FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. BLAIR A. WEST (CRD No. 2647767), Respondent.	Disciplinary Proceeding No. 2009018076101 Hearing Officer – SNB **HEARING PANEL DECISION** July 26, 2012

For misusing funds in violation of FINRA Rule 2010, Respondent is barred. In light of the bar, no further sanctions are imposed for causing his firm to violate SEC Rule 15c2-4's escrow requirements, in violation of Rule 2110.

Appearances

Samuel Barkin, Esq. and Christina Kang, Esq., for the Department of Enforcement.

David E. Robbins, Esq., for the Respondent.

DECISION

I. Procedural History[1]

Enforcement filed a Complaint with the Office of Hearing Officers on June 29, 2011, and Blair A. West ("Respondent") filed his Answer to the Complaint on September 12, 2011. The first cause of the Complaint charges that Respondent misused funds, in violation of FINRA Rule

[1] As of July 30, 2007, NASD began operating under a new corporate name, the Financial Industry Regulatory Authority ("FINRA"). References in this decision to FINRA include, where appropriate, NASD. On December 15, 2008, certain consolidated FINRA rules became effective, replacing parallel NASD rules, and in some cases the prior rules were re-numbered and/or revised. *See* Regulatory Notice No. 08-57, FINRA Notices to Members, 2008 FINRA LEXIS 50 (Oct. 2008). In that process, FINRA renumbered NASD Rule 2110 as FINRA Rule 2010. This decision refers to and relies on the rules that were in effect at the time of Respondent's alleged misconduct and cited in the Complaint as the basis for the charges against him. In addition, because Enforcement filed the Complaint after December 15, 2008, FINRA's procedural rules govern this proceeding. The applicable rules are available at www.finra.org/rules.

2010. The second cause of the Complaint, which involves a different transaction, charges that Respondent failed to hold customer private placement funds in an escrow account as required under SEC Rule 15c2-4, and released a portion of the funds to pay his fee before the minimum contingency was met, in violation of NASD Rule 2110.

The Hearing was held in New York, NY, on April 24 and 25, 2012.[2] The Hearing Panel was composed of a Hearing Officer, a current member of the District 5 Committee, and a former member of the District 10 Committee. Enforcement called five witnesses to testify: a FINRA investigator, two customers, Respondent's former employee, and Respondent. Respondent also testified on his own behalf.

II. Facts

A. Origin of Proceeding

This proceeding followed a complaint to FINRA that Respondent had removed $113,512.68 in funds to be held in escrow in connection with a possible financing transaction.[3]

B. Respondent

After working in the banking industry and obtaining an MBA degree, Respondent became registered with FINRA as a General Securities Representative through member firm Credit Suisse First Boston in 1996.[4] In 2003, Respondent formed his own firm, Crusader Securities, LLC (the "Firm" or "Crusader").[5] The Firm was engaged in the investment banking business. Respondent obtained an exemption from FINRA to operate as the sole principal of the Firm. He served as the Firm's Chief Executive Officer, Financial and Operations Principal, and

[2] "Tr." refers to the transcript of the hearing; "CX" to Enforcement's exhibits; "RX" to Respondent's exhibits, and "Stip." to the parties' stipulations. Enforcement's exhibits CX-1 through CX-75 and Respondent's exhibits RX-1through RX-80 were admitted into evidence without objection. Tr. 534-535.
[3] Tr. 310; CX-53.
[4] Stip. 1; Tr. 24, 348-352.
[5] Tr. 24-25.

Chief Compliance Officer until February 2011, when the Firm filed a Uniform Request for Withdrawal from Broker-Dealer Registration ("Form BDW").[6] Between April and December 2011, Respondent was registered as a General Securities Representative through another member firm. Respondent is not currently registered with a member firm.[7]

C. Misuse of Funds

Enforcement charges that Respondent misused funds that were intended to be held in escrow pending the closing of a sale and leaseback transaction. The facts are largely undisputed.

In October 2008, DM, the President of machine tool company ACII, approached Respondent to assist him in raising funds. On October 22, 2008, Respondent on behalf of the Firm, and DM on behalf of ACII, entered into an advisory agreement, pursuant to which the Firm agreed to advise ACII on various possible transactions, including the raising of capital ("Advisory Agreement").[8] Pursuant to the Advisory Agreement, the Firm agreed to introduce ACII to "certain capital sources, including possible … lenders."[9] ACII agreed to pay the Firm $20,000, plus a percentage of the financing received by ACII. Under the Advisory Agreement, and as Respondent acknowledged at the hearing, Crusader was not entitled to compensation from ACII for the financing unless and until the financing arrangement closed.[10]

The Advisory Agreement, which was drafted by Respondent, provided that the Firm had the exclusive right to serve as escrow agent.[11] Respondent explained that he commonly placed this provision in advisory agreements to ensure that he would receive his fee from the transaction.[12]

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[6] CX-1; Tr. 25.
[7] Stip. 1.
[8] Stip. 2; CX-2 at 3-8.
[9] *Id.*
[10] Tr. 27-28, 63-64; CX-2, at 5.
[11] CX-2 at 5-6.
[12] *Id.*; Tr. 369-370.

In the fall of 2008, Respondent identified a capital source, ACS, to potentially provide $3,500,000 in financing.[13] On December 9, 2008, the Firm received a proposed term sheet ("Term Sheet") from ACS which provided that ACS would purchase certain equipment from KSI, a subsidiary of ACII (collectively "ACII") for $3,500,000, which it would then lease back to ACII (the "Sale-Leaseback"). The proposed lease would require ACII to make monthly payments of $56,756.84 to ACS over a term of 84 months (an effective lease rate of 9.25%) with the option of repurchasing the equipment at the end of the lease for $1.[14] ACII was required to make an initial deposit of $113,513.68, representing the first and last payment that would be due under the equipment lease.[15] Crusader's projected fee for the Sale-Leaseback Transaction was $89,000.[16]

ACII was not willing to make the required deposit unless the funds were held in an escrow account.[17] Respondent stated that it would be time consuming and costly to set up an escrow account.[18] The parties therefore agreed that Crusader would hold the ACII deposit.[19] Accordingly, Respondent stated in the Term Sheet that the deposit would be wired to Crusader to be held until closing.[20] The Term Sheet also provided that the deposit was to be promptly returned to ACII should ACS not approve the transaction.[21] On December 19, 2008, DM signed the Term Sheet on behalf of ACII. On December 24, 2008, ACII wired the $113,513.68 deposit to a bank account designated by Crusader.[22]

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[13] Stip. 3.
[14] Stip. 4; CX-3 at 3-4; CX-74.
[15] *Id.*; Stip. 4-5.
[16] CX-3 at 23.
[17] CX-6.
[18] Tr. 42-43; CX-7 at 1.
[19] Stip. 6.
[20] *Id.*; Tr. 47; CX-10 at 4.
[21] *Id.*
[22] Stip. 7.

Although Respondent deleted the word "escrow" from the Term Sheet provision regarding the deposit, his wire instructions stated: "I am also attaching a copy of Crusader's escrow wire instructions for the first and last payment equal to $113,513.68." These instructions provided that the funds were to be wired to an account titled "Crusader Securities Escrow Account" at HSBC Bank.[23] Despite these references, HSBC Bank did not hold the funds in escrow; Respondent was able to exercise unfettered control over the account.[24]

During this time, Respondent was experiencing severe financial difficulty. He was delinquent in his monthly mortgage payment. His personal bank account and the Firm's operating account were overdrawn and had been subject to overdraft charges.[25] Thus, Respondent exploited ACII's funding for his own benefit. As soon as the funds were wired, Respondent used them for his own purposes.[26]

On December 24, 2008, Respondent wired $89,000 of the funds to the Crusader operating account, which had a negative balance at the time.[27] Then, he wired $7,500 to the operating account for Crusader's parent company.[28] Finally, Respondent wired $72,500 from the Crusader operating account to his personal bank account that he shared with his wife, which also had a negative balance at the time.[29]

Two days later, on December 26, 2008, Respondent made a $27,000 mortgage payment for his residence.[30] Respondent used the balance of the funds for personal expenses such as car

[23] Tr. 48; CX-10 at 1; CX-12 at 2.
[24] Tr. 53-54.
[25] Tr. 57; CX-57; CX-59.
[26] Tr. 83.
[27] Tr. 57-58; CX-59.
[28] *Id.*
[29] *Id.* Tr. 58-61; CX-57 at 15; CX-59 at 2.
[30] His monthly mortgage was $14,000 per month. Tr. 60; CX-57 at 15, 18.

payments, telephone bills, clothing purchases, and cable bills. By February 19, 2009, Respondent had withdrawn the entire deposit to pay his personal expenses.[31]

In February 2009, after several months passed and the Sale-Leaseback Transaction had not been closed, DM told Respondent it was time to "call it quits" on the transaction and return the deposit.[32] On February 23, 2009, DM sent Respondent an email stating that ACII needed either a commitment or the return of the deposit, and concluding: "[t]oday's the day."[33]

Respondent replied to the email, confirming that Crusader still held the funds.[34] However, as noted above, Respondent had already used the funds for personal expenses. Accordingly, over the next several months, Respondent offered a series of excuses to stall the return of the funds while he attempted to raise funds by renting his residence in Southampton.

For example, on February 26, 2009, in response to DM's email with wiring instructions for the return of funds, Respondent replied that they were "very close" and should have "something definitive by early next week."[35] Later, on March 4, 2009, DM emailed Respondent expressing frustration that it had been two weeks since they were "close" to closing the transaction. Respondent asked DM to "be patient."[36]

On March 10, 2009, DM sent Respondent another email, reiterating his request to return the deposit.[37] Respondent stalled again, claiming that he had been following up every day and there was one "last piece" needed to close on the transaction.[38] Similarly, on March 13, 2009, in

[31] Tr. 83; CX-56 at 3.
[32] CX-21.
[33] Tr. 65; CX-24 at 2.
[34] Tr. 66-68; CX-24 at 1.
[35] CX-26 at 1.
[36] CX-28.
[37] CX-30.
[38] Tr. 74-75; CX-33.

response to DM's telephone call, Respondent stated that he would have a response "early next week."[39]

In a further attempt to retrieve his funds, DM communicated directly with the ACS representative and obtained his agreement to release the deposit on April 3, 2009.[40] When the funds were not released, DM followed up with the ACS representative, who indicated that DM would need to work with Crusader to release the funds.[41]

On April 8, 2009, DM instructed Respondent to return the funds as ACS had authorized.[42] DM followed up with Respondent again on April 11, 2009, but received no response.[43] Finally, on Tuesday, April 14, 2009, Respondent responded by sending DM an email claiming he had been out of the office for almost two weeks, stating he would try to return the funds "before the end of the week or at worst early next week."[44] However, this commitment to return the funds was a misrepresentation; Respondent had used the funds for his own expenses and had no ability to return them.

The following week, in response to DM's April 20, 2009, email, Respondent confirmed that he would be wiring the deposit. However, Respondent had no basis for the statement because there was no money available to wire.[45]

On April 22, 2009, DM had not received the funds, so he followed up with Respondent.[46] On the same day, Respondent apologized for the delay but continued to stall, stating: "[y]ou will have the wire this week."[47]

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[39] CX-35.
[40] Stip. 9; CX-40.
[41] CX-43.
[42] Stip. 9; Tr. 83-84; CX-44.
[43] Tr. 84-86; CX-46.
[44] CX-47.
[45] Tr. 87-88; CX-48.
[46] CX-49.
[47] *Id.*

On April 23, 2009, DM informed Respondent that he had waited long enough, and that it was "evident that rather than [remaining] in a segregated escrow account, my funds have been converted to some other use…." DM informed Respondent that if he did not receive the funds by the end of the day, he would make a complaint with FINRA and the New York Attorney General.[48] In response, Respondent indicated that he expected to wire the funds the following day.[49] However, on Friday April 24, 2009, he sent DM an email that he may not be able to get the wire instructions to the bank until Monday.[50]

On Tuesday, April 28, 2009, DM filed a complaint with FINRA.[51] On the following day, Respondent received a $144,000 rental payment for his Southampton residence for the months of July and August.[52] Immediately following the receipt of these funds, Respondent wired $113,513.68 to ACII.[53]

D. Failure to Comply with Escrow Requirements

The second cause of the Complaint, involving a different transaction, charges that Respondent failed to hold customer private placement funds in an escrow account as required under SEC Rule 15c2-4, and released a portion of the funds to pay his fee before the minimum contingency was met.

In May and June 2008, Crusader acted as the lead placement agent in a private contingency offering for TWH.[54] The offering was a best efforts offering which was exempt

[48] CX-50.
[49] *Id.*
[50] CX-51.
[51] CX-53.
[52] Tr. 95-96; CX-68 at 15.
[53] *Id.*; Stip. 9.
[54] Stip. 10.

from registration and had a $250,000 minimum, with an offering window between May 1 and July 31, 2008.[55] Crusader was entitled to 10% as the lead placement agent.

In connection with the offering, Crusader established a bank account at HSBC titled "Crusader Securities LLC Escrow Account" to hold funds for investors who purchased shares of TWH in the offering.[56] However, HSBC did not agree to act as the escrow agent.

On June 4, 2008, Crusader withdrew $3,500 from the account. [57] On June 5, 2008, the $250,000 minimum was met.[58]

III. Violations

A. Misuse of Funds

Respondent is charged with misuse of funds, in violation of FINRA Rule 2010. Rule 2010 requires members and persons associated with members to "observe high standards of commercial honor and just and equitable principles of trade." It is well established that the misuse of funds violates Rule 2010.[59] "An associated person makes improper use of customer funds where he or she fails to apply the funds (or uses them for some purpose other than) as directed by the customer."[60]

Here, the evidence establishes that Respondent misused ACII's funds. When he took the funds he told ACII and ACS that the funds would be held in escrow until closing. Contrary to this representation, as soon as he received the funds, Respondent used the funds to pay his personal expenses.

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[55] *Id.*; CX-66.
[56] Stip. 11.
[57] *Id.*
[58] The offering had seven investors who deposited $290,000 into the Crusader account. *Id.*
[59] *Dep't of Enforcement v. Patel*, No. C02990052, 2001 NASD Discip. LEXIS 42, at *24-25 (NAC May 23, 2001) (barring a representative for depositing customer funds into his own account rather than investing them as directed by the customers).
[60] *Id.*

Respondent argues that it was permissible for him to use the ACII deposit to fund his personal and business expenses. Specifically, Respondent contends that he was allowed to use ACII's deposit under the Advisory Agreement's provision that permitted Crusader to take its fee from the funds in the escrow account at closing. In rejecting this contention, the Hearing Panel finds that the only reasonable reading of this provision was that Crusader would have access to the funds at closing to pay its fee. The Term Sheet stated that Crusader was to hold the deposit until closing. Respondent was required to hold ACII's funds for the benefit of the parties so that the funds would be available for ACS at closing, or, if the transaction did not close, the funds could be returned to ACII. The Advisory Agreement stated that Crusader was entitled to its fee for the transaction at closing. There was nothing in either document that allowed Respondent to advance himself an unearned fee. Respondent's repeated assurances to DM that Crusader still held the funds indicates that Respondent knew he was not entitled to have access to the funds before the transaction closed.[61]

Accordingly, the Hearing Panel finds that Respondent violated FINRA Rule 2010.

B. Failure to Maintain Escrow Account and Premature Release of Funds

Section 15(c) of the Securities Exchange Act of 1934 provides that "no broker or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security . . . by means of any manipulative, deceptive, or other fraudulent device or contrivance." SEC Rule 15c2-4 provides that it constitutes a fraudulent, deceptive or manipulative act or practice as used in Section 15(c)(2) of the Exchange Act for any broker, dealer, or municipal securities dealer participating in any distribution of securities, other than firm-commitment underwriting, to

[61] Based upon the overwhelming evidence establishing the violation, the Panel gave no weight to DM's letter to FINRA withdrawing the complaint after Respondent repaid the funds. *See* RX-6; Tr. 446-447.

accept any part of the sale price for the securities, unless the funds are properly segregated in a separate trust or agency account or deposited pursuant to an escrow arrangement until the contingency occurs. With respect to the use of escrow accounts, Rule 15(c)(2)-4b.2 provides that investor funds must be "promptly transmitted to a bank which has agreed in writing to hold all such funds in escrow for the [investors] …."

Here Respondent caused Crusader to accept customer funds before the offering met the minimum contingency. In addition, Respondent caused Crusader to accept investor funds that were not subject to an escrow agreement administered by a bank.

By failing to comply with the escrow requirements of SEC Rule 15c2-4, Respondent violated NASD Rule 2110.

IV. Sanctions

A. Misuse of Funds

The FINRA Sanction Guidelines ("Guidelines") for misuse of funds recommend a bar unless the misuse of funds resulted from a misunderstanding of the intended use of the funds or other mitigation exists.[62]

The Hearing Panel finds that there are no mitigating factors, only aggravating ones. Respondent represented that he would hold ACII's funds in escrow for the benefit of ACII and ASC, but instead transferred the funds into an account that he controlled and used the funds for his personal benefit. The evidence is overwhelming that Respondent's misconduct was intentional. The Panel also found aggravating that Respondent engaged in an extended course of fraudulent representations to avoid and postpone the return of the funds. A bar is the appropriate sanction.

[62] FINRA Sanction Guidelines at 36 (2011).

B. Escrow Violations

For violations of SEC Rule 15c2-4 and Rule 2110, the Guidelines recommend a fine between $1,000 to $10,000, and suspension in any or all capacities for up to 30 business days in egregious cases. Enforcement and Respondent agreed that a fine of $5,000 is the appropriate sanction for this violation.[63] The Hearing Panel agrees that this sanction is reasonable, but given the bar for the first cause, it imposes no additional sanction for this violation.

V. Conclusion

For misusing funds in violation of FINRA Rule 2010, Respondent is barred. In light of the bar, no further sanctions are imposed for causing his firm to violate SEC Rule 15c2-4's escrow requirements, in violation of NASD Rule 2110. Respondent is also ordered to pay costs in the amount of $4,681.25, which includes a $750 administrative fee and the cost of the hearing transcript. The costs shall be payable on a date set by FINRA, but not less than 30 days after this decision becomes FINRA's final disciplinary action in this matter.[64]

HEARING PANEL

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Sara Nelson Bloom
Hearing Officer
For the Hearing Panel

cc: Blair A. West (via electronic and first-class mail)
David E. Robbins, Esq. (via electronic and first-class mail)
Samuel Barkin, Esq. (via electronic and first-class mail)
Christina Kang, Esq. (via electronic and first-class mail)
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[63] Tr. 549.
[64] The Hearing Panel has considered and rejects without discussion all other arguments of the parties.