

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

MICHAEL ROYCE MINGHENELLI
(CRD No. 6067409),

Respondent.

Disciplinary Proceeding
No. 2017053549901

Hearing Officer–RES

DEFAULT DECISION

November 5, 2019

For conversion of funds and failure to provide documents and information despite six FINRA Rule 8210 requests, Respondent is barred from associating with any FINRA member in any capacity.

Appearances

For Complainant: David Monachino, Esq., Josefina Martinez, Esq., Eric Hansen, Esq., and Richard Chin, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For Respondent: No appearance

DECISION

I. Introduction

The Department of Enforcement filed a Complaint against Respondent Michael Minghenelli, formerly a registered person, on February 15, 2019. The first cause of action alleges that in November 2016, Minghenelli converted \$200 from his employer firm by taking an unauthorized cash advance using his corporate credit card, in violation of FINRA Rule 2010. The second cause of action alleges that in FINRA’s investigation of the matter, Respondent failed to provide documents and information as requested, in violation of FINRA Rules 8210 and 2010.

After Enforcement filed the Complaint, Minghenelli filed an Answer and participated in the proceeding for some time. But he failed to appear at a pre-hearing conference and a subsequent hearing to show cause why he should not be held in default based on that non-appearance. At my direction, Enforcement filed a motion for entry of default decision (“Default Motion”). Respondent did not file an opposition to the Default Motion. For the reasons stated

below, I find Respondent in default, deem admitted all allegations in the Complaint, grant the Default Motion, and issue this Default Decision.

II. Findings of Fact and Conclusions of Law

A. Background

Michael Minghenelli entered the securities industry in June 2011 when he became associated with Merrill Lynch, Pierce, Fenner & Smith (“Employer Firm”), where he remained until February 2017.¹ Respondent became registered through the Employer Firm as an Investment Banking Representative in August 2012 and as a Uniform Securities Agent in September 2012.² From November 2016 through February 2017, Respondent was a Structuring Associate, participating in specific client deals by conducting financial and statistical analyses, developing client presentations, and assisting with structuring and execution activities.³ On March 13, 2017, the Employer Firm filed a Uniform Termination Notice for Securities Industry Registration (“Form U5”) reporting that the Employer Firm had terminated Respondent’s employment and registration.⁴ Respondent is not currently registered.⁵

B. Jurisdiction

FINRA retains jurisdiction over Minghenelli under Article V, Section 4(a) of FINRA’s By-Laws. Enforcement filed the Complaint within two years following the effective date of the termination of Respondent’s registration,⁶ and the Complaint charges him with (1) misconduct committed while he was registered with a FINRA member, and (2) failure to respond to FINRA requests for documents and information in the two-year period following the date his FINRA registration was terminated.⁷

C. Origin of the Investigation

The investigation originated from the Form U5 reporting that the Employer Firm had terminated Minghenelli’s registration for “[c]onduct involving improper personal use of a corporate credit card.”⁸

¹ Declaration of David Monachino, executed October 3, 2019 (“Decl.”), ¶ 5.

² Decl. ¶ 5.

³ Decl. ¶ 5.

⁴ Decl. ¶ 4.

⁵ Decl. ¶ 7.

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

⁷ Complaint (“Compl.”) ¶¶ 6, 21, 37; Decl. ¶ 7; FINRA By-Laws, Art. V, Sec. 4(a).

⁸ Decl. ¶ 4.

D. Minghenelli's Default

Minghenelli filed an Answer to the Complaint and requested a hearing on March 29, 2019.⁹ Respondent participated in a midterm status conference on June 19. The deadline for Respondent and Enforcement to file pre-hearing submissions, including exhibit and witness lists, was August 23.¹⁰ Enforcement filed its pre-hearing submissions,¹¹ but Respondent did not. Nor did he respond to Enforcement's attempts to contact him.¹²

Based on these developments, and at Enforcement's request, I issued an Order setting a pre-hearing conference to determine whether Minghenelli had abandoned his defense ("Conference").¹³ The Conference was scheduled for August 30, 2019, at 10:00 a.m. (Eastern Time).¹⁴ When I convened the Conference on that date and time, Respondent failed to appear, despite a number of attempts to reach him by Enforcement and the Office of Hearing Officers.¹⁵

Later that day, I issued an Order directing Minghenelli to show cause why he should not be held in default.¹⁶ The show cause hearing was scheduled for September 6, 2019, at 10:00 a.m. (Eastern Time).¹⁷ When I convened the show cause hearing on that date and time, Respondent failed to appear, despite a number of attempts to reach him by Enforcement and the Office of Hearing Officers.¹⁸

Minghenelli has not been in contact with the Office of Hearing Officers since the midterm status conference on June 19, 2019.

Based on these facts, I find that Minghenelli's failure to appear for the Conference and the show cause hearing violated FINRA Rule 9269, and that Respondent has defaulted.

E. Minghenelli's Default Warrants a Default Decision

FINRA Rule 9241 provides that "[t]he Hearing Officer may issue a default decision, pursuant to FINRA Rule 9269, against a Party that fails to appear . . . at a pre-hearing conference of which the Party has due notice."¹⁹ Minghenelli had due notice of the Conference and the show

⁹ Decl. ¶ 9.

¹⁰ Decl. ¶ 10.

¹¹ Decl. ¶ 11.

¹² Decl. ¶ 12.

¹³ August 26, 2019 Order, at 1-2.

¹⁴ Decl. ¶ 13.

¹⁵ Decl. ¶ 13.

¹⁶ Decl. ¶ 14.

¹⁷ Decl. ¶ 14.

¹⁸ Decl. ¶ 14.

¹⁹ FINRA Rule 9241(f).

cause hearing. The Office of Hearing Officers sent Minghenelli an order scheduling the Conference by email sent to an email address that Respondent provided, first-class mail to Respondent's last known residential address as shown in the Central Registration Depository ("CRD Address"), and overnight courier to the CRD Address. Respondent was warned of the possible consequences of not appearing.²⁰ In the order for the Conference, I informed Respondent that "a failure to appear at the [Conference], either in person or through counsel or a representative, may be deemed a default."²¹ I provided similar notice in the order scheduling the show cause hearing.²² I find a default decision against Respondent is warranted.²³

When a respondent defaults by failing to appear in a pre-hearing conference, FINRA Rule 9269 authorizes a hearing officer to treat the allegations of the Complaint as admitted.²⁴ As described below, I find that Minghenelli committed the violations charged in the Complaint, and bar him from associating in any capacity with any FINRA member.

F. Minghenelli Converted Funds, in Violation of FINRA Rule 2010 (First Cause of Action)

In the first cause of action, Enforcement charges Minghenelli with violating FINRA Rule 2010 by converting \$200 from the Employer Firm. FINRA Rule 2010 requires that "[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade."²⁵ Conduct that reflects poorly on an associated person's ability to comply with regulatory requirements fundamental to the securities industry is inconsistent with such standards and principles.²⁶ FINRA Rule 2010 proscribes all unethical, business-related conduct, even if it is not in connection with securities or a securities transaction.²⁷ An associated person's "business" includes his business relationship with his employer firm.²⁸

²⁰ Decl. ¶ 11.

²¹ August 26, 2019 Order, at 2.

²² August 30, 2019 Order, at 2.

²³ Minghenelli is hereby notified that he may move to set aside this Default Decision under FINRA Rule 9269(c) if he can show good cause.

²⁴ FINRA Rule 9269(a)(2).

²⁵ FINRA Rules "shall apply to all members and persons associated with a member," and associated persons "shall have the same duties and obligations as a member under the Rules." FINRA Rule 0140(a).

²⁶ *Dep't of Enforcement v. Vedovino*, No. 2015048362402, 2019 FINRA Discip. LEXIS 20, at *19-20 (NAC May 15, 2019).

²⁷ *Dep't of Enforcement v. Seol*, No. 2014039839101, 2019 FINRA Discip. LEXIS 9, at *39-40 (NAC Mar. 5, 2019).

²⁸ *Dep't of Enforcement v. Springsteen-Abbott*, No. 2011025675501r, 2017 FINRA Discip. LEXIS 23, at *64-65 (NAC July 20, 2017), *appeal docketed*, SEC Admin. Proc. No. 3-17560r (Aug. 14, 2017).

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.²⁹ Conversion is antithetical to high standards of commercial honor and just and equitable principles of trade.³⁰ It violates FINRA Rule 2010 even if the victim of the conversion is not a customer.³¹

The Complaint alleges that the Employer Firm provided Minghenelli with a corporate credit card issued by an affiliated bank (“Affiliated Bank”).³² The Employer Firm’s Code of Conduct prohibited the use of corporate credit cards for any purpose other than appropriate business expenses and required that employees report business expenses accurately and timely.³³ The Employer Firm’s Corporate Expense Standards directed that corporate credit cards “must not be used for personal expenditures and must be expensed and paid in full each month.”³⁴

On November 27, 2016, Minghenelli used his corporate credit card at an ATM in Northfield, New Jersey, to take a cash advance of \$200 (“Advance”).³⁵ The Advance was not related to any business purpose or business expense.³⁶ Instead, Minghenelli spent the \$200 on personal expenses.³⁷

The Employer Firm was obligated to pay back the Affiliated Bank for the Advance.³⁸ The Employer Firm’s Card Program Servicing Department notified Minghenelli’s supervisor that Respondent’s corporate credit card had transaction exceptions that did not meet expense guidelines.³⁹ The supervisor questioned Respondent, who falsely denied taking the Advance.⁴⁰ The next day, Respondent called the Affiliated Bank and falsely reported that the Advance was an act of ATM fraud.⁴¹

²⁹ FINRA Sanction Guidelines (“Guidelines”) at 36 n.2 (March 2019), www.finra.org/sanction-guidelines; *accord Dep’t of Enforcement v. Casas*, No. 2013036799501, 2017 FINRA Discip. LEXIS 1, at *20 (NAC Jan. 13, 2017).

³⁰ *Dep’t of Enforcement v. Olson*, No. 2010023349601, 2014 FINRA Discip. LEXIS 7, at *8 (NAC May 9, 2014) (converting an employer firm’s funds is dishonorable and violates FINRA Rule 2010).

³¹ *Casas*, 2017 FINRA Discip. LEXIS 1, at *20; *Kenny Akindemowo*, Exchange Act Release No. 79007, 2016 SEC LEXIS 3769, at *23-24 (Sept. 30, 2016).

³² Compl. ¶ 10.

³³ Compl. ¶ 11.

³⁴ Compl. ¶ 12.

³⁵ Compl. ¶ 13.

³⁶ Compl. ¶ 14.

³⁷ Compl. ¶ 14.

³⁸ Compl. ¶ 16.

³⁹ Compl. ¶ 17.

⁴⁰ Compl. ¶ 18.

⁴¹ Compl. ¶ 19.

These facts show that Minghenelli converted \$200 from the Employer Firm and thereby failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of FINRA Rule 2010.⁴² Respondent committed conversion by intentionally using his corporate credit card to withdraw \$200 belonging to the Employer Firm, which funds he used for his personal benefit, not for any authorized business purpose. When questioned by his supervisor, Respondent falsely denied knowledge of the Advance and stated he did not take it, which demonstrates the intentional nature of his misconduct.

G. Minghenelli Failed to Provide Documents and Information to FINRA, in Violation of FINRA Rules 8210 and 2010 (Second Cause of Action)

In the second cause of action, Enforcement charges Minghenelli with violating FINRA Rules 8210 and 2010 by failing to provide documents and information requested by FINRA staff. FINRA Rule 8210 requires that “[n]o member or person shall fail to provide information or testimony . . . pursuant to this Rule.”⁴³ The Rule is indispensable to FINRA’s ability to fulfill its regulatory function.⁴⁴ Because FINRA lacks subpoena power, it must rely on the Rule to police the activities of associated persons.⁴⁵ An associated person violates the Rule when he fails to provide full and prompt cooperation to FINRA in response to a request for information.⁴⁶ The Rule is unequivocal in requiring an associated person to cooperate.⁴⁷

The Complaint alleges that as part of FINRA’s investigation of this matter, FINRA staff mailed to Minghenelli requests for documents and information under FINRA Rule 8210.⁴⁸ Respondent obstructed FINRA’s investigation by failing to comply with these requests.⁴⁹

1. The First Four FINRA Rule 8210 Requests

In July and August 2017, Enforcement mailed to Minghenelli four FINRA Rule 8210 requests directing him to produce documents and information, including (1) a list of every bank account he maintained from June 2016 through March 2017; (2) copies of bank account statements for each bank account he maintained; and (3) documentary evidence of his status as

⁴² Compl. ¶ 21.

⁴³ FINRA Rule 8210(c).

⁴⁴ *Dep’t of Enforcement v. Saliba*, No. 2013037522501, 2019 FINRA Discip. LEXIS 1, at *44 (NAC Jan. 8, 2019), appeal docketed, SEC Admin. Proc. No. 3-18989 (Feb. 6, 2019).

⁴⁵ *PAZ Sec., Inc.*, Exchange Act Release No. 57656, 2008 SEC LEXIS 820, at *12 (Apr. 11, 2008).

⁴⁶ *Dep’t of Enforcement v. Reifler*, No. 2016050924601, 2019 FINRA Discip. LEXIS 44, at *10 (NAC Sept. 30, 2019).

⁴⁷ *Dep’t of Enforcement v. Taboada*, No. 2012034719701, 2017 FINRA Discip. LEXIS 29, at *44 (NAC July 24, 2017).

⁴⁸ Compl. ¶ 25.

⁴⁹ Compl. ¶ 25.

holder of an identified luxury benefits card.⁵⁰ In accordance with FINRA Rule 8210(d), Enforcement mailed the requests to the CRD Address.⁵¹ Respondent sent emails seeking extensions of time to produce the requested documents and information, which were granted.⁵² Despite these extensions, Respondent did not respond to Enforcement’s Rule 8210 requests.⁵³

2. The October 2, 2017 FINRA Rule 8210 Request

On October 2, 2017, Enforcement mailed to Minghenelli a fifth FINRA Rule 8210 request, directing him to appear and provide on-the-record testimony on October 23.⁵⁴ Enforcement mailed this request to the CRD Address in accordance with FINRA Rule 8210(d).⁵⁵ Enforcement also sent the request to an email address Minghenelli used.⁵⁶ On October 23, Respondent appeared and gave testimony, but he failed to produce the documents and information sought in the FINRA Rule 8210 requests from July and August 2017.⁵⁷ In his testimony, Respondent disclosed his current address in New York (“New York Address”).⁵⁸ Enforcement orally repeated its FINRA Rule 8210 requests for the immediate production of the documents and information that it had previously requested in July and August 2017.⁵⁹

3. The November 17, 2017 FINRA Rule 8210 Request

On November 17, 2017, Enforcement mailed to Minghenelli a sixth FINRA Rule 8210 request seeking all monthly statements of all bank accounts he maintained from June 2016 through March 2017, and all email communications he had with the issuer of the identified luxury benefits card.⁶⁰ Enforcement mailed this request to the CRD Address and the New York Address in accordance with FINRA Rule 8210(d).⁶¹ Minghenelli did not produce any of the documents or information.⁶² Respondent did belatedly produce a bank account statement for the month of May 2017 showing the purchase of a cashier’s check on May 3.⁶³ Respondent

⁵⁰ Compl. ¶ 26. The FINRA Rule 8210 requests were dated July 17 and August 1, 16, and 31, 2017.

⁵¹ Compl. ¶ 27.

⁵² Compl. ¶ 28.

⁵³ Compl. ¶ 28.

⁵⁴ Compl. ¶ 29.

⁵⁵ Compl. ¶ 29.

⁵⁶ Compl. ¶ 29.

⁵⁷ Compl. ¶ 31.

⁵⁸ Compl. ¶ 31.

⁵⁹ Compl. ¶ 32.

⁶⁰ Compl. ¶ 33.

⁶¹ Compl. ¶ 33.

⁶² Compl. ¶ 35.

⁶³ Compl. ¶ 36.

represented to Enforcement that he used this cashier's check to repay the Employer Firm for the Advance.⁶⁴

These facts show that Minghenelli failed to produce documents and information requested in a FINRA investigation, in violation of FINRA Rule 8210.⁶⁵ A violation of FINRA Rule 8210 is also a violation of FINRA Rule 2010.⁶⁶

III. Sanctions

According to FINRA's Sanction 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.⁶⁷ The Guidelines contain General Principles Applicable to All Sanction Determinations, Principal Considerations in Determining Sanctions, and Guidelines applicable to specific violations.

The sanctions for each of Minghenelli's violations are addressed separately below.

A. Minghenelli's Conversion of Funds, in Violation of FINRA Rule 2010 (First Cause of Action)

The Sanction Guideline for Conversion recommends that adjudicators "[b]ar the respondent regardless of amount converted."⁶⁸ The Guideline does not recommend a fine "since a bar is standard."⁶⁹ Conversion of funds is extremely serious misconduct and is one of the gravest violations that a securities industry professional can commit.⁷⁰

Several aggravating factors confirm a bar is the appropriate sanction for Minghenelli's conversion of funds. First, Respondent did not accept responsibility for or acknowledge his conversion to the Employer Firm before detection and intervention.⁷¹ Second, by falsely denying knowledge of the Advance, Respondent tried to conceal his misconduct and deceive the

⁶⁴ Compl. ¶ 36.

⁶⁵ Compl. ¶ 37.

⁶⁶ *Howard Brett Berger*, Exchange Act Release No. 58590, 2008 SEC LEXIS 3141, at *2-3 n.2 (Nov. 14, 2008).

⁶⁷ Guidelines at 2 (General Principle No. 1).

⁶⁸ Guidelines at 36; *accord Dep't of Enforcement v. Harari*, No. 201125899601, 2015 FINRA Discip. LEXIS 2, at *34-35 (NAC Mar. 9, 2015). This approach reflects the judgment that, absent mitigating factors, conversion poses so substantial a risk to investors and the markets as to render the violator unfit for employment in the securities industry. *Stephen Grivas*, Exchange Act Release No. 77470, 2016 SEC LEXIS 1173, at *25 (Mar. 29, 2016).

⁶⁹ Guidelines at 36.

⁷⁰ *Dep't of Enforcement v. Vedovino*, 2019 FINRA Discip. LEXIS 20, at *27.

⁷¹ Guidelines at 7 (Principal Consideration No. 2: Whether the respondent accepted responsibility for and acknowledged the misconduct to his employer prior to detection and intervention by the firm).

Employer Firm.⁷² Third, the conversion resulted in financial harm to the Employer Firm.⁷³ Fourth, by failing to produce to FINRA documents and information relating to the Advance, Respondent attempted to delay FINRA's investigation and conceal information.⁷⁴ Fifth, the conversion resulted in the potential for Respondent's monetary gain.⁷⁵

There are no mitigating factors. Although the Employer Firm terminated Minghenelli's employment, I do not find his termination to be mitigating because Respondent has not shown this employment action has materially reduced the likelihood of misconduct in the future.⁷⁶

Considering the applicable Sanction Guideline and the aggravating factors, I find Minghenelli unfit for employment in an industry that depends on the honesty and integrity of its members. For Minghenelli's conversion, I bar him from associating with any FINRA member in any capacity. Consistent with the Guideline, I do not impose a fine.

B. Minghenelli's Failure to Provide Documents and Information, in Violation of FINRA Rules 8210 and 2010 (Second Cause of Action)

The Sanction Guideline for Failure to Respond to Requests Made Pursuant to FINRA Rule 8210 recommends a fine of \$25,000 to \$77,000 if the respondent failed to respond to a FINRA Rule 8210 request.⁷⁷ If the respondent did not respond in any manner, a bar should be standard.⁷⁸ The Guideline also directs that, where an individual provided a partial but incomplete response, a bar is standard unless the person can demonstrate that the information provided substantially complied with all aspects of the request.⁷⁹ Minghenelli's production of a single bank statement covering a one-month period⁸⁰ is tantamount to not responding in any manner.

The single consideration specific to a failure to respond is the importance of the information as viewed from FINRA's perspective.⁸¹ Documentation relating to Enforcement's investigation of an allegation of conversion of funds would be important to FINRA. According

⁷² Guidelines at 7 (Principal Consideration No. 10: Whether the respondent attempted to conceal his misconduct or to mislead or deceive the member firm with which he was associated).

⁷³ Guidelines at 7 (Principal Consideration No. 11: Whether the respondent's misconduct resulted directly or indirectly in injury to the member firm with which the respondent is associated).

⁷⁴ Guidelines at 8 (Principal Consideration No. 12: Whether the respondent attempted to delay FINRA's investigation or to conceal information from FINRA).

⁷⁵ Guidelines at 8 (Principal Consideration No. 16: Whether the respondent's misconduct resulted in the potential for his monetary or other gain).

⁷⁶ Guidelines at 5 (General Principle No. 7).

⁷⁷ Guidelines at 33.

⁷⁸ Guidelines at 33.

⁷⁹ Guidelines at 33.

⁸⁰ Compl. ¶ 36.


⁸¹ Guidelines at 33.

to the declaration of Enforcement’s counsel, “Enforcement sought bank records from Minghenelli to assess his financial condition at the time of the cash advance withdrawals and to refute any possible defense that the funds were withdrawn via the corporate credit card in error.”⁸²

Considering the applicable Sanction Guideline, for Minghenelli’s violation of FINRA Rules 8210 and 2010, I bar him from associating with any FINRA member in any capacity. I do not impose a fine.⁸³

IV. Order

With regard to the first cause of action of the Complaint, Respondent Michael Minghenelli converted funds, in violation of FINRA Rule 2010, and is barred from associating with any FINRA member in any capacity. As to the second cause of action, Minghenelli failed to comply with FINRA Rule 8210 requests, in violation of FINRA Rules 8210 and 2010, and is barred from associating with any FINRA member in any capacity. The bars shall be effective immediately if this Default Decision becomes FINRA’s final disciplinary action.


Richard E. Simpson
Hearing Officer

Copies to:

Michael Minghenelli (via email, first-class mail, and overnight courier)
David Monachino, Esq. (via email and first-class mail)
Josefina Martinez, Esq. (via email)
Eric Hansen, Esq. (via email)
Richard Chin, Esq. (via email)
Jennifer L. Crawford, Esq. (via email)

⁸² Decl. ¶ 21.

⁸³ Guidelines at 10 (“Adjudicators generally should not impose a fine if an individual is barred and there is no customer loss.”).