

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ATTILA GYULA TOTH
(CRD No. 2565633),

Respondent.

Disciplinary Proceeding
No. 2009019362801

Hearing Officer – AWL

DEFAULT DECISION

November 30, 2012

Respondent is barred from associating with any FINRA registered firm in any capacity for: (1) misusing customer funds, in violation of NASD Rules 2330 and 2110; (2) borrowing from a customer, in violation of NASD Rule 2370 and FINRA Rule 2010; (3) providing false statements to others, in violation of FINRA Rule 2010; and (4) failing to respond to requests for information, in violation of FINRA Rules 8210 and 2010.

Appearances

Heather Hawker, Esq., for the Department of Enforcement, Complainant

No appearance by or on behalf of Attila Gyula Toth, Respondent

DECISION

I. Introduction

The FINRA Department of Enforcement (“Enforcement”) filed the attached Complaint with the Office of Hearing Officers on July 5, 2012, charging Respondent Attila Gyula Toth (“Toth”) with five causes of action, alleging that Toth: (1) misused customer funds, in violation of NASD Rules 2330 and 2110; (2) borrowed money from a customer, in violation of NASD Rule 2370 and FINRA Rule 2010; (3) made false

statements to the Arizona Corporation Commission and his employer and member firm, Workman Securities Corp. (“Workman”), in violation of FINRA Rule 2010; (4) failed to respond to FINRA’s requests for information regarding, among other things, Toth’s outside business activities, in violation of Rules 8210 and 2010; and (5) failed to respond to FINRA’s requests for information regarding client allegations of misrepresentations, fraud, and recommendations of unsuitable private placements, in violation of FINRA Rule 8210 and 2010.¹

Toth failed to answer or respond to the Complaint. Consequently, on September 18, 2012, Enforcement filed a Motion for Entry of Default Decision (“Default Motion”), supported by the Declaration Supporting Motion for Entry of Default Decision (“Decl.”) signed by Heather Hawker and nine exhibits. Toth did not respond to the motion.²

II. Procedural History

On July 5, 2012, Enforcement served the Complaint and Notice of Complaint on Toth by certified mail, return receipt requested, at his last known address as contained in the Central Registration Depository (“CRD Address”).³ Toth failed to answer or respond by August 2, 2012, as required in the Notice of Complaint.⁴ Enforcement then served

¹ Following 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*, 2008 FINRA LEXIS 50 (Oct. 2008). As part of the first phase of that process, NASD Conduct Rule 2110 was adopted without material change as FINRA Conduct Rule 2010. Since the Complaint in this case was filed after December 15, 2008, the procedural rules that apply are the FINRA rules of procedure. The conduct rules that apply are those that existed at the time of the conduct at issue. They are available at www.finra.org/Industry/Regulation/FINRARules.

² The factual determinations in this decision are based on the allegations in the Complaint (“Compl.”), the Decl. and its attached exhibits, labeled CX-1 through CX-9.

³ Decl. ¶ 10; CX-8. Enforcement also sent the Complaint and Notice of Complaint by first-class mail to Toth’s CRD Address, and by first-class and certified mail to an alternative business address in Glendale, Arizona, that Toth previously provided to FINRA staff. *See* Decl. ¶ 9.

⁴ Decl. ¶¶ 10-11.

Toth with the Complaint and Second Notice of Complaint on August 3, 2012, by certified mail, return receipt requested, at his CRD Address.⁵ Toth failed to answer or respond by August 20, 2012, as required in the Second Notice of Complaint even though his wife, Erin Hall, signed the certified mail receipt on August 6, 2012.⁶ To date, Toth has not answered or responded.⁷

The Hearing Officer finds that Enforcement properly served Toth with a copy of the Complaint and that he received valid notice of this proceeding.⁸ The Hearing Officer further finds that Toth is in default by failing to answer or otherwise respond to the Complaint. Accordingly, the Hearing Officer grants Enforcement's Default Motion.

III. Findings of Fact and Conclusions of Law

Based on Toth's default, the Hearing Officer deems the allegations in the attached Complaint admitted pursuant to Rules 9215(f) and 9269(a).

A. Jurisdiction

Toth entered the securities industry in 1994 and, after associating with several other member firms, associated with member firm CapWest Securities, Inc. ("CapWest") as a general securities representative and an investment company products and variable contracts representative from February 23, 2007, through July 16, 2008.⁹ He then associated with Workman in the same capacities from July 14, 2008, through September 4, 2009, when Workman terminated him. Workman stated on the Uniform Termination

⁵ Decl. ¶ 12; CX-9. Enforcement additionally mailed the Complaint and Notice of Complaint by first-class mail to Toth's CRD Address, and also by first-class and certified mail to the alternative business address.

⁶ Decl. ¶ 13; CX-9, at 21.

⁷ Decl. ¶ 14.

⁸ See *Dep't of Enforcement v. Moore*, No. 2008015105601, 2012 FINRA Discip. LEXIS 45, at *19-21 (N.A.C. July 26, 2012) (constructive notice when complaint is mailed to respondent's CRD address).

⁹ CX-1, at 3.

Notice for Securities Industry Registration ("Form U5") filed with FINRA on September 4, 2009, that Toth used client funds for personal reasons without the client's authority.¹⁰ Since his termination on September 4, 2009, Toth has not associated with any other member firm.¹¹

Workman amended Toth's Form U5 multiple times to disclose several customer complaints.¹² The most recent amendment, filed on October 15, 2010, disclosed allegations that Toth made misrepresentations, committed fraud, and recommended unsuitable private placements.¹³

The Hearing Officer finds that jurisdiction exists in this proceeding pursuant to Article V, Section 4 of the FINRA By-Laws, as the Complaint (1) was filed within two years of the amended Form U5 disclosing that Toth may have engaged in conduct actionable under the securities laws, rules or regulations, and (2) charges Toth with conduct that occurred while associated with a FINRA member and his failure to respond to requests for information issued during the time period that FINRA retained jurisdiction over him.¹⁴

B. Misuse of Customer Funds

In March 2008, while associated with CapWest, Toth solicited customer WJ for an investment in a short-term loan to a California-based construction company, representing that he and the company's owner were personal friends and that the terms of

¹⁰ Decl. ¶ 5; CX-1 at 3 and 16, CX-2, at 1.

¹¹ Decl. ¶ 6; CX-1 at 3, CX-2, at 1.

¹² Decl. ¶ 6; CX-1, CX-3 and CX-4.

¹³ Decl. ¶ 6; CX-5.

¹⁴ Article V, Section 4 (a) FINRA By-Laws, available at www.finra.org/Rules (then follow the "FINRA Manual" hyperlink to "Corporate Organization: By-Laws").

the loan included the repayment of principal with a high interest rate.¹⁵ WJ agreed to make the investment and took a \$70,000 premature distribution from his 403(b) retirement account, netting WJ \$52,500, after withholding taxes, to invest.¹⁶ Toth prepared the paperwork for the distribution and then had WJ wire the funds to a personal bank account that Toth shared with his wife.¹⁷ Toth, however, did not invest WJ's funds in the construction company, as authorized, and later admitted, in on-the-record testimony, that he used WJ's funds to cover his personal expenses.¹⁸ WJ never authorized Toth to use the funds and at all times believed that the funds were invested in the construction company, as Toth had represented.¹⁹

Toth and WJ exchanged numerous emails between June 1, 2008, and September 9, 2009, regarding the status of WJ's investment.²⁰ Toth represented to WJ that repayment by the construction company was forthcoming, and later, that Toth would personally assume responsibility for repayment of the entire \$70,000.²¹ Toth never repaid any of the funds to WJ and failed to advise WJ that his money was not invested as directed or that Toth was using the funds for his own personal expenses.²²

NASD Rule 2330(a) provides that "no member or person associated with a member shall make improper use of a customer's securities or funds." Improper use

¹⁵ Decl. ¶ 19; Compl. ¶¶ 7-8.

¹⁶ Decl. ¶ 20; Compl. ¶¶ 9-11.

¹⁷ Decl. ¶ 21; Compl. ¶¶ 12-13.

¹⁸ Decl. ¶ 21; Compl. ¶ 13 (the deposit of WJ's funds kept Toth's bank account from being overdrawn by \$40,000).

¹⁹ Decl. ¶ 21; Compl. ¶ 14.

²⁰ Decl. ¶ 22; Compl. ¶ 15.

²¹ Decl. ¶ 22; Compl. ¶ 15.

²² Decl. ¶ 22; Compl. ¶¶ 15-16.

includes failing to apply the funds as directed by the customer and using the funds for some purpose other than as directed by the customer.²³ By Toth neither investing the funds as represented (and as WJ intended and believed) nor returning the funds to WJ, Toth misappropriated the funds for his personal use without the knowledge or authorization of WJ. Improper uses of a customer funds also constitutes a violation of Rule 2110.²⁴

Accordingly, the Hearing Officer finds that Toth's conduct relating to WJ's funds violates NASD Rules 2330 and 2110.

C. Borrowing from a Customer

In May 2009, Toth borrowed \$30,000 from customer AD without Workman's knowledge or approval.²⁵ Toth documented the loan with a promissory note dated May 6, 2009, and secured it with a deed of trust recorded in Maricopa County, Arizona, on May 18, 2009.²⁶ Workman had a policy that prohibited borrowing from a customer under any circumstances and never pre-approved Toth's borrowing from AD.²⁷ Toth acknowledged and certified that he knew and complied with Workman's policies and procedures, including the prohibition to borrow money from or loan money to any customer.²⁸

²³ See *Dep't of Enforcement v. Thomas*, No. C10030082, 2004 NASD Discip. LEXIS 49, *6 (O.H.O. June 30, 2004); *Dep't of Enforcement v. Patel*, No. C02990052, 2001 NASD Discip. LEXIS 42, *24-25 (N.A.C. May 23, 2001).

²⁴ *Dep't of Enforcement v. Easley*, No. 2008013474501, 2009 FINRA Discip. LEXIS 31 (O.H.O. Sept. 14, 2009).

²⁵ Decl. ¶¶ 25, 27; Compl. ¶¶ 23-26.

²⁶ Decl. ¶ 25; Compl. ¶¶ 24-25.

²⁷ Decl. ¶¶ 26-27; Compl. ¶¶ 20, 26.

²⁸ Decl. ¶ 26; Compl. ¶¶ 21-22.

NASD Rule 2370(a) provides, in pertinent part, that “[n]o 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 member has written procedures allowing the borrowing and lending of money between such registered persons and customers of the member....”²⁹ Since Workman specifically prohibited any borrowing, Toth’s conduct violated both the Firm and regulatory prohibitions. Accordingly, the Hearing Officer finds that Toth’s borrowing violates NASD Rule 2370 and FINRA Rule 2010.³⁰

D. Making False Statements

On August 21, 2009, Toth falsely represented in writing to Workman that he “never, took, borrowed or asked for funds from a client,” when in fact he had.³¹ Toth also advised the Arizona Corporation Commission through a written statement dated September 13, 2010, and sworn testimony on September 15, 2010, that no client provided him with a loan and specifically denied the existence of the loan and promissory note between AD and himself.³² Toth, however, knew at the time he made such statements that they were false given the date of the promissory note and deed of trust.³³

The provision of false information on multiple occasions does not uphold the high standard of commercial honor and equitable principles of trade required by FINRA Rule 2010. Toth’s misrepresentations directly reflect on his ability to comply with an

²⁹ Rule 2370 contains other conditions under which borrowing from customers is permissible; however, they are not relevant in this case.

³⁰ See e.g., *Dep’t of Enforcement v. Selewach*, No. 2006005005301, 2008 FINRA Discip. LEXIS 5, at *30 (O.H.O. Feb. 20, 2008) (misuse of customer funds in violation of Rule 2330 also violates Rule 2110, citing *Thomas*, 2004 NASD Discip. LEXIS at *6 n.10 and *Patel*, 2001 NASD Discip. LEXIS at *24-25).

³¹ Decl. ¶¶ 32; Compl. ¶¶ 33-35.

³² Decl. ¶¶ 30-31; Compl. ¶¶ 29-32.

³³ Decl. ¶¶ 31-32; Compl. ¶ 32 (the note and deed of trust have May 2009 dates).

employer's policies, which were designed to protect the public and the firm.³⁴

Accordingly, the Hearing Officer concludes that Toth's false statements violate FINRA Rule 2010.

E. Failure to Provide Information

FINRA staff may require members and persons subject to its jurisdiction "to provide information orally, in writing, or electronically ... with respect to any matter involved in [an] investigation, complaint, examination, or proceeding" authorized by the FINRA By-Laws or rules.³⁵ Here, Enforcement charges Toth in the fourth and fifth causes of action with two separate counts of failure to provide requested information.

In the first instance, FINRA staff mailed Rule 8210 requests to Toth at his CRD address by certified and first-class mail on December 13, 2010, and again on January 11, 2011, seeking information regarding the allegations contained in an amended Form U5 filed by Workman on October 15, 2010.³⁶ The allegations against Toth included misrepresentations, fraud, and recommendations of unsuitable private placements to customers TZ and DZ.³⁷ Toth's wife signed the return receipts for both requests, but Toth failed to respond.³⁸ To date, Toth has not provided any response to these requests.³⁹

In the second situation, FINRA staff sent a Rule 8210 request to Toth's CRD address, seeking information and documentation regarding Toth's outside business

³⁴ *Dep't of Enforcement v. Davenport*, No. C05010017, 2003 NASD Discip. LEXIS 4, at *9-10 (N.A.C. May 7, 2003) (misrepresentations made to firm falls within broad SEC construction of Rule [2010]; principal consideration is whether misconduct reflects on person's ability to comply with regulatory requirements necessary for proper functioning of securities industry and protection of the public).

³⁵ FINRA Rule 8210(a).

³⁶ Decl. ¶¶ 41-42; Compl. ¶¶ 49, 51.

³⁷ Decl. ¶¶ 41-42; Compl. ¶¶ 49-53.

³⁸ Decl. ¶¶ 41-42; Compl. ¶¶ 50, 53.

³⁹ Compl. ¶ 54.

activities while associated with both CapWest and Workman, his potential involvement in mortgage fraud, and the loans from customer AD and possibly other customers.⁴⁰ FINRA staff mailed the Rule 8210 request to Toth's CRD address by certified and first-class mail on March 1, 2011.⁴¹ The certified mailing was returned as unclaimed, but the first-class mailing was not returned.⁴² Toth did not respond as requested.⁴³ FINRA staff mailed a second request for the same information on March 17, 2011, also by certified and first-class mailing to Toth's CRD address, setting a response date of March 31, 2011.⁴⁴ Neither the return receipt for the certified mailing nor the first-class mailing was returned to FINRA.⁴⁵ Toth, however, failed to respond.⁴⁶

Since FINRA lacks subpoena power over its members, a failure to provide information fully and promptly undermines FINRA's ability to carry out its regulatory mandate.⁴⁷ Here, Toth's failure to provide any information in response to the two different sets of requests impeded Enforcement's assessment of potential additional misconduct. Accordingly, the Hearing Officer concludes that Toth's failure to respond to

⁴⁰ Decl. ¶ 36; Compl. ¶ 40.

⁴¹ Decl. ¶ 37; Compl. ¶ 41.

⁴² Decl. ¶ 37; Compl. ¶ 42.

⁴³ Decl. ¶ 37; Compl. ¶ 42.

⁴⁴ Decl. ¶ 38; Compl. ¶ 43.

⁴⁵ Decl. ¶ 38; Compl. ¶ 44.

⁴⁶ Decl. ¶ 38; Compl. ¶ 45.

⁴⁷ See *Dep't of Enforcement v. Fawcett*, No. C9A040024, 2007 NASD Discip. LEXIS 2, at *11-12 (N.A.C. Jan. 8, 2007); *Dep't of Enforcement v. Carcaterra*, No. C10000165, 2001 NASD Discip. LEXIS 39, at *10 (N.A.C. Dec. 13, 2001).

FINRA's requests for information, as alleged in both the fourth and fifth causes of action, violates FINRA Rule 8210 and FINRA 2010.⁴⁸

IV. Sanctions

Toth is currently subject to a statutory disqualification, having been suspended by FINRA for failing to comply with arbitration awards on May 18, 2011.⁴⁹ Further, the Arizona Corporation Commission entered an order against Toth on August 3, 2011, revoking Toth's securities registration and ordering restitution and penalties.⁵⁰

The FINRA Sanction Guidelines ("Guidelines") set forth considerations in determining what sanctions to impose for Toth's violations in this case.

A. Misuse of Customer Funds

The Guidelines recommend a bar when misuse of customer funds occurs, regardless of the amount converted.⁵¹ No mitigating factors exist with this cause of action, and a bar is the appropriate remedy. The Hearing Officer therefore bars Toth from associating with any FINRA member firm in all capacities for misappropriating customer funds, in violation of NASD Rules 2330 and 2110.⁵²

⁴⁸ *Dep't of Enforcement v. Hoeper*, No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (N.A.C. Nov. 2, 2001) (violation of Rule 8210 also violates Rule [2010]); *Dep't of Enforcement v. Baxter*, No. C07990016, 2000 NASD Discip. LEXIS 3, at *25 (N.A.C. Apr. 19, 2000).

⁴⁹ Decl. ¶ 17; CX-1 at 29-30 and 35-36.

⁵⁰ Decl. ¶ 17 (*Order to Cease and Desist, for Restitution, for Administrative Penalties, and Consent to the Same* in Arizona Corporation Commission Docket No. S-20782A-11-0019, entered against Toth and his wife, Erin M. Hall); CX-1, at 30-34.

⁵¹ Guidelines 36. *See also Thomas*, 2004 NASD Discip. LEXIS 49, at *6, n.10; *Patel*, 2001 NASD Discip. LEXIS 42, at *24-25 (affirming the bar of a representative for misuse of customer funds by depositing customer funds into his own account rather than investing them as directed by the customer).

⁵² Enforcement does not seek restitution since Arizona's consent order already requires Toth to repay customer WJ. *See Motion for Entry of Default Decision* 6, n.10.

B. Borrowing from a Client

While the Guidelines do not provide specific sanctions for Rule 2370 violations, they do direct the imposition of sanctions designed to deter future misconduct and improve the overall business standards in the securities industry.⁵³ Further, the Guidelines instruct adjudicators to consider the following relevant factors: (1) whether the respondent accepted responsibility for his misconduct; (2) whether the respondent attempted to conceal his misconduct from regulatory authorities or the member firm with which he is associated; (3) whether respondent provided assistance to FINRA's investigation of the misconduct; and (4) whether respondent's misconduct was the result of an intentional act, recklessness or negligence.⁵⁴

Here, Toth's misconduct included intentionally violating his firm's procedures, attempting later to conceal his misconduct, and failing to assist FINRA in its investigation of the loan from AD. Toth's misconduct was egregious and warrants the imposition of a severe sanction. A bar is an appropriate remedy, especially without the existence of any mitigating factors. Accordingly, the Hearing Officer bars Toth from associating with any FINRA member firm in all capacities for borrowing money from a customer, in violation of NASD Rules 2370 and 2110.⁵⁵

C. Making False Statements

Toth made multiple false statements to his employer and state regulatory personnel which demonstrates a willingness to mislead persons with oversight responsibility for him and the industry. His behavior falls substantially short of the high

⁵³ Guidelines 2, General Principles Applicable to All Sanction Determinations 1.

⁵⁴ Guidelines 6-7, Principal Considerations in Determining Sanctions 2, 10, 12, 13.

⁵⁵ Enforcement does not seek restitution. See n.52.

standard of commercial honor required by Rule 2010. Toth's misconduct is egregious and warrants a substantial sanction.

Again, the Guidelines' Principal Considerations assist the adjudicator in determining the appropriate sanction since no specific guideline addresses the making of false statements to others. Here, Toth (1) engaged in the misconduct numerous times; (2) concealed his misconduct from his employer and state regulator; (3) acted intentionally, as he knew the statements were false; and (4) by his actions, delayed, concealed, and misled others in their investigation of alleged serious misconduct.⁵⁶

By providing false information on multiple occasions, Toth demonstrated his lack of integrity and honesty to work in the securities industry. His dishonesty and deception are not mitigated by any facts in the case. Recommended sanctions in an analogous situation of forgery or falsification of records include suspension for up to two years or a bar in egregious cases.⁵⁷ Several other guidelines dealing with false reporting likewise set the range of sanctions from a suspension for two years to a bar in egregious cases.⁵⁸

Here, a bar is an appropriate remedial sanction, given the facts and circumstances of this case, the lack of mitigating factors, and the importance of truthful information when serious allegations of dishonest conduct are being investigated. Accordingly, the Hearing Officer bars Toth from associating with any FINRA member firm in all capacities for making false statements, in violation of FINRA Rule 2010.

⁵⁶ See Guidelines 6-7, Principal Considerations in Determining Sanctions 8, 10, 13. Enforcement also offers Principal Consideration 12 (substantial assistance to FINRA), perhaps as the antithesis of substantial assistance and by extension to other entities responsible for examinations or investigations. See Default Motion 6, n.11, including citation of *Davenport*, 2003 NASD Discip. LEXIS 4, at *9-10 (sanctions issued for false statement to firm denying borrowing).

⁵⁷ Guidelines 37.

⁵⁸ See, e.g., Guidelines 70 (Forms U4/U5); 72 (MSRB Rule G-37 Reporting); 73 (Regulation M Reports); and 74 (Reportable Events Under NASD Rule 3070).

D. Failure to Provide Information

A bar is “standard” when a complete failure to respond to FINRA’s Rule 8210 requests for information occurs.⁵⁹ The Guidelines instruct adjudicators to consider the importance of the information requested from FINRA’s perspective.⁶⁰ Toth’s failure to cooperate and respond undermined the FINRA staff’s ability to investigate serious allegations of dishonest conduct and determine the nature and extent of Toth’s misconduct, including potential other violations such as suitability and misrepresentation.⁶¹ Toth failed to respond to two different sets of information requests properly served on him over a four-month period. No mitigating factors exist to warrant a lesser sanction for either the fourth or fifth cause of action.

Accordingly, the Hearing Officer bars Toth from associating with any FINRA member firm in all capacities for Toth’s failure to provide the information requested, in violation of FINRA Rules 8210 and 2010.

V. Order

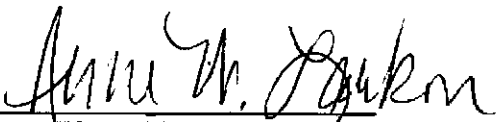
Respondent Attila Gyula Toth is barred from associating with any member firm in any capacity for (1) misusing customer funds, in violation of NASD Rules 2330 and 2110; (2) borrowing from a customer, in violation of NASD Rule 2370 and FINRA Rule 2010; (3) providing false information to the Arizona Corporation Commission and Workman, in violation of FINRA Rule 2010; and (4) failing to provide information, in violation of FINRA Rules 8210 and 2010.

⁵⁹ Guidelines 33.

⁶⁰ *Id.*

⁶¹ Decl. ¶ 16.

If this Default Decision becomes the final disciplinary action of FINRA, the bars shall become effective immediately.


Anne W. Larkin
Hearing Officer

Copies to:

Attila Gyula Toth (via overnight courier and first-class mail)
Heather Hawker, Esq. (via electronic and first-class 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,	)	Disciplinary Proceeding
	)	No. 2009019362801
Complainant,	)	
	)	Hearing Officer:
v.	)	
	)	COMPLAINT
ATTILA GYULA TOTH,	)	
CRD No. 2565633,	)	
Respondent.	)	

The Department of Enforcement alleges:

SUMMARY

1. Respondent Toth misused customer funds in violation of NASD Conduct Rules 2330 and 2110 and borrowed funds from a customer in violation of NASD Conduct Rule 2370 and FINRA Rule 2010. Further, he provided false testimony and information to a state securities regulator and false information to the firm with which he was associated, Workman Securities Corp. (Workman), regarding his borrowing funds from a customer thereby violating FINRA Rule 2010. In addition, he failed to respond to multiple written requests for information and documentation in violation of FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

2. Toth entered the securities industry in or about 1994. He was associated with CapWest Securities, Inc. (CapWest) from on or about February 23, 2007 through on or about July 16, 2008, where he was registered as a general securities representative and an investment company products and variable contracts representative.

3. Toth was then associated with Workman from on or about July 14, 2008 through on or about September 4, 2009, where he was registered in the same capacity. Per the Uniform

Termination Notice for Securities Industry Registration (Form U5) filed by Workman on September 4, 2009, the firm terminated Toth for the following reason: "Through an investigation the firm reached the opinion that the representative used client funds for personal reasons without the client's authority."

4. Since his termination from Workman, Toth's Form U5 has been amended on multiple occasions. The most recent Form U5 amendment that disclosed a new customer grievance was made on October 15, 2010. That complaint, made by TZ and DZ, alleged, among other claims, that Toth made misrepresentations, committed fraud, and recommended unsuitable private placements.

5. Toth has not associated with another member firm since his termination from Workman. Although Toth is no longer registered or associated with a FINRA member, he remains subject to FINRA's jurisdiction for the 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 CapWest filed the above-referenced October 15, 2010 amended Form U5 that disclosed Toth may have engaged in conduct actionable under the securities laws, rules and/or regulations, and (2) the Complaint charges Toth with conduct occurring while he was associated with a FINRA member and with failing to respond to FINRA requests for information that were issued within the time period that FINRA retained jurisdiction over him.

FIRST CAUSE OF ACTION

(Misuse of Customer Funds - Violations of NASD Conduct Rules 2330 and 2110)

6. The Department realleges and incorporates by reference paragraph numbers 1 – 5 above.

7. In March 2008, while associated with CapWest, Toth contacted CapWest customer, WJ, to solicit an investment in what he represented to be a short-term \$70,000 loan to a California-based construction company.

8. Toth represented that the owner of the construction company was a personal friend and that the terms of the loan included repayment of principal and payment of interest at a high rate.

9. In response to Toth's solicitation, on March 25, 2008, WJ took a premature distribution in the amount of \$70,000 from his 403(b) retirement account. The paperwork for the distribution was prepared by Toth.

10. An amount equal to 25% of the requested withdrawal was withheld for taxes and the balance of \$52,500 was deposited into WJ's personal bank account.

11. Toth originally told WJ that taxes would not be withheld from this distribution. When this proved to be incorrect, Toth told WJ that the loan would be repaid in a short period of time so as to avoid any tax consequences.

12. Shortly after the \$52,500 was received into WJ's bank account, Toth arranged for WJ to wire the funds to a BA account held by Toth and his wife, EH. This wire transaction occurred on March 28, 2008.

13. After receipt of the \$52,500 on March 28th, Toth did not invest the funds in the construction company or any other investment opportunity. Rather, the funds remained in Toth's bank account and were used by Toth to cover his personal expenses. Had the \$52,500 not been deposited into Toth's and EH's bank account, their account would have been overdrawn by over \$40,000.

14. WJ did not authorize Toth to use the funds for his own personal purposes. Rather, at all relevant times, WJ understood and believed that the funds were intended for investment, and had been invested in a short term, high interest rate loan to a construction company, as represented by Toth.

15. Between on or about June 1, 2008 and on or about September 9, 2009, WJ exchanged numerous emails with Toth concerning the purported investment. WJ repeatedly sought information from Toth concerning the repayment of the loan and the time period within which he could restore the funds to his 403(b) account and avoid the tax penalty. WJ also requested copies of documents evidencing the purported investment and the construction company's receipt of the funds. In response, Toth initially represented that repayment by the construction company was forthcoming in time to avoid the tax penalty; however, in January 2009, he told WJ that he was assuming personal responsibility for repayment.

16. When WJ had not received repayment of any portion of the purported investment by August 2009, WJ contacted Workman concerning the transaction. In September 2009, following his termination by Workman, Toth informed WJ that he did not have the funds to repay him and requested that his obligation exclude the withheld tax payment he had originally agreed to repay. Toth never provided records of the purported investment to WJ, never repaid and portion of the funds that he expended for his personal benefit and never informed WJ that he had used the funds to pay his personal expenses.

17. By failing to invest WJ's funds in the form of a short term loan to a California-based construction company, as he represented and WJ intended, and by causing the funds to come under his control and to then use the same to cover his personal expenses, Toth made improper use of the funds. Further, by continuing to mislead WJ for over a year as to the

disposition of the \$52,500 WJ understood to have been invested, Toth engaged in conduct inconsistent with high standards of commercial honor and just and equitable principles of trade.

18. Each instance in which Toth misused WJ's funds for a personal expense, as alleged above, constituted a separate and distinct violation of NASD Conduct Rules 2330(a) and 2110 by Toth. Misleading WJ as to the disposition of the funds, as alleged above, constituted a violation of NASD Conduct Rule 2110 as to representations made on or before December 14, 2008, and a violation of FINRA Rule 2010 as to representations made on or after December 15, 2008.

SECOND CAUSE OF ACTION

(Borrowing from a Customer - Violations of NASD Rule 2370 and FINRA Rule 2010)

19. The Department realleges and incorporates by reference paragraph numbers 1 – 18 above.

20. At all relevant times, Workman's procedures prohibited its representatives from borrowing funds from customers.

21. On August 1, 2008, Toth executed an "Acknowledgement of Associated Persons" confirming that he had read and understood the contents of Workman's supervisory procedures and was responsible for abiding by the same.

22. Additionally, Toth executed an annual compliance questionnaire and certification on August 4, 2008 specifically recognizing Workman's prohibition against borrowing from a customer. Relevant portions from the questionnaire/certification read as follows: "I understand that I may not borrow money from or loan money to any customers...."

23. Notwithstanding the above, in May 2009, Toth borrowed funds in the amount of \$30,000 from Workman customer AD.

24. The loan is memorialized by a May 6, 2009 promissory note signed by Toth and his wife and is secured by a deed of trust dated May 6, 2009, recorded with the Maricopa County, Arizona Recorder, recording no. 2009044039, 5/18/2009 12:52, 916-5-1-1, N.

25. The note provides, in relevant part as follows:

For value received, Attila Toth and Erin Hall ... promise to pay [AD] the sum of Thirty Thousand and 00/100 Dollars (\$30,000.00) in monthly installments of One Thousand and 00/100 Dollars (\$1,000.00) or more, payable on or before the 30th day of each month beginning on the 30th of May, 2009, with interest on all unpaid principal from April 30, 2009, until paid, at the rate of ten percent (10.0%) per annum, the interest to be first deducted from the regular monthly installments and the balance to be applied upon the principal. If not sooner paid, the entire unpaid principal and accrued interest shall be due and payable on January 1, 2010.

26. Toth borrowed the funds from customer AD without Workman's knowledge or consent.

27. By borrowing funds from a customer in contravention of the requirements of NASD Conduct Rule 2370, Toth violated NASD Conduct Rule 2370 and FINRA Rule 2010.

THIRD CAUSE OF ACTION

(Making False Statements to the ACC and Workman regarding Borrowing from Customers - Violations of FINRA Rule 2010)

28. The Department realleges and incorporates by reference paragraph numbers 1 – 27 above.

29. On September 15, 2010, Toth, while under oath, provided false testimony to a state securities regulator.

30. Specifically, during his deposition, he was asked and responded to questions regarding borrowing from AD as follows:

Q: Have you ever requested a loan from [AD]?

A: No on the loan....

Q: Are there any loan transactions or promissory notes executed between yourself and [AD]?

A: No.

31. Toth also submitted a written statement to the state securities regulator dated September 13, 2010 wherein he represented "I have no clients that provided me loans."

32. As evidenced by the promissory note and deed of trust set forth in Cause Two above, Toth borrowed at least \$30,000 from AD. As such his sworn testimony and written statement to the state securities regulator that he had not borrowed funds from AD, a Workman customer, are false.

33. Toth also responded falsely when asked by Workman about borrowing from customers.

34. On August 21, 2009, Workman's Chief Compliance Officer, KS, emailed Toth the following question: "Did you take, borrow, or use any other client funds for your own personal or business purposes anytime in the past other than from [WJ]?" Toth responded, "No I never, took, borrowed or asked for funds from a client...."

35. In light of the \$30,000 that he borrowed from Workman customer AD in May 2009, Toth's representation to Workman was false.

36. By lying to a state securities regulator and to his employer firm in a matter pertaining to his participation in the securities business, Toth acted in a manner inconsistent with high standards of commercial honor and just and equitable principles of trade. He thereby engaged in separate and distinct violations of FINRA Rule 2010.

FOURTH CAUSE OF ACTION
(Failure to Respond to Rule 8210 Requests for Information
- Violations of FINRA Rules 8210 and 2010)

37. The Department realleges and incorporates by reference paragraph numbers 1 – 36 above.

38. In November 2010, FINRA conducted an on-site inspection of Toth's office. At that time, FINRA staff also copied Toth's computer hard drives.

39. The materials obtained by FINRA staff from these efforts revealed that Toth may have engaged in additional misconduct, including, but not limited to, mortgage fraud, undisclosed outside business activities, and borrowing from customers.

40. Consequently, on March 1, 2011, staff sent a written Rule 8210 request to Toth seeking, among other items: information and documentation regarding Toth's outside business activities while associated with both CapWest and Workman; information related to Toth's involvement in apparent instances of mortgage fraud; additional information and documentation related to the loans from AD; and, information and documentation regarding possible additional instances of borrowing from customers.

41. The March 1, 2011 Rule 8210 request was sent to Toth's residential CRD address in Phoenix, AZ (CRD Address) via certified and first class mail and required a response on or prior to March 15, 2011.

42. The March 1st certified mailing was returned to FINRA stamped "Return to Sender – Unclaimed – Unable to Forward." The first class mailing was not returned to FINRA. Toth did not respond to the March 1, 2011 Rule 8210 request letter.

43. On March 17, 2011, a second Rule 8210 request for the information identified in Complaint paragraph 40 was sent to Toth at his CRD Address by certified and first class mail. Toth's responsive information was due on or prior to March 31, 2011.

44. The March 17th first class mailing was not returned to FINRA. With respect to the March 17th certified mailing, neither the delivery receipt nor the actual mailing was returned to FINRA. Per the USPS.com track and confirm service, the March 17th request was delivered on March 23, 2011 at 1:24 p.m. Toth did not respond to the March 17th Rule 8210 request letter.

45. To date, Toth has failed to provide the information that was requested, pursuant to Rule 8210 on March 1, 2011 and March 17, 2011. Both Rule 8210 requests were sent during the period that Toth remained subject to FINRA's jurisdiction; therefore, he was required by Rule 8210 to provide the requested information.

46. The acts, practices and conduct described above constitute separate and distinct violations of FINRA Rules 8210 and 2010 by Toth.

FIFTH CAUSE OF ACTION
(Failure to Respond to Rule 8210 Requests for Information
- Violations of FINRA Rules 8210 and 2010)

47. The Department realleges and incorporates by reference paragraph numbers 1 – 46 above.

48. Toth also failed to respond to written Rule 8210 requests pertaining to allegations raised by TZ and DZ that were first identified in Toth's October 15, 2010 Form U5 amendment, *i.e.*, that Toth made misrepresentations, committed fraud and recommended unsuitable private placements.

49. The first written Rule 8210 request regarding the allegations raised by TZ and DZ was sent by certified and first class mail to Toth's CRD Address on December 13, 2010. Toth's responsive information was due on or prior to December 27, 2010.

50. The December 13th certified mailing was delivered on December 16, 2010 and was signed for by Toth's wife, EH. The first class mailing was not returned to staff. Toth failed to respond to the December 13th Rule 8210 request.

51. On January 11, 2011, FINRA staff again requested, pursuant to Rule 8210, the information and documentation identified in the December 13, 2010 Rule 8210 request.

52. The January 11th Rule 8210 request was sent by certified and first class mail to Toth's CRD Address. Toth's responsive information was due by January 25, 2011.

53. The January 11th certified mailing was delivered on January 14, 2011 and was signed for by Toth's wife, EH. The first class mailing was not returned to staff. Toth did not respond to the January 11th Rule 8210 request.

54. To date, Toth has failed to provide the information that was requested, pursuant to Rule 8210 on December 13, 2010 and January 11, 2011. Both Rule 8210 requests were sent during the period that Toth remained subject to FINRA's jurisdiction; therefore, he was required by Rule 8210 to provide the requested information.

55. The acts, practices and conduct described above constitute separate and distinct violations of FINRA Rules 8210 and 2010 by Toth.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Toth committed the violations charged and alleged herein;

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

Dated: July 5, 2012

FINRA DEPARTMENT OF
ENFORCEMENT



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