

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DAME CISSE
(CRD No. 5100016),

Respondent.

Disciplinary Proceeding
No. 2009019297801

Hearing Officer—MAD

HEARING PANEL DECISION

April 2, 2012

Respondent is barred from associating with any FINRA member firm in any capacity for attempting to convert firm funds, in violation of FINRA Conduct Rule 2010. In addition, Respondent is ordered to pay the costs of this proceeding.

Appearances

Jeffrey Pariser, Esq., and Jill Fieldstein, Esq., for the FINRA
DEPARTMENT OF ENFORCEMENT.

Dame Cisse, pro se.

DECISION

I. INTRODUCTION

The Complaint filed by the Department of Enforcement (“Enforcement”) on April 14, 2011, alleges that Respondent Dame Cisse (“Cisse”) attempted to convert firm funds from his employer, FINRA member firm Capital Analysts, Inc. (“Capital Analysts”), in violation of FINRA Conduct Rule 2010, which provides that “[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.” The Complaint alleges that, on July 1, 2009, Capital Analysts’ parent

company, Western & Southern Financial Group (“WSFG”), received a \$4,828.10 check from a law firm, payable to Capital Analysts, which represented a refund for the balance of an unused retainer fee.¹ The Complaint further alleges that, on July 3, 2009, Cisse presented the retainer refund check, which was altered to include an additional payee, “Kevin Brown,” to a check cashing facility and attempted to cash the check using a driver’s license bearing the same name.²

Cisse filed an Answer on May 3, 2011, denying any misconduct and requesting a hearing. Cisse failed to appear at the hearing, which was held on January 10, 2012, in Cincinnati, Ohio.³ The Hearing Panel was composed of the Hearing Officer, and a current and a former member of FINRA’s District 8 Committee. Enforcement presented testimony from four witnesses and introduced 53 exhibits.⁴

The Hearing Panel finds that Cisse committed the violation alleged in the Complaint and bars him from associating with any FINRA member firm in any capacity.

II. FINDINGS OF FACT

A. Respondent

Cisse first became associated with a FINRA member firm in November 2005 as a non-registered employee.⁵ On July 7, 2008, Cisse became associated with Capital Analysts, also as a non-registered employee.⁶ From on or about July 14, 2009, until his

¹ Compl. ¶ 2.

² Compl. ¶¶ 8, 9.

³ The Office of Hearing Officers contacted Cisse on the morning of the hearing. He stated that he was at work and would not be attending the hearing. Because Cisse failed to appear at the hearing, this decision could also have been written solely by the Hearing Officer as a default decision.

⁴ “Tr.” refers to the transcript of the hearing. Enforcement’s exhibits are labeled CX-1 through CX-53.

⁵ CX-52, at 5.

⁶ *Id.* at 3.

termination on August 3, 2009, Cisse was registered at Capital Analysts as a Financial and Operations Principal. Cisse has not been registered with any FINRA member firm since he was terminated from Capital Analysts in August 2009.⁷

B. Cisse's Opportunity to Steal the Check

In June and July 2009, Cisse worked in Capital Analysts' accounting department in Cincinnati, Ohio.⁸ On June 30, 2009, Cisse's boss forwarded to him a voicemail from Donna Heizer ("Heizer"), a secretary in the legal department of WSFG.⁹ In her message, Heizer stated that WSFG had received a check for \$4,828.10 from a law firm, refunding a portion of a retainer fee that had been paid to the firm.¹⁰ Because Capital Analysts had drawn the original check for the law firm, she contacted its accounting department to determine how to process the check.¹¹

On July 1, 2009, Cisse contacted Heizer and told her to send him the check through inter-office mail.¹² Cisse's directive was contrary to Capital Analysts' policies and procedures, which requires all monies, including checks and securities, to be handled by the cashier's department.¹³ As instructed by Cisse, on July 1, 2009, Heizer sent the retainer refund check to Cisse by inter-office mail.¹⁴

⁷ CX-52, at 3. FINRA retains jurisdiction over Cisse pursuant to Article V, Section 4 of the FINRA's By-Laws. The alleged misconduct commenced prior to his termination of registration from a FINRA member firm, and Enforcement filed the Complaint within two years after Cisse's last FINRA registration terminated.

⁸ CX-52, at 4.

⁹ CX-2; CX-3; CX-6, at 1; Tr. 31-34.

¹⁰ CX-1; CX-2, CX-3, Tr. 31-34.

¹¹ Tr. 33-34.

¹² CX-4; CX-13; Tr. 34-35.

¹³ CX-34, CX-35.

¹⁴ CX-4, CX-13; Tr. 35.

On July 2, 2009, Heizer and Cisse communicated about a different accounting issue.¹⁵ During their exchange, Cisse mentioned that he had not received the retainer refund check.¹⁶ Heizer confirmed that she had sent the check on the previous day.¹⁷ However, contrary to his statements, Cisse had received the retainer refund check through inter-office mail on or before July 2, 2009.¹⁸

C. Cisse's Attempts to Cash the Retainer Refund Check

On July 3, 2009, Cisse took the day off from work.¹⁹ At approximately 9:00 a.m., Cisse went to Checksmart Financial ("Checksmart"), a check cashing facility in Cincinnati,²⁰ with the retainer refund check he had altered, listing "Kevin Brown" as an additional payee.²¹ Cisse provided the altered retainer refund check to Wendy Flora ("Flora"), a Checksmart district manager, to cash it.²² He completed a one-page check cashing application and provided identification.²³ As identification, Cisse presented Flora with a photocopy of his driver's license, with his picture and signature, that he had altered to reflect the name "Kevin Brown," along with "Kevin Brown's" purported social security number.²⁴

¹⁵ CX-13; Tr. 35-36.

¹⁶ CX-13; Tr. 35-36.

¹⁷ CX-13.

¹⁸ CX-27, at 29.

¹⁹ CX-36, at 1.

²⁰ CX-46, at 2-3; CX-7 (first video section); Tr. 54. Checksmart, the check cashing facility, is also referred to in certain exhibits as: Express Consumer Loans ("ECL"), Express Payroll Advance ("EPA"), and Payroll Express.

²¹ CX-6, at 5; CX-27, at 22-23.

²² CX-7 (second video section); Tr. at 43, 48-49, 52. All of Cisse's actions at Checksmart were captured on a security video. CX-7.

²³ CX-7 (second video section); Tr. 49, 51, 53-54.

²⁴ CX-6, at 8; Tr. 48-50, 52. Flora did not know Cisse's true identity until she participated in his criminal proceeding in December 2009. CX-40, at 36; Tr. 62.

Flora noticed that, while the photograph on the photocopied driver's license matched the individual at the service window, the name appeared to be altered and the signature did not appear to read "Kevin Brown."²⁵ While Cisse waited at the service window, Flora ran a report of the social security number listed on "Kevin Brown's" license and check cashing application and determined that the social security number belonged to a man with the initials A.J. who lived in Florida.²⁶ Flora returned to the window and informed Cisse that she would not be able to cash the check and that she was going to keep the check, application, and photocopy of the driver's license that Cisse had presented as identification.²⁷

Cisse left Checksmart, but returned at least two more times on July 3, 2009, in an effort to retrieve his paperwork.²⁸ On one occasion, he attempted to convince a Checksmart employee to speak with him outside of the facility.²⁹ When the employee sought Flora's assistance, Cisse left the facility but remained standing outside.³⁰ Flora contacted the police because she did not want Cisse to be there when she closed the store later that evening.³¹ When the police arrived, Cisse had already left the scene.³²

²⁵ CX-46, at 3; CX-6, at 7; Tr. 49, 53.

²⁶ CX-6, at 11-12; Tr. 50, 54-55.

²⁷ CX-46, at 3; Tr. 50, 55.

²⁸ CX-8; Tr. 56-58.

²⁹ Tr. 57.

³⁰ Tr. 58.

³¹ Tr. 58, 60.

³² CX-9; Tr. 61.

D. Cisse's Attempts to Cover Up His Attempted Theft

On July 4, 2009, Cisse contacted the Cincinnati police to report that his wallet, including his Ohio driver's license, had been stolen on July 2, 2009.³³ When Cisse returned to work on July 6, 2009, he sent an email to Heizer, stating that he had not yet received the inter-office package with the retainer refund check. He asked Heizer to initiate a stop payment for the check and to request a replacement from the law firm.³⁴

E. WSFG's Internal Investigation

Around the same time of Cisse's email, Heizer's boss requested that she return a call from the law firm that issued the retainer refund check.³⁵ Heizer spoke with a legal secretary from the law firm, who inquired about receipt of the retainer refund check.³⁶ Heizer stated that she had received the check, but that, coincidentally, she had just received notice that the check appeared to be missing.³⁷ The law firm's secretary informed Heizer that someone named "Kevin" attempted to cash the retainer refund check on July 3, 2009, but the manager of the check cashing facility confiscated the check because it looked suspicious.³⁸ Heizer requested a copy of the check and asked if more details could be obtained regarding the incident.³⁹

On July 28, 2009, Heizer received copies of both the altered and original check from the law firm.⁴⁰ Heizer forwarded the documentation to Jim Krause ("Krause"),

³³ CX-10.

³⁴ CX-12.

³⁵ CX-13; Tr. 37-38.

³⁶ Tr. 38.

³⁷ *Id.*

³⁸ Tr. 39.

³⁹ CX-13; Tr. 39.

⁴⁰ CX-15 and CX-16.

WSFG's Director of Internal Auditing and Investigations, and he began to investigate the incident involving the retainer refund check.⁴¹ On July 28, Krause spoke to Flora about "Kevin Brown's" attempt to cash the retainer refund check and requested a copy of the videotape taken by Checksmart's security cameras on the date of the incident.⁴²

After learning that Heizer had sent the retainer refund check to Cisse,⁴³ Krause reviewed Cisse's personnel file, which included a copy of his driver's license.⁴⁴ He concluded that "Kevin Brown's" license was an altered version of Cisse's license, with Cisse's photograph and signature.⁴⁵ Krause also reviewed copies of photographic stills taken from Checksmart's security cameras, and determined that Cisse was the person in the photographs.⁴⁶

On August 3, 2009, Krause retained a forensic document examiner to determine if the handwriting on the Checksmart check cashing application matched the handwriting on Cisse's Capital Analysts job application.⁴⁷ The document examiner determined that "[t]he check cashing application in questions [sic] for Kevin Brown was prepared and signed by Dame Cisse."⁴⁸

⁴¹ Tr. 41.

⁴² CX-31, at 1; CX-46, at 2; Tr. 73.

⁴³ Tr. 71.

⁴⁴ CX-22; CX-31, at 1; CX-47, at 2; Tr. 76-77, 79-80.

⁴⁵ CX-47, at 2; Tr. 79-80. *Compare* CX-6, at 8 with CX-22.

⁴⁶ CX-47 at 2; CX-19, CX-20; Tr. 76. Krause was familiar with Cisse because their offices were on the same floor. Tr. 72-73, 76.

⁴⁷ CX-29, CX-30; Tr. 78-79.

⁴⁸ CX-29, at 1; Tr. 79.

F. Cisse's Termination

On August 3, 2009, Krause met with Cisse to discuss the results of his internal investigation.⁴⁹ Cisse denied receiving or attempting to cash the retainer refund check, and also denied that he was the individual in the surveillance photographs Krause had received from Checksmart.⁵⁰ At the conclusion of the meeting, Capital Analysts terminated Cisse's employment.⁵¹

G. Cisse's Arrest and Criminal Proceeding

A Cincinnati police officer arrested Cisse after his meeting with Krause.⁵² In conducting a search of Cisse's person after his arrest, the officer found Cisse's driver's license in his wallet – the same driver's license that Cisse had reported stolen on July 4, 2009.⁵³

When interviewed by the police, Cisse initially denied that he attempted to cash the check.⁵⁴ However, after the officer reviewed the evidence, Cisse began crying and stated "I did it." Cisse explained that he was getting married in two weeks in Africa; and, because he needed money, he stole the check and attempted to cash it.⁵⁵ Cisse admitted that he received the check through inter-office mail on July 2, 2009.⁵⁶ He explained that

⁴⁹ CX-31, at 2; Tr. 80-82.

⁵⁰ CX-31, at 2; Tr. 81.

⁵¹ CX-31, at 2.

⁵² *Id.*

⁵³ CX-24. The license Cisse was carrying at the time of his arrest was not a replacement license; it was issued in March 2005 — over four years before Cisse claimed it was stolen.

⁵⁴ CX-26, CX-27, at 5-19. At approximately 12:15 p.m., after advising Cisse of his *Miranda* rights, the Cincinnati police officer began his digitally recorded interview of Cisse. CX-26; CX-27, at 2-4.

⁵⁵ CX-26; CX-27, at 19-20.

⁵⁶ CX-26; CX-27, at 29-30.

he altered the check and his driver's license to include the name "Kevin Brown."⁵⁷ Cisse also admitted to another Cincinnati detective that he had taken a check and cashed it because he was getting married and flying to Africa.⁵⁸

On January 14, 2010, Cisse entered a plea of no contest,⁵⁹ and the court found Cisse guilty of the lesser included offense of misdemeanor theft.⁶⁰

III. CONCLUSIONS OF LAW

The Hearing Panel finds that Cisse attempted to convert firm funds by stealing a check in the amount of \$4,828.10, altering the check, and attempting to cash it at a check cashing facility, in violation of FINRA Conduct Rule 2010.⁶¹

FINRA Conduct Rule 2010 is an ethical rule. It requires members and associated persons to observe high standards of commercial honor and just and equitable principles of trade. FINRA's authority to pursue disciplinary action for violations of Rule 2010 is sufficiently broad to encompass any unethical business-related misconduct, regardless of whether it involves a security.⁶² The test to determine whether conduct violates Rule 2010 is whether "the misconduct reflects on the associated person's ability to comply with the

⁵⁷ CX-26; CX-27, at 22-24.

⁵⁸ CX-37, at 60-61.

⁵⁹ *Id.* at 69-73; CX-38.

⁶⁰ CX-37, at 73; CX-39, at 3-5.

⁶¹ See *Henry E. Vail*, 52 S.E.C. 339, 342 (1995), *aff'd* 101 F.3d 37 (5th Cir. 1996). The Hearing Panel finds that Enforcement proved the Rule 2010 violation by a preponderance of the evidence independent of any evidence presented regarding Cisse's arrest and criminal proceeding.

⁶² *Dep't of Enforcement v. Saad*, No. 2006006705601, 2009 FINRA Discip. LEXIS 29, at *11 (N.A.C. Oct. 6, 2009) *aff'd*, Exchange Act Rel. No. 62178, 2010 SEC LEXIS 1761 (May 26, 2010) (citing *Daniel D. Manoff*, 55 S.E.C. 1155, 1162 (2002) (finding that registered representative who used a co-worker's credit card without authorization violated Rule 2110); *James A. Goetz*, 53 S.E.C. 472, 475 (1998) (finding that registered person's misuse of member firm's matching gift program to obtain private school tuition credit violated Rule 2110); *Dist. Bus. Conduct Comm. v. Bruun*, No. C3B960004, 1998 NASD Discip. LEXIS 23, at *10 (N.A.C. Jan. 23, 1998) (finding that registered person's submission of false reimbursement requests for seminar expenses that he did not incur violated Rule 2110)).

regulatory requirements of the securities business and to fulfill his fiduciary duties in handling other people's money.”⁶³

Enforcement proved by a preponderance of the evidence that Cisse violated Rule 2010 by stealing a firm check and attempting to cash it. Once Enforcement proved the violations, the burden shifted to Cisse to “produce evidence that refuted or rebutted the material introduced by Enforcement,” which he failed to do.⁶⁴

IV. SANCTIONS

FINRA's Sanction Guidelines (“Guidelines”) applicable to conversion recommend a bar.⁶⁵ The Guidelines define conversion for purposes of imposing sanctions generally as “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.”⁶⁶ As discussed above, the Hearing Panel concluded that Cisse stole a \$4,828.10 check from Capital Analysts, altered it, and attempted to cash it. Accordingly, consistent with the Guidelines, the Hearing Panel finds that a bar is the appropriate sanction in this case.

In assessing sanctions, the Hearing Panel considered the factors set forth in the Principal Considerations in Determining Sanctions section of the Guidelines,⁶⁷ as well as

⁶³ *Manoff*, 55 S.E.C. at 1162.

⁶⁴ *Saad*, 2009 FINRA Discip. LEXIS 29, at *19 (quoting *James B. Hovis*, Exchange Act. Rel. No. 55562, 2007 SEC LEXIS 604, at *28 (Mar. 30, 2007)).

⁶⁵ FINRA Sanction Guidelines 36 (2011), available at www.finra.org/sanctionguidelines.

⁶⁶ *Id.* n.2.

⁶⁷ Guidelines at 6-7.

other case specific factors. The Hearing Panel found several aggravating factors.⁶⁸ First, the Hearing Panel finds that Cisse's misconduct was not a mere lapse of judgment or an honest mistake. Rather, the Hearing Panel finds that Cisse's misconduct was intentional.⁶⁹ Cisse deliberately requested that Heizer send the retainer refund check to him instead of complying with Capital Analysts' policy, which required all checks to be sent to the cashier's department. Then, he altered the check and his driver's license to enable him to cash the check.

Second, the Hearing Panel considered that Cisse did not accept responsibility for his actions or attempt to remedy his misconduct.⁷⁰ He did not acknowledge his misconduct prior to his firm's discovery of the missing check. Further, Cisse continued to deny his involvement even after being confronted with the surveillance photographs from Checksmart.

Third, Cisse attempted to conceal his misconduct.⁷¹ After Cisse unsuccessfully attempted to cash the check at Checksmart, he lied to WSFG by (1) sending a false email to Heizer, which stated that he had not received the check by inter-office mail, and (2) denying his involvement in the incident when interviewed by Krause. Further, he falsely reported to the Cincinnati police that his wallet, which included his driver's license, had been stolen.

⁶⁸ See *McCarthy v. SEC*, 406 F.3d 179 (2d Cir. 2005) (finding that, in connection with sanctions, it is appropriate to consider: (1) all mitigating factors that the respondent has raised; (2) the seriousness of respondent's offenses; (3) the corresponding harm that respondent caused to members of the trading public; (4) respondent's potential gain for disobeying the rules; (5) the potential for repetition of respondent's misconduct in light of the current regulatory regime; and (6) the deterrent value to the respondent and others).

⁶⁹ Guidelines at 7 (Principal Considerations in Determining Sanctions, No. 13).

⁷⁰ *Id.* at 6 (Principal Considerations in Determining Sanctions, Nos. 2-4).

⁷¹ *Id.* (Principal Considerations in Determining Sanctions, No. 10)

Finally, the Hearing Panel considered the seriousness of Cisse's offense and the potential for recurrence. "Although [Cisse's] wrongdoing in this instance did not involve customer funds or securities, [his] willingness to lie to [Capital Analysts] and [attempt to] obtain funds to which he was not entitled indicates a troubling disregard for fundamental ethical principles which, on other occasions, may manifest itself in a customer-related or securities-related transaction. The securities industry is 'rife with opportunities for abuse,' and [Cisse's] misconduct is no less serious because the firm ... [was his victim] rather than a public customer. [Cisse's] actions reveal a willingness to construct false documents and then lie about them that suggests that his continued participation in the securities industry poses an unwarranted risk to the investing public."⁷² Cisse's threat to the investing public is not lessened by the fact that he was unsuccessful in his attempt to convert the funds.

In the absence of mitigation and in light of the aggravating factors present here, the Hearing Panel concludes that a bar is consistent with the Guidelines and is the appropriate remedial sanction for Cisse's attempted conversion of firm funds.

V. ORDER

Respondent Dame Cisse is barred from associating with any FINRA member firm in any capacity for attempted conversion of firm funds, in violation of FINRA Conduct Rule 2010. In addition, Cisse is ordered to pay costs in the amount of \$1659.15, which includes an administrative fee of \$750 and hearing transcript costs of \$909.15.

The bar shall be effective immediately if this decision becomes FINRA's final disciplinary action. The payment of costs shall be due on a date set by FINRA, but not

⁷² *Saad*, 2009 FINRA Discip. LEXIS 29, at *28-29 (internal citation omitted).

sooner than 30 days after this decision becomes FINRA's final disciplinary action in this proceeding.⁷³

Maureen A. Delaney
Hearing Officer
For the Hearing Panel

Copies to:

Dame Cisse (*via overnight courier and first-class mail*)
Jeffrey Pariser, Esq. (*via electronic and first-class mail*)
Jill G. Fieldstein, Esq. (*via electronic and first-class mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

⁷³ The Hearing Panel has considered and rejects without discussion all other arguments of the parties.