

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JAMES LANDON YARBROUGH
(CRD No. 703889),

Respondent.

Disciplinary Proceeding
No. 2010022751101

Hearing Officer – LBB

DEFAULT DECISION

Date: January 20, 2012

James Landon Yarbrough is barred from associating with any FINRA member firm in any capacity for borrowing money from a customer, in violation of NASD Rule 2370 and FINRA Rule 2010; and for failing to appear at an on-the-record interview, in violation of FINRA Rules 8210 and 2010.

Appearances

For the Department of Enforcement, Complainant, Rebecca L. Segrest, Esq., Senior Regional Counsel, Atlanta, Georgia.

No appearance by or for James Landon Yarbrough.

DECISION

I. Introduction

The FINRA Department of Enforcement (“Enforcement”) filed the attached Complaint with the Office of Hearing Officers on September 22, 2011. The two-cause Complaint charges Respondent James Landon Yarbrough (“Respondent” or “Yarbrough”) with: (1) borrowing money from a customer, in violation of NASD Conduct Rule 2370 and FINRA Rule 2010; and (2) failing to appear and testify at an on-the-record interview (“OTR”) after being served with

requests by FINRA staff, in violation of FINRA Rules 8210 and 2010.¹ Despite being properly served with the Complaint, Notice of Complaint, and Second Notice of Complaint, Respondent has not filed an Answer or otherwise responded to the Complaint.

On December 16, 2011, Enforcement filed a Motion for Entry of Default Decision and Request for Sanctions (“Default Motion”), which is supported by the sworn Declaration of Rebecca K. Segrest, Esq., (“Decl.”) and four exhibits.² Respondent did not respond to the Default Motion.

For the reasons set forth below, the Hearing Officer found Yarbrough in default and granted Enforcement’s Default Motion.

II. Respondent’s Default

Enforcement sent the Notice of Complaint and Complaint to Respondent at his residential address, as listed in the Central Registration Depository (“CRD address”), by first-class and certified mail, on September 22, 2011. Respondent signed the return receipt for the mailing sent by certified mail on September 24, 2011. The first-class mailing was not returned. According to the Notice, Respondent was required to answer the Complaint by October 20, 2011. Respondent did not answer the Complaint by that date. Decl. ¶¶ 8, 9; CX-3.

Enforcement sent a Second Notice of Complaint and a copy of the Complaint by first-class and certified mail to Respondent at his CRD address on October 21, 2011. Yarbrough signed the receipt for the certified mailing on October 24, 2011. The first-class mailing was not returned. According to the Second Notice, Respondent was required to answer the Complaint by

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 consolidated rules became effective on December 15, 2008. See FINRA Regulatory Notice 08-57, 2008 FINRA LEXIS 74 (Dec. 8, 2008). Because 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.

² Enforcement’s exhibits are labeled CX-1 through CX-4.

November 7, 2011. Respondent has not answered or otherwise responded to the Complaint.

Decl. ¶¶ 9-11; CX-4.

Enforcement properly served Yarbrough by certified mail pursuant to FINRA Rule 9134. The Hearing Officer finds that Yarbrough therefore received constructive notice of this proceeding. The evidence further reflects that Yarbrough received copies of the Complaint and Notice of Complaint on September 24, 2011, and the Second Notice of Complaint and Complaint on October 24, 2011. Accordingly, pursuant to FINRA Procedural Rules 9215(f) and 9269, the allegations in the Complaint are deemed admitted, and Enforcement's Default Motion is granted.

III. Jurisdiction

Yarbrough was employed by FINRA member firms from 1983 until May 7, 2010. Yarbrough registered with FINRA through Ameriprise Advisor Services, Inc. in February 2008, and with Ameriprise Financial Services, Inc. (collectively "Ameriprise") in October 2009. On April 29, 2010, Ameriprise filed a Uniform Termination Notice for Securities Industry Registration (Form U5), notifying FINRA of the termination of Yarbrough's employment with Ameriprise as of April 23, 2010. Yarbrough became associated with another FINRA member firm on May 3, 2010, but that firm terminated his employment on May 7, 2010. CX-1, CX-2.

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 Respondent's registration terminated, and (2) the Complaint charges him with misconduct that occurred while he was associated with a member firm, and with failing to respond to Enforcement's requests to appear and testify at an OTR made during the two-year period following the termination of his FINRA registration.³

³ 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").

IV. Violations

A. First Cause of Action: Borrowing from Customers

At the time of the violations, NASD Conduct Rule 2370⁴ provided, in pertinent part, that “(a) [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 borrowing and lending of money between such registered persons and customers of the member”⁵

At the time of the events that are the subject of the first cause of action, Customer D.W. was 102 years old. At all relevant times, D.W. maintained securities accounts at Ameriprise, and was Yarbrough’s customer. D.W. was not related to Yarbrough. Complaint ¶ 5. On or about November 5, 2009, Yarbrough borrowed \$45,000 from D.W. Ameriprise’s written supervisory procedures prohibited registered representatives from borrowing money from any customer, unless the customer was an immediate family member or a financial institution. Yarbrough had not requested or received permission from Ameriprise to borrow money from D.W. Complaint ¶¶ 6, 7.

D.W. died in February 2010. Complaint ¶ 8. On August 9, 2010, Yarbrough repaid D.W.’s estate \$5,000 of the \$45,000. Complaint ¶ 11.

The Hearing Officer finds that Yarbrough violated NASD Conduct Rule 2370 and FINRA Rule 2010, as alleged in the Complaint.⁶

⁴ 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).

⁵ Rule 2370 contained other conditions under which borrowing from customers was permissible; however, they are not relevant here because Ameriprise permitted borrowing only from immediate family members and financial institutions, and D.W. was neither.

⁶ A violation of NASD Rule 2370 is also a violation of FINRA Rule 2010. See, *Dep’t of Enforcement v. Mullins*, Nos. 20070094345, 20070111775, 2011 FINRA LEXIS 70, at *38-41 (N.A.C. Feb. 24, 2011), *appeal docketed*, SEC Dkt. No. 3-14302 (Mar. 22, 2011).

B. Failure to Appear at On-the-Record Interview

On May 3, 2010, Ameriprise filed an Amended Form U5 on behalf of Yarbrough, reporting that at the time of Yarbrough's resignation from Ameriprise, Yarbrough was under internal review for fraud or wrongful taking of property. FINRA initiated an investigation into the allegations on the Amended Form U5 filed by Ameriprise. Complaint ¶ 14.

On May 12, 2010, FINRA staff sent a written request for information to Yarbrough, pursuant to FINRA Rule 8210. On June 7, 2010, Yarbrough responded in writing. On December 13, 2010, and January 7, 2011, FINRA staff sent another written request for information to Yarbrough, pursuant to FINRA Rule 8210. On January 22, 2011, Yarbrough responded in writing to the second request. Complaint ¶ 15.

On March 29, 2011, FINRA staff sent a letter to Yarbrough's CRD address by first-class mail requesting that Yarbrough contact the FINRA Atlanta District Office to set a date and time for him to appear and testify at an OTR. The letter stated that if FINRA staff did not receive a response from Yarbrough by April 11, 2011, FINRA staff would set the testimony without his input. Complaint ¶ 16. Yarbrough called FINRA staff on April 6, 2011. During the telephone call, Yarbrough stated that he would not appear for an OTR. Complaint ¶ 17.

On April 11, 2011, FINRA staff sent a letter, pursuant to FINRA Rule 8210, to Yarbrough at his CRD address by first-class and certified mail, requesting that he appear for an OTR on April 27, 2011, at FINRA's Atlanta District Office. The letter advised Yarbrough to contact the FINRA Atlanta District Office by April 25, 2011, to confirm that he would appear for the OTR. The April 11, 2011 letter sent by first-class mail was not returned. The certified return receipt for the April 11, 2011 certified mailing reflects that the letter was delivered to Yarbrough's CRD address on April 14, 2011, and that Respondent signed for the letter. Complaint ¶ 18.

On April 27, 2011, Yarbrough failed to appear for the scheduled OTR. Yarbrough's failure to appear for an OTR impeded FINRA's investigation and prevented FINRA from completing its regulatory responsibility to fully investigate potential rule violations.

Complaint ¶ 19.

Based on the foregoing facts, the Hearing Officer finds that Yarbrough violated FINRA Rules 8210 and 2010 by failing to appear and testify at an OTR.

V. Sanctions

A. Borrowing Money from a Customer

The FINRA Sanction Guidelines ("Sanction Guidelines") do not provide specific guidance for borrowing money from a customer in violation of Conduct Rule 2370. However, a 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.⁷

According to the General Principles Applicable to All Sanction Determinations ("General Principles"), adjudicators should impose sanctions that are designed to deter future misconduct and improve overall business standards. In addition, the Principal Considerations in Determining Sanctions that are applicable to all violations direct adjudicators to consider whether the Respondent attempted to conceal his misconduct, whether his misconduct resulted in injury to the investing public, whether Respondent's misconduct was intentional, whether the

⁷ NASD Notice to Members 03-62, October 2003.

misconduct resulted in the potential for monetary gain, the size of the transaction, and the sophistication of the injured customer.⁸ All are aggravating factors.

Respondent has admitted that he knowingly violated FINRA's Rules and his firm's policy. Complaint ¶ 9. He also has admitted that he attempted to conceal the loan from his firm by instructing an individual who held power of attorney for D.W. not to reveal the loan to Ameriprise. Complaint ¶ 10. In addition, as discussed above, D.W. was quite elderly. Respondent borrowed a substantial amount of money from D.W. Respondent gained financially by his misconduct, and his misconduct injured D.W. financially.

Enforcement has not requested sanctions for Respondent's violation of NASD Conduct Rule 2370. Nevertheless, the Hearing Officer finds that Yarbrough's misconduct was egregious. The Hearing Officer finds that a bar is necessary to protect the investing public. Accordingly, the Hearing Officer will bar Yarbrough for this violation.⁹

B. Failure to Respond to Requests for Information

For failing to respond to FINRA Rule 8210 requests for information, the Sanction Guidelines provide that a bar should be "standard" when there is a complete failure to respond, and should also be standard for a partial failure to respond unless the Respondent can demonstrate that the information provided substantially complied with all aspects of the request.¹⁰ Respondent did not substantially comply with all aspects of the request. In fact, he refused to appear and testify at his OTR, which is an aggravating factor. The Hearing Officer finds that a bar from associating with any FINRA member firm in all capacities is an

⁸ FINRA Sanction Guidelines 6-7 (2011) (Principal Considerations in Determining Sanctions Nos. 10, 11, 13, 17-19), available at www.finra.org/sanctionguidelines.

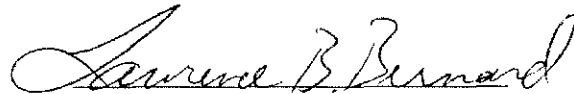
⁹ The Hearing Officer does not order restitution because Enforcement represents that the customer has been made whole. Default Motion at 3.

¹⁰ Sanction Guidelines 33.

appropriately remedial sanction given all of the facts and circumstances. Accordingly, the Hearing Officer also will bar Yarbrough from associating with any FINRA member firm in all capacities for this violation.

VI. Conclusion

James Landon Yarbrough is barred from associating with any member firm in any capacity for borrowing money from a customer, in violation of NASD Conduct Rule 2370 and FINRA Rule 2010, as alleged in the First Cause of Action; and failing to appear at on OTR, in violation of FINRA Rules 8210 and 2010, as alleged in the Second Cause of Action. The bars shall become effective immediately if this Default Decision becomes FINRA's final disciplinary action in this proceeding.

A handwritten signature in cursive script, reading "Lawrence B. Bernard".

Lawrence B. Bernard
Hearing Officer

Copies to: James Landon Yarbrough (*via overnight courier and first-class mail*)
Rebecca L. Segrest, Esq. (*via electronic and first-class mail*)
Andrew A. Favret, Esq. (*via electronic and first-class mail*)
Mark P. Dauer, Esq. (*via electronic*)
David R. Sonnenberg, Esq. (*via electronic*)