

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

DEPARTMENT OF ENFORCEMENT,

Complainant

v.

DOUGLAS K. HAAS
(CRD No. 2424725),

Respondent.

Disciplinary Proceeding
No. 2007011016301

Hearing Officer – MC

DEFAULT DECISION

April 14, 2010

Respondent is suspended from associating with any FINRA member firm in any capacity for two years, and fined \$15,000, for borrowing funds from customers, in violation of Conduct Rules 2110 and 2370.

Appearances

Heather Hawker, Senior Regional Counsel, Denver, CO, for the Department of Enforcement.

No appearance by or on behalf of Respondent Douglas K. Haas

DECISION

I. Introduction

The Department of Enforcement filed the attached Complaint in this disciplinary proceeding on October 21, 2009. The single Cause of Action alleges that in October 2007 Respondent Douglas K. Haas (“Haas”) violated Conduct Rules 2110 and 2370¹ by improperly borrowing funds from customers of his FINRA member firm employer.

¹ As of July 30, 2007, NASD consolidated with the member regulation and enforcement functions of NYSE Regulation and began operating under a new corporate name, the Financial Industry Regulatory Authority (FINRA). References in this decision to FINRA include, where appropriate, NASD. Following consolidation, FINRA began developing a new FINRA Consolidated Rulebook. The first phase of the new consolidated rules became effective

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Haas did not file an Answer or otherwise respond to the Complaint. Consequently, on February 9, 2010, Enforcement filed a Motion for Entry of Default Decision (“Default Motion”) supported by the Declaration of Heather Hawker and five exhibits.² Haas failed to reply to the Default Motion. Accordingly, for the reasons set forth below, the Default Motion is granted.³

II. Findings of Fact and Conclusions of Law

A. Haas is Subject to FINRA’s Jurisdiction

During the period relevant to allegations of the Complaint, in October 2007, Haas was associated with FINRA member firm Chase Investment Services (“Chase”) where he was registered as a General Securities Representative and an Investment Company Products and Variable Contracts Representative.⁴ Chase terminated his employment on October 19, 2007.⁵ Haas was most recently associated with another FINRA member firm from March 1, 2008, through April 30, 2008, where he became registered in the same two capacities in which he had previously been registered while at Chase.⁶ Since the termination of his employment at that firm, Haas has not been associated with any FINRA member firm.⁷

on December 15, 2008, including certain conduct rules and procedural rules. *See* Regulatory Notice 08-57 (Oct. 2008). This decision refers to and relies on the NASD Conduct Rules that were in effect at the time of Haas’s alleged misconduct. The applicable rules are available at www.finra.org/rules.

² Enforcement’s exhibits will be referred to as “CX-” with the appropriate exhibit number. References in this Default Decision to the Declaration will be referred to as “Decl.” or “Hawker Decl.” with citation to specific paragraphs.

³ The factual determinations in this Default Decision are based on the allegations of the attached Complaint, which are deemed admitted, as well as the Hawker Declaration, and the exhibits filed by Enforcement.

⁴ CX-2, pp. 1-2.

⁵ *Id.*, p. 2.

⁶ *Id.* p. 1.

⁷ Decl. ¶ 6; CX-2, p. 1.

Because the misconduct alleged in the Complaint occurred while Haas was registered with FINRA, and because the Complaint was filed within two years of the termination of his last association with a FINRA member firm, FINRA retains jurisdiction over Haas for the purposes of this disciplinary proceeding.⁸

B. Haas Defaulted

During an on-the-record interview conducted before Enforcement issued the Complaint, Haas informed Enforcement that he had no fixed residential address and provided a cell phone number and e-mail address at which he said he could be reached.⁹ Before issuing the Complaint, Enforcement attempted to contact Haas using the cell phone number and e-mail address. Haas did not respond to these attempts to contact him. Investigating further, Enforcement discovered a possible alternative residential address for Haas. Consequently, Enforcement served the Complaint and Notice of Complaint upon Haas on October 21, 2009, at his address as it appears in the Central Registration Depository (“CRD address”) and at the alternative address, by first-class and certified mail. In addition, Enforcement sent a copy of the Complaint to Haas electronically at his e-mail address.¹⁰

The first-class and certified mailings served at the CRD address were returned to Enforcement marked, “Not Deliverable as Addressed – Unable to Forward.” The first-class and certified mailings served at the alternative address were returned marked, “Unable to Forward – No Forward Order on File – Return to Postmaster of Addressee for Review.” Enforcement

⁸ FINRA By-Laws, Article V, Section 4.

⁹ Decl. ¶ 8.

¹⁰ *Id.*, ¶ 9.

received no notice of a delivery failure for transmission of the Complaint to the e-mail address.¹¹ Haas did not respond to the Complaint.¹² Enforcement subsequently conducted an Internet search for another address for Haas, without success.¹³

Enforcement served the Complaint and Second Notice of Complaint by first-class and certified mail upon Haas at the CRD address and at the alternative address, and sent an electronic copy to the e-mail address, on November 23, 2009.¹⁴ The first-class and certified mailings to both the CRD and alternative addresses were returned to Enforcement. The returned mailings to the CRD address were marked, “Not Deliverable as Addressed – Unable to Forward.” The returned mailings to the alternative address were marked, “Undeliverable as Addressed – Forwarding Order Expired.” Once again, Enforcement received no delivery failure notice for the transmission of the Complaint to the e-mail address.¹⁵ Haas has not responded in any manner to the Complaint and Second Notice of Complaint.¹⁶

Enforcement complied with the service requirements of Procedural Rule 9134. By failing to answer the Complaint, Haas defaulted. Accordingly, pursuant to Procedural Rules 9215(f) and 9269(a)(2), the allegations in the Complaint are deemed admitted.

C. Haas Improperly Borrowed Funds from Customers in Violation of Conduct Rules 2110 and 2370

The Complaint alleges that in October 2007, while employed by Chase, Haas borrowed

¹¹ Decl. ¶ 10; CX-4, pp. 11-17.

¹² Decl. ¶ 10.

¹³ *Id.*

¹⁴ Decl. ¶ 11.

¹⁵ Decl. ¶ 12; CX-5, pp. 13-19.

¹⁶ Decl. ¶ 13.

\$5,500 from customers SDS and FDS, in the form of a check made payable to cash.¹⁷ Haas memorialized the loan with a memorandum dated October 17, 2007, in which he promised to repay the loan to SDS and FDS between October 31 and November 10, 2007.¹⁸

Chase learned of the loan and investigated immediately. The day after Haas received the loan, he acknowledged it to a Chase investigator and, in addition, admitted that he had unsuccessfully sought to borrow money from other customers. Chase terminated Haas's employment for violating firm policies.¹⁹

Chase's code of conduct prohibited its representatives from borrowing money from customers, with limited exceptions inapplicable here.²⁰ Haas was on notice of the prohibition because, on July 24, 2007, less than three months earlier, he signed an employment offer letter from Chase, affirming that he had read and understood Chase's code of conduct and agreeing to abide by its terms.²¹ Furthermore, Conduct Rule 2370 prohibits persons associated with member firms from borrowing funds from customers unless doing so (i) is expressly permitted by the firm's written procedures and (ii) falls within certain specified exceptions, none of which apply to the facts of this case.

In its investigation of this matter, FINRA staff conducted an on-the-record interview of Haas on October 29, 2008. In his testimony, Haas explained that he needed to borrow the funds because he was undergoing an expensive divorce. Haas admitted that he had not repaid his

¹⁷ Complaint ¶ 5. Haas used \$5,000 of the amount he borrowed to cover a returned check he had previously presented at a Chase retail bank branch; he retained the remainder for himself. Decl. ¶ 17.

¹⁸ Decl. ¶ 18.

¹⁹ *Id.*, ¶ 19.

²⁰ *Id.*, ¶ 22.

²¹ *Id.*, ¶ 23.

customers and had not reimbursed Chase for doing so.²² In addition, Haas confirmed his admission to the Chase investigator that he had asked several other Chase customers for loans, but had been refused.²³

These facts, as alleged in the Complaint and supported by the Hawker Declaration and the exhibits filed by Enforcement, are sufficient to establish, for the purposes of this Default Decision, that Haas violated Conduct Rule 2370 by borrowing funds from customers. By doing so, Haas also violated Conduct Rule 2110.²⁴

III. Sanctions

FINRA's Sanction Guidelines do not contain recommendations for sanctions for improper borrowing from customers in violation of Conduct Rule 2370. Some guidance may be gleaned, however, from the guidelines applicable to improper use of customer funds, in violation of Conduct Rule 2330, a form of misconduct with some similarity to improper borrowing, particularly where the respondent fails to repay the loan. For improper use of customer funds, the Sanction Guidelines recommend a fine ranging from \$2,500 to \$50,000, and consideration of a bar.²⁵

In this case, Enforcement recommends imposition of a suspension from associating with any FINRA member firm in any capacity for one year and a fine of \$10,500, of which Enforcement argues \$5,500 should be deemed disgorgement of the loan proceeds that Haas has

²² Chase reimbursed the customers. Decl. ¶ 25.

²³ *Id.*, ¶ 26.

²⁴ Violation of any Conduct Rule is also a violation of Rule 2110. *Charles C. Fawcett, IV*, Exch. Act Rel. No. 56770, 2007 SEC LEXIS 2598, at *11-*12 (Nov. 8, 2007) (stating that violations of NASD rules are inconsistent with just and equitable principles of trade and constitute a violation of Rule 2110); *Dep't of Enforcement v. Shvarts*, 2000 NASD Discip. LEXIS 6, at *12-13 (N.A.C. June 2, 2000).

²⁵ If mitigating circumstances are present, such as when the misuse may be attributable from a respondent's misunderstanding of the customer's intended use of the funds, the Sanction Guidelines recommend a suspension of six months to two years, or until the respondent pays restitution. *FINRA Sanction Guidelines*, p. 38 (2007). No such mitigating circumstances are present in this case.

not repaid.²⁶ In support of this recommendation, Enforcement characterizes the misconduct as serious. While this is a fair characterization, Enforcement's recommendations are insufficient, considering the seriousness of Haas's misconduct.

As Enforcement notes, Haas was responsible for knowing his firm's, and FINRA's, restrictions on borrowing from customers. Haas signed the employment letter acknowledging having read and understood Chase's code of conduct on July 24, 2007, less than three months prior to the date of the improper loan. His misconduct is aggravated by the fact that Haas, by his own admission, solicited loans, albeit unsuccessfully, from other Chase customers. Furthermore, his failure to repay the customers, or reimburse Chase for having done so, suggests Haas either would or could not repay them, and that his customers would have suffered financial harm if Chase had not repaid them. Finally, by failing to repay either the customers or Chase, Haas has unjustly enriched himself by the use he made of the funds he borrowed.

Considering all of these circumstances, a lengthier suspension than the one year recommended by Enforcement appears to be necessary to protect the interests of the investing public, and to deter such misconduct by impressing upon Haas and others the importance of observing the restrictions upon borrowing from customers imposed by Conduct Rule 2370. Because of the seriousness of the misconduct in this case, a suspension from associating with any FINRA member firm in any capacity for two years, and a fine of \$15,000, is appropriate in this case to meet the remedial goals of the Sanction Guidelines.

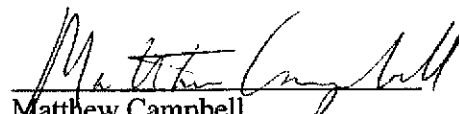
IV. Order

Respondent Douglas K. Haas is suspended in all capacities from association with any FINRA member firm for two years, and fined \$15,000, for improperly borrowing funds from customers, in violation of Conduct Rules 2110 and 2370. If this Default Decision becomes

²⁶ Default Memorandum, pp. 4-5.

FINRA's final disciplinary action in this proceeding, the two-year suspension shall begin at the opening of business on May 17, 2010, and end at the close of business on May 16, 2012. The fine shall be due and payable upon Haas's return to the securities industry.

SO ORDERED.


Matthew Campbell
Hearing Officer

Copies to:

Douglas K. Haas (via FedEx and first-class mail)
Heather Hawker, Esq. (via electronic and first-class mail)
Mark P. Dauer, Esq. (via electronic mail)
David R. Sonnenberg, Esq. (via electronic mail)

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

DEPARTMENT OF ENFORCEMENT,	)	Disciplinary Proceeding
	)	No. 2007011016301
Complainant,	)	
	)	Hearing Officer:
v.	)	
	)	COMPLAINT
DOUGLAS K. HAAS,	)	
CRD No. 2424725,	)	
Respondent.	)	
	)	

The Department of Enforcement alleges:

SUMMARY

FINRA staff commenced an investigation of Respondent Douglas K. Haas after receiving notification that Haas was terminated from Chase Investment Services, Inc. (Chase) for borrowing funds from a customer. On or about October 17, 2007, Haas borrowed \$5,500.00 from Chase customers SDS and FDS, in violation of NASD Conduct Rules 2370 and 2110.

RESPONDENT AND JURISDICTION

2. Respondent Haas was associated with member firm Chase from on or about August 6, 2007, through on or about October 19, 2007, where he was registered as a General Securities Representative and as an Investment Company Products and Variable Contracts Representative. Haas was associated with another member firm from on or about March 1, 2008, through on or about April 30, 2008, where he was also registered as a General Securities Representative and as an Investment Company Products and Variable Contracts Representative.

3. Haas has not been associated with a FINRA member since April 30, 2008. Pursuant to Article V, § 4 of FINRA's By-Laws, FINRA has jurisdiction to issue this Complaint against Haas until April 29, 2010.

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

4. The Department realleges and incorporates by reference paragraph numbers 1 - 3 above.

5. In October 2007, Respondent Haas borrowed funds in the amount of \$5,500.00 from Chase customers SDS and FDS. The funds were tendered to Haas in the form of a check made payable to cash. A handwritten note prepared by Haas memorialized the loan. That note, dated October 17, 2007 and signed by Haas, provided: "I, Douglas Kyle Haas, will repay the \$ fifty five hundred (five thousand five hundred dollars) to [SDS] and [FDS] on Oct. 31st to Nov. 10th 2007."

6. Chase's written procedures prohibited a representative from borrowing from a customer, unless the customer was an immediate family member. Neither SDS nor FDS were members of Haas's immediate family.

7. The above acts, practices and conduct constitute a violation of NASD Conduct Rules 2370 and 2110.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

A. Order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed; and

B. Order that Respondent Haas bear such costs of proceedings as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

Dated: October 21, 2009

FINRA DEPARTMENT OF
ENFORCEMENT

A handwritten signature in black ink, appearing to read "Heather Hawker", is written over a horizontal line.

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