

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT

Complainant,

v.

TEARLE G. GASKILL
(CRD No. 1936193),

Respondent.

Disciplinary Proceeding
No. 2006005746601

Hearing Officer – Sara Nelson Bloom

DEFAULT DECISION

June 11, 2007

For Respondent's failure to provide requested information, in violation of Rules 8210 and 2110, Respondent is barred from associating with any NASD member in any capacity. In light of the bar, no further sanctions are imposed for Respondent's borrowing of customer funds without the approval of his member firm, in violation of Rules 2370 and 2110.

Appearances

Thomas M. Huber, Esq., Regional Counsel, NASD, Philadelphia, PA, (Rory C. Flynn, Esq., Of Counsel, and Mark P. Dauer, Esq., Of Counsel), for the Department of Enforcement.

No appearance by Respondent.

DECISION

I. Background

On February 2, 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 Tearle G. Gaskill ("Respondent") violated Rules 2370 and 2110 by borrowing customer funds in contravention of his firm's procedures, and without meeting the conditions set forth in Rule 2370. In addition, the Complaint alleges that Respondent violated Rules 8210 and

2110 by failing respond to NASD Staff requests for testimony and documents relating to the Rule 2370 charge. On April 16, 2007, Enforcement filed a Motion for Entry of Default Decision and Request for Sanctions, supported by the declaration of Thomas M. Huber, Esq. and three exhibits. Respondent did not reply to the Motion. For the reasons set forth below, the Motion is granted.¹

II. Respondent's Default

On January 30, 2007, Enforcement sent the Complaint and Notice of Complaint to Respondent, by 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 March 2, 2007. Respondent did not file an Answer to the Complaint.

Enforcement complied with Rule 9134(b)(1) by mailing the Complaint and Notices of Complaint to Respondent's CRD address, thereby giving Respondent constructive notice of this proceeding. By failing to file an Answer, Respondent defaulted. Pursuant to Rule 9215(f), the Hearing Officer deems the allegations in the Complaint admitted.

III. Jurisdiction

In July 1993, Respondent first became registered with NASD. He was registered with NYLife Securities, Inc. ("NYL") as a Limited Representative – Investment Company and Variable Contracts Products from July 1995 to June 29, 2006. He has not been registered with an NASD member since that time.

¹ 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.

Although Respondent is not currently associated with a member firm, NASD has jurisdiction to bring this proceeding, pursuant to Art. V, § 4 of NASD'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 that two-year period.

IV. Violations

A. Improper Borrowing of Customer Funds

The Complaint alleges that on or about January 28, 2004, Respondent borrowed \$3,000 from public customer JD. At the time the Respondent is alleged to have borrowed these customer funds, NYL had written policies and procedures prohibiting representatives from borrowing money from a customer. NYL was not aware of, and did not approve, Respondent's loan from JD.

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, NYL specifically prohibited registered employees from borrowing from customers. By borrowing \$3,000 from JD, Gaskill violated his firm's procedures and Rules 2370 and 2110.

B. Failure to Respond

The Complaint also alleges that, on October 25, 2006, NASD Staff sent Respondent a letter, pursuant to Rule 8210, by first-class and certified mail to his CRD address requiring him to appear on November 8, 2006, to testify and produce copies of documents relating to the funds he had received from JD. When Respondent failed to comply with the request, NASD Staff sent

another letter, pursuant to Rule 8210, in the same manner, this time requesting Respondent to appear and produce documents on November 29, 2006. When Respondent did not appear on that date, NASD Staff sent yet another letter, pursuant to Rule 8210, in the same manner, this time requesting Respondent to appear and produce documents on December 18, 2006. Once again, Respondent did not appear or produce documents. The NASD Staff served these requests in accordance with Rule 8210(d), and therefore Respondent is deemed to have received them.

Rule 8210 authorizes NASD 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 NASD's oversight function and allows NASD to carry out its regulatory functions without subpoena power.² Here, although Respondent received valid constructive notice of the NASD Staff's request,³ he failed to respond. Respondent thereby violated Rules 8210 and 2110.

V. Sanctions

A bar is standard for failure to provide requested information. NASD Sanction Guidelines at p. 35 (2006 ed.). There is no evidence of any mitigating circumstances that would justify a lesser sanction. Therefore, Respondent is barred from associating with any NASD member in any capacity.

The Guidelines do not specifically address violations of Rule 2370. This case involves a single loan for a relatively small amount that Respondent repaid, therefore Enforcement's request for a fine of \$5,000 and a three month suspension seems reasonable. However, in light of the bar

² See, e.g., Dep't of Enforcement v. Valentino, No. FPI010004, 2003 NASD Discip. LEXIS 15, at *12 (NAC 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).

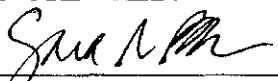
³ See David I. Cassuto, Exch. Act Rel. No. 48,087, 2003 SEC LEXIS 1496, at *9 (June 25, 2003).

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 Respondent's failure to provide requested information, in violation of Rules 8210 and 2110, Respondent is barred from associating with any NASD member in any capacity. In light of the bar, no further sanctions are imposed for Respondent's violation of Rules 2370 and 2110. The bar shall become effective immediately if this Decision becomes the final disciplinary action of NASD.

SO ORDERED.


Sara Nelson Bloom
Hearing Officer

Dated: June 11, 2007

Copies to: Tearle G. Gaskill (*via overnight and first-class mail*)
Thomas M. Huber, Esq. (*via electronic and first-class mail*)
Rory C. Flynn, Esq. (*via electronic mail*)
Mark P. Dauer, Esq. (*via electronic mail*)

EXHIBIT A

**NASD
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

TEARLE G. GASKILL
CRD No. 1936193

RESPONDENT.

**DISCIPLINARY PROCEEDING
NO. 2006005746601**

COMPLAINT

The Department of Enforcement alleges:

1. Respondent Tearle G. Gaskill first became registered with NASD in July 1993. He was registered with NYLife Securities, Inc. (NYL) as a Limited Representative - Investment Company and Variable Contracts Products from July 1995 to June 29, 2006. He has not been registered with any NASD member since June 29, 2006. NASD retains jurisdiction over Gaskill for purposes of this Complaint pursuant to Article V, Section 4, of NASD's By-Laws in that: the misconduct alleged in Cause One occurred while Gaskill was associated with NYL; and, this Complaint was filed within, and the violations of Procedural Rule 8210 alleged in Cause Two occurred within, two years after NYL filed a Form U5 terminating Gaskill's registration.

FIRST CAUSE OF ACTION

Improper Borrowing of Customer Funds (NASD Conduct Rules 2370 and 2110)

2. The Department realleges and incorporates by reference paragraph 1 above.
3. On about January 28, 2004, while registered with NYL, Gaskill borrowed \$3,000 from JD. At that time, JD maintained an account at NYL for which Gaskill was the representative.
4. When Gaskill borrowed money from JD, NYL's written policies and procedures prohibited representatives from borrowing money from a customer. Moreover, Gaskill did not otherwise inform NYL about the loan.¹
5. Based on the foregoing, Gaskill violated NASD Conduct Rules 2370 and 2110.

SECOND CAUSE OF ACTION

Failure to Appear for an OTR (NASD Procedural Rule 8210 and Conduct Rule 2110)

6. The Department realleges and incorporates by reference paragraphs 1 through 5 above.
7. By a letter dated October 25, 2006, NASD staff required Gaskill, pursuant to NASD Procedural Rule 8210, to appear in the Philadelphia District Office on November 8, 2006 to testify on the record and produce copies of documents relating to the funds he had received from JD. The letter warned Gaskill that failure to comply with the request could subject him to disciplinary action and possible sanctions including a bar from association with any NASD member. The letter was sent by first class and certified mail to the residential address shown for

¹ Gaskill eventually fully repaid the amount he borrowed.

Gaskill in Web CRD.² The envelope sent by first class mail was not returned. The staff received a return receipt card for the envelope sent by certified mail. Both the printed name and the signature on the return receipt card were illegible. Gaskill did not appear to testify on November 8, 2006 as required and he did not produce any documents to NASD staff. He did, however, leave a phone message with an NASD staff member on November 8 in which he, in substance, acknowledged receipt of the letter requiring his appearance to testify.

8. By a letter dated November 8, 2006, NASD staff requested Gaskill, pursuant to NASD Procedural Rule 8210, to appear in the Philadelphia District Office on November 29, 2006 to testify on the record and to produce copies of specified documents. The letter warned Gaskill that failure to comply with the request could subject him to disciplinary action and sanctions including a bar from association with any NASD member. The letter was sent by first class and certified mail to the residential address shown for Gaskill in Web CRD. The envelope sent by first class mail was not returned. The envelope sent by certified mail was returned to the District Office. A Postal Service label had been attached to it on which was printed the message, "Return to Sender Unclaimed Unable to Forward." Gaskill did not appear to testify on November 29, 2006 as required and he did not produce any documents to NASD staff.
9. By a letter dated December 5, 2006, NASD staff requested Gaskill, pursuant to NASD Procedural Rule 8210, to appear in the Philadelphia District Office on

² On September 21, 2006, NASD staff received a written submission from Gaskill by mail in connection with its investigation. The return address written on the envelope in which it was transmitted was Gaskill's residential address shown in Web CRD at the time (and currently).

December 18, 2006 to testify on the record and to produce copies of specified documents. The letter warned Gaskill that failure to comply with the request could subject him to disciplinary action and sanctions including a bar from association with any NASD member. The letter was sent by first class and certified mail to the residential address shown for Gaskill in Web CRD. The envelope sent by first class mail was not returned. The envelope sent by certified mail was returned to the District Office marked to show that notices had been left at the address on the envelope on December 7 and 13 and that the item was returned on December 23. The envelope did not reflect why it was returned. Gaskill did not appear in Philadelphia as required and he did not produce any documents to NASD staff.

10. NASD staff has no knowledge of a residential address for Gaskill that is more current than the address to which the letters set forth above were sent and has no knowledge of a current business address for Gaskill.
11. To the date of this Complaint, Gaskill has failed to appear to testify or contact NASD staff to arrange testimony, and he has failed to provide NASD staff any documents requested pursuant to NASD Procedural Rule 8210.
12. Based on the foregoing, Gaskill 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.

- 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: January 30, 2007


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