

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DAWN ANITA MARTIN
(CRD No. 3192507),

Respondent.

Disciplinary Proceedings
No. 2006004392801

Hearing Officer – David M. FitzGerald

DEFAULT DECISION

May 18, 2007

Summary

Respondent is fined \$5,000 and suspended for 90 days for borrowing funds from customers, in violation of Rules 2370 and 2110.

DECISION

I. Introduction

The Department of Enforcement filed the attached Complaint on November 29, 2006, alleging that Respondent Dawn Anita Martin borrowed customer funds, in violation of Rules 2370 and 2110. Respondent did not file an Answer or otherwise respond to the Complaint. On April 23, 2007, Enforcement filed a motion for a default decision, supported by the declaration of Richard A. March and 14 exhibits. Respondent did not reply to the motion.¹

II. Respondent's Default

On November 27, 2006, Enforcement sent the Complaint and Notice of Complaint to Respondent by regular and certified first class mail addressed to

¹ The factual determinations in this decision are based on the allegations of the attached Complaint, which are deemed admitted, and the additional materials filed by Enforcement with its motion.

Respondent's most current address as provided by her during an on-the-record interview with NASD staff (OTR address), but not to her most current residential address listed in the Central Registration Depository (CRD address). On December 26, 2006, Enforcement sent the Complaint and Second Notice of Complaint to Respondent by regular and certified first class mail addressed to the OTR address, but not the CRD address. After realizing that it had inadvertently failed to send the Complaint and Notices of Complaint to the CRD address, on February 20, 2007, Enforcement sent the Complaint and a Third Notice of Complaint to Respondent at both the OTR address and the CRD address by regular and certified mail, and on March 21, 2007, Enforcement sent the Complaint and a Fourth Notice of Complaint to Respondent at both the OTR address and the CRD address by certified and regular first class mail. Respondent did not file an Answer or otherwise respond to the Complaint.

Enforcement served the Complaint and the Third and Fourth Notices of Complaint on Respondent in accordance with Rule 9134, giving her constructive notice of the proceeding. By failing to respond to the Complaint, she defaulted. Pursuant to Rule 9269, the Hearing Officer will deem the allegations in the Complaint admitted.

III. Jurisdiction

Respondent was registered as an Investment Company and Variable Contracts Products Limited Representative through Waddell & Reed, Inc., from July 1999 until February 2006. Although she has not been registered since then, she remains subject to NASD jurisdiction for purposes of this proceeding, pursuant to Art. V, § 4 of NASD's By-Laws, because the Complaint was filed within two years after the termination of her last registration, and it charges her with misconduct while she was registered.

IV. Violation

The sole cause of the Complaint alleges that on or about October 19, 2005, while registered with Waddell & Reed, Respondent borrowed funds from customer RH by accepting cash in the amount of \$10,000. Waddell & Reed's written supervisory procedures prohibited borrowing money from customers, absent written authorization. Prior to accepting the loan, Respondent did not obtain any written authorization from Waddell & Reed to borrow the funds.

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent violated Rule 2370, which prohibits registered representatives from borrowing from customers unless the firm's written procedures allow the borrowing and the borrowing meets certain specified conditions. A violation of Rule 2370 is also a violation of Rule 2110.

V. Sanctions

The NASD Sanction Guidelines do not list a specific sanction for violating Conduct Rule 2370. Enforcement requests that Respondent be fined \$5,000 and suspended in all capacities for 90 days.² In support of its recommendation, Enforcement states that in this case the customer actually approached Respondent and expressed a desire to lend her money, that Respondent accepted only a single loan and repaid it, and that Respondent did not profit from her misconduct. The Hearing Officer agrees that under these circumstances the sanctions recommended by Enforcement are appropriately remedial.

² In its original motion, Enforcement set forth inconsistent sanctions recommendations. In response to an order of the Hearing Officer, Enforcement subsequently explained that it was seeking a \$5,000 fine and a 90-day suspension.

VI. Conclusion

Respondent Dawn Anita Martin is fined \$5,000 and suspended from associating with any NASD member in any capacity for 90 days for borrowing customer funds, in violation of Rules 2370 and 2110. If this decision becomes NASD's final disciplinary action in this proceeding, the fine shall be due and payable on a date determined by NASD staff and Respondent's suspension shall begin on June 18, 2007, and end on September 15, 2007.

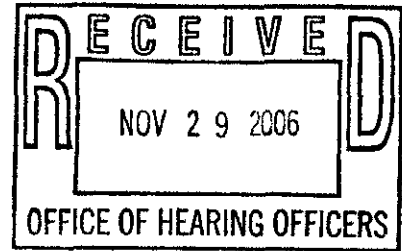
SO ORDERED.



David M. Fitzgerald
Hearing Officer

Copies to: Dawn Anita Martin (*via overnight and first class mail*)
Richard A. March, Esq. (*via electronic and first class mail*)
Mark P. Dauer, Esq. (*via electronic and first class mail*)
Rory C. Flynn, Esq. (*via electronic and first class mail*)

**NASD
OFFICE OF HEARING OFFICERS**



Department of Enforcement,

Complainant,

v.

Dawn Anita Martin,
Limited Registered Representative
CRD No. 3192507

Respondent.

Disciplinary Proceeding
No. 2006004392801

COMPLAINT

Upon information and belief, Complainant alleges as follows:

1. Respondent Dawn Anita Martin ("Respondent") became registered with Waddell & Reed, Inc. ("Member") in April 1999 as an Investment Company and Variable Contracts Products Representative. She remained with the Member until March 2006. Respondent is not currently registered with any NASD member. NASD has jurisdiction over Respondent pursuant to Article V, Section 4 of the Association's By-Laws, which provides for a two-year period of retained jurisdiction over formerly associated persons.

**NASD Conduct Rules 2370 and 2110:
Borrowing from Customer**

2. On or about October 19, 2005, Respondent borrowed funds from public customer, RH, by accepting cash in the amount of approximately \$10,000.
3. At the time of the loan, RH was Respondent's customer.
4. The Member's written supervisory procedures prohibited borrowing from customers, absent written authorization.
5. Prior to accepting the loan, Respondent did not obtain any written authorization from the Member to borrow the funds.
6. The acts, practices and conduct above constitute a violation of NASD Conduct Rules 2370 and 2110.

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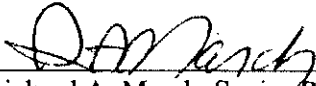
PRAYER FOR RELIEF

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

**NASD DEPARTMENT OF
ENFORCEMENT**

Date: 11/27/06


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