

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT

Complainant,

v.

JEFFREY JAY CAHN
(CRD No. 4030416)

Respondent.

Disciplinary Proceeding
No. 2006005134301

Hearing Officer – AWH

DEFAULT DECISION

May 17, 2007

Formerly registered representative borrowed funds from a customer without approval of his member firm, in violation of NASD Conduct Rules 2370 and 2110; settled that customer's complaint away from his member firm, in violation of NASD Conduct Rule 2110; and failed to respond to NASD staff requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2110. Respondent barred for failing to respond to requests for information. In light of the bar, no further sanctions imposed for the other violations.

Appearances:

Jonathan M. Prytherch, Esq., for the Department of Enforcement.

No appearance by or for Jeffrey Jay Cahn.

DECISION

Background

On December 18, 2006, the Department of Enforcement ("Enforcement") filed the Complaint in this proceeding, alleging that Jeffrey Jay Cahn borrowed funds from a customer, in violation of NASD Conduct Rules 2370 and 2110; settled that customer's complaint away from Cahn's employer firm; and failed to respond to requests for information, in violation of NASD Procedural Rule 8210 and Conduct Rule 2110. Cahn did not file an Answer to the Complaint, or to a Second Notice of Complaint. As a result,

Enforcement filed a Motion for Entry of Default Decision on March 21, 2007, to which Cahn did not respond. Accordingly, pursuant to Procedural Rules 9215(f) and 9269, Enforcement's Motion will be granted, and the allegations in the Complaint, which is attached to this Decision, will be deemed admitted.

Findings of Fact¹

Respondent

Cahn first entered the securities industry in 1999 and was registered as a General Securities Representative through member firms Ameriprise Financial Services, Inc., and IDS Life Insurance Company. On April 27, 2006, Ameriprise filed a Form U-5 on Cahn's behalf, stating that he had been discharged from both firms. On September 11, 2006, Ameriprise filed an Amended Form U-5, disclosing a customer complaint of forged signatures. Cahn is not currently associated with any member firm.

Borrowing Funds From a Customer

In 2005, Cahn borrowed \$2,000 from MD, a customer of Ameriprise for whom Cahn was the assigned registered representative. MD had been a friend Cahn's since junior high school, but MD was not a member of Cahn's immediate family. Ameriprise did not have written procedures allowing borrowing and lending of money between its registered persons and customers of those registered persons. In fact, Ameriprise had written procedures that prohibited its registered employees from borrowing from or lending to customers, with the limited exception of borrowing from, or lending to, immediate family members. Ameriprise was not aware of, and did not approve, the loan that Cahn took from MD.

¹ All findings of fact are based upon the admitted allegations in the Complaint, the Declaration Supporting Motion for Entry of Default Decision, and the exhibits attached thereto.

Settling Away from the Firm

On January 26, 2006, MD wrote a complaint letter to Cahn regarding Cahn's delinquency in paying back the \$2,000 loan. After receiving the complaint letter, Cahn repaid MD. However, Cahn discarded MD's complaint letter, which was sent to him at Ameriprise. When Ameriprise later discovered that Cahn had received the complaint letter, the firm contacted MD, who stated that Cahn had already "fixed" the matter. Cahn had settled MD's complaint without the knowledge or approval of Ameriprise.

Failure to Respond to Requests for Information

1. The first request

On June 19, 2006, pursuant to Procedural Rule 8210, NASD staff sent Cahn a request for information concerning the allegations of forged signatures. The request was sent by first class mail to Cahn's residential address listed in the Central Registration Depository ("CRD" address). The mailing was not returned. Cahn did not respond to the request for information.

On July 5, 2006, the staff spoke with Cahn who stated that he had not received the July 19, 2006, request for information, and he had a new address in Hackensack, New Jersey ("Hackensack" address).

On July 6, 2006, pursuant to Procedural Rule 8210, the staff sent another version of its first request for information by first class mail to Cahn at the Hackensack address. The mailing was not returned. Cahn did not respond to the request.

2. The second request

After unsuccessfully contacting Cahn by telephone on two occasions, on July 24, 2006, the staff sent Cahn, by first class and certified mail to his CRD and Hackensack

addresses, another request for information concerning the allegations of forged signatures. In the letter, the staff cautioned Cahn of potential disciplinary action if he failed to respond to the request for information. The first class mailings were not returned to the staff. The return receipt for the certified mailing sent to the CRD address was returned, bearing an illegible signature. The certified mailing to the Hackensack address was returned as unclaimed. Cahn did not respond to the request for information.

Service of the Complaint

On December 18, 2006, Enforcement served Cahn with the Complaint and Notice of Complaint by both first class and certified mail, sent to his CRD address and his Hackensack address. The first class mailing to the CRD address was not returned. The return receipt for the certified mailing to that address was returned unclaimed. The first class and certified mailings to the Hackensack address were returned, with the notation "moved left no address, unable to forward, return to sender." Cahn did not file an Answer.

On January 17, 2007, Enforcement served the Complaint and Second Notice of Complaint on Cahn by first class and certified mail sent to the same two addresses. The first class mailing sent to the CRD address was not returned, and the return receipt for the certified mailing to that address was returned unclaimed. The first class and certified mailings to the Hackensack address were returned, with the notation "moved left no address, unable to forward, return to sender." Cahn did not file an Answer to the Complaint.

Discussion and Conclusions

Jurisdiction

Article V, Section 4 of the NASD By-Laws provides for a two-year period of retained jurisdiction over a registered person after the effective date of the person's termination of registration or the filing of an Amended Form U-5 within two years of such termination of registration, alleging conduct actionable under any applicable statute, rule, or regulation. During this period of retained jurisdiction, NASD may file a complaint based upon conduct that occurred while the individual was registered through a member firm, or based upon such person's failure to provide information requested pursuant to NASD Procedural Rule 8210, if the request was made, and the complaint is filed, during the foregoing period of retained jurisdiction.

Enforcement filed the Complaint on December 18, 2006, within two years of the filing of the termination of Cahn's registration and the timely filing of an Amended Form U-5. The Complaint alleges misconduct while Cahn was registered with an NASD member firm, as well as failures to provide information during the period of retained jurisdiction. Therefore, NASD has jurisdiction over this proceeding.

Respondent's Default

Enforcement properly served the Complaint on Cahn by sending it via first class and certified mail to his CRD and Hackensack addresses. Pursuant to NASD Procedural Rule 9134, the mailings provide constructive notice of the instant proceeding. Because Cahn failed to file an answer to the Complaint, Procedural Rules 9215(f) and 9269 authorize entry of a default decision against him. Accordingly, the allegations in the Complaint are deemed admitted.

Borrowing Funds From a Customer

NASD Conduct Rule 2370 provides, in pertinent 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, Ameriprise specifically prohibited registered employees from borrowing from, or lending to, customers, with the limited exception of immediate family members. By borrowing \$2,000 from MD, who was not a member of Cahn's immediate family, Cahn violated his firm's procedures and NASD Conduct Rules 2370 and 2110.²

Settling Away

Settling a customer complaint without the knowledge or authorization of the member firm is a violation of Conduct Rule 2110.³ Upon receiving MD's letter of complaint, sent to Cahn at Ameriprise, Cahn repaid the loan, but discarded the complaint letter. By settling MD's complaint about his failure to repay the loan without the knowledge or authorization of Ameriprise, Cahn violated Rule 2110.

Failures to Provide Information

Procedural Rule 8210 authorizes NASD to require any person subject to its jurisdiction to provide information and testimony related to any matter under investigation. The Rule serves as a key element in NASD's oversight function and

² Any conduct that violates an NASD Conduct Rule is viewed as a violation of Conduct Rule 2110. *Dep't. of Enforcement v. Shvarts*, No. CAF980029, 2000 NASD Discip. LEXIS 6, at **12-13, (NAC June 2, 2000).

³ *District Business Conduct Comm. No. 10 v. DiAngelo*, No. C10960003, 1996 NASD Discip. LEXIS 34, at **5-6 (NAC Oct. 16, 1996).

allows NASD to carry out its regulatory functions without subpoena power.⁴ When an individual fails to respond to information requests, NASD's ability to perform its regulatory responsibilities is subverted.⁵ A violation of Procedural Rule 8210 is also a violation of Conduct Rule 2110.⁶

Cahn received constructive notice of both requests for information, and, as a result of his telephone conversation with the staff, he had actual notice that the staff was seeking information from him and had sent him a written request for that information. His complete failures to comply with the two requests for information plainly constitute violations of Procedural Rule 8210 and Conduct Rule 2110.

Sanctions

Failure to Provide Information

For failure to provide information and documents in response to requests made pursuant to Rule 8210, NASD Sanction Guidelines provide that a bar is standard where, as here, the individual fails to provide any information or documents.⁷ There are no mitigating circumstances that would warrant a sanction less than a bar for his complete failure to respond to requests for information. Accordingly, Cahn will be barred for failing to respond in any manner to requests for information made pursuant to Procedural Rule 8210.

⁴ See *Joseph G. Chiulli*, Exchange Act Release No. 42,359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for NASD effectively to conduct its investigations, and emphasizing that NASD members and associated persons must fully cooperate with requests for information); *Dep't of Enforcement v. Benz*, No. C01020014, 2003 NASD Discip. LEXIS 11, at *18 (OHO Mar. 4, 2003) ("Because NASD has no subpoena power, timely and full compliance with information requests is essential to NASD's self-regulatory function.").

⁵ *Joseph P. Hannan*, Exchange Act Release No. 40,438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998).

⁶ *Dep't of Enforcement v. Baxter*, No. C07990016, 2000 NASD Discip. LEXIS 3, at *25 (NAC Apr. 19, 2000).

⁷ *Id.*, p. 35.

Borrowing Funds From a Customer and Settling Away from the Firm

There is no specific sanction guideline for borrowing from a customer in violation of Conduct Rule 2370. Although only one customer was involved, Cahn did not have permission from the firm to borrow from the customer, failed to repay the borrowed funds until after MD wrote a letter of complaint, and attempted to conceal the complaint letter from the firm. Given those facts, Enforcement requests a fine of \$5,000 and a suspension in all capacities of 90 days. The Hearing Officer agrees that the sanctions recommended by Enforcement are appropriately remedial under the circumstances.

For settling customer complaints away from the firm, the Sanction Guidelines provide for a fine of \$2,500 to \$50,000, and consideration of a suspension for up to two years.⁸ The principal considerations are (1) whether there was verbal notice to, and acquiescence by, the firm, or respondent deceived the firm; and (2) whether the misconduct delayed or obviated the filing of required Forms U-4 or U-5 or Rule 3070 filings. There is no evidence that Cahn's actions delayed the filing of his U-5, or that it delayed the filing of an amendment to his U-4 by the firm. However, there are aggravating circumstances to be considered. Cahn concealed the loan and discarded MD's complaint letter. An appropriate sanction, therefore, would be a \$5,000 fine and a 90 day suspension for this violation. However, in light of the bar for failing to respond to requests for information, the additional sanctions for these two violations will not be imposed.⁹

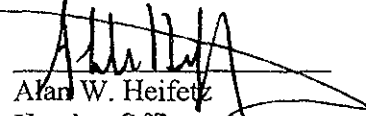
⁸ SANCTION GUIDELINES, p. 36.

⁹ See *Dep't of Enforcement v. Asensio*, No. CAF030067, 2006 NASD Discip. LEXIS 20, at *55 (NAC July 28, 2006) (in light of bar for 8210 violation, imposition of a suspension found to be redundant and fine to serve no remedial purpose).

Conclusion

Jeffrey Jay Cahn is barred from association with any NASD member firm in any capacity for failing to provide information and documents in response to NASD staff requests, in violation of Procedural Rule 8210 and Conduct Rule 2110. In light of the bar, no further sanctions imposed for borrowing customer funds, in violation of NASD Conduct Rules 2370 and 2110, and for settling a customer complaint away from his firm, in violation of Conduct Rule 2110. The bar shall become effective immediately if this Decision becomes the final disciplinary action of NASD.

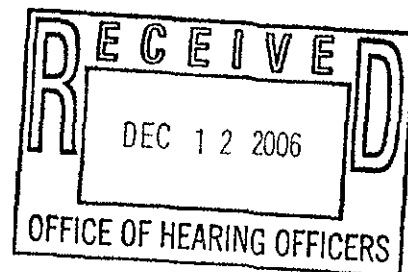
SO ORDERED.


Alan W. Heifetz
Hearing Officer

Copies to:
Via First Class Mail & Overnight Courier
Jeffrey Jay Cahn

Via First Class Mail & Electronic Mail
Jonathan M. Prytherch, Esq.
Mark P. Dauer, Esq.
Rory C. Flynn, Esq.

**NASD
OFFICE OF HEARING OFFICERS**



DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

JEFFREY JAY CAHN
(CRD No. 4030416),

RESPONDENT.

DISCIPLINARY PROCEEDING
No. 2006005134301

COMPLAINT

The Department of Enforcement alleges:

1. Respondent Jeffrey Jay Cahn first became registered with NASD as a General Securities Representative through member firms Ameriprise Financial Services, Inc. and IDS Life Insurance Company on October 20, 1999.
2. On April 27, 2006, Ameriprise filed a Form U5 on Cahn's behalf stating that he had been discharged from both firms on April 25, 2006.
3. On September 11, 2006, Ameriprise amended Cahn's Form U5 to reflect additional, potentially actionable conduct.
4. Cahn is not presently associated with any NASD member firm.
5. Accordingly, pursuant to Article V, Section 4 of NASD's By-Laws, NASD has jurisdiction over Cahn until at least September 10, 2008.

FIRST CAUSE OF ACTION
Improper Borrowing of Customer Funds (Rules 2370 and 2110)

6. The Department realleges and incorporates by reference paragraphs 1-5 above.
7. In or about September 2004, MD became Cahn's customer at Ameriprise.
8. Throughout 2005, Ameriprise's Compliance Resource Guide prohibited representatives from taking loans from customers with the exception of immediate family members.
9. Nevertheless, in or about 2005, Cahn, while associated with Ameriprise, borrowed approximately \$2,000 from MD.
10. MD was not a member of Cahn's immediate family.
11. By reason of the foregoing, Cahn violated NASD Conduct Rules 2370 and 2110.

SECOND CAUSE OF ACTION
Settling Away (Rule 2110)

12. The Department realleges and incorporates by reference paragraphs 1-11 above.
13. On or about January 26, 2006, Cahn received a complaint letter from customer MD regarding his delinquency in paying back the above-referenced loan.
14. Upon receiving the letter from MD, Cahn repaid him.
15. Cahn discarded customer MD's complaint letter, which was sent to him at the firm.
16. When Ameriprise later discovered that Cahn had received the complaint letter, the firm contacted MD, who stated that Cahn had already "fixed" the issue.
17. Cahn's settlement with MD was made without the knowledge or approval of Ameriprise.

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

THIRD CAUSE OF ACTION
Failure to Respond (Rules 8210 and 2110)

19. The Department realleges and incorporates by reference paragraphs 1-18 above.
20. By letter dated June 19, 2006, sent via regular first-class mail to Cahn's last known residential address as reflected in the records of NASD's Central Registration Depository [REDACTED] (CRD address), NASD staff requested that Cahn furnish, *inter alia*, a signed, detailed statement regarding forgery allegations from Ameriprise customers MR and HT. The request was made pursuant to NASD Procedural Rule 8210 and mandated that Cahn comply by July 3, 2006. This mailing was not returned to the Staff. Cahn failed to respond to this request.
21. On or about July 5, 2006, staff spoke with Cahn who stated that he had not received the June 19 request and that he had a new address [REDACTED] [REDACTED] (Hackensack address).
22. By letter dated July 6, 2006, sent via regular first-class mail to Cahn's Hackensack address, staff reiterated the June 19 request and again asked that Cahn furnish, *inter alia*, a signed, detailed statement regarding forgery allegations from Ameriprise customers MR and HT. The request was made pursuant to NASD Procedural Rule 8210 and mandated that Cahn comply by July 20, 2006. This mailing was not returned to the Staff. Cahn failed to respond to this request.
23. On or about July 21, 2006, staff attempted to contact Cahn by telephone to check on the status of his outstanding response. Cahn, however, did not return the staff's call.

24. On or about July 24, 2006, staff again unsuccessfully attempted to contact Cahn by telephone.
25. By letter dated July 24, 2006, sent via regular first-class and certified mail to Cahn's CRD and Hackensack addresses, staff enclosed copies of the June 19, 2006 and July 6, 2006 requests and again asked that he respond. The request was made pursuant to NASD Procedural Rule 8210, mandated that Cahn comply by August 7, 2006, and warned Cahn of potential disciplinary action for failing to comply. The first class mailings were not returned to the staff. Staff received a return receipt for the certified mailing that went to the CRD address bearing an illegible signature. The certified mailing to the Hackensack address was returned as "unclaimed." Cahn failed to respond to this request.
26. Staff is not aware of a more current residential or business address for Cahn.
27. By reason of the foregoing, Cahn violated NASD Procedural Rule 8210 and Conduct Rule 2110.

PRAYER

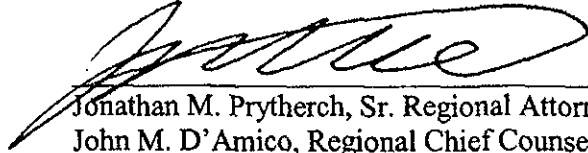
WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under NASD Rule 8310(a), including 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 18, 2006



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