FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. WILLIAM B. SMITH (CRD No. 1335193), Respondent.	Disciplinary Proceeding No. 2011029152401 Hearing Officer – MC **HEARING PANEL DECISION** February 19, 2013

Respondent William Bruce Smith converted a customer's funds, in violation of NASD Conduct Rules 2330 and 2110, and misrepresented and omitted material facts, in violation of NASD Rule 2110 and FINRA Rule 2010. For this misconduct, the Hearing Panel bars Respondent from associating in any capacity with any FINRA member firm, and orders him to pay restitution.

Appearances

Stuart P. Feldman, Esq., and Paul D. Taberner, Esq., Boston, Massachusetts, for the Department of Enforcement.

William Bruce Smith, pro se.

I. Introduction

This is a flagrant case of conversion of a customer's funds and subsequent concealment of the conversion by misrepresentations and omissions.

Respondent William Bruce Smith was formerly a broker registered with FINRA through FINRA member firm Triad Investors, Inc. In 2003, Smith persuaded a newly widowed customer to entrust to him life insurance proceeds she received after the death of her husband. Smith told the customer he would use the funds to purchase certificates of deposit on her behalf, to serve as part of the financial foundation for her retirement. Instead, Smith funneled the funds into his business, which was in financial distress. Over the next eight years Smith repeatedly assured the

customer that her money was safely invested in certificates of deposit. When the customer ultimately discovered the truth, she reported the matter to Triad. When FINRA investigated the matter, Smith responded by attempting to persuade the customer to make false statements to FINRA to support his untrue claim that she had loaned him the money he had converted.

II. The Charges

The Department of Enforcement initiated this disciplinary proceeding against Smith by filing a Complaint with the Office of Hearing Officers on March 28, 2012. The Complaint charges Smith with conversion of a customer's funds, in violation of NASD Conduct Rules 2330 and 2110. It also charges him with misrepresenting and omitting material facts to the customer and falsifying documents, in violation of NASD Conduct Rule 2110 and FINRA Rule 2010.[1] In his Answer, Smith denies the allegations.

NASD Rule 2330(a) forbids persons associated with a member firm from making "improper use of a customer's … funds." Conversion occurs when a person, without authorization, takes and uses property of another for his own purposes.[2] Conversion of another's funds violates NASD Rules 2330 and 2110, and FINRA Rule 2010.[3]

NASD Rule 2110 and its successor, FINRA Rule 2010, require persons associated with member firms to "observe high standards of commercial honor and just and equitable principles

[1] As of July 30, 2007, NASD consolidated with the member regulation and enforcement functions of NYSE Regulation and began operating under a new corporate name, the Financial Industry Regulatory Authority (FINRA). References in this decision to FINRA include, where appropriate, NASD. Following consolidation, FINRA began developing a new FINRA Consolidated Rulebook. The first set of the new consolidated rules became effective on December 15, 2008. *See* Regulatory Notice 08-57 (Oct. 2008). On that date, FINRA Rule 2010 replaced, without change, its predecessor, NASD Rule 2110. Because Smith's misrepresentations, omissions, and document falsifications occurred before and after the effective date of FINRA Rule 2010, his course of misconduct violated both NASD Rule 2110 and FINRA Rule 2010. The applicable rules are available at www.finra.org/rules.

[2] *FINRA Sanction Guidelines* at 36 n.2 (2011)("Conversion generally 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] *Dep't of Enforcement v. Mission Sec. Corp.*, No. 2006003738501, 2010 FINRA Discip. LEXIS 1, at *17 & n.13 (N.A.C. Feb. 24, 2010), *aff'd*, Exchange Act Rel. No. 63453, 2010 SEC LEXIS 4053 (Dec. 7, 2010); *Dist. Bus. Conduct Comm. v. Jones*, No. C02970023, 1998 NASD Discip. LEXIS 60, at *8 (N.A.C. Aug. 7, 1998).

of trade." To mislead a customer by misrepresenting the true state of a customer's account "is the antithesis of a registered representative's [duty to uphold] high standards of commercial honor," and a violation of NASD Rule 2110 and FINRA Rule 2010.[4]

III. The Facts

A. Background: Customer SH

Customer SH, now 66 years of age, is a long-time employee at an insurance company where she processes policies and earns approximately $38,000 annually.[5] Her husband, RH, had been employed as a vice president of marketing services for another insurance company. During the marriage, RH made all business and investment decisions for the family.[6]

RH and Smith had a business and social relationship. RH introduced Smith to SH in the 1990s. SH described the couple's relationship with Smith as "very cordial." SH testified that RH had considered working part-time with Smith after retiring, which he contemplated doing when he reached age 63.[7]

However, in August 2003, at age 56, RH died.[8] SH suddenly confronted the unfamiliar responsibility of making all of her own financial decisions.[9]

Shortly after RH's death, SH received proceeds from RH's life insurance policies. The payment central to this case was a check, dated September 10, 2003, for slightly more than

---

[4] *Dep't of Enforcement v. Abbondante*, No. C10020090, 2005 NASD Discip. LEXIS 43, at *31-32 (N.A.C. Apr. 5, 2005) (citation omitted), *aff'd*, Exchange Act Rel. No. 53066, 2006 SEC LEXIS 23 (Jan. 6, 2006).

[5] CX-1, at 3; Tr. 30. References to the hearing testimony are designated as "Tr. __." References to Enforcement's Exhibits are designated as "CX-___."

[6] Tr. 30-31.

[7] Tr. 32-33.

[8] Tr. 30-31; CX-1, at 5.

[9] Tr. 31

$100,000.[10] She also received some additional funds, including a distribution from RH's 401(k).[11] SH needed to use some of these funds for mortgage payments and to meet other basic financial needs.[12] However, she entrusted the proceeds from the life insurance policies to Smith to manage and invest for her.[13]

B. Smith Becomes SH's Financial Advisor

In 2003, Smith was registered with FINRA member firm Triad Investors, Inc., where he was employed as an independent contractor and managed a branch office for the firm.[14] He also owned W.B. Smith Companies, Inc., an umbrella entity under which he operated W.B. Smith Financial Group, a registered investment advisor, and W.B. Smith Property, LLC.[15] Immediately following RH's death, Smith became SH's financial advisor.[16]

In September 2003, Smith created a brokerage account at Triad for SH and deposited the check for RH's life insurance proceeds into it.[17] SH's new account application, dated September 11, 2003, described her account objectives as preservation of capital and income, and capital appreciation, and showed her risk tolerance as "conservative."[18] The application accurately reflected that SH had no knowledge of stocks, bonds, and limited partnerships.[19]

---

[10] Tr. 33-34; CX-2.

[11] Tr. 37.

[12] Tr. 31-32.

[13] Tr. 34.

[14] Tr. 141-42, 153. Smith remained with Triad until December 2011. Tr. 175-76. He is currently not registered or associated with any FINRA member firm. Pursuant to Article V, Section 4 of FINRA's By-Laws, FINRA has jurisdiction over Smith for the purposes of this disciplinary proceeding because the Complaint was filed on March 28, 2012, within two years of the date Triad terminated him, and the misconduct described in the Complaint occurred while he was registered with Triad.

[15] Tr. 140-42.

[16] Tr. 32.

[17] Tr. 34; CX-3, at 6.

[18] Tr. 36; CX-1, at 2.

[19] Tr. 93.

In the weeks following RH's death, Smith frequently visited SH at her home to assist her with financial matters. SH had confidence in Smith and accepted his advice.[20] She had "total faith" that Smith would "do the right things" for her and trusted him "100 percent." Smith even assisted SH in leasing a car. Because of her confidence in Smith, SH recommended him as an advisor to others.[21]

Smith advised SH to place some of her funds into an IRA and to purchase an annuity.[22] He also recommended that she use RH's life insurance proceeds to purchase certificates of deposit.[23]

C. Smith Converts Customer Funds

When Smith established SH's brokerage account, he initially recommended that SH invest $50,000 of the life insurance proceeds in certificates of deposit. SH agreed and authorized Smith to transfer this amount from her brokerage account to her personal bank account.[24] Then, acting on Smith's instructions, SH signed and gave Smith a blank check to purchase the certificates of deposit.[25]

When Smith filled in the amount of the check, he dated it September 27, 2003, and made it payable to "Unibank – Rebecca Smith."[26] Rebecca Smith is Smith's wife.[27] Smith deposited

[20] Tr. 37-38.

[21] Tr. 68-69.

[22] Tr. 37-38.

[23] Tr. 37.

[24] Tr. 38, 116; CX-3, at 1.

[25] Tr. 39, 116.

[26] Tr. 116-17; CX-3, at 2.

[27] Tr. 117. Smith testified that he does not recall forging his wife's name as endorser of the check. Tr. 118. His wife, who did not testify, wrote a letter stating she did not endorse the check and knew nothing about its deposit into her checking account. CX-10.

the check into his wife's account at Unibank, then transferred the funds into the W.B. Smith Company bank account.[28]

Less than a month later, on October 21, 2003, Smith instructed SH to authorize Triad to wire the remaining $50,000 from the life insurance proceeds in her brokerage account to her checking account.[29] SH complied and signed and gave Smith a second check. Again, SH did not date the check or name a payee, although she did make the notation "CD" on the memo line.[30] Smith dated the check October 21, 2003, and made it payable to Commonwealth National,[31] where Smith maintained his company bank account.[32]

D. Smith Conceals the Conversions

After SH gave Smith the checks, she met with him approximately twice a year to review her finances, and occasionally called him if she had questions. Some of their meetings occurred at SH's home; the others took place at Smith's office. Through the ensuing years, Smith purported to inform SH of the status of her investments. When SH asked him about the certificates of deposit, Smith told her that as they matured, he purchased new certificates, and deposited the interest earned into her brokerage account. When she asked where the certificates were located, he told her that they were at a bank called EverBank.[33]

[28] Tr. 117; CX-12, at 61-62.

[29] CX-4, at 1.

[30] Tr. 42; CX-4, at 2.

[31] Tr. 42.

[32] CX-12, at 68-69.

[33] Tr. 43-44. Smith testified that at Triad, with other clients, he "used EverBank quite a bit to buy CDs" because Triad had a business relationship with EverBank. Tr. 103, 113.

From time to time, SH confided to Smith her concerns about her ability to afford to retire. When she did, Smith told her not to worry and reassured her that she would be "fine in retirement."[34]

From September 2005 through June 2011, on an irregular basis, Smith provided SH with written 'asset reviews,' mailing some to her home and delivering others personally.[35] The reviews appeared to summarize the assets in her account. Significantly, each of the asset reviews contained a line reading "Bank CD $100,000."[36] Smith placed a post-it note on the first asset review, for the period ending September 13, 2005, directing SH to "Call me if any questions. Bill."[37] The asset reviews provided SH with written confirmation of what Smith told her, that she continued to hold certificates of deposit valued at $100,000, constituting approximately one third of her total assets.[38]

In August 2011, Smith met with SH at her request specifically to discuss her retirement. SH, about to turn 63, was considering how soon to retire. After they met, Smith sent SH a letter dated August 9, 2011, with a binder of information about the financial implications of alternative retirement dates. Once more, Smith identified as an asset, on a page devoted to a summary of SH's financial information, "Bank CDs – OTHER TAXABLE ACCOUNT" valued at $100,000.[39]

In December 2011, SH was surprised to discover that an expected monthly deposit of cash from her brokerage account into her checking account, on which she depended to pay bills,

[34] Tr. 44.

[35] Tr. 44-45.

[36] CX-6.

[37] CX-6, at 1.

[38] Tr. 46; CX-6.

[39] CX-7, at 6.

had not been made. She attempted to contact Smith. Unable to reach him, SH left a voicemail message asking Smith to call her. Instead of hearing from Smith, SH received a call from Smith's son, Peter Smith, who informed SH that Triad had terminated his father's employment with the firm[40] and that SH's Triad account had been transferred to Peter Smith at another broker-dealer.[41]

Peter Smith insisted that SH meet with him immediately. He asked SH if she knew where the certificates of deposit were located. He and SH failed to find any record of them at EverBank and at Triad.[42]

In January 2012, SH finally succeeded in reaching Smith. He insisted that he had purchased certificates of deposit on her behalf at EverBank. To assuage SH's concerns, Smith then promised that he would immediately return $50,000 to her by check sent via FedEx or certified mail, and that afterwards he would discuss returning the remaining $50,000 to her.[43]

Instead, Smith sent SH a bank treasurer's check, dated January 30, 2012, for $25,000. He also sent her a memorandum to sign. The memorandum's stated subject is "loan" and it reads "please find the payment arrangement for the loan" to W.B. Smith Companies, Inc. The memorandum states that SH accepted the $25,000 check as "partial payment on the loan" and confirms that she made the loan "with full knowledge." It also contains a "payment schedule" indicating that Smith will repay SH in three additional quarterly payments of $25,000. SH testified she did not sign the statement, because it is false. For months afterwards, she did not

[40] Tr. 52.

[41] Tr. 50.

[42] Tr. 52-53.

[43] Tr. 56-57.

deposit the check, fearful that to do so would legitimize Smith's claim that she loaned him her money.[44]

Triad informed SH that it would not take any action on Smith's handling of her account without a formal complaint. To initiate Triad's review, SH prepared and sent a notarized letter dated January 27, 2012, describing her entrustment of the funds to Smith.[45]

FINRA learned of the matter and conducted an investigation. Subsequently, on March 28, 2012, Enforcement filed its Complaint. On April 16, 2012, Smith filed his Answer in which he claimed that SH "knew exactly what the funds were for and that we would pay her back when she needed the funds."

Shortly afterward, Smith sent an email, dated June 20, 2012, to the lawyer SH had retained to help her recover her funds. Apparently operating under the mistaken belief that SH was responsible for Enforcement's Complaint, Smith wrote, "I have a proposition." It was: "Have [SH] retract her FINRA filing on my U4 by stating she was mistaken and that she had knowledge of the funds and the whereabouts. I can help with the wording. This will end the … FINRA situation immediately."[46] SH did not respond to Smith's proposal.[47]

E. Smith's "Defense"

At the hearing Smith flatly denied that he "stole funds" belonging to SH. To the contrary, he claimed that as SH's "mentor, a friend, and … confidant" he "went overboard for her … because she was a family friend" for whom he "cared very much."[48] Remarkably, Smith took SH to task for not being more "prudent," as if to imply that she was partially to blame,

[44] Tr. 56-60; CX-11. On the advice of her attorney, SH subsequently deposited the check.

[45] Tr. 83; CX-9. SH subsequently sent a letter to Massachusetts authorities as well. Tr. 80.

[46] Tr. 60; CX-14.

[47] Tr. 61.

[48] Tr. 106.

suggesting that a prudent person would have insisted on knowing exactly what bank accounts were involved, and would have demanded to see statements and evidence of the interest earned.[49]

In his testimony, Smith gave a convoluted account of how SH came to "loan" him $100,000. Smith claimed that RH, prior to his death, had agreed to invest $100,000 in Smith's ailing company.[50] Smith testified that, after RH's death, he told SH of her husband's intent to invest "to open her eyes to the fact that that [sic] availability of [the] funds was something that [RH] wished to have happen … and she agreed" to lend him the funds.[51] Smith testified that at first he believed $50,000 would suffice to alleviate the company's distress, but shortly afterwards decided he needed an additional $50,000. This was his explanation for why SH conveyed the "loan" in two separate checks.[52] He considered the $100,000 to be a "zero interest loan."[53]

Smith offered three reasons for disguising the "loan" as "CDs" in the asset reviews he provided to SH. First, he claimed that he did so for SH, because she wanted to conceal from her family the fact that she had loaned the money to him. Second, and "more important," Smith wanted to avoid revealing to Triad, with oversight of SH's account documents including the asset reviews, that he had borrowed funds from a client.[54] Finally, Smith claimed that he included the "CDs" in the asset reviews as an "accommodation" to SH to give her "some comfort in the fact that she knew where the actual assets were."[55]

---

[49] Tr. 99-100.

[50] Tr. 110. Smith testified that he needed the money because one of his former employees committed a theft in 2000 which led to a settlement that cost him over $400,000 in 2003. Tr. 143.

[51] Tr. 133-34.

[52] Tr. 138-40.

[53] Tr. 112.

[54] Tr. 166. In an investigative on-the-record interview, Smith testified that the $100,000 was "actually an investment by [SH's] husband, which I reconfigured to be a loan." He testified that one reason for characterizing the investment as a CD instead of as a loan was "cause Triad would have saw [sic] the word 'loan,' and wouldn't appreciate that." CX-12, at 58-59.

[55] Tr. 102.

Smith insisted that over the years he always accurately represented to SH that the $100,000 was a loan.[56] However, he prepared no loan documents, never advised his or her accountants of the existence of the loan, never provided SH with collateral, and never recorded the "loan" in his company's books.[57] Smith flatly contradicted SH by denying that he told her he had purchased EverBank certificates of deposit, claiming that '"Everbank' was never brought up to her by myself."[58]

IV. Conclusion

The outcome of this case depends upon the Hearing Panel's resolution of the testimonial conflicts between SH and Smith. The Panel finds SH's testimony, based on its substance, her demeanor, and the corroboration provided by the documentary evidence, to be entirely credible. In contrast, the Panel finds Smith's testimony, based on its substance, his demeanor, and the absence of any documentary corroboration, to be entirely devoid of credibility.

Smith's claim that SH loaned him $100,000, interest free, for over eight years, is a transparent fabrication, designed to avoid liability for his fraudulent misconduct. As noted, Smith produced no corroborative evidence to support his testimony. To the contrary, the evidence of Smith's attempt to induce SH, with a $25,000 treasurer's check, to sign a false statement that she loaned him the funds, and Smith's emailed "proposition" to SH's lawyer, are powerful proof of Smith's fraudulent intent and lack of credibility.[59]

Therefore, the Hearing Panel concludes that the evidence overwhelmingly establishes that Smith converted customer SH's funds, in violation of NASD Conduct Rules 2330 and 2110,

[56] Tr. 106.

[57] Tr. 112.

[58] Tr. 102.

[59] *See, e.g., John Edward Mullins*, Exchange Act Rel. No. 66373, 2012 SEC LEXIS 464, at *37 (Feb. 10, 2012)(Respondent's failure to repay customer until forced to do so undermines his claim he had permission to borrow the funds and evidences intentional conversion).

as alleged in the first cause of action, and misrepresented and omitted material facts to SH, by means of falsified documents and oral misrepresentations and omissions, in violation of NASD Conduct Rule 2110 and FINRA Rule 2010, as alleged in the second cause of action.

V. Sanctions

For conversion of funds, FINRA's Sanction Guidelines call for adjudicators to "[b]ar the respondent regardless of the amount converted."[60] It is well established that conversion is "among the most grave violations" a registered person may commit and, by its nature, "is extremely serious and patently antithetical to the 'high standards of commercial honor and just and equitable principles of trade' that [FINRA] seeks to promote."[61] As such, in the absence of mitigating factors, conversion poses so substantial a risk to investors "as to render the violator unfit for employment in the securities industry."[62] This is presumably why it is one of only three FINRA rule violations for which the standard recommended sanction is a bar.[63]

For making misrepresentations or omissions of material fact, the Guidelines recommend "[i]n egregious cases … barring the individual."[64]

In this case, there are no mitigating circumstances and numerous aggravating circumstances. Smith preyed upon SH, when, recently widowed, she was particularly vulnerable, taking advantage of the trust established through a lengthy previous friendship, under the pretext of providing financial advice to help SH secure her future retirement. In so doing, he

[60] *Guidelines*, at 36.

[61] *Mullins*, 2012 SEC LEXIS 464, at *42, *73 (*quoting Wheaton D. Blanchard*, 46 S.E.C. 365, 366 (1976)).

[62] *Id.*, at *74 (*quoting Charles C. Fawcett IV*, Exchange Act Rel. No. 56770 (Nov. 8, 2007)), 91 SEC Docket 3147, 3157 n.27.

[63] The other two are failure to respond to information requests from FINRA and cheating during broker-dealer qualifying examinations. *See Guidelines*, at 33, 40.

[64] *Guidelines*, at 88.

deceived SH and misappropriated the substantial sum she received from her husband's life insurance policy, which was to provide a significant foundation for her retirement plans.

For years thereafter, Smith created layers of deception, orally and in false documents, to mislead SH into believing that he was safeguarding funds on which she depended to provide for her future needs. When finally called to account, Smith gave evasive answers to FINRA's questions, and audaciously attempted to enlist his customer's support for his dishonest defense. These are aggravating factors that unambiguously establish that Smith engaged in a premeditated and intentional course of conduct,[65] consisting of a pattern of individual acts of dishonesty extending over a period of eight years,[66] designed to lull SH into a false sense of security allowing Smith's misuse of her funds to go undiscovered.[67] Smith's efforts to conceal his misconduct continued through FINRA's investigation and the hearing.[68] Smith clearly presents so substantial a threat to investors as to make him unfit for employment in the securities industry.

For all of these reasons, the Panel concludes that the only appropriate sanction for Smith's egregious misconduct is a bar, and an order to pay restitution to SH with interest.

VI. Order

For converting customer funds, in violation of NASD Conduct Rules 2330 and 2110, and for making material misrepresentations and omissions to the customer, in violation of NASD Rule 2110 and FINRA Rule 2010, the Hearing Panel bars Respondent William Bruce Smith

[65] *See Guidelines*, at 7 (Principal Consideration 13 ("Whether the respondent's misconduct was the result of an intentional act, recklessness or negligence.")).

[66] *See Guidelines*, at 6 (Principal Considerations 8 ("Whether the respondent engaged in numerous acts and/or a pattern of misconduct.") and 9 ("Whether the respondent engaged in the misconduct over an extended period of time.")).

[67] *See Guidelines*, at 6 (Principal Consideration 10 ("Whether the respondent attempted to conceal his or her misconduct or to lull into inactivity, mislead, deceive or intimidate a customer.")).

[68] *See Guidelines*, at 7 (Principal Consideration 12 ("whether the respondent attempted to delay FINRA's investigation, to conceal information from FINRA")).

from associating with any FINRA member firm in any capacity. In addition, the Panel orders Smith to pay customer SH restitution of $75,000, with interest.[69] Restitution shall be payable on a date set by FINRA, but not less than 30 days after this decision becomes FINRA's final disciplinary action.[70]

If this Hearing Panel Decision becomes FINRA's final disciplinary action, Smith's sanctions shall be effective immediately.

HEARING PANEL.

_____

By: Matthew Campbell
Hearing Officer

[69] Interest on the first $50,000 of converted funds shall be calculated from September 27, 2003, until repaid. Interest on the $25,000 Smith repaid SH shall be calculated from October 21, 2003, to January 30, 2012, the date he sent the check to SH. Interest on the remaining $25,000 shall be calculated from October 21, 2003, until repaid.

[70] Interest shall be paid at the rate set forth in the Internal Revenue Code at 26 U.S.C. 6621(b)(2). The interest rate, which is used by the Internal Revenue Service to determine interest due on underpaid taxes, is adjusted each quarter and reflects market conditions. Customer SH is identified in the Addendum to this Decision, which is served only on the parties.