

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

John W. Cutshall (CRD No. 874352),

Respondent.

DISCIPLINARY PROCEEDING
No. 2014041590801

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Between 2012 and 2014 (the “Relevant Period”), General Securities Representative John Cutshall abused his position as trustee for trusts that he administered on behalf of deceased and elderly customers by converting and improperly using funds from the trusts, and he thwarted his member firms’ ability to supervise his trustee activities by failing to disclose that he had been named as a beneficiary to a trust for which he had been serving as trustee.
2. In 1992, two of Cutshall’s customers at his broker-dealer employer, retired school teachers JB and LB, created separate trusts governing the disposition of their assets. Cutshall served as trustee for the separate trusts until both LB and JB died in 2005 and 2006. The JB Trust and the LB Trust remained as legal entities after their deaths, but the funds from the two trusts were combined in an account known as the “[LB] Residuary Trust” held at his broker-dealer employer, and Cutshall administered the

account as trustee on behalf of JB and LB's intellectually disabled daughter MB until she died in 2012.

3. Within weeks of MB's death in January 2012 and continuing through June 2013, Cutshall used his position as trustee to write 34 checks from the account of the LB Residuary Trust totaling approximately \$400,000 that he deposited into his own bank account.
4. In 2013, Cutshall made public for the first time an unwitnessed handwritten note purportedly signed by JB in 2002 that named Cutshall as a beneficiary of 50% of the assets in the JB Trust as the basis for his taking those funds. LB did not sign the note, and she did not execute any similar document naming Cutshall as beneficiary to her trust.
5. After having already taken approximately \$400,000 in 2012 and 2013 from the account of the LB Residuary Trust, Cutshall then hired a Maryland law firm in August 2013 to give him an opinion about the validity of the handwritten note. The Maryland law firm, among other things, advised Cutshall to return all of the money that he had already taken. Cutshall only repaid \$229,100 to the account of the LB Residuary Trust, keeping the difference of \$170,900.
6. In 2014, the Maryland law firm conducted an accounting to determine the funds available for distribution to the beneficiaries of each trust, but Cutshall did not tell the law firm that he had not returned all of the money that he had already taken. The law firm determined that the distribution to Cutshall of 50% of the assets of the JB Trust was approximately \$292,100. With the approximately \$170,900 that he previously kept, Cutshall took approximately \$463,000, significantly more than he was

purportedly entitled to under the handwritten note. By taking more funds from the JB Trust than he was entitled to receive, Cutshall converted funds from the account of the LB Residuary Trust in violation of FINRA Rules 2150(a) and 2010.

7. In April 2014, Cutshall used a check from the brokerage account of his firm customer the HSR Marital Trust, another trust for which Cutshall served as trustee, to engage in an automated clearing house (“ACH”) transaction for \$2,000 at Charlestown Gaming in West Virginia to gamble. Although he was notified of the disbursement from the trust that day, Cutshall did not repay the trust until a firm compliance employee questioned him about the transaction more than a week later. Cutshall’s unauthorized use of trust funds to gamble constitutes an improper use of customer funds, in violation of FINRA Rules 2150(a) and 2010.
8. While employed at two different member firms, Cutshall failed to disclose that he had been named as a beneficiary in 2002 of the JB Trust despite being required to do under each of those firm’s written supervisory procedures. Moreover, when each firm asked him to provide copies of the trust documents related to the account of the LB Residuary Trust in connection with his request to continue acting as trustee, Cutshall failed to provide a copy of the handwritten note that materially altered the terms of the JB Trust and made Cutshall a beneficiary. Cutshall further actively thwarted his member firm’s ability to supervise his activities as trustee by writing checks from the trust as being payable to his bank, rather than to himself, prior to depositing the checks into his personal account at that bank. Cutshall’s actions constitute a violation of FINRA Rule 2010.

9. In February 2014, Cutshall completed an annual firm questionnaire and falsely claimed that he was not named as beneficiary of any non-family member account. Cutshall's false statement in a firm compliance questionnaire constitutes a violation of FINRA Rule 2010.

RESPONDENT AND JURISDICTION

10. Cutshall entered the securities industry in 1979 when he became associated with Baker, Watts & Co., Inc. (subsequently known as Ferris, Baker Watts, LLC ("FBW")), a former FINRA regulated broker-dealer, as a General Securities Representative (GSR). Cutshall remained associated with FBW as a GSR until RBC Capital Markets, LLC ("RBC"), a FINRA regulated broker-dealer, acquired that firm in 2009, at which time Cutshall became associated with RBC as a GSR.
11. Cutshall became associated with Morgan Stanley, a FINRA regulated broker-dealer, as a GSR in June 2013 and remained associated with that firm until it terminated his employment in May 2014. Cutshall became associated with Firm 1, a FINRA regulated broker-dealer, in July 2014, and he remains associated with that firm to date.
12. Cutshall holds the following securities industry licenses: General Securities Representative (Series 7), Uniform Securities Agent (Series 63), and Registered Options Principal (Series 4).
13. Cutshall is subject to FINRA jurisdiction by virtue of his current association with a FINRA regulated broker-dealer.

BACKGROUND

The JB Trust and LB Trust

14. In 1992, two of Cutshall's customers at FBW, JB and LB, a married couple who were retired schoolteachers living in Maryland, each created separate trusts governing the distribution of funds generated from their assets during the remaining years of their lives and upon their deaths.
15. Both the JB Trust and the LB Trust provided that upon death, the assets in that respective trust would be used for the benefit of the surviving spouse. Each of the trusts further provided that upon the death of both spouses, a residuary trust would be continued to be held for the benefit of their daughter MB. MB had a severe intellectual disability and lived at a residential facility in Maryland.
16. The JB Trust and the LB Trust each further provided that upon MB's death, the assets remaining were to be distributed as follows: \$2,000 each to Church A and Cemetery A; one-fifth of the remainder to Charitable Organization A; one-fifth of the remainder to KS, a niece of LB, or her descendants; one-fifth of the remainder to MP, a niece of LB, or her descendants; and two-fifths of the remainder to GF, a nephew of JB, or his descendants. Neither the JB Trust nor the LB Trust named Cutshall, who had no family relationship to JB or LB, as a beneficiary.
17. JB and LB each designated themselves as trustee in their respective trust documents, and each trust provided that Cutshall was to become trustee by subsequent appointment, the death, or incapacity of JB and/or LB. Cutshall became trustee for each of the trusts after the deterioration of JB and LB's health and their subsequent incapacity.

18. Both JB and LB signed their respective trusts in the presence of two witnesses, including their trusts and estate lawyer, and a notary public.
19. LB died in April 2005 at the age of 85. JB died in July 2006 at the age of 98. MB died in January 2012 at the age of 57.
20. At the time of LB's death in 2005, her trust had a value of approximately \$531,000.
21. At the time of JB's death in 2006, his trust had a value of approximately \$612,000.
22. Between the time of LB's death and 2009, the assets of the two trusts were combined and held in a brokerage account known as the LB Residuary Trust. The JB Trust and the LB Trust continued as legal entities governing the appropriate distribution of assets in each of the trusts.
23. In February 2012, just weeks after MB's death, Cutshall, in his capacity as trustee for the account of the LB Residuary Trust, wrote himself a check for \$25,000 drawn against that account. In April 2012, he wrote two additional checks to himself, each for \$5,000, drawn against the same account.
24. Then starting in June 2012, Cutshall wrote an additional 31 checks totaling \$365,000 from the account of the LB Residuary Trust as being payable to "Woodsboro Bank," rather than to himself, prior to depositing the checks into his personal checking account at that institution. In total, between February 27, 2012 and June 3, 2013, Cutshall took approximately \$400,000 from the account of the LB Residuary Trust by using his position as trustee to write 34 checks drawn against the trust's account at RBC and depositing the checks into his personal bank account. Cutshall did not disclose to his member firm that he took these funds.

25. After having already taken \$400,000 from the LB Residuary Trust, Cutshall claimed in 2013 for the first time that there was a handwritten note purportedly signed by JB and dated June 20, 2002. The handwritten document states in pertinent part that Cutshall was to receive 50% of JB's Trust after JB, LB and MB all died.
26. Cutshall claims that he was alone with JB when the document was signed and there were no other witnesses to the execution of this document. Cutshall had not shown or discussed the document with any person prior to the death of MB in 2012. LB did not sign this note or any similar document.
27. While he spent more than a year taking funds from the account of the LB Residuary Trust, Cutshall made no effort to consult with any lawyer on the validity of the handwritten note, including JB and LB's trusts and estate lawyer still practicing in Maryland. Nor did he contact any of the beneficiaries named in the trusts, some of whom were at the same address listed in the trust documents.
28. Rather than consult with the lawyer who drafted and witnessed the original JB and LB trusts, in August 2013 Cutshall hired a different Maryland law firm to, among other things, give him an opinion regarding the enforceability of the handwritten note.
29. The Maryland law firm did not take any steps to verify that JB signed the document, made no examination of the signature, and its legal opinion acknowledged the suspicious nature of the signature on the document. The law firm opinion also acknowledged that because LB did not sign the handwritten note or execute a similar document, Cutshall had no claim to any assets deriving from the LB Trust.
30. The Maryland law firm advised Cutshall to return the money that he took from the account of the LB Residuary Trust in 2012 and 2013 so that they could perform an

accounting of trust assets based on the value of the JB Trust and the LB Trust as of December 31, 2013.

31. On or about September 16, 2013, Cutshall repaid the LB Residuary Trust only \$229,100, and he kept the difference of \$170,900 between that amount and the \$400,000 he had previously taken. Cutshall did not disclose to his member firm or the Maryland law firm that he kept these funds.
32. In or around 2014, the Maryland law firm prepared an accounting of the JB Trust and the LB Trust to determine the amounts due to the beneficiaries named in those trusts and to Cutshall based on the handwritten note. The accounting prepared by the Maryland law firm did not include amounts previously taken, but not returned by Cutshall in 2012 and 2013.
33. Based on the presumption that JB signed the handwritten note and that it was enforceable, the Maryland law firm told Cutshall that he was entitled to receive approximately \$292,100 from the account of the LB Residuary Trust based on their accounting of the funds attributable to the JB Trust in that account. In total, Cutshall received approximately \$463,000 from the account of the LB Residuary Trust during the Relevant Period, based on the \$170,900 that he failed to repay in September 2013 plus the approximately \$292,100 he received in June 2014. This amount represents approximately 72% of the value attributed to the JB Trust in the law firm's accounting as of December 31, 2013.
34. Cutshall never disclosed to FBW, RBC or Morgan Stanley that he had been named as a beneficiary of the JB Trust, including during the time that he withdrew funds from the LB Residuary Trust in 2012 and 2013 despite completing forms that called for the

disclosure of such information. Cutshall further failed to disclose that he served in any other fiduciary capacity for JB and LB or that he would be compensated for any such role.

The HSR Marital Trust

35. In 2014, Cutshall also served as trustee for the account of his brokerage firm customer, the HSR Marital Trust (“HSR Trust”), which he administered for the benefit of HSR’s then 91-year old widow DR. In April 2014, the brokerage account for the HSR Trust at Morgan Stanley held approximately \$100,000 in assets.
36. On Monday April 14, 2014, Cutshall went to Charlestown Gaming in West Virginia to gamble during the day. At the casino, Cutshall used a check from the HSR Trust account to make an ACH withdrawal of \$2,000 to fund his gambling that day.
37. Later that work day at 4:48 p.m., Cutshall’s assistant, MS, sent him an email alerting him that she had cleared a disbursement from the firm’s HSR Trust customer account for \$2,000 even though there had been a “Red Flag” placed on the account by OO, a firm compliance employee, to stop disbursements and asking him not to make any further disbursements from the account until given approval by OO. Cutshall did not promptly reimburse the HSR Trust after receiving this email or indicate that he had made an error that he would promptly correct.
38. On April 23, 2014, OO, after returning from vacation, questioned the transaction at the casino and asked Cutshall to explain the \$2,000 disbursement from the customer’s trust account. After receiving this demand from OO, Cutshall repaid the \$2,000 to the HSR Trust by writing a check drawn against his personal bank account on April 25, 2014, eleven days after the ACH transaction at the casino.

FIRST CAUSE OF ACTION

(Conversion)

(FINRA Rules 2150(a) and 2010)

39. The Department realleges and incorporates by reference paragraphs 1-38 above.
40. FINRA Rule 2150(a) provides that “[n]o member or person associated with a member shall make improper use of a customer’s securities or funds.”
41. FINRA Rule 2010 requires members to “observe high standards of commercial honor and just and equitable principles of trade.”
42. Conversion is any unauthorized act which deprives an owner of his property permanently or for an indefinite time. A registered person’s conversion of funds constitutes a violation of FINRA Rule 2010.
43. A violation of FINRA Rule 2150(a) constitutes a violation of FINRA Rule 2010.
44. The account of the LB Residuary Trust, containing funds from the LB Trust and the JB Trust, was a customer of Cutshall.
45. At the time of his death in 2006, the JB Trust had a value of approximately \$612,084.
46. In 2012-2013, Cutshall took approximately \$400,000 from the account of the LB Residuary Trust by using his position as trustee to write 34 checks from the trust’s account at RBC and depositing those checks into his personal bank account.
47. In 2013, Cutshall made public for the first time a handwritten note dated June 20, 2002 that purported to alter the terms of the JB Trust by naming Cutshall as a beneficiary of 50% of the assets in the JB Trust and which was purportedly signed by JB. LB did not sign that document or any similar document naming Cutshall as a beneficiary of her trust assets. The Maryland law firm opined that the handwritten note did not give Cutshall any authority or basis to take any funds deriving from the

LB Trust, and Cutshall signed a release acknowledging that he was not entitled to any funds deriving from the LB Trust.

48. In or around September 2013, the Maryland law firm advised Cutshall to return any and all funds that he had previously taken from the account of the LB Residuary Trust as a purported beneficiary of the JB Trust prior to the preparation of an accounting and distribution to the named beneficiaries.
49. In September 2013, Cutshall repaid the LB Residuary Trust only \$229,100, however, not the \$400,000 that he had originally taken. Cutshall kept \$170,900 that belonged to the account of the LB Residuary Trust.
50. In 2014, the Maryland law firm prepared an accounting of the JB Trust and the LB Trust to determine the amount that each beneficiary should receive after accounting for the contemporaneous value of each of the trusts and expenses. The Maryland law firm determined that the value of the JB Trust assets as of December 31, 2013 was approximately \$640,500 and that Cutshall should receive approximately \$292,100. The accounting did not include the approximately \$170,900 that Cutshall had previously taken from the account of the LB Residuary Trust in 2012-2013 and failed to return.
51. Cutshall took approximately \$463,000 or about 72% of the value of the JB Trust at the time the law firm's accounting. The handwritten note only purported to grant Cutshall 50% of the JB Trust's assets. In so doing, Cutshall converted funds from the account of the LB Residuary Trust, in violation of FINRA Rules 2150(a) and 2010.

SECOND CAUSE OF ACTION

(Improper Use of Customer Funds) **(FINRA Rules 2150(a) and 2010)**

52. The Department realleges and incorporates by reference paragraphs 1-51 above.
53. In April 2014, the HSR Trust was one of Cutshall's customers. Cutshall administered the HSR Trust for the benefit of DR.
54. On April 14, 2014, Cutshall used a check from the HSR Trust to engage in an ACH transaction for \$2,000 at Charlestown Gaming, a West Virginia casino.
55. Cutshall's assistant notified him on the same day that the HSR Trust account had been red flagged and that there had been a \$2,000 disbursement that very afternoon. Cutshall did not take prompt action to reimburse the account. Cutshall only repaid the HSR Trust account after he had been confronted about the transaction by a firm compliance employee almost two weeks after he engaged in the ACH transaction at the casino.
56. By improperly withdrawing and using \$2,000 in customer funds for his own benefit, Cutshall violated FINRA Rules 2150(a) and 2010.

THIRD CAUSE OF ACTION

(Failure to Abide by Standards of Commercial Honor and Principles of Trade) **(FINRA Rule 2010)**

57. The Department realleges and incorporates by reference paragraphs 1-56 above.
58. RBC had policies that prohibited representatives from acting in a fiduciary capacity for customers without approval from the branch manager and compliance department and required representatives to provide a copy of the trust documents for any accounts for which the representative sought firm approval to act as fiduciary.

59. Cutshall never disclosed to RBC that he had been named as a beneficiary of the JB Trust, and he did not provide a copy of the handwritten note naming him as a beneficiary when he sought approval to continue acting as a trustee for the account of LB Residuary Trust.
60. Likewise, Morgan Stanley had policies that strongly discouraged employees from knowingly being designated as beneficiaries of non-family trusts and required employees to notify management and seek approval for any bequest.
61. In March 2014, Cutshall submitted a Fiduciary Appointment Approval Request Form attaching the trust agreement for the JB Trust in connection with his request to continue acting as trustee. That form specifically asked Cutshall to name the beneficiaries, and Cutshall responded “many see trust.” However, he did not include a copy of the handwritten note that named him as a beneficiary and only included the original JB Trust document from 1992.
62. In April 2014, Morgan Stanley approved Cutshall’s request and explicitly stated in its approval that “[a]bsolutely no distributions may occur for your benefit, unless authorized by the Branch Manager.” Notwithstanding this directive, Cutshall did not disclose that he had been named as a beneficiary of the JB Trust through the handwritten note or that he had already taken funds from the account of the LB Residuary Trust.
63. Cutshall actively thwarted his member firms’ ability to supervise his conduct by, among other things: (i) failing to disclose that he had been named as a beneficiary to the JB Trust; (ii) failing to provide a copy of the handwritten note; (iii) failing to disclose that he was withdrawing funds from the account of the LB Residuary Trust;

(iv) hiding the fact that he was withdrawing funds by writing checks payable to “Woodsboro Bank” prior to depositing them into his personal bank account; and (v) making a false statement in Morgan Stanley’s annual compliance questionnaire by denying that he had been named as a beneficiary to any non-family member account.

64. By virtue of the above, Cutshall violated FINRA Rule 2010.

FOURTH CAUSE OF ACTION

(Making a False Statement on Firm Compliance Questionnaire) (FINRA Rule 2010)

65. The Department realleges and incorporates by reference paragraphs 1-64 above.

66. Providing misleading or false answers to a FINRA regulated firm on compliance documents or omitting material information on such documents violates FINRA Rule 2010.

67. In its 2014 Sales Questionnaire, Morgan Stanley asked Cutshall whether he had been named as a beneficiary on any non-family member account. Cutshall falsely responded “no,” even though he had been named as a beneficiary to the JB Trust through the handwritten note and had already taken funds from the LB Residuary Trust based on that note and was awaiting the accounting from the Maryland law firm about his distribution as a beneficiary.

68. By making a misrepresentation in his annual compliance questionnaire issued by Morgan Stanley, Cutshall violated FINRA Rule 2010.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed, including that Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest; and
- C. order that Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date: August 10, 2018



Richard Chin, Chief Counsel
Eric Hansen, Director
Jason Mogel, Senior Counsel
David Monachino, Senior Litigation Counsel
FINRA Department of Enforcement
Brookfield Place
200 Liberty Street
New York, NY 10281
Phone: 646.315.7345
e-mail: Jason.Mogel@finra.org