

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DONALD ANTHONY DUARTE, JR.
(CRD No. 2879683),

Respondent.

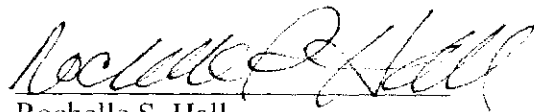
Disciplinary Proceeding
No. 2009018133802

Hearing Officer – RSH

ORDER CORRECTING DISCIPLINARY PROCEEDING NUMBER

On November 11, 2011, the Department of Enforcement filed a motion to change the disciplinary proceeding number in this proceeding from 2009018133801 to 2009018133802. For good cause shown, the motion is granted and the disciplinary proceeding number is changed to 2009018133802 as appears in the case caption above.

SO ORDERED.



Rochelle S. Hall
Hearing Officer

Dated: November 11, 2011
Washington, DC

Copies to: Donald Anthony Duarte, Jr. (via first-class mail)
Lane A. Thurgood, Esq. (via electronic and first-class mail)
David R. Sonnenberg, Esq. (via electronic mail)

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DONALD ANTHONY DUARTE, JR.
(CRD No. 2879683),

Respondent.

Disciplinary Proceeding
No. 2009018133801

Hearing Officer – RSH

DEFAULT DECISION

August 9, 2011

Respondent is barred from associating with any FINRA-registered firm in any capacity for failing to comply in a timely manner with FINRA requests for information and testimony, in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010. In light of the bar, sanctions are not imposed for: (1) borrowing from a customer, in violation of NASD Rules 2370 and 2110; (2) engaging in an unapproved outside business activity, in violation of NASD Conduct Rules 3030 and 2110; and (3) making misrepresentations to his member firm, in violation of NASD Rule 2110. In addition, Respondent is ordered to pay restitution to a customer.

Appearances

Lane A. Thurgood and Susan Light, for the Department of Enforcement.

No appearance by or on behalf of Donald A. Duarte, Jr.

DECISION

I. Introduction

The FINRA Department of Enforcement (“Enforcement”) filed the attached Complaint with the Office of Hearing Officers on March 14, 2011. The Complaint charges Donald Anthony Duarte, Jr. (“Respondent”) with: (1) borrowing from a customer, in violation of NASD Rules 2370 and 2110; (2) engaging in an unapproved outside business activity, in violation of NASD

Conduct Rules 3030 and 2110; (3) making misrepresentations to his member firm, in violation of NASD Rule 2110; and (4) failing to comply in a timely manner with FINRA requests for information and testimony, in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010.¹

Respondent did not answer or otherwise respond to the Complaint. Accordingly, on June 6, 2011, Enforcement filed a Motion for Entry of Default Decision and Request for Sanctions (“Default Motion”) with the Office of Hearing Officers, together with the declaration of Lane A. Thurgood, Esq. (“Decl.”) and five exhibits.² For the reasons set forth below, the Hearing Officer found Respondent in default and granted Enforcement’s Default Motion.

II. Procedural History

On March 14, 2011, Enforcement served the Complaint and the First Notice of Complaint on Respondent by mailing them to his most recent address recorded in the Central Registration Depository (“CRD”) by first-class certified mail, return receipt requested, and first-class mail.³ Respondent’s mother signed for the certified mailing on March 17, 2011.⁴

Respondent did not answer or otherwise respond to the Complaint.

On April 13, 2011, Enforcement served a Second Notice of Complaint and a copy of the Complaint on Respondent by mailing it to his CRD address by first-class certified mail, return receipt requested, and first-class mail.⁵ Respondent’s mother signed for the certified mailing.⁶

¹ The FINRA Rules, which include NASD Procedural and Conduct Rules, are available at www.finra.org/Rules. On December 15, 2008, the first phase of new consolidated FINRA Rules went into effect. *See*, Regulatory Notice 08-57. In the rule consolidation, NASD Rule 2110 was renumbered to FINRA Rule 2010. The findings in this Default Decision refer to the rules that were in effect at the time of the violations.

² Enforcement’s exhibits are labeled CX-1 through CX-5.

³ Decl. ¶ 44.

⁴ *Id.* ¶ 46; CX-3.

⁵ *Id.* ¶ 48.

⁶ *Id.* ¶ 50; CX-5.

To date, Respondent has not answered or otherwise responded to the Complaint. Accordingly, the Hearing Officer held the Respondent in default and deemed the allegations in the attached Complaint admitted pursuant to Rules 9215(f) and 9269(a).

III. Findings of Fact and Conclusions of Law

A. Background

Respondent was associated with Wells Fargo Investments, LLC (“Wells Fargo”), a FINRA-registered firm, from August 28, 2006, until April 27, 2009, during which period he was registered with FINRA as a General Securities Representative.⁷

On May 14, 2009, Wells Fargo filed a Uniform Termination Notice for Securities Industry Registration (“Form U5”) with FINRA on Respondent’s behalf. The Form U5 reported that Respondent had voluntarily resigned from the firm “after allegations were made that accused him of violating investment-related statutes, regulations, rules or industry standards of conduct.” The Form U5 further reported that Respondent had admitted borrowing money from a client and was making payments consistent with the terms of a loan agreement.⁸ FINRA staff commenced the investigation that led to this proceeding after it received the Form U5.⁹

B. Jurisdiction

FINRA has jurisdiction over this disciplinary proceeding, pursuant to Article V, Section 4 of FINRA’s By-Laws, because (1) the Complaint was filed within two years after FINRA terminated Respondent’s registration, and (2) the Complaint charges him with misconduct that occurred while he was associated with a FINRA-registered firm, and with failing to respond

⁷ *Id.* ¶ 1; CX-1, at 1.

⁸ CX-2.

⁹ Decl. ¶¶ 3,4.

timely to Enforcement's requests for information made during the two-year period following the termination of his FINRA registration.¹⁰

C. Borrowing from a Customer

The First Cause of Action alleges that Respondent borrowed \$50,000 from customer DM, which loan Respondent has not repaid fully. Specifically, the Complaint alleges that in early 2008, Respondent told DM that he wanted to start a business buying up distressed properties and that in order to do this he needed money to establish a credit line. Respondent persuaded DM to lend him \$50,000, and on June 21, 2008, Respondent executed a promissory note to DM. The promissory note required Respondent to make monthly payments of \$416.67 per month for 12 months, with a balloon payment of \$50,000 to be paid on June 4, 2009. On June 23, 2008, DM had a cashier's check written to Respondent for the loan amount. In the ensuing months, Respondent made most of the 12 monthly payments. On April 30, 2009, Respondent paid \$25,000 of the loan balance to DM. To date, Respondent has not repaid the remaining \$25,000 balance.¹¹

When Respondent received the loan from DM, Wells Fargo's written procedures prohibited employees from accepting or soliciting loans from firm customers.¹²

The Hearing Officer finds that the allegations in the Complaint are sufficient to establish that Respondent violated NASD Rule 2370. During the relevant period, Conduct Rule 2370 provided, in pertinent part

(a) No person associated with a member in any registered capacity may borrow money from or lend money to any customer of such person unless: (1) the

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

¹¹ Decl. ¶¶ 8-12.

¹² Decl. ¶ 13.

member has written procedures allowing borrowing and lending of money between such registered persons and customers of the member....¹³

It is well established that any conduct that violates an NASD Conduct Rule is a violation of Conduct Rule 2110 (now Rule 2010).¹⁴

D. Failure to Disclose Outside Business Activity

The Second and Third Causes of Action allege that Respondent violated NASD Conduct Rules 3030 and 2110 by engaging in an outside business activity without providing Wells Fargo with written notice of the activity. On June 11, 2008, in connection with DM's \$50,000 loan to Respondent, Respondent signed a separate agreement with DM, stating that Respondent would pay to DM two percent of the profits obtained in Respondent's purchases of distressed properties. Respondent failed to disclose or obtain written permission from Wells Fargo of his outside business activity of purchasing distressed properties.¹⁵

At the time, NASD Rule 3030 prohibited any person associated with a member firm from being "employed by, or accept[ing] 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."¹⁶ The rule was "intended to improve the supervision of registered personnel by providing information to member firms concerning outside business activities of their representatives."¹⁷ Member firms are to receive "prompt notification of *all outside business activities* of their associated persons so

¹³ Rule 2370 contains other conditions under which borrowing from customers is permissible; however, they are not relevant here because Wells Fargo's written procedures prohibited all borrowing from customers.

¹⁴ *Stephen J. Gluckman*, Exchange Act Rel. No. 41628, 1999 SEC LEXIS 1395, at *22 (July 20, 1999) (citations omitted).

¹⁵ Decl. ¶¶ 10, 16.

¹⁶ On December 15, 2010, FINRA Rule 3270 replaced NASD Rule 3030.

¹⁷ NASD Notice to Members 88-86 (Nov. 1988).

that the member's objections, if any, to such activities [can] be raised at a meaningful time and so that appropriate supervision [can] be exercised."¹⁸

The Hearing Officer finds that the facts alleged in the Second and Third Causes of Action are sufficient to establish that Respondent violated NASD Conduct Rules 3030 and 2110.

E. Misrepresentations to Firm

The Fourth Cause of Action alleges that Respondent violated Rule 2110 by making misrepresentations to Wells Fargo in an annual compliance certification. On November 4, 2008, Respondent certified that he had not accepted any loans from customers, and was not engaged in any outside business activities. In fact, he had already obtained a loan from DM and was engaged in an outside business activity.

Rule 2110 provides that registered persons "shall observe high standards of commercial honor and just and equitable principles of trade." The Hearing Officer finds that the facts alleged in the Fourth Cause of Action are sufficient to establish that, by making misrepresentations to his firm, Respondent violated Rule 2110.

F. Untimely Responses to Requests for Information and Testimony

The Fifth Cause of Action alleges that Respondent failed to respond in a timely manner to requests for information and testimony that FINRA staff issued in conjunction with the staff's investigation into Respondent's outside business activity and borrowing from customers while he was associated with Wells Fargo. The requests were issued pursuant to Rule 8210, which requires member firms and persons subject to FINRA's jurisdiction to provide information requested by FINRA. Respondent did not respond to FINRA's requests until after FINRA sent him a written Notice of Suspension.

¹⁸ *Id.* (emphasis added); see also *Department of Enforcement v. Schneider*, No. C10030088, 2005 NASD Discip. LEXIS 6, at *13 (N.A.C. Dec. 7, 2005) (explaining that NASD Rule 3030's reach extends to all outside business activity, not just securities-related activity).

FINRA staff sent two requests for information to Respondent at his CRD address by certified and first-class mail. The first request was dated July 1, 2009, and the second was dated October 9, 2009. The delivery receipts for both requests were signed; however, Respondent did not respond to either request by their due dates.¹⁹

FINRA staff also sent two requests for testimony to Respondent at his CRD address by certified and first-class mail. The first request was dated February 2, 2010, and the second was dated February 24, 2010. The delivery receipts for both requests were signed; however, Respondent did not respond to either request, and he did not appear for testimony on the dates specified in the requests.²⁰

On March 17, 2010, FINRA sent Respondent a written Notice of Suspension pursuant to Rule 9552, stating that on April 12, 2010, he would be suspended from associating with any FINRA member because he failed to provide information and testimony to FINRA. The same written notice stated that if he failed to request termination of the suspension within six months of the date of the Notice of Suspension, he would automatically be barred on September 20, 2010.²¹

On September 17, 2010, Respondent faxed a letter to FINRA, stating that he would comply with FINRA's requests for information and testimony. On October 11, 2010, Respondent submitted a statement of facts as requested in FINRA's prior requests for information. This submission was made more than 14 months after its original due date. On October 14, 2010,

¹⁹ Decl. ¶¶ 33-37.

²⁰ *Id.* ¶¶ 39-42.

²¹ *Id.* ¶¶ 43-44.

more than eight months after his originally-scheduled date for testimony, Respondent appeared for testimony, as requested by the staff on February 2, 2010, and February 24, 2010.²²

On October 28, 2010, FINRA staff sent a request for information to Respondent to follow-up on his testimony. The request was sent to Respondent at his CRD address by certified and first-class mail. The delivery receipt for the request shows that his mother signed for the letter. The due date for Respondent's response was November 5, 2010; however he did not respond by that date, and did not contact the staff to request an extension of time. Instead, he responded late, on December 6, 2010.²³

The Hearing Officer finds that the foregoing facts establish that Respondent violated Rule 8210 by failing to respond in a timely manner to FINRA's requests for information and testimony. The fact that Respondent eventually responded to the 8210 Requests "does not absolve him of liability for violating Rules 8210 and 2110."²⁴ The submission of information after FINRA institutes proceedings is no defense to a finding of violation. FINRA should not have to bring a disciplinary proceeding in order to obtain information requested pursuant to Rule 8210.²⁵ A violation of Rule 8210 is also a violation of Rule 2010.²⁶

IV. Sanctions

A. Borrowing from a Customer

The FINRA Sanction Guidelines ("Sanction Guidelines") do not provide specific sanctions for violations of Rule 2370. According to the General Principals Applicable to All

²² *Id.* ¶¶ 45-47.

²³ *Id.* ¶¶ 48-49.

²⁴ *Ashton Noshir Gowadia*, Exchange Act Rel. No. 40410, 1998 SEC LEXIS 1887 (Sept. 8, 1998).

²⁵ *Joseph Ricupero*, Exchange Act Rel. No. 62891, at *12 (Sept. 10, 2010); *Mark Allen Elliot*, Exchange Act Rel. No. 34194; 1994 SEC LEXIS 1765 (June 10, 1994).

²⁶ *Department of Enforcement v. Hoeper*, No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (N.A.C. Nov. 2, 2001).

Sanction Determinations (“General Principles”), adjudicators should impose sanctions that are designed to deter future misconduct and improve overall business standards.

An NASD Notice to Members provides guidance on Rule 2370’s importance: “Loans between registered persons and their customers are of legitimate interest to NASD and member firms because of the potential for misconduct. NASD has brought disciplinary action against registered persons who have violated just and equitable principles of trade by taking unfair advantage of their customers by inducing them to lend money in disregard of the customers’ best interests, or by borrowing funds from, but not repaying, customers.”²⁷

In addition, adjudicators are directed to consider whether the respondent attempted to conceal his misconduct, and whether he accepted responsibility for and acknowledged his misconduct to his employer or a regulator prior to detection and intervention by the employer or regulator.²⁸

Respondent’s violation of Rule 2370 was aggravated because he failed to fully repay the loan, and he failed to disclose the loan on an annual compliance questionnaire.

In light of the aggravated nature of Respondent’s misconduct and the lack of any mitigating factors, the Hearing Officer finds that a one-year suspension is the appropriate sanction for this violation. In addition, the Hearing Officer finds that Respondent should be ordered to pay restitution to his customer, in the amount of \$25,000.

B. Failing to Disclose an Outside Business Activity

The Sanction Guidelines governing outside business activities recommend that, where the outside business activities involve aggravating circumstances, adjudicators consider a suspension

²⁷ NASD Notice to Members 03-62 (Oct. 2003).

²⁸ FINRA Sanction Guidelines 2, 10 (2011), www.finra.org/sanctionguidelines.

of up to one year, and in egregious cases, a longer suspension or bar.²⁹ Under the facts of this case, the relevant principal considerations in determining sanctions for engaging in outside business activities in violation of Conduct Rule 3030 include: (i) whether the outside activity involved customers of the firm, and (ii) whether the respondent misled his or her employer member firm about the existence of the outside activity or otherwise concealed the activity from the firm.

The evidence supports the finding that Respondent borrowed \$50,000 from his customer, which he did not fully repay, to fund his business. In addition, Respondent concealed his misconduct from his firm by submitting a compliance questionnaire that failed to disclose his business of investing in distressed properties. There is no evidence of mitigating factors in the record. The Hearing Officer finds that this is an aggravated case and that a one-year suspension is the appropriate sanction.

C. Misrepresentations to Firm

While the Sanction Guidelines do not contain a guideline for misrepresentations to a member firm, the guideline for falsification of records is analogous because Respondent made his misrepresentations by including false information in firm records, *i.e.*, his annual compliance questionnaire. For falsification of records, the Sanction Guidelines recommend a fine of \$5,000 to \$100,000, and a suspension of up to two years where mitigating factors exist, or a bar in egregious cases.³⁰ The Hearing Officer finds that an appropriate sanction in this case is a one-year suspension.

²⁹ Sanction Guidelines 13.

³⁰ Sanction Guidelines 37.

D. Untimely Responses to Requests for Information and Testimony

Since FINRA lacks subpoena power, it must rely upon Rule 8210 “to police the activities of its members and associated persons.”³¹ “[A member’s] failure to respond to [FINRA’s] information requests frustrates [FINRA’s] ability to detect misconduct, and such inability in turn threatens investors and markets....”³² Because compliance with Rule 8210 is necessary for FINRA to carry out its regulatory functions, the Sanction Guidelines, as recently amended, make clear that where an individual does not respond until after FINRA files a complaint, adjudicators should apply the presumption that the failure constitutes a complete failure to respond. In this case, Respondent did not provide the information FINRA requested until FINRA filed a Notice of Suspension. Even then, Respondent did not respond until a few days before his suspension was to become permanent.

The Principal Considerations specific to determining sanctions for this violation—(1) the importance of the information requested as viewed from FINRA’s perspective, (2) the number of requests made and the degree of regulatory pressure required to obtain a response, and (3) the length of time to respond—support the imposition of a bar. The nature of the information FINRA sought from Respondent was important and goes to the heart of its regulatory obligation—investor protection. FINRA staff was attempting to determine whether Respondent had obtained a loan from a firm customer and whether he was conducting any outside business activities. The staff sent numerous requests to Respondent, and was required to file a Notice of Suspension before it got Respondent’s attention. By the time Respondent provided information, 14 months had elapsed since the staff first requested the information. There is no evidence of

³¹ *Joseph Patrick Hannan*, Exchange Act Rel. No. 40438; 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998).

³² *PAZ Sec.*, Exchange Act Rel. No. 57656, 2008 SEC LEXIS 820, at *13 (Apr. 11, 2008), *aff’d sub nom*, *PAZ Sec. v. SEC*, 566 F.3d 1172, 2009 U.S. App. LEXIS 11500 (May 29, 2009.)

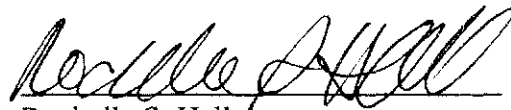
mitigating factors in the record. The Hearing Officer finds that a bar from associating with any FINRA registered firm in any capacity is the appropriate sanction.

V. Order

Donald Anthony Duarte, Jr. is barred from associating with any FINRA registered firm in any capacity for failing to respond in a timely manner to requests for information and testimony, in violation of Procedural Rule 8210 and Conduct Rule 2010. The bar shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA. In light of the bar, the suspensions for his other violations would not serve any remedial purpose and will not be imposed.

In addition, Respondent is ordered to pay restitution³³ to DM in the amount of \$25,000, together with interest on the unpaid balance, calculated at the rate established under Section 6621(a)(2) of the Internal Revenue Code, until paid in full.³⁴

So Ordered.

A handwritten signature in black ink, appearing to read 'Rochelle S. Hall', written over a horizontal line.

Rochelle S. Hall
Hearing Officer

Copies to: Donald Anthony Duarte, Jr. (via overnight courier and first-class mail)
Lane A. Thurgood, Esq. (via electronic and first-class mail)
David R. Sonnenberg, Esq. (via electronic mail)

³³ The customer is identified in the addendum to the Complaint, which is attached to this decision, which is served only on the parties.

³⁴ Interest is calculated from the due date of the balloon payment on the promissory note.

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Donald Anthony Duarte, Jr.
(CRD No. 2879683),

Respondent.

DISCIPLINARY PROCEEDING
No. 2009018133801

Hearing Officer:

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. On or about June 23, 2008, Respondent Donald Anthony Duarte Jr. ("Duarte") obtained a \$50,000 loan from customer DM, which was prohibited by his firm's policies. Duarte thereby violated NASD Rules 2370 and 2110. The promissory note, which memorialized the terms of the loan, required Duarte to make monthly payments of \$416.67 per month for 12 months with a balloon payment of \$50,000 on June 4, 2009. Duarte made most of the 12 monthly payments and paid \$25,000 to DM on April 30, 2009. Duarte paid the \$25,000 to DM shortly after Duarte's supervisor learned of the loan and told Duarte that the circumstances of the loan would be reviewed by the firm. To date, Duarte has not repaid the remaining balance.

2. In June 2008, Duarte told DM that he needed to borrow the funds to set up a line of credit to invest in real estate through an outside business activity. On June 11, 2008, Duarte provided DM with a document stating that she would be entitled to two percent of Duarte's profits within the limited liability partnership. However, Duarte failed to disclose and obtain prior written approval from his firm for the outside business activity and thereby violated NASD Rules 3030 and 2110. In the alternative, if there was no outside business activity or intention to establish one, then Duarte misled DM and thereby failed to observe high standards of commercial honor and just and equitable principles of trade in violation of NASD Rule 2110.
3. Moreover, on November 4, 2008, Duarte misstated to his member firm that he was not engaged in outside business activities. Duarte thereby violated NASD Rule 2110.
4. Between July 1, 2009, and October 28, 2010, FINRA sent Duarte numerous written requests for information and testimony. Duarte failed to respond to any of the aforementioned requests in a timely manner and thereby violated FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

5. Duarte entered the securities industry in 1997 as a general securities representative with a FINRA (formerly NASD) registered firm.
6. In March 1998, he left that firm and for the next eight years worked at various registered firms in the Los Angeles, California area.
7. In August 2006, Duarte began working for Wells Fargo Investments, LLC, where he remained until he resigned in April 2009.

8. Although Duarte has not been associated with a FINRA member firm since April 27, 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 member and (2) the Complaint charges him with misconduct committed while he was associated with a FINRA member and with failing to respond to FINRA requests for information and with failing to appear for on-the-record testimony during the two-year period after the date upon which he ceased to be associated with a FINRA member.

FIRST CAUSE OF ACTION
UNAUTHORIZED CUSTOMER LOAN
NASD Rules 2370 AND 2110

9. The Department realleges and incorporates by reference paragraphs 1-8 above.
10. Customer DM, currently 65 years old, became Duarte's customer in 2003, when she received an inheritance settlement of approximately \$400,000 and opened an account with Duarte.
11. Customer DM followed Duarte through his changes in employing firms over the ensuing years.
12. In early 2008, Duarte told DM that he wanted to start a business buying up distressed properties and that in order to do this, he needed money to establish a credit line.
13. Duarte then persuaded DM to lend him \$50,000.
14. In April 2008, DM liquidated two mutual funds from her Wells Fargo brokerage account, and transferred approximately \$70,000 to her personal checking account.

On June 21, 2008, Duarte executed a promissory note for \$50,000 to DM. On June 23, 2008, DM had a cashiers' check written to Duarte for the loan amount.

15. The promissory note memorialized the terms of the loan and required Duarte to make monthly payments of \$416.67 per month for 12 months with a balloon payment of \$50,000 to be paid on June 4, 2009. In the ensuing months, Duarte made most of the 12 monthly payments.
16. On April 20, 2009, Duarte's supervisor learned of the loan and told Duarte that the circumstances of the loan would be reviewed by the firm.
17. Shortly thereafter, on April 30, 2009, Duarte paid \$25,000 of the loan balance to DM. To date, Duarte has not repaid the remaining \$25,000 balance on the balloon payment.
18. When Duarte borrowed money from DM, NASD Rule 2370¹ prohibited an associated person from borrowing money from a customer except in certain narrowly defined circumstances, which did not apply. By virtue of the foregoing, Duarte violated NASD Rules 2370 and 2110.²

SECOND CAUSE OF ACTION
FAILURE TO DISCLOSE OUTSIDE BUSINESS ACTIVITY
NASD Rules 3030 and 2110

19. The Department realleges and incorporates by reference paragraphs 1-18 above.
20. As alleged above, in early 2008, Duarte told DM that he needed to borrow \$50,000 from her to set up a line of credit in order to invest in a business of purchasing distressed real estate.

¹ On June 14, 2010, FINRA Rule 3240 replaced NASD Rule 2370.

² On December 15, 2008, FINRA Rule 2010 replaced NASD Rule 2110.

21. As an additional inducement to DM to loan \$50,000 to Duarte, he provided DM with a document stating that she would be entitled to two percent of Duarte's profits within the limited liability partnership that intended to purchase distressed properties. This document was signed by Duarte and dated June 11, 2008.
22. At the time, NASD Rule 3030³ provided that no person registered with a member "shall be employed by, or accept compensation from, any other person as a result of any business activity . . . outside the scope of his relationship with his employer firm, unless he has provided prompt written notice to the member . . . in the form required by the member." Duarte failed to disclose and obtain prior written approval from his employing firm for the outside business activity of purchasing properties in distress. By virtue of the foregoing, Duarte violated NASD Rules 3030 and 2110.

THIRD CAUSE OF ACTION (ALTERNATIVE TO SECOND CAUSE OF ACTION)
OBTAINING CUSTOMER LOAN BY FALSE STATEMENTS
NASD Rule 2110

23. The Department realleges and incorporates by reference paragraphs 1-22 above.
24. If there was no outside business activity or intention to establish one, then Duarte misled DM by falsely stating that he wanted to start a business buying up distressed properties and that in order to do this, he needed money to establish a credit line, or words to that effect, and by providing DM with a document stating that she would be entitled to two percent of Duarte's profits within the limited liability partnership.
25. Duarte thereby obtained the loan from the customer by false statements and failed to observe high standards of commercial honor and just and equitable principles of trade and thereby violated NASD Rule 2110.

³ On December 15, 2010, FINRA Rule 3270 replaced NASD Rule 3030.

FOURTH CAUSE OF ACTION
MISREPRESENTATIONS TO FIRM
NASD RULE 2110

26. The Department realleges and incorporates by reference paragraphs 1-25 above.
27. Throughout Duarte's employment with Wells Fargo, the firm required all registered representatives, including Duarte, to certify on an annual basis that they had reviewed and were familiar with the firm's compliance manual and would abide by its terms.
28. Throughout Duarte's employment with the firm, its compliance manual prohibited its employees from soliciting or accepting loans from any customer of the firm.
29. On November 4, 2008, Duarte attested that he had reviewed the firm's compliance manual, that he would abide by its terms, that he had disclosed all relevant information, and that he did not have any outside business activity. At that time he had already obtained a loan from DM and was engaged in undisclosed outside business activities.
30. By misrepresenting that he would abide by the firm's compliance manual, that he had disclosed all relevant information, and that he did not have any outside business activity, Duarte failed to observe high standards of commercial honor and just and equitable principles of trade and thereby violated NASD Rule 2110.

FIFTH CAUSE OF ACTION
FAILURE TO COMPLY IN TIMELY MANNER WITH
FINRA REQUESTS FOR INFORMATION AND TESTIMONY
FINRA RULES 8210 AND 2010

31. The Department realleges and incorporates by reference paragraphs 1-30 above.
32. FINRA Rule 8210(a) states that "For the purposes of an investigation, complaint, examination or proceeding authorized by the FINRA By-laws or rules, an Adjudicator

or FINRA staff shall have the right to: (1) require a member, person associated with a member, or person subject to FINRA's jurisdiction to provide information orally, in writing, or electronically...and to testify at a location specified by FINRA staff, under oath or affirmation administered by a court reporter or a notary public if requested, with respect to any matter involved in the investigation, complaint, examination, or proceeding...."

33. On July 1, 2009, pursuant to FINRA Rule 8210, FINRA sent a request letter to Duarte at his Central Registration Depository ("CRD") address, requesting that he provide staff with a written statement. FINRA staff sent the request by certified and U.S. mail. According to U.S. Postal Service records, the letter was delivered to the CRD address and signed for by his sister Reina Duarte.
34. Duarte's response to FINRA's first 8210 request for information was due on July 31, 2009.
35. Duarte failed to respond to FINRA's first written request for information.
36. On October 9, 2009, pursuant to FINRA Rule 8210, FINRA sent a second written request for a written statement from Duarte with a due date of October 23, 2009. FINRA staff sent this request by certified and U.S. mail to Duarte's CRD address. U.S. Postal Service records indicate this letter was also delivered.
37. Duarte failed to respond to FINRA's second written request for information.
38. When Duarte failed to respond to FINRA's second written request for information, FINRA staff conducted a LexisNexis search and located an alternative addresses for Duarte in Tustin, California.

39. On February 2, 2010, pursuant to Rule 8210, FINRA staff sent a written request to Duarte requesting that he appear and provide testimony under oath on oral examination at FINRA offices in Washington, DC on February 17, 2010. FINRA staff sent this request by certified and United States mail to both Duarte's CRD address and the newly located Tustin, California, address. The letter requested Duarte to contact the staff by February 9, 2010, to confirm his availability for testimony. According to U.S. Postal service records the letter addressed to Duarte's CRD address was delivered and signed for by his mother, Irene Martinez. The letter to Duarte's newly located address in Tustin, California, went unclaimed and was eventually returned to FINRA. Notices were left at the residence by U.S. Postal service notifying Duarte of the attempts to deliver on February 5, 2010 and February 17, 2010.
40. Duarte failed to either contact the staff to confirm his availability for testimony or appear for testimony on February 17, 2010.
41. On February 24, 2010, FINRA sent a second written request for testimony under oath on oral examination to be held on March 8, 2010. FINRA staff sent this request by certified and U.S. mail to both Duarte's CRD address and the Tustin, California address. This letter requested Duarte contact FINRA staff by March, 2, 2010 to confirm his appearance. According to U.S. Postal records, the letter addressed to Duarte's CRD address was delivered and signed for by Reina Duarte. The letter to Duarte's newly located address in Tustin, California went unclaimed and was returned to FINRA. Notices were left at the residence, by U.S. Postal service, notifying Duarte of the attempts to deliver on February 26, 2010 and March 5, 2010.

42. Duarte failed to either contact FINRA staff to confirm his appearance, or appear for the scheduled testimony date.
43. On March 17, 2010, FINRA sent Duarte a written Notice of Suspension pursuant to FINRA Rule 9552 stating that on April 12, 2010, he would be suspended from associating with any FINRA member in any capacity because he failed to provide information to FINRA, which had been requested from him in accordance with and pursuant to FINRA Rule 8210.
44. The same written notice stated that if he failed to request termination of the suspension within six months of the date of the notice of suspension, that he would automatically be barred on September 20, 2010 from associating with any FINRA member in any capacity. This written notice was sent to both Duarte's CRD address and Tustin, California, address via Federal Express and U.S. mail. Federal Express records indicate both letters were delivered on March 18, 2010.
45. On September 17, 2010, Duarte faxed a written statement, dated September 15, 2010, to FINRA stating that he would comply with FINRA's requests for information.
46. On October 11, 2010, Duarte submitted a statement of facts as requested by FINRA's prior written requests for information dated July 1, 2009, and October 9, 2009. This submission was more than 14 months after its original due date.
47. On October 14, 2010, Duarte appeared for testimony under oath on oral examination as requested by the staff in prior written requests dated February 2, 2010, and February 24, 2010. His appearance was almost eight months after his originally scheduled testimony date.

48. On October 28, 2010, pursuant to Rule 8210, FINRA staff sent a written request for information to follow-up on Duarte's testimony. FINRA staff sent this request by certified and U.S mail to both Duarte's CRD address and the Tustin, California address. Duarte's response was due on November 5, 2010. According to U.S. Postal Service records, the letter sent to Duarte's CRD address was delivered and signed for by Irene Martinez. The letter sent to Duarte's Tustin, California, address went unclaimed and was returned to FINRA. Notices were left by U.S. Postal Service notifying Duarte of the attempt to deliver on October 30, 2010 and November 10, 2010.
49. Duarte did not contact the staff to request any additional time. Finally, on December 6, 2010, Duarte responded in writing.
50. By failing to timely respond to FINRA's written requests for information and testimony between July 1, 2009, and October 28, 2010, Duarte violated FINRA Rules 8210 and 2010.

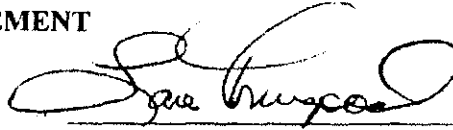
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed, including that the Respondent be required to make full and complete restitution, together with interest
- 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: March 14, 2011



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