SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 76558 / December 4, 2015

Admin. Proc. File No. 3-16461

In the Matter of the Application of

KEILEN DIMONE WILEY

For Review of Disciplinary Action Taken by

FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION -- REVIEW OF DISCIPLINARY PROCEEDINGS

Conversion of firm funds

Associated person of member firm of registered securities association converted insurance premium payments and provided false and misleading information to self-regulatory organization during an on-the-record interview. *Held*, association's findings of violation and imposition of sanctions are sustained.

APPEARANCES:

Dawn R. Meade and *Ashley M. Spencer*, of the Spencer Law Firm, for Keilen Dimone Wiley.

Alan Lawhead and *Lisa Jones Toms* for FINRA.

Appeal filed: March 26, 2015
Last brief received: July 23, 2015

Keilen Dimone Wiley, who was formerly associated with Farmers Financial, LLC, a FINRA member, seeks review of a FINRA disciplinary action. Wiley intentionally used customer insurance premiums to pay personal and business expenses. At issue here is whether this conduct violates FINRA Rule 2010, which requires that FINRA members and associated

persons observe high standards of commercial honor and just and equitable principles of trade.[1] We find that it does because it shows that Wiley is unable to fulfill the basic duties of a securities professional, which include being entrusted to handle customer funds. We sustain FINRA's finding of violation and the bar from association with any FINRA member firm based on our independent review of the record. We also sustain FINRA's finding that Wiley gave false and misleading testimony about his use of customer insurance premiums in violation of FINRA Rules 8210 and 2010.

I. Background

A. Wiley sold Farmers Insurance products while associated with a FINRA member firm.

From April 2002 to July 2011, Wiley was associated with Farmers Financial, LLC, a FINRA member firm. He held two securities licenses as an Investment Company Products/Variable Contracts Limited Representative (Series 6) and a Uniform Securities Agent (Series 63). During this time, Wiley also was an independent insurance agent in the State of Texas with Farmers Insurance, an affiliate of Farmers Financial.

Wiley sold insurance products. As set forth in his Agent Appointment Agreement with Farmers Insurance, Wiley agreed to "sell insurance for the Companies and to submit to the Companies every request or application for insurance for the classes and lines underwritten by the Companies and eligible in accordance with their published Rules and Manuals." He also agreed to collect and promptly remit monies paid by policyholders that were due to Farmers and to conform to "normal good business practices" and to all applicable state and federal laws governing his conduct.

Wiley sold Farmers Insurance products under a "doing business as" designation of Wiley Insurance Agency and Associates ("WIA"). He had two bank accounts in the name of WIA. One account he used for business and personal expenditures and the other was a merchant banking account for insurance premiums that customers paid with credit cards.

Farmers Insurance had internal policies and procedures that set forth the method for all of its insurance agents to collect and deposit customer insurance premium payments. A Famers Insurance senior auditor testified that Farmers Insurance required its agents to report the receipt of customer payments in the Agent's Credit Advice or "ACA" system. Farmers Insurance established "co-banking" accounts at various banks nationwide for its agents to deposit collected insurance premium payments. The Farmers ACA Manual and the Farmers Agency Operations Guide stressed the importance of making timely deposits in the co-banking account. Specifically, Farmers required agents to deposit customer funds within twenty-four hours of

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[1] Although Rule 2010 applies to FINRA members, FINRA Rule 0140(a) provides that "[p]ersons associated with a member shall have the same duties and obligations as a member under the Rules."

receipt. The ACA Manual also warned against commingling customer funds and cautioned that it could trigger internal audits and "lead to disciplinary action, up to and including termination of the agency agreement."

B. Wiley used customer insurance premium payments for personal and business expenses.

Beginning in March 2011, and through May 2011, Wiley collected $7,703.06 in Farmers Insurance premium payments from fifty-four different customers. Wiley reported the receipt of these payments in the ACA system. But instead of promptly depositing the funds with Farmers Insurance, Wiley deposited $6,532.70 of the amount he collected into his WIA business bank account. He then used these funds for personal and business expenses.

After several weeks, a Farmers Insurance internal audit team discovered the deposits missing from Wiley's co-banking account. The Farmers Insurance senior auditor conducted an internal investigation, which included a review of Wiley's ACA system reports, his deposits into the co-banking account, and an interview with Wiley.

Before the audit interview, Wiley's performance manager informed Wiley of the missing deposits. Wiley then made deposits into his co-banking account to replace most of the missing deposits. On May 2, 2011, Wiley deposited a WIA check for $1,690.64; on May 6, 2011, he deposited another WIA check for $1,954.52; and on May 9, 2011, he deposited $2,250.94 in cash. On May 11, 2011, the day of the audit interview, Wiley handed the senior auditor the remaining outstanding balance of $637.70 in cash and money orders.

During his interview, Wiley admitted to his performance manager and the senior auditor that it was his practice to deposit customer payments he received for insurance premiums into his WIA business account instead of the Farmers Insurance co-banking account. The senior auditor testified that Wiley stated that he deposited customer payments into his WIA business account because he needed to use the money "for a little while." Wiley admitted that he used the funds he received from customers to pay for his own personal and business expenses.

Wiley signed a written statement at the end of his interview in which he made the following admissions:

> I made it a practice of depositing cash collections into my [WIA and Associates] business account . . . and then writing a check to Farmers. . . . As time went on, I needed funds for the WIA and Associates bank account and delayed depositing the insureds' cash collections to the company co-banking account by a month or more. . . While customer collections did end up being used to pay for my personal and business expenses, this was not my intent.

The next business day, Wiley voluntarily provided an additional statement to his performance manager by email. Wiley explained the array of financial problems he had faced that he asserted contributed to his use of the customer payments and his delay in depositing them in the co-banking account, including: a bitter divorce, a foreclosure on his home, staffing

problems, his poor credit, and negative balances in his bank accounts. He admitted that using customer payments and repaying Farmers Insurance later "was questionable [to] say the least." He also stated, "I [knew] that would be walking a fine line. It was a risk I was willing to take. Why? Because I had to keep the business going."

Farmers Financial terminated Wiley on June 7, 2011 and subsequently filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") reporting his termination.

C. FINRA investigated Wiley's misuse of customer funds.

FINRA's Department of Enforcement subsequently began an investigation. As part of the investigation, Wiley was required, pursuant to FINRA Rule 8210, to provide sworn on-the-record testimony ("OTR"). During his OTR, Wiley confirmed that he understood FINRA Rule 8210's requirement that he answer questions fully, accurately, and truthfully. When FINRA staff asked him whether he used customer funds for his personal use, Wiley answered "No." Then he stated that he had disagreed with his original statement when he signed it. He suggested that his previous admissions of using the customer insurance premiums had been misinterpreted because in looking at all of his bank accounts, "the money was always there from the customers' payments that we collected."

D. FINRA found that Wiley violated FINRA Rules as charged and imposed sanctions.

FINRA Enforcement filed a two-cause complaint in 2013 alleging that Wiley intentionally converted customer insurance premium payments for his own use in violation of FINRA Rule 2010 and provided false and misleading testimony to FINRA during his OTR when he denied using the customer payments for personal and business expenses in violation of FINRA Rules 8210 and 2010. In his answer to the complaint, Wiley admitted that he was subject to FINRA's jurisdiction for purposes of this proceeding because the complaint charged Wiley with misconduct that he committed while registered or associated with a FINRA member.

On April 29, 2014, a FINRA hearing panel found that, from March through April 2011, Wiley converted the insurance premium payments he received from fifty-four customers in violation of FINRA rules. Specifically, the hearing panel found credible testimony from the senior auditor that Wiley voluntarily signed a statement admitting to using the customer premiums for business and personal use. The hearing panel found that Wiley's email to his performance manager the next business day after the audit interview, which elaborated on his earlier admissions, corroborated the senior auditor's testimony. The hearing panel also rejected Wiley's claims that he testified truthfully at his sworn OTR.

One panelist dissented from the hearing panel majority's findings of violation and sanction. The panelist found that "the premiums belonged to WIA and WIA owed a debt to Farmers for the premiums Wiley collected." The panelist gave no weight to Wiley's written statement, finding that Wiley signed the statement under duress.

On appeal, FINRA's National Adjudicatory Counsel ("NAC") affirmed the Hearing Panel's findings and sanctions it imposed. The NAC barred Wiley from association with any FINRA member firm in any capacity for his conversion violation and found that his sanction appropriately fell within the FINRA Sanction Guidelines. In light of this bar, the NAC declined to impose a sanction for providing false testimony. This appeal followed.

II. Analysis

A. Standard of Review

We base our findings on an independent review of the record and apply the preponderance of the evidence standard for self-regulatory organization ("SRO") disciplinary actions.[2] 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 violates the SRO's rules, and whether such SRO rules are, and were applied in a manner, consistent with the purposes of the Exchange Act.[3]

B. FINRA has jurisdiction over Wiley.

We find that FINRA has jurisdiction over Wiley to determine whether, in the conduct of his business, he has observed high standards of commercial honor and just and equitable principles of trade. It is undisputed that, during the relevant period, Wiley was registered as an investment company products and variable contracts representative and was associated with Farmers Financial, a FINRA member firm. As a registered person and a person associated with a member firm, Wiley's business-related conduct is subject to discipline in accordance with FINRA rules.

We have repeatedly held that FINRA's disciplinary authority is broad enough to encompass business-related conduct that is inconsistent with just and equitable principles of trade, even if that activity does not involve a security.[4] And as early as 1975, the Commission upheld disciplinary action against a person associated with a member firm for misconduct related

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[2] *See David M. Levine*, Exchange Act Release No. 48760, 2003 WL 22570694, at *2, *9 n.42 (Nov. 7, 2003).

[3] 15 U.S.C. § 78s(e)(1).

[4] *Daniel D. Manoff*, Exchange Act Release No. 46708, 2002 WL 31769236, at *4 (Oct. 23, 2002) (finding workplace conduct inconsistent with just and equitable principles of trade and high standards of commercial honor when respondent charged expenses to a co-worker's credit card without authorization); *James A. Goetz*, Exchange Act Release No. 39796, 1998 WL 130849, at *4 (March 25, 1998) (finding conduct inconsistent with just and equitable principles of trade when respondent knowingly received money from his firm's matching gift program for donations that he did not make).

to the sale of insurance products, even though that misconduct did not involve securities.[5] Thus, Wiley's unethical business-related conduct, even while performing insurance-related activities, falls under FINRA's jurisdiction.

Wiley contends that FINRA's jurisdiction is limited to the securities industry and that it improperly "ventured into the distinctly separate and different realms of insurance and Texas independent contractor and contract law." He argues that only the states can regulate the insurance industry and resolve disputes that involve independent contractors or contract law. But state laws governing insurance business practices and independent contractors are irrelevant in this case because FINRA brought this disciplinary action against Wiley for violating FINRA rules. As an associated person of a FINRA member firm, Wiley was subject to FINRA's prohibition on converting customer premium payments for his own use.

Wiley unsuccessfully attempts to distinguish the long line of Commission cases holding that FINRA's disciplinary authority is broad enough to encompass business-related conduct that does not involve securities if that conduct is inconsistent with just and equitable principles of trade. He claims that none of those cases involved an independent contract insurance agent who never participated in the securities industry. And he claims that, unlike respondents in prior cases, he never fraudulently misappropriated insurance premiums, falsified documents, or allowed policies to lapse. But Wiley's status as an independent contractor does not shield him from complying with FINRA rules. FINRA Rule 2010 "protects investors and the securities industry from dishonest practices that are unfair to investors or hinder the functioning of a free and open market, even though those practices may not be illegal or violate a specific rule or regulation."[6]

Although Wiley cites *Samuel B. Franklin*[7] for the proposition that the Commission has held that neither it nor FINRA has the authority to decide private contract rights, it is Wiley's violation of FINRA Rule 2010, not his violation of any contract, that is at issue here. Further, in *Franklin*, we noted that breaching a contract could violate FINRA Rule 2010 if the "member's failure to live up to contractual obligations . . . would constitute dishonorable and inequitable conduct not consistent with 'just and equitable principles of trade.'"[8]

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5 *Thomas E. Jackson*, Exchange Act Release No. 11476, 1975 WL 162936, at *2 (June 16, 1975) (holding that applicant's forging signature on insurance policies contravened standards of commercial honor and that, although his wrongdoing did not involve securities, on another occasion it might).

6 *Steven R. Tomlinson*, Exchange Act Release No. 73825, 2014 WL 6985131, at *5 n.15 (Dec. 11, 2014); *Benjamin Werner*, Exchange Act Release No. 9242,1971 WL 120499, at *2 (July 9, 1971) (upholding penalties against respondent for conduct inconsistent with just and equitable principles of trade even though such conduct was not held to be unlawful).

7 Exchange Act Release No. 5603, 1957 WL 52433 (Nov. 18, 1957).

8 *Id.* at *3 (internal quotations omitted).

Wiley argues that provisions of FINRA's arbitration code and related arbitration cases support his claim that FINRA lacks jurisdiction here. But this disciplinary proceeding is governed by FINRA's Code of Procedure, not its Code of Arbitration Procedure, so Wiley's reliance on arbitration provisions and cases is misplaced. Nor do we need to engage in a comprehensive review of Wiley's insurance business and apply Texas independent contractor law to determine whether his conduct is inconsistent with just and equitable principles of trade.

C. Wiley's conversion of customer insurance premium payments violated FINRA Rule 2010.

Rule 2010 requires that FINRA members and associated persons "observe high standards of commercial honor and just and equitable principles of trade." The Rule prohibits misconduct that "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."[9] Conversion is defined under FINRA's Sanction Guidelines 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."[10] In this case, FINRA established each element of the definition of conversion in the Sanctions Guidelines and found that this conduct constituted a failure to observe high standards of commercial honor and just and equitable principles of trade in violation of FINRA Rule 2010.

The facts are undisputed that, from March through May 2011, Wiley accepted a total of $7,703.06 from fifty-four Farmers customers for the payment of their Farmers insurance premiums. But instead of forwarding the payments to Farmers to be applied to the customers' insurance policies by depositing the funds into the co-banking account, Wiley diverted $6,532.70 from those payments and deposited it into his WIA bank account. Then he used the funds to pay personal and business expenses.

We agree with FINRA that Wiley's misconduct meets the definition of conversion for the purpose of a Rule 2010 violation. Wiley's actions were intentional. He told the Farmers Insurance senior auditor that he deposited the customer payments into his WIA business bank account because he needed to use the money "for a little while." He also told the senior auditor that he used the money for business and personal expenses. He signed a written statement admitting that the "customer collections did end up being used to pay for [his] personal and business expenses." The day after signing that statement, Wiley emailed his manager explaining that he converted the customer funds because of personal troubles. He admitted his conduct was "questionable to say the least," but that it "was a risk [he] was willing to take." Wiley's written admissions demonstrate his intent to convert the customers' insurance payments for his own use, regardless of the consequences.

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9 *Manoff*, 2002 WL 31769236, at *4 (internal quotation omitted).

10 *See* FINRA Sanction Guidelines at 36 & n.2 (2013 ed.).

The record also establishes that Wiley was not authorized or entitled to use the payments for his own purposes. Farmers Insurance's ACA Manual and Agency Operations Guide stressed the importance of making timely deposits in the co-banking account, and Farmers generally required agents to make deposits of customer funds within one business day of receipt. The ACA Manual specifically prohibited commingling customer funds and warned that it could "lead to disciplinary action, up to and including termination of the agency agreement." Wiley testified that Farmers Insurance expected to receive each customer payment once it was reported in the ACA system. Wiley was not entitled to exercise ownership over the customer payments for any period of time; he was required to collect the funds on behalf of Farmers Insurance and promptly remit those payments to Farmers. Instead, Wiley admitted in a written statement that he "made it a practice" to use customer insurance premiums for his own benefit for a month or more. We find, as did FINRA, that Wiley's use of customer premium payments to pay his personal and business expenses was conversion.

Wiley contends that the Agent Appointment Agreement does not define "promptly remitting monies" due to the insurance company and that it was an error to use the Agents Guide and ACA Manual to supplement the meaning of that term. According to Wiley, he was not required to use the ACA system and co-banking program and was not bound by the terms of the ACA Manual and Agency Operations Guide. Rather, the Agent Appointment Agreement required only that he submit applications for insurance that were "eligible in accordance with the written rules and manuals." Contrary to his unsupported contention, Wiley agreed in the Agent Appointment Agreement to sell insurance in accordance with Farmers Insurance's published rules and manuals, which included the ACA Manual and Agency Operations Guide. And Wiley testified during his OTR that Famers Insurance expected agents to make entries in the ACA system and deposit customer funds in the co-banking account and that this was a common practice.

According to Wiley, "Farmers allows about a thirty day window from the date the agent enters the premiums into the ACA banking receipt system to when an agent must deposit the premiums." He argues that FINRA erred in finding that Farmers required Wiley to deposit the premiums into the co-bank account within one day of receipt. But he has produced no support for this claim. On the contrary, the Agent Appointment Agreement required Wiley to collect and promptly remit monies due to Farmers. In any event, it was Wiley's unauthorized use of the customer insurance premium payments, not his delay in depositing them into the co-banking account, that establishes conversion of customer funds.

Wiley contends that the senior auditor's testimony regarding Wiley's rights, duties, and obligations has no evidentiary value because the senior auditor does not know anything about Farmers' relationship with its independent contractors and the duties, obligations, and rights of independent contractors. But the senior auditor testified as a fact witness, not a legal expert. And his testimony is corroborated by the email Wiley sent to his performance manager. We see no reason to overturn FINRA's finding that the senior auditor testified credibly.

For the same reason, we reject the reasoning of the dissenting hearing panelist, who concluded that Wiley did not convert the premiums because "the premiums belonged to WIA and WIA owed a debt to Farmers for the premiums Wiley collected." But the dissent offers no support for this other than Wiley's testimony, which we find is outweighed by other evidence such as the Agent Appointment Agreement, the ACA Manual, the Agency Operations Guide, and the senior auditor's testimony. The dissent gave no weight to Wiley's written statement, finding that Wiley signed the statement under duress. But the dissent offered no support for this conclusion, which is inconsistent with the Hearing Panel's finding that the senior auditor testified credibly.

Wiley incorrectly contends that FINRA's findings of violation should be overturned because FINRA never defined "high standards of commercial honor and just and equitable principles of trade" and used an abbreviated version of the definition of conversion rather than the one in FINRA's Sanction Guidelines. Based on our de novo review of the record, we find, as outlined above, that FINRA established each element of the definition of conversion in the Sanctions Guidelines and that FINRA further demonstrated that Wiley's conduct constituted a failure to observe high standards of commercial honor and just and equitable principles of trade.

Although Wiley contends that FINRA presented no evidence to establish Wiley's "possessory or ownership rights" in the insurance premiums, FINRA was not required to do so. Wiley's *lack* of ownership rights in the premiums is a necessary element of a conversion claim, and that was established through the evidence discussed above.

According to Wiley, this disciplinary action rests on what is essentially a misunderstanding. Wiley asserts that he "missed a payment owed to Farmers, an internal investigation was initiated, the accounts were balanced out, and all the debt owed to Farmers was remitted and the issues between Farmers and Wiley were resolved;" that he never allowed any client policies to lapse and never failed to remit payment to Farmers; and that if he had committed any legal infractions or breached the Agent Appointment Agreement, Farmers could have taken his book of business without being required to purchase the business as Farmers ultimately did. But these assertions are beside the point. Wiley intentionally used his customers' insurance payments for personal and business expenses, knowing this conduct was "questionable." He admitted he was willing to risk his customers' premiums to keep his business operating. That he eventually paid Farmers Insurance and no policies lapsed does not change the fact that he intentionally, and without authorization, took customer premiums to which he was not entitled to pay his own expenses. We agree with FINRA that this conduct is inconsistent with just and equitable principles of trade.

D. Wiley gave false and misleading testimony in violation of FINRA Rules 8210 and 2010.

FINRA Rule 8210 requires associated persons to testify under oath with respect to any matter in an investigation, complaint, or proceeding.[11] Providing false or misleading information to FINRA constitutes conduct inconsistent with just and equitable principles of trade and violates FINRA Rule 2010.[12]

At an OTR on May 10, 2012, FINRA staff asked Wiley whether he used customer funds for his own personal and business expenses. Wiley, testifying under oath, recanted his earlier admissions and answered, "No." He proceeded to state that he had disagreed with his original statement when he signed it. He suggested that his previous admissions had been misinterpreted because, in looking at all of his business bank accounts, "the money was always there from the customers' payments that we collected."

But the money was not always there. During the time Wiley collected over $7,000 in customer premiums payments, his business bank accounts often reflected a negative balance. Based on this fact, FINRA rejected Wiley's claim that the customer payments were accounted for and concluded that his denial of using customer payments for his own personal and business expenses was false and misleading.

Wiley contends that he qualified his "No" response with an explanation, admitting that he used insurance premium payments for his personal and business expenses but that he thought this was permissible as long as he remitted amounts owed to Farmers within the time required to maintain insurance coverage for the customers. In short, he claims that he did not believe he was improperly using the funds to pay for personal and business expenses. But Wiley was asked whether he used the funds for his personal and business expenses, not about the propriety of doing so. His answer to that question was false and misleading.

Wiley also contends that his response to this question was not vital to FINRA's investigation and that, because FINRA found that his denial was transparently false, it did not appear to mislead anyone or impede FINRA's investigation. But the fact that his answer was blatantly misleading does not excuse his failure to comply with Rule 8210.

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[11] *See* FINRA Rule 8210(a) ("FINRA staff shall have the right to . . . require a member, person associated with a member, or any other person subject to FINRA's jurisdiction to provide information orally . . . and to testify at a location specified by FINRA staff, under oath or affirmation . . . with respect to any matter involved in the investigation, complaint, examination, or proceeding . . . .").

[12] *See Geoffrey Ortiz*, Exchange Act Release No. 58416, 2008 WL 3891311, at *7 (Aug. 22, 2008).

III. Sanctions

A. The bar FINRA imposed on Wiley is neither excessive nor oppressive and is necessary for the protection of investors.

Pursuant to Exchange Act Section 19(e)(2), we will sustain a FINRA sanction unless we find it is "excessive or oppressive" or imposes an unnecessary or inappropriate burden on competition.[13] As part of this review, we consider any aggravating or mitigating factors[14] and whether the sanctions imposed by FINRA are remedial in nature and not punitive.[15]

FINRA's Sanction Guidelines state that "a bar is standard" for conversion "regardless of [the] amount converted."[16] This approach reflects the judgment that, absent mitigating factors,[17] conversion "poses so substantial a risk to investors and/or the markets as to render the violator unfit for employment in the securities industry."[18] Indeed, conversion is antithetical to the basic requirement that customers and firms must be able to trust securities professionals with their money,[19] and one who deliberately deceives a customer and misapplies funds entrusted to him therefore demonstrates a lack of fitness to be in the securities industry.

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[13] 15 U.S.C. § 78s(e)(2). Wiley does not claim, and the record does not show, that FINRA's action imposed an unnecessary or inappropriate burden on competition.

[14] *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).

[15] *Paz Sec., Inc.*, 494 F.3d at 1065; *see also* FINRA Sanction Guidelines at 2 ("Disciplinary sanctions are remedial in nature and should be designed to deter future misconduct and to improve overall business standards in the securities industry.").

[16] Guidelines at 6-7. Although we are not bound by FINRA's Sanction Guidelines, we use them as a benchmark in conducting our review under Exchange Act Section 19(e)(2). *John Joseph Plunkett*, Exchange Act Release No. 69766, 2013 WL 2898033, at *11 (June 14, 2013).

[17] The Guidelines include a list of non-exhaustive aggravating and mitigating factors (*i.e.*, "Principal Considerations"), and state that, "as appropriate, Adjudicators should consider case-specific factors in addition to those listed." Guidelines, at 6-7.

[18] *Charles C. Fawcett, IV*, Exchange Act Release No. 56770, 2007 WL 3306105, at *5 n.27 (Nov. 8, 2007).

[19] *See John Edward Mullins*, Exchange Act Release No. 66373, 2012 WL 423413, at *18 (Feb. 10, 2012) (Conversion "is extremely serious and patently antithetical to the 'high standards of commercial honor and just and equitable principles of trade' that underpin the self-regulation of the securities markets." (internal quotation omitted)); *Joseph H. O'Brien II*, Exchange Act Release No. 34105, 1994 WL 234279, at *3 (May 25, 1994) ("In converting [customer] funds, O'Brien abused the trust that is the cornerstone of the relationship between a securities professional and his customer.").

We agree with FINRA that Wiley's intentional, unauthorized use of customer insurance premiums to pay for his personal and business expenses constitutes the type of dishonesty and self-interest that warrants a bar. That Wiley eventually remitted the premium amounts to Farmers Insurance has little if any mitigating effect because he did so only after Farmers began an investigation.[20] A bar is necessary to protect the investing public from this type of abuse of trust and confidence and to deter Wiley and others from engaging in similar misconduct in the future.

Wiley argues that FINRA erred because it "sanctioned Wiley's lawful insurance business practices which had nothing to do with the securities industry." But, as explained above, we reject Wiley's claim that FINRA lacks jurisdiction to sanction him for non-securities related conduct that is inconsistent with just and equitable principles of trade. Wiley further argues that FINRA's sanctions are a punishment for lawful behavior and that FINRA did not establish that a bar would deter future misconduct or promote the integrity of the securities industry. We agree with FINRA that Wiley's conversion of customer insurance premiums reveals a troubling disregard for one of the fundamental responsibilities of securities professionals—handling customer funds. We conclude that barring Wiley from the securities industry is neither excessive nor oppressive and is necessary to protect investors and deter him and others from engaging in similar wrongdoing.[21]

An appropriate order will issue.[22]

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

Brent J. Fields
Secretary

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[20] Guidelines, at 6 (Principal Consideration No. 4); *see, e.g.*, *Eliezer Gurfel*, Exchange Act Release No. 41229, 1999 WL 172666, at *4 (March 30, 1999) (sustaining bar for conversion and noting that the "NASD was unimpressed by Gurfel's repayment of funds to IMMG, since Gurfel gave back the money only after he was caught, and there was no evidence suggesting Gurfel otherwise would h[a]ve repaid IMMG"), *petition denied*, 205 F.3d 400 (D.C. Cir. 2000).

[21] Wiley does not challenge FINRA's order that he pay costs totaling $1,568.35, which we also sustain.

[22] 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. Because the issues have been thoroughly briefed and can be adequately determined on the basis of the record filed by the parties, Applicant’s request for oral argument is denied. Rule of Practice 451, 17 C.F.R. § 201.451.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 76558 / December 4, 2015

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In the Matter of the Application of

KEILEN DIMONE WILEY

For Review of Disciplinary Action Taken by

FINRA

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 Keilen Dimone Wiley, and the assessment of costs imposed, is sustained.

By the Commission.

Brent J. Fields
Secretary