

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

PETER M. LEMOINE
(CRD No. 2080108),

Respondent.

Disciplinary Proceeding
No. 2006006227901

DEFAULT DECISION

Hearing Officer – SW

Date: June 30, 2008

Respondent was barred for violating NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by failing to respond to requests for information issued by the FINRA staff. No separate sanction was imposed for Respondent's violation of NASD Conduct Rules 2370 and 2110 when he borrowed \$26,000 from a customer in violation of his employer's internal procedures.

Appearances

William Brice La Hue, Esq., Senior Regional Counsel, Atlanta, GA, for the Department of Enforcement.

No appearance by or for Respondent Peter M. Lemoine.

DECISION

I. Procedural History

On January 22, 2008, the Department of Enforcement ("Enforcement") filed a two-count Complaint, alleging in count one of the Complaint that Respondent Peter M. Lemoine ("Respondent") borrowed funds from a customer in violation of NASD Conduct Rules 2110 and 2370. Count two of the Complaint alleges that Respondent failed to respond to requests for information issued by the FINRA staff pursuant to Procedural Rule 8210, in violation of NASD Conduct Rule 2110 and Rule 8210.

On May 19, 2008, Enforcement filed a Motion for Entry of Default Decision ("Motion"), supported by the Declaration of William Brice La Hue, Esq., Senior Regional Counsel in FINRA's Atlanta, GA office, and by four exhibits.¹ For the reasons set forth below, Enforcement's Motion is granted.

II. Respondent's Default

On January 22, 2008, Enforcement served Respondent with a copy of the Complaint and Notice of Complaint, via certified and first class mail, at his current residential address as reflected in FINRA's Central Registration Depository ("CRD address"), which was returned to Enforcement. (DECL at ¶¶ 6-7; CX-2, p. 1). On February 21, 2008, Enforcement re-served Respondent with copies of the Complaint and Notice of Complaint, via certified and first class mail, at his CRD address as well as two alternate addresses that Enforcement had obtained. (DECL at ¶¶ 7-8; CX-3). The U.S. Postal Service returned receipts for each of the three certified mailings, signed by "Sami Lemoine," reflecting delivery of the mailings on February 25, 2008. (DECL at ¶ 8; CX-3). Respondent failed to file an Answer or otherwise respond to the Complaint. (DECL at ¶ 9).

On March 24, 2008, Enforcement served copies of the Complaint and Second Notice of Complaint, via certified and first class mail, on Respondent at his CRD address and the two alternate addresses. (DECL at ¶ 9; CX-4). The U.S. Postal Service returned receipts for each of the three certified mailings, signed by "S. Lemoine," reflecting delivery of the mailings on March 26, 2008. (DECL at ¶ 10; CX-4). Again, Respondent failed to file an Answer or otherwise respond to the Complaint. (DECL at ¶ 11).

¹ Hereinafter, the statements in the Motion for Entry of Default Decision will be designated as "Motion, p.," the statements in the La Hue Declaration will be designated as "DECL at ¶;" and Enforcement's exhibits will be designated as "CX-" with the appropriate page or paragraph number.

The Hearing Officer finds that Enforcement complied with Procedural Rule 9134(b)(1) by sending the requests for information to Respondent's CRD address and the alternate addresses. Accordingly, the Hearing Officer finds that Respondent received effective constructive notice of this proceeding and further finds that Respondent defaulted by failing to answer the Complaint.²

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

Respondent was registered with NYLIFE Securities LLC ("NYLIFE"), a FINRA member firm, as an investment company and variable contracts products representative from November 2, 1990 to September 11, 2006. (CX-2, p. 3). On August 24, 2006, NYLIFE discharged Respondent because "he failed to comply with company policies and procedures in connection with borrowing money from a customer." (CX-1, p. 2). Respondent is not currently associated with any FINRA member firm. (CX-2, p. 3).

Nevertheless, Respondent remains subject to FINRA jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of the FINRA By-Laws, because (1) the Complaint was filed within two years after his association with NYLIFE was terminated, and (2) the Complaint charges him with misconduct while he was associated with a FINRA member, and failures to provide information requested pursuant to Rule 8210 during the period of retained jurisdiction.

B. Respondent Violated NASD Conduct Rules 2110 and 2370

Count one of the Complaint alleges that Respondent, while associated with NYLIFE, violated NASD Conduct Rules 2110 and 2370, by borrowing \$26,000 from customer SS on

² The following Findings of Fact and Conclusions of Law incorporate the allegations in the attached Complaint, pursuant to Rules 9215(f) and 9269, and *Notice to Members* 99-77 (Sept. 1999).

February 15, 2004, when NYLIFE's written supervisory procedures prohibited borrowing money from customers. (Complaint at ¶¶ 4-5). Respondent was aware of NYLIFE's prohibition, having certified in 2004 that he had received and read the representatives' handbook, which contained NYLIFE's policies and procedures regarding borrowing from customers. (Complaint at ¶ 6). In its Motion, Enforcement submitted the additional information that NYLIFE entered into a settlement with customer SS, paying her \$403,429.02 to resolve the allegation of the prohibited loan to Respondent as well as other allegations of misconduct by Respondent. (DECL at ¶ 16).

NASD Conduct Rule 2370 provides that a registered representative may not borrow money from a customer unless the representative's firm has written procedures allowing such borrowing, and the borrowing arrangement meets one of several conditions specified in the Rule. NYLIFE's written supervisory procedures explicitly prohibited registered representatives from borrowing money from customers. (Complaint at ¶ 5).

Based on the allegations deemed admitted, the Hearing Officer finds that Respondent violated NASD Conduct Rules 2370 and 2110 by borrowing \$26,000 from customer SS in violation of NYLIFE's written procedures as alleged in the first cause of the Complaint. It is well settled that any conduct that violates an NASD Conduct Rule is viewed as a violation of NASD Conduct Rule 2110.³

C. Respondent Failed to Respond to FINRA Requests for Information

Count two of the Complaint alleges that Respondent failed to respond to two requests for information that were sent by the FINRA staff to Respondent at his CRD address. (Complaint at ¶¶ 10-12). The first request was sent to Respondent on October 17, 2006, via first class mail, and the second request was sent to Respondent on November 7, 2006, via first class and certified mail. (Complaint at ¶¶ 10-11). Each request was made pursuant to Procedural Rule 8210. (*Id.*).

³ *Dep't of Enforcement v. Shvarts*, No. CAF980029, 2000 NASD Discip. LEXIS 6, at *12-13 (NAC June 2, 2000).

The U.S. Postal Service returned to the FINRA staff a receipt for the November 7, 2006 certified mailing, signed by Respondent. (Complaint at ¶ 12).

Based on the signed receipt, the Hearing Officer finds that Respondent received actual notice of the November 7, 2006 request for information sent to his CRD address. In any event, the Hearing Officer finds that Respondent is deemed to have received the requests for information sent to his CRD address pursuant to Rule 8210(d).

Failure to comply with Rule 8210 requests for information is a serious violation because it subverts FINRA's ability to perform its regulatory responsibilities.⁴

Based on the allegations deemed admitted, the Hearing Officer finds that Respondent violated NASD Conduct Rule 2110 and Procedural Rule 8210 as alleged in the second cause of the Complaint.

IV. Sanctions

A. Respondent Failed to Respond to Requests for Information

For failing to respond to two requests for information issued by the FINRA staff pursuant to Procedural Rule 8210, Enforcement recommended that Respondent be barred. The FINRA Sanction Guidelines provide that a bar should be standard when an individual respondent does not respond in any manner to a request issued pursuant to Rule 8210.⁵ The record does not indicate the existence of any mitigating factors that would warrant a lesser sanction.

Accordingly, the Hearing Officer accepts Enforcement's recommendation and bars Respondent for failing to respond to the two requests for information.

⁴ See, e.g., *Richard J. Rouse*, Exchange Act Rel. No. 32,685, 1993 SEC LEXIS 1831, at *7 (1993); *Joseph G. Chiulli*, Exchange Act Rel. No. 42,359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for FINRA to conduct its investigations effectively, and emphasizing that FINRA members and associated persons must fully cooperate with requests for information).

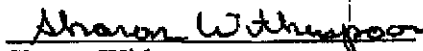
⁵ *FINRA Sanction Guidelines*, p. 35 (2007), available at <http://www.finra.org/web/groups/enforcement/documents/enforcement/p011038.pdf>.

B. No Separate Sanction Imposed for Respondent's Borrowing of Funds from a Single Customer

Because the Hearing Officer barred Respondent for his Rule 8210 violation, the Hearing Officer will impose no separate sanction for Respondent's borrowing of funds from a single customer, in violation of NASD Conduct Rules 2110 and 2370.

V. Order

Respondent Peter M. Lemoine is barred from associating with any FINRA member firm in any capacity for violating NASD Conduct Rule 2110 and Procedural Rule 8210 for failing to respond to two requests for information issued by the FINRA staff pursuant to Rule 8210. The bar will become effective immediately upon this Default Decision becoming the final disciplinary action of FINRA.


Sharon Witherspoon
Hearing Officer

Dated: Washington, DC
June 30, 2008

Copies to:

Peter M. Lemoine (via FedEx and first class mail)
William Brice La Hue, Esq. (via electronic and first class mail)
Mark P. Dauer, Esq. (via electronic and first class mail)
David R. Sonnenberg, Esq. (via electronic and first class mail)

**FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA)
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,	
Complainant,	Disciplinary Proceeding No. 2006006227901
v.	
PETER MICHAEL LEMOINE, (CRD No. 2080108)	COMPLAINT
Respondent.	

The Department of Enforcement alleges:

RESPONDENT

1. Peter Michael Lemoine ("Lemoine") entered the securities industry in July 1990, when he was employed by NYLIFE Securities, Inc. ("NYLIFE"). Lemoine was registered as an investment company and variable contracts products representative with FINRA (f/k/a NASD) in November 1990. Lemoine was employed by NYLIFE until August 2006. He is not currently employed by a FINRA member, but remains subject to FINRA's jurisdiction pursuant to Article V, Section 4 of the FINRA By-Laws.

SUMMARY

2. On or about February 15, 2004, in violation of Conduct Rule 2370 and in contravention of his employer member firm's procedures, Lemoine borrowed \$26,000 from a securities customer of his firm. Additionally, Lemoine failed to respond to two requests for information made by FINRA pursuant to NASD Procedural Rule 8210.

FIRST CAUSE OF ACTION

NASD Conduct Rules 2370 and 2110

(Borrowing from Customers)

3. The Department realleges and incorporates by reference paragraphs 1 and 2 above.
4. On or about February 15, 2004, Lemoine accepted a loan of \$26,000 from S.S., a customer of NYLIFE, his employer member firm.
5. At the time that Lemoine borrowed these funds, NYLIFE had written procedures forbidding registered representatives from borrowing funds from customers.
6. Lemoine was aware of NYLIFE's procedures and certified in 2004 that he had received and read the representative handbook that contained the firm's written policies and procedures.
7. Such acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rule 2370 and 2110 by Respondent Lemoine.

SECOND CAUSE OF ACTION

NASD Conduct Rule 2110 and Procedural Rule 8210

(Failure to Respond to FINRA Requests for Information)

8. The Department realleges and incorporates by reference paragraphs 1 through 7, above.
9. On or about August 29, 2006, the FINRA Atlanta District office initiated an investigation into the allegations on a Uniform Termination Notice for Securities Industry Registration ("Form U5") filed by NYLIFE regarding Lemoine. The Form U5 indicated that Lemoine had failed to comply with the company's policies and procedures in connection with borrowing money from a customer.

10. By letter dated October 17, 2006, sent via first class mail to Lemoine at his CRD residential address in Cottonport, Louisiana, Lemoine was requested, pursuant to NASD Procedural Rule 8210, to provide a written statement regarding the allegations disclosed on his Form U5. The October 17, 2006, letter set a deadline of October 31, 2006, for the submission of the requested written statement. The October 17, 2006, letter was not returned. Lemoine did not respond by the October 31, 2006, deadline.
11. By letter dated November 7, 2006, sent via first class and certified mail to Lemoine at his CRD address, Lemoine was again requested, pursuant to NASD Procedural Rule 8210, to provide a written statement regarding the allegations disclosed on his Form U5. The November 7, 2006, letter set a deadline of November 21, 2006, for the response.
12. The November 7, 2006 letter, sent by first class mail was not returned. The copy of the November 7, 2006 letter, sent by certified mail was delivered, and a receipt was returned to the Atlanta District Office signed by Lemoine. Lemoine did not respond by the November 21, 2006, deadline.
13. Such acts, practices and conduct constitute separate and distinct violations of NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by Respondent Lemoine.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. Order that one or more of the sanctions provided under NASD Rule 8310(a) be imposed, including that the Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest.

- 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.

FINRA DEPARTMENT OF ENFORCEMENT

Date: 1/22/08


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