

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

VLADIMIR TINGUE
(CRD No. 6332903),

Respondent.

Disciplinary Proceeding
No. 2015045951303

Hearing Officer–RES

Date: November 15, 2017

DEFAULT DECISION

For converting a customer’s money using an unauthorized ATM card he secretly created, Respondent is barred from associating with any FINRA member in any and all capacities and ordered to pay disgorgement of \$120 plus prejudgment interest.

For the Complainant: Gina Petrocelli, Esq., Sara Raisner, Esq., Carolyn O’Leary, Esq.,
Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: No appearance

DECISION

I. Introduction

Respondent Vladimir Tingue was associated with FINRA member J.P. Morgan Securities LLC (“J.P. Morgan”) as an Investment Company Products/Variable Contracts Representative and employed by J.P. Morgan’s affiliated bank (“Bank”) as a Relationship Banker. Tingue converted money from a Bank customer (“Customer”) by issuing and using an automated teller machine card (“ATM card”) for the Customer’s Bank account without the Customer’s knowledge or permission. Tingue used the ATM card or caused it to be used to withdraw \$120 from the Customer’s Bank account.

Tingue did not answer the Complaint. Department of Enforcement filed a motion for entry of a default decision (“Default Motion”), together with counsel’s declaration and supporting exhibits. Tingue did not oppose or otherwise respond to the Default Motion. For the reasons stated below, the Hearing Officer finds Tingue in default, grants the Default Motion, and issues this Default Decision.

II. Findings of Fact and Conclusions of Law

A. Respondent's Background

Tingue entered the securities industry in May 2014 when he became associated with FINRA member J.P. Morgan.¹ In July 2014, he became registered as an Investment Company Products/Variable Contracts Representative.² He subsequently became registered with another FINRA member.³ This member terminated his registration on July 22, 2015.⁴

B. FINRA's Jurisdiction

The two conditions to FINRA's jurisdiction in this disciplinary proceeding are met: (1) Enforcement filed the Complaint on July 12, 2017—within two years after the termination of Tingue's registration with a FINRA member; and (2) the Complaint charges Tingue with a violation he committed when he was registered.⁵

C. Origin of the Investigation

The investigation of Tingue started after FINRA received a Uniform Termination Notice for Securities Industry Registration J.P. Morgan filed stating he had voluntarily resigned.⁶

D. Tingue's Default

On July 12, 2017, as required by FINRA Rule 9134, Enforcement mailed the First Notice of Complaint and Complaint to the address in Brooklyn, New York reflected in Tingue's entry in the Central Registration Depository ("CRD Address").⁷ Enforcement mailed these documents by express mail, first class certified mail, and first class mail.⁸ Tingue did not claim the first class certified mailing of the First Notice of Complaint from the United States Postal Service

¹ Declaration of Carolyn O'Leary in Support of the Department of Enforcement's Motion for Entry of a Default Decision and Request for Imposition of Sanction ("Decl.") ¶ 5. This Default Decision also relies on the exhibits attached to Ms. O'Leary's Declaration ("CX-__") and the Complaint ("Compl.").

² Decl. ¶ 5.

³ CX-1, at 3.

⁴ Decl. ¶ 9.

⁵ Decl. ¶ 10; FINRA By-Laws, Art. V, § 4(a).

⁶ Decl. ¶¶ 6, 11.

⁷ Decl. ¶ 18; FINRA Rule 9134(b)(1) ("[p]apers served on a natural person may be served at the natural person's residential address, as reflected in the Central Registration Depository").

⁸ Decl. ¶ 18.

(“USPS”), and USPS returned the mailing to FINRA.⁹ The first class mailing was not returned to FINRA.¹⁰ Tingue did not file an answer to the First Notice of Complaint.¹¹

Tingue informed Enforcement in a telephone conversation on May 1, 2017, that his residential address was actually in Bronx, New York (“Bronx Address”).¹² Enforcement mailed the First Notice of Complaint and the Complaint to the Bronx Address by express mail, first class certified mail, and first class mail.¹³ One of the first class mailings was returned with a sticker stating “Return to Sender—Deceased—Unable to Forward—Return to Sender.”¹⁴ After a diligent investigation and search, Enforcement determined that this sticker was in error and there was no evidence Tingue was deceased.¹⁵

On August 10, 2017, Enforcement served the Second Notice of Complaint and Complaint by express mail, first class certified mail, and first class mail to the CRD Address and the Bronx Address.¹⁶ Tingue did not claim the first class certified mailings of the Second Notice of Complaint from USPS, and USPS returned the mailings to FINRA.¹⁷ The first class mailings were not returned to FINRA.¹⁸

Enforcement telephoned Tingue and left messages on his voicemail on September 28, September 29, October 2, and October 3, 2017.¹⁹ Tingue did not call Enforcement back in response to these voicemail messages.²⁰

To date, Tingue has not filed an answer to the Second Notice of Complaint, and it is now past the 14-day deadline of FINRA Rule 9215.²¹ The Hearing Officer finds that Tingue defaulted by failing to answer the Complaint.

⁹ Decl. ¶ 25.

¹⁰ Decl. ¶ 26.

¹¹ Decl. ¶ 35.

¹² Decl. ¶ 12.

¹³ Decl. ¶¶ 19, 36.

¹⁴ Decl. ¶ 28.

¹⁵ Decl. ¶¶ 29, 30, 32.

¹⁶ Decl. ¶ 36.

¹⁷ Decl. ¶ 41.

¹⁸ Decl. ¶ 42.

¹⁹ Decl. ¶ 33.

²⁰ Decl. ¶ 33.

²¹ Decl. ¶ 47; FINRA Rule 9215(f) (respondent shall file and serve an answer “within 14 days after service of the second notice”).

E. Tingué’s Default Warrants the Issuance of a Default Decision

FINRA Rule 9269 authorizes the Hearing Officer to issue a default decision against a respondent who “fails to answer the complaint within the time afforded under Rule 9215.”²² FINRA Rule 9215 provides that “[i]f the Respondent fails to file an answer with the Office of Hearing Officers within the time required, the Hearing Officer may issue a default decision against the Respondent pursuant to Rule 9269.”²³

Tingué had two opportunities to file an answer but did not. The Second Notice of Complaint informed him of the possible consequences of not answering—a default decision under FINRA Rule 9269.²⁴ Enforcement sent the First and Second Notices of Complaint to his CRD Address and his Bronx Address, which is his last known residential address.²⁵ The Hearing Officer finds that a default decision against Tingué is warranted.²⁶

FINRA Rule 9269 provides that “[i]f the defaulting Party is the Respondent, the Hearing Officer may deem the allegations against that Respondent admitted.”²⁷ FINRA Rule 9215 contains a similar provision.²⁸ As provided for in FINRA Rules 9215 and 9269, the Hearing Officer deems the allegations in the Complaint admitted.

F. Tingué Converted the Customer’s Money

The Complaint alleges that, as a Relationship Banker, Tingué had access to Bank customers’ personal and account information through the internal computer system.²⁹ After business hours on March 24, 2015, he used his user identification to log into the Customer’s account.³⁰ He cancelled the Customer’s ATM card and issued a new card for himself.³¹ He did this through an “instant issue” machine in the Bank branch.³² Three days later, he used the

²² FINRA Rule 9269(a).

²³ FINRA Rule 9215(f).

²⁴ CX-14, at 2.

²⁵ Decl. ¶¶ 18-19, 36.

²⁶ Tingué is hereby notified that he may move to set aside this Default Decision under FINRA Rule 9269(c) if he can show good cause.

²⁷ FINRA Rule 9269(a).

²⁸ FINRA Rule 9215(f).

²⁹ Compl. ¶ 5.

³⁰ Compl. ¶ 6.

³¹ Compl. ¶¶ 6-7.

³² Compl. ¶ 6.

unauthorized ATM card or caused it to be used to withdraw \$120 from the Customer's account.³³ The Customer did not give him permission to do these things.³⁴

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.”³⁵ This Rule prohibits any unethical, business-related conduct, even if such conduct does not involve a security.³⁶ It applies when an associated person's wrongdoing reflects poorly on his ability to comply with the regulatory requirements for the proper functioning of the securities markets and the protection of the public.³⁷

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.³⁸ Converting a person's money is extremely serious and antithetical to the high standards of commercial honor

³³ Compl. ¶ 8.

³⁴ Compl. ¶¶ 8-9.

³⁵ Although FINRA Rule 2010 applies to FINRA members, Rule 0140 provides that “[p]ersons associated with a member shall have the same duties and obligations as a member under the Rules.” FINRA Rule 0140(a); *accord Dep't of Enforcement v. Casas*, No. 2013036799501, 2017 FINRA Discip. LEXIS 1, at *19 n.12 (NAC Jan. 13, 2017) (“FINRA Rule 2010 applies also to persons associated with a member under FINRA Rule 0140(a)”); *Joseph R. Butler*, Exchange Act Release No. 77984, 2016 SEC LEXIS 1989, at *1 n.1 (June 2, 2016) (FINRA Rule 2010 “applies to [an individual respondent] through FINRA Rule 0140(a), which provides that persons associated with members have the same duties and obligations as members”); *Stephen Grivas*, Exchange Act Release No. 77470, 2016 SEC LEXIS 1173, at *1 n.1 (Mar. 29, 2016) (FINRA Rule 2010 “also applies to associated persons”).

³⁶ *Grivas*, 2016 SEC LEXIS 1173, at *10 (FINRA Rule 2010 is “designed to enable [FINRA] to regulate the ethical standards of its members” and “encompass[es] business-related conduct that is inconsistent with just and equitable principles of trade, even if that activity does not involve a security”) (quoting *Blair Alexander West*, Exchange Act Release No. 74030, 2015 SEC LEXIS 102, at *19 (Jan. 9, 2015), *aff'd*, *West v. SEC*, 641 Fed. App'x 27, 2016 U.S. App. LEXIS 1702 (Feb. 2, 2016); *Vail v. SEC*, 101 F.3d 37, 39 (5th Cir. 1996)); *Dep't of Enforcement v. Velasquez*, No. 2015044379701, 2016 FINRA Discip. LEXIS 61, at *23 (OHO Oct. 11, 2016) (same).

³⁷ *Dep't of Enforcement v. Taboada*, No. 2012034719701, 2017 FINRA Discip. LEXIS 29, at *30 (NAC July 24, 2017) (“a central inquiry is whether the wrongdoing reflects on the associated person's ‘ability to comply with regulatory requirements necessary for the proper functioning of the securities industry and the protection of the public’”) (quoting *Dep't of Enforcement v. Mielke*, No. 2009019837302, 2014 FINRA Discip. LEXIS 24, at *40 (NAC July 18, 2014)); *Casas*, 2017 FINRA Discip. LEXIS 1, at *19 (“The rule encompasses ‘a wide variety of conduct that may operate as an injustice to investors or other participants’ in the securities markets.”) (quoting *Edward S. Brokaw*, Exchange Act Release No. 70883, 2013 SEC LEXIS 3583, at *33 (Nov. 15, 2013)); *Dep't of Enforcement v. Doni*, No. 2011027007901, 2016 FINRA Discip. LEXIS 10, at *42 (OHO Apr. 18, 2016) (“Rule 2010 is a broad and generalized ethical provision that applies to any unethical business-related conduct whenever the ‘misconduct reflects on [an] associated person's ability to comply with the regulatory requirements of the securities business’”) (quoting *Daniel D. Manoff*, 55 S.E.C. 1155, 1162 (Oct. 23, 2002)).

³⁸ FINRA Sanction Guidelines (“Guidelines”) at 36 n.2 (2017) (conversion is the “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”), <http://www.finra.org/industry/sanction-guidelines>; *accord Butler*, 2016 SEC LEXIS 1989, at *17 (same); *Grivas*, 2016 SEC LEXIS 1173, at *11 (same).

and just and equitable principles of trade that FINRA seeks to promote.³⁹ Conversion is a fundamentally dishonest act that reflects negatively on a person's ability to comply with regulatory requirements and raises concerns the person is a risk to investors, firms, and the securities markets.⁴⁰

Tingue converted \$120 from the Customer's Bank account. His taking of the money was intentional and unauthorized. He neither owned the money nor was entitled to possess it. His conversion was related to his business as a Relationship Banker. It violated FINRA Rule 2010.

III. Sanctions

According to the applicable Sanction Guideline—Conversion or Improper Use of Funds or Securities—a bar is the standard sanction for the conversion of funds regardless of the amount converted.⁴¹ By its nature, conversion is an offense antithetical to the basic requirement that customers and firms must be able to trust securities professionals with their money, and renders the violator unfit for employment in the securities industry.⁴² Also, several aggravating factors from the Principal Considerations of the Sanction Guidelines apply here. Tingue did not accept responsibility for or acknowledge the misconduct to the Bank or J.P. Morgan prior to detection and intervention.⁴³ He harmed the Customer.⁴⁴ His misconduct was the result of an intentional act.⁴⁵ It resulted in his monetary gain of \$120. There are no mitigating factors.

Considering the applicable Sanction Guideline and the aggravating factors, the Hearing Officer concludes that the appropriate sanction is a bar.⁴⁶

³⁹ *Butler*, 2016 SEC LEXIS 1989, at *24 (“Converting a customer’s funds ‘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.’”) (quoting *John Edward Mullins*, Exchange Act Release No. 66373, 2012 SEC LEXIS 464, at *73 (Feb. 10, 2012)).

⁴⁰ *Doni*, 2016 FINRA Discip. LEXIS 10, at *43 (“conversion ... is fundamentally a dishonest act that reflects negatively on a person’s ability to comply with regulatory requirements and raises concerns that the person is a risk to investors, firms, and the integrity of the securities markets”).

⁴¹ Guidelines at 36 (“Bar the respondent regardless of amount converted.”).

⁴² *Dep’t of Enforcement v. Chen*, No. 2013036678201, 2016 FINRA Discip. LEXIS 4, at *45 (OHO Feb. 12, 2016) (“conversion, by its nature, is an offense ‘antithetical to the basic requirement that customers and firms must be able to trust securities professionals with their money,’ and ‘renders the violator unfit for employment in the securities industry’”) (quoting *Denise M. Olson*, Exchange Act Release No. 75837, 2015 SEC LEXIS 3629, at *9 (Sept. 3, 2015); *Charles C. Fawcett, IV*, Exchange Act Release No. 56770, 2007 SEC LEXIS 2598, at *22 (Nov. 8, 2007)).

⁴³ Guidelines at 7 (Principal Consideration No. 2: Whether the respondent accepted responsibility for and acknowledged the conduct to his or her employer prior to detection and intervention by the firm).

⁴⁴ *Id.* (Principal Consideration No. 11: Whether the respondent’s misconduct resulted directly or indirectly in injury to the investing public, the member firm with which the respondent was associated, and/or other market participants).

⁴⁵ *Id.* at 8 (Principal Consideration No. 13: Whether the respondent’s misconduct was the result of an intentional act, recklessness or negligence).

⁴⁶ Because a bar is imposed, the Hearing Officer does not order a fine. *See id.* at 10.

The Sanction Guidelines provide that the adjudicator should order restitution when an identifiable person has incurred a quantifiable loss proximately caused by a respondent's misconduct.⁴⁷ Enforcement does not seek a restitution order because the Bank reimbursed the Customer.⁴⁸ Still, Tingue obtained a financial benefit from his misconduct. In such a case, the adjudicator may order disgorgement.⁴⁹ Tingue shall pay disgorgement in the amount of \$120 plus prejudgment interest since March 27, 2015 (the date of the conversion).

IV. Order

For his conversion of the Customer's money in violation of FINRA Rule 2010, Vladimir Tingue is barred from associating with any FINRA member in any and all capacities. The bar shall be effective immediately if this Default Decision becomes FINRA's final disciplinary action. Tingue shall pay disgorgement of \$120 plus prejudgment interest to FINRA. The disgorgement and prejudgment interest shall be due on a date set by FINRA, but not less than thirty days after FINRA's final action. The prejudgment interest shall accrue at the rate in Section 6621(a) of the Internal Revenue Code, 26 U.S.C. § 6621(a), from March 27, 2015.


Richard E. Simpson
Hearing Officer

Copies to:

Vladimir Tingue (via first class mail)
Gina Petrocelli, Esq. (via first class mail and electronic mail)
Carolyn O'Leary, Esq. (via electronic mail)
Sara Raisner, Esq. (via electronic mail)

⁴⁷ *Id.* at 4 (General Principle No. 5: "Where appropriate to remediate misconduct, Adjudicators should order restitution... Adjudicators may order restitution when an identifiable person... has suffered a quantifiable loss proximately caused by a respondent's misconduct"); *see also* FINRA Rule 8310(a)(7) (FINRA may impose "any other fitting sanction"); *Dep't of Enforcement v. McGee*, No. 2012034389202, 2016 FINRA Discip. LEXIS 33, at *79 (NAC July 18, 2016) (ordering restitution where the customer's losses "were the foreseeable, direct, and proximate result of McGee's misconduct"); *Butler*, 2016 SEC LEXIS 1989, at *37 ("Ordering Butler to pay [the customer] for the amount he converted plus prejudgment interest is neither excessive nor oppressive, is remedial and not punitive, and is necessary for the protection of investors."); *Alfred P. Reeves, III*, Exchange Act Release No. 76376, 2015 SEC LEXIS 4568, at *20 (Nov. 5, 2015) (same).

⁴⁸ Decl. ¶ 51.

⁴⁹ Guidelines at 5 (General Principle No. 6: "Adjudicators may order that the respondent's ill-gotten gain be disgorged and that the financial benefit, directly and indirectly, derived by the respondent be used to redress harms suffered by customers").