BEFORE THE

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC

In the Matter of the Application of

Thomas Lee Johnson,

For Review of

FINRA Disciplinary Action

File No. 3-20646

FINRA'S BRIEF IN OPPOSITION TO MOTION FOR STAY

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OS Received 11/09/2021

TABLE OF CONTENTS

I. INTRODUCTION 1

II. FACTUAL BACKGROUND 2

A. Johnson's Background 2

B. Johnson's RBC Account 2

C. Johnson Inherits Shares of a Korean Company 3

D. RBC Liquidates Johnson's Doosan Securities and Mistakenly Credits Over $1 Million to Johnson's Account 3

E. Johnson Discovers the Excess Funds Deposited from RBC's Liquidation 4

F. Johnson Removes the Excess Funds from His RBC Account 5

G. RBC Rebills Johnson for the Doosan Transactions 5

III. PROCEDURAL HISTORY 6

A. Enforcement's Complaint 6

B. The Hearing Panel's Decision 6

C. The NAC Decision 7

IV. ARGUMENT 7

A. The Standard for Considering a Request to Stay 8

B. Johnson Has Not Shown a Strong Likelihood of Success on the Merits and Has Not Raised a Serious Legal Question 9

1. The NAC's Liability Findings Are Fully Supported and Are Not Likely to Be Overturned 9

2. The Bar Is Not Likely to Be Set Aside 10

C. Johnson Has Not Demonstrated That a Denial of the Stay Request Will Impose Irreparable Harm 11

D. Denial of the Stay Will Avoid Potential Harm to Others and Will Serve the Public Interest 13

V. CONCLUSION 14

TABLE OF AUTHORITIES

COMMISSION DECISIONS AND RELEASES **PAGES**

Dawson James Sec., Inc., Exchange Act Release No. 76440,
2015 SEC LEXIS 4712 (Nov. 13, 2015) 12

The Dratel Grp., Inc., Exchange Act Release No. 72293,
2014 SEC LEXIS 1875 (June 2, 2014).....12

Robbi J. Jones, Exchange Act Release No. 91045,
2021 SEC LEXIS 241 (Feb. 2, 2021) 9

Daniel D. Manoff, 55 S.E.C. 1155 (2002) 10

John Montelbano, Exchange Act Release No. 45107,
2001 SEC LEXIS 2490 (Nov. 27, 2001) 8, 14

Denise M. Olson, Exchange Act Release No. 75838,
2015 SEC LEXIS 3629 (Sept. 3, 2015) 13

M.E. Saad, Exchange Act Release No. 86751,
2019 SEC LEXIS 2216 (Aug. 23, 2019) 10

Se. Invs., N.C., Inc. and Frank Harmon Black, Exchange Act Release No. 86097,
2019 SEC LEXIS 1370 (Jun. 12, 2019).....8, 13

William Timpinaro, Exchange Act Release No. 29927,
1991 SEC LEXIS 2544 (Nov. 12, 1991) 8, 12

Whitehall Wellington Invs., Inc., Exchange Act Release No. 43051,
2000 SEC LEXIS 1481 (July 18, 2000).....12

Bruce Zipper, Exchange Act Release No. 82158,
2017 SEC LEXIS 3706 (Nov. 27, 2017) 8, 9, 11, 12

FINRA CASES

Dep't of Enf't v. Grivas, Complaint No. 2012032997201,
2015 FINRA Discip. LEXIS 16 (FINRA NAC Jul. 16, 2015).....10

FINRA SANCTION GUIDELINES

FINRA Sanction Guidelines (Oct. 2020),
https://www.finra.org/sites/default/files/2021-10/Sanctions_Guidelines_2020.pdf.....10

OS Received 11/09/2021

BEFORE THE

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WASHINGTON, D.C.

In the Matter of the Application of Thomas Lee Johnson, For Review of FINRA Disciplinary Action File No. 3-20646

FINRA'S BRIEF IN OPPOSITION TO MOTION FOR STAY

I. INTRODUCTION

The National Adjudicatory Council found that Thomas Lee Johnson ("Johnson" or "Applicant") violated FINRA Rule 2010 by converting $1,059,544.98 from his employer, RBC Capital Markets ("RBC" or "Firm"), and it barred him for this intentional and serious misconduct. [1] Johnson now seeks to stay the bar imposed in the NAC's October 6, 2021 decision.

The Commission should deny Applicant's motion to stay because he has not carried his burden of showing that extraordinary circumstances warrant a stay of the bar the NAC imposed. First, Johnson has not demonstrated a likelihood, let alone a strong likelihood, that he will

[1] References to the NAC's decision, a copy of which is attached as Appendix A, are cited as "Decision at_".

OS Received 11/09/2021

eventually succeed on the merits of his appeal. Second, he has failed to establish that he will suffer irreparable harm without a stay. Finally, the remaining factors that the Commission considers in deciding whether to grant a stay strongly favor allowing the bar the NAC imposed to remain in effect during this appeal—Johnson has not shown that anyone else will be harmed without a stay or that granting the stay is likely to serve the public interest.

FINRA therefore requests that the Commission deny Applicant's stay request.

II. FACTUAL BACKGROUND

A. Johnson's Background

Johnson entered the securities industry in 1983. Decision at 1. In 2009, Johnson registered with RBC as a general securities representative. *Id.* On December 14, 2017, RBC terminated Johnson's employment. Johnson has not associated with a FINRA member since.[2] Decision at 2.

B. Johnson's RBC Account

When Johnson registered with RBC in 2009, he transferred securities from a joint brokerage account he and his wife held at his prior firm to a new joint brokerage account with RBC ("RBC account"). Decision at 2. On an account transfer form, he described his 30 years of investment experience as "extensive." *Id.*

The RBC account served as Johnson's family's primary checking account which they used for "everyday expenses," such as utilities, credit card bills, property taxes, and check deposits. *Id.* Johnson's family wrote checks from the account and had debit cards associated with it. *Id.* Johnson also received his salary payments from RBC directly into the account.

[2] Johnson is currently employed at Royal Capital Wealth Management, which is not a broker dealer, but rather an investment adviser firm. He does not currently have any association or registration with a firm that the bar would effect.

OS Received 11/09/2021

Johnson was very active in monitoring the RBC account, representing that he consistently had his account information "up" on his work computer. *Id.* The account was the first thing Johnson looked at when logging in for work every day. *Id.*

Between December 2016 and November 2017, the RBC account value varied between $667,000 and $752,000. Decision at 2. Johnson was aware of the account value throughout this 11-month period. Johnson also held several different foreign and domestic securities positions in the RBC account. *Id.*

C. Johnson Inherits Shares of a Korean Company

In November 2016, Johnson inherited from his father's estate 60 shares of a South Korean company, Doosan Heavy Industries and Construction ("Doosan"). Decision at 2. Collectively, at the time of the transfer, the Doosan shares were worth $1,360.36 in U.S. dollars ("USD"). *Id.* On September 18, 2017, Johnson's account received ten Doosan warrants worth $27.21 USD from a spinoff of the Doosan shares. Decision at 3.

Between December 2016 and October 2017, the value of Johnson's Doosan holdings ranged from $896.32 to $1,430.30 USD. Johnson was aware of the approximate value of these securities, which was provided to him in his monthly account statements. *Id.*

D. RBC Liquidates Johnson's Doosan Securities and Mistakenly Credits Over $1 Million to Johnson's Account

On August 30, 2017, Johnson's administrative assistant forwarded an email notice to Johnson stating that RBC would "no longer custody" Doosan securities. Decision at 3. RBC gave Johnson three options: 1) liquidate the position; 2) transfer his holdings to another custodian; or 3) complete a "dollar write-off" transaction. *Id.* The notice further stated that RBC would liquidate the shares and warrants if no action was taken by October 2017. At the time of the notice, the 60 Doosan shares were valued at $1,010.37 USD. Johnson took no action. *Id.*

OS Received 11/09/2021

RBC sent another notice to Johnson on September 21, 2017, again stating that his Doosan securities would be liquidated if they remained in the account. Decision at 3. Johnson again failed to act. The Doosan shares were valued at $15.655 USD per share, or $939.30 USD on Johnson's October 2017 account statement. *Id.*

RBC liquidated the 60 Doosan shares and ten warrants on November 14, 2017. Decision at 3. Because of a system error, RBC erroneously priced the securities in U.S. dollars rather than South Korean won ("KRW"). *Id.* As a result, RBC mistakenly valued Johnson's stock liquidation at $17,184.58 USD per share, rather than 17,184.58 KRW per share. Collectively, RBC's system error led to a deposit of $1,059,544.98 USD into Johnson's RBC account as net proceeds from the sale of the 60 Doosan shares and ten warrants. *Id.* RBC should have deposited only $967.79 USD into Johnson's account. *Id.*

E. Johnson Discovers the Excess Funds Deposited from RBC's Liquidation

On November 14, 2017, during his daily review of his account, Johnson noticed the extra approximately $1 million in his account and asked his assistant where the funds came from. Decision at 3. She replied that the funds were from the liquidated Doosan shares and warrants. Johnson was initially skeptical of this value and wanted to verify the transaction amount. *Id.*

Johnson testified that he concluded that the stock price was in fact approximately $17,000 per share because the figure was confirmed for him by three sources—Bloomberg, Doosan's website, and RBC. Decision at 4. In fact, however, Doosan's website denoted the stock value in South Korean won, represented by a "W" with two or three lines through it. *Id.* In addition, the Bloomberg terminal also denoted the share value with the three-letter currency code for the South Korean won—KRW. *Id.* Johnson maintained that he didn't understand what KRW

OS Received 11/09/2021

meant. Johnson admitted, however, that he was surprised when he first saw the extra one million dollars and initially thought it was a mistake. *Id.*

Johnson claimed that RBC's failure to immediately make the correction gave him more confidence in the validity of the transaction because, he believed, if someone was "short $1 million," it would "get corrected immediately." Decision at 5. Johnson said he planned to distribute the after-tax proceeds from the transaction among his siblings. *Id.*

F. Johnson Removes the Excess Funds from His RBC Account

On November 22, 2017, eight days after RBC deposited the funds, Johnson wrote himself a check for $1,059,544.98 and deposited the check in a personal account he jointly owned with his wife at a bank that was not affiliated with RBC. Decision at 5. Johnson did not tell anyone about the transfer of funds. Decision at 6. Johnson was asked at the hearing whether he would have returned the money to RBC had the pricing error never been detected or corrected. He responded "no" and said that he thought it was his money because "nobody asked for it." *Id.*

G. RBC Rebills Johnson for the Doosan Transactions

On November 28, 2017, RBC canceled the liquidation and rebilled Johnson's account. Decision at 6. Because Johnson had written himself a check worth roughly $1,060,000 from the RBC account a week earlier, this resulted in the account having a negative balance exceeding $1 million. *Id.*

Johnson almost immediately saw the rebilled transaction when it was applied to his account, as he was working on his work computer at the time. Decision at 6. That same day, Johnson went to the bank where he had deposited the money and obtained a cashier's check for $1,060,000, which he deposited in his RBC account. Although RBC was unaware that Johnson had transferred the funds from the liquidation of the Doosan holdings away from the Firm, the $1

OS Received 11/09/2021

million check deposit from his bank account to his RBC account generated an exception report on November 29, 2017. *Id.* The 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. *Id.* Johnson 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." *Id.*

III. PROCEDURAL HISTORY

A. Enforcement's Complaint

On January 22, 2019, FINRA's Department of Enforcement ("Enforcement") filed a two-cause complaint against Johnson. Cause one alleged that Johnson violated FINRA Rule 2010 by converting $1,059,544.98 from RBC when he transferred the funds from his RBC account to his outside bank account. Cause two alleged that Johnson violated FINRA Rules 8210 and 2010 by providing false and misleading statements to FINRA staff on two occasions during FINRA's investigation. Johnson filed an answer denying the charges and requested a hearing.

B. The Hearing Panel's Decision

The Hearing Panel issued its decision on August 23, 2019.[3] The Hearing Panel found that Johnson violated FINRA Rule 2010 by converting funds from RBC as alleged in the complaint's first cause of action, and as a sanction for this misconduct, it barred him from associating with any FINRA member in any capacity.[4] The Hearing Panel's decision made

[3] References to the Hearing Panel's decision, a copy of which is attached as Appendix B, are cited as "HP Decision at_".

[4] The Hearing Panel found that Enforcement failed to present sufficient evidence to conclude that Johnson provided false information during FINRA's investigation, and it dismissed cause two of the complaint.

OS Received 11/09/2021

explicitly clear "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." HP Decision at 18. In addition, the Hearing Panel concluded "that Johnson was not credible when he claimed that he became convinced after looking at Bloomberg and Doosan's website that Doosan's share price was indeed $17,000." HP Decision at 18-19.

C. The NAC Decision

The NAC affirmed the Hearing Panel's findings of liability, and it deferred to the Hearing Panel's credibility determinations, which were well supported by the record and were not contradicted by Johnson with any substantial evidence necessary to overturn them. The NAC also affirmed the bar the Hearing Panel imposed on Johnson for his misconduct, noting that a bar is the standard sanction for a conversion case.

IV. ARGUMENT

Johnson has not carried his heavy burden of demonstrating that the Commission should grant him the extraordinary remedy of staying the bar the NAC imposed on him pending resolution of this appeal. He has failed to demonstrate a likelihood of success on the merits and does not raise a single "serious legal issue" concerning FINRA's action. He makes no arguments that the NAC's findings of violations should be set aside, and he falls far short of showing that the Hearing Panel's credibility findings, to which the NAC appropriately deferred, should be overturned on appeal.

Moreover, Applicant has not demonstrated that he or anyone else will suffer irreparable harm without a stay or that granting a stay will serve the public interest. Rather, the public interest strongly favors barring Johnson from the securities industry. The Commission should

OS Received 11/09/2021

allow the bar that the NAC imposed on Johnson to remain in effect to protect the securities markets and all of its participants while his appeal is pending.

A. The Standard for Considering a Request to Stay

"[T]he imposition of a stay is an extraordinary and drastic remedy," and the moving party has the burden of establishing that a stay is appropriate. *William Timpinaro*, Exchange Act Release No. 29927, 1991 SEC LEXIS 2544, at *6 (Nov. 12, 1991). In balancing the harms that would result from the grant or denial of a stay, the Commission generally considers four factors: (1) a strong likelihood that the movant will prevail on the merits; (2) whether the movant will suffer irreparable harm without a stay; (3) whether there would be substantial harm to other parties if a stay were granted; and (4) whether the issuance of a stay would serve the public interest. *John Montelbano*, Exchange Act Release No. 45107, 2001 SEC LEXIS 2490, at *12 & n.17 (Nov. 27, 2001) . "The first two factors are the most critical, but a stay decision rests on the balancing of all four factors." *Se. Invs., N.C., Inc. and Frank Harmon Black*, Exchange Act Release No. 86097, 2019 SEC LEXIS 1370, at *4-5 (Jun. 12, 2019); *see also Bruce Zipper*, Exchange Act Release No. 82158, 2017 SEC LEXIS 3706, at *19 (Nov. 27, 2017) (stating that the D.C. Circuit has suggested that a movant cannot obtain a stay unless he shows both a likelihood of success and irreparable harm).

The Commission has observed that certain courts utilize a somewhat different standard in considering whether to grant a stay. If a movant does not establish that he is likely to succeed on the merits of his appeal, this alternate standard requires that he must at least raise "a serious legal question on the merits" *and* show that the other three factors weigh *heavily* in his favor. *See Zipper*, 2017 SEC LEXIS 3706, at *19-21. The Commission has emphasized that the overall

OS Received 11/09/2021

burden on a movant under this standard "is no lighter than the one it bears under the 'likelihood of success' standard." *Zipper*, 2017 SEC LEXIS 3706, at *21.

As discussed below, Johnson has not demonstrated that the Commission should grant the extraordinary relief that he seeks.

B. Johnson Has Not Shown a Strong Likelihood of Success on the Merits and Has Not Raised a Serious Legal Question

Johnson has not shown a strong likelihood that he will succeed on the merits of his appeal. As an initial matter, Applicant argues in his motion that he "raises meaningful and substantive challenges to the proceedings and to the appropriateness of the sanctions imposed" by cross-referencing his Notice of Appeal. Motion at 1.[5] However, his notice only alleges that certain findings were in error without citing to the record or any supporting authority. "Such generalized claims of error are insufficient to establish that a stay is warranted." *Robbi J. Jones,* Exchange Act Release No. 91045, 2021 SEC LEXIS 241, at *6 (Feb. 2, 2021). For this reason alone, the Commission should deny his stay request.

1. The NAC's Liability Findings Are Fully Supported and Are Not Likely to Be Overturned

The NAC found, by a preponderance of the evidence, that Johnson converted $1,059,544.98 in funds from RBC. He took possession of funds that he knew did not belong to him and to which he was not entitled. He moved the money from his RBC account to his outside checking account and planned to distribute the money among his siblings. Johnson knew he had no right to the money, and he admitted that he would have kept it had RBC not recognized its error. Decision at 8. The NAC's findings are supported fully by the documentary evidence

[5] "Motion at___" refers to Johnson's Motion for Stay filed with the SEC on November 2, 2021.

contained in the record and supporting testimony, as well as the Hearing Panel's credibility determinations concerning Johnson. Applicant has not pointed to any evidence in the record that undermine the NAC's findings of liability, and, specifically, he has not pointed to any substantial evidence necessary to set aside the Hearing Panel's credibility findings. *See Daniel D. Manoff*, 55 S.E.C. 1155, 1162 n.6 (2002) (holding that "[c]redibility determinations by a fact-finder deserve special weight" and can be overcome only when "substantial evidence" exists for doing so).

2. The Bar Is Not Likely to Be Set Aside

Applicant is also unlikely to have Johnson's bar overturned, which is the recommended sanction in FINRA's Sanction Guidelines. The Guidelines for conversion direct FINRA adjudicators to "[b]ar the respondent regardless of amount converted." FINRA Sanction Guidelines at 36 (2020). [6] The recommended bar for conversion in the Guidelines "reflects the reasonable judgment that, in the absence of mitigating factors warranting a different conclusion, the risk to investors and the markets posed by those who commit such violations justifies barring them from the securities industry." *See Dep't of Enf't v. Grivas*, Complaint No. 2012032997201, 2015 FINRA Discip. LEXIS 16, at *25 (FINRA NAC Jul. 16, 2015).

The NAC considered Johnson's arguments for mitigation and properly found that no mitigating factors existed that would warrant a sanction less than a bar. The record fully supports this conclusion.

While Johnson maintains that the bar is punitive, the Commission and the courts have routinely found that imposing a bar for conversion is remedial. "Courts have recognized that a

[6] FINRA Sanction Guidelines (Oct. 2020), https://www.finra.org/sites/default/files/2021-10/Sanctions_Guidelines_2020.pdf

OS Received 11/09/2021

sanction does not become punitive simply because the person on whom it is imposed feels punished. Courts have also recognized that all sanctions will have some deterrent effect." *John M.E. Saad,* Exchange Act Release No. 86751, 2019 SEC LEXIS 2216, at *4-5 (Aug. 23, 2019), *aff'd*, 980 F.3d 103 (D.C. Cir. 2020). Johnson's willingness to disregard his ethical obligations in order to pursue pecuniary self-interest reflects dishonesty incompatible with the high standards of commercial honor and just and equitable principles of trade by which all FINRA members and their associated persons must abide under FINRA Rule 2010.

* * *

Johnson has not provided any argument or evidence that he possesses a strong likelihood of success on the merits of his appeal. Nor has he raised a serious legal issue.[7] The Commission should therefore deny Johnson's stay request.

C. Johnson Has Not Demonstrated That a Denial of the Stay Request Will Impose Irreparable Harm

Applicant argues that "Mr. Johnson is the Chief Compliance Officer of Royal Capital Wealth Management, LLC. As a result of the NAC's affirmation of the hearing panel's imposition of a bar against Mr. Johnson, he will have to vacate that role." Motion at 1. Applicant's claims are unspecific, speculative, and unsupported.[8] These potential issues do not constitute irreparable harm sufficient to justify granting a stay request. To establish irreparable harm, Johnson "must show an injury that is 'both certain and great' and 'actual and not

[7] Even assuming, arguendo, that Johnson has raised a serious legal issue he has not demonstrated that the other three factors, as discussed below, weigh heavily in his favor. *See, e.g.*, *Zipper*, 2017 SEC LEXIS 3706, at *19-21.

[8] Johnson is not currently associated with a broker-dealer and has not been registered in the securities industry since 2017. Decision at 2. Royal Capital Wealth Management is not a FINRA member. Therefore, it is unclear how FINRA's bar of Johnson from associating with a FINRA member will cause Royal Capital Wealth Management to remove him from his role.

OS Received 11/09/2021

theoretical.'" *Zipper*, 2017 SEC LEXIS 3706, at *13; *see also Whitehall Wellington Invs., Inc.*, Exchange Act Release No. 43051, 2000 SEC LEXIS 1481, at *5 (July 18, 2000) (holding that the movant must show that the NAC's decision will impose injury that is "irreparable as well as certain and great"); *Timpinaro*, 1991 SEC LEXIS 2544, at *8 (stating that "[t]he key word in this consideration is irreparable"). Indeed, the Commission has repeatedly held that allegedly negative economic or financial consequences that may impact a movant do not constitute irreparable harm. *See Dawson James Sec., Inc.*, Exchange Act Release No. 76440, 2015 SEC LEXIS 4712, at *10 (Nov. 13, 2015) ("[M]ere injuries, however substantial, in terms of money, time, and energy necessarily expended in the absence of a stay, are not enough to constitute irreparable harm."); *The Dratel Grp., Inc.*, Exchange Act Release No. 72293, 2014 SEC LEXIS 1875, at *17 (June 2, 2014) (finding applicant's claim that absent a stay he would "be barred from a business he has been a part of for over thirty-seven years and [that is] his only source of income," without further explanation or support, did not establish that applicant would suffer irreparable harm). Johnson asserts only that if his stay were denied, he would no longer be able to serve as CCO and makes no mention of any specific impact to his employer or his livelihood.

Applicant also argues that "[b]arring [Johnson] for several months or years pending review to then impose a suspension shorter in time would cause Appellant irreparable harm which cannot be recovered or remedied." Motion at 2. Yet Applicant has failed to show how the loss of the benefit of the hypothetical and uncertain reduction of his bar, without more, is different from the situation faced by every person who seeks a stay of a bar. "[T]he loss of

OS Received 11/09/2021

employment income does not necessarily establish irreparable harm—even when the loss is unrecoverable." *Se Invs., N.C., Inc. and Frank Harmon Black*, 2019 SEC LEXIS 1370, at *17.

Thus, Johnson has not demonstrated that he will suffer irreparable harm and his motion to stay should be denied.

D. Denial of the Stay Request Will Avoid Potential Harm to Others and Will Serve the Public Interest

Turning to the third and fourth criteria in deciding whether to grant a stay, the balance of equities weighs against staying the effectiveness of the NAC's decision to bar Johnson. Applicant asserts that "there is no evidence of harm or risk to investor [sic] if the stay is granted. Mr. Johnson has no prior disciplinary record and there was no evidence presented in this case of actual harm to any investor." Motion at 1. The fact that Johnson has no disciplinary record, and that the victim of his conversion was his firm rather than in investor, does not lessen the risks posed by his demonstrated misconduct. The public interest strongly favors protecting investors based on the NAC's conclusions. Johnson converted over $1 million from his former employer. He intentionally capitalized on a currency conversion error and admitted that he would not have returned the funds if RBC hadn't noticed. Conversion is among the most serious violations one can commit, and converting firm funds poses just as much risk to the public as converting customer funds. *See Denise M. Olson*, Exchange Act Release No. 75838, 2015 SEC LEXIS 3629, at *9 (Sept. 3, 2015).

Johnson's unrepentant self-dealing and dishonesty is antithetical to the qualities individuals in the securities industry should possess. "A propensity for dishonesty poses a risk to investors and the public." *Se Invs., N.C., Inc. and Frank Harmon Black*, 2019 SEC LEXIS 1370, at *19. In balancing the possibility of injury to Johnson against the possibility of harm to the public, the necessity of protecting the public far outweighs any potential injury to Johnson or any

other parties. *See Montelbano*, 2001 SEC LEXIS 2490, at *12-13. The Commission will further the public interest by denying the stay request.

V. CONCLUSION

For all of these reasons, the Commission should deny Johnson's request to stay the NAC's bar pending this appeal.

Respectfully submitted,

/s/ Colleen Durbin

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OS Received 11/09/2021

CERTIFICATE OF COMPLIANCE

I, Colleen Durbin, certify that:

(1) FINRA's Brief in Opposition to Motion for Stay complies with SEC Rule of Practice 151(e) because it omits or redacts any sensitive personal information; and

(2) FINRA's Brief in Opposition to Motion for Stay complies with the limitation set forth in SEC Rule of Practice 154(c). I have relied on the word count feature of Microsoft Word in verifying that this brief contains 3812 words.

Respectfully submitted,

/s/ Colleen Durbin

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Dated: November 9, 2021

CERTIFICATE OF SERVICE

On November 9, 2021, I, Colleen Durbin, certify that I caused a copy of FINRA's Brief in Opposition to Motion for Stay, in the matter of Thomas Lee Johnson, Administrative Proceeding File No. 3-20646, to be filed through the SEC's eFAP system on:

Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

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Respectfully submitted,

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FINRA'S INDEX TO APPENDIX

Appendix	Description
A	National Adjudicatory Council ("NAC") Decision in *Thomas Lee Johnson*, Dated October 6, 2021
B	Hearing Panel Decision in *Thomas Lee Johnson*, Dated August 23, 2019

OS Received 11/09/2021

APPENDIX A

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of Department of Enforcement, Complainant, vs. Thomas Lee Johnson, Carmel, IN, Respondent.	AMENDED DECISION[1] Complaint No. 2018056848101 Dated: October 6, 2021

Respondent converted funds from his former employer. Held, findings and sanctions affirmed.

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.

Decision

Pursuant to FINRA Rule 9311, Thomas Lee Johnson ("Johnson") appeals an August 23, 2019 Hearing Panel decision. The Hearing Panel found that Johnson violated FINRA Rule 2010 by converting $1,059,544.98 from his employer, RBC Capital Markets ("RBC" or "Firm"). For this violation, the Hearing Panel barred Johnson from associating with any FINRA member firm in any capacity. After an independent review of the record, we affirm the Hearing Panel's findings of violation and the sanction imposed.

I. Factual Background

A. Johnson's Background

Johnson entered the securities industry in 1983. In 2009, Johnson and his brother, AJ, registered with FINRA member firm RBC. Johnson was registered with RBC as a general securities representative and investment advisor. Both Johnson and AJ worked from RBC's

[1] This decision has been amended to correct a typographical error in the Complaint No. in the caption.

OS Received 11/09/2021

Indianapolis, Indiana branch office, where Johnson held the title of Senior Financial Associate and AJ held the title of Senior Vice President of Investments.

On December 14, 2017, RBC terminated Johnson's employment for the misconduct at issue here. Johnson has not associated with a member firm since.

B. Johnson's RBC Account

When Johnson registered with RBC in 2009, he transferred securities from a joint brokerage account he and his wife held at his prior firm to a new joint brokerage account with RBC (the "RBC account"). On the account application, Johnson listed his income as between $50,000 and $99,999; his family's net worth as between $500,000 and $999,999; and his family's liquid assets as between $100,000 and $249,999. AJ served as the registered representative on Johnson's account.

On several RBC account forms, Johnson stated he had considerable investment experience. On an account transfer form, he described his 30 years of investment experience as "extensive." Similarly, on an options agreement form, Johnson described himself as having 25 years of experience trading stocks, bonds, options, and commodities.

Johnson characterized the RBC account as his family's primary checking account which they used for "everyday expenses," such as utilities, credit card bills, property taxes, and check deposits. Johnson's family wrote checks from the account and had debit cards associated with it. Johnson also received his salary payments from RBC directly into the account. Johnson was very active in monitoring the RBC account, representing that he consistently had his account information "up" on his work computer. Johnson testified that the account was the first thing he looked at when logging in for work every day.

Between December 2016 and November 2017, the RBC account value varied between $667,000 and $752,000. Johnson was aware of the account value throughout this 11-month period. Johnson held several different foreign and domestic securities positions in the RBC account. In December 2016, Johnson's account contained equities of around 20 domestic issuers valued at over $400,000. The account also held equities of around 17 international companies valued at over $50,000. By October 2017, his domestic portfolio contained equities of 25 issuers valued at about $650,000, and his international portfolio of 11 international stocks and funds was valued at about $72,000. The values of Johnson's international securities were denominated in his account information in U.S. dollars ("USD").

C. Johnson Inherits Shares of a Korean Company

In November 2016, Johnson inherited from his father's estate 60 shares of a South Korean company, Doosan Heavy Industries and Construction ("Doosan"). While Johnson had initially executed the purchase of these shares of Doosan on behalf of his father in the mid-1990s, Johnson testified that he did not know anything about Doosan or its business, as it was his father's decision to purchase the shares. These shares were transferred to Johnson's RBC account on December 14, 2016, priced at $22.673 USD per share. Collectively, at the time of the

OS Received 11/09/2021

transfer, the Doosan shares were worth $1,360.36 USD. On September 18, 2017, Johnson's account received ten Doosan warrants worth a total of $27.21 USD from a spinoff of the Doosan shares.

Between December 2016 and October 2017, the value of Johnson's Doosan holdings ranged from $896.32 to $1,430.30 USD. Johnson stated that, throughout this time, he was aware of the approximate value of these securities, which was provided to him in his monthly account statements. Johnson attempted to sell his Doosan shares in February and March 2017 but was unsuccessful given the lack of market in the United States.

D. RBC Liquidates Johnson's Doosan Securities and Mistakenly Credits Over $1 Million to Johnson's Account

On August 30, 2017, Johnson's administrative assistant, CM, forwarded an email notice to Johnson stating that RBC would "no longer custody" Doosan securities. RBC gave Johnson three options: 1) liquidate the position; 2) transfer his holdings to another custodian; or 3) complete a "dollar write-off" transaction. The notice further stated that RBC would liquidate the shares and warrants if no action was taken by October 2017. At the time of the notice, the 60 Doosan shares were valued at $1,010.37 USD. Johnson took no action.
RBC sent another notice on September 21, 2017, again stating that Johnson's shares would be liquidated if they remained in the account. Johnson again failed to act. The Doosan shares were valued at $15.655 USD per share, or $939.30 USD collectively, on Johnson's October 2017 account statement.

RBC liquidated the 60 Doosan shares and ten warrants on November 14, 2017. Because of a system error, RBC erroneously priced the securities in U.S. dollars rather than South Korean won ("KRW"). Therefore, RBC mistakenly valued Johnson's stock liquidation at $17,184.58 USD per share, rather than 17,184.58 KRW per share. As a result, Johnson received a total of $1,031,074.80 USD instead of the actual 1,031,074.80 KRW value of the securities. If RBC had properly converted the stock's value to USD, Johnson would have received only $939.30 USD from the sale. The system error also caused RBC to misprice the warrants, each of which was priced at $2,849 USD instead of 2,849 KRW. In total, Johnson erroneously received $28,494 USD for the warrants, although their actual value was only $28.49 USD.

Collectively, RBC's system error resulted in a deposit of $1,059,544.98 USD into Johnson's RBC account as net proceeds from the sale of the 60 Doosan shares and ten warrants. RBC should have deposited only $967.79 USD into Johnson's account.

E. Johnson Discovers the Excess Funds Deposited from RBC's Liquidation

Johnson testified that it was his routine to check his RBC account every morning when logging in to his work computer. During his morning routine on November 14, 2017, Johnson noticed the extra approximately $1 million in his account and asked CM where the funds came from. According to Johnson, CM informed him that the funds were from the liquidated Doosan shares and warrants. Johnson testified that he was initially skeptical of this value and that he "wanted to verify what RBC had told [him]" about the prices for the transactions.

Johnson testified that he first tried to reconcile the value of the transaction on the office Bloomberg terminal. According to Johnson, he searched Bloomberg for Doosan, but there were too many search results and he was unable to quickly find the pricing information. Johnson said that, upon returning to his office, he searched on his computer using Doosan's CUSIP number[2] and found the same 17,184.58 per share figure that CM had mentioned. He then brought CM into his office and used Google to search for information about the company. Johnson found the Doosan website and located a link for investor relations. According to Johnson, this link also corroborated the 17,184.58 per share figure. Johnson said he checked the Bloomberg terminal again later that morning and again saw the 17,184.58 per share figure. Johnson testified that he concluded that the stock price was in fact approximately $17,000 per share because the figure was confirmed for him by three sources—Bloomberg, Doosan's website, and RBC.[3]

In fact, however, Doosan's website denoted the stock value in South Korean won, represented by a "W" with two or three lines through it: ₩. Johnson testified that he did not know what this symbol meant, and that he "didn't pay attention to the W." In addition, the Bloomberg terminal also denoted the share value with the three-letter currency code for the South Korean won—KRW. Johnson testified that he didn't understand what KRW meant when looking at the Bloomberg terminal that morning. Johnson stated that he was just "trying to match what RBC had said. If RBC said 17,000 US dollars, [he] pulled [Bloomberg] up, it said 17,000." Johnson maintains that he didn't understand what KRW stood for and that the 17,000 figure was enough for his liking, given that it was his "second or third confirmation." Johnson

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[2] A CUSIP (Committee on Uniform Securities Identification Procedures) number identifies most financial instruments, including stocks.

[3] At the hearing, Johnson gave confusing testimony about when and how many times he checked the Bloomberg terminal. He initially testified that:

> I go over to the Bloomberg, type in "Doosan." There's about 35 to 50 per page, and it's got eight pages long. Well, this isn't going to work. I go back to my office, pull up my account. I pull up the CUSIP.

Shortly thereafter, one of the Hearing Panelists attempted to clarify whether Johnson had used the Bloomberg terminal to confirm the Doosan price:

> [Hearing Panelist]: I just want to clarify what you said. So you were at the Bloomberg terminal?
>
> Johnson: Yes.
>
> [Hearing Panelist]: And then there was a link to investor relations there?
>
> Johnson: No, no, I'm sorry. After I looked at the Bloomberg and it confirmed $17,000, I went back to my office and Googled, "Doosan" . . .

OS Received 11/09/2021

admitted, however, that he was surprised when he first saw the extra one million dollars and 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.

Johnson claimed that RBC's failure to immediately make the correction gave him more confidence in the validity of the transaction because, he believed, if someone was "short $1 million," it would "get corrected immediately." According to Johnson, there was an instance in the past when RBC made a similar error in his sister's account by erroneously crediting the account with $666 million and, according to Johnson, RBC corrected the mistake the following day. Johnson stated that his father was a smart man and a savvy investor, and that when RBC did not make any correction to his account, he believed his father had made another great investment. Johnson said he planned to distribute the after-tax proceeds from the transaction among his siblings.

Johnson testified that he did not believe he was responsible for contacting RBC about the transaction value because RBC had initiated the trade and he "had nothing to do with the trade itself." Johnson said he did not verify the share price with RBC because "RBC had told [him] 17,000." Johnson stated that he "didn't feel like [he] needed to" confirm the price because the price was reflected on Bloomberg, RBC, and Doosan's website. Johnson further stated that "[i]t's not like someone deposited $1 million by mistake." Johnson testified that he did not search for news or any other information to explain Doosan's rapid share price increase.

F. Johnson Removes the Excess Funds from His RBC Account

Johnson testified that he consulted with his accountant, who was a friend of more than 30 years and a former customer, about what to do with the funds. Johnson's accountant was also a registered investment advisor, and Johnson described him as a "long-time trusted advisor." Johnson said he informed his accountant of the possibility the account credit could be a "mistake," and the accountant told Johnson that it would be best to transfer the funds away from RBC but not spend any of the money. The accountant also advised Johnson to speak with an attorney, although Johnson said he failed to do so.

On November 22, 2017, eight days after RBC's liquidation of the shares and warrants, Johnson wrote himself a check for $1,059,544.98 and deposited the check in a personal account he jointly owned with his wife at a bank that was not affiliated with RBC. Johnson testified that he used a check to transfer the funds because it avoided fees that RBC charged to wire funds electronically, and that he was not trying to hide the transfer from RBC. According to Johnson, he assumed that RBC would still see the check transfer, and that the Firm had inquired about much smaller check transfers in the past.

Johnson's manager at RBC, JB, who is a vice president at the Firm, testified that a check would have drawn less scrutiny than a wire transfer. According to JB, no Firm approval was needed for Johnson to write himself a check from his RBC account. 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.

Johnson testified that he did not tell anyone about the transfer of funds because he believed at the time that the funds were his:

> 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 not correct it.… It was in my account.

When Johnson was asked at the hearing whether he would have returned the money to RBC had the pricing error never been detected or corrected, he responded "no" and said that he thought it was his money because "nobody asked for it."

G. RBC Rebills Johnson for the Doosan Transactions

On November 28, 2017, 14 calendar days after the Doosan liquidations, RBC canceled the liquidation and rebilled Johnson's account. This correctly repriced the Doosan stock at $15.8102 USD per share and each warrant at $2.6215 USD. In total, after fees and transaction costs, Johnson received $924.79 USD. Given that Johnson had written himself a check worth roughly $1,060,000 from the account a week earlier, this resulted in a negative balance exceeding $1 million in the RBC account.

Johnson almost immediately saw the rebilled transaction when it was applied to his account, as he was logged in on his work computer at the time. That day, Johnson went to the bank where he had deposited the money and obtained a cashier's check for $1,060,000. Although RBC was unaware of Johnson's initial check that he used to transfer the funds away from the Firm, the $1 million check deposit from his bank account to his RBC account generated an exception report on November 29, 2017. The 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.

On December 1, 2017, four managers, including JB, interviewed Johnson about what had transpired. Johnson 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," a sentiment on which he did not elaborate.

H. RBC Terminates Johnson and FINRA Opens an Investigation

On December 14, 2017, RBC terminated Johnson's employment.[4] RBC submitted an initial Uniform Termination Notice for Securities Industry Registration ("Form U5") reporting that Johnson had been discharged for a "[v]iolation of company policy" that was "not client related." The Firm filed an amended Form U5 on September 25, 2019, in which it stated that it had "terminated Mr. Johnson on December 14, 2017 after it concluded that he violated the Firm's Code of Conduct, specifically Section 6.2 Protecting RBC Property (fraud, misappropriation and misuse)."

Johnson's termination from RBC was the impetus for FINRA's investigation. Pursuant to FINRA Rule 8210, FINRA staff requested information and sworn testimony from Johnson as a part of its investigation. Johnson provided a written response to the information request on February 14, 2018 and provided sworn testimony on June 27, 2018.

II. Procedural Background

On January 22, 2019, FINRA's Department of Enforcement ("Enforcement") filed a two-cause complaint against Johnson. Cause one alleged that Johnson violated FINRA Rule 2010 by converting $1,059,544.98 from RBC when he transferred the funds from his RBC account to his outside bank account. Cause two alleged that Johnson violated FINRA Rules 8210 and 2010 by providing false and misleading statements to FINRA staff on two occasions during FINRA's investigation. Johnson filed an answer denying the charges and requesting a hearing.

The Hearing Panel issued its decision on August 23, 2019, in which it found that Johnson violated FINRA Rule 2010 by converting funds from RBC. The Hearing Panel concluded that Johnson lacked a credible basis to believe that he was entitled to take possession of the proceeds from the liquidation of the Doosan securities. For Johnson's conversion, the Hearing Panel barred him from associating with any member firm in any capacity. However, the Hearing Panel found that Enforcement failed to provide sufficient evidence to conclude that Johnson provided false information during FINRA's investigation and dismissed cause two.[5] Johnson then filed the instant appeal.

III. Discussion

A. Johnson Converted Funds in Violation of FINRA Rule 2010

FINRA Rule 2010 provides that members and their associated persons, "in the conduct of [their] business, shall observe high standards of commercial honor and just and equitable principles of trade." Rule 2010 prohibits conduct that "may operate as an injustice to investors or other participants in the securities markets." *Dep't of Enf't v. Doni*, No. 2011027007901, 2017 FINRA Discip. LEXIS 46, at *21 (FINRA NAC Dec. 21, 2017). FINRA Rule 2010

[4] AJ was also terminated on December 14, 2017.

[5] Enforcement did not appeal this finding.

extends beyond the law "because the rule's purpose is to serve as a tool to prohibit dishonest practices." *Dep't of Enf't v. Vedovino*, No. 2015048362402, 2018 FINRA Discip. LEXIS 20, at *16-17 (FINRA Hearing Panel July 5, 2018), *aff'd*, 2019 FINRA Discip. LEXIS 20 (FINRA NAC May 15, 2019). FINRA's authority to enforce Rule 2010 is "sufficiently broad to encompass any unethical, business-related misconduct, regardless of whether it involves a security." *Dep't of Enf't v. Olson*¸ Complaint No. 2010023349601, 2014 FINRA Discip. LEXIS 7, at *7 (FINRA Bd. Governors May 9, 2014), *aff'd*, Exchange Act Release No. 75838, 2015 SEC LEXIS 3629 (Sept. 3, 2015).

Conversion is defined as 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." FINRA Sanction Guidelines at 36 & n.2 (2020).[6] Stated another way, conversion is "the wrongful exercise of dominion over the personal property of another." *Dep't of Enf't v. Mullins, Complaint Nos*. 20070094345, 20070111775, 2011 FINRA Discip. LEXIS 61, at *21 (FINRA NAC Feb. 24, 2011), *aff'd* 2012 SEC LEXIS 464 (Feb. 10, 2012). It is well settled that conversion by an associated person constitutes a violation of FINRA Rule 2010.[7] *See Kenny Akindemowo*, Exchange Act Release No. 79007, 2016 SEC LEXIS 3769, at *23 (Sept. 30, 2016).

We agree with the Hearing Panel that Johnson converted $1,059,544.98 in funds from RBC. Johnson exercised dominion over more than a million dollars that did not belong to him and to which he had no entitlement. He took possession of the money, moved it to his checking account away from RBC's control, and planned to distribute the money among his siblings. The money had been credited to his RBC account in error; he did not own it and had no right of possession. Indeed, as the Hearing Panel found, Johnson knew he had no right to the money. Yet he treated the money as if he did and admitted that he would have kept it had RBC not caught the error.

Johnson maintains that he did not convert the money because he had a genuine belief that he was entitled to the funds and was not aware that RBC had credited the funds in error. The Hearing Panel, however, found that Johnson's testimony on this issue was not credible. We defer to the Hearing Panel's credibility determinations because they are well supported by the record and there is not substantial evidence to overturn them. *See Manoff*, 55 S.E.C. at 1161-62 & n.6 (explaining that a Hearing Panel's credibility determination is entitled to deference absent substantial evidence to the contrary). Indeed, Johnson acknowledged that he knew the approximate value of the shares before the liquidation because he closely monitored his account. Nevertheless, Johnson intentionally chose not to ask RBC to confirm the accuracy of the transaction. *See Dep't of Enf't v. Reeves*, No. 2011030192201, 2014 FINRA Discip. LEXIS 41,

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[6] *FINRA Sanction Guidelines* (2020), https://www.finra.org/sites/default/files/SanctionsGuidelines.pdf [hereinafter *Guidelines*].

[7] "Because conversion casts doubt on a 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," it is well established that conversion is contrary to the mandate of Rule 2010." *Akindemowo*, 2016 SEC LEXIS 3769, at *19-20 (*quoting Daniel D. Manoff*, 55 S.E.C. 1155, 1162 (2002).

at *11-13 (FINRA 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). Finally, the fact that Johnson moved the funds to his personal checking account (which was not his family's primary checking account), where RBC could not access the money, further supports the conclusion that he did not truly believe that he was entitled to the funds and wanted to insulate them from RBC. In light of these facts, we find that Johnson converted funds from RBC in violation of FINRA Rule 2010.

B. Johnson's Arguments Are Without Merit

Johnson makes several other arguments in support of his position that he did not convert RBC's funds.[8] These arguments are without merit. Johnson argues that Enforcement failed to present evidence that the funds he moved to his bank account were actually RBC's funds and that "we do not know RBC's actual relationship to the Doosan Proceeds." In support of this argument, Johnson cites JB's testimony that RBC did not own the securities or funds in Johnson's account and that an outside vendor initiated the redemption which resulted in the conversion error. Johnson's argument fails.[9] There is no dispute that Johnson owned the securities and other property in his RBC account and was entitled to the legitimate profits after the redemption. However, Johnson improperly exercised ownership over the excess funds that were erroneously deposited into his RBC account and to which he was not entitled.

Johnson also maintains that, even though he moved the money from his RBC account to his checking account, he did not spend it, nor did he keep the funds once RBC discovered the error. While these actions could serve to mitigate his misconduct, they are not exculpatory. A person may be liable for conversion even if he returns the property that he improperly took. *See, e.g.*, *Olson*, 2015 SEC LEXIS 3629, at *28 (respondent who used firm's corporate credit card for personal expenses committed conversion, even though she reimbursed the firm after she was caught); *Dep't of Enf't v. Kendzierski*, No. C9A980021, 1999 NASD Discip. LEXIS 40, at *7

[8] In his opening brief, Johnson renews a motion for summary disposition that was denied by the Hearing Panel below. He maintains that he is entitled to summary disposition as a matter of law because Enforcement failed to produce any evidence to support its claim that the funds deposited into Johnson's RBC account from the liquidation were the property of RBC. Johnson also maintains that the shares belonged to him, not to RBC. However, as noted by Enforcement, a motion for summary disposition is procedurally improper on appeal to the NAC. Pursuant to FINRA Rule 9264, motions for summary disposition can only be brought before the conclusion of the hearing before the Hearing Panel. We therefore deny Johnson's motion. Nevertheless, we address the substance of Johnson's arguments in this decision.

[9] Logic dictates that the excess funds that RBC (or its outside vendor) deposited into Johnson's account belonged to RBC. Even assuming the provenance of the funds was unknown, it is immaterial for the finding that Johnson improperly exercised ownership over funds to which he was not entitled.

(NASD NAC Nov. 12, 1999) (representative converted funds when he used customer funds to repay bills, even though he repaid customer).

Johnson asserts that he did not know that the Doosan shares were erroneously priced. He argues that he moved the funds based on discussions with his accountant and after confirming the share prices.[10] He contends that he did not see or understand the South Korean Won designation and the Hearing Panel improperly disregarded testimony that Johnson was never formally trained to use the Bloomberg terminal. Therefore, he argues, the Hearing Panel erred in concluding that the pricing error would have been obvious to Johnson, given the circumstances. This argument fails as well. We agree that the inferences drawn by the Hearing Panel from the evidence, in conjunction with its credibility determinations, support the Hearing Panel's conclusion that Johnson knew that the shares were erroneously priced. Johnson testified that he was "surprised" when he saw the million-dollar credit, and he immediately thought that it was a "mistake." Coupled with the enormous size of the credit relative to Doosan's historical share price and the value reflected for the Doosan position in his account, Johnson's testimony and actions demonstrate that he knew RBC had made an error.

Finally, Johnson claims that because he never "deprived" RBC of the funds he cannot be liable for conversion. He argues that RBC was not deprived of the money because it was unaware that the money was missing until after the funds were returned. We disagree. Johnson did deprive RBC of the funds, and RBC simply was not aware of the deprivation at the time. Regardless, the NAC has stated that conversion does not require deprivation of the property converted. *See Doni*, 2017 FINRA Discip. LEXIS 46, at *27-28. Johnson also maintains that the cases cited by the Hearing Panel—in which the individuals were found liable for the taking the property of another when those individuals knew they received that property by mistake—require that the funds must have been spent. Once again, he is mistaken.[11] Johnson's withdrawing the money from his RBC account and depositing it in his personal checking account at a different bank is the act of conversion—what Johnson did with the money after taking it, or whether RBC knew at the time that the money was missing, is immaterial to liability.

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[10] Johnson maintains that his reliance on his accountant's advice "negates his state of mind that he was doing anything wrong." However, Johnson did not establish that he relied on professional advice, which would have required him to prove that he "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." *Dep't of Enf't v. Wood (Arthur W.) Co.*, No. 2011025444501, 2017 FINRA Discip. LEXIS 30, at *29-31 (NAC Mar. 15, 2017). Paradoxically, Johnson didn't follow the purported advice that he testified his accountant gave him—to consult an attorney.

[11] For example, in *Reeves*, the NAC held that the respondent committed conversion by withdrawing money from his bank account that he knew had been mistakenly wired to him by his former firm's clearing firm. In *United States v. Kussair*, the defendant's bank mistakenly credited $1 million to the defendant's account for a $100,000 deposit. No. 95-10100, 1995 U.S. App. LEXIS 37737 (9th Cir. Dec. 22, 1995). The court held that, under 18 U.S.C. § 2113(b), the federal bank larceny statute, the defendant, who knew of the error, wrongfully "took" the erroneously credited money by withdrawing it from his account.

IV. Sanctions

The Hearing Panel imposed a bar for Johnson's conversion. We agree with the Hearing Panel that a bar is the only appropriate remedial sanction, and we therefore affirm.

We have considered the FINRA Sanction Guidelines ("Guidelines") in determining the appropriate sanctions for Johnson's violation. The Guidelines governing sanctions for conversion direct us to "[b]ar the respondent regardless of amount converted."[12] The recommended bar for conversion in the Guidelines "reflects the reasonable judgment that, in the absence of mitigating factors warranting a different conclusion, the risk to investors and the markets posed by those who commit such violations justifies barring them from the securities industry." *See Dep't of Enf't v. Grivas*, Complaint No. 2012032997201, 2015 FINRA Discip. LEXIS 16, at *25 (Jul. 16, 2015).

We have also looked to the Principal Considerations in Determining Sanctions. We find that there are several aggravating factors that further support a bar. The amount of money converted was substantial and Johnson's misconduct was intentional.[13] Johnson had a well-established, daily routine of checking his trading positions and must have known the approximate value of the shares around the time of the liquidation. Furthermore, despite his feeling that there may be something amiss about the transaction, Johnson nevertheless failed to confirm the accuracy of the amount deposited in his account with RBC, which resulted in Johnson's temporary monetary gain.[14]

Johnson argues there are mitigating factors that weigh in favor or a lighter sanction. We disagree.[15] Johnson argues that it is mitigating that he returned the funds the day after RBC detected the mistake, thus lessening his misconduct. However, under the Guidelines, an effort to remedy misconduct is mitigating only when a respondent acts prior to detection.[16] Johnson repaid the money only after RBC caught the pricing error, and Johnson essentially had no choice but to deposit the money back into his RBC account because there was over a million-dollar deficit. We also do not find it mitigating that Johnson consulted his accountant. As previously stated, although Johnson did speak with his accountant, there is no information in the record to

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12 *Guidelines*, at 36.

13 *Id*. at 8 (Principal Guidelines in Determining Sanctions, Nos. 13, 17).

14 *Id.* at 6 (Principal Considerations in Determining Sanctions, No. 11).

15 We are required to consider Johnson's termination as a mitigating factor if it occurred as a result of the misconduct prior to FINRA's detection and investigation of the matter. *Denise M. Olson*, Exchange Act Release No. 75837, 2015 SEC LEXIS 3629, at *9 (Sept. 3, 2015). We find that the presence of this single mitigating factor does not diminish the severity of Johnson's misconduct.

16 *Id*. at 7 (Principal Considerations in Determining Sanctions, No. 4).

suggest that the advice provided was either official or competent or that Johnson followed the purported advice.

Johnson maintains that if we find that he violated FINRA Rule 2010, "his conduct is more closely akin to an improper use of funds, which does not require a bar." As we have discussed, Johnson's actions fully satisfy the elements of conversion and we accordingly apply the Guideline for conversion. Moreover, "[t]he NAC does not have the authority to alter the theory of liability upon which Enforcement based its allegations." *Doni*, 2017 FINRA Discip. LEXIS 46, at *31.

Finally, Johnson maintains that the Hearing Panel based its imposition of a bar on a "hypothetical scenario," because Johnson returned the "erroneously calculated Doosan Proceeds to his brokerage account within 24 hours of the debit notice." However, there is nothing hypothetical about Johnson's actions. Johnson took concrete steps in his attempt to keep the funds. Johnson knew that there was something wrong with the transaction, but rather than alerting RBC, Johnson chose to wait and see what happened. When it appeared that RBC would not catch the error, Johnson moved the money to his outside checking account, admitting that he would have kept the money had RBC not cancelled and rebilled the liquidations. The fact that he was not able to keep the money does not lessen his misconduct.

In sum, Johnson's willingness to disregard his ethical obligations in order to pursue pecuniary self-interest reflects dishonesty incompatible with the integrity required by high standards of commercial honor and just and equitable principles of trade. Therefore, we find it appropriate to affirm the bar.

V. Conclusion

We affirm the Hearing Panel's finding that Johnson converted funds from his former employer, RBC, in violation of FINRA Rule 2010. For his conversion, Johnson is barred from associating with any member firm in all capacities. Johnson is also ordered to pay $3,068.30 in hearing costs and $1,710.30 in appeal costs.

On Behalf of the National Adjudicatory Council,

Jennifer Piorko Mitchell

Jennifer Piorko Mitchell,
Vice President and Deputy Corporate Secretary

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Jennifer Piorko Mitchell
Vice President and
Deputy Corporate Secretary

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October 6, 2021

VIA ELECTRONIC MAIL

Jon-Jorge Aras, Esq.
Levan Legal LLC
1315 Walnut Street, Suite 1532
Philadelphia, PA 19107
jjaras@levan.legal

Re: Complaint No. 2018056848101: Thomas Lee Johnson

Dear Counsel:

Enclosed is the amended decision of the National Adjudicatory Council ("NAC") in the above-referenced matter. The decision was amended to correct a typographical error in the caption. The Board of Governors of the Financial Industry Regulatory Authority ("FINRA") did not call this matter for review, and the attached NAC decision is the final decision of FINRA.

In the enclosed decision, the NAC found that Johnson converted funds from his former employer, RBC Capital Markets. For his conversion, Johnson is barred from associating with any member firm in all capacities.

Please note that under FINRA Rule 8311 ("Effect of a Suspension, Revocation, Cancellation, Bar or Other Disqualification"), because the NAC has imposed a bar, effective immediately Johnson is not permitted to associate further with any FINRA member firm in any capacity, including a clerical or ministerial capacity.

Johnson is also reminded that the failure to keep FINRA apprised of his most recent address may result in the entry of a default decision against him. Article V, Section 2 of the FINRA By-Laws requires all persons who apply for registration with FINRA to submit a Form U4 and to keep all information on the Form U4 current and accurate. Accordingly, he must keep his member firm informed of his current address.

In addition, FINRA may request information from, or file a formal disciplinary action against, persons who are no longer registered with a FINRA member for at least two years after their termination from association with a member. *See* Article V, Sections 3 and 4 of FINRA's By-Laws. Requests for information and disciplinary complaints issued by FINRA during this two-year period will be mailed to such persons at their last known address as reflected in FINRA's records. Such individuals are deemed to have

OS Received 11/09/2021

received correspondence sent to the last known address, whether or not the individuals have actually received them. Thus, individuals who are no longer associated with a FINRA member firm and who have failed to update their addresses during the two years after they end their association are subject to the entry of default decisions against them. *See* Notice to Members 97-31. Letters notifying FINRA of such address changes should be sent to CRD, P.O. Box 9495, Gaithersburg, MD 20898-9401 or may be updated via FINRA's Individual Snapshot website at http://www.finra.org/industry/web-crd/crd-residential-change-address-former-finra-registered-representatives.

* * *

Johnson may appeal this decision to the U.S. Securities and Exchange Commission ("SEC"). To do so, he must file an application with the SEC within 30 days of his receipt of this decision. A copy of this application must be sent to the FINRA Office of General Counsel, as must copies of all documents filed with the SEC. Any documents provided to the SEC via facsimile or overnight mail should also be provided to FINRA by similar means.

The address of the SEC is:	The address of FINRA is:
The Office of the Secretary Securities and Exchange Commission 100 F Street, NE Room 10915 Washington, D.C. 20549-1090 Administrative ProceedingsFax@sec.gov	Attn: Colleen Durbin Office of General Counsel FINRA 1735 K Street, NW Washington, D.C. 20006 colleen.durbin@finra.org nac.casefilings@finra.org

If an application for review is filed with the SEC, the application must identify the FINRA case number and state the basis for the appeal. The appeal must include an address where he may be served and a phone number where he may be reached during business hours. If Johnson's address or phone number changes, he must advise the SEC and FINRA. Attorneys must file a notice of appearance.

Effective as of April 12, 2021, the SEC's Rules of Practice (Rules) (17 CFR §§ 201.100 – 201.1106) require the electronic filing and service of documents in Commission administrative proceedings. *See Amendments to the Commission's Rules of Practice*, 85 Fed. Reg. 86,464 (Dec. 30, 2020) (available at https://www.govinfo.gov/content/pkg/FR-2020-12-30/pdf/2020-25747.pdf). The SEC's Rules of Practice and instructions for electronic filing are available on the SEC's website on the Rules of Practice page at http://www.sec.gov/about/rulesofpractice.shtml. The SEC's electronic filing system ("eFAP") is available at https://www.sec.gov/efap.

The SEC's instructions for electronic filing also require that parties and representatives serve and accept service of documents electronically. Should Johnson decide to avail himself of the opportunity to appeal the NAC's decision to the SEC, we request that he serve a copy of his application for review, and copies of any documents he may file in support of their application for review, on FINRA electronically at colleen.durbin@finra.org. We consent to accept electronic service of his appeal on behalf of FINRA at this email address while the SEC's order remains in effect.

The filing with the SEC of an application for review shall stay the effectiveness of any sanction except a bar or expulsion. Thus, the bar imposed by the NAC in the enclosed decision will not be stayed pending appeal to the SEC, unless the SEC orders a stay. Additionally, orders in the enclosed NAC decision to pay fines and costs will be stayed pending appeal.

Questions regarding the appeal process may be directed to the Office of the Secretary at the SEC. The phone number of that office is (202) 551-5400.

If Johnson does not appeal this NAC decision to the SEC and the decision orders him to pay fines or costs, he may pay these amounts after the 30-day period for appeal to the SEC has passed. Any fines and costs assessed should be paid (via regular mail) to FINRA, P.O. Box 418911, Boston, MA 02241-8911 or (via overnight delivery) to Bank of America Lockbox Services, FINRA 418911 MA5-527-02-07, 2 Morrissey Blvd., Dorchester, MA 02125.

Sincerely,

Jennifer Piorko Mitchell

Jennifer Piorko Mitchell
Vice President and Deputy Corporate Secretary

Enclosure

cc: Ursula Clay
Tesh Cromwell
Megan Davis, Esq.
Nancy Espinosa
John Luburic, Esq.
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Direct: (202) 728-8816
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October 6, 2021

VIA SEC 19d-1 SYSTEM

Vanessa A. Countryman
Securities and Exchange Commission
100 F Street, NE
Room 10915
Washington, D.C. 20549-1090

Re: Complaint No. 2018056848101: Thomas Lee Johnson

Dear Ms. Countryman:

Enclosed please find the amended decision of the National Adjudicatory Council ("NAC") in the above referenced matter. The decision was amended to correct a typographical error in the caption. The FINRA Board of Governors did not call this matter for review and the attached NAC decision is the final decision of FINRA.

Sincerely,

/s/ Colleen Durbin

Colleen Durbin

Enclosure

cc: Tanya Doctor Nixon

APPENDIX B

OS Received 11/09/2021

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.

OS Received 11/09/2021

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.

OS Received 11/09/2021

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.

OS Received 11/09/2021

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 [redacted].[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.

OS Received 11/09/2021

$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.

OS Received 11/09/2021

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.

OS Received 11/09/2021

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

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[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.

OS Received 11/09/2021

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.

OS Received 11/09/2021

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

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[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

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[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]

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[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]

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[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.

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[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.

OS Received 11/09/2021

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

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[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.

OS Received 11/09/2021

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

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[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.

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[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.

OS Received 11/09/2021

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.

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[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 to 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. Terdjanian*, 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. Miciek*, 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]

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[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).

OS Received 11/09/2021

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 inconsistences 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.

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[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).

OS Received 11/09/2021

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

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[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

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[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.

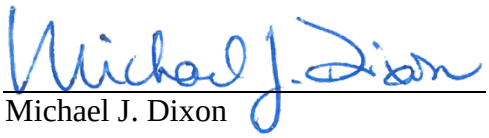
Johnson is ordered to pay the hearing costs of $3,818.30, consisting of a $750 administrative fee and $3,068.30 for the cost of the transcript. The assessed costs shall be due on a date set by FINRA, but not sooner than 30 days after this decision becomes FINRA's final disciplinary action in this proceeding.

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.

OS Received 11/09/2021

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.

OS Received 11/09/2021