

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

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REGISTRATION & DISCLOSURE

DEPARTMENT OF ENFORCEMENT,	)	Disciplinary Proceeding
	)	No. 2006005523401
Complainant,	)	
	)	Hearing Officer
v.	)	
	)	COMPLAINT
NATHAN LORNE	)	
CRD No. 3277561	)	
	)	
Respondent.	)	

The Department of Enforcement alleges:

1. Respondent Nathan Lorne (Lorne) was associated with member firm Waddell & Reed, Inc. from on or about February 12, 2003 through on or about June 5, 2006, where he was registered as a General Securities Representative. From on or about June 27, 2006 through on or about July 20, 2006, Respondent Lorne was associated with another member firm, where he was also registered as a General Securities Representative. Since July 2006, Lorne has not been associated with a FINRA member.
2. Pursuant to Article V, § 4 of FINRA's By-Laws, FINRA has jurisdiction to issue this Complaint.

SUMMARY

3. While serving as treasurer of a trade association chapter, Lorne converted more than \$10,000 from the organization's bank account. The trade association was Lorne's customer at Waddell & Reed. Lorne subsequently pled guilty to a state charge of felony theft after the trade association filed a complaint with the criminal authorities. In addition, Lorne: i) failed to notify Waddell & Reed of his outside business activities as

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treasurer of the chapter and also as a director and vice president of another corporation; and, ii) made false affirmative representations to the firm that he was not engaged in any outside business activity.

FIRST CAUSE OF ACTION
(Conversion of Customer Funds - NASD Conduct Rules 2330 and 2110)

4. Complaint paragraph numbers 1-3, above, are re-alleged and incorporated herein by reference.

5 On or about August 25, 2006, a criminal complaint was filed against Respondent Lorne charging him with felony theft. A copy of the charging document titled "Complaint and Information" (Complaint) is attached as **Exhibit 1** and is incorporated herein by reference.¹

6. The Complaint provides, in relevant part:

That between and including July 1, 2005 and April 30, 2006, at the City and County of Denver, State of Colorado, Nathan Lorne unlawfully, feloniously, and knowingly obtained or exercised control over a thing of value, namely: MONEY of [CRA], with the value of five hundred dollars or more but less than fifteen thousand dollars, without authorization, or by threat or deception, and intended to deprive [CRA] permanently of its use or benefit, and knowingly used, concealed, or abandoned the thing of value in such manner as to permanently deprive [CRA], of its use or benefit; in violation of section 18-4-401(1)(a)(b), (2)(c), C.R.S.

See **Exhibit 1**, p. 2.

7. In support of the Complaint allegations, the CRA, the trade association, had submitted to the Denver District Attorney's Office an Economic Crime Complaint Form (attached as **Exhibit 2** and incorporated herein by reference) and a Victim Impact Statement (attached as **Exhibit 3** and incorporated herein by reference). Those

¹ The Complaint Exhibits are being filed under seal as they contain customer names and/or other sensitive information.

documents provide that Respondent Lorne, in his capacity as the Treasurer of the MH Chapter of the CRA (MH Chapter), stole from the CRA by making unauthorized withdrawals totaling in excess of \$10,000 from the MH Chapter's bank account. *See also* Supporting Affidavit for Arrest Warrant issued in the criminal proceeding and attached as **Exhibit 4** and incorporated herein by reference.

8. The criminal complaint filed against Respondent Lorne identified the CRA, rather than the MH Chapter, as the theft victim because the MH Chapter is an affiliate of the CRA organization. Specifically, the CRA is a non-profit membership trade group that has eighteen chapters throughout Colorado, including the MH Chapter. The chapters are not separately incorporated, but rather, are created under the CRA's By-Laws. The CRA oversees the chapters and all chapter members are members of the CRA. *See* Declaration of PM, Chief Executive Officer of the CRA attached as **Exhibit 5** and incorporated herein by reference.

9. As previously noted, during the period of July 1, 2005 through April 30, 2006 when Respondent Lorne made the unauthorized withdrawals, Lorne was the registered representative assigned to the CRA's accounts at Waddell & Reed.

10. The CRA learned of Respondent Lorne's unauthorized withdrawals after receiving an anonymous letter sent to the then current President of the MH Chapter, CM, dated March 31, 2006 advising that the MH Chapter's bank account should be audited. *See* Declaration of CM, former President of the MH Chapter, attached as **Exhibit 6** and incorporated herein by reference.

11. Following the receipt of the anonymous tip, CM obtained copies of the MH Chapter's bank records and discovered that Lorne had made over forty withdrawals

totaling approximately \$12,101.00 from the Chapter's bank account. *See Exhibits 2, 3 and 6.* Neither CM nor the MH Chapter's Board of Directors had authorized these withdrawals, and neither had knowledge of the withdrawals until after the receipt of the anonymous tip. *See Exhibit 6.* Respondent Lorne was able to hide the withdrawals from CM and the MH Chapter Board members by submitting false financial reports at the monthly Chapter meetings.

12. Respondent Lorne used the moneys that he withdrew from the MH Chapter's bank account for his own personal use. *See Investigative Testimony of Nathan Lorne, October 23, 2007, p 64. l. 21 – 24,* a copy of which is attached as **Exhibit 7** and incorporated herein by reference.

13. After the MH Chapter's receipt of the anonymous letter and the review of the Chapter's bank records, Respondent Lorne was confronted about the unauthorized withdrawals. Lorne subsequently issued the MH Chapter a personal check dated April 13, 2006, in the amount of \$10,895.84. **Exhibit 6.**

14. On February 15, 2007, Respondent Lorne entered into a plea agreement to resolve the criminal proceedings. A copy of the plea agreement is attached hereto as **Exhibit 8** and is incorporated herein by reference.

15. *Under the terms of the plea agreement, Respondent Lorne pled guilty to a class four felony theft charge – C.R.S. § 18-4-401(1) and (2)(c) – for theft of funds from the CRA. The plea agreement further provided for a two year supervised deferred judgment.*

16. The Denver District Court accepted Respondent Lorne's plea agreement on February 15, 2007. Lorne advised the court that he knowingly and willfully took money from the CRA. Lorne waived his right to a trial as well as his right to appeal.

17. The court further advised Lorne that the presumptive sentencing range for a class four felony was a two to six year jail sentence, a three year probationary period, plus a fine of up to \$500,000. Lorne confirmed to the court that it was his free and voluntary decision to plead guilty.

18. The court ordered Lorne to pay CRA additional restitution in the amount of \$1,282.03. Lorne was given a two year supervised deferred judgment and was placed on probation.

19. Pursuant to C.R.S. § 16-7-206(3), "[t]he acceptance by the court of a plea of guilty acts as a waiver by the defendant of the right to trial on all issues including the determination of the penalty to be assessed, **and the acceptance of such plea acts as a conviction for the offense.**" (Emphasis added.) With respect to a plea agreement that provides for a deferred sentence, under Colorado law, the defendant is considered convicted until the successful completion of the deferral period.

20. Respondent Lorne's unauthorized taking of funds from the MH Chapter's bank account for his own personal use constitutes conversion of customer funds in violation of NASD Conduct Rules 2330 and 2110.

SECOND CAUSE OF ACTION
(Pleaded in the Alternative to the First Cause of Action)
(Conversion of Funds – NASD Conduct Rule 2110)

21. Complaint paragraph numbers 1-20, above, are re-alleged and incorporated herein by reference.

22. In the alternative to Complainant's allegations that by virtue of the conduct described in paragraphs 5 through 19 above, Respondent Lorne violated NASD Conduct Rules 2330 and 2110, Complainant alleges that by virtue of such conduct, Lorne violated NASD Conduct Rule 2110.

THIRD CAUSE OF ACTION
(Undisclosed Business Activities – NASD Conduct Rules 3030 and 2110)

23. Complaint paragraph numbers 1-22, above, are re-alleged and incorporated herein by reference.

24. NASD Conduct Rule 3030 provides, in relevant part, as follows:

No person associated with a member in any registered capacity shall be employed by, or accept compensation from, any other person as a result of any business activity, other than a passive investment, outside the scope of his relationship with his employer firm, unless he has provided prompt written notice to the member.

25. Consistent with the provisions of Rule 3030, during the time period in question, Waddell & Reed required its representatives to notify their division manager in writing if they were employed by or accepted compensation from any other person as a result of any business activity, other than a passive investment, outside the scope of the representatives' relationship with Waddell & Reed.

26. Waddell & Reed's procedures further prohibited representatives (with certain exceptions not applicable here) from acting as an officer or director of any organization which held or invested in Waddell & Reed products. Similarly, Waddell & Reed prohibited representatives (with certain exceptions not

applicable here) from acting in any fiduciary capacity for any individual who held or invested in Waddell & Reed products.

27. As discussed above, CRA was a Waddell & Reed customer; and, the MH Chapter was part of the CRA, overseen by the CRA, and created pursuant to the CRA By-Laws. For purposes of the criminal proceeding, referenced in paragraphs 5-19, above, where Respondent Lorne pled guilty to felony theft of CRA funds, the MH Chapter and the CRA were treated as one and the same.

28. On January 3, 2006, Waddell & Reed notified its representatives by means of a Compliance Alert memorandum that Waddell & Reed does not support and will not approve certain types of outside business activities, including, business activities where the representative has access to the organization's bank or brokerage accounts as a result of the representative's status within the organization, i.e., serving as treasurer. At that time, Respondent Lorne served as the Treasurer of the MH Chapter and had access to the Chapter's bank funds.

29. Notwithstanding the requirements of Rule 3030, including Waddell & Reed's own procedures, Respondent Lorne failed to provide Waddell & Reed with prompt written notice that he was the Treasurer of the MH Chapter. *See* Waddell & Reed's written Rule 8210 response dated December 10, 2007, a copy of which is attached hereto as **Exhibit 9** and incorporated herein by reference.

30. In 2005 and 2006, Respondent Lorne served as a Director and the Vice President of the IQ Zone Corporation. As a result of his involvement with the IQ Zone Corporation, Lorne was given stock in the company.

31. Respondent Lorne failed to provide Waddell & Reed prompt written notice that he was a Director and the Vice President of the IQ Zone Corporation. *See Exhibit 9.*

32. The foregoing conduct constitutes separate and distinct violations of NASD Conduct Rules 3030 and 2110 by Respondent Lorne.

**FOURTH CAUSE OF ACTION
(False Statement to Employer Regarding Outside Business Activities
– NASD Conduct Rule 2110)**

33. Complaint paragraph numbers 1-32, above, are re-alleged and incorporated herein by reference.

34. In Compliance Certifications executed by Respondent Lorne on May 24, 2005 and October 25, 2005, Lorne represented that he was not engaged in any outside business activity and did not serve as an officer, director, or employee of any organization. Copies of the Compliance Certifications are attached hereto as **Exhibit 10** and are incorporated herein by reference.

35. Respondent Lorne's representations were false. As discussed above, at the time Lorne made the certifications, he was the Treasurer of the MH Chapter and a Director and Vice President of the IQ Zone.

36. Respondent Lorne's dishonesty to his firm reflected directly on his ability to deal responsibly with the public, and thereby violated NASD Conduct Rule 2110

RELIEF REQUESTED

WHEREFORE, the Department of Enforcement 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 Respondent Lorne bear such costs of proceedings as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330.

Dated: February 15, 2008

FINRA DEPARTMENT OF
ENFORCEMENT



Heather Hawker
Senior Regional Counsel
Lewis Taylor Egan
Regional Chief Counsel
FINRA Department of Enforcement
370 17th Street, Suite 2900
Denver, Colorado 80202
(303) 446-3110
Fax. No. (303) 620-9450
heather.hawker@finra.org
lewis.egan@finra.org

OF COUNSEL

Rory C. Flynn, Of Counsel
FINRA Department of Enforcement
1801 K Street, N.W., Suite 800
Washington, D.C. 20006
(202) 974-2974
Fax No. (202) 721-8318

Mark P. Dauer, Of Counsel
FINRA Department of Enforcement
1100 Poydras St.
Energy Centre, Ste. 850
New Orleans, LA 70163
(504) 412-2405
Fax No. (504) 522-4077