

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

OSCAR DONALD OVERBEY, JR.
(CRD No. 2066217),

Respondent.

Disciplinary Proceeding
No. 2006006292602

Hearing Officer – Sara Nelson Bloom

Default Decision

February 11, 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 suspension is imposed for borrowing of customer funds without the approval of Respondent's member firm, in violation of Rules 2370 and 2110. However, Respondent is ordered to pay restitution in the amount of \$50,000 plus interest.

Appearances

UnBo Chung, Esq., FINRA, Chicago, IL, for the Department of Enforcement.

No appearance by Respondent.

DECISION

I. Background

On October 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 Oscar Donald Overbey ("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 to respond to FINRA Staff ("Staff") requests for documents. On December 20, 2007, Enforcement filed a Motion for Entry of Default Decision, supported by the declaration of Unbo Chung, Esq., and four exhibits. Respondent did not reply to the Motion. For the reasons set forth below, the Motion is granted.¹

II. Respondent's Default

On October 2, 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 November 1, 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

From October 1990 to July 2006, Respondent was registered with member firm Ameriprise Financial Services, Inc. ("Ameriprise"). 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)

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.

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.

IV. Violations

A. Improper Borrowing of Customer Funds

The Complaint alleges that on or about May 9, 2006, Respondent borrowed \$50,000 from public customer and non-family member, MS.

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

Accordingly, by borrowing \$50,000 from MS, Respondent violated his firm's procedures and Rules 2370 and 2110.

B. Failure to Respond

The Complaint also alleges that, on September 15, 2006, FINRA Staff ("Staff") sent Respondent a request for information, pursuant to Rule 8210, by first-class and certified mail to his CRD address. Respondent failed to respond. In the same manner, on October 16, 2006, Staff sent Respondent a second request for information. 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.² Here, although Respondent received valid constructive notice of the 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. 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 \$50,000 loan, which Respondent did not repay. The Hearing Officer finds that the record supports a substantial suspension, but not necessarily a bar. Accordingly, in light of the bar for failing to respond to requests for information in violation of Rules 8210 and 2110, no further suspension will be imposed for Respondent's violation of Rules 2370 and 2110.

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

However, Respondent shall be ordered to pay restitution.⁴ Restitution is “a traditional remedy used to restore the status quo where otherwise a wrongdoer would unjustly benefit or his victim would unjustly suffer loss.” David J. Dambro, 51 S.E.C. 513, 518 (1993); Toney L. Reed, 51 S.E.C. 1009, 1013 (1994)(restitution is “founded on the principle that a wrongdoer shall not be unjustly enriched by his wrongdoing, or that the wrongdoer should restore his victim to the status quo ante”). As the Guidelines direct, “[a]djudicators may order restitution when an identifiable person, member firm, or other party has suffered a quantifiable loss as a result of a respondent’s misconduct, particularly where a respondent has benefited from the misconduct.” Guidelines at 4. Accordingly, Respondent shall make restitution to customer MS in the amount of \$50,000, plus interest.

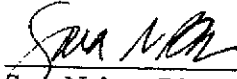
VI. Conclusion

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 of the bar, no further suspension is imposed for borrowing of customer funds without the approval of Respondent’s member firm, in violation of Rules 2370 and 2110. Additionally, Respondent shall make restitution to customer MS in the amount of \$50,000, plus interest calculated pursuant to

⁴ Enforcement indicated that MS did not receive repayment from any source, but it did not seek restitution because, should Respondent be barred, repayment would be unlikely. However, as recent National Adjudicatory Council cases indicate, restitution may be imposed to cover customer losses, without regard to repayment issues associated with a bar. See, Dep’t of Enforcement v. Audifferen, No. C10030095, 2007 NASD Discip. LEXIS 30, at *45 (NAC October 18, 2007); Dep’t of Enforcement v. Merhi, No. E072004044201, 2007 NASD Discip. LEXIS 9, at **35-36 (NAC February 16, 2007).

26 U.S.C. § 6621(2)(2) from May 9, 2006, to the date of payment.⁵ 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:

Oscar D. Overbey, Jr. (via overnight and first-class mail)
Unbo Chung, Esq. (via electronic mail)
David R. Sonnenberg, Esq. (via electronic mail)
Mark P. Dauer, Esq. (via electronic mail)

⁵ MS paid Respondent on May 9, 2006; therefore, this is the appropriate date to use in calculating restitution.

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

V.

Oscar Donald Overbey, Jr., (CRD No.
2066217),

Respondent.

DISCIPLINARY PROCEEDING
No. 2006006292602

COMPLAINT

The Department of Enforcement alleges:

1. Oscar Donald Overbey, Jr. entered the securities industry on July 31, 1990 as a General Securities Industry Representative of a FINRA (F/K/A National Association of Securities Dealers or NASD) member firm. Between October 1990 and July 2006, he was registered in this capacity with Ameriprise Financial Services, Inc. Overbey is not currently registered with any FINRA members. On March 21, 2007, Overbey was the subject of a regulatory action by the Illinois Secretary of State Securities Department for fraud and conversion. On May 7, 2007, the state revoked his state securities license. FINRA has jurisdiction over Overbey pursuant to Article V, Section 4 of the Association's By-Laws, which provides for a two-year period of retained jurisdiction over formerly associated persons.

FIRST CAUSE FOR COMPLAINT
NASD Conduct Rules 2370 and 2110:
Borrowing from a Customer

2. Paragraph number 1, above, is re-alleged and incorporated herein by reference.
3. On or about May 9, 2006, Overbey borrowed \$50,000 from MS, a public customer of the Member.
4. At the time Overbey borrowed this money from the customer, the Member's written supervisory procedures specifically prohibited borrowing money from customers unless they were members of the representative's immediate family.
5. Customer MS is not related to Overbey in any way.
6. The conduct above constitutes a violation of NASD Conduct Rule 2370 and 2110 by Overbey.

SECOND CAUSE FOR COMPLAINT
NASD Conduct Rule 2110 and NASD Procedural Rule 8210:
Failure to Respond to Requests for Information

7. The Department realleges and incorporates by reference paragraphs 1 through 6 above.

8. On or about September 15, 2006, FINRA Staff sent to Overbey a request that he provide certain information, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210. That request for information was sent by first class and certified mail to Overbey's address of record as contained in the records of the Central Registration Depository ("CRD address"). The first class mail to the CRD address was not returned to the FINRA Staff, and receipt for the certified mail was returned back to FINRA Staff signed by "Oscar Donald Overbey."

9. On or about October 16, 2006, FINRA Staff sent to Overbey a second request that he provide the information initially requested on September 15, 2006, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210. This request for information was sent by first class and certified mail to Overbey's CRD address. The first class mail to the CRD address was not returned but the certified mailing to the CRD address was returned, marked "Unclaimed." Also on October 16, 2006, FINRA Staff sent the request for information to an alternative address (the same address but with a different apartment number) via certified and regular mail. The first class mail to the alternative address was not returned but the certified mailing to the alternative address was returned, marked "Unclaimed."

10. Overbey has failed to respond to the requests for information described in Paragraphs 7 through 9 to date, and the dates for responding to the requests have passed.

11. The acts, practices and conduct described above constitute separate and distinct violations of NASD Conduct Rule 2110 and Procedural Rule 8210 by Overbey.

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: 10.2.07


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