

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

SARAH REBECCA BOARDMAN
(CRD No. 4175152),

Respondent.

Disciplinary Proceeding
No. 2007010778801

Hearing Officer – RSH

DEFAULT DECISION

April 28, 2009

Respondent violated Conduct Rules 2370 and 2110 by borrowing money from her customer and failing to repay the loan. She also violated Procedural Rule 8210 and Conduct Rule 2110 by failing to respond to requests for information. For these violations, Respondent was barred from associating with any member firm in any capacity and ordered to pay restitution to the customer.

Appearances

Richard A. March, Senior Regional Counsel, Mark A. Koerner, Regional Chief Counsel, Chicago, IL, for the Department of Enforcement.

No appearance by or for the Respondent.

DECISION

I. Introduction

The Department of Enforcement (“Enforcement”) for the Financial Industry Regulatory Authority (“FINRA”) filed a Complaint (attached to this Decision as Exhibit A) on November 21, 2008. The Complaint alleges that Respondent Sarah R. Boardman (“Boardman”) violated NASD Conduct Rules 2370 and 2110 by borrowing \$25,000 from her customer and failing to repay the loan. The Complaint also alleges that Boardman subsequently violated Procedural Rule 8210 and Conduct Rule 2110 by failing to respond to FINRA requests for information about the loan.

Boardman did not answer or otherwise respond to the Complaint. Consequently, on February 27, 2009, Enforcement filed a Motion for Entry of Default Decision, supported by the Declaration of Richard A. March ("March Decl.") and 5 exhibits. Boardman did not reply to the motion.¹

II. Findings of Fact and Conclusions of Law

A. Respondent's Default

Enforcement mailed the Complaint and First Notice of Complaint to Boardman's last known residential address as shown in FINRA's Central Registration Depository (the "CRD Address") by first-class and certified mail, on November 21, 2008. The first-class mailing was not returned, and U.S. Postal Service ("USPS") records show that the certified mailing was delivered to Boardman at her CRD Address.²

Enforcement mailed the Complaint and Second Notice of Complaint to Boardman's CRD Address by first-class and certified mail on December 23, 2008. As before, the first-class mailing was not returned; however, the certified mailing was returned to Enforcement, marked "unclaimed." The Second Notice of Complaint stated that Boardman was required to answer the Complaint by January 13, 2009. To date, Boardman has not filed an answer with the Office of Hearing Officers or otherwise responded to the Complaint.³

The Hearing Officer finds that Enforcement properly served Boardman with the Complaint by mailing the Complaint and the First and Second Notices of Complaint in accordance with FINRA Procedural Rule 9134(b)(1), thereby giving her constructive

¹ The factual determinations in this decision are based on the allegations of the attached Complaint, which are deemed admitted, as well as additional materials filed by Enforcement.

² March Decl., ¶ 6; Complainant's Exhibit ("CX") 2, 3.

³ March Decl., ¶¶ 7,8; CX-4,5.

notice of this disciplinary proceeding. By failing to answer the Complaint, Boardman defaulted.⁴ Accordingly, pursuant to Procedural Rules 9215(f) and 9269(a)(2), the Hearing Officer deems the allegations in the attached Complaint admitted and grants Enforcement's motion for entry of a default decision.⁵

B. Jurisdiction

On or about May 5, 2000, Boardman became registered with NASD as a General Securities Representative through member firm AXA Advisors, LLC ("AXA"). She remained continuously associated with AXA until on or about May 3, 2007. Boardman subsequently became registered with MML Investors Services, Inc. ("MML"), another member firm. According to the Uniform Termination Notice for Securities Industry Registration ("Form U5") filed by MML, Boardman was terminated from that firm on October 26, 2007, because of "allegations of industry misconduct at prior broker/dealer."⁶

Although Boardman has not been registered with FINRA since October 26, 2007, she remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's Bylaws, because (1) the Complaint was filed within two years following the termination of her registration with FINRA, and (2) the Complaint charges her with misconduct committed while she was associated with a FINRA member

⁴ *Department of Enforcement v. Reynolds Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at *5 (N.A.C. Dec. 9, 2003) (NASD Procedural Rule 9134(b)(1) allows for constructive notice by mailing a complaint to the respondent's most recent CRD address) (quoting *Lubeck v. SEC*, 1998 U.S. App. LEXIS 18849, at *20 (9th Cir. Aug. 12, 1998)).

⁵ On December 15, 2008, the first phase of new consolidated FINRA Rules went into effect. See, Regulatory Notice 08-57. Pursuant to the consolidation, NASD Rules 9210-9290 were superseded by FINRA Rules 9210-9290. With respect to this decision, unless otherwise noted, the relevant FINRA Rules are identical to the corresponding NASD Rules. The FINRA Rules are at www.finra.org/Rules.

⁶ March Decl. ¶ 5; CX- 1.

firm and with failing to respond to FINRA's requests for information made during the two-year period following her registration termination.⁷

C. Borrowing Money From a Customer

The first cause of action in the Complaint alleges that Boardman violated NASD Conduct Rules 2370 and 2110 by borrowing money from her customer, TL, who was also a customer of AXA. The Complaint alleges that on or about November 1, 2006, Boardman took a \$25,000 check from TL and signed a promissory note agreeing to repay the loan amount plus \$2,000 (8% interest) on or before December 1, 2007. The Complaint also alleges that AXA's compliance manual prohibited registered representatives from borrowing money from customers who were not relatives and that TL and Boardman were not related.

The March Declaration states that Enforcement has in its files copies of documents that support its allegations—TL's \$25,000 check written to and endorsed by Boardman; the promissory note signed by Boardman; TL's account statements showing that Boardman was her broker; AXA's compliance manual provisions relating to borrowing by registered representatives; Boardman's signed compliance questionnaire certifying that she understood and was in compliance with AXA's compliance manual; and statements made by Boardman and TL.⁸ In April 2008, TL, in a telephone conversation, told FINRA Staff ("Staff") that Boardman had lied to TL to obtain the loan, and that Boardman had not repaid her.⁹

⁷ Article V, Sec. 4(a), FINRA By-Laws, *available at* www.finra.org/rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: Bylaws").

⁸ March Decl. ¶¶ 10, 11, 12 and related footnotes.

⁹ March Decl. ¶ 14.

Conduct Rule 2370 prohibits a registered representative from borrowing money from a customer unless the member has written procedures allowing such borrowing *and* the borrowing arrangement satisfies one of five specified conditions. AXA's compliance manual prohibits a registered representative from borrowing money from a customer unless the two are related, one of the five conditions specified in Rule 2370. Since Boardman is not related to her customer, the loan does not fall within the Rule's exceptions.

The Hearing Officer finds that the allegations in the first cause of action are sufficient to establish, for purposes of this default decision, that Boardman violated NASD Conduct Rule 2370. It is well settled that any conduct that violates an NASD Conduct Rule is also a violation of NASD Conduct Rule 2110.¹⁰

D. Failure to Respond to Information Requests

The second cause of action alleges that Boardman violated Procedural Rule 8210 and Conduct Rule 2110 by failing to respond to two written requests that she provide information to the Staff concerning the \$25,000 loan from TL. The Staff sent each request by first-class and certified mail to the Respondent at her CRD Address pursuant to Procedural Rule 8210. The first request was sent on December 12, 2007. The first-class mailing was not returned, and the certified return receipt was returned signed by Boardman.¹¹ After not receiving a response to its first request for information, on January 15, 2008, the Staff sent a second request, again by first-class and certified mail. The first-

¹⁰ *Department of Enforcement v. Shvarts*, 2000 NASD Discip. LEXIS 6, at *12-13 (N.A.C. June 2, 2000).

¹¹ March Decl., ¶16.

class mailing was not returned, and the certified return receipt was returned signed by Boardman.¹²

The Hearing Officer finds that the allegations in the second cause of action are sufficient to establish, for purposes of this default decision, that Boardman violated Procedural Rule 8210 and Conduct Rule 2110.

III. Sanctions

A. Borrowing Money From a Customer

FINRA Sanction Guidelines (“Guidelines”) do not suggest a specific sanction for violating Rule 2370. Enforcement recommends that Boardman be barred and directed to repay \$25,000 to customer TL, plus 8% interest. Enforcement argues that, in view of AXA’s express prohibition and Boardman’s failure to repay the loan, her conduct was egregious.

The Hearing Officer agrees that Boardman’s conduct was egregious because (i) Boardman’s actions were intentional, (ii) Boardman was aware of AXA’s prohibition against borrowing from customers, (iii) Boardman lied to the customer to obtain the loan, (iv) the customer was harmed by Boardman’s failure to repay the \$25,000, and (v) Boardman profited from her misconduct.¹³ Accordingly, the Hearing Officer finds that Boardman should be barred from associating with any member firm in any capacity. In addition, she should be required to pay restitution to TL in the amount of \$25,000 plus 8% interest from November 1, 2006, the date of the loan, until paid.

¹² March Decl., ¶ 17.

¹³ See, *Terry Wayne White*, 50 S.E.C. 211 (1990).

B. Failure to Respond to Requests for Information

The Guidelines recommend a bar when a respondent fails to respond in any manner to a request for information issued pursuant to Procedural Rule 8210.¹⁴ Here, Boardman failed to respond in any manner to two written requests that she provide information in connection with the loan from TL. There are no mitigating factors that would justify a sanction less than a bar. Accordingly, the Hearing Officer finds that Boardman should be barred from associating with any FINRA member in any capacity for violating Procedural Rule 8210 and Conduct Rule 2110.

IV. Order

Sarah R. Boardman is barred from association with any member firm in any capacity for borrowing money from a customer, in violation of Conduct Rules 2370 and 2110, and for failing to respond to requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2110. The bars will become effective immediately if this Default Decision becomes FINRA's final disciplinary action in this proceeding. In addition, she is ordered to pay restitution to TL in the amount of \$25,000 plus 8% interest from November 1, 2006, until paid.

SO ORDERED.



Rochelle S. Hall
Hearing Officer

Copies to:

Sarah R. Boardman (*via overnight courier and first class mail*)
Richard A. March, Esq. (*via electronic and first class mail*)
Mark P. Dauer, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

¹⁴ Sanction Guidelines at 35.

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SARAH BOARDMAN,
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COMPLAINT

The Department of Enforcement alleges as follows:

SUMMARY

1. Sarah Boardman obtained a loan from a customer, in violation of NASD Conduct Rules 2370 and 2110, and failed to respond to requests for information, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

RESPONDENT

2. Between May 2000 and May 2007, Boardman was registered as a general securities representative with AXA Advisors, LLC, a member of FINRA. In October 2007, AXA filed an amended Form U5 Uniform Termination Notice for Securities Industry Registration disclosing that Boardman had borrowed \$25,000 from a customer in November 2006. Although Boardman subsequently became registered with another FINRA member, she has not been registered or associated with any FINRA member since November 2007. Boardman therefore is subject to the jurisdiction of FINRA, pursuant to Article V, Section 4 of FINRA's By-Laws.

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

3. On or about November 1, 2006, Boardman borrowed funds from public customer, TL, pursuant to a promissory note, by accepting a check in the amount of \$25,000.
4. At the time of the loan, TL was Boardman's customer, as well as a customer of AXA.
5. AXA's compliance manual prohibited a representative from borrowing from a customer who was not a family member. TL was not a relative of Boardman.
6. The acts, practices and conduct above constitute a violation of NASD Conduct Rules 2370 and 2110.

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

7. On or about December 12, 2007, FINRA staff sent Boardman a letter requesting that she provide certain information, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210. That request for information was sent by first class and certified mail to Boardman's CRD address. With regard to the mailing to Boardman's CRD address, the first class letter was never returned, while the return receipt card for the certified letter appears to have been signed for by Boardman. Boardman never provided a response to the request.
8. On or about January 15, 2008, FINRA staff sent Boardman a letter requesting that she provide certain information, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210. That request for information was sent by first class and certified mail to Boardman's CRD address. With regard to the mailing to Boardman's CRD address, the first

class letter was never returned, while the return receipt card for the certified letter appears to have been signed for by Boardman. Boardman never provided a response to the request.

9. On or about October 17, 2008, FINRA staff sent Boardman a letter requesting that she appear for an on-the-record interview on November 6, 2008, pursuant to and in accordance with NASD Procedural Rule 8210. Boardman never appeared for the on-the-record interview, nor did she request a continuance or provide an explanation for her absence.

10. The acts, practices and conduct described above constitute separate and distinct violations of NASD Conduct Rule 2110 and Procedural Rule 8210 by Boardman.

PRAYER FOR RELIEF

WHEREFORE, Complainant 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; 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.

Date: November 21, 2008

FINRA DEPARTMENT OF ENFORCEMENT



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