15. P.M. told Harris that the CRA believed that Respondent had taken about $10,000 from the Mile High Chapter. P.M. told Harris that Respondent had repaid the money and apologized to the board of directors of the CRA, or the Mile High Chapter, for his actions, but he again demanded that Respondent be removed from the account, requested an audit of the CRA's accounts at W&R, and asked why the CRA should remain a client of W&R. After speaking to P.M., Harris confronted Respondent, who then admitted for the first time that he had taken the money. CX-18; Tr. 279 – 282, 321.

As a result of P.M.'s phone call to Harris, W&R's compliance department requested further information, and Respondent provided written responses to the inquiry on May 19. CX-19; CX-20. Respondent characterized taking the money as a loan from the Mile High Chapter for assistance with securing a place to live and getting back on his feet, and indicated that the Chapter president was aware of it. He told his compliance department that he did not have records showing the exact amount he had borrowed, as he had relinquished control of all records when he resigned as treasurer. CX-20.

2. Respondent Conceals the Matter from His New Firm

The Uniform Termination Notice for Securities Industry Registration (Form U5) that W&R filed for Respondent stated that he had resigned from the firm while under internal review into allegations that he had borrowed from an affiliate of a client. CX-1. ING, Respondent's new firm, inquired about the statement, and on June 28, 2006, Respondent told ING in writing that he was "surprised and angered" by the Form U5, that the allegations were false, and that "monies were never removed from a client's account and moved into any account controlled by me." His response did not mention borrowing from an affiliate of a client, as was referenced in the Form U5, or that the CRA had accused him of taking the funds. CX-29. ING raised additional questions in a June 30 telephone conference, and that day Respondent wrote to a senior compliance analyst at ING, denying that he had ever borrowed from a client, and reiterating that W&R had found no evidence of borrowing from a client. CX-30.

3. Respondent's Deceptive Responses to FINRA

On June 22, 2006, FINRA Senior Compliance Examiner Susan Byford sent letters to W&R and Respondent, pursuant to Procedural Rule 8210, asking about the termination of Respondent's employment while he was under internal review for borrowing money from an affiliate of a client, as stated in the Form U5. JX-1; CX-13. The examiner's letter to Respondent requested, among other things, a "written statement detailing the circumstances surrounding the above referenced allegations," and a "written narrative describing whether you accepted funds from any of your customers or their affiliates." CX-13. Consistent with his statement to ING, on about June 28, 2006, Respondent provided a very brief but deceptive written response that failed to address the questions in the examiner's inquiry. Instead, he "emphatically den[ied] borrowing money from any client …." He represented that "[m]onies were never removed from a client's account and moved into any account controlled by me." He stated that the allegations were false,

and that he understood that W&R "arrived at the same conclusion that I did not borrow money from a client, nor remove money from any client's account and into an account controlled by me." CX-14. By this time, however, Respondent had already apologized to the CRA and admitted to W&R that he had "borrowed" money from the Mile High Chapter.

On about July 7, 2006, Respondent supplemented his response, reiterating his assertions that he did not borrow money from a client's account, and that W&R investigated the allegations and found no evidence that he had borrowed money from a client. Respondent again stated that he did not have any documentation relating to "receipt(s), withdrawals, relays and ultimate use of the above investors', as well as any other investors' funds" because he had never "accepted funds for my personal behalf from an investor of Waddell & Reed …." CX-15.

The FINRA examiner followed up with a request for additional information in a letter on November 27, 2006, pursuant to Procedural Rule 8210. The letter referred to the criminal charges, and asked for a written statement "detailing the circumstances surrounding the allegations that you made unauthorized withdrawals from the CRA's account," among other things. CX-24. The letter also asked for all documentation concerning receipts and withdrawals of CRA funds. On December 6, 2006, Respondent asked to defer his response until the criminal matter was "resolved," which, he stated, would likely happen within several months to a year. FINRA received a letter from Respondent on February 18, 2007, partially responding to the November 2006 request. Although he had already pleaded guilty to felony theft, in this letter Respondent stated that "the situation has most recently been deferred" and that final resolution would occur, again, within several months to a year. CX-25; CX-26; Tr. 119 – 120.

At the hearing, Respondent testified that he had represented to FINRA that the criminal matter had been deferred because the case would be automatically dismissed if he complied with

the terms of the deferred judgment. He testified that his representation that the criminal case would be resolved within several months to a year was based on his understanding that he could apply for early dismissal of the case if he complied with all the terms of the deferred judgment. Tr. 176 – 177.

On September 28, 2007, pursuant to Rule 8210, FINRA's examiner requested additional information about the criminal matter and requested the outstanding responses to the November 2006 request for information, including books and records "evidencing the alleged activity." CX-26. On October 4, 2007, Respondent responded, explaining that the criminal matter was still not resolved, because under the terms of the plea agreement, the court had entered a deferred judgment. As to documentation, he claimed, "My steps for tracking the handling and use of funds was by matter of bank statements, which were mailed to me as Treasurer of the Mile Hi Chapter." He also noted, "All books and records were returned to the Mile Hi Chapter in the Spring/Summer of 2006, per the organization's request. I did not retain copies of any books or records." CX-27 at 3.

At the hearing, however, Respondent testified that the Chapter never requested that he return records, and that when he was terminated, W&R had retained all the records that were in his office. Tr. 157 – 158.

4. Respondent's Inconsistencies Concerning Documentation of the Amount He Had Misappropriated and Testimony About a Phantom Spreadsheet

At the hearing, Respondent provided a different explanation of how he had kept track of his misappropriations. He testified that he had kept a spreadsheet showing the exact amounts he had "borrowed," offering this testimony as evidence that he always intended to repay the money. Tr. 154 – 155, 196 – 197. Respondent did not provide the spreadsheet, or even disclose its alleged existence, in response to FINRA's Rule 8210 requests for information. Tr. 338 – 339.

Respondent testified that his hard drive crashed in the summer of 2007, and he lost about 40% of the information on the drive, including the spreadsheet. Tr. 196, 338, 360.

Respondent asserted at the hearing that he had not provided the spreadsheet to FINRA because it was not responsive to any of FINRA's requests. He testified that his view was that the spreadsheet was not a document that showed receipts or withdrawals of the Chapter's funds. He testified that he understood a request for books and records showing the theft from the Mile High Chapter as referring only to the Chapter's books and records. Tr. 360 – 362. Respondent's disclosure of the spreadsheet's alleged existence is inconsistent with his representations to FINRA staff that he had returned all records showing the withdrawals to the Mile High Chapter; his representations to the staff and to his firm that he could not provide precise information on the withdrawals because he had kept track of the amounts using the bank statements and other records he had returned to the Chapter; and his testimony at hearing that W&R had kept all his files. Tr. 157 – 158. He explained this inconsistency by saying, "I guess my answer to [the inquiry from W&R's Chief Regulatory Officer] wasn't clear." Tr. 340.

D. Respondent Failed to Notify His Firm of His Involvement with IQ Zone and Falsely Represented that He Was Not Engaged in Outside Business Activities

During the time period that Respondent was associated with W&R, the firm required a representative to notify his division manager in writing if the representative was employed by or accepted compensation from any other person as a result of any business activity, other than a passive investment, outside the scope of the representative's relationship with W&R. Stip. 44.

During 2005 and 2006, Respondent served as a director and vice president of the IQ Zone Corporation, a small, start-up software company. Stip. 62; Tr. 163; CX-39. The company was a very informal, small operation, founded by one of Respondent's friends and operated from his

home computer. Although never profitable, it was a for-profit corporation. Tr. 194 – 195, 347 – 348. Respondent did not receive monetary compensation for his position with IQ Zone. Tr. 163.

Respondent did not provide written notice to W&R that he was serving as a director and vice president of IQ Zone on the required outside business activity form. Stip. 64. Respondent executed two compliance certifications for W&R in 2005, one on May 24, and the other on October 25. Stip. 66, 67; JX-8; JX-9. Both certifications asked if Respondent was engaged in any outside business activities. Stip. 68. Respondent responded "No" to this question on both compliance certifications, even though, at the time he signed the certifications, he was a director and vice president of IQ Zone. Tr. 183 – 184. Respondent testified that, based on conversations with his supervisor, including discussions at compliance meetings, he understood that he was not required to notify W&R of uncompensated, volunteer positions, and checked "No" on the forms in reliance on that understanding. Stip. 69; Tr. 164 – 168; JX-8; JX-9.

In early July 2005, as a result of his involvement with IQ Zone, Respondent received stock in the company. Stip. 63; RX-20; Tr. 168. Respondent did not consider the stock to be compensation because it had no value at the time he received it. As a result, he again checked "No" on the October 25 outside business activity form. Tr. 169 – 170.

In his testimony at the hearing, Respondent's supervisor corroborated Respondent's assertion that he had told W&R representatives that the firm's outside business activities policies did not apply to uncompensated, volunteer activities. Tr. 292 – 293, 315. Harris also testified, however, that W&R representatives should have understood that "compensation" included stock, so that if a representative received stock from an outside business activity, notice and approval were required. Tr. 268 – 269, 292 – 293, 316 – 318, 323. Furthermore, the firm's compliance certification specifically asked if the representative served as an officer or director of any

corporations. Regardless of whether he was compensated, Respondent was clearly required to check "Yes" on the certification to disclose his position as an officer or director of a corporation. JX-8; JX-9; Tr. 222 – 227, 238, 270 – 272. Thus, checking "No" was a misrepresentation to the firm.

While Respondent did not provide written notice to his firm of his activities with respect to IQ Zone, he also did not conceal his involvement. Beginning in March 2003, W&R maintained a web page for Respondent. Stip. 61. As of November 2005, the web page stated that Respondent was a director of the IQ Zone Corporation. RX-2. Respondent's web site was reviewed by W&R in the home office, however, and not by his supervisor. Harris was unaware that Respondent was involved with IQ Zone until the compliance department asked him about it in December 2007. Tr. 264 – 265, 297; JX-10. Thus, although Respondent did not provide proper written notice to the firm or inform his supervisor of his role with IQ Zone, the firm had some knowledge of his involvement with IQ Zone.

III. Conclusions of Law

A. FINRA Has Jurisdiction Over Respondent

Although Respondent is not currently associated with any FINRA member, he remains subject to FINRA jurisdiction for purposes of this proceeding, pursuant to Art. V, § 4 of FINRA's By-Laws, because the Complaint was filed within two years after the termination of his last registration with a member firm, and it charges him with misconduct while he was registered.

B. Respondent Converted Funds of the Mile High Chapter in Violation of Rule 2110

Respondent did not oppose Enforcement's motion for summary disposition with respect to the Second Cause of Action, alleging that he violated Conduct Rule 2110 by converting funds of the Mile High Chapter. Accordingly, the Hearing Panel granted Enforcement's motion, and

found that Respondent converted the Chapter's funds, in violation of Rule 2110. The hearing record further establishes that Respondent converted the Chapter's funds, in violation of Rule 2110.

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." *FINRA Sanction Guidelines* at 38 n.2 (2007). FINRA has regularly found that associated persons have violated Rule 2110 by converting the funds of non-customers. *Dist. Bus. Conduct Comm. v. Vail*, No. C06920051, 1994 NASD Discip. LEXIS 192, at *13 (N.B.C.C. Sept. 22, 1994), *aff'd, Henry E. Vail*, 52 S.E.C. 339, 342 (1995), *aff'd*, 101 F.3d 37 (5th Cir. 1996) (barred for misappropriation 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); *Dist. Bus. Conduct Comm. v. Kwikkel-Elliott*, No. C04960004, 1998 NASD Discip. LEXIS 4 (N.B.C.C. Jan. 16, 1998) (barred for converting funds from employer by submission of false expense reimbursement requests).

Respondent abused his position as treasurer of the Mile High Chapter by withdrawing funds from the Chapter's bank account and writing checks to himself without the Chapter's authorization. He used the funds for his personal expenses. The evidence establishes that Respondent violated Rule 2110 by converting the funds of the Mile High Chapter.

C. Respondent Engaged in Outside Business Activities with IQ Zone Without Notifying His Firm

Respondent did not oppose Enforcement's motion for summary disposition with respect to the Third Cause of Action, for failure to notify his firm of his outside business activities with respect to IQ Zone, in violation of Conduct Rule 3030. Accordingly, the Hearing Panel granted Enforcement's motion, and found that Respondent violated Rule 3030. Furthermore, the

undisputed evidence establishes that Respondent failed to notify W&R in writing that he was acting as a director and officer of IQ Zone, both before and after he accepted stock from IQ Zone. These facts establish that Respondent violated Rule 3030.

D. Respondent Made Misrepresentations to His Firm Concerning His Outside Business Activities with IQ Zone

Respondent did not oppose Enforcement's motion for summary disposition with respect to the Fourth Cause of Action. Accordingly, the Hearing Panel granted Enforcement's motion, and found that Respondent violated Rule 2110 by making misrepresentations to his firm concerning his activities with respect to IQ Zone.

"[T]he SEC has consistently construed Conduct Rule 2110 broadly to apply to all business-related misconduct, including misrepresentations made to a member firm by a registered representative." *Dep't of Enforcement v. Hardin*, No. E072004072501, 2007 NASD Discip. LEXIS 24, at *10 – *11 (N.A.C. July 27, 2007), citing *James A. Goetz*, 53 S.E.C. 472, 477-78 (1998); *see also Dep't of Enforcement v. Davenport*, No. C05010017, 2003 NASD Discip. LEXIS 4, at *8 – *10 (N.A.C. May 7, 2003). Respondent misrepresented his involvement with IQ Zone. Although his supervisor incorrectly informed him that volunteer activities did not require notice to the firm, the forms that he completed required him to disclose his involvement. Furthermore, once he received stock as compensation, notice was clearly required, yet he continued to represent to his firm that he was not engaged in any outside business activities. The evidence establishes that Respondent violated Rule 2110 by misrepresenting his involvement with IQ Zone to his firm.

IV. Sanctions

The Sanction Guidelines recommend a bar for conversion, regardless of the amount converted. *FINRA Sanction Guidelines* at 38 (2007). Respondent urges the Hearing Panel to

exercise its discretion to impose a sanction lower than recommended by the Sanction Guidelines.[3] Respondent's argument can be summed up in selections from his statements to the Hearing Panel:

> I just want a chance to show that I'm worthy of a customer's confidence. I think I have a lot to offer this business, and I certainly enjoyed what I do. I just want a chance to try and do it again.… I think I've learned though. I'm pretty sure I know I've learned. I'm sorry for what I did. I did it, but I'm sorry.…
>
> If the – in my mind, if the state of Colorado has effectively given me a chance by saying, Okay, February of 2009 [the criminal] case is dismissed, I'm essentially asking for the same treatment here.

Tr. 179 – 180, 200. There are no material mitigating factors in Respondent's arguments that would support a sanction below the bar recommended by the Sanction Guidelines, but there are several aggravating factors. Accordingly, the Hearing Panel finds that the appropriate sanction is a bar.

Respondent engaged in a pattern of misrepresentations to conceal his conversion.[4] He continually and regularly misled the Mile High Chapter by providing false quarterly financial reports, concealing the fact that he had taken funds from the Chapter's bank account. Respondent repeatedly misled his firm about his misappropriation of the Chapter's funds and the CRA's concerns about him. When first approached by his supervisor about the CRA's request to remove him as its advisor, Respondent falsely said that the CRA was concerned with the level of detail in reports he had provided. He did not mention or acknowledge his unauthorized withdrawals of the Chapter's funds until the CRA contacted his supervisor a second time. Even then he told his firm that the money he took was a loan. When he joined ING, he continued his

[3] *See* General Principles Applicable to All Sanction Determinations, *Sanction Guidelines* at ¶3, page 3.
[4] *See* Principal Consideration 10: "Whether the respondent attempted to conceal his or her misconduct or to lull into inactivity, mislead, deceive, or intimidate a customer, regulatory authorities, or, in the case of an individual respondent, the member firm with which he or she is/was associated."

pattern of deception, misleading ING about the nature of the allegations, his conversion of funds, and W&R's conclusions based on its investigation of his conduct.

Respondent also attempted to conceal the situation from FINRA, repeatedly evading the FINRA examiner's questions with misleading responses.[5] When asked about borrowing from an affiliate of a client, he responded by denying that he had borrowed from a client. He represented to FINRA that his firm concluded that he had not borrowed from a client and that its investigation had exonerated him; however, his firm had actually concluded that he had taken money from an affiliate of a client and jeopardized the firm's relationship with the client. Even after he had entered a guilty plea, Respondent did not answer the examiner's questions about the criminal matter; rather, he represented that it was an ongoing matter that was not yet resolved.

His responses concerning the records that would show what he had done were inconsistent, and his inconsistencies continued through the course of his testimony at the hearing. Respondent told FINRA that he had returned all books and records to the Mile High Chapter, and that he had used bank statements to keep track of his "borrowing." In a later response to FINRA inquiries and at the hearing, Respondent stated that the Mile High Chapter had never requested the bank records, and that W&R had confiscated the records when Respondent left the firm. Tr. 157 – 158. Similarly, Respondent claimed at the hearing that he had once kept a spreadsheet showing the exact amounts he had "borrowed," offering this testimony as evidence that he always intended to repay the money, but that the spreadsheet had been lost due to a computer problem. He never mentioned this spreadsheet in responses to FINRA or his firm, and the existence of such a record is inconsistent with representations that he did not know the exact

[5] *See* Principal Consideration 12: "Whether the respondent provided substantial assistance to FINRA in its examination and/or investigation of the underlying misconduct, or whether the respondent attempted to delay FINRA's investigation, to conceal information from FINRA, or to provide inaccurate or misleading testimony or documentary information to FINRA."

amount that he had taken. While a hard drive crash might explain why he did not produce a spreadsheet at the hearing, it does not explain his earlier denials that he had any such documents or his earlier claim that he relied solely on bank statements to determine the amount he owed.

Respondent seeks credit for accepting responsibility for his actions, but he accepted responsibility only after he knew that he had been found out. To the extent that Respondent did accept responsibility, he was too late under the Sanction Guidelines.[6] His confession to the Mile High Chapter came only after the CRA had discovered his defalcations. Additionally, Respondent continually characterized his actions as mere borrowing, both in his initial statement to the Mile High Chapter, and in his statements to his employers and FINRA. He never fully acknowledged that he had converted the funds, except in his criminal plea agreement.

Respondent repaid all of the converted funds to the Mile High Chapter, but only after it became apparent that his conversion might be discovered. He should have "voluntarily and reasonably attempted, prior to detection and intervention, to pay restitution or otherwise remedy the misconduct." *Dep't of Enforcement v. Farley*, No. C9A000038, 2001 NASD Discip. LEXIS 51 (O.H.O. Oct. 2, 2001); *see also Daniel D. Manoff*, Exchange Act Rel. No. 46708, 2002 SEC LEXIS 2684, at *17 – *18 (Oct. 23, 2002) ("Neither [respondent's] repayment of the funds nor his lack of a disciplinary record justifies [his acts of conversion]").[7] Thus, the repayment is not a mitigating factor.

Respondent engaged in his misconduct for nearly ten months, stopping only when he lost sole control of the bank account and was about to be caught. He made nearly 50 unauthorized

[6] *See* Principal Consideration 2: "Whether an individual … respondent accepted responsibility for and acknowledged the misconduct to his or her employer (in the case of an individual) or a regulator prior to detection and intervention by the firm (in the case of an individual) or a regulator."
[7] *See* Principal Consideration 4: "Whether the respondent voluntarily and reasonably attempted, *prior to detection and intervention*, to pay restitution or otherwise remedy the misconduct." (Emphasis added).

withdrawals, and admits that he "borrowed" $10,895.84. The duration, pattern, and amount of money converted are all aggravating factors. *See* Principal Considerations 8, 9, and 18. Upon consideration of all the evidence, the Hearing Panel finds that the appropriate sanction is a bar in all capacities.

In light of the bar, no additional sanctions are imposed for Respondent's failure to notify his firm of outside business activities, in violation of Conduct Rules 3030 and 2110, or his false statements to his firm concerning outside business activities, in violation of Conduct Rule 2110. Because Respondent has repaid the funds to the Mile High Chapter, restitution is not required.

V. Conclusion

Respondent Nathan Lorne is barred from associating with any FINRA member firm for converting funds, in violation of Conduct Rule 2110.[8] In light of the bar, no additional sanctions are imposed for Respondent's failure to notify his firm of outside business activities, in violation of Conduct Rules 3030 and 2110, or his false statement to his employer concerning outside business activities, in violation of Conduct Rule 2110. Respondent is also ordered to pay costs of $2,782.72, which includes an administrative fee of $750 and the cost of the hearing transcript.

The bar shall be effective immediately if this decision becomes FINRA's final disciplinary action in this proceeding.

HEARING PANEL

_____

Lawrence B. Bernard
Hearing Officer

[8] The Hearing Panel has considered and rejects without discussion all other arguments of the parties.

Copies to: Nathan Lorne (*via overnight courier and first-class mail*)
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