

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JOSEPH TIEDEKEN
(CRD No. 4310006),

Respondent.

Disciplinary Proceeding
No. 2005003119501

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

December 27, 2007

The Respondent is barred from associating with any member firm in any capacity for his failure to respond to requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2110. The Respondent also violated NASD Conduct Rules 2370 and 2110 by borrowing customer funds in violation of his employer's written policies and procedures. However, in light of the bar imposed for the other violation, no additional sanction is imposed for his violation of Rule 2370.

Appearances

UnBo Chung, Regional Counsel, Chicago, IL (Mark P. Dauer, Of Counsel) for the Department of Enforcement.

No appearance by or on behalf of Joseph Tiedeken.

DECISION

I. Introduction

On May 25, 2007, the Department of Enforcement ("Enforcement") filed the attached Complaint against Joseph Tiedeken ("Tiedeken" or the "Respondent"). The Complaint charges that Tiedeken borrowed money from a customer in violation of his employer's policies and procedures and NASD Conduct Rules 2370 and 2110, and that he failed to respond to requests

for information, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110.¹ Tiedeken did not answer or otherwise respond to the Complaint. On November 1, 2007, Enforcement filed a Motion for Entry of Default Decision, which is supported by the Declaration of UnBo Chung and seven exhibits. The Respondent did not reply to the motion.

II. Findings of Fact and Conclusions of Law

A Respondent's Default

The Hearing Officer finds that Enforcement properly served the Respondent with the Complaint by mailing the Complaint and the First and Second Notices of Complaint to his most current residential address shown in the Central Registration Depository (the "CRD address") by first-class certified mail. Enforcement mailed the First Notice of Complaint on May 24, 2007, and the Second Notice of Complaint on June 26, 2007.² Tiedeken did not respond to either notice.

After Enforcement sent the first two Notices of Complaint to the Respondent, Enforcement learned of several possible current addresses for the Respondent. On September 4, 2007, Enforcement served the Respondent with a Third Notice of Complaint sent to the first alternate address by first-class certified mail.³ The postal service returned the mailing and provided a second alternative address for the Respondent. On September 11, 2007, Enforcement mailed the Fourth Notice of Complaint to the Respondent at both his CRD address and the second alternative address provided by the Postal Service.⁴ The Respondent did not reply, and,

¹ NASD is now the Financial Industry Regulatory Authority (FINRA). FINRA's rules, which include NASD Conduct and Procedural Rules, are available at www.finra.org/rules.

² Exhibits C2 and C3.

³ Exhibit C4.

⁴ Exhibit C5.

on October 9, 2007, Enforcement mailed a copy of the Fifth Notice of Complaint by first-class certified mail to the Respondent at both addresses.⁵

To date, Tiedeken has not filed an Answer with the Office of Hearing Officers. Accordingly, the Hearing Officer finds Tiedeken in default and, pursuant to Procedural Rules 9215(f) and 9269(a)(2), deems the allegations in the attached Complaint admitted.⁶

B Jurisdiction

Tiedeken first entered the securities industry as a General Securities Representative (Series 7) in November 2000.⁷ Most recently, Tiedeken was registered as a General Securities Representative through FINRA member firm NatCity Investments, Inc. ("NatCity") from January 5, 2005, until October 27, 2005.⁸ Tiedeken has not since been associated with a FINRA member firm or registered with FINRA. Nonetheless, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's Bylaws, because (1) the Complaint was filed within two years following the termination of his registration with FINRA and (2) the Complaint charges him with misconduct committed while he was associated with a FINRA member firm and with failing to respond to FINRA's requests for information made during the two-year period following his registration termination.

C Improper Loan Transaction with Customer

The First Cause of Action alleges that on or about September 24, 2004, while he was registered with New England Securities, Tiedeken borrowed \$11,000 from his customer, RG. At

⁵ Exhibit C6.

⁶ *Department 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)).

⁷ Exhibit 1, at 4 (CRD record).

⁸ *Id.* at 3. According to Tiedeken's CRD record, NatCity discharged him on October 21, 2005, because he failed to disclose a personal loan from a customer that he made before joining the firm.

the time, New England Securities had a written policy that prohibited its registered representatives from borrowing money or securities from customers.

The allegations in the First Cause of Action are sufficient to establish for purposes of this proceeding that Tiedeken improperly borrowed money from customer RG in violation of NASD Conduct Rule 2370, which prohibits registered representatives from borrowing money from a customer unless the member firm with which the representative is registered has written procedures permitting such loans and the loan arrangement meets one of five specified conditions, none of which applied in this case.⁹ The Hearing Officer further concludes that Tiedeken thereby violated Conduct Rule 2110, which requires that FINRA members shall "observe high standards of commercial honor and just and equitable principles of trade."¹⁰ A violation of another NASD rule is also a violation of Conduct Rule 2110.¹¹

D Failure to Respond to Requests for Information

The Second Cause of Action alleges that Tiedeken failed to respond completely to five separate requests for information issued by FINRA staff pursuant to, and in accordance with, Procedural Rule 8210. The staff issued the requests to Tiedeken in connection with the staff's investigation of the facts and circumstances surrounding the loan he obtained from his customer while he was a registered representative with New England Securities.

FINRA staff sent Tiedeken the first request on December 22, 2005, by first-class certified mail to his CRD address. Tiedeken did not respond at all to the first request. On January 30, 2006, the staff sent Tiedeken a second request for information by first-class certified mail. On

⁹ See NASD Notice to Members 04-14 (Mar. 2004), "Borrowing from and Lending to Customers," available at http://www.finra.org/web/groups/rules_regs/documents/notice_to_members/p003255.pdf.

¹⁰ Conduct Rule 0115 makes all NASD rules, including Conduct Rule 2110, applicable to both FINRA members and all persons associated with FINRA members.

¹¹ See, e.g., *Chris Dinh Hartley*, Exchange Act Release No. 50,031, 2004 SEC LEXIS 1507, at *9 (July 16, 2004).

the same date, the staff sent the second request to Tiedeken at an alternative address that it had uncovered. The receipts for both certified mailings were returned signed by a recipient. "Kim Tiedeken" signed for the mailing addressed to the Respondent's CRD address, and "Joseph Tiedeken" signed for the receipt mailed to the alternative address. Nonetheless, Tiedeken did not provide any of the requested information.

On February 27, 2006, the staff sent Tiedeken a third request by first-class certified mail. The third request was sent to Tiedeken's CRD address and the same alternative address. Once again, the mailing receipts were returned signed by Kim and Joseph Tiedeken. On March 14, 2006, Tiedeken called and spoke to a member of FINRA's staff. During this conversation, Tiedeken acknowledged that he had borrowed \$11,000 from RG while he was employed at New England Securities. Tiedeken further stated that he possessed loan documents relating to the loan, including canceled checks and a promissory note. The staff requested that he provide the staff with copies of the loan documents, which Tiedeken agreed to do. During the telephone conversation, Tiedeken also stated that he was in the process of moving from his CRD address and that the alternative address the staff had used was his current residential address.

Despite Tiedeken's promise to provide the requested loan documentation, he did not do so. Therefore, on April 12, 2006, the staff sent him a written request for the loan documents pursuant to Procedural Rule 8210. The staff sent the fourth request to both addresses by first-class certified mail. Tiedeken did not respond.

On September 1, 2006, the staff sent Tiedeken another written request for copies of the loan documents pursuant to Procedural Rule 8210 . Once again, the staff sent the request to both the CRD address and the alternative address Tiedeken had said was his current residential address. Neither mailing was returned, but Tiedeken did not respond.

According to the Complaint, Tiedeken has not provided any of the documents the staff requested in connection with its investigation. Tiedeken's response to the staff's requests was limited to the telephone conversation on March 14, 2006, during which he acknowledged that he had borrowed \$11,000 from RG, as alleged in the Complaint.

The foregoing allegations are sufficient to establish for purposes of this proceeding that Tiedeken violated NASD Procedural Rules 8210 and 2110 by failing to respond completely to the staff's requests for information.¹²

III. Sanctions

A Failure to Respond Completely to Requests for Information

The FINRA Sanction Guidelines ("Guidelines") recommend a bar where a respondent fails to respond in any manner to a request for information issued pursuant to Procedural Rule 8210.¹³ Where mitigation exists, the Guidelines recommend consideration of a suspension in all capacities of up to two years.

The Hearing Officer concludes that the Respondent's oral response on March 14, 2006, is not sufficiently mitigating to justify allowing the Respondent to remain in the securities industry. FINRA staff sent the Respondent five requests for documents in connection with its investigation of the loan transaction, which the Respondent acknowledged he had in his possession. Nonetheless, he did not provide copies of any of the documents in response to the staff's written requests although he stated that he would. Moreover, the investigation related to potentially serious misconduct, which the staff could not evaluate fully without the requested information. First, the loan transaction violated his firm's written policies, which prohibited all such

¹² *Department of Enforcement v. Baxter*, No. C07990016, 2000 NASD Discip. LEXIS 3, at *25 (N.A.C. Apr. 19, 2000); *Joseph P. Hannan*, Exchange Act Release No. 40,438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998).

¹³ Sanction Guidelines 35 (2007), available at <http://www.finra.org/web/groups/enforcement/documents/enforcement/p011038.pdf>.

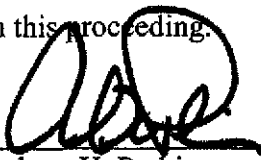
transactions with the firm's customers. Second, the Respondent's self-dealing had the potential for customer harm and the Respondent's monetary benefit.¹⁴ Accordingly, the Hearing Officer will bar Tiedeken from associating with any FINRA member in any capacity for violating Procedural Rule 8210 and Conduct Rule 2110.

B Customer Loan

The Guidelines do not contain a specific recommended sanction for violations of NASD Conduct Rule 2370. Enforcement recommended that the Respondent be suspended in all capacities for 90 days and fined \$5,000. The Hearing Officer agrees with Enforcement's assessment. However, in light of the bar imposed for the other violation, the Hearing Officer will not impose separate sanctions for this violation.

IV. Order

Joseph Tiedeken is barred from associating with any member firm in any capacity for failing to respond completely to the staff's requests for information in violation of Procedural Rule 8210 and Conduct Rule 2110. The bar will become effective immediately if this Default Decision becomes FINRA's final disciplinary action in this proceeding.



Andrew H. Perkins
Hearing Officer

¹⁴ See Guidelines at 7 (Principal Considerations in Determining Sanctions, No. 16 and No. 17).

Copies to:

Joseph Tiedeken (by FedEx, next day delivery, and first-class mail)

UnBo Chung, Esq. (by electronic and first-class mail)

Mark P. Dauer, Esq.(by electronic and first-class mail)

David R. Sonnenberg, Esq. (by electronic and first-class mail)

**NASD
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

JOSEPH TIEDEKEN (CRD NO. 4310006),

RESPONDENT.

**DISCIPLINARY PROCEEDING
No. 20050031195**

COMPLAINT

The Department of Enforcement alleges:

Summary

1. On or about September 24, 2004, Joseph Tiedeken borrowed \$11,000 from a securities customer of his employing member firm against his firm's procedures. Additionally, between the approximate dates of December 2005 and April 2006, Tiedeken failed to respond to 5 requests for information made pursuant to NASD Procedural Rule 8210.

Respondent

2. Tiedeken became registered with NASD on January 19, 2001 as a General Securities Representative. Between the time period of October 2002 and December 2004, Tiedeken was registered in this capacity with New England Securities, a member of NASD. Between the time period of January 2005 and October 2005, Tiedeken was registered in the above capacity with another NASD member. Tiedeken is not currently registered with any NASD members.

**First Cause of Action
NASD Conduct Rules 2370 and 2110
Borrowing from Customers**

3. The Department realleges and incorporates by reference paragraphs 1-2 above.
4. On or about September 24, 2004, Tiedeken accepted a loan of \$11,000 from RG, a customer of his employing member firm. At the time Tiedeken borrowed the money, his employing member firm had written procedures forbidding registered representatives from borrowing money from customers.
5. The acts, practices and conduct above constitute separate and distinct violations of NASD Conduct Rules 2370 and 2110 by Tiedeken.

**Second Cause of Action
NASD Conduct Rule 2110 and Procedural Rule 8210
Failure to Respond**

6. The Department realleges and incorporates by reference paragraphs 1-5 above.
7. On or about December 22, 2005, NASD staff sent to Tiedeken a request that he provide certain information, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210. Tiedeken's address was obtained through the Central Registration Depository system ("CRD"). This request for information was sent via certified and first class mail. The certified mailing was returned, marked "unclaimed," but the first class mail was not returned.

8. On or about January 30, 2006, NASD staff sent a second request for information to Tiedeken's CRD address via certified and regular mail. The return receipt was returned to NASD staff, signed by "Kim Tiedeken" and the first class mail was not returned. An alternative address was located for Tiedeken in Michigan. Also on or about January 30, 2006, Staff sent the request for information to the alternative address via certified and first class mail. The return receipt was returned to NASD staff, signed by "Joseph Tiedeken" and the first class mail was not returned.

9. On or about February 27, 2006, NASD staff sent a third request for information to Tiedeken via certified and regular mail to his CRD address and his alternative address. The return receipt from the certified mail to his CRD address was returned to NASD staff, signed by "Kim Tiedeken" and the return receipt from the alternative address was returned to Staff signed by "Joseph Tiedeken." Neither first class mailing was returned.

10. On or about March 14, 2006, Tiedeken called NASD staff and verbally acknowledged borrowing \$11,000 from [REDACTED] while employed at New England Securities. During this conversation, Tiedeken claimed to have additional documents regarding the loan and copies of the checks he received from [REDACTED]. NASD staff requested the additional loan documents and copies of the checks. Tiedeken verbally agreed to send these documents. During this call, Tiedeken stated that he was in the process of moving out of his CRD address and that the alternative address was valid.

11. NASD staff never received the documentation requested from Tiedeken. On or about April 12, 2006, NASD staff a fourth request for information was sent to Tiedeken's CRD address and his alternative address. The certified and regular mailings sent to his CRD address were returned to NASD Staff marked "Forward Time Expired - Return to Sender." The certified mailing sent to the alternative address was returned, marked "Unclaimed." The regular mail sent to the alternative address was not returned to Staff.

12. On or about September 1, 2006, a final request for information was sent to Tiedeken's CRD address and his alternative address. The certified mail sent to his CRD address was returned to NASD Staff marked "Returned - Forwarding Order Expired," and the regular mail was returned marked "Returned - Not Deliverable as Addressed." Neither the certified or regular mailing sent to the alternative address was returned. No receipt was returned for the certified mailing sent to the alternative address.

13. The time to respond for all the requests for information has expired, and Tiedeken has not responded in any way.

14. The acts, practices and conduct described above constitute separate and distinct violations of NASD Conduct Rule 2110 and Procedural Rule 8210 by Tiedeken.

< REMAINDER OF PAGE LEFT INTENTIONALLY BLANK >

PRAYER

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under NASD Rule 8310(a) be imposed, including that the Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest.
- 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: May 24, 2007

UnBo Chung, Senior Regional Attorney
Mark Koerner, Regional Chief Counsel
NASD Department of Enforcement
55 W. Monroe Street, Suite 2700
Chicago, IL 60603
(312) 899-4641; Fax No. (312) 899-4600

NASD Regional Director

Carlotta Romano, Senior Vice President
NASD, District 8
55 W. Monroe Street, Suite 2700
Chicago, IL 60603
(312) 899-4324; Fax No. (312) 606-0742

Of Counsel

Rory C. Flynn, Of Counsel
NASD Department of Enforcement
1801 K Street, N.W., Suite 800
Washington, D.C. 20006
(202) 974-2974; Fax No. (202) 721-8318

Mark P. Dauer, Of Counsel
NASD Department of Enforcement
1100 Poydras Street
Energy Centre, Suite 850
New Orleans, LA 70163
(504) 522-6527; Fax: (504) 522-4077