

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

SEAN P. KIMBLE
(CRD No. 4598087),

Respondent.

Disciplinary Proceeding
No. 2007007670001

Hearing Officer – SNB

DEFAULT DECISION

July 9, 2008

Respondent is barred from associating with any FINRA member in any capacity for engaging in check kiting, in violation of Rule 2110, and failing to respond to requests for information, in violation of Rules 8210 and 2110.

Appearances

Richard S. Schultz, Esq., for the Department of Enforcement.

No appearance by or for Sean P. Kimble.

DECISION

I. Background

On February 19, 2008, the Department of Enforcement filed a Complaint in this proceeding, attached to this Decision as Exhibit A, alleging that Respondent Sean P. Kimble (“Respondent”) engaged in check kiting, in violation of Rule 2110, and failed to respond to requests for information, in violation of Rules 8210 and 2110. Respondent did not file an Answer to the Complaint. Accordingly, on May 21, 2008, Enforcement filed a motion for entry of default decision, supported by the Declaration of Richard S. Schultz, Esq., and 16 exhibits. Respondent did not file a response to the motion.

For the reasons set forth below, Enforcement's motion is granted.¹

II. Respondent's Default

On February 15, 2008, Enforcement sent the Complaint and Notice of Complaint to Respondent by certified and first-class mail to his most current residential address listed in the Central Registration Depository ("CRD address"), as well as two alternative addresses ("Alternative Addresses"). In the same manner, Enforcement sent the Complaint and Second Notice of Complaint to Respondent on March 31, 2008. Respondent did not file an Answer to the Complaint.

Enforcement served the Complaint and Notices of Complaint on Respondent in accordance with Rule 9134, giving him constructive notice of this proceeding. By failing to respond, he defaulted. Pursuant to Rules 9215(f) and 9269, the allegations in the Complaint, which is attached to this decision, are deemed admitted.

III. Jurisdiction

Between July 2005 and January 2007, Respondent was registered as a General Securities Representative with Chase Investment Services Corp., ("Chase" or "the Member"). Respondent is not currently associated with a member firm.

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) 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.

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.

IV. Violations

A. Check Kiting

Cause One of the Complaint alleges that from October to December 2006, Respondent wrote 12 checks, totaling \$3,120, from a bank account at the bank affiliate of his FINRA member firm, which exceeded the funds available in that account. He deposited those checks in another personal account maintained at the bank affiliate of his FINRA member firm, which created inflated balances of uncollected funds in that account which he then withdrew.

As a result of his conduct, Respondent had an effective debit balance of at least \$1,752.90 in the account from which he wrote the checks. Respondent admitted his misconduct to his firm. The admitted facts describe a check kiting scheme by which Respondent violated Rule 2110's requirement that members and associated persons observe high standards of commercial honor and just and equitable principles of trade.

B. Failure to Respond

Cause Two of the Complaint alleges that on March 12, 2007, FINRA Staff ("Staff") sent Respondent a request for information concerning the conduct charged in Cause One of the Complaint. Staff sent the request by first-class and certified mail to Respondent's CRD address. On April 2, 2007, May 2, 2007, and May 31, 2007, Staff again sent this request by first-class and certified mail to Respondent's CRD address. Staff served the requests in accordance with Rule 8210(d), and therefore Respondent is deemed to have received them. Respondent did not respond.

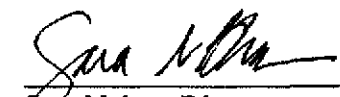
V. Sanctions

There are no specific Guidelines for check kiting in the FINRA Sanction Guidelines ("Guidelines"). However, because the misconduct at issue was intentional and its purpose was to allow Respondent to spend bank funds to which Respondent was not entitled, it is analogous to conversion of those funds. The Sanction Guideline for conversion is a bar, regardless of the amount converted. Guidelines, at 38 (2007 ed.). Under the Sanction Guidelines a bar is standard for failure to respond in any manner to requests for information. Guidelines, at 35. There is no evidence of any mitigating circumstance that would justify a lesser sanction.

VI. Conclusion

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

SO ORDERED.


Sara Nelson Bloom
Hearing Officer

Copies to: Sean P. Kimble (*via overnight and first-class mail*)
Richard S. Schultz, Esq. (*via electronic and first-class mail*)
Mark P. Dauer, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

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

DEPARTMENT OF ENFORCEMENT,

Complainant

vs.

SEAN P. KIMBLE
Registered Representative
(CRD No. 4598087)

Respondent

**Disciplinary Proceeding
No. 2007007670001**

Hearing Officer

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. From October to December 2006, Sean P. Kimble (Kimble) knowingly inflated the balance of one of his bank accounts that he maintained at the Member's bank affiliate, JPMCB, by depositing checks drawn from his two other bank accounts at JPMCB, which had insufficient funds. Kimble's actions violated NASD Conduct Rule 2110.

2. On March 12, 2007, April 2, 2007, May 2, 2007, May 31, 2007, and January 16, 2007, the FINRA Staff (Staff) sent letters to Kimble requesting information and documentation about his actions in depositing checks from one bank account into another without sufficient funds, but Kimble failed to respond to the requests for information, in violation of NASD Conduct Rule 2110 and Rule 8210.

RESPONDENT

3. From on or about July 6, 2005 to on or about December 22, 2006, Kimble was registered as a General Securities Representative with Chase Investment Services Corp. (Member), a member of FINRA (f/k/a NASD). Kimble is not currently associated with any member of FINRA. Since this Complaint is filed within two years of the termination of Kimble's registration with the Member, Kimble is subject to the jurisdiction of FINRA, pursuant to Article V, Section 4 of the FINRA's By-Laws.

**FIRST CAUSE FOR COMPLAINT
NASD Conduct Rules 2110 – Depositing Checks From One Bank Account to Another
Without Available Funds by Kimble.**

4. Paragraphs number 1 through 3 above are re-alleged and incorporated herein by reference.

5. From at least October to December 2006, Kimble maintained three separate checking accounts at the Member's bank affiliate, JPMCB. The checking accounts were numbered [REDACTED]. During this time Kimble repeatedly engaged in a practice commonly known as "check kiting," among his three checking accounts.

6. From in or about October 2006 to in or about December 2006, Kimble wrote out a total of 12 checks, totaling \$3,120, from one of his checking accounts at JPMCB. He made these checks payable to himself, when he knew that he had insufficient funds in the account to pay for the checks. He then endorsed the checks and deposited them at ATM machines into one of his other two checking accounts with JPMCB. After the checks were deposited, he withdrew funds from the accounts, which the ATM machine provided based on his deposit. The checks that

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Kimble wrote and deposited are shown on Schedule A, attached hereto and incorporated by reference.

7. On or about December 13, 2006, Kimble drafted and endorsed a check, numbered [REDACTED] for the amount of \$100 from Kimble's [REDACTED] Acc't., and mistakenly deposited the check back into his [REDACTED] Acc't., through an ATM. JPMCB discovered Kimble's conduct after this transaction.

8. On or about December 21, 2006, Kimble was interviewed by representatives of JPMCB. During the interview, Kimble admitted that he knowingly inflated his account balances by depositing checks drawn on his two other JPMCB checking accounts, when there were insufficient funds in the accounts to cover his payments. Kimble admitted that \$3,120 in returned items on his accounts were a result of this activity.

9. On or about December 21, 2006, Kimble prepared a hand-written statement, in which he stated the following:

This chain of events started with some bookkeeping errors with my checking account. Funds were very tight and my wife and I were struggling to make ends meet. ... I transferred funds from one of my accounts to the other thinking I had the available assets. After the check card transactions cleared, I found that I didn't have the necessary funds and several NSF's were applied to my account. This caused me to be severely negative. At this point, I made a very bad decision. Instead of coming clean with management and trying to fix the problem immediately, I continued to deposit checks without proper funding to create cash flow. As time passed, more and more fees accrued and the situation spiraled out of control. This came to an end when I mistakenly deposited a check into the same account that it was drawn off of. This caused all of my accounts to be frozen and led to me informing my manager what had happened. ... [I]t was my poor judgment that led to the continuing problems.

10. Kimble had insufficient funds to pay for each of the checks from his three checking accounts and some of them were returned for insufficient funds.

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11. As a result of his conduct, Kimble caused a debit balance of at least \$1,752.90 in his checking accounts with JPMCB.

12. The acts, practices and conduct set forth above constitute separate and distinct violations of NASD Conduct Rule 2110 by Kimble.

**SECOND CAUSE FOR COMPLAINT
Conduct Rule 2110 and Rule 8210 - Failure to Respond to the Staff's Requests for
Information by Kimble.**

13. Paragraph numbers 1 through 12 above are re-alleged and incorporated herein by reference.

14. On or about March 12, 2007, Staff sent Kimble a request that he provide a written statement responding to the allegation that he deposited checks among his three bank accounts without sufficient funds, as noted in paragraphs 4 through 11 above, pursuant to and in accordance with the provisions of NASD Rule 8210. The request for information was sent by first class mail to Kimble's address of record as contained in the records of the Central Registration Depository ("CRD Address"). The first class mailing was returned to the Staff marked "Return to Sender, No Such Number."

15. On or about April 2, 2007, having received no response from Kimble, the Staff sent him a letter marked "Second Request," asking that he provide a written statement responding to the allegation that he deposited checks among his three bank accounts without sufficient funds, as noted in paragraphs 4 through 11 above, pursuant to and in accordance with the provisions of NASD Rule 8210. The Second Request for information was sent by first class mail, and by certified mail, return receipt requested, to Kimble's CRD Address. The first class mailing and the certified mailing were returned to the Staff marked "Return to Sender, No Such Number."

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16. On or about May 2, 2007, having received no response from Kimble, the Staff sent him a letter marked "final request," asking that he provide a written statement responding to the allegation that he deposited checks among his three bank accounts without sufficient funds, as noted in paragraphs 4 through 11 above, pursuant to and in accordance with the provisions of NASD Rule 8210. This Final Request for information was sent by first class mail, and by certified mail, return receipt requested, to Kimble's CRD Address, and to an address in Noblesville, IN (Noblesville Address), and an address in Fishers, IN (Fishers Address), which the Staff learned of during its investigation. The first class mailings to the CRD Address and the Noblesville Address were not returned to the Staff. The first class mailing to the Fishers Address was returned marked "Returned to Sender, Not Deliverable as Addressed, Unable to Forward." The certified return receipt for the mailing to the CRD Address was returned apparently signed by someone with the last name "Fleming." The certified mailing to the Fishers Address was returned marked "Returned to Sender, Not Deliverable as Addressed, Unable to Forward." The certified mailing to the Noblesville Address was returned to the Staff marked "Return to Sender, Unclaimed."

17. On or about May 31, 2007, having received no response from Kimble, the Staff sent him a second letter marked "FINAL REQUEST," asking that he provide a written statement responding to the allegation that he deposited checks among his three bank accounts without sufficient funds, as noted in paragraphs 4 through 11 above, pursuant to and in accordance with the provisions of NASD Rule 8210. This Final Request for information was sent by first class mail, and by certified mail, return receipt requested, to Kimble's CRD Address, and was sent only by first class mail to Kimble's Noblesville Address, and his Fishers Address. The first class mailings to the CRD Address and the Noblesville Address were not returned to the Staff. The

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first class mailing to the Fishers Address was returned marked "Returned to Sender, Not Deliverable as Addressed, Unable to Forward." The certified mailing to the CRD Address was returned marked "Returned to Sender, Attempted Not Known."

18. On or about January 16, 2008, having received no response from Kimble, the Staff sent him a letter marked "FINAL REQUEST," asking that he provide a written statement responding to the allegation that he deposited checks among his three bank accounts without sufficient funds, as noted in paragraphs 4 through 11 above, pursuant to and in accordance with the provisions of NASD Rule 8210. This Final Request for information was sent by first class mail, and by certified mail, return receipt requested, to Kimble's CRD Address, his Noblesville Address, and his Fishers Address. None of the first class mailings were returned to the Staff. The certified return receipt for the mailing to the Noblesville Address was returned apparently signed by Kimble, as having received the letter on January 19, 2008. The certified mailing to the Fishers Address was returned marked "Returned to Sender, Not Deliverable as Addressed, Unable to Forward." The certified mailing to the Noblesville Address was returned to the Staff marked "Returned to Sender, Not Deliverable as Addressed, Unable to Forward."

19. Kimble failed to respond to each and all of the requests for documents and information described in paragraphs 14 through 18 above, and the time for Kimble to respond has passed.

20. The aforementioned acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 and NASD Rule 8210 by Kimble.

PRAYER FOR RELIEF

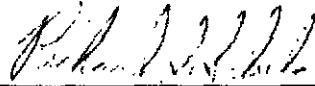
WHEREFORE, the Department respectfully requests that the Panel:

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

February 15, 2008

Date



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Schedule A

Checks That Sean Kimble Wrote and Deposited Into His Other Accounts At ATMs

Check Number	Date on Check	Date Processed	Drawn From Acc't. No.	Deposited In Acc't. No.	Amount of Check
	10/03/06	10/06/06			\$250
	10/05/06	10/11/06			\$250
	11/03/06	11/07/06			\$250
	11/05/06	11/09/06			\$220
	11/09/06	11/14/06			\$250
	11/10/06	11/14/06			\$250
	11/13/06	11/16/06			\$100
	11/22/06	11/28/06			\$500
	11/25/06	11/29/06			\$200
	12/01/06	12/07/06			\$200
	12/09/06	12/14/06			\$250
	12/09/06	12/14/06			\$400
Total					\$3,120