

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

TERRENCE THOMAS ALEXANDER
(CRD No. 3273969),

Respondent.

Disciplinary Proceeding
No. 2007011261701

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

May 29, 2009

Respondent violated Conduct Rules 2370 and 2110 by borrowing money from his customer and failing to repay the loan. For this violation, Respondent was barred from associating with any member firm in any capacity. In light of this finding, the Second Cause of Action alleging in the alternative that the loan constituted a private securities transaction, in violation of Conduct Rule 3040, was dismissed. Respondent also violated Procedural Rule 8210 and Conduct Rule 2110 by failing to respond to requests for information. For this violation, Respondent was barred from associating with any member firm in any capacity.

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 December 8, 2008. The First Cause of Action alleges that Respondent Terrence Thomas Alexander ("Alexander") violated NASD Conduct Rules 2370 and 2110 by borrowing \$29,000 from his customer in December 2005. In the alternative, the Second Cause of Action alleges that

the transaction described in the First Cause of Action between Alexander and his customer constituted a private securities transaction and that Alexander violated NASD Conduct Rules 3040 and 2110 by participating in that transaction without giving prior written notice to, and receiving prior written approval from, Chase Investment Services Corp. ("Chase"). The Third Cause of Action alleges that Alexander subsequently violated Procedural Rule 8210 and Conduct Rule 2110 by failing to respond to FINRA requests for information.¹

Alexander did not answer or otherwise respond to the Complaint. Consequently, on May 4, 2009, Enforcement filed a Motion for Entry of Default Decision, supported by the Declaration of Richard March ("March Decl.") and 11 exhibits. Alexander did not reply to the motion.²

II. Findings of Fact and Conclusions of Law

A. Respondent's Default

Enforcement mailed the Complaint and First Notice of Complaint to Alexander's last known residential address as shown in FINRA's Central Registration Depository (the "CRD Address") by first-class certified mail, on December 5, 2008. The U.S. Postal Service ("USPS") returned the mailing marked, "Addressee Unknown."³

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 consolidate rules became effective 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 Respondent's alleged misconduct. The applicable rules are available at www.finra.org/rules.

² 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.

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

Enforcement mailed the Complaint and Second Notice of Complaint to Alexander's CRD Address by first-class certified mail on January 6, 2009. As before, the USPS returned the mailing marked, "Addressee Unknown."⁴

Because Enforcement learned of a second address for Alexander that could be more current than his CRD Address, it served the Complaint on Alexander two more times. On March 5, 2009, Enforcement mailed the Complaint and a Third Notice of Complaint to Alexander's CRD Address and the second address by first-class certified mail. The USPS returned the mailing addressed to the CRD Address marked, "Addressee Unknown," and returned the signed receipt for the second mailing signed by Alexander.⁵ On April 6, 2009, Enforcement mailed the Complaint and a Fourth Notice of Complaint to Alexander's CRD Address and the second address by first-class certified mail. The USPS returned the mailing addressed to the CRD Address marked, "Addressee Unknown." The USPS website shows that the certified mailing sent to the second address has not been claimed or returned to FINRA.⁶

The Second Notice of Complaint stated that Alexander was required to answer the Complaint by January 23, 2009. To date, Alexander has not filed an answer with the Office of Hearing Officers or otherwise responded to the Complaint.⁷

The Hearing Officer finds that Enforcement properly served Alexander with the Complaint by mailing the Complaint and the Notices of Complaint in accordance with FINRA Procedural Rule 9134(b)(1), thereby giving him constructive notice of this disciplinary

⁴ March Decl. ¶ 7; CX-5.

⁵ March Decl. ¶ 8; CX-7, 8.

⁶ March Decl. ¶ 9; CX-11.

⁷ March Decl., ¶¶ 7; CX-4, 5.

proceeding. By failing to answer the Complaint, Alexander defaulted.⁸ 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.

B. Jurisdiction

In July 2005, Alexander became registered with FINRA as a General Securities Representative through member firm Chase. He remained continuously associated with Chase until November 2007. On March 3, 2008, Alexander became registered with Chicago Investment Group, LLC, which terminated him on March 10, 2008, for failing to disclose FINRA's then pending investigation against him.⁹

Although Alexander has not been registered with FINRA since March 10, 2008, he 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 his registration with FINRA, and (2) the Complaint charges him with misconduct committed while he was associated with a FINRA member firm and with failing to respond to FINRA's requests for information made during the two-year period following his registration termination.¹⁰

C. Borrowing Money From a Customer

The First Cause of Action alleges that Alexander violated NASD Conduct Rules 2370 and 2110 by borrowing money from his customer, SS, who was also a customer of Chase. The Complaint alleges that on or about December 21, 2005, Alexander borrowed \$29,000 from SS by

⁸ *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)).

⁹ CX-1.

¹⁰ Article V, Sec. 4(a), FINRA By-Laws, available at www.finra.org/rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: Bylaws").

accepting a check payable to Alexander Holdings LLC (“Alexander Holdings”), which company is wholly-owned by Alexander.¹¹ The loan was secured by a promissory note dated December 30, 2005. Under the terms of the promissory note, Alexander was obligated to pay SS interest calculated at 5% per year on the unpaid balance plus 30% of the net revenue Alexander Holdings generated from the sale of certain real estate.¹² The First Cause of Action further alleges that Chase’s compliance manual prohibited registered representatives from borrowing money from customers who were not relatives and that SS and Alexander were not related.

The March Declaration provides further details regarding the loan. On February 22 and April 4, 2008, Alexander provided information to FINRA staff about the loan transaction in response to two written requests for information issued under Procedural Rule 8210. He also provided testimony about the loan at an on-the-record interview the staff conducted on May 6, 2008.¹³ Alexander admitted that he had discussed the possibility of obtaining a loan from SS in October 2005 to finance the purchase of real estate. In November 2005, Alexander formed Alexander Holdings and then completed the \$29,000 loan from SS. Alexander deposited the funds and then used some of the funds to pay his personal debts. He was not able to account for the balance of the funds.¹⁴

In June 2007, SS filed a civil action against Alexander to recover the balance due him, and, in December 2007, an Illinois court entered judgment against Alexander and in favor of SS in the amount of approximately \$36,000.¹⁵

¹¹ March Decl. ¶ 12.

¹² *Id.*

¹³ *Id.* ¶ 13 & n.10.

¹⁴ *Id.* ¶ 13.

¹⁵ 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. Chase'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 Alexander is not related to SS, 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 Alexander violated NASD Conduct Rules 2370 and 2110. Conduct that violates an NASD Conduct Rule is also a violation of NASD Conduct Rule 2110.¹⁶

In light of the foregoing finding of liability under the First Cause of Action, the Hearing Officer dismisses the Second Cause of Action, which was pled in the alternative.

D. Failure to Respond to Information Requests

The Third Cause of Action alleges that Alexander violated Procedural Rule 8210 and Conduct Rule 2110 by failing to respond to three written requests that he provide further information to the Staff concerning the \$29,000 loan from SS. Based on the information Alexander provided in response to two previous requests for information, the staff requested copies of his bank statements and check registers, as well as documents evidencing his use of the borrowed funds. The Staff sought these documents because Alexander had not explained what he had done with the loan proceeds.

¹⁶ *Department of Enforcement v. Shvarts*, 2000 NASD Discip. LEXIS 6, at *12-13 (N.A.C. June 2, 2000).

The Staff sent each request to Alexander at his CRD Address and the second address supplied by the USPS pursuant to Procedural Rule 8210. The requests were dated April 16, April 24, and May 8, 2008.¹⁷

At his on-the-record interview on May 6, 2008, Alexander acknowledged that he received the requests for documents dated April 16 and April 24, 2008, and he stated that he would produce them.¹⁸ However, to date, he has not provided any of the documents relating to his use and application of the loan proceeds.¹⁹

The Hearing Officer finds that the allegations in the Third Cause of Action are sufficient to establish, for purposes of this default decision, that Alexander 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 Alexander be barred. Enforcement has not requested that Alexander be ordered to pay restitution to SS because he has obtained a court judgment against Alexander for the full amount of the loan, plus accrued interest. Enforcement argues that, in view of Chase's express prohibition and Alexander's failure to repay the loan, his conduct was egregious.

The Hearing Officer agrees that Alexander's conduct was egregious because (i) Alexander's actions were intentional, (ii) Alexander was aware of Chase's prohibition against borrowing from customers, (iii) SS was harmed by Alexander's failure to repay the loan, and (iv)

¹⁷ March Decl., ¶¶ 23-25.

¹⁸ *Id.* ¶ 26.

¹⁹ *Id.*

Alexander profited from his misconduct.²⁰ Accordingly, the Hearing Officer finds that Alexander should be barred from associating with any member firm in any capacity.

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 8210.²¹ Here, Alexander failed to respond in any manner to three written requests that he provide documentation evidencing how Alexander used the \$29,000 loan proceeds he received from SS. There are no mitigating factors that would justify a sanction less than a bar. Although Alexander at first cooperated with the staff, this factor is not sufficiently mitigating to warrant consideration of a suspension instead of a bar. The staff requested copies of his bank records evidencing his receipt and disposition of the \$29,000 he borrowed from SS. In addition, because Alexander was unable to provide any details regarding the disposition of the funds, the staff requested copies of bills and related receipts supporting his statement that he used some of the money to pay his personal expenses.²² As a result of its inquiries, FINRA had a reasonable basis to investigate further whether Alexander had engaged in private securities transactions, converted customer funds, or had improperly borrowed money from his customer.²³ Alexander did not have the right to disregard the staff's request for this documentation. "A belief that [FINRA] does not need the requested information 'provides no excuse for a failure to provide it.' ... [A]n associated person has 'an obligation to respond to a ... request even if his response [is] a statement that he believed he had already

²⁰ See, *Terry Wayne White*, 50 S.E.C. 211 (1990).

²¹ FINRA Sanction Guidelines 35 (2007), available at <http://www.finra.org/RegulatoryEnforcement/index.htm> (then follow "FINRA Sanction Guidelines" hyperlink).

²² March Decl. ¶ 13.

²³ *Morton Bruce Erenstein*, Exchange Act Rel. No. 56768, 2007 SEC LEXIS 2596, at *14-15 (Nov. 8, 2007).

provided [FINRA] with the information it had requested."²⁴ Accordingly, the Hearing Officer finds that Alexander should be barred from associating with any FINRA member in any capacity for violating Procedural Rule 8210 and Conduct Rule 2110.

IV. Order

Terrence Alexander 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.



Andrew H. Perkins
Hearing Officer

Copies to:

Terrence Alexander (*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*)

²⁴ Erenstein, 2007 SEC LEXIS 2596, at *13 (citations omitted).

**FINRA
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant

v.

TERRENCE ALEXANDER,
Registered Representative
(CRD No. 3273969)

Respondent.

Disciplinary Proceeding
2007011261701

Hearing Officer

COMPLAINT

The Department of Enforcement alleges as follows:

SUMMARY

1. Terrence Alexander 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 July 2005 and August 2006, Alexander was registered as a general securities representative with Chase Investment Services Corp., a member of FINRA. Alexander was registered in the same capacity with CCO Investment Services Corp., Chase's successor, between July 2006 and November 2007. Alexander 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. In December 2005, Alexander borrowed funds from public customer, SS, pursuant to a promissory note, by accepting a check in the amount of \$29,000.
4. At the time of the loan, SS was Alexander's customer, as well as a customer of Chase.
5. Chase's compliance manual prohibited a representative from borrowing from a customer, unless he was a family member. SS was not a relative of Alexander.
6. The acts, practices and conduct above constitute a violation of NASD Conduct Rules 2370 and 2110.

SECOND CAUSE OF ACTION
NASD Conduct Rules 3040 and 2110
Private Securities Transaction

7. Should a determination be made that Alexander's conduct did not constitute a borrowing violation under Rule 2370 as set forth in the first cause of action above, Complainant states, in the alternative, that in December 2005, Alexander participated in a private securities transaction by arranging for the issuance of a security in the form of a promissory note in the amount of \$29,000 from public customer SS and by investing those funds in Alexander Holdings, LLC, an entity owned by Alexander.
8. The promissory note memorializing the acceptance of the funds was signed by Alexander and provided that Alexander would pay SS interest at the annual rate of 5%, plus 30% of the net revenue from the sale of properties that had been renovated.
9. Prior to engaging in the private securities transaction, Alexander failed to give

written notice of his intention to participate in the proposed transaction, and failed to receive written acknowledgment of said notice.

10. The acts, practices and conduct described above constitute separate and distinct violations of NASD Conduct Rules 3040 and 2110 by Alexander.

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

11. On or about April 16, 2008, FINRA staff sent Alexander a letter requesting that he 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 Alexander's CRD address and a second address in Matteson, Illinois represented by Alexander to be his residence. With regard to the mailing to Alexander's CRD address, the first class letter was never returned, while the certified letter was never claimed by Alexander. With regard to the mailing to Alexander's Matteson, Illinois address, the first class letter was never returned, while the return receipt card for the certified letter shows that it appears to have been signed for by Alexander. Alexander never provided a response to the request.

12. On April 24, 2008, FINRA staff sent Alexander a letter requesting that he 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 Alexander's CRD address and his Matteson, Illinois address. With regard to the mailing to Alexander's CRD address, the first class letter was never returned, while the certified letter was never claimed by Alexander. With regard to the mailing to Alexander's Matteson, Illinois address, the first class letter was never returned, while the return receipt card for the certified letter appears to have

been signed for by Alexander. Alexander never provided a response to the request.

13. On or about May 8, 2008, FINRA staff sent Alexander a letter requesting that he 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 Alexander's CRD address and his Matteson, Illinois address. With regard to the mailing to Alexander's CRD address, the first class letter was never returned, while the certified letter was never claimed by Alexander. With regard to the mailing to Alexander's Matteson, Illinois address, the first class letter was never returned, while the return receipt card for the certified letters appears to have been signed for by Alexander. Alexander never provided a response to the request.

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

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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.

**FINRA DEPARTMENT OF
ENFORCEMENT**

Date: December 5, 2008



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