

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

John W. Pena
(CRD No. 2780628),

Respondent.

DISCIPLINARY PROCEEDING
No. 2007010533701

Hearing Officer: SNB

**ORDER ACCEPTING
OFFER OF SETTLEMENT**

Date: June 4, 2010

INTRODUCTION

Disciplinary Proceeding No. 2007010533701 was filed on November 20, 2009, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent John W. Pena submitted an Offer of Settlement (Offer) to Complainant on April 15, 2010. Pursuant to FINRA Rule 9270(e), the Complainant and the National Adjudicatory Council (NAC), a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA) have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to FINRA Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.

Under the terms of the Offer, Respondent has consented, without admitting or denying the allegations of the Complaint, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, to the entry of findings and violations consistent with the allegations of the Complaint, except as modified in paragraphs 1 and 16-18 below, and to the imposition of the sanctions set forth below, and fully understands that this Order will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA.

BACKGROUND

Pena first became registered with FINRA in October 1996 as a General Securities Representative (Series 7). In January 2002, Pena became registered with former FINRA member CEG. On November 30, 2007, CEG filed a Form U5 on behalf of Pena reporting his involuntary termination on November 30, 2007. Pena is not currently registered with a FINRA member. Nevertheless, FINRA has jurisdiction to file this complaint pursuant to Article V, Section 4 of its By-Laws, which provides for a two-year period of retained jurisdiction following the effective date of termination of registration. Pena has not been the subject of prior disciplinary action.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:

1. While Respondent Pena was associated with a FINRA member, he borrowed \$20,000 from two customers, in violation of his employer member firm's written procedures and NASD Conduct Rules 2370 and 2110. Pena failed to repay the loan. Pena also failed to respond timely and completely to FINRA requests for information and

documents, in violation of NASD Rule 8210, NASD Conduct Rule 2110, FINRA Rule 8210, and FINRA Conduct Rule 2010.

2. Pena first became registered with FINRA in October 1996 as a General Securities Representative (Series 7). In January 2002, Pena became registered with former FINRA member CEG. On November 30, 2007, CEG filed a Form U5 on behalf of Pena reporting his involuntary termination on November 30, 2007.
3. Pena is not currently registered with a FINRA member. Nevertheless, FINRA has jurisdiction to file this complaint pursuant to Article V, Section 4 of its By-Laws, which provides for a two-year period of retained jurisdiction following the effective date of termination of registration.
4. In February 2004, while employed by and registered through former FINRA member CEG, Pena borrowed \$20,000 from customers MD and ED.
5. The loan from MD and ED was evidenced by a promissory note signed by Pena and dated February 2, 2004. Per the note, the loan required payment of interest at a rate of 6½ percent per annum and repayment of the principal balance on or before June 15, 2005.
6. When Pena received the loan from MD and ED, CEG had written procedures forbidding registered representatives from borrowing funds from customers of the firm, except in cases where the customer is an immediate family member. Neither MD nor ED is a member of Pena's immediate or extended family.
7. Pena did not notify CEG of the loan or seek or obtain the firm's approval prior to accepting the loan. Pena has also failed to repay the loan.

8. By accepting a loan from MD and ED, Pena violated NASD Rules 2370 and 2110.
9. On or about September 17, 2007, FINRA staff sent a letter to Pena notifying him that it was investigating allegations by MD and ED that Pena had withdrawn funds from their account without authority. The letter requested, pursuant the NASD Rule 8210, that Pena provide a written statement in response to the allegations. Pena provided a written statement to FINRA staff on or about October 18, 2007, in which he disputed the allegations of MD and ED.
10. Subsequent investigation by FINRA staff revealed evidence suggesting that Pena might have engaged in outside business activities and private securities transactions with MD and ED and that he had accepted a loan from them. On July 14, 2008, FINRA staff sent a letter to Pena requesting, pursuant to Rule 8210, that he provide written responses to questions and produce documents relating to his apparent outside business activities and private securities transactions and the loan. The letter was sent via certified mail, return receipt requested, and a copy by first class mail, to Pena's residential address as reflected in FINRA's Central Registration Depository ("CRD address") and to a more current residential address known to the staff ("current address"). The letter requested that Pena provide the requested written responses and documents no later than July 28, 2008.
11. On July 29, 2008, the staff received a letter from Pena, dated July 23, 2008, acknowledging receipt of the staff's July 14, 2008 letter and requesting that the submission deadline be extended by 60 days. By letter dated August 18, 2008, the staff notified Pena that his request for a 60-day extension had been granted and that

the submission deadline was now September 22, 2008. Pena, however, did not provide the requested documents and written responses by September 22, 2008.

12. By letter dated December 15, 2008, sent to Pena via certified mail, return receipt requested, and a copy by first class mail, to Pena's CRD address and to his current address, FINRA staff notified Pena that it had not received the documents and written responses requested in the staff's July 14, 2008 letter, and requested, pursuant to Rule 8210, that Pena submit the requested responses and documents no later than December 29, 2008. The staff also requested, pursuant to Rule 8210, that Pena appear for an on-the-record interview ("OTR") at the New Orleans district office on January 29, 2009.
13. On January 23, 2009, FINRA staff received a telephone call from Pena's attorney, JG, requesting that the OTR be postponed to a later date due to a schedule conflict. The staff and JG agreed to reschedule the OTR for March 17, 2009.
14. On March 11, 2009, FINRA staff sent an email to Pena's attorney notifying him that the staff still had not received requested documents and written responses from Pena. On March 12, 2009, Pena's attorney and FINRA staff conferred by telephone about the outstanding requests. The staff agreed to postpone the OTR to allow Pena additional time to obtain requested documents. With regard to Pena's written responses to informational requests, the staff requested that they be provided no later than March 23, 2009.
15. By letter dated April 6, 2009, sent to Pena via certified mail, return receipt requested, and a copy by first class mail, to Pena's CRD address and to his current

address, FINRA staff notified Pena that it had not received the documents and written responses requested by the staff in its July 14, 2008 letter, and requested, pursuant to Rule 8210, that Pena submit the requested written responses and documents no later than April 17, 2009. A copy of the April 6, 2009 letter was sent to Pena's attorney, also. Pena, however, did not provide the requested documents and written responses by April 6, 2009.

16. On April 27, 2009, FINRA staff received an email from Pena's attorney stating, "I have Mr. Pena's answers [to the staff's requests for information] and we are in the process of typing them out. You should have it by Friday [May 1, 2009]. I will fax it to you." The staff did not receive Pena's written responses by May 1, 2009.

17. On January 19, 2010, Pena provided a partial response to FINRA's requests for documents and written responses.

18. By failing to timely and completely respond to FINRA's requests for documents and written responses, Pena violated NASD Rule 8210 and NASD Conduct Rule 2110 with regard to the letter issued on July 14, 2008, and FINRA Rule 8210 and FINRA Conduct Rule 2010 with regard to the letters issued on December 15, 2008 and April 6, 2009.

Based on the foregoing, Respondent John W. Pena violated NASD Conduct Rules 2370 and 2110, NASD Rule 8210, FINRA Rule 8210, and FINRA Rule 2010.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondent from any future misconduct, and

represent a proper discharge by FINRA, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

It is ordered that Respondent John W. Pena be barred from association with any member in any capacity.

The sanctions imposed herein shall be effective on a date set by FINRA staff. Pursuant to FINRA Rule 8313(e), a bar or expulsion shall become effective upon approval or acceptance of this Order.

SO ORDERED.

FINRA

Signed on behalf of the
Director of ODA, by delegated authority

Handwritten signature of Mark J. Fernandez in cursive script, followed by a forward slash and the number 97.

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