

FINANCIAL INDUSTRY REGULATORY AUTHORITY¹
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

LARRY WASHINGTON
(CRD No. 2228845),

Respondent.

Disciplinary Proceeding
No. 2006006623601

DEFAULT DECISION

Hearing Officer – SW

Dated: September 20, 2007

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 \$5,000 from a customer in violation of his employer's internal procedures.

Appearances

UnBo Chung, Esq. Senior Regional Attorney, Chicago, IL, and Rory C. Flynn, Esq., Of Counsel, Washington, DC, for the Department of Enforcement.

No appearance by or for Respondent Larry Washington.

DECISION

I. Procedural History

On May 25, 2007, the Department of Enforcement ("Enforcement") filed a two-count Complaint, alleging in count one that Respondent Larry Washington ("Respondent") borrowed funds from a customer in violation of NASD Conduct Rules 2110 and 2370. Specifically, count one of the Complaint alleges that Respondent borrowed \$5,000 from RM, a customer of Respondent's employer, MetLife Securities Inc. ("MetLife") on March 24, 2004, in violation of MetLife's internal written procedures, which did not allow representatives to borrow funds from

¹ Effective July 30, 2007, the corporate successor to NASD is the Financial Industry Regulatory Authority (FINRA).

customers. Count two of the Complaint alleges that Respondent failed to respond to requests for information issued by the FINRA staff pursuant to Rule 8210, in violation of NASD Conduct Rule 2110 and NASD Procedural 8210.

On August 17, 2007, Enforcement filed a Motion for Entry of Default Decision ("Motion"), supported by the Declaration of UnBo Chung, Esq., Senior Regional Attorney in FINRA's Chicago, IL office, and by five exhibits.² For the reasons set forth below, Enforcement's Motion is granted.

II. Respondent's Default

On May 24, 2007, Enforcement served Respondent with copies of the Complaint and Notice of Complaint, via certified and first class mail, at his current residential address as reflected in the Central Registration Depository ("CRD address").³ (DECL at ¶ 6; CX-2, p. 11). Respondent did not file an Answer. (DECL at ¶ 8). On June 26, 2007, Enforcement served Respondent with copies of the Complaint and Second Notice of Complaint, via certified and first class mail, at his CRD address. (DECL at ¶ 7; CX-4, p. 7). Again, Respondent failed to file an Answer or otherwise respond to the Complaint. (DECL at ¶ 8).

The Hearing Officer finds that Enforcement complied with Procedural Rule 9134(b)(1) by sending the requests for information to Respondent's CRD address.⁴ Accordingly, the

² Hereinafter, the statements in the Motion for Entry of Default Decision will be designated as "Motion, p.," the statements in the Chung Declaration will be designated as "DECL at ¶;" and Enforcement's exhibits will be designated as "CX-" with the appropriate page or paragraph number.

³ Respondent's CRD address is [REDACTED] (DECL at ¶ 6; CX-1, p. 1).

⁴ See Department of Enforcement v. Verdiner, No. CAF020004, 2003 NASD Discip. LEXIS 42, at * 5 n.1 (NAC Dec. 9, 2003) (finding that respondent received constructive notice when the complaint was mailed to respondent's CRD address).

Hearing Officer finds that Respondent received effective constructive notice of this proceeding and further finds that Respondent defaulted by failing to answer the Complaint.⁵

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

Respondent was registered with MetLife, a FINRA member firm, as an investment company and variable contracts products representative from April 27, 1992 to October 20, 2006.⁶ (CX-1, p. 2). On October 6, 2006, MetLife discharged Respondent for “not follow[ing] company policy with regards to borrowing money from a client.” (*Id.*). Respondent is not currently associated with any FINRA member firm. (CX-1, p. 2; DECL at ¶ 5).

Nevertheless, Respondent remains subject to FINRA jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of the NASD By-Laws, because (1) the Complaint was filed within two years after his association with MetLife 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 MetLife, borrowed funds in violation of NASD Conduct Rules 2110 and 2370, by borrowing \$5,000 from customer RM on March 24, 2004, when MetLife’s written supervisory procedures prohibited borrowing money from customers. (Complaint at ¶¶ 3-4). Enforcement submitted additional information with its Motion that Respondent attended compliance meetings where MetLife’s

⁵ 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).

⁶ On November 7, 2000, Respondent applied to become registered as a general securities representative with MetLife; he was terminated without registration on October 6, 2006. (CX-1, p. 2).

policy regarding borrowing from customers was discussed, as evidenced by his signature on sign-in sheets for the meetings. (DECL at ¶ 10; Motion, p. 4). Respondent also eventually repaid RM. (Id.)

NASD Conduct Rule 2370, which became effective November 10, 2003, 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.⁷ MetLife's prohibition on borrowing from customers applied even if the customer was an immediate family member or personal friend of the representative. (Complaint at ¶ 4; Motion, p. 3). By borrowing \$5,000 from RM in violation of MetLife's written procedures, Respondent violated NASD Conduct Rule 2370. It is well settled that any conduct that violates an NASD Conduct Rule is viewed as a violation of NASD Conduct Rule 2110.⁸

Based on the allegations deemed admitted, the Hearing Officer finds that Respondent violated NASD Conduct Rules 2370 and 2110, as alleged in the first cause of the Complaint.

C. Respondent Failed to Respond to FINRA Requests for Information

Count two of the Complaint alleges that Respondent failed to respond to four requests for information that were sent by the FINRA staff to Respondent on November 17, 2006, December 12, 2006, February 12, 2007 and March 8, 2007, via first class and certified mail. (Complaint at ¶¶ 7-11). Each request was made pursuant to NASD Procedural Rule 8210. (Id.). The

⁷ As originally adopted, NASD Conduct Rule 2370 provided that no associated person may borrow money from a customer unless (1) the member firm has written procedures allowing for such a loan, (2) the loan falls within proscribed parameters, and (3) the member firm pre-approves the loan in writing. Notice to Members, 03-62 (Oct. 2003). Effective February 18, 2004, Rule 2370 was amended: (i) to limit the scope of Rule 2370 to those lending arrangements between registered persons and their particular customers, rather than to any customers of the firm; and (ii) to allow a member to adopt written procedures that, under certain circumstances, do not require registered persons to give notice of, or the member to pre-approve in writing, two of the five types of permissible lending arrangements. Notice to Members, 04-14 (Mar. 2004).

⁸ Dep't of Enforcement v. Shvarts, No. CAF980029, 2000 NASD Discip. LEXIS 6, at *12-13 (NAC June 2, 2000).

November 17, 2006 request was sent to Respondent's CRD address. (Complaint at ¶ 7). The December 12, 2006 request was sent to Respondent's CRD addresses and to two additional addresses that the FINRA staff obtained through a credit check, the Southfield address and the Detroit address.⁹ (Complaint at ¶¶ 8-9; DECL at ¶ 12). The February 12, 2007 request was sent to Respondent's CRD address, and the March 8, 2007 request was sent to Respondent at his CRD address, the Southfield address, and the Detroit address.¹⁰ (Complaint at ¶¶ 10-11; DECL at ¶ 12).

The Hearing Officer finds that Respondent is deemed to have received the requests for information sent to his CRD address and the alternative addresses 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.¹¹

Based on the allegations deemed admitted, the Hearing Officer finds that Respondent violated NASD Conduct Rule 2110 and NASD 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 four requests for information issued by the FINRA staff pursuant to NASD Procedural Rule 8210, Enforcement recommended that Respondent be barred. The FINRA Sanction Guidelines provide that a bar should be standard when an individual respondent

⁹ [REDACTED] (Complaint at ¶ 8; DECL at ¶ 12.b).

¹⁰ Prior to filing of the Complaint, Enforcement knew that Respondent was not accepting certified mail sent to the Southfield address or the Detroit address. (Complaint at ¶¶ 9, 11; DECL at ¶¶ 12.c, 12.e).

¹¹ 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).

does not respond in any manner to a request issued pursuant to Rule 8210.¹² 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 four requests for information.

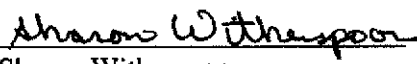
B. The Hearing Officer Imposes No Separate Sanction for Respondent's Borrowing of Funds from a Single Customer

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 2370.¹³

V. Order

Respondent Larry Washington is barred from associating with any FINRA member firm in any capacity for violating NASD Conduct Rule 2110 and NASD Procedural Rule 8210 for failing to respond to four 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.

SO ORDERED.


Sharon Witherspoon
Hearing Officer

Dated: Washington, DC
September 20, 2007

Copies to:
Larry Washington (via FedEx and first class mail)
UnBo Chung, Esq. (via electronic and first class mail)
Mark P. Dauer, Esq. (via electronic and first class mail)
Rory C. Flynn, Esq. (via electronic and first class mail)

¹² FINRA Sanction Guidelines, p. 35 (2007).

¹³ Enforcement recommended that Respondent be sanctioned with 90-day suspension in all capacities and a \$5,000 fine for borrowing from funds a single customer, in violation of NASD Conduct Rules 2370, since the loan had been repaid. (Motion, p. 5).

**NASD
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

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Hearing Officer

COMPLAINT

The Department of Enforcement ("Enforcement") alleges:

1. Larry Washington ("Washington") became registered with MetLife Securities Corporation ("Member"), a NASD member firm, in January 1992 as an Investment Company/Variable Contracts Representative. Washington remained registered with the Member in this capacity until he was terminated in October 2006. Washington has no prior disciplinary history and is not currently registered with any NASD members. NASD has jurisdiction over Washington 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 Customers**

2. Paragraph number 1, above, is re-alleged and incorporated herein by reference.

3. On or about March 24, 2004, Washington borrowed \$5,000 from RM, a public customer of the Member.

4. At the time Washington borrowed this money from the customer, the Member's written supervisory procedures specifically prohibited borrowing money from customers. This prohibition applied even if the customer was an immediate family member or a personal friend of the representative.

5. The conduct above constitutes a violation of NASD Conduct Rules 2370 and 2110 by Washington.

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

6. Paragraphs 1 through 5, above, are re-alleged and incorporated herein by reference.

7. On or about November 17, 2006, NASD staff sent Washington 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 Washington's address. This address was obtained through the Central Registration Depository system (the "CRD address"). The certified mailing was returned, marked "Unable to Forward," but the first class mail was not returned.

8. Because the postal service indicated that the CRD address was not valid, a credit check was performed. This check revealed 2 alternative addresses, one at [REDACTED] (the "Southfield address") and another at [REDACTED] (the "Detroit address").

9. On or about December 12, 2006, a second request for information was sent to Washington at his CRD address, the Southfield address and the Detroit address. These requests for information were each sent via certified and regular mail. None of the regular mail was returned to NASD staff. The certified mailing sent to Washington's CRD address was returned, marked "Unable to Forward." The certified mailing sent to the Southfield address was returned, marked, "Unclaimed." The certified mailing sent to the Detroit address was returned, marked "Attempted."

10. On or about February 12, 2007, the third request for information was sent to Washington's CRD address via certified and regular mail. The regular mail was not returned. The receipt from the certified mailing was returned to NASD staff, but the signature was illegible.

11. On or about March 8, 2007, the fourth request for information was sent to Washington's CRD address, the Southfield address and the Detroit address via certified and regular mail. None of the regular mail was returned. The certified mailing sent to Washington's CRD address was returned, marked "Unclaimed." The certified mailing sent to the Southfield

address was returned, marked "Unclaimed." The certified mailing (nor the receipt) sent to the Detroit address was not returned.

12. To date, Washington has failed to respond to each and all of the requests for information as described in the paragraphs above, and the time and the dates for responding to the requests have passed.

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

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PRAYER FOR RELIEF

WHEREFORE, 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 Washington bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330.

Date: May 24, 2007

**NASD DEPARTMENT OF
ENFORCEMENT**



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