

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

DEPARTMENT OF MARKET REGULATION,

Complainant,

v.

ALLERTON TOWNE
(CRD No. 1212315),

Respondent.

Disciplinary Proceeding
No. 20050030310.

AMENDED DEFAULT DECISION

Hearing Officer – Sara Nelson Bloom

January 30, 2009

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REGISTRATION & DISCLOSURE

For misuse of funds, in violation of Rules 2330 and 2110, and for failure to provide requested information, in violation of Rules 8210 and 2110, Respondent is barred from associating with any FINRA member in any capacity. In light of the bar, no further sanctions are imposed for Respondent's failure to disclose outside business activities to his firm, in violation of Rules 3030 and 2110.

Appearances

Ralph Drury Martin, Esq., Rockville, MD, for the Department of Market Regulation.

No appearance by or for Respondent.

DECISION

I. Background

On June 20, 2008, the Department of Market Regulation ("Market Regulation") filed a three-cause Complaint in this proceeding, attached to this Decision as Exhibit A. The first cause alleges that Allerton Towne ("Respondent") violated Rules 2330 and 2110 by misusing customer funds. The second cause alleges that Respondent violated Rules 3030 and 2110 by failing to disclose outside business activities. The third cause alleges

¹ This Decision is amended to add inadvertently omitted references to Respondent's violation of Rule 2330 for the misuse of funds.

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that Respondent violated Rules 8210 and 2110 by failing to respond to FINRA Staff requests for information.

Respondent did not file an Answer to the Complaint. Accordingly, on September 16, 2008, Market Regulation filed a motion for entry of default decision, supported by the Declaration of Ralph Drury Martin and four exhibits. On November 7, 2008, Market Regulation filed a supplement to its Motion relating to restitution. Respondent did not file a response to the motion.

For the reasons set forth below, Market Regulation's motion is granted.²

II. Respondent's Default

On June 20, 2008, Market Regulation sent the Complaint and Notice of Complaint to Respondent by first-class and certified mail, to Respondent's last known residential address according to the Central Registration Depository (the "CRD Address"). Respondent did not file an Answer. In the same manner, on August 4, 2008, Market Regulation sent the Complaint and Second Notice of Complaint to Respondent at his CRD Address. Respondent again did not file an Answer.

Market Regulation complied with Rule 9134(b)(1) by mailing the Complaint and Notices of Complaint to Respondent's CRD Address, thereby giving him constructive notice of this proceeding. By failing to file an Answer, Respondent defaulted. Accordingly, pursuant to Rules 9215(f) and 9269(a)(2), the allegations in the Complaint are deemed admitted.

III. Jurisdiction

Respondent was first registered with FINRA in 1989. From December 1998 through September 2006, he was associated with Merit Capital Associates, Inc. and its

² The factual determinations in this Decision are based on the allegations of the attached Complaint, which are deemed admitted, and the declaration and exhibits filed by Market Regulation with its motion.

successor, Source Capital Group, Inc. ("Source Capital"). On September 20, 2006, Respondent resigned after being suspended by his firm for failing to cooperate fully with FINRA's investigation. Respondent has not been associated with a member firm since then.

Although Respondent is not currently associated with a member firm, FINRA has jurisdiction to bring this proceeding, pursuant to Art. V, § 4 of FINRA's By-Laws, because (1) the Complaint charges Respondent with misconduct while he was an associated person and with failing to comply with requests for information made during the two-year period following termination of his last registration, and (2) the Complaint was filed within that two-year period.

IV. Violations

A. Misuse of Funds

The first cause of the Complaint alleges that, while associated with Source Capital, Respondent had a Bahamian corporation as a client, Plymouth Capital Inc. ("Plymouth Bahamas"). At the same time, Respondent owned a Florida corporation, also called Plymouth Capital, Inc. ("Plymouth Florida"). Respondent admitted that in January 2006, he intentionally and without authorization from Plymouth Bahamas, wired \$4,181.81 from its account at Source Capital to his Plymouth Florida account at Wachovia Bank. Respondent then used these funds for personal expenditures.

These allegations are sufficient to establish, for purposes of this default decision, that Respondent misused funds, in violation of Rules 2330 and 2110.

B. Failure to Disclose Outside Business Activities

The second cause of the Complaint alleges that while employed at Source Capital, Respondent performed consulting work regarding mergers and acquisition for at least

two corporations and was paid \$18,500 for this work. However, he never informed Source Capital of this outside consulting work.

These allegations are sufficient to establish, for purposes of this default decision, that Respondent violated Rules 3030 and 2110.

C. Failure to Respond

The third cause of the Complaint alleges that, on October 6, 2006, FINRA Staff ("Staff") sent Respondent a Rule 8210 request by certified mail and Federal Express to Respondent's CRD Address, requesting that Respondent produce his Plymouth Florida account statements for the periods January through December 2005 and February through May 2006. At an on-the-record interview of Respondent in December 2006, the Staff again requested that Respondent produce the documents. Although he agreed to do so, he never provided the documents to the Staff.

Rule 8210 authorizes FINRA to require any person subject to its jurisdiction to provide information related to any matter under investigation. The Rule serves as a key element in FINRA's oversight function and allows FINRA to carry out its regulatory functions without subpoena power.³ Here, although Respondent received the Staff's Rule 8210 request, he failed to respond

These allegations are sufficient to establish, for purposes of this default decision, that Respondent therefore violated Rules 8210 and 2110.

³ See, e.g., Dep't of Enforcement v. Valentino, No. FPI010004, 2003 NASD Discip. LEXIS 15, at *12 (NAC May 21, 2003), aff'd, 2004 SEC LEXIS 330 (Feb. 13, 2004) ("It is well established that because NASD lacks subpoena power over its members, a failure to provide information fully and promptly undermines NASD's ability to carry out its regulatory mandate.") (citation omitted); Joseph G. Chiulli, Exch. Act Rel. No. 42,359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for FINRA to effectively conduct its investigations, and emphasizing that FINRA members and associated persons must fully cooperate with requests for information).

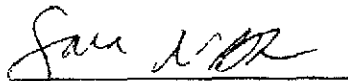
V. Sanctions

Respondent's misuse of funds in this case amounts to conversion, inasmuch as Respondent used customer funds for his own purposes without authorization. For conversion, the Guidelines recommend a bar, regardless of the amount converted. FINRA Sanction Guidelines ("Guidelines") at 38 (2007 ed.). A bar is also standard for failure to provide requested information. Guidelines at 35. There is no evidence of any mitigating circumstances that would justify a lesser sanction for these violations. Therefore, Respondent is barred from associating with any FINRA member in any capacity for each violation.⁴ In light of the bar, no additional sanctions are imposed for Respondent's failure to disclose outside business activities to his firm, in violation of Rules 2110 and 3030.

VI. Conclusion

For misuse of funds, in violation of Rules 2330 and 2110, and for failure to provide requested information, in violation of Rules 8210 and 2110, Respondent is barred from associating with any FINRA member in any capacity. These bars shall become effective immediately if this Decision becomes the final disciplinary action of FINRA. In light of the bar, no additional sanctions are imposed for Respondent's failure to disclose outside business activities to his firm, in violation of Rules 2110 and 3030.

SO ORDERED.


Sara Nelson Bloom
Hearing Officer

⁴ Because Respondent claimed that he made restitution to the customer and the customer failed to cooperate with the Staff's attempt to confirm this, Market Regulation did not seek restitution, and the Hearing Officer did not order it.

Copies to:

Allerton Towne *(via overnight courier and first-class mail)*

Ralph Drury Martin, Esq. *(via electronic and first-class mail)*

James J. Nixon, Esq. *(via electronic and first-class mail)*

Richard G. Wallace, Esq. *(via electronic and first-class mail)*

**FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA)
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF MARKET REGULATION,

Complainant,

v.

**ALLERTON TOWNE
(CRD No. 1212315)**

Respondent.

**DISCIPLINARY PROCEEDING
No. 20050030310**

HEARING OFFICER:

COMPLAINT

Upon information and belief, the Department of Market Regulation alleges as follows:

Overview

1. Respondent Allerton Towne made improper use of customer funds, failed to notify his firm of outside business activities, and failed to respond to requests for information made pursuant to NASD Procedural Rule 8210.

Respondent

2. Towne was first registered with FINRA in 1989. From 1998 until September 2006, he was registered first with Merit Capital Associates, Inc. and then with its successor firm, Source Capital Group, Inc. Towne resigned from Source Capital effective September 20, 2006, after he was suspended by the firm for failing to cooperate fully with FINRA's investigation. Towne has not been registered with a FINRA member firm since then.

Jurisdiction

3. FINRA has jurisdiction over this matter under Article V, Section 4(a), of NASD's By-Laws. Section 4(a) provides for continued jurisdiction over a person whose association with a member has been terminated, for two years after the effective date of termination of registration, "based upon conduct which commenced prior to the termination" of registration, or "upon such person's failure, while subject to the NASD's jurisdiction as provided herein, to provide information requested by the NASD pursuant to the Rules of the Association."

FACTS

4. At all times relevant to this Complaint, Towne had as a client Plymouth Capital Inc., which was incorporated in the Bahamas in 1997 ("Plymouth Bahamas").

5. At all times relevant to this Complaint, Towne and his former wife were the owners of a Florida corporation, also called Plymouth Capital, Inc. ("Plymouth Florida"), which Towne caused to be incorporated in 2000. Plymouth Florida had no ownership or control connection with Plymouth Bahamas.

6. On or about January 11, 2006, Towne ordered the sale of 25,000 shares of IDS Worldwide, Inc, which were in Plymouth Bahamas's account at Source Capital. As a result of the sale, Plymouth Bahamas's account was credited with \$4,256.41.

7. On or about January 17, 2006, Towne, intentionally and without authorization from Plymouth Bahamas, converted money belonging to Plymouth Bahamas by wiring \$4,181.81 from Plymouth Bahamas's account at Source Capital to a bank account at Wachovia Bank in the name of Plymouth Florida, which was controlled by Towne.

8. On or about January 17, 2006, Towne used \$1,600 of these funds to buy tickets for himself to the Daytona 500 and subsequently spent more of the money on other personal expenditures.

9. During June and July 2006, while employed at Source Capital, Towne performed consulting work regarding mergers and acquisitions for at least two corporations and was paid at least \$18,500 for this work.

10. Towne never informed Source Capital of this outside consulting work.

11. On October 6, 2006, pursuant to NASD Procedural Rule 8210, FINRA staff sent Towne a letter, via certified mail and Federal Express, requesting that he produce statements of the bank account of Plymouth Florida at Wachovia Bank for the months January through December 2005 and February through May 2006.

12. By the time Towne was interviewed on the record by FINRA staff on December 1, 2006, he had neither produced the requested statements nor otherwise responded to the Rule 8210 request.

13. During his testimony, the staff again requested that Towne produce these bank statements, and he agreed to do so.

14. Nevertheless, Towne never produced the statements or otherwise responded to the outstanding document request.

FIRST CAUSE OF ACTION

Violations of NASD Conduct Rules 2110 AND 2330 (Improper use of customer funds)

15. The foregoing allegations are re-alleged and incorporated by reference.

16. Beginning on or about January 17, 2006, Towne made improper use of funds belonging to his customer, Plymouth Bahamas, in violation of NASD Conduct Rule 2330, and

thereby also failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of NASD Conduct Rule 2110.

SECOND CAUSE OF ACTION

Violations of NASD Conduct Rules 2110 and 3030 (Undisclosed outside business activity)

17. The foregoing allegations are re-alleged and incorporated by reference.

18. In June and July 2006, Towne, while associated with a member firm in a registered capacity, was employed by outside persons and accepted compensation from them as a result of business activities, other than passive investments, outside the scope of his relationship with his employer firm, and failed to give his employer notice of these activities, in violation of NASD Conduct Rule 3030. Towne thereby also failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of NASD Conduct Rule 2110.

THIRD CAUSE OF ACTION

Violations of NASD Conduct Rule 2110 and NASD Procedural Rule 8210 (Failure to provide information)

19. The foregoing allegations are re-alleged and incorporated by reference.

20. By failing to respond to the staff's Rule 8210 requests for documents, Towne violated NASD Procedural Rule 8210 and also failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of NASD Conduct Rule 2110.

RELIEF REQUESTED

WHEREFORE, the Department of Market Regulation respectfully requests:

- A. an order that one or more of the sanctions provided under NASD Rule 8310(a), including a bar from association with any member of FINRA, be imposed; and

- B. an order that the Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330.

Respectfully submitted,

Date: June 20, 2000



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