

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JEFFREY E. KRUPNICK
(CRD No. 4307569)

Respondent.

Disciplinary Proceeding
No. 2014043869901

Hearing Officer–MC

**EXTENDED HEARING PANEL
DECISION**

January 8, 2018

For converting customer funds, in violation of FINRA Rules 2150(a) and 2010, the Extended Hearing Panel bars Respondent from associating with any FINRA member firm in any capacity.

Appearances

For the Complainant: Carolyn Craig, Esq., Emma Jones, Esq., and Frank Mazzarelli, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

No appearance for Respondent.

I. Introduction

For more than three years, Respondent Jeffrey E. Krupnick, while a broker at FINRA member firm Wells Fargo Advisors, LLC, managed several accounts for MK, his customer and half-brother. One of the accounts was a joint brokerage account. Krupnick named himself primary owner, but the account contained only MK's funds. MK authorized Krupnick to make some expenditures from the joint account on his behalf.

From January 2012 through November 2014 (the "relevant period"), Krupnick withdrew and transferred approximately \$143,000 of MK's funds from the joint account and made personal use of the money.

MK complained to Wells Fargo in November 2014. The firm investigated. Krupnick claimed the withdrawals and transfers were approved by MK and some were loans MK made to him. MK denied authorizing Krupnick to borrow or use the funds. The firm mediated a

settlement by which Krupnick repaid MK \$121,000, funds he said MK loaned him, and Wells Fargo contributed \$22,000 to make MK whole.

The Department of Enforcement filed a Complaint with a single cause of action charging Krupnick with conversion of MK's funds.

II. Background

A. Respondent and Jurisdiction

Krupnick first registered as a General Securities Representative with a FINRA member firm in 2001.¹ In 2008, he registered with FINRA through Wells Fargo.² He resigned from Wells Fargo in November 2014 after the firm began its investigation into MK's allegations.³

Krupnick subsequently registered with another FINRA member firm where he was employed until October 2017. He is not currently associated with a FINRA member firm but is subject to FINRA's jurisdiction for the purposes of this disciplinary proceeding pursuant to Article V, Section 4 of FINRA's By-Laws, because the alleged misconduct occurred while he was registered with a FINRA member firm, and Enforcement filed the Complaint while Krupnick was still registered with FINRA.⁴

B. Procedural History

Enforcement filed its Complaint on April 21, 2016. The initial pre-hearing conference took place on May 27, and the parties agreed to a three-day hearing starting on December 19, 2016. Although Krupnick resides in Florida, at his request the hearing was to take place in Chicago.

On October 11, 2016, Krupnick's counsel filed a motion to postpone the hearing for four to seven months. He represented that Krupnick had been seriously injured in an automobile accident in June 2016, and the injuries caused Krupnick to suffer from extreme pain rendering him physically and mentally unable to participate in a hearing or help prepare his defense. Krupnick submitted letters from two treating physicians attesting to the extent and effects of his injuries. Enforcement opposed postponing the hearing. I issued an order requiring Krupnick to provide an affidavit and additional medical information under seal. On October 25, 2016, after considering the additional information, I granted the motion for postponement and rescheduled the hearing for May 2–4, 2017.

¹ Joint Stipulation ("Stip.") ¶ 1.

² Stip. ¶ 3.

³ Hearing Transcript ("Tr.") 339, 367–69.

⁴ According to FINRA's Central Registration Depository, Krupnick's employer member firm suspended him in September 2017. He resigned on October 18, 2017, and is not now registered with FINRA.

On January 13, 2017, Krupnick submitted an updated report representing that his physical condition had not improved since the previous October. The parties participated in another pre-hearing conference on March 13, 2017. His counsel represented that Krupnick's condition had worsened and his pain management specialist strongly advised against any travel for fear of exacerbating his injuries.⁵ Krupnick moved to postpone the hearing to permit him to undergo further medical treatment. Over Enforcement's objection,⁶ I granted the motion and issued an amended scheduling order. Based on his counsel's representations that his medical condition and pain management needs could protract the hearing, I increased the number of hearing days to five and rescheduled it to begin on September 25, 2017, in Florida.

In March 2017, the parties filed pre-hearing submissions, including briefs, witness and exhibit lists, exhibits, and stipulations. The parties also filed numerous objections to each other's submissions.

On May 19, 2017, Krupnick submitted an updated status report representing that his condition had stabilized. On May 22, the parties participated in another pre-hearing conference. Krupnick's counsel asked to relocate the hearing to Chicago, because the flight from Krupnick's home in Sarasota to Chicago would be shorter than the drive to Boca Raton, the Florida hearing site.⁷ I granted the request, and on July 25, issued a notice of hearing designating the FINRA District Office in Chicago as the hearing site. In the meantime, on July 14, 2017, Krupnick filed another updated status report, describing his condition as having slightly worsened.

On August 18, 2017, Krupnick's counsel filed a motion to again relocate and postpone the hearing until late October or November. The motion stated that Krupnick had taken a commercial airline flight from Florida to Virginia on August 10. It stated that although the flight was short, it "extremely aggravated" Krupnick's back injuries and he needed time to recuperate. It represented that his physician recommended against his undertaking air travel for the foreseeable future. Enforcement opposed the request and asked that Krupnick be required to produce medical records relating to his injuries.⁸

Following a pre-hearing conference on August 21, 2017, I directed Krupnick to produce all medical records relating to the treatment of his injuries and to submit a statement from his physician describing his condition, prognosis, treatment, and how soon he would be able to recuperate from the exacerbation of his injuries caused by his August 10 flight.

I reviewed the medical records and concluded that they showed, contrary to his previous representations, that Krupnick's condition had substantially improved over time. The records showed no driving restrictions; contained medical opinions that his injuries did not require

⁵ March 13, 2017 Pre-Hearing Conference Transcript ("PHC Tr.") 3–8.

⁶ *Id.* at 10–13.

⁷ May 22, 2017 PHC Tr. 6–7.

⁸ August 21, 2017 PHC Tr. 3–6.

surgical intervention; described his level of pain as tolerable; and estimated that he should recover from the aggravation to his injuries resulting from his recent flight well before the scheduled hearing date. Consequently, on August 30, 2017, I denied Krupnick's request to again postpone the hearing, but relocated it to FINRA's Boca Raton District Office so he would be able to drive instead of fly.

On September 15, 2017, ten days before the hearing date, Krupnick's counsel filed a motion to withdraw from the case. The motion stated that Krupnick had failed "to meet his obligations" to counsel and that their communication had deteriorated to the point that further representation by counsel had become "unreasonably difficult, if not impossible." I granted the motion.

At a pre-hearing conference on September 19, 2017, Krupnick represented that he was attempting to obtain new counsel. He also articulated a series of complaints: he was unhappy about his counsel's withdrawal from the case; he was at a disadvantage because he did not have "any idea" as to how his former counsel had planned to defend him;⁹ and Enforcement had violated his constitutional rights in the investigation of the case.¹⁰ He stated that if he was unable to retain new counsel, he would not appear and participate in the hearing.¹¹ He acknowledged that he was aware of the location and time of the commencement of the hearing¹² and understood the potential consequences if he should fail to appear.¹³

The hearing convened on September 25, 2017, at FINRA's District Office in Boca Raton, Florida. Krupnick did not appear. Enforcement and staff at the Office of Hearing Officers attempted to contact him at all of his known email addresses and cell and office phone numbers. Krupnick did not respond. The hearing therefore proceeded without him.

The hearing lasted three days. Enforcement presented testimony from: MK; Troy Mulhern, the FINRA Senior Regulatory Coordinator primarily responsible for the investigation, who collected documents and prepared summary exhibits; and two Wells Fargo witnesses, manager Anthony Langer and broker Michael Halperin. In addition to a number of Enforcement's exhibits and one exhibit Krupnick had submitted prior to the hearing, the Extended Hearing Panel received all of the joint exhibits and the parties' stipulations.

III. The Complaint and Answer

The Complaint alleges that between July 2011 and February 2014, Krupnick opened eight brokerage accounts for MK. One of them was a joint brokerage account.¹⁴ During the

⁹ September 19, 2017 PHC Tr. 12–14.

¹⁰ *Id.* at 16–17.

¹¹ *Id.* at 29–30.

¹² *Id.* at 33–34.

¹³ *Id.* at 18–19.

¹⁴ Complaint ("Compl.") ¶¶ 4–5.

relevant period, Krupnick transferred funds from MK's other Wells Fargo accounts and deposited more than \$15,000 in the form of MK's traveler's checks into the joint account.¹⁵ Although Krupnick made some authorized purchases on MK's behalf with funds from the joint account, the Complaint alleges that he used most of the money for himself to pay off credit card debts, fund home improvements, and pay wedding expenses.¹⁶ By Enforcement's calculations, Krupnick misappropriated and converted approximately \$143,000 of MK's funds for his own use, without MK's knowledge or approval.¹⁷ The Complaint alleges that when MK complained and Wells Fargo investigated the matter, Krupnick falsely asserted that most of the money he took from the joint account consisted of loans from MK.¹⁸ The single count of the Complaint charges that Krupnick violated FINRA Rules 2150(a) and 2010.

In his Answer, Krupnick denied misusing MK's funds¹⁹ and affirmatively asserted that because MK orally permitted him to use the funds at issue, and consented to the transactions, his use of the funds was not unauthorized.²⁰

In addition, in his pre-hearing brief, Krupnick claimed MK's accusation that he converted funds was a malicious fabrication to retaliate against Krupnick for having intervened in MK's personal life in a well-intentioned effort to help him out. Krupnick stated that MK had a dispute with local police arising out of illegal drug-dealing in Hawaii. Krupnick claims he phoned the local police department on MK's behalf to try to resolve the problem and that when his half-brother learned of the intervention, he became angry and retaliated by making false allegations against Krupnick to his supervisors at Wells Fargo, and then pursued the false allegations with FINRA.²¹

IV. Facts

MK is 62 years old and a 40-year resident of Hawaii. He has been semi-retired since the late 1990s, when he sold a successful business he had established. He now buys and sells condominiums and oversees a management company.²²

MK is 20 years older than Krupnick.²³ Having had no contact for a number of years, MK and Krupnick reconnected in 2009 or 2010.²⁴ Theirs was a long-distance relationship since

¹⁵ Compl. ¶¶ 6–7.

¹⁶ Compl. ¶¶ 17–19.

¹⁷ Compl. ¶¶ 21, 36; JX-1.

¹⁸ Compl. ¶ 29.

¹⁹ Answer (“Ans.”) ¶¶ 17–22.

²⁰ Ans., Third, Fifth, and Sixth Affirmative Defenses.

²¹ Respondent's Amended Pre-Hr'g Br. at 2.

²² Tr. 28–29.

²³ Tr. 28–30; Stip. ¶ 5.

²⁴ Tr. 31.

Krupnick's home is in Sarasota, Florida.²⁵ However, once they reconnected, they began to communicate frequently by phone, text messages, and email, and by 2013, phone records show they called one another nearly every other day.²⁶

A. The Joint Account

In July 2011, Krupnick began opening Wells Fargo accounts for MK. One was a brokerage account he held jointly with MK. The opening account documents identified Krupnick as the registered representative of record for the joint account, as well as the primary account owner, and directed that correspondence regarding the account should be sent to Krupnick's Sarasota home address.²⁷ The joint account held only cash, not securities; the cash came from MK's funds in other Wells Fargo accounts Krupnick also opened, and from MK's travelers checks Krupnick deposited into the joint account.²⁸

Wells Fargo policy permitted Krupnick to effect journals, or transfers, of less than \$100,000 of customer funds from one Wells Fargo account to another with oral approval of the customer, even if the transfers resulted in a change in beneficial ownership of the transferred funds.²⁹ Krupnick effected 35 journals from MK's accounts into the joint account. Notes made by his assistants documenting the journal requests reflect that when he directed them to make the transfers, he told them that MK had authorized or requested them.³⁰ Other funds came from automatic journals from MK's business account and margin trust account on a monthly basis, pursuant to standing letters of authorization.³¹

Other accounts Krupnick established for MK included an account in the name of a business MK owned ("business account");³² a revocable brokerage trust account that traded on margin and held securities and cash ("margin trust account");³³ a separate revocable brokerage

²⁵ Stip. ¶ 6.

²⁶ In 2013, there were calls on 65 percent of the days, and in 2014, 56 percent of the days. Tr. 219–223; CX-105A Revised.

²⁷ Stip. ¶¶ 6–7, 16; JX-3, at 4–5.

²⁸ Tr. 155–57. MK estimated that his primary trust account had a value of more than \$900,000 at the time of the hearing. Tr. 127.

²⁹ Tr. 244. The parties stipulated that a journal is a transfer of currency or securities from one Wells Fargo account to another Wells Fargo account. Some were initiated by Krupnick and others were automatically effected pursuant to a letter of authorization, and would periodically transfer currency or securities from one Wells Fargo account to another. Stip. ¶¶ 53–54.

³⁰ Tr. 166–70; CX-69, at 4; see *e.g.*, JX-17, at 2; JX-22, at 2; JX-24, at 1; JX-27, at 2; JX-28, at 1; JX-29; JX-30, at 1; JX-31, at 1; JX-32; JX-33; JX-37, at 2; JX-38; JX-39, at 2; JX-41, at 2; CX-13, at 1.

³¹ Tr. 163–64.

³² Stip. ¶ 24; JX-5, at 9.

³³ Stip. ¶ 27; JX-8, at 5, 9, 11–12; CX-90.

trust account that did not trade on margin (“non-margin trust account”),³⁴ and a revocable trust advisory account (“consolidated trust account”).³⁵

Between 2012 and 2014, Krupnick funded the joint account with \$15,400 in deposits of MK’s travelers checks and transfers from MK’s other accounts totaling more than \$180,000. These included approximately \$8,000 from the business account, more than \$87,000 from the margin trust account, more than \$44,000 from the non-margin trust account, and more than \$41,000 from the consolidated trust account.³⁶ All of these funds were MK’s.

Krupnick made a single deposit of his own for \$6,000 into the joint account. However, it was immediately preceded by a transfer of \$8,000 from the joint account to his account. The net effect was a transfer of \$2,000 of MK’s money from the joint account to Krupnick’s personal brokerage account, leaving none of Krupnick’s funds in the joint account.³⁷

Krupnick decided where account opening documents and monthly account statements were to be sent. Beginning August 25, 2011, Wells Fargo mailed the account statements for the margin trust and non-margin trust accounts to MK’s post office box in Hawaii.³⁸ On January 23, 2013, Krupnick directed his assistant to change the mailing address for these two accounts to Krupnick’s Sarasota address.³⁹ Similarly, when Krupnick opened the consolidated trust account, he directed that the new account documents and monthly statements be sent to his address, not to MK.⁴⁰ These three accounts were the sources for most of the funds Krupnick transferred to the joint account, and then withdrew or transferred to himself. After January 2013, statements for these accounts were not sent to MK.⁴¹

Krupnick also had the new account documents and monthly account statements for the joint account sent to his address. Duplicate statements for the joint account were mailed to MK’s post office box from January 2011 through August 2014.⁴² However, MK moved and ceased receiving mail at his post office box in December 2012, although the post office held his mail for him to pick up, he testified, until June 2013.⁴³

³⁴ Stip. ¶ 35; JX-34, at 28–29.

³⁵ Stip. ¶¶ 48–49; JX-34, at 25, 28–29.

³⁶ Stip. ¶¶ 56–57, 59–61.

³⁷ Tr. 164. In response to a FINRA Rule 8210 request for information, Krupnick represented that he had deposited \$500 of his money into the joint account when it was opened. However, a review of all of Krupnick’s account statements failed to disclose any such deposit. Tr. 194; JX-45, at 5.

³⁸ Stip. ¶ 30; Stip. ¶ 40.

³⁹ Stip. ¶ 31; Stip. ¶ 41.

⁴⁰ Stip. ¶¶ 50–51.

⁴¹ Stip. ¶¶ 41–42, 50–51.

⁴² Stip. ¶¶ 17–18.

⁴³ Tr. 407–10.

In early 2012, Krupnick began to transfer and withdraw funds from the joint account. As time passed, the frequency of the transactions increased. In 2012, there were 19; in 2013, there were 35; and in 2014, there were 49.⁴⁴ During the relevant period, Krupnick made cash withdrawals, initiated journals transferring funds from the joint account to his brokerage account and home equity loan account, and finally, in September and October 2014, transferred funds from the joint account to seven of his personal credit card accounts.⁴⁵ With these transfers and withdrawals, Krupnick appropriated approximately \$143,000 of MK's funds for his own use.⁴⁶

B. MK's Complaint to Wells Fargo

MK testified that he became concerned in 2014 because he was not receiving account statements, and he repeatedly called and sent text messages to Krupnick asking him to send them to him.⁴⁷ MK testified that when Krupnick said the statements were going to Krupnick in Florida, he told Krupnick he wanted the statements sent to Hawaii. According to MK, in an exchange of text messages in March 2014, Krupnick promised that by April all of his Wells Fargo account statements would go to his Hawaii address.⁴⁸ However, MK testified, he did not obtain the statements until Wells Fargo sent them after he complained to the firm.⁴⁹

MK made his complaint to Wells Fargo on November 11, 2014,⁵⁰ in a telephone call to Anthony Langer, a manager at Wells Fargo's Sarasota office.⁵¹ Langer was one of Krupnick's supervisors at the time.⁵² The next day, Langer tried unsuccessfully to reach MK to obtain additional details; when MK did not return his call, Langer sent a text message to MK asking to discuss the matter further.⁵³

According to Langer, the day before he formally filed MK's complaint for review by the appropriate Wells Fargo department, Krupnick, who appeared "nervous . . . very concerned and agitated," as Langer described it, "pulled me in his office" to tell him that his brother had just been released from the hospital and was "irate and . . . crazy."⁵⁴

⁴⁴ Tr. 170–72; JX-1.

⁴⁵ JX-1.

⁴⁶ Tr. 305.

⁴⁷ There are several text messages to corroborate MK's testimony that over time he made repeated requests to be provided with account statements: CX-39; CX-51, at 49–50; CX-62; CX-64.

⁴⁸ Tr. 79–81; CX-33.

⁴⁹ Tr. 81–82.

⁵⁰ Tr. 174.

⁵¹ Tr. 332, 338.

⁵² Tr. 342.

⁵³ Langer did not recall the date, but did remember the sequence of events. Tr. 335–38. The text message he sent MK, the day following MK's initial telephone complaint, is dated November 12, 2014. CX-51, at 1–2.

⁵⁴ Tr. 335–36.

In MK's original telephone call on November 11, he complained about a trade Krupnick had mishandled for him.⁵⁵ In the next few days, the complaint grew to include allegations that Krupnick had stolen money from his accounts and possessed gold coins and bullion purchased with MK's funds.⁵⁶

Apparently in response to learning that MK had complained to Wells Fargo, Krupnick sent a text message to him on November 13. Krupnick wrote that Wells Fargo recommended the two of them should resolve "the money repayment outside of Wells," and asked MK if it would be satisfactory if Krupnick sent a certified check and shipped a gold bar and coin to him.⁵⁷

On November 15, MK sent a message to Langer stating that Krupnick had told him he had taken \$91,000 from him.⁵⁸ MK testified that Krupnick's lawyer informed his lawyer that Krupnick wanted to repay a \$91,000 "loan" MK had made to him. In addition, according to MK, Krupnick had called a mutual friend, and told him that he had borrowed money from MK.⁵⁹

After learning MK had made a complaint, Krupnick asked Langer if he was referring it through Wells Fargo's system. Langer told him that he was.⁶⁰

C. Krupnick's Reaction to the Complaint

1. Krupnick's Settlement Offer

The day MK complained, Krupnick called a lawyer who practices criminal law.⁶¹ On November 17, 2014, less than a week later, the lawyer sent MK a letter and two statements directed to Wells Fargo for MK to sign and notarize. The letter proposed a settlement.

Krupnick offered to immediately wire \$100,000 and send gold bullion he had purchased for MK. The offer was contingent upon a number of preconditions. First, MK had to sign and notarize the two statements, "recanting and terminating" the complaints he had made to Wells Fargo.⁶² The first statement recanted MK's complaint about Krupnick's handling of a stock transaction in which MK lost a substantial amount of money.⁶³ The second statement retracted MK's complaint that Krupnick had misappropriated funds from his accounts. Both statements linked MK's complaints to his recent surgery and other health problems, including pain, fatigue

⁵⁵ Tr. 337, 343-44.

⁵⁶ Tr. 338-39.

⁵⁷ CX-51, at 3-4.

⁵⁸ Tr. 338; CX-51, at 20-22. MK's text message states that Krupnick admitted taking \$91,000 from his accounts.

⁵⁹ Tr. 112-13.

⁶⁰ Tr. 339.

⁶¹ Tr. 302.

⁶² CX-108, at 1-2.

⁶³ CX-108, at 3.

from weeks of lack of sleep, and the effects of pain medications.⁶⁴ Next, Wells Fargo had to continue to employ Krupnick. Finally, the statements had to persuade Wells Fargo to “terminate any internal audit” of Krupnick. Then, if in six months Krupnick was not under any investigation, he promised to send an additional \$50,000 to MK.⁶⁵

MK did not sign the statements.

2. Krupnick’s Confession to a Colleague

When Wells Fargo hired Krupnick in May 2008, the firm also hired Mitchell Halperin, now a first vice president of investments at the Wells Fargo Sarasota office. Halperin worked in close physical proximity with Krupnick until 2012, when Halperin moved to a different branch office, but he still maintained an office at the Sarasota branch where Krupnick spent most of his time.⁶⁶ At the suggestion of a Wells Fargo supervisor, Halperin and Krupnick formed a partnership and shared a registered representative number.⁶⁷ The purpose was to increase efficiency, and also to help boost Krupnick’s asset level. They worked together on some accounts and had what Halperin described as a “business relationship.”⁶⁸ The two brought different skill sets to the partnership: Krupnick’s role was to bring in new clients and Halperin’s was to maintain the office.⁶⁹

Halperin testified that in November 2014 he became aware of a customer complaint against Krupnick, but he did not know the details. According to Halperin, Krupnick told him his brother was upset about how he had handled a trade.⁷⁰

Halperin learned of Krupnick’s resignation from Wells Fargo from one of his managers. Halperin inferred that the resignation was related to the customer complaint.⁷¹ When Krupnick left Wells Fargo, Halperin inherited Krupnick’s customer accounts.⁷²

After the resignation, Krupnick called Halperin several times.⁷³ He called one evening early in December 2014 to say he wanted to discuss his situation, and he came to Halperin’s home. Once there, Krupnick told Halperin that his brother had accused him of taking money from his Wells Fargo accounts. Halperin testified this shocked him. Krupnick told Halperin that

⁶⁴ CX-108, at 4.

⁶⁵ CX-108, at 1.

⁶⁶ Tr. 346–48.

⁶⁷ Tr. 353–54.

⁶⁸ Tr. 348–49.

⁶⁹ Tr. 352–53.

⁷⁰ Tr. 362–363, 367.

⁷¹ Tr. 366–67.

⁷² Tr. 364–65.

⁷³ Tr. 369.

he had spent some of the money to make purchases for MK. Halperin advised Krupnick to make an accounting of where the money went. It was then that Krupnick, in tears, admitted to Halperin that he had taken MK's money. Halperin asked Krupnick how much; Krupnick replied that he did not know. Krupnick told Halperin that he was heartbroken, and that he did not know what the future held for him.⁷⁴

D. Krupnick's Defenses

In his Answer and his pre-hearing brief, Krupnick denied the allegations. He affirmatively asserted that MK orally agreed to loan him the funds, and then approved, ratified, and consented to all Krupnick's transfers and withdrawals from the joint account.⁷⁵ As noted above, Krupnick also claims that MK fabricated the complaint he made to Wells Fargo in retaliation against him because he "interfered" in MK's "drug dealing"⁷⁶ when he called the local police in Hawaii purportedly "to curtail his drug dealing to the officers" and "to cease this behavior."⁷⁷

Krupnick claims that the funds he withdrew and transferred fell into several categories: general purpose interest-free loans MK made to him on request; monthly "rent" payments of \$500 "to establish a history of residency in Florida" because MK wanted to move there from Hawaii; gifts MK made to Krupnick in connection with his wedding in July 2014; loans to permit Krupnick to pay down high credit card balances; and reimbursements for expenses Krupnick incurred on behalf of MK, but which he cannot specifically recall.⁷⁸

During the investigation, Mulhern made a request for information under Rule 8210 for Krupnick to provide an accounting of the transactions in the joint account. Krupnick responded in late January or early February 2015⁷⁹ with a spreadsheet. Krupnick explained he created it by referring only to the joint account statements, but not statements for other accounts, including his own credit card accounts. The first entry is dated March 1, 2013. However, as Mulhern testified, the first of the disputed transactions in the joint account actually occurred in January 2012. The spreadsheet does not include any transactions in 2012, nor does it include transfers in January and February 2013. It also omits a transfer from the joint account to Krupnick's home equity line of credit account that occurred on November 4, 2014.⁸⁰

Krupnick's spreadsheet categorizes the transactions as deposits, withdrawals, transfers and journals. It contains a column titled "Purpose." However, there are transactions for which no

⁷⁴ Tr. 370–72.

⁷⁵ Ans. ¶ 29, and Third, Fifth, and Sixth Affirmative Defenses.

⁷⁶ Respondent's Amended Pre-Hr'g. Br. at 15.

⁷⁷ *Id.* at 2.

⁷⁸ *Id.* at 8–10.

⁷⁹ Tr. 218–19.

⁸⁰ Tr. 183–84; JX-1, at 4; JX-45.

purpose is stated. These are all for transactions labeled either “journal” or “withdraw.”⁸¹ Mulhern testified that Krupnick provided no explanation of what those withdrawals or transfers were used for and testified in an on-the-record investigative interview on February 28, 2015 (“OTR”) that he could not recall.⁸²

Krupnick labeled another column “Amount Expense.” In his OTR, Krupnick explained that this column represents reimbursements for purchases or expenses he undertook for MK.⁸³ The column heading “Amount Loan,” Krupnick stated, represents amounts he borrowed from MK. “Rent,” Krupnick testified, represents monthly payments for MK’s rental of a room at Krupnick’s Florida home.⁸⁴

On the spreadsheet’s last page, Krupnick provided totals. For the period covered—March 1, 2013 to October 14, 2014—the spreadsheet represents that MK paid him \$10,000 for the rental of the room; reimbursed him more than \$14,000 for expenses he incurred on MK’s behalf; authorized journals of more than \$94,000 into Krupnick’s account, comprised of more than \$9,000 for personal credit card payments and more than \$85,000 to Krupnick’s personal account; and that Krupnick withdrew more than \$14,000 as a cash loan. It also shows Krupnick making deposits into the joint account totaling \$6,500, which Krupnick deducted from what he represents as the amount owed to MK.⁸⁵

Mulhern issued a Rule 8210 request seeking clarification from Krupnick about the rental payments. On September 11, 2015, in the written response through his attorney, Krupnick represented that he did not recall receiving any rent payments from MK in 2012, but received them from March 2013 through October 2014.⁸⁶ This was consistent with his OTR testimony and the first spreadsheet.

Having discovered additional transactions in the joint account in 2012 that Krupnick did not include in his spreadsheet, Mulhern issued another Rule 8210 request, and in October or November 2015, shortly after the September 11 written response, Krupnick provided a second spreadsheet to cover the period unaddressed in the first spreadsheet.⁸⁷ Its format is similar to the first one. However, it does not contain a column identifying loans. It has a new heading, “Amount of EFT,” for electronic fund transfers.⁸⁸ Krupnick testified earlier in his OTR that MK

⁸¹ JX-45, at 1–3.

⁸² Tr. 185–87.

⁸³ Tr. 187.

⁸⁴ Tr. 188; JX-45.

⁸⁵ Tr. 195–96; JX-45, at 5.

⁸⁶ Tr. 211–12.

⁸⁷ Tr. 203.

⁸⁸ Tr. 204, 218–19; JX-46.

began lending him money in March or May 2013; however, none of the entries in the second spreadsheet describing the “Purpose/Reason for Transfer” mention a loan.⁸⁹

All of the EFTs documented on the first page of the second spreadsheet are shown as transfers into Krupnick’s home equity line of credit account, and in the purpose column for all of them Krupnick entered “JK does not recall the specific reason for this transfer.” Krupnick provided no explanation for why the transfers went into the home equity line of credit account.⁹⁰ EFT transactions in 2012 listed on the second page are described as being for rent, contradicting Krupnick’s September 11, 2015 Rule 8210 response. Krupnick did not explain why he described some EFT transactions as being for rent, and not others. To summarize, in his OTR, Krupnick stated that MK began paying rent in March 2013, consistent with his first spreadsheet, but the second spreadsheet represents the rental payments started in August 2012.⁹¹

Krupnick’s spreadsheets contain several transactions described as expenses for MK’s benefit, for which he should not have to repay MK, but Krupnick provided no explanation of how he used the funds for MK’s benefit.⁹² For example, on September 6, 2013, there was a journal of \$4,000 from MK’s non-margin trust account to the joint account, and a journal of \$4,137.74 from the joint account to Krupnick’s personal brokerage account.⁹³ Krupnick described the latter as an expense on MK’s behalf, but did not explain what the purported expense was for on his first spreadsheet.⁹⁴

V. Discussion

Even though Krupnick chose not to appear at the hearing, the Panel carefully considered the defenses he offered through the Answer he filed and his pre-hearing brief, in addition to the joint exhibits and stipulations to which he agreed, as well as the testimony Enforcement presented and the exhibits it introduced at the hearing. Taking all of this into consideration, the Panel finds that substantial evidence supports the cause of action charging Krupnick with converting MK’s funds.

First, MK testified credibly that he did not agree to make any loans to Krupnick⁹⁵ and there is no evidence supporting Krupnick’s claim that he did so. During FINRA’s investigation, Mulhern reviewed extensive email and text message communications between MK and Krupnick. During the relevant period the brothers communicated frequently by email and text messages. Yet the communications disclose nothing suggesting that MK offered or intended to

⁸⁹ Tr. 204–05; JX-46.

⁹⁰ Tr. 210–11; JX-46, at 1.

⁹¹ Tr. 211–12; JX-45, at 1; JX-46, at 2.

⁹² Tr. 238–41.

⁹³ Tr. 240–41; CX-104.

⁹⁴ JX-45, at 2.

⁹⁵ Tr. 112.

lend money to Krupnick, and no document indicates that any of the transfers was a loan.⁹⁶ Krupnick's bald assertion that MK, a semi-retired businessman in his early sixties, would give him carte blanche to transfer money from his Wells Fargo accounts into the joint account to borrow and use for whatever he wished, without interest, without an agreement to repay, is not only contradicted by MK's testimony, but is inconsistent with common sense. Similarly, Krupnick's claim that MK provided him with several thousand dollars in the form of a wedding gift, and a loan to cover his wedding expenses, is belied by MK's testimony and unsupported by any documentation, such as an email, a text, or a card denoting the gift.

During the investigation, Enforcement asked Krupnick to provide any contemporaneous notes or documentation to show that he was keeping track of the funds he withdrew or transferred from the joint account, and how he was using the money. Logic suggests that if MK was making loans to his brother, which Krupnick meant to repay, he would have kept some record of them. However, Krupnick did not provide any such document.⁹⁷

Krupnick's assertion that MK decided to establish evidence of Florida residency by renting a room for \$500 per month is similarly unsupported. The lack of any mention of rent in the voluminous emails and text messages between the brothers casts doubt on Krupnick's claim. Mulhern examined Krupnick's income tax filings for 2012–2014, and found no notation indicating receipt of rental income. Mulhern reviewed Wells Fargo documents and found no evidence that Krupnick disclosed to the firm he was renting a room to MK, which would have been a reportable outside business activity.⁹⁸ And MK, who has resided in Hawaii for the past 40 years, testified credibly that he never expressed an intention to move to Florida. The inconsistencies in Krupnick's investigative testimony concerning the start of the rental payments, and in the descriptions of the payments in the two spreadsheets Krupnick submitted to Mulhern, further undermine the credibility of Krupnick's claim.

In addition, Krupnick's attempts to discredit his brother ultimately undermine his own credibility. As noted above, when MK first called Wells Fargo to complain about him, Krupnick went to Langer, a manager, and characterized MK as being "crazy." He did not say, as he would have had it been true, that MK had loaned him funds he intended to repay. Then, in his pre-hearing brief, as discussed above, Krupnick accuses MK of fabricating the complaint to retaliate after, out of concern for MK's purported drug dealings with Hawaiian police officers, Krupnick had interceded to help MK. The chronology belies his accusation: Mulhern's review of Krupnick's phone records revealed that Krupnick called the Hawaiian police department *after* MK first complained to Wells Fargo on September 11, 2014.⁹⁹ The sequence of events supports

⁹⁶ Tr. 191–93.

⁹⁷ Tr. 182–83.

⁹⁸ Tr. 196–98.

⁹⁹ Tr. 304.

MK's denial that he complained to Wells Fargo to retaliate against Krupnick for calling the police department.¹⁰⁰

Finally, the effort undertaken by Krupnick and a lawyer representing him to pay MK \$150,000 if he retracted his complaint to Wells Fargo, and if Wells Fargo agreed to terminate its investigation and to continue to employ Krupnick, casts further doubt on Krupnick's credibility. The evidence shows that Krupnick treated MK's joint account as if it were his personal bank account. The preconditions Krupnick set for the return of the misappropriated funds were a desperate effort to misrepresent the truth and keep Wells Fargo from investigating serious misconduct by one of its registered representatives. As such, it is also evidence of Krupnick's consciousness of his culpability for wrongdoing, and his intent to conceal it.

VI. Conclusions

The Complaint's single charge against Krupnick is conversion of MK's funds, in violation of FINRA Rules 2150(a) and 2010. Rule 2150(a) prohibits associated persons from making "improper use of customer's securities or funds." Conversion consists of making an "intentional and unauthorized taking and/or exercise of ownership over property" of another, by one who does not own and is not entitled possess it.¹⁰¹ Conversion of funds violates Rule 2010 because it reflects "a failure to observe the high standards of commercial honor required of registered persons."¹⁰²

For the reasons discussed above, the Panel finds that Enforcement satisfied its burden and proved by a preponderance of the evidence that Krupnick converted the funds of a customer, MK, in the amount of \$143,000. Krupnick's claims to have been authorized to transfer, withdraw, and make personal use of funds from MK's Wells Fargo accounts are not credible, and are unsupported by the evidence. The evidence shows that Krupnick sought to conceal his misconduct from MK, and with the access he had to MK's Wells Fargo accounts, engaged in a pattern of numerous misappropriations of MK's funds that increased over time, as he apparently went deeper into debt from mounting expenses. The evidence shows that MK repeatedly sought access to account statements that Krupnick kept from him. When MK complained to Wells Fargo, Krupnick sought to discredit him. The Panel also finds credible the testimony of Krupnick's former Wells Fargo colleague describing a distraught Krupnick confessing that MK's accusation of conversion was accurate, and that he had taken and misused funds belonging to his customer and brother.

¹⁰⁰ Tr. 140–43. Indeed, the chronology supports MK's testimony that Krupnick called a police officer he knows in Hawaii threatening to cause trouble for MK and the officer to get him to persuade MK to retract his complaint to Wells Fargo.

¹⁰¹ FINRA Sanction Guidelines ("Guidelines") at 36 n.2 (2017), http://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf; *Stephen Grivas*, Exchange Act Release No. 77470, 2016 SEC LEXIS 1173, at *11–12 (Mar. 29, 2016).

¹⁰² *Grivas*, 2016 SEC LEXIS 1173, at *2–3.

VII. Sanctions

Enforcement seeks a bar from the securities industry as the “only appropriate sanction for Krupnick’s misconduct.” The Panel agrees.¹⁰³

Our starting point is the direction given by FINRA’s Sanction Guideline for conversion, which states unequivocally: “Bar the respondent regardless of amount converted.”¹⁰⁴ As noted above, it is well-established that conversion of customer funds violates Rule 2010 because it contravenes the high standards of commercial honor securities professionals are expected to uphold,¹⁰⁵ and because the nature of the misconduct “poses so substantial a risk to investors” that someone culpable of it is “unfit for employment in the securities industry.”¹⁰⁶ Thus, in fashioning an appropriate sanction, the Panel must be mindful of the need to protect the investing public by imposing a sanction that will “prevent and discourage future misconduct” of a similar nature not just by Krupnick, but others as well.¹⁰⁷

We also find a number of aggravating factors identified in the Sanction Guidelines’ Principal Considerations in Determining Sanctions that underscore the seriousness of Krupnick’s misconduct, and the risk he poses to investors.

Krupnick has not accepted responsibility for his misconduct.¹⁰⁸ He did not acknowledge taking MK’s funds before MK complained, and when he became aware of the complaint, his response was to try to discredit MK, and to falsely claim MK had authorized him to take the funds, and had agreed to give him interest-free loans to use for various purposes.

Although Krupnick participated in a settlement mediated by Wells Fargo and contributed a substantial portion of the sum required to repay MK the funds he misappropriated, Wells Fargo contributed the difference between the amount Krupnick converted and the amount he returned to MK. Krupnick’s contribution to the mediated settlement occurred only after MK complained, and was insufficient to fully reimburse MK’s financial loss.¹⁰⁹

¹⁰³ As noted above, the Complaint charges Krupnick with violations of both Rules 2150(a) and 2010. Because conversion violates Rule 2010, and the Guidelines call for a bar, we find it unnecessary to also discuss or impose separately sanctions appropriate for violations of Rule 2150(a).

¹⁰⁴ Guidelines at 36.

¹⁰⁵ *Grivas*, 2016 SEC LEXIS 1173, at *1–2.

¹⁰⁶ *Joseph R. Butler*, Exchange Act Rel. No. 77984, 2016 SEC LEXIS 1989, at *18–20 (June 2, 2016) (citing *Grivas*, 2016 SEC LEXIS 1173, at *28 (quoting *Charles C. Fawcett, IV*, Exchange Act Rel. No. 56770, 2007 SEC LEXIS 2598, at *22 n.27 (Nov. 8, 2007)).

¹⁰⁷ Guidelines at 2 (General Principle No. 1).

¹⁰⁸ Guidelines at 7 (Principal Consideration No. 2).

¹⁰⁹ Guidelines at 7 (Principal Consideration No. 4).

Krupnick's misconduct was not a one-time event, caused by an isolated mistake in judgment. Rather, it was intentional, consisting of numerous individual wrongful acts constituting a pattern of misconduct Krupnick engaged in to transfer funds into the joint account and then to move them into his own accounts or make cash withdrawals.¹¹⁰ Krupnick's efforts to conceal his misappropriations from MK by having account statements sent to himself instead of MK provide additional evidence of the intentionality of his misconduct.¹¹¹ Krupnick further aggravated the seriousness of his misconduct by responding to Rule 8210 requests during FINRA's investigation with two inconsistent, incomplete and misleading accountings of the funds he took from MK's accounts.¹¹² Yet another aggravating circumstance is that Krupnick's misappropriations consisted of numerous transactions, some for thousands of dollars, resulting in a large monetary gain for him.¹¹³

For these reasons, the Panel concludes that, consistent with its responsibility under the Sanction Guidelines to protect investors, prevent Krupnick from doing further harm, and deter others from engaging in similar misconduct detrimental to their customers, the appropriate sanction is to bar Krupnick from associating with any FINRA member firm in any capacity.¹¹⁴

VIII. Order

For converting the funds of his customer MK, in violation of FINRA Rules 2150(a) and 2010, as charged in the Complaint, Respondent Jeffrey E. Krupnick is barred from associating with any FINRA member firm in any capacity.

In addition, we assess Krupnick the cost of hearing transcripts and an administrative fee of \$750, for a total of \$4,434.68.

¹¹⁰ Guidelines at 7–8 (Principal Consideration Nos. 8–9, 13).

¹¹¹ Guidelines at 7 (Principal Consideration No. 10).

¹¹² Guidelines at 8 (Principal Consideration No. 12).

¹¹³ Guidelines at 8 (Principal Consideration Nos. 16–17).

¹¹⁴ Enforcement asks that we also order Krupnick to pay \$22,000, plus prejudgment interest, to Wells Fargo because Krupnick converted \$143,000 of MK's funds but repaid only \$121,000. In the settlement, the firm paid \$22,000 to MK to make up the difference between what Krupnick paid and what he took. However, the settlement resulted from negotiations between MK, Wells Fargo, and Krupnick, each of whom was represented by counsel. Furthermore, the settlement also resolved other claims made by MK against Wells Fargo for which the firm paid him compensation in addition to the \$22,000. Tr. 117–19, 305, 321–22. For these reasons, the Panel declines to order disgorgement.

The bar shall become effective immediately if this decision becomes the final disciplinary action of FINRA. The assessed costs shall be due on a date set by FINRA, but not less than 30 days after this decision becomes FINRA's final disciplinary action in this proceeding.¹¹⁵



Matthew Campbell
Hearing Officer
For the Extended Hearing Panel

Copies to:

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¹¹⁵ The Panel has considered and rejects without discussion any other arguments made by the parties that are inconsistent with this decision.