

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT

Complainant,

v.

TIMOTHY JOHN LANE
(CRD No. 2215044)

Respondent.

Disciplinary Proceeding
No. 20050019203-01

Hearing Officer – AWH

DEFAULT DECISION

February 16, 2007

Formerly registered representative borrowed funds from a customer without approval of his member firm, in violation of NASD Conduct Rules 2370 and 2110, and failed to respond to NASD staff requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2110. Respondent barred for both violations.

Appearances:

David Utevsky, Esq., for the Department of Enforcement.

No appearance by or for Timothy John Lane.

DECISION

Background

On September 20, 2006, the Department of Enforcement (“Enforcement”) filed the Complaint in this proceeding, alleging that Timothy John Lane borrowed funds from a customer, in violation of NASD Conduct Rules 2370 and 2110, and failed to respond to requests for information, in violation of NASD Procedural Rule 8210 and Conduct Rule 2110. Lane did not file an Answer to the Complaint, or to a Second Notice of Complaint. As a result, Enforcement filed a Motion for Entry of Default Decision on December 22, 2006, to which Lane did not respond. Accordingly, pursuant to Procedural Rules 9215(f)

and 9269, Enforcement's Motion will be granted, and the allegations in the Complaint, which is attached to this Decision, will be deemed admitted.

Findings of Fact¹

Respondent

Lane first entered the securities industry in 1992. As pertinent to the Complaint, Lane was registered through WM Financial Services, Inc. ("WMFS") as a General Securities Representative from June 8, 2004, until his termination on April 1, 2005. On June 24, 2005, WMFS filed an Amended Form U-5, disclosing a customer complaint that Lane borrowed money from the customer and had not repaid her. Lane is not currently associated with any member firm.

Borrowing Funds From a Customer

On January 16, 2005, Lane borrowed \$5,000 from YW, a customer of WMFS for whom Lane was the assigned registered representative. No interest or repayment date was specified for the loan, and the only evidence of the loan was a check that was written by YW and endorsed by Lane. Lane represented to YW that he would be able to repay her in February 2005.

YW was not a member of Lane's immediate family. She did not regularly arrange or extend credit in the ordinary course of business. WMFS did not have written procedures allowing borrowing and lending of money between its registered persons and customers of those registered persons. In fact, WMFS had written procedures that prohibited its registered employees from borrowing or otherwise obtaining any customer

¹ All findings of fact are based upon the admitted allegations in the Complaint, the Declaration of David Utevsky in Support of Motion for Entry of Default Decision, and the exhibits attached thereto.

funds for personal use or investment. Lane did not request or obtain permission from WMFS to borrow funds from YW.

On June 1, 2005, Lane gave YW five checks, each in the amount of \$1,000, drawn on a bank account that had been closed on May 19, 2005. After YW complained in writing to WMFS, on July 5, 2005, WMFS settled her complaint by paying her \$5,000. Lane did not contribute to the settlement.

Failure to Respond to Requests for Information

1. The first request.

On September 7, 2005, pursuant to Procedural Rule 8210, Enforcement sent Lane a request for information concerning the loan from YW to him. The request was sent both by first-class and certified mail to Lane's residential address listed in the Central Registration Depository ("CRD" address) and a more recent address ("the Portland address") obtained by the NASD staff. The first class mailings were not returned. The certified mail envelope sent to the CRD address was returned, indicating that the forwarding time had expired, and identifying a forwarding address for Lane in Milwaukie, Oregon ("the Milwaukie address"). The return receipt for the certified mailing to the Portland address was returned with a signature resembling Lane's signature on the five checks he gave to YW, and it bore the printed name "Tim Lane." Lane did not respond to the request for information.

On September 12, 2005, pursuant to Procedural Rule 8210, the staff sent another version of its first request for information to Lane at the Milwaukie address. The first class mailing was not returned. The certified mailing receipt was received with a

signature and printed name as appeared on the receipt for the Portland address. Lane did not respond to the request.

2. The second request

On September 22, 2005, the staff sent another request for information concerning the loan to Lane. Because the Portland address and the Milwaukie address and the zip codes were the same, the staff sent the request only to the Portland address, in addition to the CRD address. The first class mailing to the CRD address was returned, stating that the forwarding time had expired. The certified mailing to that address was refused. The first class mailing to the Portland address was not returned; the certified mailing to that address was returned unclaimed and was not able to be forwarded. Lane did not respond to the request.

3. The third request

On April 24, 2006, the staff sent another request for information concerning the loan to Lane at his CRD and Portland addresses. The first class mailings were not returned. The return receipt for the certified mailing to the CRD address bore what appeared to be the signature of "V. M. Lane." The return receipt for the certified mailing to the Portland address bore an illegible signature that did not resemble Lane's. Lane did not respond to the request.

Service of the Complaint

On September 20, 2006, Enforcement served Lane with the Complaint and Notice of Complaint by both first class and certified mail, sent to his CRD address and his Portland address. Both mailings to the CRD address were returned, marked "attempted, not known." The first class mailing to the Portland address was not returned. The

certified mailing delivery receipt to that address bore a signature that resembles that of Lane as it appeared on the checks he wrote to YW. Lane did not file an Answer.

On October 20, 2006, Enforcement served the Complaint and Second Notice of Complaint on Lane by first class and certified mail sent to the same two addresses. Both mailings sent to the CRD address were returned, marked "attempted, not known." The first class mailing to the Portland address was not returned; the receipt for the certified mailing to that address was returned, bearing an illegible signature that did not resemble Lane's. Lane did not file an Answer to the Complaint.

Discussion and Conclusions

Jurisdiction

Article V, Section 4 of the NASD By-Laws provides for a two-year period of retained jurisdiction over a registered person after the effective date of the person's termination of registration or the filing of an Amended Form U-5, filed within two years of such termination of registration, alleging conduct actionable under any applicable statute, rule, or regulation. During this period of retained jurisdiction, NASD may file a complaint based upon conduct that occurred while the individual was registered through a member firm, or based upon such person's failure to provide information requested pursuant to NASD Procedural Rule 8210, if the request was made, and the complaint is filed, during the foregoing period of retained jurisdiction.

Enforcement filed the Complaint on September 20, 2006, within two years of the filing of the termination of Lane's registration and the timely filing of an Amended Form U-5. The Complaint alleges misconduct while Lane was registered with an NASD

member firm, as well as failures to provide information during the period of retained jurisdiction. Therefore, NASD has jurisdiction over this proceeding.

Respondent's Default

Enforcement properly served the Complaint on Lane by sending it via first class and certified mail to his CRD and Portland addresses. Pursuant to NASD Procedural Rule 9134, the mailings provide constructive notice of the instant proceeding, and the signed receipt for the mailing to the Portland address demonstrates that he had actual knowledge of the proceeding. Because Lane failed to file an answer to the Complaint, Procedural Rules 9215(f) and 9269 authorize entry of a default decision against him. Accordingly, the allegations in the Complaint are deemed admitted.

Borrowing Funds From a Customer

NASD Conduct Rule 2370 provides, in pertinent part, that no person associated with a member in any registered capacity may borrow money from a customer of that person unless the member has written procedures allowing such borrowing, and the borrowing meets one of five listed conditions (none of which applied to the relationship between YW and Lane). Here, WMFS specifically prohibited registered employees from borrowing from customers for personal use or investment under any circumstances. By borrowing \$5,000 from YW, Lane violated his firm's procedures and NASD Conduct Rules 2370 and 2110.²

Failures to Provide Information

Procedural Rule 8210 authorizes NASD to require any person subject to its jurisdiction to provide information and testimony related to any matter under

² Any conduct that violates an NASD Conduct Rule is viewed as a violation of Conduct Rule 2110. *Dep't. of Enforcement v. Shvarts*, No. CAF980029, 2000 NASD Discip. LEXIS 6, at **12-13, (NAC June 2, 2000).

investigation. The Rule serves as a key element in NASD's oversight function and allows NASD to carry out its regulatory functions without subpoena power.³ When an individual fails to respond to information requests, NASD's ability to perform its regulatory responsibilities is subverted.⁴ A violation of Procedural Rule 8210 is also a violation of Conduct Rule 2110.⁵

Lane received actual notice of the first request for information and constructive notice of the second and third requests. His complete failures to comply with the three requests for information plainly constitute violations of Procedural Rule 8210 and Conduct Rule 2110.

Sanctions

Borrowing Funds From a Customer

There is no specific sanction guideline for borrowing from a customer in violation of Conduct Rule 2370. However, where, as here, Lane did not have permission from the firm to borrow from the customer and he intentionally failed to repay the borrowed funds, the misconduct has the same effect as conversion of funds. The NASD Sanction Guideline for conversion of funds provides that a bar is standard, regardless of the amount of funds converted.⁶ Here, there are no mitigating circumstances that would

³ See *Joseph G. Chiulli*, Exchange Act Release No. 42,359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for NASD effectively to conduct its investigations, and emphasizing that NASD members and associated persons must fully cooperate with requests for information); *Dep't of Enforcement v. Benz*, No. C01020014, 2003 NASD Discip. LEXIS 11, at *18 (OHO Mar. 4, 2003) ("Because NASD has no subpoena power, timely and full compliance with information requests is essential to NASD's self-regulatory function.").

⁴ *Joseph P. Hannan*, Exchange Act Release No. 40,438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998).

⁵ *Dep't of Enforcement v. Baxter*, No. C07990016, 2000 NASD Discip. LEXIS 3, at *25 (NAC Apr. 19, 2000).

⁶ SANCTION GUIDELINES p. 38.

warrant a lesser sanction. Accordingly, Lane will be barred for borrowing customer funds in violation of Conduct Rules 2370 and 2110.

Failure to Provide Information

For failure to provide information and documents in response to requests made pursuant to Rule 8210, NASD Sanction Guidelines provide that a bar is standard where, as here, the individual fails to provide any information or documents.⁷ There are no mitigating circumstances that would warrant a sanction less than a bar for his complete failure to respond to requests for information. Accordingly, Lane will be barred for failing to respond in any manner to requests for information made pursuant to Procedural Rule 8210.

Conclusion

Timothy John Lane is barred from association with any NASD member firm in any capacity for borrowing customer funds, in violation of NASD Conduct Rules 2370 and 2110, and for failing to provide information and documents in response to NASD staff requests, in violation of Procedural Rule 8210 and Conduct Rule 2110. The bars shall become effective immediately if this Decision becomes the final disciplinary action of NASD.

SO ORDERED.



David M. FitzGerald
Deputy Chief Hearing Officer⁸

⁷ SANCTION GUIDELINES p. 35.

⁸ The Deputy Chief Hearing Officer issues this Decision in the absence of the Hearing Officer, pursuant to Rule 9235(b).

Copies to:

Via First Class Mail & Overnight Courier

Timothy John Lane

Via First Class Mail & Electronic Mail

David Utevsky, Esq.

Mark P. Dauer, Esq.

Rory C. Flynn, Esq.

**NASD
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

TIMOTHY JOHN LANE,
CRD No. 2215044,

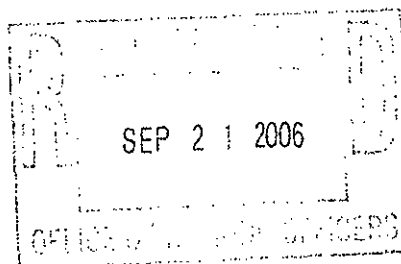
RESPONDENT.

DISCIPLINARY PROCEEDING
20050019203-01

HEARING OFFICER: _____

COMPLAINT

The Department of Enforcement alleges:



1. Respondent Timothy John Lane ("Lane") was initially associated with a member of NASD in January 1992. He was registered as in Investment Company / Variable Contracts Representative from April 1992 until February 1995. He became registered as a General Securities Representative in April 1993. From on or about June 8, 2004, until on or about April 1, 2005, he was registered through WM Financial Services, Inc. ("WMFS") as a General Securities Representative.

2. On or about April 1, 2005, a Uniform Termination Notice for Securities Industry Registration ("Form U-5") was filed by WMFS on behalf of Respondent Lane. The Form U-5 disclosed that Respondent Lane had voluntarily terminated his registration on March 31, 2005.

3. On or about June 24, 2005, an Amended Form U-5 was filed by WMFS on behalf of Respondent Lane. The Amended Form U-5 disclosed that customer YW had filed a complaint alleging that Respondent Lane had borrowed money from her and had not repaid her.

4. Respondent Lane is not currently registered or associated with any member firm; however, pursuant to Article V, Section 4 of the NASD By-Laws, NASD retains jurisdiction over him for purposes of this Complaint

FIRST CAUSE OF ACTION
[Borrowing From Customer (Rule 2370)]

5. The Department realleges and incorporates by reference paragraphs 1 through 4 above.

6. On or about January 16, 2005, while associated with WMFS in a registered capacity, Respondent Lane borrowed funds in the amount of \$5,000 from YW, a customer of WMFS for whom Respondent Lane was the assigned registered representative. The loan was funded by YW's personal check in the amount of \$5,000, payable to Respondent Lane.

7. No interest rate or repayment date was specified for YW's loan to Respondent Lane. But Respondent Lane told YW he would be able to repay her in February 2005.

8. Respondent Lane did not give YW a promissory note and there was no other written agreement evidencing the loan.

9. YW was not a member of Respondent Lane's immediate family. YW did not regularly arrange or extend credit in the ordinary course of business.

10. WMFS did not have written procedures allowing the borrowing and lending of money between its registered persons and its customers. WMFS' written procedures prohibited its registered employees from borrowing or otherwise obtaining any customer funds for personal use or investment.

11. Respondent Lane did not request or obtain permission from WMFS to borrow money from YW.

12. Respondent Lane did not repay any of the money he borrowed from YW.

13. On or about June 1, 2005, Respondent Lane gave YW five checks, each in the amount of \$1,000. The checks were drawn on a bank account which had been closed.

14. On or about June 17, 2005, YW made a written complaint to WMFS.

15. On or about July 5, 2005, WMFS settled YW's complaint by paying her \$5,000. Respondent Lane did not contribute to the settlement.

16. Such acts, practices and conduct constitute a violation of NASD Conduct Rule 2370. Such conduct is further inconsistent with high standards of commercial honor and just and equitable principles of trade and a violation of Conduct Rule 2110 by Respondent Lane.

SECOND CAUSE OF ACTION

[Failure to Respond to Requests for Information (Rule 8210)]

17. The Department realleges and incorporates by reference paragraphs 1 through 4 and 6 through 16 above.

18. In or about June 2005, NASD initiated an investigation concerning the loan from YW to Respondent Lane ("NASD investigation" or "investigation"). The investigation focused, among other things, on whether Respondent Lane had obtained a loan from a customer without the written pre-approval of his employer member firm, WMFS. In connection with that investigation, NASD staff requested information from Respondent Lane.

19. Respondent Lane's residential address as reflected in NASD's Central Registration Depository ("CRD") is [REDACTED] ("the CRD Address").

20. Respondent Lane's address as shown on the checks he gave to YW is [REDACTED]
[REDACTED] According to the U.S. Postal Service website, the correct version of that address is [REDACTED] ("the Portland Address").

First Request for Information

21. On September 7, 2005, NASD staff sent a request for information pursuant to NASD Procedural Rule 8210 relating to the subject matter of the NASD investigation, via U.S. Postal Service first class mail and certified mail, return receipt requested, to the CRD Address and the Portland Address. The September 7, 2005, request letter required a response no later than September 21, 2005.

22. The envelope sent to the CRD Address via first class mail on September 7, 2005, was not returned by the U.S. Postal Service. The envelope sent to the CRD Address via certified mail was returned by the U.S. Postal Service, marked "forward time exp, return to sender." The returned envelope identified [REDACTED] ("the Milwaukie Address") as a forwarding address for Respondent Lane.

23. The envelope sent to the Portland Address via first class mail on September 7, 2005, was not returned by the U.S. Postal Service. The staff received a domestic return receipt for the envelope sent to the Portland Address via certified mail, bearing an illegible signature. Underneath the signature, in a space designated as "Received by (*Printed Name*)," the name "Tim Lane" was printed.

24. On September 12, 2005, the staff sent another version of its first request for information pursuant to Procedural Rule 8210, via U.S. Postal Service first class mail and certified mail, return receipt requested, to the Milwaukie Address, which had been identified by the U.S. Postal Service as a forwarding address for Respondent Lane. The September 12, 2005, request letter required a response no later than September 26, 2005.

25. The envelope sent to the Milwaukie Address via first class mail on September 12, 2005, was not returned by the U.S. Postal Service. The staff received a domestic return receipt for the envelope sent to the Milwaukie Address via certified mail, bearing an illegible signature. Underneath the signature, in a space designated as "Received by (*Printed Name*)," the name "Tim Lane" was printed.

26. To date, NASD has not received any response to the requests for information sent on September 7 and September 12, 2005.

Second Request for Information

27. Sometime before September 22, 2005, the staff determined that the Portland Address and the Milwaukie address were different versions of the same street address. Subsequent requests for information were therefore sent to the Portland Address and not to the Milwaukie Address.

28. On September 22, 2005, the staff sent another request for information pursuant to Procedural Rule 8210, via U.S. Postal Service first class mail and certified mail, return receipt requested, to the CRD Address and the Portland Address. Copies of the request dated September 7, 2005, were enclosed. The second request letter also requested additional information. The September 22, 2005, request letter required a response no later than October 6, 2005.

29. The envelope sent to the CRD Address via first class mail on September 22, 2005, was returned by the U.S. Postal Service, marked "forward time exp, return to sender." The returned envelope identified the Milwaukie Address as a forwarding address for Respondent Lane. The envelope sent to the CRD Address via certified mail was returned by the U.S. Postal Service, marked "refused."

30. The envelope sent to the Portland Address via first class mail on September 22, 2005, was not returned by the U.S. Postal Service. The envelope sent to the Portland Address via certified mail was returned by the U.S. Postal Service, marked "return to sender, unclaimed, unable to forward."

31. To date, NASD has not received any response to the request for information sent on September 22, 2005.

Third Request for Information

32. On April 24, 2006, the staff sent another request for information pursuant to Procedural Rule 8210, via U.S. Postal Service first class mail and certified mail, return receipt requested, to the CRD Address and the Portland Address. Copies of the requests dated September 7 and September, 2005, were enclosed. The April 24, 2006, request letter required a response no later than May 5, 2006.

33. The envelope sent to the CRD Address via first class mail on April 24, 2006, was not returned by the U.S. Postal Service. The staff received a domestic return receipt for the envelope sent to the CRD Address via certified mail, bearing what appeared to be the signature of "V. M. Lane."

34. The envelope sent to the Portland Address via first class mail on April 24, 2006, was not returned by the U.S. Postal Service. The staff received a domestic return receipt for the envelope sent to the Portland Address via certified mail, bearing an illegible signature.

35. To date, NASD has not received any response to the request for information sent on April 24, 2006.

36. Respondent Lane has failed to respond in any fashion to the foregoing requests for information.

37. Such acts, practices and conduct constitute separate and distinct violations of NASD Procedural Rule 8210. Such conduct is inconsistent with high standards of commercial honor and just and equitable principles of trade and a violation of Conduct Rule 2110 by Respondent Lane.

PRAYER

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under NASD Rule 8310(a), including monetary sanctions, be imposed.
- B. order that the Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330.

NASD DEPARTMENT OF ENFORCEMENT

Date: September 20, 2006



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