

## NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ELIAS E. ASHOOH  
(CRD No. 867625),

Respondent.

Disciplinary Proceeding  
No. 2005000923801

### DEFAULT DECISION

Hearing Officer – SW

Date: June 13, 2006

**Respondent is barred from associating with any member firm in any capacity for: (i) violating NASD Conduct Rules 2370 and 2110 by borrowing customer funds; and (ii) violating NASD Conduct Rule 2110 by attempting to borrow customer funds, in violation of his employer's express prohibition against representatives borrowing money or securities from customers. In addition to the bars, Respondent is directed to reimburse his customer, with interest.**

### Appearances

Paul D. Taberner, Esq., Regional Counsel, Boston, MA, and Rory C. Flynn, Esq., Of Counsel, Washington, DC, for the Department of Enforcement.

No appearance by or for Respondent Elias E. Ashooh.

### DECISION

#### I. Procedural History

On December 19, 2005, the Department of Enforcement ("Enforcement") filed the attached two-count Complaint against Respondent Elias E. Ashooh ("Respondent"). Specifically, count one of the Complaint alleges that Respondent borrowed \$13,900 from customer JB in October 2004, despite his employer's written supervisory procedures prohibiting such conduct, in violation of NASD Conduct Rules 2370 and 2110. Count two of the Complaint alleges that Respondent attempted to borrow an additional \$10,750 from customer JB in February 2005, in violation of NASD Conduct Rule 2110.

On April 24, 2006, Enforcement filed a Motion for Entry of Default Decision (“Motion”), supported by the Declaration of Paul D. Taberner, Esq., Regional Counsel in NASD’s Boston, MA office, and by five exhibits.<sup>1</sup> For the reasons set forth below, Enforcement’s Motion is granted.

## **II. Respondent’s Default**

On December 14, 2005, Enforcement served Respondent with a copy of the Complaint and Notice of Complaint, via certified and first class mail, at his last known address (“Canal address”).<sup>2</sup> (DECL at ¶ 17; CX-2). Respondent did not file an Answer. (DECL at ¶ 19). On January 13, 2006, Enforcement served Respondent with copies of the Complaint and Second Notice of Complaint, via certified and first class mail, at his Canal address and a second address obtained from an Equifax report (the “Equifax address”).<sup>3</sup> (DECL at ¶ 20; CX-3). Again, Respondent failed to file an Answer or otherwise respond to the Complaint. (DECL at ¶ 22).

Subsequent to filing the Second Notice of Complaint, the NASD staff realized that it had not served the Complaint on Respondent at his residential address as reflected in the Central Registration Depository (“CRD address”).<sup>4</sup> Accordingly, on February 24, 2006, Enforcement served the Complaint and Third Notice of Complaint on Respondent at his CRD address, the Canal address, and the Equifax address, via certified and first class mail. (DECL at ¶ 23). On March 1, 2006, NASD received a return receipt signed by “Elias Ashooh” evidencing delivery of the Complaint and Third Notice of Complaint to Respondent at his CRD address. (DECL at ¶ 24;

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<sup>1</sup> Hereinafter, the statements in the Motion for Entry of Default Decision will be designated as “Motion, p.,” the statements in the Taberner Declaration will be designated as “DECL at ¶,” and Enforcement’s exhibits will be designated as “CX-” with the appropriate page or paragraph number.

<sup>2</sup> Respondent’s last known address was [REDACTED] (DECL at ¶ 17).

<sup>3</sup> The NASD staff obtained the address of [REDACTED] for Respondent from an Equifax report. (DECL at ¶ 20).

<sup>4</sup> Respondent’s CRD address is [REDACTED] (DECL at ¶ 23; CX-1, p. 1).

CX-4). Respondent, however, did not file an Answer in response to the Third Notice of Complaint. (DECL at ¶ 25).

Accordingly, on March 27, 2006, Enforcement served the Complaint and Fourth Notice of Complaint on Respondent, via certified mail, at his CRD address, the Canal address, and the Equifax address. Respondent did not file an Answer in response to the Fourth Notice of Complaint. (DECL at ¶ 28).

Based on the signed receipt for the Complaint and Third Notice of Complaint, the Hearing Officer finds that Respondent received actual notice of this disciplinary proceeding. In any event, Enforcement properly served Respondent in compliance with Procedural Rule 9134(b)(1) by sending the Complaint via first class and certified mail to Respondent's CRD address.<sup>5</sup> (DECL at ¶¶ 23-26; CX-4; CX-5). Thus, Respondent received valid notice of this proceeding and defaulted by failing to answer the Complaint. Accordingly, pursuant to Procedural Rules 9215(f) and 9269(a)(2), the Hearing Officer finds Respondent in default and deems the allegations in the Complaint admitted.<sup>6</sup>

### **III. Findings of Fact and Conclusions of Law**

#### **A. Jurisdiction**

Respondent became registered with an NASD member firm in April 1985. (CX-1, p. 2). Respondent was registered with NASD member firm Linsco/Private Ledger Corp. ("Linsco" or the "Firm") as a general securities representative from January 2, 1991 to April 6, 2005, and as a general securities principal from February 3, 1992 to April 6, 2005. (*Id.*). Respondent has not been registered since April 6, 2005. (*Id.*).

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<sup>5</sup> *Dep't of Enforcement v. Reynolds Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at \*5 (N.A.C. Dec. 9, 2003) (NASD Procedural Rule 9134(b)(1) allows for constructive notice by mailing a complaint to the respondent's most recent CRD address) quoting *Lubeck v. SEC*, 1998 U.S. App. LEXIS 18849, at \*20 (9th Cir. Aug. 12, 1998).

<sup>6</sup> The following Findings of Fact and Conclusions of Law incorporate the allegations in the attached Complaint, pursuant to Rule 9215(f) and NASD Notice to Members 99-77.

Pursuant to Article V, Section 4 of the NASD's By-Laws, a person whose association with an NASD member firm has been terminated, and who is no longer associated with any member firm, remains subject to NASD jurisdiction for conduct that took place while he was associated with a member firm if the Complaint is filed within two years after the effective date of termination of his last registration.

The Complaint in this case is based on Respondent's conduct while he was associated with Linsco, and was filed less than two years after the effective date of termination of Respondent's registration. Therefore, NASD has jurisdiction over this proceeding.

**B. Respondent Violated Conduct Rules 2110 and 2370**

Count one of the Complaint alleges that Respondent, while associated with Linsco, solicited and borrowed \$13,900 from customer JB, in violation of NASD Conduct Rules 2370 and 2110. (Complaint at ¶¶ 2, 6-7). Specifically, despite being aware of Linsco's prohibition against loans by customers to its representatives, on October 12, 2004, Respondent solicited a loan from customer JB to pay the rent on his apartment and office under the same terms as an earlier April 2003 loan that JB had made to Respondent.<sup>7</sup> (Complaint at ¶¶ 3-4, 6-7). On October 14, 2004, Respondent deposited into his business checking account the \$13,900 borrowed from customer JB. (Motion, p. 3). Further, on a January 2005 questionnaire submitted to Linsco's compliance department, Respondent falsely certified that he had no outstanding loans or other financial dealings with customers. (Complaint at ¶ 7).

Count two of the Complaint alleges that in February 2005, Respondent solicited another loan from customer JB in the amount of \$10,750. (Complaint at ¶ 10). On February 10, 2005, customer JB sent a letter to Linsco requesting the firm to transfer \$10,750 from his Linsco

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<sup>7</sup> In April 2003, prior to the effective date of NASD Conduct Rule 2370, Respondent borrowed \$26,650 from customer JB and agreed to repay the loan with 7% annual interest. (Complaint at ¶ 3; Motion, pp. 2-3).

account to Respondent's bank account. (Id.). The Linsco margin department did not process customer JB's request, but instead notified the Firm's compliance department of the attempted transfer of money between customer JB and Respondent. (Complaint at ¶ 11).

Enforcement submitted additional information with its Motion that, in on-the-record testimony, Respondent admitted that he failed to inform Linsco of the October 2004 loan or the February 2005 attempted loan from customer JB. (Motion, p. 4). Respondent also admitted that he knew that such conduct was specifically prohibited by Linsco's written supervisory procedures. (Id.). Further, Respondent admitted that had Linsco not refused to process customer JB's wire transfer request in February 2005, he would have borrowed the additional \$10,750 from customer JB. (Id.). Finally, Respondent has failed to repay the \$13,900 October 2004 loan. (Motion, pp. 4-5).

NASD Conduct Rule 2370, which was effective November 10, 2003, provides, in part, that no person associated with a member in a registered capacity may borrow money from or lend money to a customer of such person unless the member has written procedures authorizing such an arrangement, and the arrangement meets certain conditions.<sup>8</sup> Linsco had written procedures in place that prohibited all representatives from borrowing money or securities from a customer. JB was a particular customer of Respondent. (Complaint at ¶ 2).

The allegations in the first cause of the Complaint and the evidence submitted by Enforcement are sufficient to establish that Respondent borrowed \$13,900 from customer JB in

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<sup>8</sup> As originally adopted, NASD Conduct Rule 2370 provided that no associated person may borrow money from a customer unless (1) the member firm has written procedures allowing for such a loan, (2) the loan falls within proscribed parameters, and (3) the member firm pre-approves the loan in writing. NASD Notice to Members, 03-62 (Oct. 2003). Effective February 18, 2004, prior to the transactions at issue in this proceeding, Rule 2370 was amended: (i) to limit the scope of Rule 2370 to those lending arrangements between registered persons and their particular customers, rather than to any customers of the firm; and (ii) to allow a member to adopt written procedures that, under certain circumstances, do not require registered persons to give notice of, or the member to pre-approve in writing, two of the five types of permissible lending arrangements. NASD Notice to Members, 04-14 (Mar. 2004).

October 2004, in violation of Linsco's written procedures. Accordingly, the Hearing Officer finds that Respondent violated NASD Conduct Rule 2370. It is well settled that any conduct that violates an NASD Conduct Rule is viewed as a violation of NASD Conduct Rule 2110.<sup>9</sup>

The allegations in the second cause of the Complaint and the evidence submitted by Enforcement are sufficient to establish that Respondent attempted to borrow \$10,750 from customer JB in February 2005, in violation of Linsco's written procedures.

The NAC has previously stated that NASD Conduct Rule 2110 "is not limited to rules of legal conduct but rather . . . it states a broad ethical principle."<sup>10</sup> "[O]ne may find a violation of the ethical requirements where no legally cognizable wrong occurred [and that] NASD has authority to impose sanctions for violations of 'moral standards' even if there was no 'unlawful' conduct."<sup>11</sup>

The Hearing Officer finds that Respondent's attempt to borrow \$10,750 from his customer despite his Firm's express prohibition against such borrowing was plainly improper and unethical. Accordingly, the Hearing Officer finds that Respondent violated NASD Conduct 2110.

#### **IV. Sanctions**

The NASD Sanction Guidelines do not list a specific sanction for violating NASD Conduct Rule 2370. Enforcement recommended that Respondent be barred and directed to repay \$13,900 to customer JB, plus interest. Enforcement argued that, in view of his Firm's express prohibition, Respondent's conduct in borrowing customer funds and attempting to borrow customer funds was egregious

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<sup>9</sup> Dep't of Enforcement v. Shvarts, No. CAF980029, 2000 NASD Discip. LEXIS 6, at \*12-13 (NAC June 2, 2000).

<sup>10</sup> Id.

<sup>11</sup> Id. (citing Benjamin Werner, 44 S.E.C. 622, 623 (1971)).

The Hearing Officer agrees that Respondent's conduct was egregious because (i) Respondent's actions were intentional, (ii) despite Linsco's express prohibition against such conduct, Respondent solicited two separate loan transactions from customer JB evidencing a pattern of misconduct, (iii) customer JB was harmed because Respondent failed to repay \$13,900 to customer JB, and (iv) Respondent profited by his misconduct.<sup>12</sup> Accordingly, the Hearing Officer finds that Respondent's conduct in borrowing customer funds and attempting to borrow customer funds warrants a bar.

Respondent is barred from associating with any member firm in any capacity, and ordered to pay \$13,900 to customer JB plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2), from October 14, 2004, the date of the violative conduct, until paid.

#### **V. Order**

Respondent Elias E. Ashooh is barred from associating with any NASD member firm in any capacity for: (i) violating NASD Conduct Rules 2370 and 2110, by borrowing customer funds in violation of his Firm's express prohibition against representatives borrowing securities or money from customers; and (ii) violating NASD Conduct Rule 2110, by attempting to borrow funds from customer JB in violation of his Firm's prohibition.

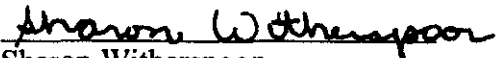
In addition to the bars, Respondent is directed to reimburse customer JB \$13,900, plus interest from October 14, 2004 until paid. The interest to be charged is at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2).

These sanctions shall become effective on a date set by NASD, but not before the expiration of 30 days after the date this Default Decision becomes the final disciplinary action of NASD; provided, however, that the bars shall become effective immediately upon this Default

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<sup>12</sup> See Terry Wayne White, 50 S.E.C. 211 (1990).

Decision becoming the final disciplinary action of NASD.

  
Sharon Witherspoon  
Hearing Officer

Dated: Washington, DC  
June 13, 2006

Copies to:  
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Paul D. Taberner, Esq. (via electronic and first class mail)  
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ORIGINAL

**NASD  
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

Elias E. Ashooh  
(CRD No. 867625)

Respondent.

Disciplinary Proceeding  
No. 2005000923801

Hearing Officer -

Date: December 14, 2005

**COMPLAINT**

Upon information and belief, Complainant alleges as follows:

1. Respondent Elias E. Ashooh ("Ashooh") first became registered with the NASD in 1979 as a general securities representative. He was registered with Linsco / Private Ledger Corp. ("LPL") (BD No. 6413) in that capacity from approximately January 2, 1991 to approximately March 15, 2005. He has not been registered with any member since March 15, 2005, when LPL terminated Ashooh for the misconduct detailed in Cause Two of this Complaint. NASD retains jurisdiction over Ashooh for purposes of this Complaint pursuant to Article V, Section 4 of NASD's By-Laws in that the misconduct alleged in Causes One and Two occurred while Ashooh was associated with member firm LPL.

## **BACKGROUND**

2. JB and his wife AB first opened an account with Ashooh in 1979, prior to Ashooh becoming associated with LPL. When Ashooh transferred firms, JB and AB moved their account with him, until they moved their account with Ashooh over to LPL.
3. On or about April 4, 2003, Ashooh borrowed \$26,650 from customer JB in exchange for a promissory note signed by Ashooh. Ashooh borrowed the funds from customer JB in order to pay outstanding rent on his office.
4. At the time he borrowed these funds from customer JB, Ashooh was aware that LPL's written supervisory procedures specifically prohibited all representatives from borrowing money of securities from a customer.

## **CAUSE ONE OF COMPLAINT**

### **Borrowing Customer Funds Violation of NASD Conduct Rules 2370 and 2110**

5. The allegations in Paragraphs 1 through 4 above are re-alleged and incorporated herein by reference.
6. On or about October 12, 2004, Ashooh borrowed \$13,900 from customer JB. Ashooh did not provide customer JB with a separate note for this loan, but instead agreed with JB to repay the funds on the same terms as the April 2003 loan. Ashooh told JB that he needed to borrow these funds in order to pay outstanding rent on his apartment and his office.
7. Ashooh was aware in October 2004 that LPL's written supervisory procedures specifically prohibited all representatives of LPL from borrowing money or securities from a customer. Moreover, Ashooh failed to inform LPL of the loan or otherwise obtain its permission. Despite his awareness of the firm's prohibition, Ashooh nonetheless borrowed funds from customer JB. Further, in January 2005, Ashooh submitted a questionnaire to LPL's

Compliance Department in which he falsely certified that he did not have any outstanding loans or other financial dealings with customers.

8. By doing so, Ashooh violated NASD Conduct Rules 2370 and 2110.

## **CAUSE TWO OF COMPLAINT**

### **Attempting to Borrow Customer Funds Violation of NASD Conduct Rule 2110**

9. The allegations in Paragraphs 1 through 8 above are re-alleged and incorporated herein by reference.

10. In or about early February 2005, Ashooh again solicited customer JB for a loan in order to pay for outstanding rent on his apartment and office. Customer JB agreed, and, on or about February 10, 2005, he JB sent a letter to LPL requesting the firm to transfer \$10,750 from his LPL account to Ashooh's bank account.

11. The LPL Margin Department did not process customer JB's request, but instead notified the firm's Compliance Department of the attempted transfer of money between customer JB's LPL account and Ashooh's bank account.

12. Ashooh was aware in February 2005 that LPL's written supervisory procedures specifically prohibited all representatives of LPL from borrowing money or securities from a customer. Further, in January 2005, Ashooh submitted a questionnaire to LPL's Compliance Department in which he falsely certified that he did not have any outstanding loans or other financial dealings with customers.

13. Despite his awareness of the firm's prohibition, Ashooh nonetheless attempted to borrow funds from customer JB. Moreover, Ashooh failed to inform LPL of the requested loan or otherwise obtain its permission. But for the actions of LPL's Margin Department, Ashooh would have borrowed money from a customer in violation of NASD Conduct Rule 2370.

14. By attempting to borrow funds from a customer, Ashooh violated NASD Conduct Rule 2110.

**PRAYER FOR RELIEF**

**WHEREFORE**, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;
- B. An order imposing sanctions upon the Respondent in accordance with NASD Rule 8310;
- C. An order requiring Respondent to disgorge fully any and all ill-gotten gains, together with interest;
- D. An order imposing such costs of any proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330; and
- E. An order imposing any other fitting sanction.

Dated: December 14, 2005

NASD  
DEPARTMENT OF ENFORCEMENT



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