

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

COLLEEN M. McMAHON-HILL
(CRD No. 5272881),

Respondent.

Disciplinary Proceeding
No. 20080160404-01

Hearing Officer – MAD

DEFAULT DECISION

March 9, 2010

Respondent is barred from associating with any FINRA member firm in any capacity for acquiring and using credit cards without the authorization of the named cardholders, in violation of Conduct Rule 2110, and failing to respond to requests for information, in violation of Procedural Rule 8210 and Conduct Rules 2110 and 2010.

Appearances

John Han, Senior Regional Counsel, San Francisco, CA, for the Department of Enforcement.

No appearance by or for Colleen M. McMahon-Hill.

DECISION

I. Introduction

The Department of Enforcement (“Enforcement”) filed the attached Complaint on October 30, 2009. The Complaint charges that Respondent Colleen M. McMahon-Hill (“Respondent”) obtained credit cards under false pretenses and used the cards without the authorization of the named cardholders, in violation of Conduct Rule 2110, and failed to

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respond to information requests from FINRA staff, in violation of Procedural Rule 8210 and Conduct Rules 2110 and 2010.¹

Respondent did not answer or otherwise respond to the Complaint. Consequently, on January 19, 2010, Enforcement filed a Motion for Entry of Default Decision ("Default Motion"), supported by the Declaration of John Han ("Han Decl.") and four exhibits. Respondent did not respond to the motion.²

II. Findings of Fact and Conclusions of Law

A. Jurisdiction

Respondent entered the securities industry in January 2007, when she became associated with Chase Investment Services Corp. ("Chase").³ She became registered with FINRA as an Investment Company and Variable Contracts Products Representative in February 2007.⁴ Respondent began working at a Chase bank affiliate, JP Morgan Chase Bank, N.A. ("Chase Bank"), in January 2007.⁵ She was employed at Chase Bank until she was terminated on November 18, 2008.⁶ On December 9, 2008, Chase filed a Uniform Termination Notice for Securities Industry Registration ("Form U5"), indicating that Respondent's employment had been terminated as a result of unauthorized credit

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 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 conduct rules that were in effect at the time of Respondent's misconduct. Conduct Rule 2110 was renumbered as Rule 2010 in the Consolidated Rulebook without substantive change. 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 Han Decl. ¶ 5; CX-1.

⁴ Han Decl. ¶ 5; CX-1.

⁵ Han Decl. ¶ 5; CX-1.

⁶ Han Decl. ¶ 13.

card applications and transactions.⁷ Respondent has not been associated with a FINRA member firm since her termination from Chase.⁸

Although Respondent has not been registered with FINRA since December 9, 2008, she remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years following the termination of her last registration with a FINRA member and (2) the Complaint charges her with misconduct committed while she was associated with a FINRA member firm and with failing to respond to FINRA requests for information made during the two-year period following the termination of her registration.⁹

B. Origin of the Underlying Investigation

FINRA commenced the investigation that led to the Complaint in this proceeding after Chase filed the Form U5, which disclosed that Chase Bank had terminated Respondent's employment on November 18, 2008, after she admitted to applying for, receiving, and using two credit cards in the name of two bank customers, without their knowledge or consent.¹⁰

C. Respondent's Default

On October 30, 2009, Enforcement sent the Notice of Complaint and Complaint to Respondent by first-class and certified mail at her residential address recorded in the Central Registration Depository ("CRD Address") and an alternative address reflected on

⁷ Han Decl. ¶ 13.

⁸ *Id.* ¶ 5.

⁹ See Article V, Sec. 4(a), FINRA By-Laws, available at www.finra.org/rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: Bylaws").

¹⁰ Han Decl. ¶ 13; CX-1.

documentation that Enforcement received from Chase ("Alternative Address").¹¹ The U.S. Postal Service returned the certified mailings marked "Attempted, Not Known."¹² The first-class mailings were not returned.¹³ Respondent did not respond to the Complaint by November 27, 2009, the deadline specified in the Notice of Complaint.¹⁴

On November 30, 2009, Enforcement served Respondent with copies of the Second Notice of Complaint and Complaint, by first-class and certified mail, at her CRD Address and the Alternative Address.¹⁵ The U.S. Postal Service returned the Second Notice sent by certified mail to the CRD Address, marked "unclaimed."¹⁶ The Second Notice sent by certified mail to the Alternative Address was returned, marked "Attempted, Not Known."¹⁷ The first-class mailings were not returned.¹⁸ The Second Notice of Complaint required Respondent to answer the Complaint by December 17, 2009.¹⁹ To date, Respondent has not answered or otherwise responded to the Complaint.

Respondent defaulted by failing to answer the Complaint.²⁰ 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 Default Motion.

¹¹ Han Decl. ¶¶ 8-9.

¹² *Id.* ¶ 9.

¹³ *Id.*

¹⁴ *Id.* ¶ 10.

¹⁵ *Id.* ¶ 10.

¹⁶ *Id.* Enforcement has no knowledge of a more current address for Respondent. *Id.* ¶ 11.

¹⁷ *Id.* ¶ 11.

¹⁸ *Id.*

¹⁹ *Id.* ¶ 10.

²⁰ *Dep't of Enforcement v. Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at *5 n.1 (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." (citing *Lubeck v. SEC*, 1998 U.S. App. LEXIS 18849, at *20 (9th Cir. Aug. 12, 1998))).

D. Unauthorized Acquisition and Use of Credit Cards

The First Cause of the Complaint alleges that Respondent violated Conduct Rule 2110 by obtaining credit cards under false pretenses and using the cards for her personal benefit without the named cardholders' authorization. Respondent applied by telephone for two bank-issued credit cards in the names of GM and MK, and directed Chase Bank to send the credit cards to her home address.²¹ She then made unauthorized credit card transactions, totaling approximately \$5,642.97.²²

On November 18, 2008, a Chase Bank fraud investigator interviewed Respondent about the credit card applications and transactions.²³ Respondent prepared a hand-written statement, acknowledging that she used the cards without GM's and MK's permission.²⁴ Chase Bank did not attempt to collect the amount of the unauthorized credit card transactions from GM or MK.²⁵ Respondent did not reimburse Chase Bank for its losses.²⁶

The facts alleged in the Complaint establish that Respondent obtained and used credit cards, in the names of GM and MK without their authorization, for charges totaling approximately \$5,642.97, in violation of Conduct Rule 2110, which requires members to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business.

²¹ Han Decl. ¶ 14.

²² *Id.* ¶¶ 15, 16.

²³ *Id.* ¶ 17.

²⁴ *Id.*

²⁵ *Id.* ¶ 19.

²⁶ *Id.*

E. Failure to Respond to Information Requests

The Second and Third Causes of the Complaint allege that Respondent failed to respond to written requests that she provide information about the circumstances surrounding her termination. The requests were dated December 11, 2008, and August 6, 2009. FINRA staff sent the December 11 request to Respondent at her CRD Address by regular and certified first-class mail pursuant to Procedural Rule 8210.²⁷ On December 19, 2008, the U.S. Postal Service returned the first-class mailing to the staff marked, "Return to Sender, Unclaimed, Unable to Forward."²⁸ On January 21, 2009, the certified mailing was returned to the staff with the same notation.²⁹

FINRA staff sent the August 6 request to Respondent at her CRD Address and the Alternative Address by regular and certified first-class mail pursuant to Procedural Rule 8210.³⁰ The U.S. Postal Service returned the first-class mailings to the CRD Address and the Alternative Address on August 13, 2009, and August 17, 2009, respectively.³¹ The certified mailing to the Alternative Address was returned to the staff on August 17, 2009, marked "Return to Sender, Not Deliverable as Addressed, Unable to Forward."³² The certified mailing to the CRD Address was returned to the staff on September 16, 2009, marked "Return to Sender, Unclaimed, Unable to Forward."³³ Respondent did not respond to the two Rule 8210 information requests.³⁴

²⁷ Han Decl. ¶ 20. At the time of the December 11 information request, Enforcement had not yet learned of the Alternative Address for McMahon-Hill. *Id.* ¶ 23.

²⁸ *Id.* ¶ 21.

²⁹ *Id.*

³⁰ *Id.* ¶ 24.

³¹ *Id.* ¶ 25.

³² *Id.*

³³ *Id.*

³⁴ *Id.* ¶¶ 21, 25.

The Hearing Officer finds that the allegations in the Second and Third Causes of the Complaint are sufficient to establish, for purposes of this default decision, that Respondent violated Procedural Rule 8210 and Conduct Rules 2110 and 2010.

III. Sanctions

A. Unauthorized Acquisition and Use of Credit Cards

The FINRA Sanctions Guidelines (“Guidelines”) do not address the unauthorized acquisition and use of credit cards. The Guidelines for conversion of funds are the most analogous, and recommend a bar, regardless of the amount converted.³⁵ Here, there is no evidence of any mitigating factors that would justify a lesser sanction. Accordingly, the Hearing Officer will bar Respondent from associating with any member firm in any capacity for the violation of Conduct Rule 2110, as alleged in the first Cause of Action of the Complaint.³⁶

B. Failure to Respond to Information Requests

The Guidelines also recommend a bar where a respondent fails to respond in any manner to a request for information issued pursuant to Procedural Rule 8210.³⁷ Here, Respondent failed to respond to two written requests that she provide information in connection with the staff’s investigation into the circumstances surrounding her termination. There are no mitigating factors. Accordingly, the Hearing Officer will bar Respondent from associating with any FINRA member in any capacity for violating Procedural Rule 8210 and Conduct Rules 2110 and 2010, as alleged in the Second and Third Causes of the Complaint.

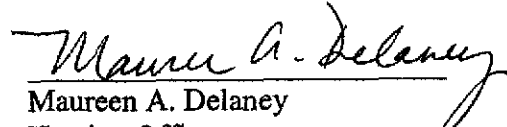
³⁵ FINRA Sanction Guidelines 38 (2007), available at www.finra.org/sanctionguidelines.

³⁶ The Hearing Officer did not order Respondent to pay restitution because the customers did not suffer a loss. Chase Bank did not require GM and MK to pay the unauthorized charges.

³⁷ Sanction Guidelines at 35.

IV. Order

Respondent is barred from associating with any member firm in any capacity for (1) acquiring and using credit cards without the authorization of the named cardholders, in violation of Conduct Rule 2110, as alleged in the First Cause of Action; and (2) failing to respond to requests for information, in violation of Procedural Rule 8210 and Conduct Rules 2110 and 2010, as alleged in the Second and Third Causes of Action. The bars shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.


Maureen A. Delaney
Hearing Officer

Copies to: Colleen M. McMahon-Hill (*via overnight courier and first-class mail*)
John Han, Esq. (*via first-class and electronic 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,

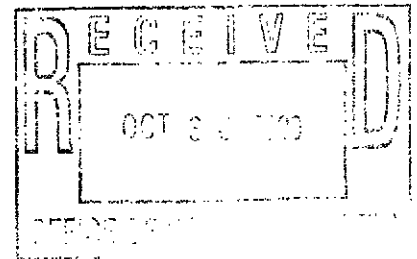
Complainant,

v.

Colleen M. McMahon-Hill
(CRD No. 5272881),

Respondent.

DISCIPLINARY PROCEEDING
No. 20080160404-01



COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Respondent Colleen M. McMahon-Hill (Respondent) applied for and obtained credit cards in the names of two individuals without their authorization and consent. After receiving the credit cards, Respondent used them to make unauthorized payments and purchases for her personal benefit. Further, Respondent failed to provide information requested by FINRA staff pursuant to Rule 8210 as part of staff's investigation of her unauthorized credit card use. Respondent's acquisition and use of credit cards constituted violations of NASD Conduct Rule 2110. Her failures to provide information constituted violations of NASD Procedural Rule 8210, NASD Conduct Rule 2110, FINRA Rule 8210 and FINRA Rule 2010.

RESPONDENT AND JURISDICTION

2. Respondent first became associated with a member of FINRA when she joined Chase Investment Services Corp (the Firm) in January 2007. Her association with the Firm was terminated on November 18, 2008, as a result of the Firm's discovery of the conduct described in the First Cause of Complaint, below. She has not been associated with a FINRA member since her termination. Pursuant to Article V, Section 4 of the FINRA By-laws, FINRA has jurisdiction to initiate a disciplinary proceeding against Respondent for two years following her termination. FINRA has jurisdiction to bring this action until November 17, 2010.
3. FINRA's jurisdiction extends to violations occurring during the period that Respondent was associated with the Firm or, with respect to the failure to provide information requested pursuant to Rule 8210, while she was subject to FINRA's jurisdiction to initiate a disciplinary action. Respondent's unauthorized acquisition and use of credit cards occurred in August and September 2008, while she was associated with the Firm. Her failures to provide information occurred in January 2009 and August 2009, during FINRA's two-year jurisdictional period.

FIRST CAUSE OF ACTION

Unauthorized Acquisition and Use of Credit Cards, NASD Conduct Rule 2110

4. The Department realleges and incorporates by reference paragraphs 1-3 above.
5. While associated with the Firm, Respondent was also an employee of the Firm's bank affiliate. Through the bank affiliate, Respondent applied for bank-issued credit cards in the names of GM and MK. Neither GM nor MK authorized Respondent to apply

for these credit cards or knew that Respondent had done so. Respondent did not inform the bank affiliate that she was applying for the credit cards in GM's and MK's names without their knowledge or consent.

6. Respondent directed the bank affiliate to send the credit cards to her home address; the credit card in GM's name was mailed to that address on August 14, 2008, and the credit card in MK's name was mailed to that address on August 20, 2008. Respondent received the credit cards.
7. On or about August 19, 2008, Respondent used the credit card in GM's name to make a payment in the amount of \$170.00 and a purchase in the amount of \$136.48. GM did not authorize or know about these credit card transactions.
8. Between August 22, 2008, and September 8, 2008, Respondent used the credit card in MK's name to make 23 purchases totaling approximately \$1,215.00. On August 21, 2008, and August 22, 2008, Respondent used the credit card in MK's name to make payments of, respectively, \$705.67 and \$2,115.82. On August 22, 2008, Respondent used the credit card in MK's name to withdraw cash at a bank affiliate Automated Teller Machine in the amount of \$1,300.00. MK did not authorize or know about these credit card transactions.
9. The bank affiliate discovered the unauthorized activity described in paragraph 7 above on or about August 26, 2008. On or about September 8, 2008, GM executed an affirmation of forgery and attested that she had not requested or used the credit card in her name or provided the card or her personal identification number to anyone.

10. The bank affiliate discovered the unauthorized activity described in paragraph 8 above on or about September 18, 2008. On or about October 3, 2008, MK executed an affirmation of forgery and attested that she had not requested or used the credit card in her name or provided the card or her personal identification number to anyone.
11. Neither GM nor MK paid for the unauthorized credit card transactions; the bank affiliate bore the losses. Respondent did not reimburse the bank affiliate. After its discovery of the unauthorized credit card applications and transactions, the bank affiliate terminated Respondent's employment and the Firm terminated her association.
12. Each instance in which Respondent acquired a credit card without authorization and under false pretenses and each use of a credit card in the name of a third party for her personal benefit without the named cardholder's authorization and consent, as described above, constituted conduct inconsistent with high standards of commercial honor and just and equitable principles of trade and a violation of NASD Conduct Rule 2110 by Respondent.

SECOND CAUSE OF ACTION

Failure to Provide Information, NASD Procedural Rule 8210 and NASD Conduct Rule 2110

13. The Department realleges and incorporates by reference paragraphs 1-3 and 5-12 above.
14. On December 11, 2008, FINRA staff sent to Respondent a written request for information pursuant to NASD Procedural Rule 8210. The written request was sent

by first-class and certified mail to Respondent's residential address of record according to the Central Registration Depository System (CRD). That address is [REDACTED] (CRD Address). Respondent was directed to provide information, on or before January 11, 2009, concerning the facts set forth on the Uniform Termination Notice for Securities Industry Registration submitted by the Firm to terminate her association.

15. The first-class and certified mailings described in paragraph 14 above were returned to FINRA marked "return to sender, unclaimed, unable to forward." Respondent did not provide the requested information.
16. The failure to provide information requested pursuant to NASD Procedural Rule 8210, as described in paragraphs 14 and 15 above, constituted violations of NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by Respondent.

THIRD CAUSE OF ACTION

Failure to Provide Information, FINRA Rule 8210 and FINRA Rule 2010

17. On August 6, 2009, FINRA staff sent to Respondent a written request for information pursuant to FINRA Rule 8210. The written request for information was sent by certified and first-class mail to Respondent's CRD address. The written request was also sent to another address (the alternate address) that Respondent had entered on a written statement provided to her former employer in connection with its investigation of the circumstances described in Cause One, above. Respondent was directed to provide, on or before August 20, 2009, the information requested in the August 6, 2009, written request.

18. The certified mailings of the August 6, 2009, written requests for information to the CRD address and the alternate address referenced in paragraph 17 above were returned to FINRA marked "return to sender, unclaimed, unable to forward" and "return to sender, insufficient address, unable to forward," respectively. The first-class mailing to the CRD address was returned marked "return to sender, attempted-not known, unable to forward." The first-class mailing to the alternate address was marked "return to sender, not deliverable as addressed, unable to forward." Respondent did not provide the requested information.

19. The failure to provide information requested pursuant to FINRA Rule 8210, as described in paragraphs 17 and 18 above, constituted violations of FINRA Rule 8210 and FINRA Rule 2010.

RELIEF REQUESTED

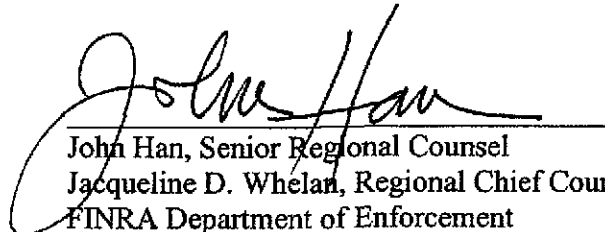
WHEREFORE, the Department respectfully requests that the Panel:

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

- 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: October 30, 2009



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