

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

THOMAS LEE JOHNSON
(CRD No. 1215434),

Respondent.

Disciplinary Proceeding
No. 2018056848101

Hearing Officer—MJD

HEARING PANEL DECISION

Date: August 23, 2019

Respondent converted \$1,059,544.98 from his employer firm. For this misconduct, Respondent is barred from associating with any member firm in any capacity. Enforcement failed to prove that Respondent provided false or misleading information to FINRA staff during its investigation. The Hearing Panel therefore dismisses this charge. Respondent is also ordered to pay costs.

Appearances

For the Complainant: Joseph E. Strauss, Esq., and John Luburic, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: Jon-Jorge Aras, Esq.

I. Introduction

The Department of Enforcement filed a two-cause Complaint against Respondent Thomas Lee Johnson (“Johnson” or “Respondent”) on January 22, 2019. Cause one charges Johnson with converting \$1,059,544.98 from his employer, FINRA member firm RBC Capital Markets, LLC (“RBC” or the “Firm”), after the Firm incorrectly priced sales of his holdings in Doosan Heavy Industries & Construction Co. (“Doosan”), a South Korean company whose securities trade on the Korean stock exchange. RBC incorrectly priced the sales in U.S. dollars instead of South Korean won. Because of a system error, Johnson received \$1,059,544.98 in his RBC securities account from the sales, but he was entitled to less than \$1,000. Eight days after RBC’s error, Johnson moved the money to a personal bank account. Johnson later returned the funds to his RBC account when he saw that the Firm had corrected its error and reversed the credit, causing the account to have a negative balance. The Complaint alleges that this misconduct violated FINRA Rule 2010.

Cause two alleges that twice during Enforcement’s investigation Johnson provided FINRA staff with false information about the mistaken credit in his account—in a written statement to the staff and during on-the-record testimony (“OTR”). The Complaint alleges that Johnson’s misconduct violated FINRA Rules 8210 and 2010.

Johnson filed an Answer to the Complaint in which he denied that his conduct constituted conversion and that he provided FINRA staff with false information during Enforcement’s investigation.

The Hearing Panel finds that, as alleged in cause one, Respondent converted \$1,059,544.98 from RBC, in violation of FINRA Rule 2010, and bars him from associating with any member firm in any capacity. The Panel dismisses cause two because Enforcement failed to prove that Johnson violated FINRA Rules 8210 and 2010.¹

II. Findings of Fact

A. Johnson’s Background

Johnson entered the securities industry when he associated with a member firm in 1983. In 2009, he registered as a general securities representative and investment advisor with FINRA through his association with RBC.² Johnson worked at an RBC branch office in Indianapolis, Indiana.³ The Firm terminated Johnson on December 14, 2017, as a result of the misconduct alleged in cause one of the Complaint. He has not been registered with a FINRA member firm since December 26, 2017, when RBC filed a Uniform Termination Notice for Securities Industry Registration (“Form U5”) terminating his registration.⁴ On Johnson’s Form U5, RBC reported that it had discharged him for a “[v]iolation of company policy, not client related.”⁵

Since entering the securities industry, Johnson has partnered with his brother, Andrew Johnson (“Andrew”), at other firms with which they had associated. They joined RBC together in 2009. At RBC, Johnson was a Senior Financial Associate and his brother held the title of

¹ The hearing was held June 11 and 12, 2019, in Chicago, Illinois.

² Enforcement’s and Respondent’s Stipulation Regarding Certain Facts and Exhibits (“Stip.”) ¶¶ 3-4.

³ Joint Exhibit (“JX-”) 3, at 7-8.

⁴ Stip. ¶ 5; JX-2; JX-18, at 2. Since January 2018, Johnson has been registered as an investment advisor with a non-FINRA member firm. Tr. 36-37; JX-1, at 3, 9, 12.

⁵ JX-1, at 3; JX-2, at 1; JX-26, at 3. Johnson’s termination from RBC caused FINRA staff to begin the investigation that led to the filing of the Complaint in this disciplinary proceeding. *See* JX-15, at 4. The Firm also filed a National Futures Association Individual Withdrawal form (“Form 8-T”) on December 26, 2017, citing no reason for Johnson’s withdrawal—only noting that he was “discharged.” JX-26, at 13. RBC did not state on the Form 8-T that at the time of Johnson’s termination he had been, or was then, under investigation for wrongful taking of property or for violations of other investment-related rules or industry standards of conduct. JX-26, at 14, 17.

Senior Vice President of Investments.⁶ They shared responsibilities for servicing their customers. Andrew received two-thirds of the commissions the clients paid and Johnson received one-third.⁷ RBC terminated Andrew's employment the same day as his brother—December 14, 2017. RBC filed a Form U5 terminating Andrew's registration on January 3, 2018.⁸

Although Johnson is no longer registered or associated with a FINRA member, he is subject to FINRA's jurisdiction for purposes of this proceeding pursuant to Article V, Section 4, of FINRA's By-Laws. The Complaint was filed within two years of the effective date of termination of Johnson's registration with RBC and cause one of the Complaint charges him with misconduct committed while he was registered with a FINRA member. Cause two charges Johnson with providing false and misleading responses to FINRA's requests for information during the two-year period after the date he ceased to be registered or associated with a FINRA member.

B. Johnson's RBC Account

When Johnson registered with RBC in 2009, he transferred securities from a joint account with his wife at his prior firm to a joint account at RBC.⁹ Johnson stated on several RBC account forms that he had considerable investment experience. On an account transfer form, Johnson described his investment experience as "extensive" and stated that he had been an investor for 30 years.¹⁰ On an options agreement he submitted to RBC at the same time, Johnson claimed to have 25 years' experience trading stocks, bonds, options, and commodities.¹¹ On his account application, Johnson reported that his income (excluding his wife's income) was between \$50,000 and \$99,999; his family's net worth (excluding their home) was between \$500,000 and \$999,999; and his family had between \$100,000 and \$249,999 in liquid assets.¹²

Johnson described the RBC brokerage account as his family's "main checking account" that he used for "everyday expenses."¹³ His family wrote checks from the account and had debit cards associated with it. Johnson and his wife used the account to pay for many household

⁶ JX-18, at 2; JX-19, at 1; JX-22, at 24; Respondent's Exhibit ("RX-") 1, at 1.

⁷ Hearing Transcript ("Tr.") 333. Andrew was the designated registered representative on all of the accounts he shared with his brother. He was also the registered representative on Johnson's joint account with his wife. Johnson was not the registered representative on any customer accounts. Tr. 334-35. *See* JX-4, at 1.

⁸ JX-3, at 1-2, 10. RBC reported that it had discharged Johnson's brother for "[v]iolation of company policies, including policy regarding outside speaking engagements." JX-3, at 1. Andrew disputed the reason RBC gave for his termination on the Form U5. He said a Firm manager believed that he knew his brother had wrongly taken the money from the RBC account. Tr. 334.

⁹ JX-6.

¹⁰ Tr. 40-41; JX-7, at 1.

¹¹ Complainant's Exhibit ("CX-") 1, at 1.

¹² JX-7, at 1-2. *See also* CX-1, at 1.

¹³ Tr. 44.

expenses, including utilities, credit card bills, and property taxes, and to deposit checks.¹⁴ He also used the account for automated payroll direct deposits from the Firm.¹⁵ Johnson received monthly statements for the RBC account by mail and email, and had the “account in front of [him] every day.”¹⁶ When he logged onto his computer at work each day, the RBC account was the first thing he looked at.¹⁷

From December 2016 to November 2017, the value of the RBC joint account ranged between about \$667,000 and \$752,000 at the end of each month.¹⁸ It held multiple foreign and domestic securities positions. In December 2016, the joint account held equities of around 20 domestic issuers, with a market value over \$400,000. Johnson and his wife also owned other foreign stocks besides Doosan. They had equity positions in about 17 international companies or funds, with a market value over \$50,000, some of which they held as American depositary receipts.¹⁹ In October 2017, Johnson and his wife held 25 domestic stocks worth nearly \$650,000 in the account,²⁰ as well as positions in 11 international stocks or funds, including Doosan, worth nearly \$72,000.²¹ The account statements denominated foreign securities in U.S. dollars.²²

C. Johnson Inherits Doosan Stock

In November 2016, Johnson inherited 60 shares of Doosan stock from the estate of his father, who had recently died.²³ Johnson had handled his father’s purchase of the stock in the mid-1990s.²⁴ He testified that he knew “nothing” or “zero” about Doosan’s business before the liquidation.²⁵ On December 14, 2016, the 60 Doosan shares (and other stocks from his father’s estate) were transferred into Johnson’s RBC account. At the time, the price of Doosan was \$22.673 per share, making his 60 shares worth \$1,360.36.²⁶ Account statements reflect that from December 2016 to October 2017, the value of Johnson’s 60 Doosan shares fluctuated between

¹⁴ See JX-4, at 176-88.

¹⁵ See JX-4, at 176-78.

¹⁶ Tr. 44.

¹⁷ Tr. 46, 72.

¹⁸ JX-4, at 1, 21, 33, 45, 57, 71, 85, 97, 107, 117, 127, 139. Johnson was aware of the total value of the RBC joint account throughout the relevant period. Tr. 61-62.

¹⁹ JX-4, at 5-6.

²⁰ JX-4, at 130-31.

²¹ JX-4, at 132. Johnson inherited all the foreign stocks from his father. Tr. 358.

²² See, e.g., JX-4 at 5-6, 153.

²³ Complaint (“Compl.”) ¶ 10; Answer (“Ans.”) ¶ 10; Stip. ¶ 8.

²⁴ Tr. 49-50, 364. Johnson never bought Doosan stock for himself. Tr. 51.

²⁵ Tr. 365-66.

²⁶ Tr. 56; Stip. ¶ 9; JX-4, at 8.

\$896.32 and \$1,430.30.²⁷ Johnson testified that he was aware of the approximate value of his Doosan stock throughout the time he held the stock because it was in his monthly account statements.²⁸ In February and March 2017, Johnson tried to sell the Doosan stock but there was no market for it in the United States.²⁹

On September 18, 2017, ten Doosan warrants valued at \$27.21 were deposited into Johnson's account as a "spinoff" of the 60 Doosan shares.³⁰ A month later, the ten Doosan warrants were worth \$28.04.³¹

D. RBC Sells Johnson's Doosan Shares and Warrants

On August 30, 2017, administrative assistant Christy McCord ("McCord") forwarded Johnson and his brother an email notice from RBC stating that the Firm would "no longer custody" the Doosan stock.³² According to Johnson, the Firm planned to switch the transfer agent that handled foreign securities and the new transfer agent would not hold Doosan shares.³³ The Firm told Johnson that he had three options: liquidate the position, transfer the securities to another custodian, or complete a "dollar write-off" transaction. The email also told Johnson and his brother that if the securities were still in the account by late October 2017 RBC would liquidate the position. The notice also reported the current value of the 60 Doosan shares as \$1,010.37.³⁴

²⁷ JX-4, at 5, 23, 38, 50, 62, 76, 90, 102, 112, 122, 132. The price of the Doosan stock ranged from \$14.939 to \$23.838 per share, according to monthly account statements. *See* JX-4.

²⁸ Tr. 59-60. According to Johnson, Doosan's stock price was available to him only through his monthly statements because, unlike other securities, it was not priced daily. Tr. 360-61.

²⁹ Tr. 62-65; CX-2; CX-3.

³⁰ Stip. ¶ 10; JX-4, at 123; JX-17.

³¹ JX-4, at 133.

³² JX-8, at 1. From November 2016 to December 2017, McCord provided administrative support to Johnson and his brother. Lesley Reardon ("Reardon") served as McCord's backup. Tr. 152, 178-79; Stip. ¶ 7.

³³ Tr. 67-68; JX-15, at 1. According to Johnson, he was the only person in the office who owned foreign securities and was affected by RBC's switch to a new transfer agent. Tr. 69-70.

³⁴ JX-8.

On September 21, 2017, RBC followed up with a letter to Johnson repeating that it would “liquidate” the Doosan stock if it were still in the account in late October 2017.³⁵ Johnson took no action, choosing instead to allow the new transfer agent to liquidate or redeem the stock.³⁶

Johnson’s October 2017 RBC account statement reflected that as of October 31, 2017, the Doosan stock price was \$15.655 per share and the total value of Johnson’s 60 shares was \$939.30.³⁷

On November 14, 2017, RBC liquidated Johnson’s 60 Doosan shares and ten warrants.³⁸ Because of a system error, RBC priced the securities in U.S. dollars instead of South Korean won. As a result, according to the trade confirmations, the Firm priced the Doosan stock at \$17,184.58 per share (instead of 17,184 South Korean won per share). RBC reported the value of the liquidation of the stock, after deducting fees and other charges, as \$1,031,074.80 (instead of 1,031,074.80 South Korean won). It was actually \$939.30.³⁹

The same system error occurred with the liquidation of the ten Doosan warrants. RBC recorded that it sold each warrant for \$2,849 (instead of 2,849 South Korean won), or \$28,494.⁴⁰ The true value of all ten the warrants at the time was less than \$30.⁴¹

As a result of the system error, on November 14, 2017, RBC deposited \$1,059,544.98 in Johnson’s account as the net proceeds from the sale of the 60 Doosan shares and ten warrants.⁴²

E. Johnson’s Actions After the Doosan Redemptions

Johnson testified that when he went to the office on November 14, 2017—like every other workday—he immediately logged onto his computer and pulled up his RBC account. When he saw the extra \$1 million in the account, the first thing he did was ask McCord where it came from. According to Johnson, McCord told him it came from the sales of the Doosan shares

³⁵ JX-9. RBC’s letter did not refer to the Doosan warrants that were first reflected in Johnson’s account a few days earlier.

³⁶ Tr. 71-72; JX-15, at 1. According to Johnson, in May 2017, the 60 Doosan shares were subject to a reorganization, as a result of which he acquired 2,500 Doosan bonds. The bonds had a miniscule value, as reflected in account statements and the Firm’s notices to Johnson about disposing of the stock. *See* JX-4, at 76, 153; JX-8, at 2; JX-9; JX-15, at 1. The transfer agent and RBC did not redeem the 2,500 Doosan bonds and Johnson still owned them at the time of the hearing. Tr. 71-72.

³⁷ Stip. ¶ 12; JX-4, at 132-33.

³⁸ Stip. ¶ 13.

³⁹ Stip. ¶ 14; JX-10, at 1.

⁴⁰ Stip. ¶ 14.

⁴¹ Stip. ¶ 12; JX-12, at 1.

⁴² Stip. ¶ 15. The record does not conclusively identify the specific cause of the pricing or currency conversion errors.

and warrants.⁴³ At the hearing, Johnson testified that he then “mostly just [tried] to verify what RBC had told [him]” about the prices for the two transactions.⁴⁴

After talking to McCord, Johnson went to the Bloomberg terminal in the office and searched for “Doosan,” but Bloomberg generated too many search results for him to quickly identify the stock. So he returned to his office and typed in the Doosan stock CUSIP on his computer, which pulled up the \$17,000 per share figure that matched what McCord had told him. He asked McCord to come look at his computer. Johnson then Googled “Doosan Heavy Industries” to locate the company’s website. The investor relations link on the company’s website also showed a \$17,000 per share price, according to Johnson.⁴⁵ Johnson testified that he did not look for news about Doosan that would explain the extraordinary increase in its price.⁴⁶ Nor did he ask anyone at RBC to confirm the price because “RBC had told [him], 17,000,”⁴⁷ and because he “didn’t feel like [he] needed to” confirm the price, even though he knew that only a few weeks earlier the stock value was a fraction of the amount of money he had just received.⁴⁸ Johnson testified that he concluded that the stock price was in fact \$17,000 because the figure was confirmed for him by three sources—Bloomberg, Doosan’s website, and RBC.⁴⁹

In fact, the Doosan website that Johnson consulted showed the price of the stock in South Korean won, represented by a “W” with either one or two lines through it: ₩.⁵⁰ Johnson testified that he “had no clue at the time” what the symbol represented and that the “W meant nothing to [him].”⁵¹ He said, “I didn’t pay any attention to the W. I saw the 17,000 that matched. I did not go into the little numbers, [or] the letters.”⁵²

According to Johnson, he also paid no attention to Bloomberg’s use of the three-letter international currency code for the South Korean won: KRW.⁵³ Johnson testified that he did not know what “KRW” stood for when later that morning he looked at the Bloomberg terminal. He

⁴³ Tr. 72-74, 77. According to Johnson, only McCord—and not Reardon—responded to him about the source of the \$1 million. Tr. 81.

⁴⁴ Tr. 90.

⁴⁵ Tr. 74-75.

⁴⁶ Tr. 89, 103.

⁴⁷ Tr. 90.

⁴⁸ Tr. 108. Nor did Johnson notify anyone else at RBC that he had received an extra \$1 million in his account. Tr. 135, 141.

⁴⁹ Tr. 75-76.

⁵⁰ Tr. 91; CX-21.

⁵¹ Tr. 91. Johnson also testified that the symbol for South Korean won “didn’t register at all” and that he “honestly couldn’t even tell you South Korea was in Won at that time.” Tr. 92.

⁵² Tr. 94.

⁵³ Tr. 97-98, 244-47; CX-9, at 2-4. Yahoo Finance also displayed Doosan’s stock value in South Korean won. *See* Tr. 241-43; CX-7, at 4. Doosan’s securities trade on Korea Exchange, the South Korean national stock exchange. Tr. 247; CX-4, at 6; CX-9, at 3.

said that he “was trying to match what RBC had said. If RBC said 17,000 US dollars, [he] pulled [Bloomberg] up, it said 17,000.”⁵⁴ He did not “recognize [KRW], didn’t think anything about it.”⁵⁵ Johnson said there was “no mention of Korean Won by RBC [he] saw the 17,000 [on Bloomberg] and moved on. That was [his] second or third confirmation, depending on what order you want to put it in.”⁵⁶

Johnson testified that he was “surprised” when he saw the extra million dollars in his account.⁵⁷ He initially thought it was a mistake. “My initial reaction was yes, it was a mistake, and RBC would fix it over night [sic] if – I don’t know if mistake is the right word. It was probably not correct, if that’s the same as a mistake, but I worked for 35 years [in the securities industry]. I’ve seen things priced incorrectly. They get reversed immediately.”⁵⁸ According to Johnson, at no point did he think there was a currency conversion error.⁵⁹

When the transactions were not immediately reversed, Johnson testified that he thought that his father “who’s a very smart man, had hit another home run.”⁶⁰ According to Johnson, the fact that RBC did not immediately correct the trade gave him confidence. “The longer it went on with – you know, the next day the fact is if I have \$1 million that’s not supposed to be mine, someone is short \$1 million. That gets corrected immediately.”⁶¹ Johnson reiterated in his hearing testimony that when RBC did not correct the transactions after settlement date and the money was still in his account, he thought his father had “had another one of his big winners.”⁶² As a result of the supposed unexpected windfall in Doosan, Johnson considered distributing the after-tax proceeds from the liquidations to himself and his four siblings.⁶³

Johnson explained that he did not contact RBC’s trading desk about the pricing of the transactions because he had not initiated the trade: “You know, if I had made a trade and they priced it wrong, yes. But I had nothing to do with the trade itself.”⁶⁴ Instead, Johnson said that he assumed that RBC would fix the transactions the next day, as it had when the Firm on a different occasion mistakenly credited his sister’s brokerage account with \$666 million.⁶⁵ As more time

⁵⁴ Tr. 97-98.

⁵⁵ Tr. 98.

⁵⁶ Tr. 99.

⁵⁷ Tr. 101.

⁵⁸ Tr. 102.

⁵⁹ Tr. 104.

⁶⁰ Tr. 102.

⁶¹ Tr. 102-03.

⁶² Tr. 103.

⁶³ Compl. ¶ 18; Ans. ¶ 18; Tr. 124, 238, 250-52, 328; JX-15, at 2.

⁶⁴ Tr. 104.

⁶⁵ Tr. 104-05.

passed during which RBC did not correct the transactions, Johnson testified that he “started to believe that it was accurate.”⁶⁶ According to Johnson, “I mean, it’s not like someone deposited \$1 million by mistake. It’s not like someone – I had a wire transfer in my account that I knew wasn’t mine. RBC liquidated a position at \$17,000 a share.”⁶⁷ “It was a good thing,” Johnson testified, that he got \$17,000 per share for stock that was worth \$15 per share a few weeks previously.⁶⁸

F. Andrew Johnson’s Testimony about the Doosan Credits in His Brother’s Account

Johnson called his brother to testify at the hearing to back up his claim that it was reasonable for him to believe that RBC’s pricing was accurate. Andrew, the registered representative on Johnson’s RBC joint account, testified that he learned of the Doosan redemptions when he arrived in the office the morning of November 14, 2017, as the markets were about to open. The redemptions had just occurred and Johnson’s account had been credited the \$1 million. He heard McCord exclaim that his brother was now a millionaire. According to Andrew, McCord told him that the money had come from redemptions of the Doosan securities.⁶⁹

Andrew then went to the Bloomberg terminal, which already displayed the page for Doosan, “and there it was, you know, 17,100 whatever per share. [It] shocked me.”⁷⁰ He did not notice that Bloomberg showed the share value in South Korean won; if he had, he would have told his brother, he said.⁷¹ When Andrew looked at the Bloomberg terminal, he “verified something that I was already looking for, which was 17,111. There it was I found what I was looking for.”⁷² His “assumption” was that “everything on [Bloomberg] was in dollars.”⁷³

Andrew testified that he was “quite skeptical” that the Doosan transactions were accurate. He thought “it was most likely an error, and that they’d fix it the next day.”⁷⁴ But as time went on and the transactions were not corrected, Andrew said he became more convinced that his father had picked a winning stock.⁷⁵ He acknowledged that the rise in the value of Doosan’s stock represented “an astronomical overnight increase.” The reason he consulted the Bloomberg

⁶⁶ Tr. 105.

⁶⁷ Tr. 108.

⁶⁸ Tr. 108.

⁶⁹ Tr. 303-04, 314-15.

⁷⁰ Tr. 304. *See also* Tr. 315-17.

⁷¹ Tr. 305.

⁷² Tr. 320-21.

⁷³ Tr. 318.

⁷⁴ Tr. 306.

⁷⁵ Tr. 305-06.

terminal was that he was “skeptical” about the value of the transactions.⁷⁶ Andrew also testified that he knew the actual value of the Doosan securities before the redemption, and he knew that Doosan was a South Korean company.⁷⁷

Like Johnson, Andrew did not talk to anyone at RBC to confirm that the valuations reflected in his brother’s account were accurate. He assumed that the transactions were “most likely a mistake” and RBC would correct them overnight. He nonetheless testified that it was not worth his “time, energy and effort” to contact someone at RBC to confirm the price of the Doosan shares and warrants.⁷⁸

G. Johnson Transfers the Funds to His Bank Account

Eight days after RBC’s error, on November 22, Johnson wrote himself a check for \$1,059,544.98 from the RBC account and deposited it into a personal bank account that he held jointly with his wife at JPMorgan Chase Bank (“Chase Bank”).⁷⁹ Johnson testified that he used a check to transfer the funds instead of a wire because the Firm charged a fee to wire money. He was not trying to hide the transfer from RBC, he said.⁸⁰ He testified that he assumed RBC would see the check.⁸¹ He testified that in the past the Firm had asked him about much smaller checks he had written to customers, so he expected someone would ask him about this check, too.⁸² Johnson did not tell anyone, including his brother, that he had removed the money from the RBC account.⁸³

Johnson disputed Enforcement’s assertion that, when he transferred the money to the Chase Bank joint account, he knew he was not entitled to the funds: “No. Not at all. By then it had been in my account for seven days. If RBC had made a mistake, they would have reversed it by now [M]y confidence said it was a good transaction. It grew every single day that they did

⁷⁶ Tr. 321.

⁷⁷ Tr. 314-16, 319.

⁷⁸ Tr. 324-25.

⁷⁹ Compl. ¶ 17; Ans. ¶ 17; Stip. ¶ 16; JX-4, at 145; JX-5, at 1; JX-13.

⁸⁰ Tr. 110-11. An RBC assistant complex manager, Janet Buswell (“Buswell”), testified that no Firm approval was needed for Johnson to write himself a check. On the other hand, in the case of a wire transfer, for anti-money laundering purposes, the Firm required two levels of approval before a customer, including Johnson, could wire out more than \$1 million. In this case, Johnson would have had to sign a letter of authorization and explain the reason for the transfer. Tr. 221-23. According to Buswell, RBC supervisors get an employee cash flow report about activity in an employee’s securities account at the end of each month. An outgoing check for more than \$1 million would have triggered a review, but in this case the Firm reviewed Johnson’s money movements before the month-end cash flow review. Tr. 224-27, 231-32, 262-65. *See also* CX-5, at 2. By using a check, the transfer was concealed for a brief time but it would eventually have been discovered.

⁸¹ Tr. 348, 364.

⁸² Tr. 111, 346-47.

⁸³ Tr. 115, 331. Andrew testified that he learned that Johnson had withdrawn the money from the RBC account the day that Johnson returned the funds—November 29, 2017. Tr. 327, 343-44.

not correct it.”⁸⁴ When he was specifically asked during the hearing whether he believed he was entitled to the money, Johnson replied, “It was in my account.”⁸⁵ In his OTR during the investigation, however, Johnson testified that he “probably” did not believe he was entitled to receive the million dollars from the sale of the Doosan stock when he moved the money to the bank account.⁸⁶

Johnson testified at the hearing that he consulted his accountant about what to do with the million-dollar credit. Johnson’s accountant was a friend and a former customer who also was a registered investment advisor. Johnson considered him a “long-time trusted advisor,” especially because he had known the accountant for more than 30 years.⁸⁷

Johnson told the accountant “there was a possibility maybe down the line that [the credit] could possibly be a mistake.”⁸⁸ The accountant in turn told Johnson that “if it was him, he would take the money out of RBC, but don’t spend it just in case they ask for it back.”⁸⁹ The accountant also recommended that Johnson consult an attorney, which Johnson did not do.⁹⁰ Johnson did not tell anyone, including his brother, that he had sought advice from his accountant until after RBC had discharged them in December 2017.⁹¹

H. RBC Cancels and Rebills the Doosan Transactions

The morning of November 28, 2017, RBC canceled the liquidations of Johnson’s Doosan shares and warrants and rebilled the transactions, pricing the Doosan stock at \$15.8102 per share and the warrants at \$2.6215 per warrant. After deducting fees, Johnson received \$924.79 from the rebilled sale of the Doosan shares and \$26.22 from the rebilled sale of the warrants.⁹² The rebilling of the two transactions immediately generated a negative balance in the account exceeding \$1 million because Johnson had transferred that money to his bank account a week earlier.⁹³

Johnson immediately saw that RBC reversed the Doosan transactions because he was looking at his RBC account on his work computer when it occurred. Johnson went to Chase

⁸⁴ Tr. 113.

⁸⁵ Tr. 113.

⁸⁶ Tr. 113-14; JX-21, at 77.

⁸⁷ Tr. 116.

⁸⁸ Tr. 118-19. At his OTR, Johnson testified he “believed that there was a probability that [the money] would be taken back” by RBC. Tr. 123; JX-21, at 80.

⁸⁹ Tr. 115. *See also* Tr. 118.

⁹⁰ Tr. 121, 330-31.

⁹¹ Tr. 115.

⁹² Tr. 124-25; Stip. ¶ 17; JX-4, at 143; JX-11; JX-12.

⁹³ JX-15, at 2.

Bank the same day, obtained a cashier's check for \$1,060,000, and deposited it into his RBC account the next morning, November 29.⁹⁴

RBC was not immediately aware that Johnson had withdrawn over \$1 million from his account on November 22. But depositing the \$1,060,000 check into the RBC account on November 29 generated an exception report. That report prompted the Firm's operations manager to ask Johnson's supervisor to talk to Johnson about the business purpose and source of the funds.⁹⁵

Soon after Johnson returned the money, RBC concluded that Johnson had transferred the funds even though he had to have known that the Doosan stock was not worth \$1 million.⁹⁶ On December 1, 2017, as part of the Firm's investigation, four managers interviewed Johnson about what happened. He acknowledged to them that even though he knew there might have been a pricing error, he removed the money from his RBC account because he "felt more comfortable getting it out of RBC."⁹⁷

According to a written response to FINRA staff's request for information made pursuant to FINRA Rule 8210, Johnson told "the whole story" to the RBC branch office service manager who handled the deposit and had asked him where the money came from.⁹⁸ The Firm quickly determined that Johnson had transferred the funds out of his RBC account after the pricing error on November 14 and then returned the funds to cover the debit once he saw the transactions rebilled.⁹⁹

When asked at the hearing if he would have returned the money to RBC if the Firm had not rebilled the transactions, Johnson answered, "I took the funds because I thought it was my money. So the answer to your question is no, I thought it was my money."¹⁰⁰ "I assumed it was a correct trade. I honestly did. I had no idea – by that time I had no idea that there was a currency conversion [error]."¹⁰¹ Johnson added, "Well, no one – no one ever asked for it. As soon as they

⁹⁴ Tr. 126, 367-68; Stip. ¶ 18; JX-4, at 143; JX-5, at 1; JX-14; JX-15, at 2.

⁹⁵ CX-4, at 4. *See also* Tr. 207-08, 212-13; JX-16.

⁹⁶ *See* CX-5, at 1-2. Because Johnson deposited the \$1,060,000 within a day of the rebill and the resulting negative balance in his account, there was not enough time to trigger a margin call. *See* Tr. 230-31; CX-5, at 1. Had Johnson not returned the money to his account, RBC would eventually have taken steps to recover it from him, according to Buswell. Tr. 277-78.

⁹⁷ Tr. 238; CX-23, at 3.

⁹⁸ JX-15, at 2. Johnson also told FINRA in the same response letter that RBC "only became aware of this situation by me depositing the funds back into my [RBC] account." JX-15, at 3. Johnson testified at the hearing that he told his supervisor the day of the deposit that the source of the money was the Doosan transaction. Tr. 367-68.

⁹⁹ CX-4, at 1-2; CX-5, at 2-4. Andrew did not think "it was a big deal" that his brother withdrew the money from the RBC account because once a debit appeared in the account after the trade correction, Johnson immediately returned the money to the account. Tr. 327.

¹⁰⁰ Tr. 370.

¹⁰¹ Tr. 368.

asked for it, I returned it.”¹⁰² According to Buswell, had the Firm not questioned the \$1,060,000 deposit, Johnson’s actions “would have flown under the radar” and RBC would not have scrutinized his money movements.¹⁰³

I. Johnson’s Written and Oral Statements to FINRA Staff During the Investigation

On February 14, 2018, Johnson responded in writing to a request for information from FINRA staff made pursuant to FINRA Rule 8210.¹⁰⁴ On June 27, 2018, as part of the investigation, Johnson also provided sworn testimony at an OTR conducted by FINRA staff.¹⁰⁵ The Complaint alleges that Johnson provided FINRA staff with false information on these two occasions—specifically concerning what his assistants, McCord and Reardon, did and told him on November 14, 2017, the day of the Doosan stock and warrant redemptions.

1. Johnson’s Written Statement to FINRA Staff (February 14, 2018)

In the first instance, FINRA staff asked Johnson to provide a “signed and detailed statement” responding to the Firm’s allegation that he violated its policy when he transferred the Doosan sales proceeds from his RBC account to his Chase Bank account. According to the Complaint, the relevant portion of Johnson’s response contained the following false statement intended to support his claim that it was reasonable for him to believe that his Doosan securities were worth over a million dollars:

[W]hen I pulled up my account that morning [November 14, 2017] there was an extra million dollars plus in it. I asked my assistant Christy McCord what was going on. She and her coworker Lesley Reardon researched my account and told me that the 60 shares of Doosan sold for \$17,184.58 each for a total of \$1,031,074.80 and that the 10 Doosan warrants sold for \$2,849.40 each for a total of \$28,494.00.¹⁰⁶

When confronted with this written statement at the hearing, Johnson testified that he recalled it was only McCord who “researched” his account and told him Doosan’s share price, and that he “never directly spoke” with Reardon, but she was near him when he and McCord spoke.¹⁰⁷

¹⁰² Tr. 369.

¹⁰³ CX-5, at 2. *See also* Tr. 268, 272.

¹⁰⁴ JX-15.

¹⁰⁵ JX-21.

¹⁰⁶ Compl. ¶ 24; JX-15, at 1. *See also* Tr. 72-77.

¹⁰⁷ Tr. 79-81.

2. Johnson's OTR Testimony (June 27, 2018)

Enforcement alleges that the following OTR testimony Johnson gave on June 27, 2018, was also false. His OTR testimony concerned efforts McCord and Reardon made to confirm Doosan's price to Johnson.

Q: And why did you say, "This doesn't make – it didn't make any sense [RBC's \$1 million deposit for the Doosan transactions]. How could it be"?

A: While I'm not sure that I followed the value month to month of whatever started [\$]1800 down to \$1200, an extra million dollars didn't make any sense. I knew it wasn't worth that much.

Q: What happened next?

A: I said, "This makes no sense. What happened?" And [McCord] got on the Bloomberg [terminal] – we had a Bloomberg in the office and went down. And Lesley [Reardon] was with her. And they found the valuation. And they told me what the share price was, and I said, "Well, that doesn't make any sense."

And I got on the Internet and Googled Doosan Heavy Industries and came to their website, which showed the share price.

...

Q: So both Ms. McCord and Ms. Reardon checked Bloomberg?

A: They were – Yes, they were on – they were both investigating as to what the value of the Doosan shares were [sic].

Q: So they were – They were investigating the value of the Doosan shares on their respective screens, or were they looking at the same screen?

A: I honestly don't recall. I believe they were on their separate RBC computers. And then there's only one Bloomberg in the office, which is around the corner from Lesley's [Reardon's] desk maybe six feet away.¹⁰⁸

At the hearing, when shown the foregoing passage from his OTR transcript, Johnson testified that he could not recall whether both McCord and Reardon checked Bloomberg and told him what the Doosan's share price was.¹⁰⁹

¹⁰⁸ JX-21, at 62-64. *See also* Tr. 83-85.

¹⁰⁹ Tr. 81-82, 86.

The following OTR testimony was also false, according to Enforcement:

Q: And what did – what did Ms. – Did Ms. McCord say anything to you after checking Bloomberg?

A: Well, they came to the price per share, whatever it was. I don't even know what it was. \$23,000 and [\$]17,000. One [*i.e.*, the warrants] was one; one [*i.e.*, the shares] was the other, ballpark. And that's what they told me it was.¹¹⁰

At the hearing when asked about this testimony, Johnson testified that McCord told him the price of Doosan “first thing” that morning, and that to “the best of [his] recollection” his OTR testimony was not accurate—that it was not both McCord and Reardon who told him Doosan's share price.¹¹¹

3. McCord's Hearing Testimony

Enforcement called McCord and Reardon to testify about what happened on November 14, 2017. McCord's testimony was somewhat inconsistent. She first testified that Johnson did not ask her to look up Doosan's price or CUSIP on the Bloomberg terminal on November 14 and she never looked up the stock's price on her own.¹¹² When pressed later, McCord testified that she could not remember what happened on November 14.¹¹³ She also could not recall any conversations she may have had with Johnson that day.¹¹⁴

McCord said that at the time of the sales she knew that Johnson owned Doosan stock because she had forwarded emails to him in February and March 2017 about the Firm being unable to sell it for him.¹¹⁵ McCord testified that Johnson and his brother would occasionally ask her to look up the price of stocks on the Bloomberg terminal, including stocks in their personal accounts.¹¹⁶ She knew how to look up the historical prices of a stock on the Bloomberg terminal, but she did not use the service often.

¹¹⁰ JX-21, at 64. *See also* Tr. 86-87.

¹¹¹ Tr. 87.

¹¹² Tr. 155-57, 160-61, 165, 171. Under questioning, McCord conflated the February and March 2017 efforts by Johnson to sell his Doosan stock with the involuntary liquidation performed by the transfer agent on November 14, 2017. *See* Tr. 153-55.

¹¹³ Tr. 173.

¹¹⁴ Tr. 175.

¹¹⁵ Tr. 163-65.

¹¹⁶ Tr. 160-61, 168, 171-72.

4. Reardon's Hearing Testimony

Enforcement also called Reardon to testify at the hearing. She said that at the time of the Doosan liquidations she did not know whether Johnson owned Doosan stock and warrants in his RBC account. Also according to Reardon, Johnson did not say anything to her about the liquidations on the day they occurred.¹¹⁷ But he did tell her that he had received a million dollar deposit in his account, which she said he had described as “an irregularity” and “something strange.” Reardon was about to propose that Johnson contact the department at RBC that handles tenders and exchanges of stock to confirm the transactions, but, she testified, he told her that RBC was “stupid,” and that caused her to reconsider making the suggestion.¹¹⁸

According to Reardon, Johnson asked her to look at his account to “see what happened.” She did, and saw the balance with the additional \$1 million, but she did nothing else.¹¹⁹ According to Reardon, Johnson did not ask her to determine where the extra \$1 million came from. She therefore did not tell Johnson that the money came from the sales of the Doosan stock and warrants. Reardon did not hear McCord tell Johnson the source of the money or the price of the securities. She also did not hear McCord announce, “Tom’s a millionaire.”¹²⁰

Reardon knew how to turn on the Bloomberg terminal but never, or rarely, used it. She could not recall ever using the terminal to look up the price of a stock.¹²¹ Neither Johnson nor his brother asked Reardon to look up the price of the Doosan stock and warrants on the Bloomberg terminal, according to Reardon. She also said she did not look up the price on Bloomberg on her own initiative.¹²² According to Reardon, Johnson did not ask her to do any research on the price of the Doosan securities.¹²³

III. Conclusions of Law

A. Johnson Engaged in Conversion (Cause One)

Cause one of the Complaint charges that Johnson violated FINRA Rule 2010 by converting \$1,059,544.98 from RBC. Johnson did so, according to the Complaint, on November 22, 2017, when he transferred the funds from the RBC securities account to the Chase

¹¹⁷ Tr. 180.

¹¹⁸ Tr. 180-81, 189.

¹¹⁹ Tr. 180-81, 186-88.

¹²⁰ Tr. 182-84.

¹²¹ Tr. 183-84.

¹²² Tr. 184.

¹²³ Tr. 189-90.

Bank account “for his own use and benefit, when he knew he had received the funds in error and that he had no right to possess the funds.”¹²⁴

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.”¹²⁵ The Rule is “designed to enable [FINRA] to regulate the ethical standards of its members”¹²⁶ and it “encompass[es] business-related conduct that is inconsistent with just and equitable principles of trade.”¹²⁷ An associated person violates Rule 2010 when “the misconduct reflects on the associated person’s ability to comply with the regulatory requirements of the securities business and to fulfill his fiduciary duties in handling other people’s money.”¹²⁸

FINRA’s Sanction Guidelines (“Guidelines”) define conversion as 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.”¹²⁹ The Securities and Exchange Commission (“SEC”) has repeatedly stated that conversion violates FINRA Rule 2010 because it is a fundamentally dishonest act that reflects negatively on a person’s ability to comply with regulatory requirements. Conversion raises concerns that the person is a risk to investors, firms, and the integrity of the securities markets.¹³⁰ Conversion further demonstrates that an associated person is unable “to observe the high standards of commercial honor required of registered persons.”¹³¹

Johnson first makes certain factual arguments about his state of mind and purported belief about the million-dollar credit. His chief argument is that he did not know that RBC had incorrectly priced the Doosan securities. He asserts that he “reasonably relied on RBC’s pricing” of the securities “given the extraordinary length of time it took” for it to rebill the transactions

¹²⁴ Compl. ¶ 20. At the hearing, at the conclusion of Enforcement’s case, Johnson made an oral motion through counsel for partial summary disposition pursuant to FINRA Rule 9264(b) on the conversion charge. As grounds, Johnson argued that Enforcement had failed to prove that the funds Johnson took belonged to RBC and therefore it failed to prove that he took possession or ownership over property belonging to someone else. Enforcement opposed the motion. The Panel conferred and denied Johnson’s motion. *See* Tr. 294-300.

¹²⁵ Pursuant to FINRA Rule 0140, FINRA Rule 2010 also applies to persons associated with a member.

¹²⁶ *Blair Alexander West*, Exchange Act Release No. 74030, 2015 SEC LEXIS 102, at *19 (Jan. 9, 2015) (quoting *Heath v. SEC*, 586 F.3d 122, 132 (2d Cir. 2009)) (discussing New York Stock Exchange Rule 476, the counterpart to former NASD Rule 2110), *petition for review denied*, 641 F. App’x 27 (2d Cir. 2016).

¹²⁷ *Stephen Grivas*, Exchange Act Release No. 77470, 2016 SEC LEXIS 1173, at *10 (Mar. 29, 2016) (quoting *Vail v. SEC*, 101 F.3d 37, 39 (5th Cir. 1996)).

¹²⁸ *Dep’t of Enforcement v. Casas*, No. 2013036799501, 2017 FINRA Discip. LEXIS 1, at *20 (NAC Jan. 13, 2017) (quoting *Daniel D. Manoff*, 55 S.E.C. 1155, 1162 (2002)).

¹²⁹ FINRA Sanction Guidelines at 36 n.2 (2019), <http://www.finra.org/industry/sanction-guidelines>. *See also John Edward Mullins*, Exchange Act Release No. 66373, 2012 SEC LEXIS 464, at *33 (Feb. 10, 2012) (quoting FINRA’s Sanction Guidelines at 38 (2007)).

¹³⁰ *Dep’t of Enforcement v. Grivas*, No. 2012032997201, 2015 FINRA Discip. LEXIS 16, at *14 (NAC July 16, 2015), *aff’d*, 2016 SEC LEXIS 1173.

¹³¹ *Grivas*, 2016 SEC LEXIS 1173, at *2-3.

because in his experience it never took more than a day to fix a trading error.¹³² He also argues that he satisfactorily confirmed the stock's price the morning of the transactions when he consulted Bloomberg and Doosan's website and also reviewed RBC's trade confirmations. He further claims that he had no duty to speak to anyone at RBC or otherwise investigate the accuracy of the transaction prices, and that he acted in good faith.¹³³

Johnson acknowledges that the reason he did not spend any of the money he transferred to the Chase Bank account was that he was concerned the transactions were "made in error." He therefore chose to keep the proceeds in the account "for the foreseeable future," following his accountant's advice, he said.¹³⁴ He also defends his actions by claiming he did not deprive RBC of money because, once the Firm rebilled the transactions, he immediately moved the money back to his RBC account.¹³⁵

The Panel rejects all of Johnson's arguments. He is an experienced broker. He had worked in the securities industry for more than 30 years. The Panel finds that at no time did Johnson have a credible basis to believe that he was entitled to take possession of the proceeds of the transactions. It was too good to be true. The Panel finds that under all the circumstances RBC's pricing error would have been obvious to an experienced broker like Johnson. We accordingly determine that Johnson never believed he was lawfully entitled to the funds.¹³⁶

Given the enormous size of the credit, Doosan's historical share price (about which Johnson said he was aware), and the fact that it involved a foreign security, Johnson's testimony and actions demonstrate that he knew RBC had made an error. Johnson acknowledged that he knew something was amiss from the start. He said he was "surprised" when he saw the million-dollar credit, and he immediately thought that it was a "mistake." The Panel finds that Johnson was not credible when he claimed that he became convinced after looking at Bloomberg and

¹³² Respondent's Pre-Hearing Brief ("Johnson's Pre-Hearing Br.") 13. *See also* Respondent's Response Brief ("Johnson's Response Br.") 1-2.

¹³³ Johnson's Pre-Hearing Br. 13.

¹³⁴ Johnson's Pre-Hearing Br. 13. Johnson argues he moved the money to Chase Bank "under the guidance of his accountant, who Mr. Johnson fully apprised of all facts relevant" to the Doosan transactions. Johnson's Pre-Hearing Br. 13. Johnson identified the accountant as a potential witness but did not call him to testify at the hearing. The issue Johnson faced, in any event, was not fundamentally an accounting one. Also, the record does not reflect whether Johnson gave the accountant all of the relevant facts. Even if Johnson did consult his accountant, as he said he did, the Panel rejects that the accountant's suggestion to move the money and not spend any of it is exculpatory. *See Dep't of Enforcement v. Wood (Arthur W.) Company, Inc.*, No. 2011025444501, 2017 FINRA Discip. LEXIS 30, at *29-31 (NAC Mar. 15, 2017) (rejecting defense of reliance on advice of accountant concerning the proper accrual of respondent firm's debt liability because respondent could not shift the burden of complying with FINRA rules to the accountant and it failed "to establish that it made a complete disclosure to the accountant, sought advice as to the conduct in question, received advice, and relied on that advice in good faith.").

¹³⁵ Johnson's Pre-Hearing Br. 13; Johnson's Response Br. 2.

¹³⁶ Given the totality of the circumstances, the Panel finds one need not be an experienced broker—any reasonable securities account holder would know that some sort of error had occurred.

Doosan’s website that Doosan’s share price was indeed \$17,000. As a seasoned broker, he would have known that a foreign issuer’s securities would be quoted in local currency on Bloomberg.

The Panel finds Johnson’s other actions—not spending any of the money he moved to the Chase Bank account and then immediately returning it after seeing the rebill—inculpatory, not exculpatory, because they reveal that Johnson in fact knew the money was never his to spend. Furthermore, Johnson did not dispute RBC’s rebilling of the transactions by protesting that the Firm was taking back money that rightfully belonged to him. Instead, he immediately obtained a cashier’s check and deposited it in the RBC account, with no questions asked.

The Panel does not find plausible—and therefore rejects—Johnson’s assertion that his purported belief that the money was his was strengthened when the Firm did not correct the error within a few days. Instead, the Panel finds that Johnson never held a good faith belief that the money was his.¹³⁷ He did not bring the obvious error to the attention of anyone at the Firm, which would have been the logical and prudent thing to do. Contrary to Johnson’s contorted logic, it was imperative that he disclose the error to RBC before taking the money. Johnson did not contact anyone, the Panel finds, because he hoped that RBC would never catch its error and he would reap an extraordinary 1,000-fold windfall at his employer’s expense. It would require the suspension of disbelief and an utter display of naiveté for the Panel to find otherwise. It would defy common sense to arrive at a different conclusion.¹³⁸

Johnson also makes faulty legal arguments. He states that he did not exercise possession or ownership over the Doosan proceeds “in a manner that satisfies the charge of conversion” because he and his wife owned, or controlled, both the RBC account and the Chase Bank account. Stated differently, merely moving the money from Johnson’s personal brokerage account to his personal checking account cannot constitute conversion, he says, because the transfer did not change, or alter, ownership of the funds to the detriment of RBC.¹³⁹ Johnson cites no legal authority for this argument, and the Panel rejects it. Due to Johnson’s actions, RBC no longer controlled the funds in his account. When the Firm rebilled the transactions, it created a negative balance in Johnson’s account. Had Johnson not returned the funds, the Firm would have suffered a million-dollar loss.

¹³⁷ The Panel also finds that Andrew’s testimony on this topic was not credible and therefore was not helpful to Johnson’s case. Andrew acknowledged at the hearing that he was “shocked” and “quite skeptical” about the huge price increase in Doosan and therefore immediately assumed it was an error. He was the assigned registered representative on Johnson’s account. He easily could have checked the true price of the securities instead of pretending, as did Johnson, that the Bloomberg and Doosan’s website “confirmed” the price. But Andrew never raised questions about the transactions with anyone at RBC.

¹³⁸ *United States v. Durham*, 211 F.3d 437, 441 (7th Cir. 2000) (“[J]uries are allowed to draw upon their own experience in life as well as their common sense in reaching their verdict [C]ommon sense should be used to evaluate what reasonably may be inferred from circumstantial evidence.”) (quoting *United States v. Magana*, 118 F.3d 1173, 1201 (7th Cir. 1997)).

¹³⁹ Johnson’s Pre-Hearing Br. 12-13; Johnson’s Response Br. 2.

The fact that RBC credited Johnson's account in error is no defense to a charge of conversion. It is immaterial that RBC (or the transfer agent) may have acted negligently.¹⁴⁰ Contrary to Johnson's averments, he was obligated to address the error with RBC before taking the extraordinary step of moving the money to his bank account. A person who comes into property of another that he knows was delivered to him by mistake is liable for conversion if he takes it knowing of the mistake.¹⁴¹ Johnson took possession of the money when he knew the credit was a mistake.¹⁴² As a registered representative, under the circumstances of this case, Johnson had an obligation to refrain from taking RBC's money.¹⁴³

Enforcement has satisfied each of the elements needed to show that Johnson engaged in conversion. The act of conversion was complete when Johnson transferred the money on November 22, 2017. First, his transfer of the money from the RBC account to the Chase Bank account was intentional. Second, Johnson's transfer was not authorized because the money was not his. RBC credited the money to his account in error, and Johnson knew it. Third, by placing the money in the Chase Bank account, Johnson exercised ownership over the money and deprived RBC of it.¹⁴⁴ Johnson knew he did not own the money and was therefore not entitled to possess it.

¹⁴⁰ The Panel rejects Johnson's argument that Enforcement's failure to present evidence about what caused the system error impaired his ability to defend himself. Tr. 256-58. The nature or cause of the error was not material to Johnson's decision to transfer the money to Chase Bank.

¹⁴¹ See *Dep't of Enforcement v. Reeves*, No. 2011030192201, 2014 FINRA Discip. LEXIS 41, at *11-13 (NAC Oct. 8, 2014) (finding respondent liable for conversion when he transferred funds to himself "without any plausible reason to believe he was entitled to receive them" without first contacting his employer firm or the clearing firm that deposited the funds in his account by mistake), *aff'd*, Exchange Act Release No. 76376, 2015 SEC LEXIS 4568 (Nov. 5, 2015).

¹⁴² See *United States v. Kussair*, No. 95-10100, 1995 U.S. App. LEXIS 37737 (9th Cir. Dec. 22, 1995) (defendant held liable for bank larceny when his bank erroneously credited his account with a \$1 million deposit, instead of \$100,000, and circumstantial evidence showed that defendant knew of the error before he spent some of the money and transferred the bulk of it to Pakistan); *United States v. Posner*, 408 F.Supp. 1145, 1153 (D. Md. 1976) (defendant liable for larceny when he took advantage of bank's overpayments by writing checks on the account); *Rana v. Terdjianian*, 46 A.3d 175 (Conn. App. Ct. 2012) (defendant found liable for conversion when plaintiff mistakenly deposited checks into defendant's bank account and defendant wrongfully retained the money), *appeal denied*, 47 A.3d 886 (Conn. 2012); *People v. Miciel*, 308 N.W.2d 603, 606-07 (Mich. Ct. App. 1981) (defendant liable for larceny by conversion when, after having been informed that bank teller mistakenly credited account with an extra \$10,000, he wrote a check against his bank account). See also 50 Am. Jur. 2d Larceny § 28 ("Where money or other property is delivered by mistake, and the receiver takes it with knowledge of the mistake and with the intent to keep it, the offense is larceny since there is no consent on the part of the owner to part with the excessive amount or with the property delivered by mistake.").

¹⁴³ See *Leonard John Ialeggio*, 52 S.E.C. 1085, 1088 (1996) ("[R]egistered persons are expected to adhere to a standard higher than 'what they can get away with.'"), *petition for review denied*, No. 98-70854, 1999 U.S. App. LEXIS 10362 (9th Cir. May 20, 1999).

¹⁴⁴ See *Grivas*, 2016 SEC LEXIS 1173, at *11-12.

The Panel therefore finds that Johnson converted \$1,059,544.98 from RBC, in violation of FINRA Rule 2010. His conduct violated the high standards of commercial honor and just and equitable principles of trade by which an associated person must abide.

B. Enforcement Failed to Prove that Johnson Provided False or Misleading Information During the Investigation (Cause Two)

Cause two of the Complaint charges that twice during Enforcement’s investigation Johnson provided FINRA staff with false information about the mistaken credit in his account, in violation of FINRA Rules 8210 and 2010. The Complaint alleges that Johnson made his first false statement in the February 14, 2018, written response to a request for information from FINRA staff. The Complaint states that Johnson told FINRA staff that after seeing the \$1 million credit in his account he asked McCord “what was going on,” that McCord and Reardon researched his account, and they told him that the Doosan stock sold for more than \$17,000 per share and the warrants sold for more than \$2,800 each.¹⁴⁵

The Complaint charges that Johnson provided essentially the same allegedly false information during his sworn investigative testimony on June 27, 2018. The Complaint specifically alleges that Johnson testified at the OTR that when he saw over \$1 million had been credited to his RBC account on November 14:

(i) he asked [McCord] where the deposited funds came from; (ii) [McCord] told him that the deposited funds were proceeds from the sale of his Doosan stock and warrants; (iii) both [McCord and Reardon] checked the Bloomberg Terminal for him and confirmed the price of the Doosan stock and warrants.¹⁴⁶

The Complaint further alleges that Johnson’s written statement and OTR testimony are false because Johnson “never asked [McCord] to research his RBC Account to verify the accuracy of the proceeds” from the sales of the Doosan securities and “thus neither [McCord nor Reardon] took any steps to confirm the price of the Doosan stock and warrants when liquidated” from the account.¹⁴⁷

FINRA Rule 8210 empowers FINRA, in the conduct of an investigation, to require a member or an associated person to provide information in writing or orally and requires members and registered persons to respond completely and truthfully. Because FINRA lacks subpoena power, it relies on Rule 8210 to obtain information from its members. An associated person’s obligation to comply with Rule 8210 requests for information is unequivocal. “The rule is at the heart of the self-regulatory system for the securities industry.”¹⁴⁸

¹⁴⁵ Compl. ¶ 24. *See also* JX-15, at 1.

¹⁴⁶ Compl. ¶ 25.

¹⁴⁷ Compl. ¶ 26.

¹⁴⁸ *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *13 (Nov. 14, 2008).

Providing false information to FINRA in response to a Rule 8210 request violates Rules 8210 and 2010.¹⁴⁹ Providing false or misleading information to FINRA in the course of an examination or investigation “can conceal wrongdoing” and therefore “subvert[s] [FINRA’s] ability to perform its regulatory function and protect the public interest.”¹⁵⁰

Enforcement argues that the allegedly false statements were significant because “any attempt by Johnson to verify the price of Doosan’s stock goes directly to Enforcement’s investigation of his potential liability and charging determinations.”¹⁵¹ Based on the evidence presented at the hearing, including Johnson’s written statement and OTR testimony, the Panel finds that Johnson, McCord, and Reardon talked about the \$1 million RBC mistakenly credited to his account. Given the nature of the event, some immediate confusion and excitement in the office about the money is likely. The Panel finds it reasonable, under the circumstances, that Johnson, in some manner, had asked McCord or Reardon to double-check or review the activity in his account. Reardon testified that Johnson told her he had received a million dollars in the account; that he asked her to look at his account; and that she did so.

Because McCord’s recollection of the events of that morning were inconsistent and contradictory, the Panel declines to rely on her testimony. McCord testified that Johnson did not ask her look up Doosan’s price or CUSIP number. But she also testified that she could not recall what conversations she had with Johnson on November 14, 2017.

The Panel further finds that alleged inconsistencies between Johnson’s written statement to FINRA, his OTR testimony, and McCord’s and Reardon’s hearing testimony are not material. The Complaint charges that Johnson did not ask McCord to “research” his account to “verify the accuracy of the proceeds” and that neither McCord nor Reardon took any steps to confirm the price of Doosan stock and warrants. However, McCord and Reardon acknowledged at the hearing that they looked at Johnson’s account and saw the large credit because he told them about it. Based on the exchange Johnson had with his two assistants, it was reasonable for him, in his written statement and OTR, to have described what McCord and Reardon did as “research” and verifying or confirming Doosan’s price.

¹⁴⁹ See *CMG Inst’l Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *30 (Jan. 30, 2009) (Providing false or misleading information to FINRA during an investigation constitutes an independent violation of FINRA Rule 2010, separate from a violation of Rule 8210.); *Dep’t of Enforcement v. Fretz*, No. 2010024889501, 2015 FINRA Discip. LEXIS 54, at *41-42 (NAC Dec. 17, 2015) (citing *Dep’t of Enforcement v. Ortiz*, No. E0220030425-01, 2007 FINRA Discip. LEXIS 3, at *33 n.26 (NAC Oct. 10, 2007), *aff’d*, Exchange Act Release No. 58416, 2008 SEC LEXIS 2401 (Aug. 22, 2008)); *John Montelbano*, 56 S.E.C. 76, at 98 (2003) (finding that respondents violated Rule 8210 by giving false testimony during an OTR).

¹⁵⁰ *Ortiz*, 2008 SEC LEXIS 2401, at *32 (quoting *Michael A. Rooms*, 58 S.E.C. 220, 229 (2005), *aff’d*, 444 F.3d 1208 (10th Cir. 2006)).

¹⁵¹ Tr. 390 (closing statement by Enforcement counsel).

Based on the totality of the circumstances, the Panel finds that Enforcement failed to present sufficient evidence to conclude that Johnson provided false or misleading information during the investigation, in violation of FINRA Rules 8210 and 2010. The Panel therefore dismisses cause two of the Complaint.

IV. Sanctions

In determining the appropriate sanctions for Johnson's conversion, the Panel considered the Sanction Guidelines, including the General Principles Applicable to All Sanction Determinations ("General Principles") and the Principal Considerations in Determining Sanctions ("Principal Considerations").¹⁵² We also considered all relevant facts and circumstances, including the seriousness of the misconduct, any aggravating and mitigating factors, and the risk of future harm that Johnson poses to the investing public.

The Guidelines state that a bar is standard for conversion "regardless of [the] amount converted."¹⁵³ The National Adjudicatory Council ("NAC") has stated that "[c]onversion is extremely serious misconduct and is one of the gravest violations that a securities industry professional can commit."¹⁵⁴ The SEC has concluded that conversion is "patently antithetical to the high standards of commercial honor and just and equitable principles of trade that [FINRA] seeks to promote."¹⁵⁵ Consistent with the Guidelines, the Panel concludes that a bar is the appropriate sanction.

No mitigating circumstances exist that would warrant any sanction less than a bar. Instead, the Panel is disturbed by multiple aggravating factors. Johnson took a large sum of money.¹⁵⁶ Johnson did not bring the obvious pricing error to RBC's attention, but chose instead to hope the Firm would never detect the mistake.¹⁵⁷ He also has not acknowledged his misconduct. Instead, he blamed RBC for incorrectly pricing the securities and not quickly correcting the error, which he used to rationalize transferring the funds to an outside bank account eight days after the error. He minimized the wrongdoing, stating that he did not think he

¹⁵² Guidelines at 2-8.

¹⁵³ Guidelines at 36. The Guidelines do not recommend imposing a fine for conversion because a bar is standard. Guidelines at 36.

¹⁵⁴ *Grivas*, 2015 FINRA Discip. LEXIS 16, at *28 (citing *Mullins*, 2012 SEC LEXIS 464, at *73).

¹⁵⁵ *Mullins*, 2012 SEC LEXIS 464, at *42 (quoting *Wheaton D. Blanchard*, 46 S.E.C. 365, 366 (1976)). See also *Denise M. Olson*, Exchange Act Release No. 75838, 2015 SEC LEXIS 3629, at *9 (Sept. 3, 2015) (conversion "poses so substantial a risk to investors and/or the markets as to render the violator unfit for employment in the securities industry") (quoting *Charles C. Fawcett, IV*, Exchange Act Release No. 56770, 2007 SEC LEXIS 2598, at *22 n.27 (Nov. 8, 2007)).

¹⁵⁶ Guidelines at 8 (Principal Considerations, Nos. 16, 17) (whether the respondent's misconduct resulted in the potential for the respondent's monetary or other gain) (the number, size and character of the transactions at issue).

¹⁵⁷ Guidelines at 7 (Principal Considerations, No. 10) (whether the respondent attempted to conceal his or her misconduct or to lull into inactivity, mislead, deceive or intimidate the member firm with which he or she is/was associated).

did anything wrong.¹⁵⁸ Johnson acknowledged that he would have kept the money had RBC never caught the error. The Panel therefore finds that Johnson intended to permanently deprive RBC of its funds and that he acted knowingly when he took possession of the money and transferred it to his bank account.¹⁵⁹

The Guidelines also direct adjudicators to consider whether Johnson has demonstrated that his termination “qualifies for any mitigative value, keeping in mind the goals of investor protection and maintaining high standards of business conduct.”¹⁶⁰ Johnson has the burden to prove that his termination “has materially reduced the likelihood of misconduct in the future.”¹⁶¹ His termination does not overcome the Panel’s finding that his misconduct calls for a bar, the standard sanction for conversion under the Guidelines.

The Panel does not find it mitigating, as Johnson suggests, that he relied on his accountant for advice for what to do with the windfall. The ownership question was not fundamentally an accounting problem. In any case, the Panel determines that the accountant did not provide competent advice when he suggested that Johnson move the money away from RBC’s control but not spend any of it.¹⁶²

The Panel also does not find mitigating Johnson’s general claim that it was reasonable for him to believe that he was entitled to the money given the delay in rebilling the transactions and that he undertook to independently confirm Doosan’s share price.¹⁶³ As stated above, the Panel finds that, based on his contemporaneous actions and testimony, Johnson knew all along the money was not his to keep.

Nor does the Panel find it mitigating that Johnson returned the money to RBC. Johnson argues that in fashioning appropriate sanctions the Panel “should consider that [he] acted voluntarily, without any request from RBC, to return” the proceeds from the Doosan transactions to his brokerage account.¹⁶⁴ Under the Guidelines, an effort to remedy misconduct is mitigating only when a respondent takes action before detection and intervention.¹⁶⁵ Johnson returned the

¹⁵⁸ Guidelines at 7 (Principal Considerations, No. 2) (whether an individual respondent accepted responsibility for and acknowledged the misconduct to his or her employer prior to detection and intervention by the firm).

¹⁵⁹ Guidelines at 8 (Principal Considerations, No. 13) (whether the respondent’s misconduct was the result of an intentional act, recklessness or negligence).

¹⁶⁰ Guidelines at 5 (General Principles, No. 7).

¹⁶¹ Guidelines at 5 (General Principles, No. 7).

¹⁶² Guidelines at 7 (Principal Considerations, No. 7) (whether the respondent demonstrated reasonable reliance on competent legal or accounting advice).

¹⁶³ Johnson’s Pre-Hearing Br. 13; Johnson’s Response Br. 3. The Panel rejects Johnson’s argument that this was not “a typical conversation claim” because the “circumstances are unique” and do not involve a situation where “a broker takes money from a client and spends it.” Tr. 405 (Johnson closing statement).

¹⁶⁴ Johnson’s Pre-Hearing Br. 15.

¹⁶⁵ Guidelines at 7 (Principal Considerations, No. 4) (whether the respondent voluntarily and reasonably attempted, prior to detection and intervention, to pay restitution or otherwise remedy the misconduct). *See Blair Alexander*

money only when RBC corrected its pricing error on November 28, 2017. The Panel finds that he did not act voluntarily, as the correction generated a deficit in his RBC account and quickly would have triggered a margin call had Johnson not returned the funds immediately. As he testified, Johnson would not have returned the money on his own had RBC not caught its error. Johnson's misconduct demonstrates to the Panel that he lacks the "commitment to the high fiduciary standards demanded by the securities industry."¹⁶⁶

Accordingly, after weighing aggravating factors and considering potentially mitigating factors, the Panel finds that a bar is the only appropriately remedial sanction. The Panel therefore bars Johnson from associating with any member firm in any capacity for converting \$1,059,544.98 from RBC, in violation of FINRA Rule 2010, as alleged in cause one.

V. Order

The Panel bars Respondent Thomas Lee Johnson from associating with any FINRA member firm in any capacity for converting \$1,059,544.98 from RBC, in violation of FINRA Rule 2010, as alleged in cause one.

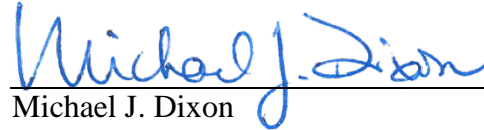
The Panel dismisses cause two, which alleges that Johnson provided FINRA staff false information during the investigation, in violation of FINRA Rules 8210 and 2010.

Johnson is ordered to pay the hearing costs of \$3,818.30, consisting of a \$750 administrative fee and \$3,068.30 for the cost of the transcript. The assessed costs shall be due on a date set by FINRA, but not sooner than 30 days after this decision becomes FINRA's final disciplinary action in this proceeding.

West, Exchange Act Release No. 74030, 2015 SEC LEXIS 102, at *44-45 (Jan. 9, 2015) (rejecting argument that repayment of misused funds mitigates misconduct because repayment was made after detection).

¹⁶⁶ *Henry E. Vail*, 52 S.E.C. 339, 342 (1995) (Registered representative's misappropriation of funds of an organization for which he served as treasurer "make us doubt his commitment to the high fiduciary standards demanded by the securities industry."), *aff'd*, 101 F.3d 37.

The bar shall become effective immediately if this decision becomes FINRA's final action in this disciplinary proceeding.¹⁶⁷



Michael J. Dixon
Hearing Officer
For the Hearing Panel

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¹⁶⁷ The Hearing Panel considered and rejected without discussion all other arguments by the parties.