

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ERIC A. AXEL
CRD No. 4073828,

Respondent.

DISCIPLINARY PROCEEDING
No. 2007010889202

HEARING OFFICER - SNB

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: September 13, 2011

INTRODUCTION

Disciplinary Proceeding No. 200701088902 was filed on November 10, 2010, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA) (Complainant). Respondent Eric A. Axel submitted an Offer of Settlement (Offer) to Complainant dated September 12, 2011. 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, 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

Axel first became registered as a General Securities Representative ("GSR") with a FINRA member firm in April 2000. From February 2003 through October 2003, Axel was registered as a GSR with another FINRA member firm. From October 2003 through December 2004, Axel was registered as a GSR with J.P. Turner & Company, LLC ("JP Turner"). From December 2004 through October 2005, he was registered as a GSR with Bathgate Capital Partners LLC ("Bathgate"), now known as GVC Capital LLC. From April 2006 through August 2008, Axel was registered as a GSR with another FINRA member firm. Axel is currently registered as a GSR with a FINRA member firm.

FINDINGS AND CONCLUSIONS

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

FIRST CAUSE OF ACTION

In May 2004, while associated with JP Turner, Respondent Axel, along with two other registered representatives, KS and RK, formed Pearson Darby & Co., Inc. ("Pearson Darby") to own and operate an Office of Supervisory Jurisdiction. Axel, KS, and RK each owned one-third of Pearson Darby. Axel was the President/Managing Director of Pearson Darby, KS was the Chairman/Managing Director, and RK was the Executive Vice President.

Loans From Customer DB

To obtain capital for Pearson Darby, Axel solicited a loan from one of his firm customers, DB. In October 2004, while associated with JP Turner, Axel, through Pearson Darby, borrowed

\$50,000.00 from DB. The loan was evidenced by a bridge note, dated October 6, 2004, which obligated Pearson Darby to repay DB \$50,000.00 plus \$10,000.00 in interest, by December 30, 2004. The bridge note was signed by both Axel (as President) and RK (as Executive Vice President) on behalf of Pearson Darby. According to the terms of the bridge note, both Axel and RK personally guaranteed Pearson Darby's repayment obligation. In January 2005, Pearson Darby paid DB \$60,000.00 to satisfy the obligation arising from the bridge note.

At the time DB loaned the money to Pearson Darby, JP Turner had a written policy that prohibited individuals from borrowing money from firm customers. Any exceptions to this prohibition required review by and approval from the firm. Axel did not seek or receive approval from JP Turner for the loan received from DB.

Prior to receiving the loan, Axel and KS discussed with JP Turner personnel the possibility of raising capital for Pearson Darby. However, in a June 8, 2004 email that Axel received, the Chief Compliance Officer explicitly stated that Axel and KS did "not qualify to raise money with your customers." This email referenced NASD Rule 2370 as a basis for denying the request to raise money for Pearson Darby from customers.

In or about December 2004, Axel left JP Turner and became associated with Bathgate. Around this time, customer DB transferred his account to Bathgate where Axel remained his account representative until October 2005.

In or about February 2005, while associated with Bathgate, Axel, through Pearson Darby, solicited another \$50,000.00 from customer DB. This loan was also evidenced by a bridge note, dated February 1, 2005, which obligated Pearson Darby to repay DB \$50,000.00 plus \$10,000.00 in interest, by April 1, 2005. The bridge note was signed by both Axel (as President) and RK (as

Executive Vice President) on behalf of Pearson Darby. According to the terms of the bridge note, both Axel and RK personally guaranteed the loan.

At the time that Axel solicited the loan from DB and received the funds on behalf of Pearson Darby, Bathgate had a written policy that prohibited registered persons from borrowing money from a customer. Axel had not asked for, nor had he received permission from Bathgate, to borrow funds from DB.

Pearson Darby did not repay DB the \$60,000.00 owed by April 1, 2005. As a result, on April 29, 2005, DB signed an agreement on Pearson Darby letterhead, whereby Pearson Darby agreed to pay DB a total of \$65,000.00 (an additional \$5,000.00) by June 1, 2005. When Pearson Darby did not repay DB by June 1, DB signed another agreement on Pearson Darby letterhead on July 12, 2005, whereby Pearson Darby agreed to pay DB the outstanding debt of \$65,000.00 in six installments. Specifically, DB was to receive payments of \$10,000.00 each on July 30, 2005, August 30, 2005, September 30, 2005, October 30, 2005, and November 30, 2005. A final payment of \$15,000.00 was due by December 30, 2005.

DB received a check dated August 3, 2005, in the amount of \$10,000.00 that was signed by Axel; however, a "stop payment" was subsequently placed on the check.

To date, DB has not received any repayment of funds from the February 2005 loan.

Loan from Customer TV

In or about April 2005, while associated with Bathgate, Axel, through Pearson Darby, borrowed \$100,000.00 from customer TV. This loan was also evidenced by a bridge note, dated April 12, 2005, which obligated Pearson Darby to repay TV \$100,000.00 plus \$20,000.00 in interest, by May 12, 2005. The bridge note was signed by both Axel (as President) and KS (as

Chairman) on behalf of Pearson Darby. According to the terms of the bridge note, both Axel and KS personally guaranteed the loan.

At the time that Axel received the funds from TV on behalf of Pearson Darby, Bathgate had a written policy that prohibited registered persons from borrowing money from a customer. Axel had not asked for, nor had he received, permission from Bathgate, to borrow funds from TV.

Pearson Darby did not repay TV the \$120,000.00 owed by May 12, 2005. As a result, on July 14, 2005, TV signed an agreement on Pearson Darby letterhead, whereby Pearson Darby agreed to pay TV a total of \$145,054.80 in nine installments. According to the agreement, TV was to receive \$22,630.14 by July 30, 2005; \$15,541.10 by August 30, 2005; \$15,880.14 by September 30, 2005; \$16,034.25 by October 30, 2005; \$15,958.90 by November 30, 2005; \$15,691.78 by December 30, 2005; \$15,212.33 by January 30, 2006; \$14,500.00 by February 30, 2006; and \$13,606.16 by March 30, 2006. Under the agreement, TV would also receive 25,000 shares of Pearson Darby stock. Axel and KS also signed the agreement on July 15, 2005 and July 16, 2005, respectively. To date, TV has received partial repayment of the loan.

Axel, by causing Pearson Darby, a company he co-owned and controlled, to borrow from his customers in transactions involving his personal guarantees of repayment constituted borrowing arrangements prohibited by Rule 2370. Neither JP Turner's or Bathgate's policy permitted Axel to borrow through an entity that he controlled.

By reason of the foregoing, Axel violated NASD Conduct Rules 2370 and 2110.

SECOND CAUSE OF ACTION

On or about December 3, 2004, Respondent Axel completed a Registered Representative Compliance Certification as required by Bathgate. One of the questions on the Compliance Certification asked, "Have you ever loaned money to a customer, or borrowed money from a customer, or arranged for a third party to loan or borrow from a customer?" Respondent Axel answered, "No" to the question. Axel's response was false because in or about October 2004, while he was registered with JP Turner, Axel had borrowed \$50,000.00 from customer DB through Axel's company, Pearson Darby.

By reason of the foregoing, Axel violated NASD Conduct Rule 2110.

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 Eric A. Axel be fined \$10,000.00 and suspended for one (1) year from association with any FINRA member firm in any capacity.

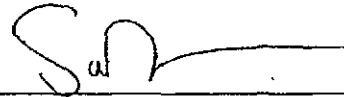
Respondent agrees to pay the monetary sanction(s) upon notice that this Offer has been accepted and that such payments are due and payable. Respondent has submitted an Election of Payment form showing the method by which he proposes to pay the fine imposed.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

SO ORDERED.

FINRA

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

A handwritten signature in black ink, appearing to be 'S. Im', written over a horizontal line.

Soo H. Im, Senior Regional Counsel
FINRA Department of Enforcement
300 S. Grand Avenue, Suite 1600
Los Angeles, CA 90071
(213) 229-2321; Fax: (213) 617-1570
soo.im@finra.org