

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS¹**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

CHARLES ROBERT MURDOUGH
(CRD No. 2437321),

Respondent.

Disciplinary Proceeding
No. 2006005136901

Hearing Officer – Sara Nelson Bloom

Default Decision

February 5, 2008

For failing 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 the bar, no further sanctions are imposed for borrowing of customer funds without the approval of Respondent's member firm, in violation of Rules 2370 and 2110.

Appearances

Michael J. Newman, Esq., FINRA, Woodbridge, NJ, for the Department of Enforcement.

No appearance by Respondent.

DECISION

I. Background

On June 4, 2007, the Department of Enforcement ("Enforcement") filed a two-cause Complaint in this proceeding, attached to this Decision as Exhibit A. The Complaint alleges that Respondent Charles Robert Murdough ("Respondent") violated Rules 2370 and 2110 by borrowing customer funds in contravention of his firm's procedures, and without meeting the

¹ As of July 30, 2007, NASD consolidated with the member firm regulation functions of the NYSE and began operating under a new corporate name, the Financial Industry Regulatory Authority ("FINRA"). References in this decision to FINRA include, where appropriate, NASD.

conditions set forth in Rule 2370. In addition, the Complaint alleges that Respondent violated Rules 8210 and 2110 by failing respond to FINRA Staff ("Staff") requests for testimony and documents relating to the Rule 2370 charge. On December 5, 2007, Enforcement filed a Motion for Entry of Default Decision and Request for Sanctions, supported by the declaration of Michael J. Newman, Esq., and five exhibits. Respondent did not reply to the Motion. For the reasons set forth below, the Motion is granted.²

II. Respondent's Default

On May 31, 2007, Enforcement sent the Complaint and Notice of Complaint to Respondent, by first-class and certified mail, to his last known residential address listed in the Central Registration Depository (the "CRD address"). In the same manner, Enforcement sent the Complaint and Second Notice of Complaint to Respondent on June 29, 2007. Respondent did not file an Answer to the Complaint. On September 12, 2007, Enforcement sent the Notice of Complaint and Complaint to Respondent, by first-class and certified mail, to his CRD address and another possible current address (the "Alternate address"). In the same manner, Enforcement sent the Complaint and Second Notice of Complaint to Respondent on October 11, 2007.

Enforcement complied with Rule 9134(b)(1) by mailing the Complaint and Notices of Complaint to Respondent's CRD address and the Alternate address, thereby giving Respondent constructive notice of this proceeding. By failing to file an Answer, Respondent defaulted.

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.

Pursuant to Rule 9215(f), the Hearing Officer deems the allegations in the Complaint admitted.

III. Jurisdiction

From February 1994 through December 2004, Respondent was registered with member firm Merrill, Lynch, Pierce, Fenner & Smith, Incorporated, ("Merrill Lynch"). In January 2005, Merrill Lynch filed a Form U5 stating that Respondent was terminated for "taking a loan from a client contrary to firm policy." On June 15, 2005, Merrill Lynch amended Respondent's Form U5 to disclose the settlement of a customer arbitration claim. Respondent is currently not associated with a FINRA member.

Although Respondent is not currently associated with a member firm, FINRA has jurisdiction to bring this proceeding, pursuant to Art. V, § 4 of FINRA'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 two years of the amendment of Respondent's Form U5.³

IV. Violations

A. Improper Borrowing of Customer Funds

The Complaint alleges that on or about April 15, 2004, Respondent borrowed \$25,000 from public customer and non-family member, WP. Respondent agreed in writing to repay the loan in full within one year, at an interest rate of 5%. WP died in November 2004 at the age of 90. To date, Respondent has not repaid the loan to WP or his estate.⁴

³ Art. V, § 4 of FINRA's By-Laws does not require that the U5 amendment relate to the misconduct charged in the Complaint.

⁴ Merrill Lynch repaid WP's estate; therefore, Enforcement did not seek restitution.

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, Merrill Lynch specifically prohibited registered employees from borrowing from customers, unless they were family members.

Accordingly, by borrowing \$25,000 from WP, Respondent violated his firm's procedures and Rules 2370 and 2110.

B. Failure to Respond

The Complaint also alleges that, on June 21, 2006, FINRA Staff ("Staff") sent Respondent a letter, pursuant to Rule 8210, by first-class and certified mail to his CRD address requiring him to provide information about the loan received from WP. Respondent failed to respond. On July 12, 2006, Staff sent Respondent another request for the same information, by first-class and certified mail to his CRD address, and several alternative addresses. Staff again sent this request in the same manner on August 2, 2006. Once again, Respondent did not respond. Staff served these requests in accordance with Rule 8210(d), and therefore Respondent is deemed to have received them.

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 request,⁶ he failed to respond. Respondent thereby violated Rules 8210 and 2110.

V. Sanctions

A bar is standard for failure to provide requested information. FINRA Sanction Guidelines ("Guidelines") at p. 35 (2007 ed.). There is no evidence of any mitigating circumstances that would justify a lesser sanction. Therefore, Respondent is barred from associating with any FINRA member in any capacity.

The Guidelines do not specifically address violations of Rule 2370. This case involves a single loan for \$25,000 that Respondent documented. However, Respondent has not repaid the loan as provided in the loan agreement, and WP has since died. Further circumstances surrounding this loan are unknown, because Respondent has failed to respond to Staff requests. Consistent with the Guidelines, the Hearing Officer finds that this failure respond is an aggravating factor. The record therefore supports a substantial sanction, but not necessarily a bar. However, in light of the bar for failing to respond to requests for information in violation of Rules 8210 and 2110, no further sanctions will be imposed for Respondent's violation of Rules 2370 and 2110.

VI. Conclusion

For failing 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

⁵ See, e.g., Dep't of Enforcement v. Valentino, No. FP1010004, 2003 NASD Discip. LEXIS 15, at *12 (N.A.C. 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).

of the bar, no further sanctions are imposed for borrowing of customer funds without the approval of Respondent's member firm, in violation of Rules 2370 and 2110. The bar shall become effective immediately if this Decision becomes the final disciplinary action of FINRA.

SO ORDERED.


Sara Nelson Bloom
Hearing Officer

Copies to: Charles Robert Murdough (*via overnight and first-class mail*)
Michael J. Newman, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)
Mark P. Dauer, Esq. (*via electronic mail*)

**NASD
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

**CHARLES ROBERT MURDOUGH
(CRD No. 2437321),**

RESPONDENT.

**DISCIPLINARY PROCEEDING
No. 2006005136901**

COMPLAINT

The Department of Enforcement alleges:

1. Respondent Charles Robert Murdough first became registered with NASD as a Series 7 General Securities Representative on February 7, 1994. From that date through December 17, 2004, Murdough was registered with Merrill Lynch, Pierce, Fenner & Smith Inc. (Merrill Lynch).
2. On or about December 17, 2004, Merrill Lynch filed a partial Form U5 terminating Murdough. On or about January 4, 2005, Merrill Lynch filed a full Form U5, stating that Murdough was terminated for "taking a loan from a client contrary to firm policy."

3. On or about June 15, 2005, Merrill Lynch amended Murdough's Form U5 to disclose the settlement of a customer arbitration claim, filed against Murdough and Merrill Lynch, for \$37,000. The U5 amendment states: "claimant alleges FA made unsuitable recommendations and engaged in churning."
4. Murdough has not been registered with another firm since his termination from Merrill Lynch. Accordingly, pursuant to Article V, Section 4 of NASD's By-Laws, NASD has jurisdiction over Murdough until at least June 14, 2007.

**FIRST CAUSE OF ACTION
IMPROPER BORROWING FROM A CUSTOMER
(NASD Conduct Rules 2370 and 2110)**

5. The Department realleges and incorporates by reference paragraphs 1-4 above.
6. In 2004, W.P. was a customer of Murdough's in the Merrill Lynch Branch Office in Buffalo, New York.
7. In 2004, Merrill Lynch's compliance procedures prohibited financial advisors from engaging in borrowing or lending agreements with customers, unless they were family members.
8. Nevertheless, on or about April 15, 2004, Murdough, while registered with Merrill Lynch, borrowed \$25,000 from customer W.P.
9. In connection with the loan, Murdough provided W.P. with a letter agreement specifying that he would repay the loan in full within one year at an interest rate of 5%.
10. W.P. died on November 8, 2004 at the age of 90. At the time of W.P.'s death, Murdough had not repaid the loan. To date, Murdough has not repaid the loan to W.P.'s estate.
11. There was no familial relationship between W.P. and Murdough.

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

**SECOND CAUSE OF COMPLAINT
FAILURE TO RESPOND
(NASD Procedural Rule 8210 and Conduct Rule 2110)**

13. The Department realleges and incorporates by reference paragraphs 1-12 above.
14. By letter dated June 21, 2006, NASD staff requested, pursuant to NASD Procedural Rule 8210, that Murdough provide information about the \$25,000 loan and his relationship with customer W.P. The letter, which requested a response by July 5, 2006, was sent via First-Class Mail to Murdough's last known residential address as reflected in the records of NASD's Central Registration Depository (CRD Address): [REDACTED]

[REDACTED] The letter was never returned to NASD. Murdough failed to respond to this request.

15. By letter dated July 12, 2006, NASD staff again requested that Murdough provide information about the \$25,000 loan and his relationship with customer W.P. The letter, which requested a response by July 26, 2007, was sent via First-Class Mail to Murdough's CRD address, as well as to three other potential addresses provided by Equifax: [REDACTED]

[REDACTED]

The letters were not returned to NASD. Again, Murdough failed to respond to this request.

16. By letter dated August 2, 2006, NASD staff again requested that Murdough provide information about the \$25,000 loan and his relationship with customer W.P. The letter was again mailed, by First-Class and certified mail, to Murdough's CRD address and the three potential addresses identified in the paragraph above. It requested a response by August 16, 2006, and warned Murdough that his failure to comply could result in disciplinary action.
17. The certified letters sent to Murdough's CRD address and to [REDACTED] [REDACTED] were delivered on August 11, 2006. The signatures on delivery receipts for both mailings are indecipherable, but appear to be signed by the same individual. The certified letters sent to the other two potential addresses for Murdough identified through the Equifax search were returned to the NASD staff as "unclaimed." The First-Class mailings were not returned. Again, Murdough failed to respond to this request.
18. The staff is not aware of a more current residential address or business address for Murdough.
19. By reason of the foregoing, Murdough 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

Dated: May 31, 2007



Michael J. Newman, Regional Counsel
John M. D'Amico, Regional Chief Counsel
NASD Department of Enforcement
581 Main Street, 7th Floor
Woodbridge, NJ 07095
(732) 596-2030; Fax: (732) 721-6557

NASD District Director

Gary K. Liebowitz, Senior VP
NASD, District 9B
581 Main Street, 7th Floor
Woodbridge, New Jersey 07095
(732) 596-2000; Fax: (732) 596-2001

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: (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