

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

V.

THOMAS A. DAVIS
(CRD No. 6121035),

Respondent.

Disciplinary Proceeding
No. 2016050741702

Hearing Officer–RES

DEFAULT DECISION

October 9, 2018

For conversion and failure to appear for on-the-record testimony, Respondent is barred from associating with any FINRA member firm in any capacity.

For the Complainant: Joshua I. Sherman, Esq. and Gina Petrocelli, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: No appearance.

DECISION

I. Introduction

The Department of Enforcement filed a Complaint alleging two causes of action against Thomas Davis, formerly a registered person. The Complaint alleges: first, that Davis converted \$2,226 from his employer, Wells Fargo Bank, N.A., in violation of FINRA Rule 2010; and second, that Davis failed to appear and provide testimony in violation of FINRA Rules 8210 and 2010.

Enforcement served Davis with the Complaint in accordance with FINRA Rules. Davis did not file an Answer. Enforcement filed a motion for entry of default decision (“Default Motion”), together with counsel’s declaration and supporting exhibits. Davis did not file an opposition. For the reasons stated below, I find Davis in default, grant the Default Motion, and issue this Default Decision.

II. Findings of Fact and Conclusions of Law

A. Davis's Background

Thomas Davis entered the securities industry in April 2012 through an association with Wells Fargo Advisors, LLC (“Wells Fargo Advisors”), a FINRA member firm.¹ Wells Fargo Advisors’ affiliated bank, Wells Fargo Bank, N.A. (“Wells Fargo Bank”), employed Davis as a personal banker and branch manager.² Davis passed the Series 6 and Series 63 examinations in November 2012.³ On July 21, 2016, Wells Fargo Advisors filed a Uniform Termination Notice for Securities Industry Registration (“Form U5”) terminating Davis’s registration with Wells Fargo Advisors.⁴ Since then, Davis has not been registered with FINRA or associated with a FINRA member firm.⁵

B. Jurisdiction

The prerequisites for FINRA’s jurisdiction in this disciplinary proceeding have been met: first, Enforcement filed the Complaint on July 12, 2018—within two years after Wells Fargo Advisors filed the Form U5 on July 21, 2016;⁶ and second, the Complaint charges Davis with (a) violations committed while he was registered; and (b) failing to appear for on-the-record testimony in the two-year period after the date on which he ceased to be registered or associated with a FINRA member firm.⁷

C. Origin of the Investigation

The investigation originated from the Form U5, which reported that Wells Fargo Advisors had terminated Davis’s registration because he had allegedly opened accounts in the names of customers of Wells Fargo Bank, credited those accounts with funds from the bank, issued debit cards in the names of the customers, withdrew almost all the funds from the accounts, and “[took] money that did not belong to him.”⁸

D. Davis's Default

Enforcement served the Complaint, a First Notice of Complaint, a Second Notice of Complaint, and an Amended Second Notice of Complaint, by first class certified mail on Davis’s

¹ Declaration of Joshua I. Sherman in Support of Enforcement’s Motion for Entry of Default Decision (“Decl.”) ¶ 5.

² Decl. ¶ 5.

³ Decl. ¶ 5.

⁴ Decl. ¶¶ 4, 6.

⁵ Decl. ¶ 7.

⁶ Decl. ¶ 7; FINRA By-Laws, Art. V, Sec. 4(a).

⁷ Decl. ¶ 7; FINRA By-Laws, Art. V, Sec. 4(a).

⁸ Decl. ¶ 4.

Midway, Georgia residential address reflected in FINRA’s Central Registration Depository, and on Davis’s updated Hinesville, Georgia residential address, in accordance with FINRA Rule 9134(a)(2) and (b)(1).⁹ Davis did not file an Answer or otherwise respond to the Complaint.¹⁰ I find that Davis defaulted.

E. Davis’s Default Warrants Issuance of a Default Decision

FINRA Rule 9269 authorizes the Hearing Officer to issue a default decision against a respondent who does not file an Answer to the Complaint within the time afforded under FINRA Rule 9215.¹¹ Davis had the opportunity to file an Answer but did not. He was warned of the possible consequences of not answering the Complaint.¹² I find a default decision against Davis is warranted.¹³ Upon a default, FINRA Rules 9215(f) and 9269 authorize the Hearing Officer to treat the allegations in the Complaint as admitted by the respondent. As described below, I find that Davis committed the violations charged, and impose a permanent industry bar.

F. Davis Converts Property in Violation of FINRA Rule 2010

FINRA Rule 2010 provides that “[a] member in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.”¹⁴ This Rule prohibits business-related conduct that is inconsistent with just and equitable principles of trade, even if that activity does not involve a security.¹⁵ Conversion is the intentional and unauthorized taking of or exercise of ownership over property by one who neither owns the property nor is entitled to possess it.¹⁶ Converting a person’s property is antithetical to high standards of commercial honor and just and equitable principles of trade.¹⁷ Conversion violates FINRA Rule

⁹ Decl. ¶¶ 8-9, 11, 13, 17, 20. Enforcement also sent the Complaint, First Notice of Complaint, Second Notice of Complaint, and Amended Second Notice of Complaint by first class mail and email. Decl. ¶¶ 13, 15, 17, 19-20, 22. It was necessary to send the Amended Second Notice of Complaint because the Second Notice of Complaint had an incorrect response due date. Decl. ¶ 20. Davis has actual notice of this proceeding in that he signed the receipt for the certified mailing of the First Notice, Second Notice, and Amended Second Notice. Decl. ¶¶ 13, 17, 20.

¹⁰ Decl. ¶¶ 16, 24.

¹¹ FINRA Rule 9269(a).

¹² Second Notice of Complaint.

¹³ Davis is hereby notified that he may move to set aside this Default Decision under FINRA Rule 9269(c) if he can show good cause.

¹⁴ FINRA Rule 2010; *accord Dep’t of Enforcement v. Taboada*, No. 2012034719701, 2017 FINRA Discip. LEXIS 29, at *29 (NAC July 24, 2017).

¹⁵ *Keilen Dimone Wiley*, Exchange Act Release No. 76558, 2015 SEC LEXIS 4952, at *11 (Dec. 4, 2015), *aff’d sub nom.* 663 Fed. App’x 353, 2016 U.S. App. LEXIS 19051 (Oct. 19, 2016).

¹⁶ FINRA Sanction Guidelines at 36 n.2 (2018), <http://www.finra.org/industry/sanction-guidelines>.

¹⁷ *Joseph R. Butler*, Exchange Act Release No. 77984, 2016 SEC LEXIS 1989, at *24 (June 2, 2016) (“Converting a customer’s funds ‘is extremely serious and patently antithetical to the high standards of commercial honor and just

2010 even if the person from whom the property is converted is not a customer of the firm with which the respondent is associated.¹⁸

Davis was a personal banker and branch manager employed by Wells Fargo Bank in Hilton Head, South Carolina. Davis had access to bank customers' personal and account information through the bank's internal computer system.¹⁹ On 20 occasions in the period from January 11 through May 19, 2016, he intentionally issued \$2,226 in unwarranted cash credits purportedly on the bank's behalf to five bank customers.²⁰ He subsequently withdrew and spent the credited funds without the customers' or the bank's knowledge or authorization.²¹ He withdrew the funds by using debit cards he issued in the customers' names but kept for himself.²² This conduct constitutes conversion in violation of FINRA Rule 2010.

G. Davis Fails to Appear for Testimony in Violation of FINRA Rules 8210 and 2010

FINRA Rule 8210 confers upon FINRA Staff the right to "require a member, person associated with a member, or any person subject to FINRA's jurisdiction ... to testify ... with respect to any matter involved in [an] investigation."²³ The Rule provides that "[n]o member or person shall fail to provide information or testimony ... pursuant to this Rule."²⁴ Thus, failure to appear for on-the-record testimony as requested by FINRA is a violation of FINRA Rules 8210 and 2010.²⁵

In accordance with FINRA Rules, Enforcement served Davis with a FINRA Rule 8210 request requiring him to appear and provide testimony on March 21, 2018.²⁶ A lawyer for Enforcement spoke with Davis by telephone about his upcoming testimony and subsequently

and equitable principles of trade that [FINRA] seeks to promote.") (quoting *John Edward Mullins*, Exchange Act Release No. 66373, 2012 SEC LEXIS 464, at *73 (Feb. 10, 2012)).

¹⁸ *Dep't of Enforcement v. Casas*, No. 2013036799501, 2017 FINRA Discip. LEXIS 1, at *20 (NAC Jan. 13, 2017).

¹⁹ Complaint ("Compl.") ¶ 7.

²⁰ Compl. ¶ 8.

²¹ Compl. ¶ 12.

²² Compl. ¶ 11.

²³ FINRA Rule 8210(a).

²⁴ FINRA Rule 8210(c); *accord Taboada*, 2017 FINRA Discip. LEXIS 29, at *41-42 ("FINRA Rule 8210 requires a registered person to respond fully, completely, and truthfully to a request for information from FINRA").

²⁵ *Dep't of Enforcement v. Evansen*, No. 2010023724601, 2014 FINRA Discip. LEXIS 10, at *26 (NAC June 3, 2014) (the respondent "violated FINRA Rules 8210 and 2010 when he failed to appear at three scheduled on-the-record interviews and testify"). A violation of FINRA Rule 8210 is also a violation of FINRA Rule 2010. *Id.* at *24 n.23.

²⁶ Compl. ¶ 15.

provided him with additional reminders by email and voicemail.²⁷ Davis did not appear.²⁸ Enforcement served Davis with a second FINRA Rule 8210 request requiring him to appear on April 12, 2018.²⁹ Enforcement provided Davis with email and voicemail reminders of his upcoming testimony.³⁰ Davis did not appear.³¹ Davis's failure to appear and provide testimony violated FINRA Rules 8210 and 2010.

III. Sanctions

According to FINRA's Sanction Guidelines ("Guidelines"), the purpose of the disciplinary process is to protect the investing public, support and improve overall business standards in the securities industry, and decrease the likelihood of recurrence of misconduct by the disciplined respondent.³² The Guidelines contain General Principles Applicable to All Sanction Determinations, Principal Considerations in Determining Sanctions, and Guidelines applicable to specific violations.

The Principal Considerations include aggravating factors that apply to this case. Davis engaged in 20 acts of conversion over a four-month period.³³ He injured his employer.³⁴ By failing to appear for testimony, he attempted to delay FINRA's investigation and concealed information from FINRA.³⁵ His misconduct was the result of intentional acts, resulting in his monetary gain.³⁶ Although Wells Fargo Bank terminated Davis's employment based on the same conduct at issue in this proceeding, I do not find such termination to be mitigating because Davis

²⁷ Compl. ¶ 17.

²⁸ Compl. ¶ 21.

²⁹ Compl. ¶ 22.

³⁰ Compl. ¶ 24.

³¹ Compl. ¶ 28.

³² Guidelines at 2 (General Principle No. 1).

³³ Compl. ¶¶ 1, 8; Guidelines at 7 (Principal Consideration No. 8: Whether the respondent engaged in numerous acts and/or a pattern of misconduct; Principal Consideration No. 9: Whether the respondent engaged in the misconduct over an extended period of time).

³⁴ Guidelines at 7 (Principal Consideration No. 11: With respect to other parties, including the investing public, (a) whether the respondent's misconduct resulted directly or indirectly in injury to such other parties, and (b) the nature and extent of the injury).

³⁵ Guidelines at 8 (Principal Consideration No. 12: Whether the respondent attempted to delay FINRA's investigation or conceal information from FINRA).

³⁶ Guidelines at 8 (Principal Consideration No. 13: Whether the respondent's misconduct was the result of an intentional act, recklessness or negligence; Principal Consideration No. 16: Whether the respondent's misconduct resulted in the potential for the respondent's monetary or other gain).

has not shown that the termination has materially reduced the likelihood of misconduct in the future.³⁷

A. Conversion

The Guideline for Conversion (first cause of action) recommends that the adjudicator “[b]ar the respondent regardless of amount converted.”³⁸ The Guideline does not recommend a fine “since a bar is standard.”³⁹ For conversion of property, I bar Davis from associating with any FINRA member firm in any capacity. Consistent with the Guideline, I do not impose a fine.

B. Failure to Appear for Testimony

The Guideline for Failure to Respond to Requests Made Pursuant to FINRA Rule 8210 (second cause of action) recommends that, “[i]f the individual did not respond in any manner, a bar should be standard.”⁴⁰ The adjudicator should consider a fine of \$25,000 to \$73,000.⁴¹ The single Principal Consideration specific to this Guideline is the importance of the information requested as viewed from FINRA’s perspective.⁴²

Here, the withheld information was important: by failing to appear for testimony, Davis prevented Enforcement from examining the extent and scope of his conversion of funds.⁴³ Enforcement also was unable to ask Davis about documents produced by Wells Fargo Advisors in the investigation.⁴⁴ For failure to appear for testimony, I bar Davis from associating with any FINRA member firm in any capacity. I do not impose a fine.⁴⁵

IV. Order

Respondent Thomas Davis converted property in violation of FINRA Rule 2010. For this violation, he is barred from associating with any FINRA member firm in any capacity. Davis failed to appear for testimony in violation of FINRA Rules 8210 and 2010. For this violation, he is barred from associating with any FINRA member firm in any capacity.

³⁷ Guidelines at 5 (General Principle No. 7).

³⁸ Guidelines at 36.

³⁹ Guidelines at 36.

⁴⁰ Guidelines at 33.

⁴¹ Guidelines at 33.

⁴² Guidelines at 33.

⁴³ Decl. ¶ 29.

⁴⁴ Decl. ¶ 29.

⁴⁵ Guidelines at 10 (“Adjudicators may exercise their discretion in applying FINRA’s policy on the imposition and collection of monetary sanctions as necessary to achieve FINRA’s regulatory purposes”).

The bars shall be effective immediately if this Decision becomes FINRA's final action in this disciplinary proceeding.


Richard E. Simpson
Hearing Officer

Copies to:

Thomas A. Davis (via email, first class mail, and overnight courier)
Joshua I. Sherman, Esq. (via email and first class mail)
Sara Raisner, Esq. (via email)
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