

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JAMES KENNETH ARD
(CRD No. 5837571),

Respondent.

Disciplinary Proceeding
No. 2012031746301

Hearing Officer – CC

DEFAULT DECISION

April 30, 2014

Respondent is barred from associating with any FINRA member firm in any capacity for misappropriating funds, in violation of FINRA Rule 2010.

Appearances

R. W. Sardegna, Esq., and Perry C. Hubbard, Esq., for the Department of Enforcement, Complainant.

No appearance by or for Respondent, James Kenneth Ard.

DECISION

I. Introduction

On December 18, 2013, FINRA's Department of Enforcement ("Enforcement") filed a Complaint with FINRA's Office of Hearing Officers. The Complaint alleges that James Kenneth Ard ("Ard"), while serving as Lieutenant Governor of South Carolina and while associated with member firm Hilliard W.L. Lyons ("Hilliard"), unlawfully charged more than \$12,000 in personal expenses to his Lieutenant Governor campaign fund, in violation of FINRA Rule 2010.

Enforcement served Ard with the Complaint in accordance with FINRA's Code of Procedure, and Ard failed to answer or otherwise respond. Accordingly, on March 19, 2014, Enforcement filed a Motion for Entry of Default Decision ("Default Motion"), together with the

Declaration of Robin W. Sardegna in Support of the Default Motion (“Sardegna Decl.”), and three exhibits (hereafter referred to as “CX-1” through “CX-3”).

For the reasons set forth below, the Hearing Officer finds Ard in default, grants Enforcement’s Default Motion, and deems the allegations of the attached Complaint admitted, pursuant to FINRA Rules 9215(f) and 9269(a).

II. Findings of Fact and Conclusions of Law

A. Ard’s Background

Ard first entered the securities industry when he associated with Hilliard in August 2010.¹ Ard served as a business development consultant for Hilliard until he voluntarily resigned on March 1, 2013.² Ard has not been associated with a FINRA member since that time.³

In May 2009, Ard became a candidate for Lieutenant Governor of South Carolina.⁴ On November 2, 2010, the people of South Carolina elected Ard to the office of Lieutenant Governor.⁵

B. FINRA’s Jurisdiction

Article I of the FINRA By-Laws defines an “associated person” as a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not such person is registered or exempt from registration. Between August 20, 2010, and March 1, 2013, Ard associated with Hilliard as a business development consultant who was responsible for soliciting and developing relationships with

¹ Sardegna Decl. ¶ 4; CX-1.

² *Id.*

³ CX-1.

⁴ Complaint (“Compl.”) ¶¶ 1, 5.

⁵ Compl. ¶ 5.

new customers for the firm's investment banking and securities business. Thus, between August 20, 2010, and March 1, 2013, Ard was an associated person of Hilliard.⁶

FINRA has jurisdiction over this disciplinary proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (i) Enforcement filed the Complaint within two years following the termination of Ard's association with Hilliard on March 1, 2013; and (ii) the Complaint alleges that Ard engaged in misconduct that occurred while he was associated with Hilliard.⁷

C. Origin of the Complaint

Enforcement represents that FINRA commenced an investigation that led to the filing of the Complaint based upon an anonymous tip.⁸

D. Ard's Default

On December 18, 2013, Enforcement served a Notice of Complaint and the Complaint on Ard by first-class and certified mail at his residential address as recorded in FINRA's Central Registration Depository ("CRD Address").⁹ The United States Postal Service ("USPS") provided Enforcement with a certified mail delivery receipt evidencing delivery of the certified mailing on January 8, 2014.¹⁰ An individual identified as "J. Ken Ard" signed the delivery receipt.¹¹ The USPS did not return the mailing sent via first-class mail to Ard's CRD Address.¹²

⁶ Sardegna Decl. ¶ 2. *See Dep't of Enforcement v. Reichman*, Complaint No. 200801201960, 2011 FINRA Discip. LEXIS 18, at *21 (FINRA NAC July 21, 2011) (finding that, although Reichman did not sell securities to the public, her work supported the firm's securities business, and she was an associated person of the firm); *cf. DBCC No. 3 v. Paramount Inv. Int'l*, Complaint No. C3A940048, 1995 NASD Discip. LEXIS 248, at *12-13 (NASD NBCC Oct. 20, 1995) (finding that independent consultant who recruited and trained sales force was an associated person).

⁷ *See* Article V, Sec. 4(a), FINRA By-Laws, *available at* www.finra.org/Industry/Regulation/FINRARules/ (then follow "FINRA Manual" hyperlink to "Corporate Organization: By-Laws").

⁸ Sardegna Decl. ¶ 3.

⁹ Sardegna Decl. ¶ 6; CX-1.

¹⁰ Sardegna Decl. ¶ 7; CX-2.

¹¹ *Id.*

¹² Sardegna Decl. ¶ 7.

The Notice of Complaint indicated that Ard's answer was due on or before January 15, 2014.

Ard did not respond.¹³

On January 31, 2014, Enforcement served a Second Notice of Complaint and the Complaint on Ard by first-class and certified mail at Ard's CRD Address.¹⁴ The USPS did not return either mailing.¹⁵ USPS electronic tracking information indicates that the USPS left notice of the certified mailing at Ard's CRD Address on February 3, 2014.¹⁶ The Second Notice of Complaint stated that Ard's answer was due on or before February 17, 2014. Ard has not answered or otherwise responded to the Complaint.¹⁷

FINRA Rule 9134(b) provides for service on a natural person at the person's residential address as indicated in CRD. The Hearing Officer finds that Enforcement properly served the Complaint, and Ard received actual notice of the December 18, 2013 Notice of the Complaint and constructive notice of the January 31, 2014 Second Notice of the Complaint.¹⁸ Accordingly the Hearing Officer finds that, by failing to answer, Ard defaulted.

E. Rule 2010 Violation – Misappropriation of Funds

On November 2, 2010, three months after Ard began his association with Hilliard, Ard was elected to serve as the Lieutenant Governor of the State of South Carolina.¹⁹ In November and December 2010, in contravention of South Carolina law, Ard charged more than \$12,000 in

¹³ Sardegna Decl. ¶ 9.

¹⁴ Sardegna Decl. ¶ 8.

¹⁵ *Id.*

¹⁶ Sardegna Decl. ¶ 8; CX-3.

¹⁷ Sardegna Decl. ¶ 9.

¹⁸ See *Dep't of Enforcement v. Moore*, 2012 FINRA Discip. LEXIS 45, at *19-21 (NAC July 26, 2012) (finding that respondent had constructive notice of complaint mailed to his CRD address).

¹⁹ Compl. ¶ 5.

personal expenses to his campaign fund.²⁰ In February 2011, the South Carolina State Ethics Commission began an investigation of Ard for possible ethics violations and the misuse of campaign funds.²¹ On June 30, 2011, Ard signed a consent order in which he admitted to the improper personal use of campaign funds.²² On March 8, 2012, a grand jury issued an indictment against Ard charging him with several violations of South Carolina law, including the misuse of campaign funds.²³ On March 9, 2012, Ard pleaded guilty to seven misdemeanor charges of state law ethics violations, including the unlawful personal use of campaign funds.²⁴ Ard also resigned from the office of Lieutenant Governor of South Carolina.²⁵

FINRA Rule 2010 states that “[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.”²⁶ FINRA’s disciplinary authority “is broad enough to encompass business-related conduct that is inconsistent with just and equitable principles of trade, even if that activity does not involve a security.”²⁷ Indeed, Rule 2010 applies where, as here, “the misconduct reflects on the associated person’s ability to comply with the regulatory requirements of the securities business.”²⁸ Ard misappropriated campaign funds for personal use while, at the same time, he used his position as Lieutenant Governor to develop new business relationships for Hilliard. The Securities and

²⁰ Compl. ¶ 7. The expenses that Ard charged to his campaign fund included cell phone bills, clothing, computer equipment, personal travel, and a Christmas vacation for Ard and his family. *Id.*

²¹ Compl. ¶ 9.

²² *Id.*

²³ Compl. ¶ 10.

²⁴ *Id.*

²⁵ *Id.*

²⁶ Rule 2010 applies to Ard through Rule 0140, which provides that persons associated with a FINRA member have the same duties and obligations as the member.

²⁷ *Vail v. SEC*, 101 F.3d at 39 & n.4 (quoting *Earnest A. Cipriani, Jr.*, 51 S.E.C. 1004, 1006 n.5 (1994), 1994 SEC LEXIS 506, at *4 n.5); *Daniel D. Manoff*, 55 S.E.C. 1155, 1162 & n.8 (2002), 2002 SEC LEXIS 2684, at *11-12 & n.8.

²⁸ *Manoff*, 55 S.E.C. at 1162.

Exchange Commission has found similar conduct, although not securities-related, to violate FINRA's ethics rule.²⁹ Based on the foregoing facts, the Hearing Officer finds that Ard violated FINRA Rule 2010.

III. Sanctions

The FINRA Sanction Guidelines ("Guidelines") for conversion or improper use of funds recommend a bar in all conversion cases.³⁰ The Guidelines indicate that conversion generally is "an 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."³¹ The Guidelines further indicate that the adjudicator should consider a bar even in cases involving the improper use of funds that do not rise to the level of conversion.³² Where the improper use of funds results from a respondent's misunderstanding of the intended use of the funds or other mitigation exists, the Guidelines state, a suspension of six months to two years may be appropriate.³³

Here, there is no evidence of any misunderstanding on Ard's part, or other factors that would mitigate the significance of his misconduct. Ard engaged in numerous acts or a pattern of misconduct by misappropriating campaign funds for various personal expenses over the course of multiple months.³⁴ Additionally, Ard's misconduct resulted in his personal monetary gain.³⁵ In light of the absence of mitigating factors and these aggravating factors, and given the nature of

²⁹ See *John Edward Mullins*, Exchange Act Rel. No. 66373, 2012 SEC LEXIS 464, at *42 (Feb. 10, 2012) (finding NASD Rule 2110 (precursor to FINRA Rule 2010) violation where associated person converted funds belonging to a charitable foundation for which he served as vice president); *Manoff*, 55 S.E.C. at 1162 (finding NASD Rule 2110 violation where associated person made unauthorized use of co-worker's credit card).

³⁰ FINRA Sanction Guidelines at 36 (2013), available at <http://www.finra.org/web/groups/industry/@ip/@enf/@sg/documents/industry/p011038.pdf>.

³¹ *Id.*

³² *Id.*

³³ *Id.*

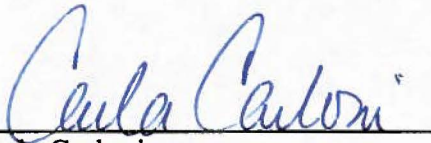
³⁴ Guidelines at 6-7 (Principal Consideration Nos. 8, 9).

³⁵ Guidelines at 6-7 (Principal Consideration No. 17).

Ard's misconduct, the Hearing Officer finds that the facts and circumstances of this case warrant a bar. Accordingly, Ard is barred from associating with any FINRA member firm in any capacity.

IV. Order

Respondent James Kenneth Ard is barred from associating with any FINRA member firm in any capacity for misappropriating funds from his campaign for Lieutenant Governor of South Carolina, in violation of FINRA Rule 2010. The bar shall become effective immediately if this decision becomes FINRA's final disciplinary action.



Carla Carloni
Hearing Officer

Copies to:
James Kenneth Ard (via overnight courier and first-class mail)
R. W. Sardegna, Esq. (via email and first-class mail)
Perry C. Hubbard, Esq. (via email)
Jeffrey Pariser, Esq. (via email)

EXHIBIT A

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

James Kenneth Ard (CRD No. 5837571),

Respondent.

DISCIPLINARY PROCEEDING
No. 2012031746301

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. In or around May 2009, James Kenneth Ard "(Ard)" became a candidate for Lieutenant Governor of South Carolina. He won election to the office on November 2, 2010. Beginning on August 20, 2010, Ard was an associated person of J.J.B. Hilliard, W.L. Lyons, LCC ("Hilliard" or the "firm"). While associated with Hilliard, Ard misappropriated approximately \$12,000 in campaign funds for his own personal use. By virtue of this conduct, Ard violated FINRA Rule 2010.

RESPONDENTS AND JURISDICTION

2. Ard became associated with Hilliard as a Non-Registered Fingerprint employee on August 20, 2010. From that time until his voluntary resignation in March 2013, he worked at the firm as a "Business Development Consultant," responsible for bringing

in and developing relationships with new customers to the firm. Ard has not been associated with a FINRA member firm since his termination from Hilliard.

3. Although Ard is no longer registered or associated with a FINRA member, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years after the date upon which he ceased to be associated with a FINRA member, and (2) the Complaint charges him with misconduct committed while he was associated with a FINRA member.

CAUSE OF ACTION
(Misappropriation (FINRA Rule 2010))

4. The Department realleges and incorporates by reference paragraphs 1 through 3 above.
5. In or around May 2009, Ard became a candidate for Lieutenant Governor of South Carolina. He was elected as South Carolina's Lieutenant Governor on November 2, 2010.
6. On August 20, 2010, Ard became associated with Hilliard as a Non-Registered Fingerprint employee.
7. During November and December 2010, Ard unlawfully charged more than \$12,000 in personal expenses to his campaign fund. These expenses included cell phone bills, clothing, computer equipment, personal travel, and a Christmas vacation for Ard and his family.

8. South Carolina Code Ann. § 8-13-1348(A) prohibits the use of campaign funds to defray personal expenses unrelated to the campaign, nor are they to be converted to personal use.
9. In February 2011, the South Carolina State Ethics Commission began an investigation of Ard for ethical violations, including the misuse of campaign funds. The investigation resulted in Ard signing a June 30, 2011 Consent Order in which he admitted improper personal use of campaign funds.
10. Subsequently, the State Attorney General convened a grand jury. On March 8, 2012, the grand jury issued an indictment against Ard charging him with, among other things, misuse of campaign funds. The next day, Ard resigned from office and pleaded guilty to seven misdemeanor charges of State ethics violations, including unlawful use of campaign funds for personal expenses.
11. By misappropriating over \$12,000 from his campaign, Ard failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of FINRA Rule 2010.

RELIEF REQUESTED


WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondents committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed; and,

- C. order that Respondents bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date: 12/18/2013



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