

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DUANE McKAY DEANE
(CRD No. 4924221),

Respondent.

Disciplinary Proceeding
No. 2006007483801

Hearing Officer – AWH

DEFAULT DECISION

March 25, 2008

Respondent is barred from associating with any FINRA member in any capacity for misuse of a corporate credit card, in violation of NASD Rule 2110, and failing to respond to requests for information, in violation of NASD Rules 8210 and 2110.

Appearances

Lynn M. Kaseta, Esq., for the Department of Enforcement.

No appearance by or for Duane McKay Deane.

DECISION

I. Background

On October 18, 2007, the Department of Enforcement filed the Complaint in this proceeding, alleging that Respondent Duane McKay Deane misused a corporate credit card, in violation of NASD Rule 2110, and failed to respond to requests for information, in violation of NASD Rules 8210 and 2110. Respondent did not file an Answer to the Complaint. On January 23, 2008, Enforcement filed a motion for a default decision. Deane did not respond to that motion.

II. Respondent's Default

Enforcement sent the Complaint and Notice of Complaint to Respondent on October 18, 2007, by certified and first class mail to his residential address listed in the Central Registration Depository (the "CRD address"). The certified mailing was returned to Enforcement with the notation of a new address for Respondent. On October 31, 2007, Enforcement sent the Complaint and Notice of Complaint by certified and first class mail to Respondent at his new address. The certified receipt was signed by Deane. He did not file an Answer to the Complaint.

On November 30, 2007, Enforcement sent the Complaint and Second Notice of Complaint by certified and first class mail to Deane at his CRD address and his new address. He did not file an Answer to the Complaint.

Enforcement served the Complaint and Notices of Complaint on Deane in accordance with Rule 9134, giving him constructive notice of this proceeding. By signing the return receipt for the October 31, 2007, mailing, he received actual notice of the Complaint. By failing to respond, he defaulted. Pursuant to NASD Procedural Rules 9215(f) and 9269, Enforcement's motion for a default decision will be granted, and the allegations in the Complaint, which is attached to this decision, will be deemed admitted.¹

III. Jurisdiction

Deane was associated as a business consultant with FINRA member Metropolitan Life Insurance Company from September 20, 2004, to November 7, 2006, when Metropolitan terminated him because he failed to follow company policy regarding use of his company credit card. Deane never became registered with FINRA, although he filed

¹ The factual determinations in this decision are based on the admitted allegations in the Complaint, the Declaration Supporting Motion for the Entry of a Default Decision, and the exhibits attached thereto.

a Form U4 through Metropolitan, applying for registration as a General Securities Representative. However, he failed the Series 7 examination on May 19, 2006, and September 18, 2006. He is not currently associated with a member firm. Because the Complaint charges him with misconduct while he was associated with a member firm, and with failing to respond to FINRA staff requests for information and documentation during the two-year period following termination of his association, he remains subject to FINRA jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of the FINRA By-Laws.

IV. Violations

The first cause of the Complaint alleges that from March 31, 2006, to October 10, 2006, Deane improperly obtained and misused at least \$8,800 by using his corporate credit card for cash advances to pay for various personal items such as a vacation in Cancun, Mexico, and his personal cellular telephone bill. On two occasions, he falsely claimed to be on business trips and obtained cash advances, without prior management approval, by fabricating emergency circumstances, such as claiming to the credit card company that his corporate credit card had been lost or stolen. Deane failed to make repayments to the credit card company or reimburse Metropolitan. The admitted facts demonstrate that he made false claims and converted firm funds, thereby violating NASD Rule 2110's requirement that members and associated persons observe high standards of commercial honor and just and equitable principles of trade.

The second cause of the Complaint alleges that on or about December 26, 2006, and on or about January 18, 2007, FINRA staff, in the course of its investigation into whether he had improperly used his corporate credit card, sent Deane requests, pursuant

to Rule 8210, for information with respect to the subject matter of its investigation. FINRA staff sent the requests to him by certified and first class mail at his CRD address. Because the requests were sent to him at his CRD address, pursuant to NASD Rule 8210(d), he is deemed to have received them. By failing to respond to the requests, Deane violated NASD Rules 8210 and 2110.

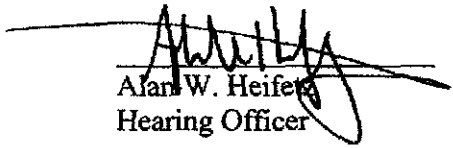
V. Sanctions

Deane's misconduct was fraudulent and intentional. He obtained firm funds to which he was not entitled and expended them for his personal benefit. Accordingly, his intentional and unauthorized expenditure of those funds amounts to conversion. The Sanction Guideline for conversion is a bar, regardless of the amount converted. *Sanction Guidelines*, at 38. Under the Sanction Guidelines a bar is standard for failure to respond in any manner to requests for information. *Sanction Guidelines*, at 35. There is no evidence of any mitigating circumstance that would justify a lesser sanction.

VI. Conclusion

Duane McKay Deane is barred from associating with any FINRA member firm in any capacity for conversion of firm funds, in violation of NASD Rule 2110, and for failing to respond to requests for information, in violation of NASD Rules 8210 and 2110. The bars will become effective immediately if this decision becomes FINRA's final disciplinary action.

SO ORDERED.


Alan W. Heifetz
Hearing Officer

Copies to:

Duane McKay Deane *(via first class mail & overnight Courier)*

Lynn M. Kaseta, Esq. *(via first class & electronic mail)*

Mark P. Dauer, Esq. *(via first class & electronic mail)*

David R. Sonnenberg, Esq. *(via first class & electronic mail)*

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

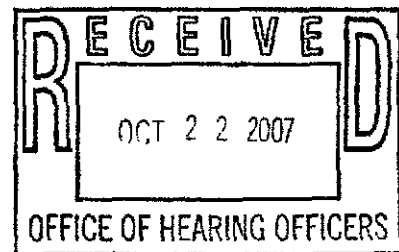
COMPLAINANT,

v.

DUANE MCKAY DEANE (CRD No.4924221),

RESPONDENTS.

**DISCIPLINARY PROCEEDING
No. 2006007483801**



COMPLAINT

The Department of Enforcement alleges:

1. From September 20, 2004 to November 7, 2006, Respondent Duane McKay Deane ("Deane") was an associated person of Metropolitan Life Insurance Company ("Metropolitan"), a FINRA member firm. Metropolitan employed Deane as a Business Consultant.
2. On May 3, 2006, Deane filed a Form U4 through Metropolitan applying for registration as a general securities representative. Deane never became registered with FINRA (f/k/a National Association of Securities Dealers or NASD); he took and failed the Series 7 examination on May 19, 2006 and September 18, 2006.
3. On November 7, 2006, Metropolitan filed a Form U5 terminating Deane because he "did not follow company policy regarding use of [his] company credit card."

4. Deane is not presently associated with a member firm, but remains subject to FINRA's jurisdiction pursuant to Article V, Section 4 of the FINRA By-Laws until at least November 6, 2008.

OVERVIEW

5. Deane improperly obtained and misused at least \$8,800 by using his corporate credit card to obtain cash advances and pay for personal items. He then failed to repay this debt. Deane also did not respond to requests for information issued by FINRA staff. This conduct violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

FIRST CAUSE OF ACTION

Misuse of Corporate Credit Card (NASD Conduct Rule 2110)

6. The Department realleges and incorporates by reference paragraphs 1-5 above.
7. Throughout 2006, Metropolitan authorized its employees to use corporate credit cards only for business purposes and permitted cash advances on a case-by-case basis only after management approval.
8. From March 31, 2006 to October 10, 2006, Deane improperly obtained and misused at least \$8,800 by using his corporate credit card to get cash advances and pay for various personal items, such as a vacation to Cancún, Mexico and his personal cellular telephone bill.
9. For example, on July 3, 2006 and August 17, 2006, Deane, while claiming to be on business trips, obtained cash advances, without prior management approval, by fabricating emergency circumstances, such as falsely claiming to the credit card

company that his corporate credit card had been lost or stolen. Deane, however, was not on business trips when he requested the cash advances and his corporate credit card had not been lost or stolen.

10. Deane then failed to make payments to the credit card company, or reimburse Metropolitan, for his corporate credit card debt.
11. By making false claims, obtaining funds without authorization and converting the funds for his own use and benefit, Deane violated NASD Conduct Rule 2110.

SECOND CAUSE OF ACTION

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

12. The Department realleges and incorporates by reference paragraphs 1-11 above.
13. On December 26, 2006, FINRA staff ("staff"), pursuant to NASD Procedural Rule 8210, sent a letter to Deane at [REDACTED] his Central Registration Depository address of record ("CRD Address"), requesting that he provide information regarding the alleged improper use of his corporate credit card. The letter, which requested that Deane respond by January 11, 2007, was sent via first-class and certified mail. The certified envelope was returned to the staff as "UNCLAIMED" on January 13, 2007. The first-class envelope was not returned to the staff.
14. On January 18, 2007, the staff, pursuant to NASD Procedural Rule 8210, again sent a letter to Deane at his CRD address requesting that he provide information regarding the alleged improper use of his corporate credit card. The letter, which was sent via first-class and certified mail, requested that Deane respond by

February 1, 2007 and advised him that, if he failed to respond, he may be subject to disciplinary action. The certified envelope was returned to the staff as "UNCLAIMED" on February 5, 2007. The first-class envelope was not returned to the staff.

15. The staff is not aware of a more current residential address or business address for Deane.
16. Deane failed to respond to the staff's requests for information.
17. As a result of this conduct, Deane violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

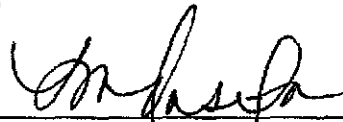
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under NASD Rule 8310(a), including monetary sanctions, be imposed; and
- 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

Dated: October 18, 2007



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