

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

CARL McCASKILL
(CRD No. 1345072),

Respondent.

Disciplinary Proceeding
No. 20070094178

DEFAULT DECISION

Hearing Officer – SW

Date: August 12, 2008

Respondent is barred from associating with any FINRA member firm in any capacity for (i) violating NASD Conduct Rules 2370 and 2110 by borrowing customer funds in breach of his employer's policies and procedures, and (ii) violating NASD Conduct Rule 2110 and NASD Procedural Rule 8210 by failing to respond to a request for information issued by the FINRA staff. In addition to the bars, Respondent is directed to reimburse his customer the sum of \$109,000 plus interest.

Appearances

Howard L. Kneller, Esq., Senior Counsel, New York, NY, for the Department of Enforcement.

No appearance by or for Respondent Carl McCaskill.

DECISION

I. Procedural History

On April 7, 2008, the Department of Enforcement ("Enforcement") filed a two-count Complaint, alleging in count one of the Complaint that Respondent Carl McCaskill ("Respondent") borrowed funds from customer MM in violation of NASD Conduct Rules 2110 and 2370, and in count two of the Complaint that Respondent failed to respond to a request for information issued by the FINRA staff pursuant to Procedural Rule 8210, in violation of NASD Conduct Rule 2110 and Rule 8210.

On June 19, 2008, Enforcement filed a Motion for Entry of Default Decision ("Motion"), supported by the Declaration of Howard L. Kneller, Esq., Senior Counsel in FINRA's New York, NY office, and by six exhibits.¹ For the reasons set forth below, Enforcement's Motion is granted.

II. Respondent's Default

On April 4, 2008, Enforcement served Respondent with a copy of the Complaint and Notice of Complaint, via certified mail and FedEx, at his current residential address as reflected in the Central Registration Depository ("CRD address"). (DECL at ¶ 26; CX-1, p. 1; CX-3, p. 12). Respondent did not file an Answer. (DECL at ¶ 29). On May 2, 2008, Enforcement served Respondent with copies of the Complaint and Second Notice of Complaint, via certified mail and FedEx, at his CRD address. (DECL at ¶ 30; CX-5, p. 8). Again, Respondent failed to file an Answer or otherwise respond to the Complaint. (DECL at ¶ 35).

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

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

Respondent became registered on November 20, 2000 when he became employed by Salomon Smith Barney, a predecessor to Citigroup Global Markets, Inc. ("Citigroup"). (DECL at ¶ 4). On November 1, 2006, Citigroup filed a Form U-5 to report that it had terminated

¹ Hereinafter, the statements in the Motion for Entry of Default Decision will be designated as "Motion, p.," the statements in the Kneller Declaration will be designated as "DECL at ¶;" and Enforcement's exhibits will be designated as "CX-" with the appropriate page or paragraph number.

² 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).

Respondent on October 25, 2006, for accepting a loan from a client. (CX-1, pp. 1-2).

Respondent is not currently associated with any FINRA member firm. (DECL at ¶ 6).

Nevertheless, 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 Citigroup was terminated, and (2) the Complaint charges him with misconduct while he was registered, and failure to provide information requested pursuant to Rule 8210 during the period of retained jurisdiction.

B. Respondent Violated Conduct Rules 2110 and 2370

Count one of the Complaint alleges that Respondent, while associated with Citigroup, violated NASD Conduct Rules 2110 and 2370, by borrowing \$159,000 from customer MM on March 29, 2006, in breach of Citigroup's written supervisory procedures. (Complaint at ¶¶ 6, 10-12).

Citigroup's written supervisory procedures at the time of the loan specifically prohibited its employees from borrowing money from customers unless: (i) the customer was another employee of Citigroup; and (ii) prior written approval was obtained for the loan from the employees' branch office manager. (Complaint at ¶ 10). Customer MM has never been an employee of Citigroup, and Respondent did not request or obtain permission from Citigroup to borrow money from MM. (Complaint at ¶¶ 11-12). Respondent has only repaid \$50,000 of customer MM's \$159,000 loan. (Complaint at ¶ 13).

NASD Conduct Rule 2370 provides that a registered representative may not borrow money from a customer unless the representative's firm has a written procedure allowing such borrowing, the firm approves the borrowing arrangement in writing, and the borrowing arrangement meets one of several conditions specified in the Rule. Respondent's borrowing was not in compliance with Citigroup's written supervisory procedures, and Respondent did not

request or obtain permission from Citigroup prior to borrowing the money from customer MM. (Complaint at ¶¶ 10-12).

Based on the allegations deemed admitted, the Hearing Officer finds that Respondent violated NASD Conduct Rules 2370 and 2110 by borrowing \$159,000 from customer MM in violation of Citigroup's written supervisory procedures as alleged in the first cause of the Complaint. It is well settled that any conduct that violates an NASD Conduct Rule is viewed as a violation of NASD Conduct Rule 2110.³

C. Respondent Failed to Respond to a FINRA Request for Information

Count two of the Complaint alleges that Respondent failed to respond to a request for information that was sent by the FINRA staff to Respondent at his CRD address on January 4, 2008, via first class and certified mail, pursuant to Procedural Rule 8210.⁴ (Complaint at ¶¶ 17-18; DECL at ¶¶ 18-19).

The Hearing Officer finds that Respondent is deemed to have received the request for information sent to his CRD address 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.⁵

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.

³ *Dep't of Enforcement v. Shvarts*, No. CAF980029, 2000 NASD Discip. LEXIS 6, at *12-13 (NAC June 2, 2000).

⁴ Prior to receiving a request for information from the FINRA staff, Respondent received and failed to respond to a request for information from the staff of the New York Stock Exchange, LLC. (Complaint at ¶ 16).

⁵ 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).

IV. Sanctions

A. Respondent Violated Conduct Rules 2370 and 2110

The *FINRA Sanction Guidelines* do not list a specific sanction for violating Conduct Rule 2370. Enforcement recommended that Respondent be barred and directed to pay \$109,000 to customer MM, plus interest. Enforcement argued that Respondent's conduct was egregious and warranted a bar.

The Hearing Officer finds that Respondent's conduct was egregious because (i) Respondent's actions were intentional, (ii) the customer was harmed because Respondent failed to completely repay customer MM within three months of the loan in violation of his agreement with MM, and (iii) Respondent profited by his misconduct.⁶ Accordingly, the Hearing Officer finds that Respondent's actions warrant a bar.

Respondent is barred from associating with any FINRA member firm in any capacity, and ordered to pay \$109,000 to customer MM plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2), from March 29, 2006, the date of the violative conduct, until paid.

B. Respondent Failed to Respond to a Rule 8210 Request for Information

The *FINRA Sanction Guideline* for failure to respond to Rule 8210 requests for information states that a bar should be standard where the respondent failed to respond in any manner.⁷

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.

⁶ See *Terry Wayne White*, 50 S.E.C. 211 (1990).

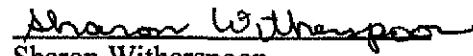
⁷ *FINRA Sanction Guidelines*, p. 35 (2007), available at <http://www.finra.org/web/groups/enforcement/documents/enforcement/p011038.pdf>.

V. Order

Respondent Carl McCaskill is barred from associating with any FINRA member firm in any capacity for: (i) violating NASD Conduct Rules 2370 and 2110 by borrowing customer funds in breach of his employer's policies and procedures; and (ii) violating NASD Conduct Rule 2110 and NASD Procedural Rule 8210 by failing to respond to a request for information issued by the FINRA staff.

In addition to the bars, Respondent is directed to reimburse customer MM \$109,000 plus interest from March 29, 2006, until paid. The interest to be charged is at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2).

These sanctions shall become effective on a date set by FINRA, but not before the expiration of 30 days after the date this Default Decision becomes the final disciplinary action of FINRA; provided, however, that the bars shall become effective immediately upon this Default Decision becoming the final disciplinary action of FINRA.


Sharon Witherspoon
Hearing Officer

Dated: Washington, DC
August 12, 2008

Copies to:

Carl McCaskill (via FedEx and first class mail)
Howard L. Kneller, Esq. (via electronic and first class mail)
David R. Sonnenberg, Esq. (via electronic and first class mail)

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

Department of Enforcement,

Complainant,

v.

Carl McCaskill,
CRD No. 1345072

Respondent.

Disciplinary Proceeding
No. 20070094178

Hearing Officer

COMPLAINT

RECEIVED

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The Department of Enforcement alleges:

1. Respondent Carl C. McCaskill ("Respondent") became registered with NASD and the NYSE in March of 2001 as a General Securities Representative with Salomon Smith Barney, the predecessor entity to Citigroup Global Markets, Inc. (the "Member").
2. On or about November 1, 2006, the Member filed a Uniform Termination Notice for Securities Industry Registration ("Form U-5") stating that Respondent's employment with the member terminated on October 25, 2006. Under the heading "Reason for Termination," the Form U-5 stated that Respondent was permitted to resign due to the fact that he accepted a loan from a customer.
3. Respondent is not currently registered with any FINRA members.

4. FINRA has jurisdiction over Respondent pursuant to Article V, Section 4(a)(i) of FINRA's By-Laws, which provides for a two-year period of retained jurisdiction over formerly associated persons, because:
 1. this Complaint is being filed within two years after the effective date of the termination of Respondent's registration (November 1, 2006);
and
 2. this Complaint is based upon conduct that commenced prior to termination of Respondent's registration.

**FIRST CAUSE OF ACTION
NASD Conduct Rules 2370 and 2110:
Borrowing from a Customer**

5. Paragraph 1 through 4 above are re-alleged and incorporated herein by reference.
6. On or about March 29, 2006, Respondent borrowed \$159,000 from a customer, MM, to invest in an outside business.
7. The loan was made to Respondent via a check issued by MM and made payable to the outside business.
8. At or about the time of the loan, respondent advised MM that he would personally guarantee the principle of the loan with interest, to be paid back within three months.
9. NASD Conduct Rule 2370 prohibits an associated person from borrowing money from a customer, except in certain specified circumstances. The member firm

employer must have written procedures allowing such loans and must approve the arrangement in writing. In addition, one of the following five circumstances must also be present: (1) the customer is a member of the associated person's immediate family; (2) the customer is engaged in the business of lending money; (3) the customer is an associated person of the same firm; (4) the lending relationship is based on a personal relationship outside the broker/customer relationship, and the loan would not have been made but for that relationship; or (5) the loan is based on a business relationship outside the broker/customer relationship.

10. In addition, the Member's written supervisory procedures at the time of the aforementioned loan specifically prohibited its employees from borrowing money from customers unless the customer was another employee of the Member and prior written approval was obtained for the loan from the employees' Branch Office Manager.
11. MM has never been an employee of the Member, is not related in any way to Respondent and is not and has never been in the business of lending money. Nor have any of the other requirements set forth in paragraph 9 above been satisfied.
12. Respondent did not request or obtain permission from the Member to borrow money from MM. Nor could he under the procedure set forth above.
13. To date, respondent has only paid back \$50,000 of the loaned amount to MM.

14. The acts, practices and conduct above constitute violations of NASD Conduct Rules 2370 and 2110 by Respondent.

SECOND CAUSE OF ACTION
NASD Conduct Rule 2110 and NASD Procedural Rule 8210
Failure to Respond to Requests for Information

11. Paragraphs 1 through 10 above are re-alleged and incorporated herein by reference.
12. On or about February 16, 2007, in connection with the investigation of this matter, the staff of the Division of Enforcement of NYSE Regulation, Inc. sent to Respondent a request that he provide a written statement concerning the matters under investigation. In this letter, Respondent was informed that his failure to submit the requested statement could result in the institution of formal disciplinary proceedings against him. This letter was sent by first class and certified mail to Respondent at his residential address, as reflected in the Central Registration Depository system ("CRD"). The receipt for the certified mail was returned back to FINRA bearing the purported signature of Respondent, thus indicating that he had received the letter. The first class mailing to the CRD address was not returned to FINRA staff by the postal authorities.
13. On or about January 4, 2008, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210, FINRA Enforcement staff sent to Respondent a request that he provide the written statement initially requested on February 16, 2007 as set

forth above. In this letter, Respondent was informed that his failure to submit the requested statement could result in the institution of formal disciplinary proceedings against him. This letter was sent by first class and certified mail to Respondent at his residential address, as reflected in the CRD. The first class mailing was not returned by the postal authorities. The certified mailing was returned to FINRA staff by the postal authorities marked "unclaimed, unable to forward."

14. To date, FINRA has not received the requested information nor any response to the foregoing requests from Respondent.

15. The acts, practices and conduct described in paragraph 14 above constitute violations of NASD Conduct Rule 2110 and Procedural Rule 8210 by Respondent.

RELIEF REQUESTED

WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;
- B. An order imposing sanctions upon the Respondent, including monetary sanctions, in accordance with NASD Rule 8310.
- C. An order requiring Respondent to (a) disgorge fully any and all ill-gotten gains, and/or (b) make full and complete restitution, together with interest;
- D. An order imposing such costs of any proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330; and
- E. An order imposing any other fitting sanction.

**FINRA DEPARTMENT OF
ENFORCEMENT**

Date: April 3, 2008



Susan Light, Senior Vice President and Chief
Counsel

Steven Korostoff, Director, Enforcement Center

Howard L. Kneller, Senior Counsel

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