

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

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REGISTRATION & DISCLOSURE

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JOSE DANIEL IRIARTE, JR.
(CRD No. 4146368),

Respondent.

Disciplinary Proceeding
No. 20070103697

Hearing Officer – Sara Nelson Bloom

DEFAULT DECISION

October 3, 2008

Respondent is barred from associating with any FINRA member in any capacity for (1) conversion of customer funds, in violation of Rules 2110 and 2330(a); (2) borrowing of customer funds without the approval of Respondent's member firm, in violation of Rules 2370 and 2110; and (3) failing to provide requested information, in violation of Rules 8210 and 2110.

Appearances

Jessica Poropat, Esq., New York, NY, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

I. Background

On March 27, 2008, the Department of Enforcement ("Enforcement") filed a three-count Complaint in this proceeding, attached to this Decision as Exhibit A. The first count alleges that Respondent Jose Daniel Iriarte ("Respondent") violated Rule 2110 by converting customer funds. The second count alleges that Respondent violated Rules 2370 and 2110 by borrowing customer funds in contravention of his firm's procedures, and without meeting the conditions set forth in Rule 2370. The third count alleges that Respondent violated Rules 8210 and 2110 by failing to respond to FINRA Staff ("Staff") requests for information and documents. On June 19, 2008,

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Enforcement filed a Motion for Entry of Default Decision, supported by the declaration of Jessica A. Poropat, Esq., and 15 exhibits. Respondent did not reply to the Motion. On August 12, 2008, Enforcement filed a supplemental submission regarding restitution. For the reasons set forth below, the Motion is granted.¹

II. Respondent's Default

On March 27, 2008, Enforcement sent the Complaint and Notice of Complaint to Respondent, by first-class and certified mail, to his last known residential address listed in the Central Registration Depository (the "CRD address"). In the same manner, Enforcement sent the Complaint and Second Notice of Complaint to Respondent on April 30, 2008. Respondent did not file an Answer to the Complaint.

Enforcement complied with Rule 9134(b)(1) by mailing the Complaint and Notices of Complaint to Respondent's CRD address, thereby giving Respondent constructive notice of this proceeding. By failing to file an Answer, Respondent defaulted. Pursuant to Rule 9215(f), the Hearing Officer deems the allegations in the Complaint admitted.

III. Jurisdiction

Respondent first became registered with FINRA as a General Securities Representative in February 2000. From May 2001 through August 21, 2007, he was registered with member firm Morgan Stanley & Co. Inc. (f/k/a Morgan Stanley DW Inc.) ("Morgan Stanley"). Respondent is currently not associated with a FINRA member.

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 the

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.

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 the Complaint was filed within two years of the termination of his registration.

IV. Violations

A. Improper Borrowing of Customer Funds

The Complaint alleges that on November 2, 2006, Respondent borrowed \$132,000 from GS, his non-family customer at Morgan Stanley. Respondent signed a promissory note agreeing to repay the loan on or before May 2, 2007.

Rule 2370 provides, in relevant part, that no person associated with a member in any registered capacity may borrow money from a customer of that person unless the member has written procedures allowing such borrowing, and the borrowing meets one of five listed conditions. Here, Morgan Stanley specifically prohibited registered employees from borrowing from customers, unless they were family members.

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent borrowed customer funds in violation of Rules 2370 and 2110.

B. Conversion

The Complaint also alleges that Respondent converted another customer's funds to partially repay his loan to GS. Specifically, on two occasions in April 2007, another customer, BFD, gave Respondent two cashier's checks: the first check for \$100,000, which BFD instructed Respondent to use to invest in a hedge fund that Respondent had recommended; and the second check for \$30,000, which BFD instructed Respondent to deposit in BFD's account. Rather than

doing as instructed, and without authority, Respondent deposited both cashier's checks into GS's account as a *partial repayment on the loan*.

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent converted customer funds, in violation of Rules 2110 and 2330(a).

C. Failure to Respond

The Complaint also alleges that, on August 29, 2007, the Staff sent Respondent a request for information, pursuant to Rule 8210, by first-class and certified mail, to his business address as reflected in the Central Registration Depository ("CRD"). Respondent failed to respond. In the same manner, on November 12, 2007 and December 19, 2007, Staff sent Respondent second and third requests for information to his last known residential address as reflected in CRD. Once again, Respondent did not respond. In the same manner, on January 16, 2008, Staff sent a fourth and final request for information, this time to his last known business and residential addresses as reflected in CRD. Respondent did not respond. Pursuant to Rule 8210(d), Respondent is deemed to have received the requests that were sent to his residential CRD address.

Rule 8210 authorizes FINRA to require any person subject to its jurisdiction to provide information related to any matter under investigation. The Rule serves as a key element in FINRA's oversight function and allows FINRA to carry out its regulatory functions without

subpoena power.² Here, although Respondent received valid constructive notice of the Staff's requests sent to his residential CRD address,³ he failed to respond. Respondent thereby violated Rules 8210 and 2110.

V. Sanctions

For conversion, the Guidelines recommend a bar, regardless of the amount converted. FINRA Sanction Guidelines ("Guidelines") at 38 (2007 ed.). A bar is also standard for failure to provide requested information. Guidelines at 35. There is no evidence of any mitigating circumstances that would justify a lesser sanction. Therefore, Respondent is barred from associating with any FINRA member in any capacity for these violations.

The Guidelines do not specifically address violations of Rule 2370. This case involves a \$132,000 loan. Given the size of the loan and the fact that Respondent converted funds from another customer to repay it, a bar is appropriate for Respondent's violation of Rules 2370 and 2110.⁴

VI. Conclusion

Respondent is barred from associating with any FINRA member in any capacity for (1) conversion of customer funds, in violation of Rules 2110 and 2330(a);

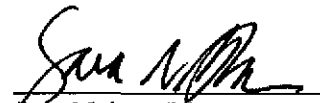
² See, e.g., Dep't of Enforcement v. Valentino, No. FPI010004, 2003 NASD Discip. LEXIS 15, at *12 (NAC May 21, 2003), aff'd, 2004 SEC LEXIS 330 (Feb. 13, 2004) ("It is well established that because NASD lacks subpoena power over its members, a failure to provide information fully and promptly undermines NASD's ability to carry out its regulatory mandate.") (citation omitted); 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 the NASD effectively to conduct its investigations, and emphasizing that NASD members and associated persons must fully cooperate with requests for information).

³ See, David I. Cassuto, Exch. Act Rel. No. 48,087, 2003 SEC LEXIS 1496, at *9 (June 25, 2003).

⁴ Respondent is not ordered to pay restitution to his customers because Respondent repaid GS using, in part, BFD's funds, and Morgan Stanley repaid BFD. See, e.g., Dep't of Enforcement v. Gonchar, No. CAF040058, 2008 NASD Discip. LEXIS 31, at 56 (NAC Aug. 26, 2008), appeal pending, No. 3-13243 (SEC Sept. 26, 2008).

(2) borrowing of customer funds without the approval of Respondent's member firm, in violation of Rules 2370 and 2110; and (3) failing to provide requested information, in violation of Rules 8210 and 2110. The bars shall become effective immediately if this Decision becomes the final disciplinary action of FINRA.

SO ORDERED.


Sara Nelson Bloom
Hearing Officer

Copies to:

Jose Daniel Iriarte, Jr. (*via overnight delivery and first-class mail*)
Jessica A. Poropat, Esq. (*via electronic and first-class mail*)
Scott M. Andersen, Esq. (*via electronic mail*)
Linda S. Riefberg, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

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

Department of Enforcement,

COMPLAINANT,

V.

**Jose Daniel Iriarte, Jr.
CRD No. 4146368,**

RESPONDENT.

DISCIPLINARY PROCEEDING
No. 20070103697

COMPLAINT

The Department of Enforcement alleges:

RESPONDENT & JURISDICTION

1. Respondent Jose Daniel Iriarte, Jr. ("Iriarte") first entered the securities industry when he became registered with A.G. Edwards and Sons, Inc., a FINRA member in February 2000. In April 2, 2001, he became associated with Morgan Stanley, & Co., Inc. ("Morgan Stanley" or the "Firm") as a registered representative and remained there until July 25, 2007, when the Firm terminated Iriarte's employment. On August 15, 2007, Iriarte became associated with TWS Financial, Inc. ("TWS Financial") as a registered representative, where he remained until he voluntarily terminated his employment on September 19, 2007 and since that time, Iriarte has not been associated with any other FINRA member.

2. Although Iriarte is not currently associated with a FINRA member, he remains subject to the jurisdiction of FINRA pursuant to Article V, Section 4, of the FINRA By-Laws in that the misconduct alleged occurred while Iriarte was associated with a member and a complaint was filed within two years following Iriarte's registration termination.

OVERVIEW

3. Iriarte wrongfully converted a customer's funds in order to repay a second customer, from whom Iriarte had earlier borrowed funds. In addition, Iriarte failed to respond to FINRA's NASD Rule 8210 requests issued in the course of its investigation.

FIRST CAUSE OF ACTION

Wrongfully Converting Customer Funds [NASD Rules 2110 and 2330(a)]

4. The Department realleges and incorporates by reference paragraphs 1-3 above.
5. While Iriarte was employed at the Firm, on or about November 2, 2006, he borrowed \$132,000 from a Firm customer, GS, for whom Iriarte served as registered representative.
6. In exchange for the loan from GS (the "Loan"), Iriarte executed a promissory note, which included terms that the Loan was required to be repaid in full on or before May 2, 2007.
7. During 2007, BFD was a Firm customer which Iriarte served as registered representative.

8. On two occasions in April 2007, an agent of BFD physically handed Iriarte a cashiers check. One cashiers check was in the amount of \$100,000 and the other was in the amount of \$30,000, and both were dated April 19, 2007.
9. At the time he handed the \$100,000 cashiers check to Iriarte, BFD's agent instructed Iriarte to use the check to invest in a hedge fund, which Iriarte recommended as an investment.
10. At the time he handed the \$30,000 cashiers check to Iriarte, BFD's agent instructed Iriarte to deposit the \$30,000 check into BFD's account at the Firm.
11. Rather than following the instructions provided by BFD, Iriarte, on or about April 20, 2007, deposited both of BFD's cashiers checks, totaling \$130,000, into customer GS's account at the Firm.
12. Iriarte deposited BFD's cashiers checks into GS's account as a partial repayment of the Loan GS made to Iriarte.
13. Iriarte did not have permission or authority from BFD to use its funds for Iriarte's own uses and purposes.
14. As a result of this conduct, Iriarte violated NASD Rules 2110 and 2330(a).

SECOND CAUSE OF ACTION

Borrowing Funds from a Customer of his Member Employer [NASD Rules 2370 and 2110]

15. The Department realleges and incorporates by reference paragraphs 1-14 above.
16. The Firm has written procedures prohibiting registered representatives from borrowing money from customers, unless the customer is a family member.

However, even in the situation of a family member, Firm approval is required in order for the employee to borrow money.

17. GS was not a family member of Iriarte.
18. Any exception to the Firm's policy required written approval by the Branch Manager or other supervisor, and also approval from the Firm's Compliance Department.
19. Iriarte never notified, nor received approval from, his supervisor, the Branch Office Manager, or the Compliance Department for the Loan.
20. As a result of this conduct, Iriarte violated NASD Rules 2370 and 2110.

THIRD CAUSE OF ACTION

Failing to Respond to Enforcement's Requests for Information and Documentation [NASD Rules 8210 and 2110]

21. The Department realleges and incorporates by reference paragraphs 1-20 above.
22. Iriarte failed to respond to Enforcement's requests for information pursuant to NASD Rule 8210.
23. On August 29, 2007, Enforcement sent an information request to Iriarte via first class mail and certified mail, return receipt requested, to Iriarte's last known business address at TWS Financial, as reflected in the Central Registration Depository ("CRD"). Iriarte worked at TWS Financial at the time of the mailing. The information request sought a written response to the allegations on Iriarte's Form U5 that Iriarte misdirected customer funds and failed to cooperate with Morgan Stanley's investigation. Enforcement did not receive a response from Iriarte by the deadline of September 28, 2007. To date, the letter sent via first

class mail has not been returned to Enforcement, and Enforcement did not receive the return receipt for its certified letter.

24. On November 12, 2007, Enforcement sent a second information request to Iriarte pursuant to NASD Rule 8210, again seeking a written response from Iriarte to the allegations that he misdirected customer funds and failed to cooperate with Morgan Stanley's investigation. The information request was sent via first class mail and certified mail, return receipt requested, to Iriarte at his last known residential address as stated on CRD: [REDACTED] [REDACTED] (the "Graham Farm Address"). Enforcement did not receive a response from Iriarte by the deadline of November 26, 2007. The postal service returned the letter sent via certified mail to Enforcement with a stamp that stated the parcel was "Unclaimed." However, the postal service did not return the letter sent to Iriarte via first class mail to Enforcement.
25. On December 19, 2007, Enforcement sent a third information request, pursuant to NASD Rule 8210, to Iriarte at the Graham Circle Address. This request letter asked Iriarte for specific information surrounding the Loan from GS as well as Iriarte's use of BFD's funds. Enforcement did not receive a response from Iriarte by the deadline of January 4, 2008. The postal service returned the letter sent via certified mail to Enforcement with a stamp that stated the parcel was "Unclaimed." However, the postal service did not return the letter sent to Iriarte via first class mail to Enforcement.
26. On January 16, 2008, Enforcement sent a fourth information request, pursuant to NASD Rule 8210, to Iriarte at the Graham Circle Address, as well as the last

known business address as reflected in the CRD for Iriarte, asking Iriarte for specific information surrounding the Loan from GS as well as Iriarte's use of BFD's funds. Enforcement did not receive a response from Iriarte by the due date of January 25, 2008 and to date, has not received any response from Iriarte.

Receipt from the letter sent via certified mail was returned to Enforcement with the signature of "Sarah Iriarte" and dated "1/19." To date, the letter sent via first class mail has not been returned to Enforcement. The letter sent to Iriarte at his last known business address at TWS Financial was received and a representative from TWS Financial called Enforcement to state that Iriarte was no longer employed there.

27. As a result of this conduct, Iriarte violated NASD Rules 8210 and 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 and restitution, 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: 3/27/08

3/27/08
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