

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

Department of Enforcement,

Complainant,

v.

Martin David Batstone  
CRD No. 2171601,

Respondent.

Disciplinary Proceeding  
No. 2019061205201

**COMPLAINT**

The Department of Enforcement alleges:

**SUMMARY**

1. Between November 2015 and August 2016, while associated with Independent Financial Group, LLC (“IFG” or the “Firm”), Respondent Martin David Batstone solicited two Firm customers to invest a total of \$75,000 in a small limited liability company purporting to provide brand management and product placement services for athletes and entertainers (the “Company”). In soliciting the investments, Batstone informed the customers that their funds would be used by the Company for general operating expenses, including marketing and distribution of an energy drink. Contrary to these representations, between November 2015 and January 2017, Batstone transferred \$11,100 of the customers’ funds to his personal bank accounts and used the funds for his personal expenditures. As a result, Batstone willfully violated Section 10(b) of the Securities Exchange Act, Rule 10b-5(a)–(c) thereunder, and FINRA Rules 2020 and 2010.

2. By using \$11,100 of the customers' funds for his personal expenditures rather than for investment purposes, as intended by the customers, Batstone converted the customers' funds. As a result, Batstone violated FINRA Rules 2150 and 2010.

3. Batstone never provided written notice, or otherwise informed the Firm, of his participation in soliciting investments in the Company, which constituted private securities transactions. As a result, Batstone violated FINRA Rules 3280 and 2010.

### **RESPONDENT AND JURISDICTION**

4. Batstone was first registered with a FINRA member from November 1991 to February 1992. Between August 1992 and January 2009, Batstone was registered with three other FINRA members.

5. From January 2009 to April 2017, Batstone was registered with IFG as a General Securities Representative.

6. After leaving IFG, between April 2017 and August 2018, Batstone was registered with another FINRA member. Batstone was then registered with a different FINRA member between November 2018 and May 2019.

7. Batstone is not currently registered with a FINRA member.

8. Although Batstone 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 Batstone's registration with a FINRA member, namely, May 17, 2019; and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member.

## FACTS

9. In approximately 2014, Batstone was introduced to the Company through an acquaintance, AB, a former rapper and disc jockey who owned and promoted the Company.

10. Between approximately 2014 and 2019, Batstone assisted the Company in marketing, capital raising, and managing at least two of the Company's financial accounts.

11. During the period of Batstone's involvement, the Company's only client was CD, a professional skateboarder and television personality, and its only business with CD involved the branding, distribution and product placement of an energy drink promoted by CD.

12. Between November 2015 and August 2016, Batstone solicited investments in the Company to potential investors, including Firm customer EF and Firm customer GH, who was a senior citizen.

13. In soliciting their investments, Batstone represented to EF and GH that their investment funds would be used by the Company for general operating expenses, including the marketing and distribution of the energy drink. He also represented that they could expect returns on their investments in five to seven years.

14. Based on Batstone's recommendation, EF invested \$25,000 and GH invested \$50,000 in the Company.

15. Specifically, on November 25, 2015, EF invested \$25,000 in the Company by providing a cashier's check to Batstone made payable to the Company.

16. On November 25, 2015, Batstone deposited EF's funds into a Company checking account that Batstone controlled. The account had been opened on or about November 9, 2015 and had a \$450 balance at the time of the deposit.

17. Between November 27, 2015 and February 24, 2016, Batstone transferred a total of \$23,000 of EF's funds from the Company account to his personal account, \$5,000 of which he retained and used for personal expenditures without EF's knowledge or authorization.

18. On August 12, 2016, GH invested \$50,000 in the Company by providing a personal check to Batstone made payable to the Company.

19. On September 2, 2016, Batstone deposited the \$50,000 that he received from GH into another Company checking account that he controlled. The account had been opened earlier the same day and had a zero balance at the time of the deposit.

20. On December 19, 2016 and January 23, 2017, Batstone transferred a total of \$6,100 of GH's funds from the Company account to his personal account and then used the funds for personal expenditures without GH's knowledge or authorization.

21. At the time of their investments in the Company, Batstone failed to provide EF or GH with any documentation memorializing the investment or its terms. Instead, EF and GH relied exclusively on the verbal representations made to them by Batstone in making their investments.

22. Batstone never disclosed at any time to EF or GH that any portion of their investment funds would be used for his personal expenditures.

23. As of September 2017, the Company was no longer in good standing in the state in which it was organized.

24. As of the date of this Complaint, EF and GH have received no return on their investment, or return of their principal investments in the Company.

25. EF's and GH's investments in the Company were securities because they invested money in the Company expecting to capitalize and receive profits from the business operations

of the Company and relied upon the efforts of Batstone and AB for the success of their investments.

26. Batstone's activities in soliciting investments in the Company were outside the regular course or scope of his employment with IFG. Batstone never provided written notice, or otherwise informed the Firm, of his participation in soliciting investments in the Company.

### **FIRST CAUSE OF ACTION**

#### **Fraud**

#### **(Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder and FINRA Rules 2020 and 2010)**

27. The Department of Enforcement realleges and incorporates by reference paragraphs 1 – 26, above.

28. Section 10(b) of the Securities Exchange Act of 1934 prohibits "any person, directly or indirectly, by the use of any means of instrumentality of interstate commerce or of the mails, or any facility of any national security exchange ... to use or employ in connection with the purchase or sale of any security ... any manipulative or deceptive device of contrivance." Rule 10b-5 thereunder makes it unlawful for any person, directly or indirectly:

(a) To employ any device, scheme, or artifice to defraud,

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

29. FINRA Rule 2020 provides that “[n]o member shall effect any transaction in or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance.”

30. 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.”

31. Between November 2015 and August 2016, customers EF and GH invested a total of \$75,000 in the Company based upon Batstone’s recommendations.

32. At the time of their investments, Batstone represented to EF and GH that their funds would be used by the Company for general operating expenses, including the marketing and distribution of the energy drink. Contrary to these representations, between November 2015 and January 2017, Batstone transferred \$11,100 of the customers’ funds to his personal bank accounts and used the funds for his personal expenditures.

33. Batstone never disclosed to EF or GH that a portion of their investment funds would be used for his own personal expenditures.

34. Batstone’s use of investment funds for personal expenditures, rather than for the Company’s business purposes, was material to a reasonable investor’s decision to invest in the Company.

35. Batstone was aware, or reckless in not knowing, in connection with EF’s and GH’s investments in the Company that he would use a portion of the investors’ funds for personal expenditures.

36. EF’s and GH’s investments in the Company were securities.

37. Batstone used means and instrumentalities of interstate commerce in obtaining EF's and GH's investment funds, depositing those funds into Company accounts and transferring portions of those funds to his personal accounts.

38. As a result of the foregoing conduct, Batstone willfully violated Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5(a)-(c) thereunder, and violated FINRA Rules 2020 and 2010.

**SECOND CAUSE OF ACTION**  
**Conversion**  
**(FINRA Rules 2150 and 2010)**

39. The Department of Enforcement realleges and incorporates by reference paragraphs 1 – 38, above.

40. FINRA Rule 2150(a) provides that “[n]o member or person associated with a member shall make improper use of a customer’s securities or funds.”

41. 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.” Conversion of funds is inconsistent with high standards of commercial honor and just and equitable principles of trade.

42. In November 2015 and August 2016, customers EF and GH invested a total of \$75,000 in the Company based upon Batstone’s recommendations.

43. At the time their investments, EF and GH intended that their funds be used by the Company for general operating expenses, including marketing and distribution of the energy drink. Instead, between November 2015 and January 2017, Batstone transferred a total of \$11,100 of the customers’ funds to his personal bank accounts and used the funds for his personal expenditures.

44. EF and GH did not authorize Batstone's use of a portion of their investment funds for personal expenditures and Batstone has not returned the \$11,100 transferred to his personal bank accounts.

45. By using \$11,100 of the customers' funds for his personal expenditures rather than for investment purposes, as intended by the customers, Batstone converted and made improper use of the customers' funds.

46. As a result of the foregoing conduct, Batstone violated FINRA Rules 2150(a) and 2010.

**THIRD CAUSE OF ACTION  
Private Securities Transactions  
(FINRA Rules 3280 and 2010)**

47. The Department of Enforcement realleges and incorporates by reference paragraphs 1 – 46, above.

48. FINRA Rule 3280(b) provides that, “[p]rior to participating in any private securities transaction, an associated person shall provide written notice to the member with which he is associated describing in detail the proposed transaction and the person's proposed role therein and stating whether he has received or may receive selling compensation.”

49. 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.”

50. Between November 2015 and August 2016, Batstone participated in private securities transactions by soliciting EF and GH to invest a total of \$75,000 in the Company.

51. Batstone never provided written notice, or otherwise informed the Firm, of his participation in soliciting investments in the Company.

52. As a result of the foregoing conduct, Batstone violated FINRA Rules 3280 and 2010.

**RELIEF REQUESTED**

WHEREFORE, the Department of Enforcement respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Batstone 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 Batstone be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest;
- C. order that Batstone bears such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330; and
- D. make specific findings that Batstone willfully violated Section 10(b) and Rule 10b-5(a)-(c) thereunder of the Exchange Act.

**FINRA DEPARTMENT OF ENFORCEMENT**

Date: October 1, 2019

  
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