

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

Respondent.

Disciplinary Proceeding
No. 2010022128301

Hearing Officer – LBB

HEARING PANEL DECISION

October 25, 2012

The Department of Enforcement failed to prove that Respondent converted funds from her member firm, in violation of FINRA Rule 2010, as charged in the Complaint. The Complaint is dismissed.

Appearances

Adam B. Walker, Esq., Principal Regional Counsel, and Seema Chawla, Esq., Principal Regional Counsel, Kansas City, Missouri, for the Department of Enforcement.

Gordon D. Gee, Esq., Kansas City, Missouri, for Respondent.

DECISION

The Department of Enforcement (“Enforcement”) filed the Complaint in this disciplinary proceeding on November 1, 2011, charging [“Respondent”] with converting \$451.27 from her member firm by submitting false expense reports. Respondent answered the Complaint on December 13, 2011, denying that she knowingly or intentionally submitted false expense reports to her firm. A hearing was conducted on July 10, 2012, in Kansas City, Missouri, before a hearing panel composed of a current member of the District 4 Committee, a former member of the District 5 Committee, and a Hearing Officer. Enforcement called a FINRA examiner and Respondent as witnesses. Respondent testified on her own behalf, and called a former customer and her current supervisor as character witnesses.

The Complaint charges Respondent with submitting expense reports to [the "Firm"] that requested payment of credit card charges for taking V.D., Respondent's contact person for a corporate client, and V.D.'s two daughters to dinner and the Lion King, but instead taking her own daughter to the dinner and show. There is no dispute that Respondent submitted the expense reports to the Firm, resulting in payment of the charges, or that Respondent took her daughter to the dinner and show. The issue in this case is whether Respondent submitted erroneous expense reports with the intention of causing the Firm to pay her personal expenses, or, as she contends, the errors were inadvertent. Enforcement failed to prove by a preponderance of the evidence that Respondent intentionally submitted false expense reports to the Firm. Accordingly, the Hearing Panel dismisses the Complaint.

I. Respondent

Respondent was first registered with a FINRA member firm in 1993, and has continued to be registered since that time. At the time of alleged violation, she was registered with FINRA through the Firm, where she was employed in the Firm's Des Moines office from 1993 until March 2010. She is currently registered with [another member firm]. CX-1.

II. Origin of FINRA's Investigation

FINRA began the investigation leading to the filing of the Complaint because the Firm filed a Form U5 reporting that it had terminated Respondent's employment for cause. Tr. 28-29; CX-1.

III. Respondent Takes Her Daughter to Dinner and the Show and Submits Expense Reports to Her Firm

In December 2009, Respondent invited V.D., who was her contact at a corporate client, and V.D.'s two young daughters to dinner and a performance of the Lion King. She received permission from her supervisor to invite the client to attend the event. Tr. 91, 96-97. She bought

four tickets for the Lion King through [the Club], where she was a member, for \$75 each, for a performance on January 22, 2010. Tr. 83-84; CX-5. The Club automatically billed the \$300 charge for the tickets to Respondent's Firm corporate credit card. The charge appeared on her Club statement for December 2009. Tr. 85; CX-5.

Respondent created a partial entry on an expense report for the cost of the Lion King tickets soon after buying the tickets. She later completed the expense report requesting payment of the charge for the four tickets and submitted it to the Firm. When she submitted the report, she believed she was going to attend the event with the client and her daughters. Tr. 89, 93-4, 96-97. A document provided to FINRA by the Firm shows that Respondent submitted an expense report to the Firm for payment of the charge for the four tickets as a business expense. Tr. 48; CX-5. The description of the expense is "... cost of tickets of \$75 for four to civic center to entertain [M Corporation] – V.D., A.D., B.D., and myself." Tr. 48; CX-5.¹ The Hearing Panel finds that the report was submitted on or before January 20, 2010.²

The Lion King performance was scheduled for January 22, 2010. Tr. 131. A day or two before the performance, V.D. cancelled. Tr. 91. The tickets were non-refundable, so Respondent took her 24-year-old daughter to the dinner and show. The other two tickets went unused. Tr. 90, 92, 93, 98, 199; CX-4. Respondent did not obtain her Firm's permission to use the tickets for her personal use or reimburse the Firm for the cost of the tickets. Tr. 93.

¹ The report on Respondent's expenses that was introduced in evidence appears to be the partial results of a record search conducted by the Firm. CX-5; Tr. 48. Respondent did not see this type of report while she was at the Firm, and was not familiar with the format of the report. She also was not familiar with some of the information shown on the report, or with the Firm's procedures for handling expense reports that had been submitted by employees. Tr. 88-89, 131, 134, 142-143. No Firm witnesses testified at the hearing.

² The Club's statement for the period ending January 31, 2010, reported a credit card payment for the tickets and other expenses on January 14, 2010. CX-5. The report provided by the Firm shows the transaction date as January 14, 2010. The "general ledger effective date" on the report is January 20, 2010. CX-5. Based on the transaction date, the date of the general ledger entry, and the Club's January 2010 statement reporting payment for the tickets on January 14, 2010, the Hearing Panel finds that the Firm paid the charge on or before January 20.

Respondent created a partial entry for the planned dinner with V.D. and her daughters before the January 22 event. Tr. 138. The description she entered, as shown on the report provided by the Firm, was for "Dinner with V.D., A.D., B.D., and myself prior to Civic Center event." CX-5. Respondent used the dinner reservation that she had made for the evening she had planned with V.D. and her daughters to take her daughter to dinner before the show. Tr. 96-98. Respondent's personal credit card and the corporate credit card looked very similar, and she inadvertently paid for the dinner with her corporate card, rather than her personal [Firm] credit card. Tr. 98-99, 153. When the \$151.27 charge for the dinner with her daughter appeared on her expenses, Respondent pulled the receipt from her file, "matched it up," and submitted the expense for payment. She sent the receipt to her supervisor. Tr. 99-100, 102, 137, 144. The Firm paid the charge for the dinner. CX-5.

Respondent first learned of the errors on her expense reports on March 4, 2010, when her supervisor called her about the inaccurate reports. She offered to reimburse the Firm, but the Firm terminated her employment on March 5 without accepting her offer. Tr. 76, 99-100, 121, 126-127.

IV. Enforcement Has Failed to Establish that Respondent Converted Funds from Her Firm

Enforcement alleges that Respondent converted \$451.27, the price of the four tickets and the dinner. Conversion is "an intentional and unauthorized taking of and/or exercise of ownership over property by one who neither owns the property nor is entitled to possess it."³ Enforcement has the burden of proving a conversion charge by a preponderance of the evidence.⁴

³ *FINRA Sanction Guidelines* at 36 n.2 (2011).

⁴ *Dep't of Enforcement v. Saad*, No. 2006006705601, 2009 FINRA Discip. LEXIS 29, at *18 (N.A.C. Oct. 6, 2009), *aff'd*, *John M. Saad*, Exchange Act Rel. No. 62178, 2010 SEC LEXIS 1761 (May 26, 2010).

Based on several factors, the Hearing Panel finds that Enforcement has not shown that Respondent intended to cause the Firm to pay her personal expenses.

First, it was the practice of the office for Firm employees to use tickets when clients cancelled plans to attend events. Respondent testified that tickets for events would sometimes go unused, and sometimes someone from the office would attend. Tr. 93. Thus, Respondent did not need to falsify an expense report to use the tickets.

Second, the Hearing Panel considered the fact that Respondent's income was more than \$300,000 in 2009. Tr. 119. It is unlikely that she would jeopardize a job she had held for nearly 20 years, in which she was quite successful, for such a small sum.

Third, Respondent did not attempt to conceal the fact that she took her daughter to the dinner and show. When Respondent went to the office the following Monday, she told her colleagues all about the performance and dinner, including that she had taken her daughter because the client had cancelled. Tr. 119.

Fourth, Respondent's practices in the preparation and submission of expense reports, including the reports for the Lion King performance and the dinner with her daughter, were likely to lead to occasional unintentional errors. Respondent explained that she prepared partial reports for anticipated expenses so she would not forget to submit them, and then finished the reports piecemeal when the expenses were incurred. The nature of her job responsibilities required her to be on the telephone constantly, and she often prepared expense reports while talking on the telephone. Tr. 87, 89, 93-97, 99-102, 114, 127-129, 138, 140-143. Respondent testified that the submission of the expense reports for payment was an honest mistake.

Tr. 93-94, 98-100.⁵ The Hearing Panel found that Respondent was a very credible witness and found her account of the inadvertent errors in creating and submitting her expense reports credible.⁶

The Hearing Panel finds that Enforcement failed to prove by a preponderance of the evidence that Respondent converted funds from her firm by causing the Firm to make payments for the tickets to the Lion King and dinner with her daughter, and dismisses the charge that she converted funds from the Firm.

V. Conclusion

Enforcement has not shown that Respondent converted funds from her firm, in violation of FINRA Rule 2010. The Complaint is dismissed.⁷

Hearing Panel.

Lawrence B. Bernard
Hearing Officer

⁵ Testimony from a Firm witness about the workings of the expense reporting system, including evidence of what was on computer screens when registered representatives created expense reports, might have been helpful to the Hearing Panel. Respondent was the only witness who had any knowledge of how the system worked, but her knowledge was limited. In addition, she has been gone from the Firm for more than two years, and did not recall precisely what was on her computer screen when she worked on expense reports. *See* Tr. 89, 99, 144-145.

⁶ Respondent was responsive to questions from both parties, answered thoughtfully, admitted her lack of information or recollection on some matters, and did not appear evasive.

⁷ The Hearing Panel has considered all of the arguments of the parties. They are rejected or sustained to the extent they are inconsistent or in accord with the views expressed herein.