

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT

Complainant,

v.

JOHN KAVALEC
(CRD No. 1309961),

Respondent.

Disciplinary Proceedings
No. 2005002707301 and
No. 20060048428 (Consolidated)

Hearing Officer – David M. FitzGerald

DEFAULT DECISION

May 2, 2007

Summary

Respondent is barred from associating with any NASD member in any capacity for failing to respond to requests for information, in violation of Rules 8210 and 2110. In light of the bar, no additional sanctions are imposed on Respondent for borrowing funds from customers, in violation of Rules 2370 and 2110.

DECISION

I. Introduction

The Department of Enforcement filed the attached Complaints on November 6 and December 13, 2006. The November 6 Complaint alleges that Respondent John Kavalec borrowed customer funds, in violation of Rules 2370 and 2110, and failed to respond to requests for information, in violation of Rules 8210 and 2110. The December 13 Complaint alleges that Respondent also failed to respond to certain additional requests for information, in violation of Rules 8210 and 2110. Respondent did not file an Answer or otherwise respond to either Complaint. Enforcement then filed a motion to consolidate the two proceedings, pursuant to Rule 9214(b). Respondent did not reply to the motion, and the Chief Hearing Officer granted it on February 21, 2007. On March 1, 2007,

Enforcement filed a motion for a default decision in the consolidated proceeding, supported by the declaration of Richard A. March and 10 exhibits. Respondent did not reply to the motion.¹

II. Respondent's Default

On November 3, 2006, Enforcement sent the November 6 Complaint and Notice of Complaint to Respondent by regular and certified first class mail addressed to Respondent's most current residential address listed in the Central Registration Depository (the CRD address). On December 4, 2006, Enforcement sent the November 6 Complaint and Second Notice of Complaint to Respondent by regular and certified first class mail addressed to the CRD address. Respondent did not file an Answer or otherwise respond to the November 6 Complaint.

On December 11, 2006, Enforcement sent the December 13 Complaint and Notice of Complaint to Respondent by regular and certified first class mail addressed to Respondent's CRD address, and on January 8, 2007, sent the December 13 Complaint and Second Notice of Complaint by certified and regular first class mail to the CRD address. Once again, Respondent did not file an Answer or otherwise respond to the December 13 Complaint.

Enforcement served the Complaints and the Notices of Complaint on Respondent in accordance with Rule 9134, giving him constructive notice of the proceedings. By failing to respond to the Complaints, he defaulted. Pursuant to Rule 9269, the Hearing Officer will deem the allegations in the Complaints admitted.

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

III. Jurisdiction

Respondent was registered as an Investment Company and Variable Contracts Products Limited Representative through SII Investments, Inc., from January 1997 until September 2005. Although he has not been registered since then, he 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 his last registration, and it charges him with misconduct while he was registered and with failing to provide information requested during that two-year period.

IV. Violations

The first cause of the November 6 Complaint alleges that while registered with SII, on or about August 6, 2004, Respondent borrowed funds from customer CL by accepting a check made payable to him in the amount of \$15,000, and on or about May 31, 2005, borrowed additional funds from CL by accepting a check made payable to him in the amount of \$10,000. SII's written supervisory procedures specifically prohibited borrowing money from customers.

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.

The second cause of the November 6 Complaint alleges that on or about December 13, 2005, and January 10 and January 23, 2006, NASD staff sent Respondent letters, pursuant to Rule 8210, requesting that he provide certain information. According

to Enforcement's default motion, these requests sought information regarding Respondent's borrowing funds from customer CL. NASD staff sent the letters by regular and certified first class mail to Respondent's CRD address, and pursuant to Rule 8210(d), he is deemed to have received them. Respondent did not respond in any manner to these requests.

The December 13 Complaint alleges that on or about July 5 and July 25, 2006, NASD staff sent additional letters to Respondent requesting information, pursuant to Rule 8210. Enforcement's motion indicates that these requests sought information regarding a complaint from another customer that Respondent had borrowed money from her. Once again, the staff sent the letters to Respondent at his CRD address by regular and certified mail, and he is therefore deemed to have received them, but he failed to respond to the requests in any manner.²

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent failed to respond to requests for information, in violation of Rules 8210 and 2110.

V. Sanctions

For failing to respond to requests for information, the Guidelines recommend a bar. NASD Sanction Guidelines at 35. There is no evidence of any mitigating facts that would justify a lesser sanction in this case.

The NASD Sanction Guidelines do not list a specific sanction for violating Conduct Rule 2370. Enforcement requests that Respondent be suspended for one year for

² Enforcement did not charge or allege that Respondent did, in fact, borrow money from the customer referred to in the December 13 Complaint.

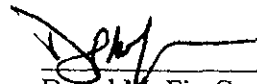
this violation. In its motion papers, Enforcement indicates that customer CL "has acknowledged that Respondent Kavalec has since repaid him for these two loans," but points out that SII's supervisory procedures specifically prohibited borrowing from customers, and that Respondent borrowed money twice from the customer.

Particularly given the size of the loans, the Hearing Officer tends to agree with Enforcement's recommendation, but in light of the bar for Respondent's failures to respond to requests for information a suspension would serve no purpose. Accordingly, no separate sanctions will be imposed for Respondent's borrowing from a customer.

VI. Conclusion

Respondent John Kavalec is barred from associating with any NASD member in any capacity for failing to respond to requests for information, in violation of Rules 8210 and 2110. In light of the bar, no separate sanctions are imposed on Respondent for borrowing customer funds, in violation of Rules 2370 and 2110. The bar will be effective immediately if this decision becomes NASD's final disciplinary action.

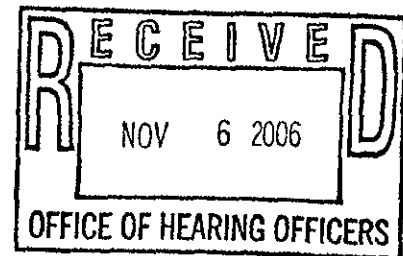
SO ORDERED.



David M. FitzGerald
Hearing Officer

Copies to: John Kavalec (*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.

John Kavalec,
Limited Registered Representative
CRD No. 1309961

Respondent.

Disciplinary Proceeding
No. 2005002707301

COMPLAINT

Upon information and belief, Complainant alleges as follows:

1. Respondent John Kavalec ("Respondent") became registered with NASD in October 1984 as an Investment Company and Variable Contracts Products Representative. Between January 1997 and September 2005, Respondent became registered in the same capacity with SII Investments, Inc. ("Member"). 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.

FIRST CAUSE OF ACTION
NASD Conduct Rules 2370 and 2110:
Borrowing from Customer

2. On or about August 6, 2004, Respondent borrowed funds from public customer CL by accepting a check made payable to him in the amount of \$15,000.

3. On or about May 31, 2005, Respondent borrowed funds from public customer CL by accepting a check made payable to him in the amount of \$10,000.

4. The Member's written supervisory procedures specifically prohibited borrowing money from customers.

5. The acts, practices and conduct above constitute separate and distinct violations of NASD Conduct Rules 2370 and 2110 by Respondent.

SECOND CAUSE OF ACTION
NASD Conduct Rule 2110 and NASD Procedural Rule 8210
Failure to Respond to Requests for Information

6. Paragraphs 1 through 5 are re-alleged and incorporated herein by reference.

7. On or about December 13, 2005, NASD Staff sent Respondent a letter requesting that he provide certain information, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210. That request for information was sent by first class and certified mail to Respondent's address of record as contained in the records of the Central Registration Depository ("CRD address") and requested that he respond by January 3, 2006. The first class was never returned, while the certified mail was received by Gayle Kavalec. Respondent never provided a response to the request.

8. On or about January 10, 2006, NASD Staff sent Respondent a letter requesting that he provide certain information, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210. That request for information was sent by first class and certified mail to Respondent's address of record as contained in the records of the Central Registration Depository ("CRD address") and requested that he respond by January 23, 2006. The first class was never returned, while the certified mail was received by Respondent. Respondent never provided a response to the request.

9. On or about January 23, 2006, NASD Staff sent Respondent a letter requesting that he provide certain information, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210. That request for information was sent by first class and certified mail to Respondent's address of record as contained in the records of the Central Registration Depository ("CRD address") and requested that he respond by February 6, 2006. Neither the the first class nor the certified letter were ever returned. Respondent never provided a response to the request.

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

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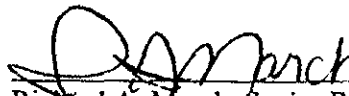
PRAYER FOR RELIEF

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: 11/3/06


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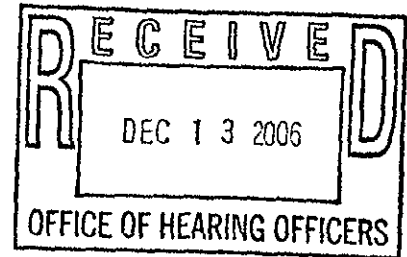
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**NASD Conduct Rule 2110 and NASD Procedural Rule 8210
Failure to Respond to Requests for Information**

2. On or about July 5, 2006, NASD Staff sent Respondent a letter requesting that he provide certain information, pursuant to and in accordance with the provisions of NASD

Procedural Rule 8210. That request for information was sent by first class and certified mail to Respondent's address of record as contained in the records of the Central Registration Depository ("CRD address") and requested that he respond by July 19, 2006. The first class was never returned, while the certified mail was returned and marked unclaimed. Respondent never provided a response to the request.

3. On or about July 25, 2006, NASD Staff sent Respondent a letter requesting that he provide certain information, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210. That request for information was sent by first class and certified mail to Respondent's address of record as contained in the records of the Central Registration Depository ("CRD address") and requested that he respond by August 8, 2006. The first class was never returned, while the certified mail was returned and marked unclaimed. Respondent never provided a response to the request.

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

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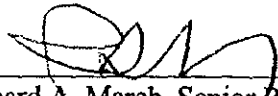
PRAYER FOR RELIEF

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 NASD Rule 8330.

**NASD DEPARTMENT OF
ENFORCEMENT**

Date: December 11, 2006


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