

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JEFFREY EUGENE TIPTON
(CRD No. 3271659),

Respondent.

Disciplinary Proceeding
No. 20070087150-01

Hearing Officer – SW

DEFAULT DECISION

Dated: October 7, 2008

Respondent is barred from associating with any FINRA member firm in any capacity for violating Conduct Rule 2110 and Procedural Rule 8210 by failing to appear for an on-the-record interview requested pursuant to Rule 8210. No separate sanctions were imposed on Respondent for: (i) violating Conduct Rules 3030 and 2110 when he engaged in an outside business activity without providing prompt written notice of the activity to his employer; and (ii) violating Conduct Rules 2370 and 2110 when he loaned funds to his customer in breach of his employer's policies and procedures.

Appearances

Jacqueline D. Whelan, Esq., Regional Chief Counsel, San Francisco, CA, for the
Department of Enforcement.

No appearance by or for Respondent Jeffrey E. Tipton.

DECISION

I. Procedural History

On May 8, 2008, the Department of Enforcement ("Enforcement") filed the attached three-count Complaint against Respondent Jeffrey Eugene Tipton ("Respondent"). The Complaint alleges that Respondent: (1) engaged in an outside business activity when he accepted compensation from an elderly customer, EL, to assist her with her personal finances without providing his employer with prompt written notice of the activity, in violation of

Conduct Rules 3030 and 2110; (2) loaned funds to customer EL in breach of his employer's policies and procedures, in violation of Conduct Rules 2370 and 2110; and (3) failed to appear for an on-the-record interview requested by the FINRA staff pursuant to Procedural Rule 8210, in violation of Conduct Rule 2110 and Rule 8210.

On August 15, 2008, Enforcement filed a Motion for Entry of Default Decision ("Motion"), supported by the Declaration of Jacqueline D. Whelan, Esq., Regional Chief Counsel in FINRA's San Francisco, CA office, and by six exhibits. For the reasons set forth below, Enforcement's Motion is granted.

II. Respondent's Default

On May 8, 2008, Enforcement served Respondent with a copy of the Complaint and Notice of Complaint, via certified mail, at his current residential address as reflected in the Central Registration Depository ("CRD address"). Respondent did not file an Answer. On June 6, 2008, Enforcement served Respondent with a copy of the Complaint and Second Notice of Complaint, via certified mail, at his CRD address. Again, Respondent failed to file an Answer or otherwise respond to the Complaint.

The Hearing Officer finds that Enforcement complied with Procedural Rule 9134(b)(1) by sending the mailings to Respondent's CRD address.¹ 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

¹ 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).

² The factual determinations in this Decision are based on the Motion for Entry of Default Decision, the Declaration in Support of the Motion, the exhibits attached thereto, and the allegations in the Complaint, deemed admitted pursuant to Rules 9215(f) and 9269, and *Notice to Members* 99-77 (Sept. 1999).

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

On January 4, 2000, Respondent became registered as a general securities representative with AXA Advisors, LLC ("AXA"). On July 10, 2007, AXA filed a Form U5 reporting that it had terminated Respondent on July 3, 2007, for conducting an undisclosed and unapproved outside business activity. Respondent is not currently associated with any FINRA member firm.

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 registration with AXA was terminated, and (2) the Complaint charges him with misconduct while he was registered, and failure to respond to a Rule 8210 request for an on-the-record interview issued during the period of retained jurisdiction.

B. Respondent Engaged in an Outside Business Activity

FINRA began an investigation after AXA filed a Rule 3070 report on May 30, 2007, disclosing its receipt of a customer complaint purportedly written by Respondent's customer EL. In April 2007, customer EL disavowed the customer complaint, claiming that her daughter had sent the complaint without her knowledge and consent.

The first cause of the Complaint alleges that Respondent violated Conduct Rules 3030 and 2110 when he entered into an oral agreement with customer EL to assist her with her personal finances in exchange for a fee. Respondent's assistance included paying customer EL's bills and providing her with cash from her accounts to pay her living expenses. Customer EL paid Respondent a total of \$1,900 in four checks dated December 14 and 29, 2006, and January 12 and 30, 2007.

Enforcement provided the additional information that: (i) Respondent not only paid bills for customer EL but also shopped for her groceries and drove her to various destinations; (ii) EL

orally agreed to pay Respondent \$150 per month to reimburse him for gasoline and other expenses he incurred in providing assistance to her;³ and (iii) AXA's policies and procedures, in effect during the period, required that outside business activities receive prior written approval. In addition, AXA registered persons were to promptly update their annual outside business activity questionnaires to reflect any new outside businesses. Respondent's agreement to be compensated for providing personal services was outside the scope of his employment with AXA, and he did not provide notice of his activity to AXA.

Conduct Rule 3030 provides that "[n]o person associated with a member shall be employed by, or accept compensation from, any other person as a result of any business activity ... outside the scope of his relationship with his employer firm, unless he has provided prompt written notice to the member ... in the form required by the member."

The purpose of Rule 3030 is to provide member firms with prompt notice of outside business activities so that the member's objections, if any, to such activities can be raised at a meaningful time and the member can exercise appropriate supervision as necessary under applicable law.⁴ Rule 3030 requires disclosure of all outside business activity, not just securities-related activity.⁵

Based on the allegations deemed admitted, the Hearing Officer finds that Respondent violated Conduct Rule 3030 by entering into an agreement to provide, and receiving compensation for providing, personal services to customer EL, without providing written notice

³ The FINRA staff was unable to obtain useful or reliable information directly from customer EL because her recollection of all of the relevant events was very vague.

⁴ *Proposed Rule Change by NASD Relating to Outside Business Activities of Associated Persons*, Exch. Act Rel. No. 26,063, 1988 SEC LEXIS 1841 (Sept. 6, 1988), adopted at Exch. Act Rel. No. 26,178, 1988 SEC LEXIS 2032 (Oct. 13, 1988).

⁵ *Dist. Bus. Conduct Comm. v. Cruz*, No. C8A930048, 1997 NASD Discip. LEXIS 62, at *96 (Oct. 31, 1997).

to his employer, as alleged in the first cause of the Complaint. It is well settled that any conduct that violates any Conduct Rule is viewed as a violation of Conduct Rule 2110.⁶

C. Respondent Loaned Funds to Customer EL in Breach of AXA's Procedures

Count two of the Complaint alleges that while associated with AXA, Respondent violated Conduct Rules 2370 and 2110, by lending funds to customer EL, in breach of AXA's procedures that prohibited borrowing and lending transactions with customers.

Conduct Rule 2370 provides that a registered representative may not borrow money from, or lend money to, a customer unless (i) the representative's firm has a written procedure allowing such borrowing or lending, (ii) the firm approves the borrowing or lending arrangement in writing, and (iii) the borrowing or lending arrangement meets one of several conditions specified in the Rule.

On November 20, 2006, December 3, 2006, and during the period from December 8, 2006 until January 17, 2007, Respondent loaned customer EL a total of \$600. The loans were repaid on December 8, 2006 and January 17, 2007. Respondent wrote that he loaned money to customer EL for groceries and other items when EL had month-end cash flow shortfalls. Respondent's loans to customer EL were not in compliance with AXA's written supervisory procedures, and Respondent did not request or obtain permission from AXA prior to lending money to customer EL.

Based on the allegations deemed admitted, the Hearing Officer finds that Respondent violated Conduct Rules 2370 and 2110 by lending a total of \$600 to customer EL in breach of AXA's procedures, as alleged in the second cause of the Complaint.

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

D. Respondent Failed to Appear for an On-the-Record Interview

After obtaining information from AXA regarding its receipt of a customer complaint purportedly written by Respondent's customer EL, the FINRA staff sought additional information from Respondent regarding his interaction with customer EL. Count three of the Complaint alleges that Respondent failed to appear on March 27, 2008, for an on-the-record interview as requested in a letter sent by the FINRA staff to Respondent at his CRD address on March 14, 2008, via first-class and certified mail, pursuant to Procedural Rule 8210.⁷

The Hearing Officer finds that Respondent is deemed to have received the request to appear sent to his CRD address pursuant to Rule 8210(d). Failure to comply with a Rule 8210 request to appear is a serious violation because it subverts FINRA's ability to perform its regulatory responsibilities.⁸

Based on the allegations deemed admitted, the Hearing Officer finds that Respondent violated Conduct Rule 2110 and Procedural Rule 8210 by failing to appear for an on-the-record interview, as alleged in the third cause of the Complaint.

IV. Sanctions

A. Respondent Failed to Appear for an On-the-Record Interview

The *FINRA Sanction Guideline* for failure to respond to a Rule 8210 request states that a bar should be standard where the respondent failed to respond in any manner.⁹

⁷ The FINRA staff initially requested that Respondent appear for testimony on February 8, 2008 at the FINRA district office in a letter dated December 20, 2007. In a January 29, 2008 letter, the FINRA staff requested that Respondent contact the FINRA staff on or before February 5, 2008, to set a date for an on-the-record interview. Respondent did not respond to either the December 20, 2007 or the January 29, 2008 letter.

⁸ See, e.g., *Richard J. Rouse*, Exch. Act Rel. No. 32,685, 1993 SEC LEXIS 1831, at *7 (1993); *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 FINRA to conduct its investigations effectively, and emphasizing that FINRA members and associated persons must fully cooperate with requests for information).

⁹ *FINRA Sanction Guidelines*, p. 35 (2007), available at <http://www.finra.org/web/groups/enforcement/documents/enforcement/p011038.pdf>.

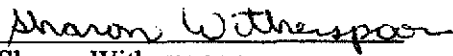
In the instant case, where Enforcement has not identified any mitigating factors and a bar is standard for this type of violation, the Hearing Officer accepts Enforcement's recommended sanction and bars Respondent from association with any FINRA member firm in any capacity.

B. No Separate Sanctions Imposed for Respondent's Engaging in an Outside Business Activity or Lending Funds to a Customer

Because the Hearing Officer barred Respondent for his Rule 8210 violation, the Hearing Officer will impose no separate sanctions for Respondent's violations of: (i) Conduct Rules 3030 and 2110 when he engaged in the outside business activity of providing personal services to customer EL for a fee without providing prompt notice of the activity to his employer; and (ii) Conduct Rules 2370 and 2110 when he loaned funds to customer EL in violation of his employer's policies.

V. Order

Respondent Jeffrey E. Tipton is barred from associating with any FINRA member firm in any capacity for violating Conduct Rule 2110 and Procedural Rule 8210 by failing to appear for an on-the-record interview requested by the FINRA staff pursuant to Procedural Rule 8210. The bar shall become effective immediately upon this Default Decision becoming the final disciplinary action of FINRA.


Sharon Witherspoon
Hearing Officer

Dated: Washington, DC
October 7, 2008

Copies to:
Jeffrey E. Tipton (via FedEx and first-class mail)
Jacqueline D. Whelan, 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

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Jeffrey Eugene Tipton,
CRD No. 3271659,

Respondent.

DISCIPLINARY PROCEEDING
No. 20070087150-01

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Between December 1, 2006, and January 31, 2007, Respondent Tipton accepted compensation of approximately \$1,900.00 from EL, a customer of his employer-member, for assisting EL with her personal finances. Respondent failed to provide his employer-member with written notice of this outside business activity, in violation of NASD Conduct Rules 2110 and 3030. While assisting EL, Respondent loaned money to her on at least two occasions, totaling approximately \$600.00. Respondent's employer-member did not have procedures permitting representatives to loan money to or borrow money from customers; therefore, Respondent's loans to EL violated NASD Conduct Rules 2110 and 2370. Finally, Respondent failed to appear for

testimony as requested by the staff pursuant to Procedural Rule 8210, in violation of NASD Conduct Rule 2110 and Procedural Rule 8210.

RESPONDENT AND JURISDICTION

2. Respondent Jeffrey Tipton first became associated with a member of FINRA in May 1999. From January, 2000 until July 3, 2007, he was a general securities representative of AXA Advisors, LLC. Respondent has not been associated with a member of FINRA since the termination of his association with AXA Advisors, LLC. FINRA has jurisdiction to issue this Complaint pursuant to Article V, Section 4 of its By-laws.

FIRST CAUSE OF ACTION

Outside Business Activity (NASD Rules 3030 and 2110)

3. The Department realleges and incorporates by reference paragraphs 1 and 2 above.
4. Between on or about December 1, 2006, and on or about January 31, 2007, Respondent Tipton accepted compensation from EL, a customer of AXA Advisors, LLC, for assisting EL with her personal finances. His assistance included paying EL's bills and providing her with cash from her accounts for her living expenses. EL paid Respondent \$1,900.00 in four checks dated December 14, 2006, December 29, 2006, January 12, 2007, and January 30, 2007, in the amounts, respectively, of \$600.00, \$600.00, \$300.00 and \$400.00.
5. By accepting compensation for providing assistance to EL, as described in paragraph 5 above, Respondent Tipton engaged in outside business. Pursuant to Conduct Rule 3030, Respondent Tipton was required to provide prompt written notice of his outside

business activity to AXA Advisors, LLC. In violation of Conduct Rules 3030 and 2110, Respondent failed to provide written notice at any time between his acceptance of the first payment and the termination of his association with the firm.

SECOND CAUSE OF ACTION

Loans to Customers (NASD Rules 2370 and 2110)

6. The Department realleges and incorporates by reference paragraphs 1, 2, 4 and 5 above.
7. On or about November 20, 2006; on or about December 3, 2006; and on one or more occasions during the period from on or about December 8, 2006 until January 17, 2007; Respondent Tipton loaned money to EL. The loans totaled approximately \$600.00 and were repaid on or about December 8, 2006, and on or about January 17, 2007.
8. During the period of the loans described in paragraph 7 above, AXA Advisors, LLC did not have procedures permitting representatives to borrow money from, or loan money to, customers of the firm. AXA Advisors, LLC's compliance procedures expressly prohibited borrowing and lending transactions with customers.
9. Because AXA Advisors, LLC did not have procedures permitting representatives to loan money to customers, Respondent Tipton's loans to EL constituted separate and distinct violations of Conduct Rules 2370 and 2110.

THIRD CAUSE OF ACTION

Failure to Appear for Testimony (NASD Procedural Rule 8210 and Conduct Rule 2110)

10. The Department realleges and incorporates by reference paragraphs 1, 2, 4, 5 and 7-9, above.
11. On March 14, 2008, FINRA staff sent to Respondent Tipton a written request to appear for on-the-record testimony on March 27, 2008, in connection with the staff's investigation of his involvement with EL's personal finances. The request was made pursuant to Procedural Rule 8210 and was sent by certified and first-class mail to Respondent at 6240 N. 3rd Street, Fresno, CA 93710, his most recent residential address as reflected in the Central Registration Depository.
12. The certified mailing of the request to appear for testimony was returned to FINRA staff marked "unclaimed." The first-class mailing was not returned to the staff.
13. Respondent failed to appear for on-the-record testimony on March 14, 2008, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

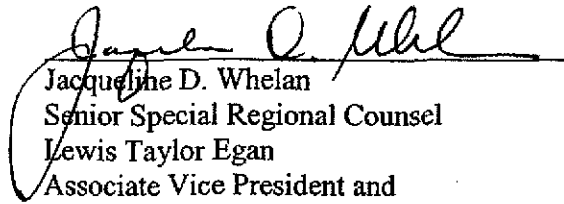
RELIEF REQUESTED

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.
- 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: May 8, 2008


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