

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934  
Release No. 76376 / November 5, 2015

Admin. Proc. File No. 3-16264

In the Matter of the Application of  
  
ALFRED P. REEVES, III  
  
For Review of Disciplinary Action Taken by  
  
FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION — REVIEW OF DISCIPLINARY  
PROCEEDINGS

Principal of former member firm of registered securities association converted funds of his former employer in violation of just and equitable principles of trade. *Held*, association's findings of violation and sanction imposed are *sustained*.

APPEARANCES:

*Alfred P. Reeves, III*, pro se.

*Alan Lawhead, Jennifer C. Brooks, and Colleen E. Durbin* for the Financial Industry Regulatory Authority, Inc.

Appeal filed: November 7, 2014  
Last brief received: April 17, 2015

Alfred P. Reeves, III, directed his former employer's clearing firm to wire funds to a bank account he controlled instead of to his former employer's account. We must determine whether this conduct supports FINRA's finding that Reeves converted funds in violation of FINRA Rule 2010, and, if so, whether the sanction imposed by FINRA as a remedy for that violation is excessive or oppressive. We reject Reeves's contentions that he did not know that the funds belonged to his former employer and that FINRA was biased against him; we find that his conversion of his former employer's funds for his own use violated Rule 2010's requirement that associated persons observe "high standards of commercial honor and just and equitable principles of trade;" and we conclude that the bar imposed by FINRA is neither excessive nor oppressive. Accordingly, we sustain FINRA's action.

## **I. Background**

Reeves has been in the securities industry for over forty years and has worked for several broker-dealers in various principal capacities. During the events at issue, Reeves served as the Financial and Operations Principal ("FINOP") for HWJ Capital Partners II, LLC. He also owned and operated the consulting firm Access Capital Financial Group.

### **A. Reeves was HWJ's FINOP from March 2011 through August 2011.**

In March 2011, Reeves entered a month-to-month contract with HWJ to serve as the firm's registered FINOP. Two months later, HWJ retained Legent Clearing to provide clearing services to the firm. As HWJ's FINOP, Reeves filled out the necessary paperwork to commence HWJ's relationship with Legent, listing himself as HWJ's "Authorized Billing Contact" and providing his personal cell phone number and email address on the account information form. HWJ's owner signed the agreement and submitted it to Legent.

Reeves continued to work for HWJ until August 30, 2011, when HWJ declined to renew Reeves's contract. The next month, Reeves sent HWJ an invoice in the amount of \$2,000 for services rendered during August. The email transmitting the invoice stated that HWJ's non-renewal of the contract left Reeves in a "financial bind" and that "bookkeeping . . . and any other services for August or in the future are no longer free. Hence, the attached bill. . . . Thank you in advance for sending a check as soon as possible."<sup>1</sup>

### **B. HWJ's clearing firm asked Reeves for payment instructions after he had been terminated.**

In an October 7 email Legent, HWJ's clearing firm, asked Reeves for payment instructions, writing:

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<sup>1</sup> After brief associations with two other FINRA member firms, Reeves has not been associated with a FINRA member firm since December 2011.

Your September billing invoice is complete and Legent owes you money. We do not have payment instructions on file for you. Please fill out the following Accounting Questionnaire and send back to Correspondent [Billing@legentclearing.com](mailto:Billing@legentclearing.com) We will then be able to get your payment to you.

The Questionnaire asked for information pertaining to broker-dealer clearing services such as (1)"Do you trade in Inventory Accounts?"; (2)"Do you plan to hold inventory positions overnight?"; (3)"What is your Firm's Fiscal Year End?"; and (4)"Do you need limited access to the Billing Folder on your FTP Site?"

Legent asked Reeves for instructions regarding the payment because Legent had not been notified that Reeves was no longer HWJ's FINOP or authorized billing contact. Reeves did not ask Legent or HWJ about the nature of the payment, inform HWJ that Legent owed money on the September invoice, or disclose to Legent that he was no longer HWJ's FINOP. Instead, Reeves filled out the Questionnaire and supplied his own consulting firm's bank account information (Access Capital) and his personal email address and cell phone number. Once Legent received the completed Accounting Questionnaire, it wired \$59,704.93 to the bank account of Access Capital on October 12, 2011.

This payment was owed to HWJ, not Reeves. The \$59,704.93 was a refund of commissions that apparently had been withheld in error on several trades executed by HWJ in the IRA account of the firm's owner.

**C. Reeves disposed of most of the \$59,000 on personal matters.**

Reeves learned that over \$59,000 had been wired into the account of Access Capital when he checked the account balance on approximately October 21, 2011. Before the wire transfer, the balance in the account had been \$156.29. Beginning on October 21, and over the next ten days, Reeves began to use the new funds in the Access Capital account. He wrote a check for \$50,000 that was deposited in an account controlled by his ex-wife, and used \$8,572.05 of the remaining amount for personal expenses, including mortgage and credit card payments. Reeves did not contact either Legent or HWJ concerning the money.

HWJ learned in November 2011 during a routine FINRA examination that Legent had mistakenly withheld the commission money and then unwittingly forwarded the funds to Reeves. In an email to Reeves, HWJ's owner accused him of stealing the money and demanded its return. Reeves denied any wrongdoing, said he did not have access to HWJ's funds, and refused to return the money. The next day, HWJ's owner registered a complaint against Reeves with the FINRA examiner on HWJ's premises; this ultimately led to the investigation that culminated in the instant disciplinary action against Reeves.

Both HWJ and Legent demanded that Reeves repay the \$59,704.93. Reeves offered to resolve the situation by repaying the total at a rate of \$5,000 a month, but stipulated two conditions: that Legent admit that it had "misappropriated" HWJ's funds and paid them to Reeves in error, and that Reeves would pay no money until he had resolved all issues with

FINRA. Legent refused to admit that it had misappropriated the funds, so no agreement was reached among Legent, HWJ and Reeves. Reeves ultimately repaid \$31,000 to HWJ.<sup>2</sup>

**D. FINRA barred Reeves from associating with any FINRA member.**

Based on the complaint from HWJ's owner, FINRA opened an investigation and then filed a disciplinary action against Reeves for conversion of HWJ's funds. A Hearing Panel found that Reeves converted HWJ's funds, barred Reeves for his misconduct, and ordered him to pay restitution of \$28,704.93 plus prejudgment interest. Reeves appealed the decision to the National Adjudicatory Council (the "NAC"). On October 8, 2014, the NAC affirmed the Hearing Panel's decision, finding that Reeves had acknowledged that he directed Legent to pay Access Capital funds "without any plausible reason to believe he was entitled to receive them," that it was "uncontroverted that Reeves spent the funds without HWJ's knowledge or authorization," and that he "has not yet repaid the firm in full . . . ." The NAC affirmed the sanctions imposed by the Hearing Panel. This appeal followed.

**II. Analysis**

**A. Standard of Review**

We base our findings on an independent review of the record and apply a preponderance of the evidence standard for self-regulatory organization disciplinary actions.<sup>3</sup> Pursuant to Exchange Act Section 19(e)(1), in reviewing an SRO disciplinary action, we determine whether the aggrieved person engaged in the conduct found by the SRO, whether such conduct violated the provisions found, and whether those rules are, and were applied in a manner, consistent with the purposes of the Exchange Act.<sup>4</sup>

**B. Reeves intentionally converted HWJ's funds.**

FINRA defines conversion generally 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

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<sup>2</sup> FINRA made this assertion in its brief before us and Reeves did not contradict it in his reply brief.

<sup>3</sup> See *Richard G. Cody*, Exchange Act Release No. 64565, 2011 WL 2098202, at \*9 (May 27, 2011) (citing *Seaton v. SEC*, 670 F.2d 309, 311 (D.C. Cir. 1982) (upholding preponderance of evidence standard in FINRA disciplinary proceeding)), *aff'd*, 693 F.3d 251 (1st Cir. 2012).

<sup>4</sup> 15 U.S.C. § 78s(e); see, e.g., *Joseph Abbondante*, Exchange Act Release No. 53066, 2006 WL 42393, at \*6 (Jan. 6, 2006), *petition denied*, 209 F. App'x 6 (2d Cir. 2006). Reeves does not argue, and the record does not support a finding, that Rule 2010 is, or FINRA's application of it was, inconsistent with the Exchange Act.

possess it."<sup>5</sup> Although Reeves does not dispute that he directed Legent to wire funds to the account of his own consulting firm, he contends that his actions did not result in conversion because he did not take the money intentionally. Instead, he claims that he provided his consulting firm's account number to Legent because he thought Legent's email was in reference to the invoice for \$2,000 that he had sent HWJ for services rendered in August 2011. Reeves asserts that he did not question the \$59,704.93 increase in his consulting firm's account after Legent wired the money because he was accustomed to receiving large deposits for deals that closed through a broker-dealer that he owned.

The NAC found, and we agree, that the record evidence does not support these claims. Reeves's claim that he thought Legent's email concerned his \$2,000 invoice to HWJ is not plausible. Reeves's termination from HWJ was acrimonious – even Reeves testified that he did not expect HWJ to pay the \$2,000 invoice. And Legent's September email to Reeves stated that *Legent*, not HWJ, owed money. Further, Reeves's invoice for the August services thanked HWJ "in advance for sending a check as soon as possible" (which was consistent with HWJ's past payments to Reeves), but Legent's email asked for account instructions for a wire transfer. Finally, the Account Questionnaire that Legent attached to its email asked for information that a securities professional as experienced as Reeves would have recognized as being related to the provision of clearing services rather than any FINOP or other services Reeves might have provided to HWJ. For example, the form asked about trading in inventory accounts, and whether inventory positions were held overnight. Such information was irrelevant to the payment for Reeves's consulting services to HWJ.

Reeves's claim that he thought that the \$59,704.93 increase in his consulting firm's account could have been related to a deal that closed through his broker-dealer is also unsupported. Although three witnesses testified that they had done large deals with Reeves in the past, they also testified that they did not have any deals with Reeves that were nearly ready to close in the time period at issue. Reeves himself did not point to any deal near completion during this time.

Reeves also argues that it was HWJ's responsibility to notify Legent promptly of Reeves's termination from HWJ's employ. But even if HWJ failed to notify HWJ, that does not negate Reeves's actions in converting the funds. Reeves made no effort to contact Legent or HWJ to clarify the purpose of the payment. In any event, Reeves admits that since at least November 2011, he knew the money was not his and he has not repaid the full balance. As a result, Reeves continued to intentionally exercise unauthorized ownership over HWJ's funds from November 2011 to date.

For all of these reasons, we find that Reeves converted funds both when he directed Legent to wire funds to the Access Capital account and when he continued to hold the funds after HWJ contacted him to demand their return.

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<sup>5</sup> *FINRA Sanction Guidelines* 36.

### C. Reeves violated Rule 2010 when he converted HWJ's funds.

Reeves's conversion of HWJ's funds violated FINRA Rule 2010. Rule 2010 requires the observance of "high standards of commercial honor and just and equitable principles of trade"<sup>6</sup> and is "designed to enable [FINRA] to regulate the ethical standards of its members."<sup>7</sup> The Rule "serves as an industry backstop for the representation, inherent in the relationship between a securities professional and a customer, that the customer will be dealt with fairly and in accordance with the standards of the profession."<sup>8</sup> To this end, Rule 2010 sets forth a standard intended to encompass "a wide variety of conduct that may operate as an injustice to investors or other participants in the marketplace."<sup>9</sup> It is well settled that conversion violates Rule 2010 because it is "extremely serious and patently antithetical to the 'high standards of commercial honor and just and equitable principles of trade' that [FINRA] seeks to promote."<sup>10</sup>

### III. Sanctions

Pursuant to Exchange Act Section 19(e)(2), we will sustain a FINRA sanction unless we find, "having due regard for the public interest and the protection of investors," that the sanctions are "excessive or oppressive" or impose an "unnecessary or inappropriate burden on competition."<sup>11</sup> As part of this review, we consider any aggravating or mitigating factors presented<sup>12</sup> and whether the sanctions imposed by FINRA are remedial and not punitive.<sup>13</sup>

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<sup>6</sup> Rule 2010 applies to Reeves through FINRA Rule 140, providing that persons associated with a member have the same duties and obligations as a member.

<sup>7</sup> *Heath v. SEC*, 586 F.3d 122, 132 (2d Cir. 2009) (discussing NYSE Rule 476, counterpart to NASD Rule 2010), *aff'g Thomas W. Heath*, Exchange Act Release No. 59223, 2009 WL 56755 (Jan. 9, 2009). We interpret and apply all SRO just-and-equitable rules under the same analysis and precedent. *See, e.g., Dante J. DiFrancesco*, Exchange Act Release No. 66113, 2012 WL 32128, at \*5 & n.19 (Jan. 6, 2012) (applying *Heath*, 2009 WL 56755, at \*4).

<sup>8</sup> *DiFrancesco*, 2012 WL 32128, at \*5 & n.21 (citing *Heath*, 2009 WL 56755, at \*4).

<sup>9</sup> *Id.* at \*5 & n.22 (citing *Heath*, 2009 WL 56755, at \*5 & n.13).

<sup>10</sup> *John Edward Mullins*, Exchange Act Release No. 66373, 2012 WL 423413, at \*11 (Feb. 10, 2012) (internal citations omitted).

<sup>11</sup> 15 U.S.C. § 78s(e)(2). Reeves does not claim, nor does the record show, that FINRA's action imposed an unnecessary or inappropriate burden on competition.

<sup>12</sup> *See Saad v. SEC*, 718 F.3d 904, 906 (D.C. Cir. 2013); *PAZ Sec., Inc. v. SEC*, 494 F.3d 1059, 1064-65 (D.C. Cir. 2007).

<sup>13</sup> *See PAZ*, 494 F.3d at 1065.

Though not bound by FINRA's Sanction Guidelines, we use them as a benchmark for our review under Exchange Act Section 19(e)(2).<sup>14</sup> For conversion, the Sanction Guidelines recommend imposing a bar as the standard sanction, regardless of the amount converted.<sup>15</sup> The NAC also considered the Sanction Guidelines' Principal Considerations, which include a non-exhaustive list of aggravating and mitigating factors.<sup>16</sup> The relevance of these factors depends on the facts and circumstances of each case.<sup>17</sup>

We find that a bar is consistent with the Sanction Guidelines and sustain the sanction imposed by the NAC because it is neither excessive nor oppressive. Conversion is "among the most grave violations committed by" a securities professional.<sup>18</sup> We find that Reeves engaged in behavior contrary to the high standards of commercial honor and just and equitable principles of trade when he converted HWJ's funds. Specifically, Reeves must have known that when Legent contacted him to repay the funds, Legent was contacting Reeves in his capacity as agent for HWJ. As described above, the nature of the questions in the Accounting Questionnaire provided by Legent made this clear because the questions concerned information relevant to broker-dealer clearing services. Although Reeves knew that he no longer had authority to act as HWJ's agent, he filled out the Accounting Questionnaire and directed Legent to send the funds to the Access Capital account. Once he knew the money was in Access Capital's account, he began withdrawing it. He did not contact either Legent or HWJ to clarify that he was not authorized to act as HWJ's agent; nor did he ask about the source or purpose of the transfer. He exhausted virtually the entire amount that Legent had wired to him. Reeves's conduct demonstrates that he intentionally engaged in the unauthorized conversion of funds.

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<sup>14</sup> *Capwest Sec., Inc.*, Exchange Act Release No. 71340, 2014 WL 198188, at \*9 (Jan. 17, 2014) (citation omitted). FINRA adopted the Sanction Guidelines to ensure "greater consistency, uniformity, and fairness in the sanctions that are imposed for violations." *Richard A. Neaton*, Exchange Act Release 65598, 2011 WL 5001956, at \*12 n.38 (Oct. 20, 2011).

<sup>15</sup> FINRA Sanction Guidelines, <http://www.finra.org/web/groups/industry/@enf/@sg/documents/p011038.pdf>, at 36 ("Sanction Guidelines").

<sup>16</sup> *Id.* at 6-7.

<sup>17</sup> *Id.* at 6.

<sup>18</sup> *Mullins*, 2012 WL 423413, at \*18. We have upheld a bar as an appropriate remedy for conversion in other disciplinary actions. *See, e.g., Denise M. Olson*, Exchange Act Release No. 75838, 2015 WL 5172954, at \*3 (Sept. 3, 2015) ("[A]bsent mitigating factors, conversion 'poses so substantial a risk to investors and/or the markets as to render the violator unfit for employment in the securities industry.'" (internal citations omitted)); *Janet Gurley Katz*, Exchange Act Release No. 61449, 2010 WL 358737, at \*26 (Feb. 1, 2010) (in NYSE case, "[m]isappropriating client funds and making misstatements are serious misconduct, and we have sustained bars as appropriate sanctions in the past for such conduct.").

We agree with the NAC that there are aggravating factors that further support the imposition of a bar. As the NAC found, Reeves deprived HWJ of the use of its \$59,704.93 while benefitting himself.<sup>19</sup> And as the NAC also found, Reeves has not taken any responsibility for his misconduct. Instead, Reeves has blamed HWJ's owner for failing to notify Legent that Reeves had been terminated, blamed Legent for mistakenly deducting the money as commissions in the first place, and blamed FINRA for inappropriate bias.<sup>20</sup>

But any mistakes made by HWJ and Legent would not excuse Reeves's deliberate conduct in converting funds for his own use, and, as described above, we do not credit Reeves's assertion that he thought the October 7 email from Legent concerned a \$2,000 invoice he had submitted to HWJ following his termination. Further, the record does not support his claim of inappropriate FINRA bias as a result of accusations against him by HWJ's owner. Although HWJ's owner accused Reeves of having obtained the money by hacking into HWJ's or Legent's computer system, FINRA's investigation found no support for this accusation and the NAC rejected it. At the hearing, HWJ's owner manifested animosity towards Reeves, but the Hearing Officer repeatedly admonished the owner as to his tone, while reminding Reeves that Reeves had called the owner as a witness. There is no evidence that the owner's accusation of hacking or his animosity influenced either the Hearing Panel or the NAC.

Reeves also contends that FINRA has a vendetta against him stemming from an alleged altercation between Reeves and a FINRA employee at some unidentified time in the past. We reject this contention as unsubstantiated because Reeves offers no evidence of either this alleged altercation nor a vendetta by FINRA as a result. To the extent Reeves argues that he is a victim of selective prosecution, Reeves "must demonstrate that he was unfairly singled out for prosecution based on improper considerations such as race, religion, or the desire to prevent the exercise of a constitutionally protected right."<sup>21</sup> Reeves has made no such showing.

Reeves argues that his unblemished forty-five year career should be taken into account, but the point Reeves intends to make in raising this issue is unclear. Before the NAC, Reeves argued that his formerly discipline-free career was proof that he would not be so unwise as to try to steal money. The NAC rejected this by saying that, under all the circumstances, a person with Reeves's experience would have inquired as to the amount and purpose of the transfer from Legent before directing the payment to his personal account. We agree with this reasoning.

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<sup>19</sup> Sanction Guidelines at 6 (Principal Consideration No. 11).

<sup>20</sup> *Id.* (Principal Consideration No. 2).

<sup>21</sup> *Scott Epstein*, Exchange Act Release No. 59328, 2009 WL 223611, at \*16 (Jan. 30, 2009) (citations omitted), *aff'd*, 416 F. App'x 142 (3rd Cir. 2010).

And to the extent this is an argument for mitigation, "lack of disciplinary history is not a mitigating factor" under FINRA Guidelines because securities professionals "'should not be rewarded for acting in accordance with [their] duties.'"<sup>22</sup>

We also sustain the restitution order imposed by FINRA. The Sanction Guidelines recommend such an order to restore the status quo ante where an identifiable member has suffered a quantifiable loss due to respondent's misconduct.<sup>23</sup> Ordering Reeves to pay restitution to HWJ for the amount that he has not yet repaid, together with prejudgment interest on that amount, is neither excessive nor oppressive.

For all the above reasons, we find that the sanctions imposed by FINRA were neither excessive nor oppressive.

#### IV. CONCLUSION

For all the above reasons, we sustain FINRA's findings that Reeves violated FINRA Rule 2010 and the sanction imposed.

An appropriate order will issue.<sup>24</sup>

By the Commission (Chair WHITE and Commissioners AGUILAR, STEIN, and PIWOWAR).

Brent J. Fields  
Secretary

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<sup>22</sup> *Blair Alexander West*, Exchange Act Release No. 74030, 2015 WL 137266, at \*12 (January 9, 2015) (internal citations omitted).

<sup>23</sup> Sanction Guidelines at 4 (General Principle No. 5).

<sup>24</sup> We have considered all of the parties' contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

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Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934  
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In the Matter of the Application of  
  
ALFRED P. REEVES, III  
  
For Review of Disciplinary Action Taken by  
  
FINRA

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ORDER SUSTAINING DISCIPLINARY ACTION TAKEN BY FINRA

On the basis of the Commission's opinion issued this day, it is  
  
ORDERED that the disciplinary action taken by FINRA against Alfred P. Reeves is  
  
hereby sustained.

By the Commission.

Brent J. Fields  
Secretary