

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

V.

**AUSTIN WAYNE MORTON
(CRD No. 5538108),**

RESPONDENT.

**DISCIPLINARY PROCEEDING
No. 2016052347901**

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. In September and October 2016, Austin Wayne Morton violated FINRA Rule 2010 by converting a total of \$36,000 from an 82-year-old former customer with dementia (Customer A).
2. Morton first took \$20,000 in cash from Customer A in September 2016, shortly after the customer, accompanied by Morton, had withdrawn the cash from his bank account.
3. Then, in October 2016, Customer A agreed to loan Morton \$6,000 for medical expenses that were never incurred. But in accepting the loan, Morton took a signed but otherwise blank check from Customer A and made the check out for \$22,000 instead of the agreed-upon \$6,000, thus converting \$16,000 not authorized by Customer A.
4. In addition, Morton violated FINRA Rules 3270 and 2010 by engaging in an undisclosed outside business activity. Specifically, without providing his firm with prior written

notice, he accepted \$2,000 in cash from Customer A as compensation for assisting the customer with locating and surrendering an annuity he held at another firm.

RESPONDENT AND JURISDICTION

5. Morton was associated as a General Securities Representative with Edward D. Jones & Co. L.P. from October 2011 until the firm discharged him on November 18, 2016. On December 7, 2016, Edward Jones filed a Form U5 terminating Morton's registrations due to Morton's taking of the above-referenced \$22,000 check from Customer A. Morton has not been associated with another FINRA member firm since his termination from Edward Jones.

6. Although Respondent is no longer registered or associated with a FINRA member, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years after the effective date of termination of Respondent's registration with Edward Jones, namely, December 7, 2016 and (2) the Complaint charges him with misconduct committed while he was registered with a FINRA member.

FACTS

MORTON'S FINANCIAL DISTRESS AND GAMBLING EXPENSES

7. Morton began working as a Financial Advisor with Edward Jones in 2011. Morton primarily worked out of the Sallisaw, Oklahoma office in eastern Oklahoma. In November 2016 Morton's book of business contained about 500 households with a total of around \$35 million in assets.

8. From January to November 2016, Morton's compensation from Edward Jones was approximately \$107,000 in commissions and fees. Despite the six-figure compensation he

earned from Edward Jones, Morton experienced financial distress in 2015 and 2016. Of the ten months between January and October 2016, Morton maintained negative bank account balances for seven of them. He incurred more than \$2,240 in overdraft fees and non-sufficient-fund fees in 2015, and from January 2016 to October 2016, he paid \$1,036 in such fees. In 2015 and 2016 Morton also had two outstanding tax warrants from the State of Oklahoma totaling more than \$5,000.

9. Morton gambled extensively—principally online and on-track horse race betting. Morton's gambling losses and expenses exceeded his income from Edward Jones. For example, in 2016 Morton incurred close to \$130,000 in losses from Online Site A, the primary online horse racing wagering facility with which he placed bets at the time.

10. Morton also made 380 separate deposits totaling approximately \$157,000 into his Online Site A account during 2016. In September 2016 alone, the month in which he committed his first act of conversion, Morton made 38 separate deposits into his Online Site A account totaling more than \$17,300. Twenty-six of those deposits – totaling \$12,220 – were made after he converted funds from Customer A on September 13, 2016.

CUSTOMER A'S MENTAL CONDITION

11. Customer A, now 83 years old, is a retired rancher and businessman. When he opened his account with Edward Jones in December 2014 with Morton as his broker, his net worth was \$750,000, his investment objectives were income and growth, and his risk tolerance was moderate.

12. In December 2012, Customer A was diagnosed with dementia by two doctors and had been taking medication for his memory deficits. From the time of his diagnosis in December 2012 until approximately July 2016, Customer A was apparently able to function relatively well

despite his dementia with the support of his second wife. In or about July 2016, Customer A divorced his second wife, and thereafter his dementia worsened and it became increasingly difficult for him to function independently.

13. On September 2, 2016, Customer A's daughter told Morton's branch office administrator that Customer A was having memory problems for which he was taking medication. The branch office administrator then entered a note to this effect in Customer A's electronic file on Edward Jones's customer relationship system.

MORTON'S RELATIONSHIP WITH CUSTOMER A

14. Morton's grandfather and Customer A were friends, and Morton has known Customer A since childhood. From late 2014 to October 2016, Morton visited with Customer A, and they had meals together on a regular basis.

15. In December 2014 Customer A, then age 81, opened an IRA account with Morton at Edward Jones. At its inception, the account held cash and shares in one stock with a total account value of around \$21,000. Between December 2014 and September 2016, when the account was closed, Customer A bought a small number of additional individual stocks and continued to hold some cash, but no additional money was added to the account. When the account was closed in September 2016, it was valued at approximately \$22,350.

16. Customer A instructed Morton to close his Edward Jones IRA account on September 13, 2016. The funds were then distributed to Customer A's bank account at Bank A on September 16, 2016 and the IRA account was closed.

CUSTOMER A'S ANNUITY HELD OUTSIDE OF EDWARD JONES

17. When Customer A opened his IRA account at Edward Jones, he told Morton that he held an annuity at another firm valued at around \$200,000, but that he could not recall where the annuity was held. In 2015 and early 2016, Morton assisted Customer A in locating the annuity.

18. In February 2016, with Morton's continued assistance, Customer A surrendered his annuity. Customer A incurred around \$21,000 in surrender fees, leaving proceeds of around \$182,000. Despite Morton's work helping locate the annuity, the proceeds were not invested with Morton at Edward Jones. Instead, Customer A and his daughter used the proceeds to purchase bank CDs in Customer A's name at Bank A.

19. On multiple occasions, Customer A and his daughter offered to compensate Morton for the time he had spent helping Customer A locate his annuity. Although Morton initially declined their offer, he eventually told them that his time locating the annuity was worth \$2,000. Customer A paid Morton this amount on September 13, 2016.

MORTON'S SEPTEMBER 2016 CONVERSION OF FUNDS

20. On September 6, 2016, Morton met with Customer A to discuss the future of Customer A's investment plans and IRA account at Edward Jones. After this meeting, Morton concluded that Customer A was not going to increase the amount invested in his Edward Jones IRA and was not going to invest with Edward Jones the proceeds of the annuity that Morton had helped him locate and surrender earlier in 2016.

21. Morton was disappointed that despite the time he devoted to Customer A, he would not be receiving additional business from him.

22. On September 13, 2016, Customer A and Morton met at Morton's office. As noted above, Customer A instructed Morton to liquidate his holdings and close his Edward Jones IRA account. After the transactions had cleared, the proceeds, approximately \$22,350, were wired to Customer A's bank account at Bank A.

23. Also on September 13, 2016, after placing the instructions to close Customer A's IRA account, Morton drove Customer A to Bank A, where Customer A made a \$22,000 cash withdrawal. Customer A received the cash in a white plastic bag, which was placed in the glove compartment of Morton's vehicle while Morton and Customer A then went to lunch together.

24. After lunch, Morton drove Customer A back to his office (where Customer A's vehicle was still parked), and Customer A departed Morton's company without the \$22,000 he had withdrawn from Bank A.

25. Morton kept all of the \$22,000 in cash that Customer A had withdrawn and used those funds for his own benefit.

26. Customer A intended for Morton to receive \$2,000 as a fee for his help with locating and surrendering his annuity, but Customer A did not authorize or intend for Morton to receive the remaining \$20,000 in cash that had been withdrawn from his bank account.

27. By taking all of the cash that Customer A had withdrawn from Bank A and using it for his own benefit, Morton converted \$20,000 of Customer A's funds.

28. Morton did not provide prior written notice to Edward Jones that he had accepted \$2,000 from Customer A as compensation for helping Customer A locate and surrender his variable annuity.

29. In the days following September 13, 2016, there were four cash deposits in Morton's bank account totaling close to \$14,000 in varying amounts ranging from \$800 to \$6,200.

MORTON'S OCTOBER 2016 CONVERSION OF FUNDS

30. On October 9, 2016, Morton visited Customer A at Customer A's home. During the visit, Customer agreed to loan Morton \$6,000 for one year at 6% interest in connection with certain of Morton's anticipated medical costs. The loan was not documented on paper.

31. Customer A gave Morton a signed but otherwise blank check drawn from his account at Bank A for the loan. Morton then completed the rest of the information on the check, including making it out in the amount of \$22,000—an amount \$16,000 higher than what Customer A had agreed to lend him.

32. On October 10, 2016, Morton cashed Customer A's check at Bank A and thereafter used the proceeds for his own benefit.

33. In October 2016, Morton made nine cash deposits totaling \$16,200 (in varying amounts from \$200 to \$7,500). Morton did not use any of the proceeds from Customer A's check to pay for medical costs.

34. Morton has not repaid any portion of the funds to Customer A.

35. By completing and cashing a signed blank check from Customer A in the amount of \$22,000 when Customer A had agreed to loan him only \$6,000, Morton converted \$16,000 of Customer A's funds.

FIRST CAUSE OF ACTION

CONVERSION

(FINRA RULE 2010)

36. The Department realleges and incorporates by reference paragraphs 1 through 35 above.

37. As alleged above, in September 2016, Morton took \$20,000 in cash from Customer A without authorization and converted it for his own personal benefit.

38. As alleged above, in October 2016, Morton filled out a blank, yet signed check from Customer A in an amount \$16,000 more than was authorized, and thus converted that \$16,000 for his own personal benefit after he cashed the check.

39. FINRA Rule 2010 requires members and associated persons to “observe high standards of commercial honor and just and equitable principles of trade.” Conversion is conduct inconsistent with high standards of commercial honor and just and equitable principles of trade.

40. By converting a total of \$36,000 of Customer A’s funds, Morton violated FINRA Rule 2010.

SECOND CAUSE OF ACTION

FAILURE TO DISCLOSE OUTSIDE BUSINESS ACTIVITY

(FINRA RULES 3270 AND 2010)

41. The Department realleges and incorporates by reference paragraphs 1 through 40 above.

42. In September 2016 Morton accepted \$2,000 from Customer A as compensation for his assistance in locating and surrendering an annuity Customer A held at another firm.

Morton did not provide prior written notice to Edward Jones of this outside business activity prior to assisting Customer A or accepting the \$2,000 as payment for that assistance.

43. FINRA Rule 3270 provides that “[n]o registered person may be an employee, independent contractor, sole proprietor, officer, director or partner of another person, or be compensated, or have the reasonable expectation of compensation, from any other person as a result of any business activity outside the scope of the relationship with his or her member firm, unless he or she has provided prior written notice to the member, in such form as specified by the member.”

44. By accepting \$2,000 in compensation for assisting Customer A with locating and surrendering an annuity held at a firm outside of Edward Jones, Morton engaged in an undisclosed outside business activity in violation of FINRA Rule 3270. By virtue of that violation, Morton also violated FINRA Rule 2010.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed, including that Respondent be required to disgorge fully any and all ill-gotten gains; and,
- C. order that Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date: February 24, 2017



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