

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

FREDERICK L. MATHIS
(CRD No. 4831306),

Respondent.

Disciplinary Proceeding
No. 2007011906401

Hearing Officer – LBB

DEFAULT DECISION

February 19, 2009

Respondent is barred for misuse of firm funds in violation of Conduct Rule 2110. He is also barred for failure to respond to requests for information in violation of Procedural Rule 8210 and Conduct Rule 2110.

Appearances

Laura Leigh Blackston, Senior Regional Counsel, FINRA, New Orleans, Louisiana, for the Department of Enforcement

No appearance by or for Respondent

DECISION

The Department of Enforcement filed the Amended Complaint in this action on October 27, 2008. The Amended Complaint asserts two causes of action against Respondent Frederick L. Mathis ("Respondent"): misuse of firm funds in violation of NASD Conduct Rule 2110, and failure to provide information in violation of NASD Procedural Rule 8210 and Conduct Rule 2110.¹ Despite being properly served with the Amended Complaint, Notice of Amended Complaint, and Second Notice of Amended Complaint, Respondent has not filed an answer to

¹ Effective December 15, 2008, NASD Procedural Rule 8210 and NASD Conduct Rule 2110 were incorporated into the FINRA Consolidated Rules as FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010, respectively. *See* NTM 08-57. The text was not changed.

the Amended Complaint. On January 21, 2009, Enforcement filed a Motion for Entry of Default Decision, to which Respondent did not respond. Accordingly, pursuant to Procedural Rules 9215(f) and 9269, the allegations in the Amended Complaint will be deemed admitted, and Enforcement's motion will be granted.²

I. Respondent's Default

On October 27, 2008, Enforcement served Respondent with the Amended Complaint and Notice of Amended Complaint by certified mail to his residential address as reflected in the Central Registration Depository ("CRD"), and to a slightly revised CRD address obtained from an electronic database. Both were returned by the Postal Service marked "unclaimed." A Second Notice of Amended Complaint and Amended Complaint were served on Respondent by certified mail at his CRD address and the revised address on November 25, 2008. Neither was returned by the Postal Service. Respondent has not answered or otherwise responded to the Amended Complaint.

Enforcement served the Amended Complaint and the Notices of Amended Complaint on Respondent in accordance with Procedural Rule 9134, giving him constructive notice of this proceeding. By failing to respond, he defaulted.

II. Jurisdiction

Respondent registered with FINRA as a General Securities Representative for E*Trade LLC in August 2004. He was associated with E*Trade from July 2004 until he was terminated on November 30, 2007.

The Amended Complaint charges Respondent with violations that occurred while he was registered with a member firm, and with failure to respond to requests for information issued

² The factual determinations in this decision are based on the allegations of the attached Amended Complaint and the materials filed by Enforcement with its motion.

within two years after the termination of his registration with a member firm. While Respondent is not currently registered with a FINRA member firm, he was subject to FINRA's jurisdiction at the time the Amended Complaint was filed because the Amended Complaint was filed within two years after the termination of his registration, and he remains subject to FINRA's jurisdiction, pursuant to Article V, Section 4 of FINRA's By-Laws.

III. Origin of the Investigation

FINRA's investigation began on December 24, 2007, soon after E*Trade filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") indicating it had terminated Respondent's employment. The Form U5 stated that Respondent had made unauthorized credits of firm funds to himself.

IV. Violations

A. Misuse of Firm Funds in Violation of Rule 2110

FINRA has regularly found that associated persons have violated NASD Conduct Rule 2110 by misusing their firm's funds. *See, e.g., Dist. Bus. Conduct Comm. v. Kwikkel-Elliott*, No. C04960004, 1998 NASD Discip. LEXIS 4 (N.B.C.C. Jan. 16, 1998) (conversion of funds from employer by submission of false expense reimbursement requests); *Dep't of Enforcement v. Foran*, 2000 NASD Discip. LEXIS 8 (N.A.C. Sept. 1, 2000) (conversion of firm funds by misdirection of mutual fund trail commissions away from member firm's "house account" to respondent's own commission account); *Dep't of Enforcement v. Kaplan*, No. 20070077587 (O.H.O. June 20, 2008) (conversion of firm funds by use of firm credit card for personal expenses and submission of false expense reports); *Dep't of Enforcement v. Farley*, No. C9A000038, 2001 NASD Discip. LEXIS 51 (O.H.O. Oct. 2, 2001) (conversion of firm funds by keeping and spending firm funds deposited into his account by girlfriend).

Respondent held a personal brokerage account at E*Trade Securities and a personal bank account at E*Trade Bank. From about April 23, 2007, to November 16, 2007, Respondent used his manager's user identification and password to make 13 unauthorized credits to his E*Trade Securities brokerage account and seven unauthorized credits to his E*Trade Bank account. The credits, totaling \$1,205, were funded from a firm account used to provide credits to customers, and Respondent was not entitled to any credits from this account.

These allegations, which are deemed admitted, are sufficient to establish for purposes of this default decision that Respondent violated Conduct Rule 2110 by misusing his firm's funds.

B. Failure to Provide Information in Violation of Rules 8210 and 2110

From January 9 through March 14, 2008, FINRA staff sent five requests to Respondent, pursuant to NASD Procedural Rule 8210, requesting documents and information relating to the allegations that he had misused his firm's funds. Two of the requests were sent to Respondent at his CRD address, and three were sent to a slightly revised CRD address. Respondent did not respond to any of the requests. During that period, Rule 8210 authorized FINRA to require any person subject to its jurisdiction to provide information related to any matter under investigation.

By failing to respond to requests for information, Respondent violated Procedural Rule 8210. A violation of Rule 8210 is also a violation of Conduct Rule 2110. *Dep't of Enforcement v. Hoeper*, No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (N.A.C. Nov. 2, 2001).

V. Sanctions

The Sanction Guidelines recommend a bar as the sanction for the improper use of funds in violation of Conduct Rule 2110. *Sanction Guidelines* at 38. There is no evidence of any mitigating factors that would make a sanction of anything less than a bar appropriate.

The Sanction Guidelines recommend a bar where a respondent fails to respond in any manner to a request for information issued pursuant to Procedural Rule 8210. *Sanction*

Guidelines at 35. Where mitigation exists, the Guidelines recommend consideration of a suspension in all capacities of up to two years. A bar is the appropriate sanction under the facts and circumstances of this case. The record reflects that Respondent failed to respond in any manner, and there are no mitigating factors that would justify imposition of a lesser sanction.

VI. Conclusion

Respondent is barred for misusing firm funds in violation of Conduct Rule 2110. He is also barred for failing to respond to requests for information in violation of Procedural Rule 8210 and Conduct Rule 2110. If this decision becomes FINRA's final disciplinary action, the bars shall become effective immediately.

SO ORDERED.


Lawrence B. Bernard
Hearing Officer

Copies to: Frederick L. Mathis (*via overnight courier and first-class mail*)
Laura Leigh Blackston, Esq. (*via email and first-class mail*)
David R. Sonnenberg, Esq. (*via email*)
Mark P. Dauer, Esq. (*via email*)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Frederick L. Mathis,
General Securities Representative
[CRD No. 4831306],

Respondent.

DISCIPLINARY PROCEEDING
No. 2007011906401

Hearing Officer: ____

AMENDED COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Frederick Mathis made unauthorized credits to his brokerage and bank accounts with funds to which he was not entitled. He also failed to respond to requests from FINRA for information.

RESPONDENT AND JURISDICTION

2. Frederick Mathis entered the securities industry in August 2004 as a general securities representative with E*Trade Securities, L.L.C. ("E*Trade). At all times mentioned herein, he remained registered with E*Trade. On November 30, 2007, E*Trade terminated Mathis's employment due to the unauthorized credits that he

had made to his personal accounts. Following termination by E*Trade, Mathis has not returned to the industry.

3. Pursuant to FINRA's By-Laws, Article V, Sec. 4 (a)(i), FINRA retains jurisdiction over Mathis for two years following the termination of his employment by E*Trade. Consequently, FINRA has jurisdiction over Mathis until November 29, 2009.

FIRST CAUSE OF ACTION

NASD Conduct Rule 2110: Misuse of Firm Funds, Against Respondent Mathis

4. The Department realleges and incorporates by reference paragraphs 1-3 above.
5. Mathis held a personal brokerage account at E*Trade and a personal bank account at E*Trade Bank.
6. Mathis was a senior member of a customer service team at E*Trade. In this position, he had access to the customer service manager's User ID and Password.
7. During the time period from on or about April 23, 2007, through on or about November 16, 2007, without the knowledge or permission of the customer service manager, Mathis used the manager's User Identification and Password to make 13 unauthorized credits to his E*Trade brokerage account and 7 unauthorized credits to his E*Trade bank account. The credits were funded from a firm account used to provide credits to customers. Mathis was not entitled to any credits from this account.
8. The unauthorized credits totaled \$1,205.00.

9. Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rule 2110.

SECOND CAUSE OF ACTION

NASD Conduct Rule 2110 and NASD Procedural Rule 8210: Failure to Respond to Requests for Information, Against Respondent Mathis

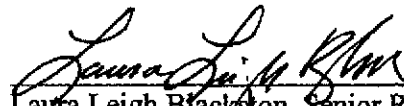
10. The Department realleges and incorporates by reference paragraphs 1-9 above.
11. By letters dated January 9, 2008, January 25, 2008, February 13, 2008, February 28, 2008 and March 14, 2008, the FINRA District Staff requested that Mathis provide information to the staff concerning the activities described in the First Cause of Complaint. These requests for information were sent pursuant to, and in accordance with, the provisions of Procedural Rule 8210, all as more fully detailed on Exhibit "A," attached hereto.
12. Mathis failed to respond to FINRA's request for information.

RELIEF REQUESTED

WHEREFORE, the Department 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.
- B. order that the Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330.

Date: October 27, 2008


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**DECLARATION OF
Jennifer W. Schwin**

1. My name is Jennifer W. Schwin. I am a Senior Examiner in the Cause Section of the District No. 5 office of FINRA, located in New Orleans, Louisiana.
2. This investigation (20070119064) is the result of a Form U-5 Disclosure filed on behalf of Frederick Mathis (CRD No. 4831306) by E*Trade Securities, LLC. The disclosure reflects that Mathis was terminated from the firm for making unauthorized credits to his personal brokerage and bank accounts.
3. CRD reflects the following address for Mr. Mathis: [REDACTED].
4. On January 9, 2008, I sent correspondence to Mr. Mathis at the address reflected in CRD via certified and regular U.S. Mail. Mr. Mathis' response was due January 23, 2008. A signature appears on the certified return receipt which was returned to the New Orleans District office on January 25, 2008. Although the certified return receipt bears a signature, it is unclear as to whether or not this is Mathis' signature. Mr. Mathis did not provide a response to this request.
5. On January 25, 2008, I sent a second request via certified and regular U.S. Mail to Mr. Mathis at the address reflected in CRD. The certified mailing was returned to the District office unsigned for and the return receipt was torn off and taped to the front to the envelope. The regular U.S. Mailing was not returned to the District office. Mr. Mathis did not provide a response to this request.
6. Given that Mathis was not responding to FINRA's requests for information, I attempted to locate an additional address for Mr. Mathis using the Smartlinx reporting system. Although this report did not identify another address for Mr. Mathis, it was noted that the address reflected on CRD was missing a direction identifier for the street address. Specifically, Smartlinx noted Mr. Mathis' address as [REDACTED].
7. Given the discovery of this information, I sent a new, first request to Mr. Mathis on February 13, 2008 to this address with the additional information. The request was sent via certified and regular U.S. Mail and a response was due on or before February 27, 2008. The certified mailing was returned unclaimed to the District office on April 15, 2008. The regular U.S. mailing was not returned to the District office. Mr. Mathis did not provide a response to this request.
8. On February 28, 2008, I sent a second request to Mr. Mathis via certified and regular U.S. Mail and a response was due on or before March 13, 2008. The certified mailing was returned unclaimed to the District office on April 24, 2008. The regular U.S. mailing was not returned to the District office. Mr. Mathis did not provide a response to this request.

9. On March 14, 2008, I sent a third and final request to Mr. Mathis via certified and regular U.S. Mail and a response was due on or before March 27, 2008. The certified mailing was received and signed for by Quenton Bogkins. The date of receipt is not noted on the return receipt, however it was received in the District office on March 24, 2008. The regular U.S. mailing was not returned to the District office. Mr. Mathis did not provide a response to this request.

June 19, 2008


Jennifer W. Schwin, Declarant