

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JUNG HAN KIM
(aka "Jay Kim")
(CRD No. 2972169),

Respondent.

Disciplinary Proceeding
No. 2007011178001

Hearing Officer – MC

DEFAULT DECISION

July 8, 2009

The Respondent is barred from associating with any FINRA member firm in any capacity for failing to respond to FINRA requests for information, in violation of Conduct Rule 2110 and Procedural Rule 8210. In light of the bar, no separate sanctions are imposed upon Respondent for: (i) borrowing funds from a customer, in violation of Conduct Rules 2110 and 2370; and (ii) establishing an outside brokerage account without informing his employer firm, and without informing the outside firm of his association with a broker-dealer, in violation of Conduct Rules 2110 and 3050.

Appearances:

William St. Louis, Deputy Regional Chief Counsel, New York, NY, for the Department of Enforcement.

No appearance by or for Respondent Jung Han Kim.

DECISION

I. Introduction

On February 3, 2009, the Department of Enforcement ("Enforcement") for the Financial Industry Regulatory Authority ("FINRA") filed the attached Complaint in this disciplinary proceeding. The First Cause of Action of the Complaint alleges that

Respondent Jung Han Kim ("Kim") borrowed money from a customer while registered as a General Securities Representative with FINRA member firm GLB Trading, Inc. ("GLB"), in violation of Conduct Rules 2110 and 2370. The Second Cause of Action of the Complaint alleges that Kim failed to inform GLB that he and his wife had opened a joint brokerage account at E*Trade Securities LLC ("E*Trade") and failed to inform the other firm that he was associated with GLB, in violation of Conduct Rules 2110 and 3050. Finally, the Third Cause of Action of the Complaint alleges that Kim failed to respond to requests for information issued to him by FINRA staff in violation of Conduct Rule 2110 and Procedural Rule 8210.¹

Enforcement served Kim with the Complaint and Notice of Complaint at his last known residential address recorded in FINRA's Central Registration Depository (the "CRD address") and at three other addresses obtained by FINRA staff during the course of its investigation. Respondent did not answer or otherwise respond to the Complaint. As a result, FINRA staff served Kim with the Complaint and Second Notice of Complaint at his CRD address, and this time at four other addresses obtained by the staff. Respondent again failed to answer or otherwise respond to the Complaint.

Consequently, on May 6, 2009, Enforcement filed a Motion for Entry of Default Decision and Imposition of Sanctions ("Default Motion") supported by the Declaration of

¹ On December 15, 2008, the first phase of the new consolidated FINRA Rules, resulting from the consolidation of NASD with the member regulation and enforcement functions of NYSE Regulation, went into effect. See Regulatory Notice 08-57 (Oct. 2008). This Default Decision refers to and relies on the NASD Conduct Rules that were in effect at the time of Respondent's alleged misconduct. The applicable rules are available at www.finra.org/rules.

William St. Louis and 29 exhibits.² Respondent did not respond to the Default Motion.³

For the reasons set forth below, the Default Motion is granted.

II. Findings of Fact and Conclusions of Law

A. Jurisdiction

Kim first became registered with FINRA as a General Securities Representative through a member firm on January 16, 1998.⁴ Kim was registered with FINRA as a General Securities Representative through GLB from July 11, 2005, through March 10, 2007.⁵ On March 10, 2007, GLB filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") stating that Kim was terminated for "lack of production."⁶ On the same date, Kim's registration with FINRA was terminated.⁷

Even though Kim has not been registered with FINRA since March 10, 2007, the Complaint was filed and served less than two years after FINRA terminated Kim's registration. In addition, the misconduct alleged in the Complaint occurred while Kim was associated with a FINRA member firm, and within two years following his

² Enforcement's exhibits will be referred to as "CX ___" with the appropriate exhibit and page numbers; the Declaration of William St. Louis will be referred to as "Decl." or "St. Louis Declaration" with citation to specific paragraphs therein.

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 Default Motion, the St. Louis Declaration, and the exhibits filed by Enforcement.

⁴ CX-1.

⁵ *Id.*

⁶ CX-2.

⁷ *Id.*

termination. Thus, pursuant to Article V, Section 4 of FINRA's By-Laws, Kim remains subject to FINRA's jurisdiction for purposes of this proceeding.⁸

B. Respondent's Default

Enforcement served Kim with copies of the Complaint and Notices of Complaint by certified and first-class mailings to his CRD address. Enforcement also served Kim at a number of additional addresses obtained by FINRA staff during its investigation.

1. First Notice of Complaint

On February 2, 2009, Enforcement served the Complaint and First Notice of Complaint by first-class mail and certified mail, return receipt requested, on three addresses: (i) Kim's CRD address [REDACTED] (ii) the CRD address, with "LN" spelled out as [REDACTED] ("Lane" address); and (iii) a Fresno, CA address found through a database search conducted by FINRA staff ("Fresno" address). In addition, Enforcement sent the Complaint and First Notice of Complaint to an e-mail address found by FINRA staff in documents relating to the account Kim and his wife opened at E*Trade.⁹

Both the first-class and certified mailings to the CRD address and the Lane address were returned with markings indicating they were not deliverable and could not be forwarded.¹⁰ The envelope containing the first-class mailing to the Fresno address was returned with an address label bearing Kim's wife's name and another address in

⁸ Article V, Sec. 4, FINRA By-Laws, *available at* www.finra.org/rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: By-Laws").

⁹ Decl. ¶ 11.

¹⁰ Decl. ¶¶ 12, 13.

Clovis, CA (“Clovis” address).¹¹ The envelope containing the certified mailing to the Fresno address was returned marked “Return to Sender.”¹² The Complaint and First Notice of Complaint were also served on Kim by e-mail. Despite these efforts, Kim did not file an Answer or otherwise reply to the Complaint.

2. Second Notice of Complaint

On March 13, 2009, Enforcement served the Complaint and Second Notice of Complaint upon Kim by first-class and certified mail at four addresses. These were the same addresses to which the Complaint and First Notice of Complaint had been sent, with the addition of the Clovis address. Enforcement also sent the Complaint and Second Notice of Complaint to Kim’s e-mail address.¹³

As before, the envelopes containing the first-class and certified mailings sent to the CRD and the Lane addresses were returned marked “Not Deliverable as Addressed – Unable to Forward.”¹⁴ The first-class mailing to the Fresno address was not returned; the certified mailing was returned marked “Attempted Not Known.”¹⁵ Similarly, the first-class mailing to the Clovis address was not returned, and the certified mailing was returned marked “Unclaimed.”¹⁶ The Complaint and Second Notice of Complaint were also served on Kim by e-mail.¹⁷

¹¹ Decl. ¶ 14.

¹² Decl. ¶ 16.

¹³ Decl. ¶ 21.

¹⁴ Decl. ¶¶ 22, 23.

¹⁵ Decl. ¶ 24.

¹⁶ Decl. ¶ 25.

¹⁷ Decl. ¶ 26.

Despite these efforts, Kim did not file an Answer or respond in any other way to the Second Notice of Complaint. By serving Kim with the Complaint and Notice of Complaint at his CRD address and the other possibly more current addresses of which it became aware during its investigation, Enforcement properly complied with the requirements of Procedural Rule 9134(b)(1). Accordingly, Kim defaulted by failing to respond to the Complaint. The allegations in the Complaint are therefore deemed admitted, pursuant to Rules 9215(f) and 9269(a)(2).

C. Violations

1. Kim Violated Conduct Rules 2110 and 2370 by Borrowing Money from a Customer Without His Firm's Knowledge or Permission

In November 2007, HP, one of Kim's customers at GLB, filed an Investor Complaint Form against Kim with FINRA.¹⁸ The subsequent FINRA staff investigation led to the discovery of three checks drawn on an account of HP and his wife totaling \$70,000. All three checks were dated September 27, 2006, and were made payable to Kim.¹⁹ In addition, FINRA staff found that on the same date, Kim executed a "Loan/Pledge Agreement" in which Kim pledged securities as collateral for a loan of \$70,000 from HP²⁰ in violation of Conduct Rule 2370.²¹ GLB's supervisory procedures

¹⁸ Decl. ¶ 30; CX-19. HP alleged that Kim converted funds HP and his wife had invested with Kim. The Complaint, however, contains no allegations relating to conversion. In addition, neither the Complaint nor the St. Louis Declaration and accompanying exhibits provide any indication that Kim failed to repay the loan that is the subject of the Complaint, and Enforcement is not seeking an order of restitution.

¹⁹ Decl. ¶¶ 36-39; CX-24, CX-25.

²⁰ CX-23.

²¹ Conduct Rule 2370 prohibits associated persons from borrowing money from customers except when the member firm has written procedures allowing such loans and the borrowing arrangement meets certain conditions absent here. Default Motion, p. 3.

expressly prohibited associated persons from borrowing from customers.²² GLB confirmed that HP's loans to Kim were made without GLB's knowledge or approval.²³ Furthermore, GLB provided FINRA staff with a copy of a "Representative Compliance Agreement" signed by Kim on August 22, 2005, in which Kim specifically agreed that he would not "borrow money or securities from a client."²⁴

These facts, as alleged in the First Cause of Action of the Complaint and supported by the St. Louis Declaration and accompanying exhibits, are sufficient to establish, for the purposes of this Default Decision, that Kim violated Conduct Rules 2110 and 2370 by borrowing \$70,000 from customer HP.

2. Kim Violated Conduct Rules 2110 and 3050 by Failing to Disclose an Outside Brokerage Account

In the course of its investigation, FINRA staff learned that Kim and his wife held a joint account at E*Trade. The staff obtained account opening documents that appeared to have been executed by Kim showing that the account was opened on September 29, 2006, while Kim was associated with GLB.²⁵ The documents also show that Kim did not disclose to E*Trade that he was employed by or associated with GLB, and that he made several misrepresentations in his new account application: (i) he listed his occupation as "Assistant Manager;" (ii) he listed his "business" as "Trade (goods and services)"; and (iii) he checked "no" in response to a question asking whether he was employed by a

²² Decl. ¶ 41; CX-26.

²³ Decl. ¶ 40.

²⁴ Decl. ¶ 42; CX-27.

²⁵ Decl. ¶¶ 31, 32; CX-20.

broker-dealer.²⁶ GLB confirmed that Kim never disclosed the existence of the outside brokerage account to the firm, as he was required to do.²⁷

These facts, as alleged in the Second Cause of Action of the Complaint and supported by the St. Louis Declaration and accompanying exhibits, are sufficient to establish, for the purposes of this Default Decision, that Kim violated Conduct Rules 2110 and 3050, by opening an account at E*Trade without informing GLB, and that when he did so, he made false representations to E*Trade and failed to disclose that he was employed by a broker-dealer.

3. Kim Violated Conduct Rule 2110 and Procedural Rule 8210 by Failing to Respond in Any Manner to FINRA Staff Requests for Information

To investigate this matter, FINRA staff issued two letters, the first on December 14, 2007, and the second on January 7, 2008, requesting Kim to provide information pursuant to Procedural Rule 8210.²⁸ Both letters were sent, by first-class and certified mail, to Kim's CRD address.²⁹ Both the first-class and certified mailings were returned with markings indicating they were not deliverable and were unable to be forwarded.³⁰ Kim failed to respond in any manner to the requests for information.³¹

These facts, as alleged in the Third Cause of Action of the Complaint and supported by the St. Louis Declaration and accompanying exhibits, are sufficient to

²⁶ Decl. ¶ 32, 33; CX-20, CX-21.

²⁷ Decl. ¶¶ 34; CX-22.

²⁸ Decl. ¶ 43.

²⁹ Decl. ¶ 44.

³⁰ Decl. ¶ 45; CX 28, CX-29.

³¹ Decl. ¶ 47.

establish, for the purposes of this Default Decision, that Kim violated Conduct Rule 2110 and Procedural Rule 8210, by failing to respond in any manner to FINRA staff requests for information issued to him pursuant to Procedural Rule 8210.

III. Sanctions

The Sanction Guidelines recommend a bar when a respondent fails to respond in any manner to a request for information issued pursuant to Procedural Rule 8210.³² If there are mitigating factors, the Guidelines recommend consideration of a suspension in any or all capacities for up to two years.

In this case, FINRA staff issued two requests to Kim for information needed in order for the staff to investigate the serious customer complaint that had come to its attention. Kim ignored both requests. As Enforcement points out, the record of this case is devoid of any circumstances that might be deemed mitigating.

As has often been observed, “Conduct Rule 2110 and Procedural Rule 8210 are crucial components of [FINRA’s] examinations and investigations.... Procedural Rule 8210 gives [FINRA] the right to require a member or person associated with a member to provide information, orally or in writing, in connection with an examination or investigation. The Rule further states that no member or person shall fail to provide such information.”³³ Concerning sanctions for violating Rule 8210, “[t]he Guidelines treat a failure to respond ... as egregious.”³⁴

³² *FINRA Sanction Guidelines*, 35 (2007).

³³ *Dep’t of Enforcement v. Gregory R. Masceri*, No. C8A040079, 2006 NASD Discip. LEXIS 29, at *35 - *36 (N.A.C. Dec. 18, 2006).

³⁴ *Id.* at *41.

A bar, therefore, is the appropriate sanction for Respondent's violations of Conduct Rule 2110 and Procedural Rule 8210 by failing to respond in any manner to the two requests for information issued to him in this case by FINRA staff pursuant to Rule 8210, as alleged in the Third Cause of the Complaint.

The FINRA Sanction Guidelines contain no recommendations for violations of Conduct Rule 2370, as alleged in the First Cause of the Complaint. For Kim's violations of Conduct Rules 2110 and 2370, Enforcement requests the imposition of a suspension from associating with any FINRA member firm in all capacities for 90 days and a \$10,000 fine because (i) the amount of the loan was substantial, (ii) Kim violated explicit policies of GLB, and (iii) Kim had signed an agreement with GLB by which he specifically accepted the prohibition on borrowing money from a customer.

For failure to comply with Conduct Rule 3050, as alleged in the Second Cause of the Complaint, the Guidelines recommend a fine of \$1,000 to \$25,000 and, in egregious cases, suspension for up to two years or a bar.³⁵ Enforcement notes that one of the Principal Considerations is whether the violator provided oral notice to his firm of the outside account activity and whether the firm acquiesced in the activity, which did not occur in this case. Enforcement argues that Kim's affirmative false representation to E*Trade that he was not employed by a broker-dealer is an aggravating factor, because it prevented E*Trade from notifying GLB of the existence of the joint account held by Kim and his wife. Enforcement recommends the imposition of a \$15,000 fine and a six-month suspension from associating with any FINRA member firm in all capacities for Kim's violations of Conduct Rules 2110 and 3050.

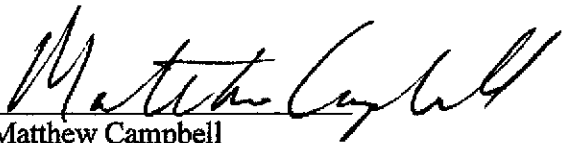
³⁵ *Guidelines, supra*, 17 (2007).

Enforcement's recommendations are reasonable and would be adopted were it necessary to impose sanctions for Kim's violations of Conduct Rules 2370 and 3050. In light of the imposition of a bar for Kim's failure to respond in any manner to FINRA staff requests for information, however, it is unnecessary to impose sanctions for the violations alleged in the First and Second Causes of the Complaint.

IV. Order

Respondent Jung Han Kim is barred from association with any FINRA member firm in all capacities for failing to respond to requests for information from FINRA staff pursuant to Rule 8210, in violation of Conduct Rule 2110 and Procedural Rule 8210.

The bar will become effective immediately if this Default Decision becomes FINRA's final disciplinary action in this proceeding.


Matthew Campbell
Hearing Officer

Copies to:

Jung Han Kim (via FedEx and first-class mail)
William St. Louis, 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,

Complainant,

v.

JUNG HAN KIM
(also known as "Jay Kim")
(CRD No. 2972169),

Respondent.

DISCIPLINARY PROCEEDING
No. 2007011178001

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. This complaint alleges three causes of action against Respondent Jung Han Kim. First, while Kim was registered with FINRA through an association with member firm GLB Trading, Inc. (BD No. 125363) ("GLB") he borrowed money from GLB customer HP in violation of GLB's policies and procedures and NASD Conduct Rule 2370.
2. Second, while he was associated with GLB, Kim failed to inform the firm that he and his wife had a joint brokerage account at another broker-dealer (Firm 2). Kim also failed to inform Firm 2 that he was associated with GLB.
3. Finally, Kim failed to respond to Staff inquiries in violation of NASD Procedural Rule 8210.

JURISDICTION

4. Kim first became registered with FINRA as a General Securities Representative on December 18, 1997 through his association with a member firm.
5. After being associated with three member firms, Kim was registered with FINRA as a General Securities Representative through an association with GLB from July 11, 2005 through March 10, 2007.
6. On March 10, 2007, GLB filed with FINRA a Uniform Termination Notice for Securities Industry Registration ("Form U5") terminating Kim's registration. The Form U5 disclosed that Kim was terminated and that his last date of employment was March 10, 2007.
7. Currently, Kim is not associated with any FINRA member firm. However, FINRA retains jurisdiction over Kim pursuant to Article V, Section 4 of its By-Laws.

FIRST CAUSE OF ACTION
(Violation of NASD Conduct Rules 2370 and 2110)

8. The Department realleges and incorporates by reference paragraphs 1 through 7, above.
9. In or around September 2006, GLB customer HP lent at least \$70,000 to Kim.
10. The loans were in connection with a "Loan/Pledge Agreement" or "promissory note" executed by Kim (as the "Borrower") and HP (as the "Lender") on September 27, 2006.
11. The agreement or note reflected that Kim pledged securities as collateral in exchange for \$70,000 in loans from HP.
12. HP gave three checks to Kim. Specifically, HP gave Kim the following checks, drawn on a joint bank account HP maintained with his wife:
 - a. check no. 2498 dated September 27, 2006 payable to Kim in the amount of \$5,000;
 - b. check no. 2499 dated September 27, 2006 payable to Kim in the amount of \$15,000;and

- c. check no. 2500 dated September 27, 2006 payable to Kim in the amount of \$50,000.
- 13. All three checks had the handwritten notation "Loan pay" in the check memo line.
- 14. At least two of the checks were endorsed by Kim and deposited into a brokerage account Kim maintained at Firm 2.
- 15. NASD Conduct Rule 2370 prohibits a registered person from borrowing money from a customer unless the firm has written procedures permitting such loans and certain other conditions exist.
- 16. GLB's procedures did not permit borrowing money from customers and Kim never sought GLB's permission to borrow monies from HP.
- 17. GLB was unaware of HP's loans to Kim.

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

SECOND CAUSE OF ACTION

(Violation of NASD Conduct Rules 3050 and 2110)

- 18. The Department re-alleges and incorporates by reference paragraphs 1 through 17, above.
- 19. In or around September 29, 2006, while Kim was associated with GLB, Kim and his wife opened a joint brokerage account (the "9022 Joint Account") with Firm 2.
- 20. The account opening form for the 9022 Joint Account, which Kim executed on September 28, 2006, has "no" as a response to a question concerning whether Kim was employed by a broker-dealer. The form also shows that Kim's:
 - a. employer is JNEA, Inc.;
 - b. line of business is "Trade (Goods & Services)"
 - c. occupation is "Assistant Manager."
- 21. Kim did not disclose to Firm 2 his employment by, or any relationship he had with, GLB.

22. Kim did not disclose to GLB the existence the 9022 Joint Account.

By reason of the foregoing, Kim violated NASD Conduct Rules 3050 and 2110.

THIRD CAUSE OF ACTION
(Failure to Respond – Violation of NASD Procedural Rule 8210
and NASD Conduct Rule 2110)

23. The Department realleges and incorporates by reference paragraphs 1 through 22, above.

The First Request for Information

24. By letter dated December 14, 2007, issued pursuant to and in accordance with NASD Procedural Rule 8210, the staff of FINRA's Seattle District office (the "Staff") requested that Kim provide a written response to certain questions.

25. The letter was sent to Kim at his last known residential address as reflected on Central Registration Depository (hereinafter the "CRD Address") by regular first class mail and by certified mail, return receipt requested.

26. The December 14th mailings by regular first class mail and certified mail were both returned to the Staff by postal authorities bearing a label that read, "Return to Sender – Not Deliverable as Addressed – Unable to Forward."

27. Kim did not respond to the Staff's request for information.

The Second Request for Information

28. By letter dated January 7, 2008, issued pursuant to and in accordance with NASD Procedural Rule 8210, the Staff again requested that Kim provide a written response to certain questions.

29. The letter was sent to Kim at the CRD Address by regular first class mail and by certified mail, return receipt requested.

30. The January 7th mailings by regular first class mail and certified mail were both returned to the Staff by postal authorities bearing a label that read, "Return to Sender – Not Deliverable as Addressed – Unable to Forward."

31. Kim did not respond to the Staff's request for information.

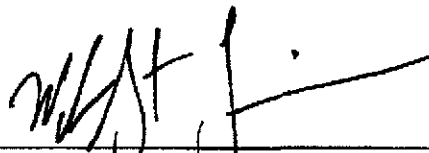
By reason of the foregoing, Kim violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under FINRA Procedural Rule 8310(a), including monetary sanctions, be imposed.
- B. order that the Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Procedural Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT



Date: February 2, 2009

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