

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

MICHAEL MENDENHALL
(CRD No. 4963691),

Respondent.

Disciplinary Proceeding
No. 2009020489901

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

July 25, 2012

Respondent is barred from associating with any FINRA registered firm in any capacity for: (1) responding untruthfully to requests for information, in violation of FINRA Rules 8210 and 2010; and (2) borrowing money from customers, in violation of NASD Rules 2370 and 2110, and FINRA Rules 3240 and 2010.

Appearances

Helen Barnhill, Esq., for the Department of Enforcement.

Pamela Mackey, Esq., for Michael Mendenhall.¹

DECISION

The FINRA Department of Enforcement (“Enforcement”) filed the attached Complaint with the Office of Hearing Officers on February 16, 2011. The Complaint contains three causes of action against Respondent Michael Mendenhall (“Mendenhall”). The first cause of action alleges that Mendenhall provided false and misleading information to FINRA in response to a request for information FINRA staff sent him on February 16, 2010, thereby violated FINRA Rules 8210 and 2010. The request for information required Mendenhall to provide a written statement indicating whether he had borrowed funds from any customers while he was associated with UVEST

¹ Mendenhall’s attorney withdrew on June 7, 2011.

Financial Services Group, Inc. (“UVEST”). The remaining two causes of action allege that Mendenhall borrowed money from four customers without notifying UVEST of the loans, in violation of NASD Rules 2370 and 2110, and FINRA Rules 3240 and 2010.

I. Procedural History

FINRA staff began the investigation that led to this proceeding after FINRA received a customer complaint, alleging that Mendenhall had recommended that the customer cash in an annuity contract and lend Mendenhall the proceeds to help him fund a residential real estate purchase.² The customer further claimed that Mendenhall failed to repay the loan as promised. In the course of the investigation, FINRA staff determined that Mendenhall had borrowed money under similar circumstances from other customers by telling them that they could make more money by lending him money rather than purchasing insurance products.³

On February 16, 2011, Enforcement served the Notice of Complaint on Pamela Mackey, Esq. (“Mackey”), Mendenhall’s attorney.⁴ Mackey had advised Enforcement that she was authorized to accept service of the Complaint on Mendenhall’s behalf.⁵ On March 8, 2011, Mackey filed a Motion to Stay Proceedings on Mendenhall’s behalf because the State of Colorado had charged him with three felony counts of theft against an at-risk adult, and the felony charges related to the same transactions that are the subject of FINRA’s Complaint in this disciplinary proceeding. Mendenhall requested that this proceeding be stayed until the criminal case terminated. The Hearing Officer granted the motion to stay the proceeding on March 21, 2011.

² Decl. of Helen G. Barnhill in Support of Mot. for Entry of Default Decision (“Decl.”) ¶ 6.

³ *Id.*

⁴ *Id.* ¶ 9.

⁵ *Id.*

On June 7, 2011, the Office of Hearing Officers received Mackey's Notice of Withdrawal as Mendenhall's attorney. In the notice, Mackey advised that the original criminal case against Mendenhall had been dismissed and replaced with two criminal cases charging him with 27 felony counts of theft and securities fraud.

At the Hearing Officer's request in June 2011, Enforcement contacted the Colorado county court, the Colorado Deputy District Attorney, and Mendenhall's court appointed counsel to ascertain the status of the criminal proceedings. Enforcement learned that Mendenhall was incarcerated and that it was likely that the criminal cases would proceed to trial in August 2011. Based on this information, the Hearing Officer continued the stay of this proceeding and set several status conferences to monitor the progress of Mendenhall's criminal cases.

On February 3, 2012, the Office of Hearing Officers received a hand written letter from Mendenhall. He represented that he remained in custody at the Denver Downtown Detention Center awaiting his criminal trials, which were set to begin on February 21 and March 19, 2012. Mendenhall requested that the status conference in this proceeding scheduled for February 22, 2012, be continued until his criminal trials ended. At Mendenhall's request, the Hearing Officer rescheduled the status conference to April 5, 2012.

During the status conference on April 5, 2012, Enforcement reported that Mendenhall had been found guilty on 25 felony counts and he was scheduled to be sentenced on April 20, 2012. Mendenhall did not participate in the conference call. On April 20, 2012, the Colorado court sentenced Mendenhall to 30 years in prison and ordered that he pay more than \$1.4 million in restitution to 25 customers, including the customers referenced in this Decision.⁶

⁶ Decl. ¶ 12.

Because the criminal trials had concluded, the Hearing Officer terminated the stay and directed Mendenhall to file an Answer on or before May 7, 2012. Mendenhall did not file an Answer as ordered. Thus, on May 15, 2012, the Hearing Officer entered an order finding Mendenhall in default and directing Enforcement to file a motion for entry of default decision.

On June 6, 2012, Enforcement filed a Motion for Entry of Default Decision with the Office of Hearing Officers. The motion is supported by the declaration of Helen G. Barnhill, Esq. and four exhibits. Mendenhall did not respond to the Default Motion.

For the reasons set forth below, the Hearing Officer grants Enforcement's Motion for Entry of Default Decision.

II. Findings of Fact and Conclusions of Law

Pursuant to FINRA Rules 9215(f) and 9269(a), the Hearing Officer treated the allegations in the attached Complaint as admitted.

A. Michael Mendenhall

Mendenhall entered the securities industry in June 2005 when he became registered as a General Securities Representative through UVEST. Mendenhall was associated with UVEST until November 20, 2009.⁷ On January 19, 2009, Mendenhall joined Colorado Financial Service Corporation ("Colorado Financial").⁸ Colorado Financial discharged Mendenhall on October 18, 2010, because he had not provided a timely response to a request for information issued by FINRA.⁹

⁷ Ex. 1(b), at 3; Ex. 1(c).

⁸ Ex. 1(e).

⁹ Ex. 1(b), at 4.

Mendenhall was registered with FINRA as a General Securities Representative from October 2005 until November 2009 and from January 19, 2010, until October 28, 2010.¹⁰ Mendenhall has not been associated with a FINRA member firm or registered with FINRA since October 28, 2010.

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 Mendenhall's registration, and (2) the Complaint charges him with misconduct committed while he was associated with a FINRA member.¹¹

C. Mendenhall Responded Falsely to FINRA's Request for Information

On February 16, 2010, FINRA staff sent Mendenhall a request for information pursuant to FINRA Rule 8210, which grants FINRA staff the right to require a person subject to FINRA's jurisdiction to provide information with respect to any matter involved in an investigation, complaint, examination, or proceeding.¹² FINRA staff requested the information in connection with FINRA's investigation into customer OV's complaint regarding a loan he made to Mendenhall. One of the questions asked Mendenhall if he had borrowed funds from OV and any other clients. If he had, FINRA staff asked Mendenhall to identify each such customer and provide detailed information about each loan.¹³ Mendenhall provided a written response dated March 9, 2010, in which he identified customer OV as the only customer from whom he had

¹⁰ Ex. 1(b).

¹¹ 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").

¹² Rule 8210 (a)(1).

¹³ Compl. ¶ 4.

borrowed funds.¹⁴ Mendenhall's response was false. In fact, he had borrowed funds from at least three other customers.

The facts alleged in the first cause of action establish that Mendenhall violated FINRA Rules 8210 and 2010 by providing false information to FINRA staff in response to the staff's request for information.

D. Customer Loans at UVEST

The second cause of action alleges that Mendenhall borrowed money from three UVEST customers in violation of NASD Conduct Rules 2370¹⁵ and 2110. NASD Conduct Rule 2370 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"¹⁶ In addition, UVEST had a written policy prohibiting its registered representatives from borrowing money from customers under any circumstances.¹⁷ Accordingly, Mendenhall violated NASD Conduct Rules 2370 and 2110 by borrowing money from UVEST customers, as described below.

1. Customer OV

On September 29, 2007, while he was registered with UVEST, Mendenhall borrowed \$125,110 from OV. The principal loan balance plus accrued interest at the rate of 9% per year was due in full on October 1, 2008.¹⁸ At the time of the loan, OV was 76 years old and a UVEST

¹⁴ *Id.*

¹⁵ Effective June 14, 2010, NASD Conduct Rule 2370 was superseded by FINRA Conduct Rule 3240. *See* FINRA Regulatory Notice 10-21, 2010 FINRA LEXIS 41 (Apr. 2010).

¹⁶ Rule 2370 contains other conditions under which borrowing from customers is permissible; however, they are not relevant in this case.

¹⁷ Compl. ¶ 15.

¹⁸ Compl. ¶¶ 7-8.

customer. Mendenhall and OV signed a promissory note, which described the purpose of the loan as follows:

Mr. Mendenhalls [sic] recent real estate acquisitions located near the Belleview Lightrall [sic] Station/Continuum Partners development. Mr. Mendenhall owns 4 units in the gated community known as 'Montrechez' located at 4545 S. Monaco Str. Denver, Co 80237. These units are 141, 142, 145 & 247. Phase I of this project is complete with phase 2&3 to be completed by Standard Pacific Homes¹⁹

Mendenhall made a \$10,000 interest payment on or about December 3, 2008. He did not make any further payments to OV.

2. Customer JH

On or about February 18, 2008, Mendenhall borrowed \$116,045 from JH, who was approximately 80 years old at the time. Mendenhall requested the loan to enable his purchase of two real estate properties at 4545 S. Monaco Street, Denver, Colorado. Mendenhall told JH that the loan would provide her a greater return than an annuity she owned. JH agreed to the loan, and they executed a promissory note dated February 18, 2008. The promissory note provided that Mendenhall would pay JH interest at the rate of 8.25% per year.²⁰ To fund the loan, JH liquidated an annuity and an Index Fund she held in her securities account at UVEST, incurring an early withdrawal charge which Mendenhall agreed to repay by adding it to the loan amount.²¹ Mendenhall did not make any payments on the promissory note.²²

3. Customer FM

In December 2008, Mendenhall borrowed \$59,555 from UVEST customer FM. At the time, FM was approximately 82 years old. Mendenhall agreed to repay the loan in three months plus interest at the rate of 8% per year. But he did not give FM a promissory note evidencing the

¹⁹ Compl. ¶ 7.

²⁰ Compl. ¶ 9.

²¹ *Id.* ¶ 10. JH incurred a withdrawal charge of \$9,445.52 when she liquidated the annuity. Mendenhall agreed to repay the charge by adding it to the loan amount.

²² Compl. ¶ 10.

loan. Instead, Mendenhall gave FM a post-dated check dated March 3, 2009, for \$61,500.²³

When FM attempted to deposit the check in March and April 2009, the check was returned for insufficient funds.²⁴

After the check was dishonored, Mendenhall told FM that he would pay her \$10,000 per week until the loan amount was paid in full. He made one \$10,000 payment. Thereafter, rather than making additional weekly payments as he had promised, Mendenhall gave FM a promissory note for \$51,500. The promissory note was dated July 22, 2009.²⁵ The promissory note was due and payable in 12 months and paid an annual interest rate of 8.25%. Mendenhall did not make any payments to FM on the promissory note.²⁶

E. Customer Loan at Colorado Financial

The third cause of action alleges that Mendenhall violated FINRA Conduct Rules 3240 and 2010 by borrowing a total of \$9,000 from NL—\$5,000 in August 2010, and \$4,000 in September 2010. At the time, Mendenhall was associated with Colorado Financial. NL was approximately 90 years old and one of Mendenhall's customers. Mendenhall eventually repaid the loans in full.²⁷

Rule 3240 provides in relevant part that “[n]o person associated with a member in any registered capacity may borrow money from ... any customer of such person unless: (1) the member has written procedures allowing the borrowing ... of money between such registered persons and customers of the member”²⁸ Colorado Financial did not permit its registered

²³ *Id.* ¶ 11.

²⁴ *Id.* ¶ 12.

²⁵ *Id.* ¶ 13.

²⁶ *Id.* ¶ 14.

²⁷ Compl. ¶ 19.

²⁸ Rule 3240(a). Like predecessor NASD Rule 2370, Rule 3240 contains other conditions under which borrowing from customers is permissible; however, they are not relevant in this case.

representatives to borrow money from customers under any circumstances.²⁹ Accordingly, the Hearing Officer finds that Mendenhall violated Rules 3240 and 2010 by borrowing money from Customer NL.

III. Sanctions

The FINRA Sanction Guidelines (“Sanction Guidelines”) for providing false information to FINRA in response to Rule 8210 requests for information recommend a fine of \$25,000 to \$50,000 and a suspension of up to two years where mitigation exists.³⁰ Where, as in this case, there are no mitigating factors, the Sanction Guidelines recommend that the individual be barred from associating with any FINRA member firm in any capacity. In addition, the Sanction Guidelines instruct adjudicators to consider the importance of the information requested as viewed from FINRA’s perspective when assessing sanctions.³¹

The Hearing Officer finds that a bar from associating with any FINRA member firm in all capacities is an appropriately remedial sanction given the facts and circumstances of this case. The information Enforcement sought was important. Enforcement was investigating serious allegations of dishonest conduct. In addition, Mendenhall caused significant harm to numerous elderly customers for which he has been criminally responsible. Accordingly, the Hearing Officer will bar Mendenhall from associating with any FINRA member firm in all capacities for responding untruthfully to FINRA’s requests for information.

The Hearing Officer also will bar Mendenhall from associating with any FINRA member firm in any capacity for borrowing money from customers in violation of NASD Rules 2370 and 2110, and FINRA Rules 3240 and 2010. Although the Sanction Guidelines do contain specific

²⁹ Compl. ¶ 20.

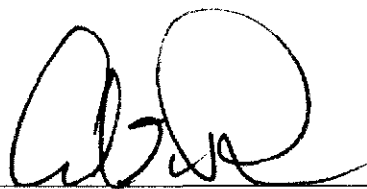
³⁰ FINRA Sanction Guidelines 33 (2011), www.finra.org/sanctionguidelines.

³¹ *Id.*

recommendations for violations of these rules, the General Principles Applicable to all Sanction Determinations direct adjudicators to impose sanctions that are designed to deter future misconduct and improve the overall business standards in the securities industry. The Sanction Guidelines instruct adjudicators to consider the following relevant factors: (1) whether the respondent accepted responsibility for his or her misconduct; (2) whether the respondent engaged in numerous acts or a pattern of misconduct; and (3) whether the respondent engaged in misconduct over an extended period. These factors along with the magnitude of the harm Mendenhall caused mandate that he be barred for these violations.

IV. Order

Michael Mendenhall is barred from associating with any member firm in any capacity for responding untruthfully to FINRA's Rule 8210 requests for information, in violation of Rules 8210 and 2010. In addition, Michael Mendenhall is barred for borrowing money from customers, in violation of NASD Rules 2370 and 2110, and FINRA Rules 3240 and 2010. The bars shall become effective immediately if this Default Decision becomes FINRA's final action in this disciplinary proceeding.

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

Andrew H. Perkins
Hearing Officer

Copies to:

Michael Mendenhall (*via overnight courier and first-class mail*)

Helen Barnhill, Esq. (*via electronic and first-class mail*)

David R. Sonnenberg, Esq. (*via electronic mail*)

Mark Dauer, Esq. (*via electronic mail*)