

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JENNIFER B. YOUNG
(CRD No. 2527700),

Respondent.

Disciplinary Proceeding
No. 2008012237901

DEFAULT DECISION

Hearing Officer – Sara Nelson Bloom

January 26, 2010

For misappropriation of funds, in violation of Rule 2110, and for failure to appear for testimony, in violation of Rules 8210 and 2010, Respondent is barred from associating with any FINRA member in any capacity.

Appearances

Helen G. Barnhill, Esq., Denver, CO, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

I. Background

On September 21, 2009, the Department of Enforcement (“Enforcement”) filed a two-cause Complaint in this proceeding, attached to this Decision as Exhibit A. The first cause alleges that Jennifer B. Young (“Respondent”) violated Rule 2110 by making approximately \$94,000 in personal charges on her employer’s credit cards without authority. The second cause alleges that Respondent violated Rules 8210 and 2010 by failing to appear for testimony as requested by FINRA Staff.¹

¹ Following the consolidation of NASD and the member regulation, enforcement, and arbitration functions of NYSE Regulation into FINRA, FINRA began developing a new “Consolidated Rulebook” of FINRA Rules. The first phase of the new consolidated rules became effective on December 15, 2008. See FINRA Regulatory Notice 08-57 (Oct. 2008). In that process, FINRA renumbered NASD Rule 2110 as FINRA Rule 2010. Because the Complaint in this case was filed after December 15, 2008, the procedural rules that apply are the current FINRA Rules. The conduct rules that apply are the NASD Rules that existed at the time of the conduct at issue.

Respondent did not file an Answer to the Complaint. Accordingly, on December 2, 2009, Enforcement filed a Motion for Entry of Default Decision, supported by the Declaration of Helen G. Barnhill, Esq. ("Barnhill Decl.") and five exhibits. Respondent did not file a response to the Motion.

For the reasons set forth below, Enforcement's motion is granted.²

II. Respondent's Default

On September 14, 2009, Enforcement sent the Complaint and Notice of Complaint by first-class and certified mail to Respondent's last known residential address according to the Central Registration Depository (the "CRD Address"). These mailings were not returned. Barnhill Decl. ¶ 11; CX-4. Respondent did not file an Answer. In the same manner, on October 13, 2009, Enforcement sent the Complaint and Second Notice of Complaint to Respondent at her CRD Address. Barnhill Decl. ¶ 12. The certified mailing was returned, marked "unclaimed." The first-class mailing was not returned. Barnhill Decl. ¶ 12; CX-5. Respondent again did not file an Answer.

Enforcement complied with Rule 9134(b)(1) by mailing the Complaint and Notices of Complaint to Respondent's CRD Address, thereby giving her constructive notice of this proceeding. By failing to file an Answer, Respondent defaulted. Accordingly, pursuant to Rules 9215(f) and 9269(a)(2), the allegations in the Complaint are deemed admitted.

III. Jurisdiction

Respondent first became registered as a General Securities Representative with FINRA member LPL Financial Corporation (the "Firm") in 2003. On January 29, 2008, the Firm terminated Respondent based upon the conduct alleged in count one of the

² The factual determinations in this Decision are based on the allegations of the attached Complaint, which are deemed admitted, and the declarations and exhibits filed by Enforcement with its motion.

Complaint. She has not been associated with a member firm since then. CX-1.

Although Respondent is not currently associated with a member firm, FINRA has jurisdiction to bring this proceeding, pursuant to Art. V, § 4 of FINRA's By-Laws, because (1) the Complaint charges Respondent with misconduct while she was an associated person and with failing to comply with requests for information made during the two-year period following termination of her last registration, and (2) the Complaint was filed within that two-year period.

IV. Violations

A. Misuse of Employer Funds

The first cause of the Complaint alleges that Respondent made personal charges on the Firm's credit cards without authority.³ Specifically, from December 2004 through January 2008, Respondent made approximately \$94,000 in personal charges on three Firm credit cards (two in her supervisor's name and one in her name) without her Firm's authority. These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent misused employer funds in violation of Rule 2110.

B. Failure to Respond

Rule 8210 authorizes FINRA to require any person subject to its jurisdiction to provide information related to any matter under investigation.⁴ The second cause of the

³ FINRA Staff commenced its investigation into Respondent's conduct after her Firm filed a Form U5 disclosing that Respondent may have misappropriated her Firm's business funds and credit cards for personal use. Barnhill Decl. ¶ 15; CX-2.

⁴Rule 8210 serves as a key element in FINRA's oversight function and allows FINRA to carry out its regulatory functions without subpoena power. See, e.g., Dep't of Enforcement v. Valentino, No. FPI010004, 2003 NASD Discip. LEXIS 15, at *12 (NAC May 21, 2003), aff'd, 2004 SEC LEXIS 330 (Feb. 13, 2004) ("It is well established that because NASD lacks subpoena power over its members, a failure to provide information fully and promptly undermines NASD's ability to carry out its regulatory mandate.") (citation omitted); Joseph G. Chiulli, Exch. Act Rel. No. 42,359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for FINRA to effectively conduct its investigations, and emphasizing that NASD members and associated persons must fully cooperate with requests for information).

Complaint alleges that on February 3, 2009, FINRA Staff sent a request to Respondent at her CRD address by first-class and certified mail, pursuant to Rule 8210, directing her to appear and testify at an on-the-record interview on February 23, 2009. On February 6, 2009, Respondent contacted staff to confirm receipt of the request, and to inform Staff that she had not decided whether she would appear as requested. Staff left Respondent a message to follow up, but Respondent did not respond. Respondent did not appear to testify.

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent failed to appear for testimony, in violation of Rules 8210 and 2010.⁵

V. Sanctions

With respect to Respondent's unauthorized personal charges of \$94,000 on her Firm's credit cards, Enforcement requests a bar.⁶ For misuse of funds amounting to misappropriation, as is the case here, the FINRA Sanctions Guidelines ("Guidelines") recommend a bar, regardless of the amount misappropriated. Guidelines at 38 (2007 ed.). There is no evidence of any mitigating circumstances that would justify a lesser sanction for this violation. Therefore, the Hearing Officer imposes a bar for this violation.

With respect to Respondent's failure to appear for testimony, a bar is standard for a failure to provide requested information in any manner. Guidelines at 35. However, Enforcement requests a two-year suspension rather than a bar, reasoning that this case does not involve a complete failure to respond, because Respondent responded to an earlier request for written information. Based upon the limited information in the record, and given the fact that Respondent refused to appear for her scheduled on-the-record

⁵ A violation of Rule 8210 is also a violation of Rule 2010. Dep't of Enforcement v. Hooper, No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (NAC Nov. 2, 2001) (applying former Rule 2110).

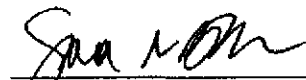
⁶ Enforcement does not request restitution, because Respondent has repaid the misappropriated funds.

interview, it is unclear whether Respondent's response to the earlier request for documents and information should be credited as a partial response in determining the appropriate sanctions for her later refusal to appear for her on-the-record interview. However, the Hearing Officer has determined that she need not reach the issue. In light of the bar for misuse of funds, no additional sanctions are imposed for Respondent's Rule 8210 violation.

VI. Conclusion

For misuse of funds, in violation of Rule 2110, Respondent is barred from associating with any FINRA member in any capacity. In light of the bar, no additional sanctions are imposed for Respondent's failure to appear for testimony, in violation of Rules 8210 and 2010. The bar shall become effective immediately if this Decision becomes the final disciplinary action of FINRA.

SO ORDERED.


Sara Nelson Bloom
Hearing Officer

Copies to: Jennifer B. Young (*via overnight courier and first-class mail*)
Helen Barnhill, Esq. (*via electronic and first-class mail*)
Mark P. Dauer, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

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OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,	)	Disciplinary Proceeding
	)	No. 2008012237901
Complainant,	)	
	)	Hearing Officer:
v.	)	
	)	COMPLAINT
Jennifer Birrell Young	)	
CRD No. 2527700	)	
	)	
Respondent.	)	

The Department of Enforcement alleges:

SUMMARY

1. Jennifer B. Young charged approximately \$94,000 of personal expenses to three credit cards (one of which was a corporate card in her name and two of which were in the name of her supervisor, JH) and to a line of credit, also in the name of JH, without the authorization of JH or her employer, LPL Financial Corporation (LPL). This conduct violated NASD Conduct Rule 2110. In addition, Young failed to respond to a Rule 8210 request for testimony, in violation of FINRA Rule 8210 and NASD Conduct Rule 2010.

RESPONDENT AND JURISDICTION

2. Young, age 37, first entered the securities industry in 1995 when she registered as a General Securities Representative with a member firm. She left that firm in January 1998 and went on to associate with three other member firms, including FUS, before becoming registered as a General Securities Representative through LPL on December 11, 2003. On January 22, 2008, LPL terminated Young's registration for

“misappropriation of branch manager’s business funds and credit cards for personal use.”

Young was also discharged from FUS for misusing a company credit card.

3. Young is not currently registered through or associated with any member firm. However, pursuant to Article V, Section 4 of the FINRA By-Laws, FINRA retains jurisdiction over her for purposes of this Complaint.

FIRST CAUSE OF ACTION

(Conduct Rule 2110, Misuse of three Credit Cards and a Line of Credit)

4. The Department realleges and incorporates by reference paragraphs 1-3 above.
5. While at LPL, Young served as an assistant and de facto Office Manager for LPL registered representative JH. JH managed a branch office in Denver named JDHA.
6. LPL issued one corporate MasterCard to JH and one to Young. From approximately December 2004 through January 2008, Young charged approximately \$54,300.00 to the two cards, without authorization from JH or LPL. The charges were for Young’s personal benefit and were not related to any business purpose of LPL or JDH or JDHA. Young made periodic payments on the cards between December 2004 and January 2008. After Young’s misconduct was detected she repaid approximately \$13,182.18 and \$26,898.07 to JH and/or JDHA.
7. JH frequently traveled to Mexico City and his corporate MasterCard was not universally accepted there. As a result, in early 2005, he had asked Young to research other alternatives to the corporate MasterCard. Young presented a Capital One Visa Card as an alternative to JH, who instructed her to open an account online. JH told Young not to activate the card upon its receipt, but to lock it up for future use. Without JH’s authorization or consent, Young charged approximately \$20,035.00 to the Capital One

Visa Card between approximately December 2006 and January 2008. Young made periodic payments on the card between approximately December 2006 and January 2008. After Young's misconduct had been detected, Young paid the remaining balance of approximately \$15,600.00 directly to Capital One in February 2008.

8. JH had an account with a financial institution, UB, that periodically sent courtesy checks to JH's office. Young cashed some of these checks, without JH's authorization, thereby creating a line of credit. This account was transferred to another financial institution, BA, when BA purchased this line of business from UB. Young incurred approximately \$16,112.00 in charges on the line of credit between approximately March 2005 and February 2008. Young paid the account in full directly to BA on February 14, 2008.
9. By virtue of the foregoing, Young violated NASD Conduct Rule 2110.

SECOND CAUSE OF ACTION

(FINRA Rule 8210 and FINRA Conduct Rule 2010, Failure to Appear for an on-the-record Interview)

10. The Department realleges and incorporates by reference paragraphs 1 through 3, and 5 through 9 above.
11. On February 3, 2009, FINRA staff sent to Young, by first class and certified mail and by e-mail, a written request that she appear, pursuant to FINRA Procedural Rule 8210, for an on-the-record interview (OTR) on February 23, 2009, at FINRA's Denver Office. The request was sent to Young's CRD address. The certified letter was returned to staff marked "return to sender, unclaimed, unable to forward." The first class mailing was not returned. Young called the FINRA examiner on February 6, 2009, and told him she had not yet made up her mind as to whether she would appear. On February 17, 2009, the

examiner left a voicemail for Young asking whether she intended to testify. She neither responded nor appeared for her February 23, 2009 OTR.

12. By virtue of the foregoing, Young violated FINRA Rule 8210 and FINRA Conduct Rule 2010.

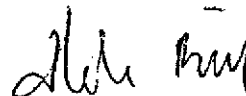
RELIEF REQUESTED

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

FINRA DEPARTMENT OF ENFORCEMENT

Date: September 14, 2009


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