

FINANCIAL INDUSTRY REGULATORY AUTHORITY¹
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT

Complainant,

v.

DAVID ALEXANDER RICCA
(CRD No. 3202131),

Respondent.

Disciplinary Proceeding
No. 2006004672701

DEFAULT DECISION

Hearing Officer – Sara Nelson Bloom

August 22, 2007

For conversion of customer funds, in violation of Rule 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 these bars, no further sanctions are imposed for Respondent's improper borrowing of customer funds, in violation of Rules 2370 and 2110.

Appearances

Soo H. Im, Esq., New York, NY (Rory C. Flynn, Esq., of Counsel) for the Department of Enforcement.

No appearance by Respondent.

DECISION

I. Background

On April 13, 2007, the Department of Enforcement ("Enforcement") filed a three-cause Complaint in this proceeding, attached to this Decision as Exhibit A. The first cause alleges that David Alexander Ricca ("Respondent") violated Rules 2370 and 2110 by borrowing funds from a customer. The second cause alleges that Respondent violated Rule 2110 by misusing customer

¹ Effective July 30, 2007, the corporate successor to NASD is the Financial Industry Regulatory Authority (FINRA).

funds. The third cause alleges 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 June 29, 2007, Enforcement filed a motion for entry of default decision, supported by the Declaration of Soo H. Im and 21 exhibits. Respondent did not file a response to the motion.

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

II. Respondent's Default

On April 12, 2007, Enforcement served the Complaint and Notice of Complaint on Respondent by first-class and certified mail, sent to Respondent's last known residential address according to the Central Registration Depository (the "CRD Address"), as well as two alternate addresses. Respondent did not file an Answer. In the same manner, on May 11, 2007, Enforcement served the Complaint and Second Notice of Complaint on Respondent. Respondent again did not file an Answer.

Enforcement complied with Rule 9134(b)(1) by mailing the Complaint and Notices of Complaint to Respondent's CRD Address, thereby giving Respondent 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

Between October 2004 and May 2006, Respondent was registered as a General Securities Representative with FINRA member firm Citigroup Global Markets, Inc. (the "Member"). Respondent is not currently associated with a member firm.

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 Enforcement with its motion.

Although Respondent is not currently associated with a member firm, FINRA has jurisdiction to bring this proceeding, pursuant to Art. V, § 4 of NASD's By-Laws, because (1) the Complaint charges Respondent with misconduct while he was a registered 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. Improper Borrowing of Customer Funds

The Complaint alleges that in December 2005, Respondent borrowed \$10,000 from public customer LG, and in March 2006, Respondent borrowed an additional \$15,000 from LG. At the time the Respondent is alleged to have borrowed these customer funds, the Member had written policies and procedures prohibiting representatives from borrowing money from a customer. The Member was not aware of, and did not approve, Respondent's loan from LG.

Rule 2370 provides, in relevant 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. Here, the Member specifically prohibited registered employees from borrowing from customers. By borrowing \$25,000 from LG, Respondent violated his firm's procedures and Rules 2370 and 2110.

B. Conversion³

The second cause of the Complaint alleges that in April 2006, customer SBP gave Respondent \$25,000 to invest for the benefit of SBP and his family. Rather than investing the funds, Respondent converted these funds to his own use and benefit. In May, 2006, Respondent

³ The Complaint captioned the conduct as misuse of customer funds, but alleged that Respondent converted funds to his own use.

entered into an agreement to pay SBP \$37,500, his wife, and a family friend. The payment included the original \$25,000 in principal that Respondent received from SBP, with interest.⁴ Despite his agreement to repay the SBP in June 2006, Respondent has not done so. These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent converted funds, in violation of Rule 2110.

C. Failure to Respond

The third cause of the Complaint alleges that, on June 20, 2006, FINRA Staff sent Respondent a request for information pursuant to Rule 8210, inquiring about the alleged improper borrowing of customer funds alleged in the first cause of the Complaint. The request was sent by regular mail to Respondent's CRD Address. In the same manner, on July 7, 2006, FINRA Staff sent a second request for information to Respondent to the CRD Address and an additional address. The Staff served the requests in accordance with Rule 8210(d), and therefore Respondent is deemed to have received them. Respondent did not respond.

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.⁵ Here, although Respondent received valid constructive notice of the Staff's requests,⁶ he failed to respond to them. Respondent therefore violated Rules 8210 and 2110.

⁴ There is no information in the complaint or the declaration as to why the investment was later documented as a loan.

⁵ 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 the NASD effectively to conduct its investigations, and emphasizing that NASD members and associated persons must fully cooperate with requests for information).

⁶ See David I. Cassuto, Exch. Act Rel. No. 48,087, 2003 SEC LEXIS 1496, at *9 (June 25, 2003).

V. Sanctions

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 (2007 ed.). 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.⁷

The Guidelines do not specifically address violations of Rule 2370. Although this case involves two loans from one customer and Respondent repaid the loan, the size of the loans was significant. Therefore Enforcement's request for a fine of \$10,000 and a nine month suspension seems reasonable. However, in light of the bars for conversion in violation of Rule 2110, and for failing to respond to requests for information in violation of Rules 8210 and 2110, no further sanctions will be imposed for Respondent's improper borrowing of customer funds, in violation of Rules 2370 and 2110.

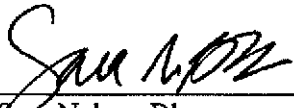
VI. Conclusion

For conversion of funds, in violation of Rule 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 these bars, no further sanctions will be imposed for Respondent's improper borrowing of customer funds, in violation

⁷ Restitution of the converted funds has not been ordered because there is no evidence in the record to determine if the customer recovered these funds from the Member or another source.

of Rules 2370 and 2110.

SO ORDERED.


Sara Nelson Bloom
Hearing Officer

Copies to:

David Alexander Ricca (*via overnight and first-class mail*)

Soo H. Im, Esq. (*via electronic mail*)

Rory C. Flynn, Esq. (*via electronic mail*)

**NASD
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DEPARTMENT OF ENFORCEMENT,

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DAVID ALEXANDER RICCA
(CRD No. 3202131),

Respondent.

Disciplinary Proceeding
No. 2006004672701

COMPLAINT

The Department of Enforcement alleges:

JURISDICTION

1. Respondent David Alexander Ricca ("Respondent") first became registered with NASD as a General Securities Representative ("GSR") on February 29, 2000.
2. From August 2000 to October 2004, Respondent was registered as a GSR through a member firm.
3. From on or about October 29, 2004 through May 18, 2006, Respondent was registered as a GSR through his association with Citigroup Global Markets, Inc. ("CGMI") (BD No. 7059).¹
4. On May 25, 2006, CGMI filed a Uniform Termination Notice for Securities Industry Registration ("Form U-5") concerning Respondent.
5. Under the heading, "Reason for Termination," the Form U-5 stated, "Management discretion, unrelated to sales practice." Because this narrative was a result of an

¹ Respondent is technically employed by Smith Barney Citigroup, a division of Citigroup Global Markets Inc.

administrative error, on June 1, 2006, the firm filed an amendment to Respondent's Form U-5 to amend the reason for his termination. According to the amendment, Respondent was "permitted to resign...Management discretion following a complaint from a customer's attorney alleging a loan from the client to the FA."

6. Currently, Respondent is not associated with any member firm. However, NASD retains jurisdiction over Respondent pursuant to Article V, Section 4 of its By-Laws.

**FIRST CAUSE OF COMPLAINT
(Borrowing Funds from a Customer)
(Violation of NASD Conduct Rule 2370 and NASD Conduct Rule 2110)**

7. The Department realleges and incorporates by reference paragraphs 1 through 6 above.
8. Respondent was registered as a GSR through his association with member firm CGMI from October 2004 to May 2006. In or about December 2005, Respondent received \$10,000 in loans from customer LG. In or about March 2006, Respondent received another \$15,000 in loans from LG. On or about March 3, 2006, Respondent executed a loan agreement memorializing these two loans.
9. At the time Respondent borrowed the money, his employer had a written procedure that prohibited employees from borrowing or lending money to customers. Respondent did not notify his employer of the arrangement with LG.

By reason of the foregoing, Respondent violated NASD Conduct Rules 2370 and 2110.

**SECOND CAUSE OF COMPLAINT
(Misuse of Funds)
(Violation of Conduct Rule 2110)**

10. The Department realleges and incorporates by reference paragraphs 1 through 9 above.

11. In or about April 2006, while Respondent was registered with NASD and associated with CGMI, SBP gave Respondent \$25,000 to invest that money on behalf of himself and his family at CGMI.
12. On May 16, 2006, Respondent met with SBP where Respondent presented SBP with five (5) notarized letters in which Respondent promised to repay SBP, his wife, and a family friend, various amounts totaling \$37,500. As per these letters, Respondent would pay back these loans on various dates between June 2, 2006 and June 17, 2006. The \$37,000 represented the principal (\$25,000) as well as the interest.
13. The firm was unaware of the transactions between SBP and Respondent.
14. To date, Respondent has not repaid SBP, his wife, or the family friend any of the money.
15. Respondent did not set up a CMGI account for SBP, his wife, or for the family friend.
16. Respondent did not apply these funds as SBP had directed and converted the funds for his own use and benefit.

By reason of the foregoing, Respondent violated NASD Conduct Rule 2110.

THIRD CAUSE OF COMPLAINT
(Failure to Respond)
(Violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110)

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

First Request

18. By letter dated June 20, 2006, the staff of NASD's District 10 office (the "Staff") requested that Respondent provide certain information and documents concerning, among other things, the loans he received from LG. The letter was sent via regular mail to Respondent's current residential address as reflected in the records of the NASD Central Registration Depository, [REDACTED] (the "CRD Address").

The request was made pursuant to, and in accordance with, NASD Procedural Rule 8210, and required a response by July 5, 2006.

19. The letter was not returned to the Staff.

20. The Staff did not receive a response from Respondent.

Second Request

21. By letter dated July 7, 2006, the Staff once again requested that Respondent provide certain information and documents concerning, among other things, the loans he received from LG. The letter was sent via regular and certified mail to Respondent's CRD Address as well as an additional address obtained by the Staff: [REDACTED] [REDACTED] (the "Additional Address"). The request was made pursuant to, and in accordance with, NASD Procedural Rule 8210, and required a response by July 17, 2006.

22. The letters sent by regular mail were not returned to the Staff.

23. The certified mail return receipt for the mailing to the CRD Address was returned to the Staff with the designation, "Not Deliverable as Addressed – Unable to Forward."

24. The certified mail return receipt for the mailing to the Additional Address was received by Staff bearing the signature "Johanna Ricca."

25. The Staff did not receive a response from Respondent.

By reason of the foregoing, Respondent violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

PRAYER

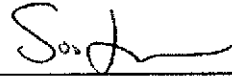
WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under NASD Rule 8310(a), including money 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: April 12, 2007



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