

**FINRA
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

**THOMAS M. ARETZ
(CRD No. 1083897),**

RESPONDENT.

**DISCIPLINARY PROCEEDING
No. 20090177643**

COMPLAINT

The Department of Enforcement ("Department") alleges:

SUMMARY

1. Respondent Thomas M. Aretz ("Aretz" or "Respondent") established an outside business activity, without the permission of his FINRA-regulated broker-dealer employer, in violation of NASD Rules 3030 and 2110, as well as FINRA Rule 2010. In connection with this business, Aretz borrowed approximately \$242,800 from five of his customers at his FINRA-regulated broker-dealer employer, in violation of NASD Rules 2370 and 2110, as well as FINRA Rule 2010. Aretz has not repaid these loans. Aretz also failed to provide information and documents, as requested by staff pursuant to FINRA Rule 8210, in violation of FINRA Rules 8210 and 2010.

RESPONDENT

2. Aretz first entered the securities industry in 1982, and worked continuously in the industry until 1994. In 1999, he returned to the industry and he passed the Series 6 exam.

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Between July 2000 and April 2009, Aretz was qualified as an Investment Company Products/Variable Contracts Representative, and he worked in that capacity for Kovack Securities, Inc. ("Kovack" or "the Firm"), a FINRA-regulated broker-dealer. Kovack terminated Aretz's registration on April 13, 2009, after Kovack discovered that Aretz had borrowed funds from a Firm customer without obtaining prior written approval from Kovack.

3. Although Aretz has not been associated with a FINRA-regulated broker-dealer since April 13, 2009, he 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 after the date upon which he ceased to be associated with a FINRA regulated broker-dealer and (2) the Complaint charges him with misconduct committed while he was associated with a FINRA-regulated broker-dealer and with failing to respond to FINRA requests for information during the two-year period after the date upon which he ceased to be associated with a FINRA-regulated broker-dealer.

FIRST CAUSE OF ACTION

Engaging in an Unapproved Outside Business Activity (NASD Rules 3030 and 2110 and FINRA Rule 2010)

4. The Department realleges and incorporates by reference paragraphs 1 through 3 above.

5. Rule 3030 provides, in relevant part:

No person associated with a member in any registered capacity shall be employed by, or accept compensation from, any other person as a result of any business activity, other than a passive investment, outside the scope of his relationship with his employer firm, unless he has provided prompt written notice to the member. Such notice shall be in the form required by the member.

6. Rule 2110, which was in effect when Aretz began at the Firm and through December 14, 2008, provided that all associated persons must at all times "observe high standards of commercial honor and just and equitable principles of trade."¹

7. Kovack's Written Supervisory Procedures manual stated, in relevant part

No Registered Representative shall be employed by, or accept compensation from, any other person as a result of any business activity without prior notification to [Kovack]

All outside business activity must be reported to [Kovack] using the outside business activity notification form This form is to be used to update Form U-4 for all [registered representatives].

It is the [registered representative's] responsibility to keep an accurate U-4 and promptly update his U-4 as required.

8. In or around 2006, Aretz formed a company called "All Bright Colors." Aretz owned and operated All Bright Colors until at least April 2009.

9. Aretz used All Bright Colors to purchase land for the development of a campground to be used by the owners of recreational vehicles.

10. All Bright Colors was an outside business activity that Aretz engaged in outside the scope of his relationship with Kovack.

Loans to All Bright Colors

11. BA, RJ, and KR were three of Aretz's customers who had brokerage accounts at Kovack.

12. Customer BA and Customer RJ made loans to Aretz in the form of checks payable to "All Bright Colors." BA's check payable to All Bright Colors, for \$25,000, was

¹ Rule 2110 was renumbered and superseded by Rule 2010, effective December 15, 2008, but the language of the Rule was unchanged.

deposited in January 2008. Further, two checks RJ made payable to All Bright Colors, which totaled \$35,000, were deposited in December 2007 and March 2008.

13. Aretz reported to these customers that he wanted these loans in order to purchase land for a recreational vehicle campground.

14. These checks were deposited into one of Aretz's bank accounts.

15. A check drawn in April 2009 by Aretz, which was returned for insufficient funds, was made payable to Customer KR. This check was drawn on the account where the BA and RJ checks were deposited. The face of the check identified the owner of the account as "TNT Enterprises of Destin, Inc., DBA [doing business as] All Bright Colors."

16. Aretz never made a written request or received permission from Kovack to engage in the outside business activity known as All Bright Colors.

17. As a result of the foregoing conduct, Aretz violated NASD Rules 3030 and 2110, and FINRA Rule 2010.

SECOND CAUSE OF ACTION

Borrowing From Customers

(NASD Rules 2370 and 2110 and FINRA Rule 2010)

18. The Department realleges and incorporates by reference paragraphs 1 through 17 above.

19. NASD Rule 2370 provides, in part, that no registered person may borrow money from any customer of that person, unless the FINRA-regulated broker-dealer employer has written procedures permitting such borrowing. In addition, Rule 2370 provides that no registered person may borrow money from customers unless either: the

customer and the representative are immediate relatives; the customer is a financial institution; the customer and the representative are both employees of the same firm; the lending arrangement is based on a personal or business relationship outside of the broker-customer relationship.

Respondent Was the Firm's Assigned Registered Representative for Customers CR, BA,

RJ, KR, and CM

20. Customers CR, BA, RJ, KR, and CM were all individuals who were customers of Kovack for whom Aretz was the assigned registered representative.

21. Aretz borrowed a total of approximately \$242,800 from these customers, and has not repaid any of these loans.

Customer CR

22. Respondent borrowed \$50,000 from customer CR, in the following manner. On or about December 13, 2006, Aretz borrowed \$20,000 from CR, in a check drawn by CR and made payable to "Tom Aretz," and, on or about January 10, 2007, Aretz borrowed \$30,000 from CR, in a check drawn by CR and made payable to "Tom Aretz."

23. These loans, which totaled \$50,000, were also memorialized in a promissory note that Aretz and CR signed on or about January 20, 2007. The note stated:

[CR] has agreed to loan Thomas Aretz \$50,000 for a period of one year at the rate of 12% or higher if the Stock Market produces a higher return.

24. On or about January 20, 2008, CR and Aretz executed an amended promissory note regarding these loans. This amended note also added to the amount of the underlying loan the interest that had by then accrued, and the amended note stated:

[CR] has agreed to loan Tom Aretz \$56,000 for one year at an interest Rate [sic] of 12%. Repayment will be in Jan. 2009.

25. On or about February 12, 2009, CR and Aretz executed another amended promissory note regarding these loans, which was appended to the January 10, 2007 promissory note, and which stated:

[CR] and Thomas Aretz have agreed to extend this note and Thomas Aretz will start to pay interest [sic] at the rate of 10% or \$563.00 per month.

Customer BA

26. Aretz borrowed a total of \$40,000 from customer BA, in the following manner. On or about November 30, 2007, Aretz borrowed \$15,000 from customer BA, in a check drawn by BA and made payable to "Tom Aretz." On or about January 30, 2008, Aretz borrowed an additional \$25,000 from BA, in a check drawn by BA and made payable to "All Bright Colors Inc."

27. On or about January 30, 2008, Aretz and BA executed a promissory note memorializing these loans. The promissory note stated:

[BA] has agreed to loan \$40,000 to All Bright Colors Inc (Tom Aretz) for one year at the interest rate of 10%, to be repaid in Jan[uary] 2009.

Customer RJ

28. Aretz borrowed \$102,800 from customer RJ, in the following manner. In five separate checks, dated between December 18, 2007 and March 28, 2008, all drawn by RJ, and all made payable to "All Bright Colors," Aretz borrowed \$100,000. Three of these checks bore the notation "Tom Aretz Loan." On or about October 14, 2008, Aretz borrowed an additional \$2,800 from RJ, in a check drawn by RJ and made payable to "Tom Aretz."

Customer KR

29. On or about October 17, 2007, Aretz borrowed \$25,000 from customer KR, in a check drawn by KR, made payable to Bank of America, and bearing the notation "Cash for Loan for Tom Aretz."

30. On or about October 17, 2007, Aretz executed a promissory note memorializing this \$25,000 loan. Aretz's signature was notarized and the promissory note stated that Aretz would repay the loan, with 6% interest, on or before November 28, 2007.

31. On or about February 5, 2008, Aretz and KR executed an amended promissory note regarding this \$25,000 loan. Aretz's signature was notarized and the promissory note stated that Aretz would repay the \$25,000 loan, with interest at the rate of 10%, in January 2009.

32. On or about March 11, 2009, Aretz executed an amended promissory note regarding this \$25,000 loan. Aretz's signature was notarized and the note stated that, considering the interest and principal, Aretz would repay "the new amount" of \$28,107, plus 10% interest, on or before February 15, 2011.

Customer CM

33. On or about April 30, 2007, Aretz borrowed \$25,000 from CM, and memorialized the loan in a promissory note which stated that Aretz would borrow the money for six months and would pay at least 10% interest on the loan.

34. CM understood that the loan would be used by Aretz to purchase land.

Firm Policy

35. At the time of each of the aforementioned loans, Aretz was associated with Kovack in a registered capacity.

36. Kovack prohibited its registered representatives from borrowing funds from clients without the express written consent of the Firm's Chief Compliance Officer or his designee, or Kovack Senior Management.

37. Aretz did not request or obtain permission from Kovack to borrow money from customers of the Firm.

38. As a result of the foregoing conduct, Aretz violated NASD Rules 2370 and 2110, and FINRA Rule 2010.

THIRD CAUSE OF ACTION

**Failure to Respond to a Request for Information and Documents
FINRA Rule 8210 and FINRA Rule 2010**

39. The Department realleges and incorporates by reference paragraphs 1 through 38 above.

40. On or about March 31, 2010, FINRA staff sent a letter via certified mail and first class mail to Aretz's then most-current residential address, according to the Central Registration Depository ("CRD"). The CRD address for Kovack was at the time, and is currently, [REDACTED]

[REDACTED] The letter was sent pursuant to Rule 8210, and requested documents and information concerning: the circumstances that led to Aretz's termination from the Firm; whether Aretz had ever borrowed money from a customer; and whether Aretz had ever engaged in outside business activity. The requested information and documents were to be provided to the Department on or before April 21, 2010.

41. The letter sent by certified mail was returned to the Department on or about April 26, 2010, with the notation by the United States Postal Service "Return to Sender -- Unclaimed -- Unable to Forward." The letter sent by first class mail was not returned to Enforcement. Aretz did not provide the information and documents requested in the letter dated March 31, 2010.

42. On or about April 30, 2010, FINRA staff sent a second request for information and documents to Aretz, at his CRD address, via certified and first class mail, pursuant to FINRA Rule 8210. The April 30, 2010 letter also requested documents and information concerning: the circumstances that led to Aretz's termination from the Firm; whether Aretz had ever borrowed money from a customer; and whether Aretz had ever engaged in outside business activity. The April 30, 2010 letter enclosed a copy of the March 31, 2010 letter. The information and documents requested in the April 30, 2010 letter were to be provided to the Department on or before May 17, 2010.

43. The Return Receipt for the certified letter was returned to FINRA signed by "Tom Aretz." The letter sent by first class mail was not returned. Aretz did not provide the information and documents requested in the letter dated April 30, 2010.

44. By virtue of the foregoing, Aretz violated FINRA Rules 8210 and 2010.

PRAYER

WHEREFORE, the Department respectfully requests that the Panel:

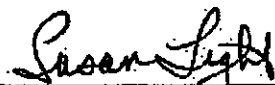
- A. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed.
- B. order that the Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA

DEPARTMENT OF ENFORCEMENT

Date:

January 28, 2011



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