

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JOEY N. PEREZ
(CRD No. 4739449),

Respondent.

Disciplinary Proceeding
No. 2006005690401

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

August 13, 2007

Respondent is barred from associating with any member firm for issuing a bank debit card on a customer's bank account without the customer's knowledge or authorization, in violation of Conduct Rule 2110; and failure to respond to requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2110.

Appearances

William B. La Hue, Regional Counsel, Atlanta, GA (Rory C. Flynn, Chief Litigation Counsel, and Mark P. Dauer, Of Counsel) for the Department of Enforcement.

No appearance by or on behalf of Joey N. Perez.

DECISION

I. Introduction

On May 2, 2007, the Department of Enforcement ("Enforcement") filed the attached Complaint against Joey N. Perez ("Perez" or the "Respondent"). The Complaint charges the Respondent with (1) the unauthorized issuance of a bank debit card in the name of A.P., in violation of NASD Conduct Rule 2110, and (2) failing to respond to three requests for information concerning his unauthorized issuance of the debit card, in violation of NASD

Procedural Rule 8210 and NASD Conduct Rule 2110.¹ The Respondent did not answer or otherwise respond to the Complaint. On July 23, 2007, Enforcement filed a motion for entry of a default decision. The Respondent did not reply to the motion.

II. Findings of Fact and Conclusions of Law

A. Respondent's Default

The Hearing Officer finds that Enforcement properly served the Respondent with the Complaint by mailing it to his most current residential address shown in the Central Registration Depository (the "CRD address") by first-class certified mail.² Enforcement mailed the First Notice of Complaint on April 30, 2007, and the Second Notice of Complaint on May 30, 2007. Perez did not respond to either notice, and he has not to date filed an Answer with the Office of Hearing Officers. Accordingly, the Hearing Officer finds Perez in default and, pursuant to Procedural Rules 9215(f) and 9269(a)(2), deems the allegations in the attached Complaint admitted.³

B. Jurisdiction

Perez first entered the securities industry in an unregistered capacity in 2003. He first registered as a Investment Company and Variable Contracts Products Representative (Series 6) in December 2005 through Chase Investment Services Corp. ("Chase"), a FINRA member firm.⁴

¹ NASD is now the Financial Industry Regulatory Authority (FINRA). FINRA's rules, which include NASD Conduct and Procedural Rules, are available on FINRA's Internet site at <http://www.finra.org/RulesRegulation/FINRARules/index.htm>.

² *Department of Enforcement v. Reynolds Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at *5 (N.A.C. Dec. 9, 2003) (NASD Procedural Rule 9134(b)(1) allows for constructive notice by mailing a complaint to the respondent's most recent CRD address) (quoting *Lubeck v. SEC*, 1998 U.S. App. LEXIS 18849, at *20 (9th Cir. Aug. 12, 1998)).

³ The record reflects that some of the mailings were returned with notations that Perez no longer lived at the CRD address. Enforcement then conducted an unsuccessful search for a more current address.

⁴ Ex. 2, at 3 (CRD record).

Chase discharged Perez in June 2006, for issuing unauthorized debit cards in the name of bank customers.⁵ Perez's registration terminated effective June 22, 2006.

Perez is not currently registered with a member firm; however, he remains subject to FINRA's jurisdiction for the purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's Bylaws, because (1) the Complaint was filed within two years following the termination of his registration with FINRA and (2) the Complaint charges him with misconduct committed while he was associated with a FINRA member firm and with failing to respond to requests for information made during the two-year period following his registration termination.

C. Unauthorized Issuance of Bank Debit Card in Customer's Name

The First Cause of Action alleges that, on March 16, 2005, customer A.P. obtained a debit card from one of Chase's bank affiliates in Houston, Texas. Perez was the bank representative who serviced customer A.P. and issued him the debit card. Later the same day, Perez issued a second debit card in the name of A.M, A.P.'s wife, without their knowledge or authorization. Perez then gave the unauthorized debit card to an acquaintance who was unrelated to A.M. or A.P.

According to Chase's records, the debit card was used on numerous occasions in Texas and Oklahoma between November 2005 and February 2006, causing unauthorized aggregate withdrawals of \$13,744 from A.P.'s bank account.

Enforcement's foregoing allegations, which are deemed admitted, are sufficient to establish for the purposes of this proceeding that Perez issued a debit card on A.P.'s Chase bank account without A.P.'s consent or knowledge, in violation of Conduct Rule 2110, which Conduct Rule requires that FINRA members shall, in conducting their business, "observe high standards

⁵ Ex. 1, at 2 (Form U-5).

of commercial honor and just and equitable principles of trade.”⁶ FINRA’s disciplinary authority under Rule 2110 is broad enough to cover a wide range of unethical conduct that does not directly involve securities or the violation of a specific securities law.⁷

D. Failure to Respond to Requests for Information

The Second Cause of Action alleges that Perez failed to respond to three requests for information and documents. The Complaint alleges that pursuant to, and in accordance with, Procedural Rule 8210, FINRA staff sent Perez requests for information on July 10, 2006, July 27, 2006, and August 17, 2006. Each request was sent to Perez’s CRD address by first-class mail, and the later two also were sent by certified first-class mail. To date Perez has not responded in any manner to the requests for information.

These allegations, which are deemed admitted, are sufficient to establish for purposes of this proceeding that Perez failed to respond in any manner to FINRA staff’s requests for information and so violated NASD Procedural Rule 8210. A violation of Procedural Rule 8210 is also a violation of Conduct Rule 2110.⁸

III. Sanctions

The Hearing Officer concludes that a bar is the appropriate remedial sanction for each violation. The FINRA Sanction Guidelines recommend consideration of a bar in egregious cases involving unauthorized transactions.⁹ Similarly, the Sanction Guideline for improper use of

⁶ Conduct Rule 0115 makes all NASD rules, including Conduct Rule 2110, applicable to both FINRA members and all persons associated with FINRA members.

⁷ *Vail v. SEC*, 101 F.3d 37, 39 (5th Cir. 1996). See also *Daniel D. Manoff*, 55 S.E.C. 1161-63 (2002) (finding that respondent’s unauthorized use of a co-worker’s credit card numbers constituted unethical business conduct that violated Rule 2110).

⁸ *Department of Enforcement v. Baxter*, No. C07990016, 2000 NASD Discip. LEXIS 3, at *25 (N.A.C. Apr. 19, 2000); *Joseph P. Hannan*, Exchange Act Release No. 40,438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998).

⁹ FINRA Sanction Guidelines 103 (2007) (Unauthorized Transactions and Failures to Execute Buy and/or Sell Orders), available at <http://www.finra.org/web/groups/enforcement/documents/enforcement/p011038.pdf>.

customer funds recommends consideration of a bar in egregious cases.¹⁰ Applying these Sanction Guidelines by analogy to the present facts, the Hearing Officer considered the following aggravating factors. First, the allegations support the conclusion that Perez issued the debit card on A.P.'s account to gain unauthorized access to his funds on deposit at Chase. Perez's apparent motive was to benefit either himself or his acquaintance to whom Perez gave the card. These factors establish that Perez acted in bad faith in issuing the debit card and giving it to another person without the account holder's knowledge or consent. Second, A.P. suffered harm as a direct result of Perez's actions. The record shows that the card was used to obtain more than \$13,000 from A.P.'s account. On the other hand, the record reflects no mitigating factors. Accordingly, the Hearing Officer finds that a bar is the appropriate sanction for this violation.¹¹

The applicable Sanction Guideline for failing to respond to a request for information made pursuant to NASD Procedural Rule 8210 suggests that a bar should be standard where no mitigating circumstances exist.¹² Here, the record discloses no such mitigating factors. Accordingly, the Hearing Officer concludes that a bar is appropriate for this violation as well.

IV. Order

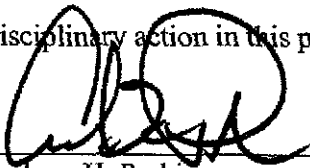
Joey N. Perez violated NASD Conduct Rule 2110 by issuing a bank debit card without the account holder's knowledge or authorization and Procedural Rule 8210 and Conduct Rule 2110 by failing to respond to FINRA requests for information. For each violation, he is barred

¹⁰ *Id.* at 38 (Conversion or Improper Use of Customer funds).

¹¹ The Hearing Officer did not award restitution because Chase reimbursed the customer.

¹² Sanction Guidelines at 35 (Failure to Respond or Failure to Respond Truthfully, Completely or Timely to Requests Made Pursuant to FINRA Procedural Rule 8210).

from associating with any member firm in any capacity. The bars will become effective immediately if this decision becomes FINRA's final disciplinary action in this proceeding.

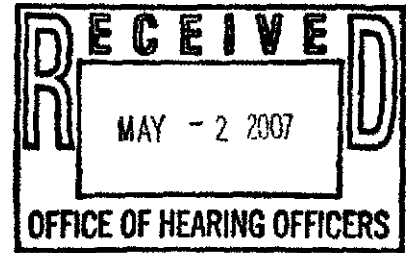


Andrew H. Perkins
Hearing Officer

Copies to:

Joey N. Perez (by FedEx, next day delivery, and first-class mail)
William B. La Hue, Esq. (by electronic and first-class mail)
Rory C. Flynn, Esq. (by electronic and first-class mail)
Mark P. Dauer, Esq. (by electronic and first-class mail)

**NASD
OFFICE OF HEARING OFFICERS**



DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JOEY N. PEREZ
(CRD No. 4739449),

Respondent.

DISCIPLINARY PROCEEDING
NO. 2006005690401

COMPLAINT

The Department of Enforcement alleges:

1. Respondent Joey N. Perez ("Perez") entered the securities industry in November 2003, in an unregistered capacity. He was later registered with Chase Investment Services Corp. ("Chase") as an Investment Company and Variable Contracts Products Representative in December 2005. Perez was employed by Chase until May 2006. Perez is not currently registered with an NASD member; however, he remains subject to the jurisdiction of the NASD pursuant to Article V, Section 4 of the NASD Bylaws until May 26, 2008.

FIRST CAUSE OF ACTION

NASD Conduct Rule 2110

(Unauthorized Issuance Of Debit Card)

2. The Department realleges and incorporates by reference paragraph 1 above.
3. On or about March 16, 2005, customer A.P. obtained a debit card from the Houston, Texas, Greenpoint branch office of Chase's bank affiliate ("Chase Bank"). Respondent

Perez was the bank service representative who serviced customer A.P. and issued him the debit card.

4. A second debit card was issued that same day by Respondent Perez. This debit card was issued in the name of A.P.'s wife ("A.M.") without A.P.'s or A.M.'s knowledge or authorization. Instead of giving the debit card to customer A.P. or A.M., Respondent Perez maintained possession of it.
5. Later, Respondent Perez gave A.M.'s debit card to an acquaintance who was unrelated to A.M. A.M.'s debit card was subsequently used on numerous occasions in Texas and Oklahoma, during the period from November 2005 through February 2006. The use of A.M.'s debit card resulted in unauthorized aggregate withdrawals of \$13,744.
6. Such acts, practices and conduct described above constitute a violation of NASD Conduct Rule 2110 by Respondent Perez.

SECOND CAUSE OF ACTION

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

7. The Department realleges and incorporates by reference paragraphs 1 through 6 above.
8. During the course of NASD's investigation of Respondent Perez' conduct, NASD attempted to obtain a written statement from Perez. On July 10, 2006, NASD sent a letter to Respondent Perez via first class mail addressed to his CRD address. The July 10, 2006 letter requested that Respondent Perez provide a written response regarding the issuance of the unauthorized debit card. This request was made pursuant to Rule 8210 and Perez'

response was due by July 24, 2006. The July 10, 2006 letter was not returned to the NASD. Respondent Perez did not respond to the request by the July 24, 2006, deadline.

9. On July 27, 2006, NASD sent a second letter to Respondent Perez via both first class and certified mail to his CRD address. The July 27, 2006 letter once again requested that Respondent Perez provide a written response regarding the issuance of the unauthorized debit card, among other things. This request was made pursuant to NASD Rule 8210 and Perez' response was due by August 10, 2006. The July 27, 2006 letter, sent by first class mail, was returned to the NASD marked "attempted not known." However, a receipt for the July 27, 2006 letter, sent by certified mail, was returned showing that it was delivered. Respondent Perez did not respond to the request by the August 10, 2006, deadline.
10. On August 17, 2006, NASD sent a third letter to Respondent Perez via first class and certified mail to his CRD address. The August 17, 2006 letter once again requested that Respondent Perez provide a written response regarding the issuance of the unauthorized debit card, among other things. This request was also made pursuant to Rule 8210 and Perez' response was due by August 31, 2006. The August 17, 2006 letter, sent by first class mail, was not returned to NASD. However, the August 17, 2006 letter, sent by certified mail, was returned to NASD marked "attempted not known." Respondent Perez did not respond to the request by the August 31, 2006, deadline.
11. Such acts, practices and conduct described above constitute separate and distinct violations of NASD Conduct Rule 2110 and NASD Procedural Rule 8210 by Respondent Perez.

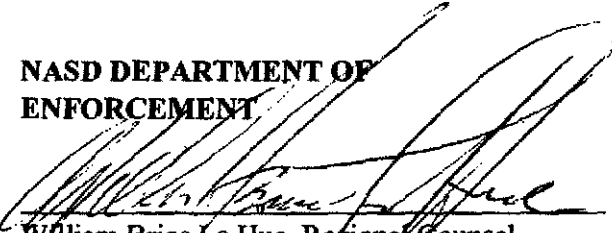
PRAYER

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that the respondent committed the violations charged and alleged herein.
- B. order that one or more of the sanctions provided under NASD Rule 8310(a), including monetary sanctions, be imposed.
- C. order that the Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330.

Date: 4/30/2007

**NASD DEPARTMENT OF
ENFORCEMENT**


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