

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

RANDY A. BOLD
(CRD No. 2772699),

Respondent.

Disciplinary Proceeding
No. E072004082001

DEFAULT DECISION

Hearing Officer – SW

Date: February 16, 2006

Respondent is barred from associating with any member firm in any capacity for (i) violating NASD Conduct Rule 2110 and NASD Procedural Rule 8210 by failing to respond to two requests for information issued by the NASD staff, and (ii) violating NASD Conduct Rules 2370 and 2110 by borrowing customer funds without receiving prior approval from his employer. In addition to the bars, Respondent is directed to reimburse his customers with interest.

Appearances

William Brice LaHue, Regional Counsel, Atlanta, GA, and Rory C. Flynn, Of Counsel, Washington, DC, for the Department of Enforcement.

No appearance by or for Respondent Randy A. Bold.

DECISION

1. Procedural History

On August 29, 2005, the Department of Enforcement (“Enforcement”) filed a two-count Complaint, alleging in count one that Respondent Randy A. Bold (“Respondent”) borrowed funds from customers in violation of NASD Conduct Rules 2110 and 2370. Specifically, count one of the Complaint alleges that Respondent borrowed funds from two customers in two separate transactions, without complying with the internal policies of his employer, in violation of NASD Conduct Rule 2370. Count two of the Complaint alleges that Respondent failed to

respond to requests for information issued by the NASD staff pursuant to Procedural Rule 8210, in violation of NASD Rules 2110 and 8210.

Pursuant to NASD Rules 9215(a) and 9138(c), Respondent was required to file an answer to the Complaint, which he failed to do. Accordingly, on November 28, 2005, Enforcement filed a Motion for Entry of Default Decision ("Motion"), supported by the Declaration of William Brice LaHue, Esq., Regional Counsel in NASD's Atlanta, GA office, and by four exhibits.¹ For the reasons set forth below, Enforcement's Motion is granted.

II. Respondent's Default

On August 25, 2005, Enforcement served Respondent with copies of the Complaint and Notice of Complaint, via certified and first class mail, at his current residential address as reflected in the Central Registration Depository ("CRD address").² (DECL at ¶ 7; CX-3). Respondent did not file an Answer. (DECL at ¶ 10). On September 28, 2005, Enforcement served Respondent with copies of the Complaint and Second Notice of Complaint, via certified and first class mail, at his CRD address. (DECL at ¶ 8; CX-4). Again, Respondent failed to file an Answer or otherwise respond to the Complaint. (DECL at ¶ 10).

Enforcement properly served Respondent in compliance with Procedural Rule 9134(b)(1) by sending the Complaint via first class and certified mail to Respondent's CRD address.³ (DECL at ¶¶ 7-8; CX-3; CX-4). Thus, Respondent received valid constructive notice of this proceeding and defaulted by failing to answer the Complaint. Accordingly, pursuant to

¹ Hereinafter, the statements in the Motion for Entry of Default Decision will be designated as "Motion, p.;" the statements in the LaHue Declaration will be designated as "DECL at ¶;" and Enforcement's exhibits will be designated as "CX-" with the appropriate page or paragraph number.

² Respondent's CRD address is [REDACTED] (DECL at ¶ 7; CX-2, p. 1).

³ *Dep't of Enforcement v. Reynolds Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at *5 (N.A.C. Dec. 9, 2003) (NASD Procedural Rule 9134(b)(1) allows for constructive notice by mailing a complaint to the respondent's most recent CRD address) quoting *Lubeck v. SEC*, 1998 U.S. App. LEXIS 18849, at *20 (9th Cir. Aug. 12, 1998).

Procedural Rules 9215(f) and 9269(a)(2), the Hearing Officer finds Respondent in default and deems the allegations in the Complaint admitted.

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

Respondent was registered with NASD member firms Wachovia Securities, Inc. and Wachovia Securities, LLC (collectively "Wachovia") from July 12, 2001 until October 22, 2004.⁴ (CX-2, pp. 4-5). Respondent has not been registered since that date. (CX-4).

Pursuant to Article V, Section 4 of the NASD's By-Laws, a person whose association with an NASD member firm has been terminated, and who is no longer associated with any member firm, remains subject to NASD jurisdiction for conduct that took place while he was associated with a member firm if the Complaint is filed within two years after the effective date of termination of his last registration.

The Complaint in this case is based on Respondent's conduct while he was associated with Wachovia, and it was filed less than two years after the effective date of termination of his registration. Therefore, NASD has jurisdiction over this proceeding.

B. Respondent Violated Conduct Rules 2110 and 2370

The Complaint, attached to this Default Decision as Exhibit A, alleges that Respondent, while associated with Wachovia, solicited and borrowed funds from customers JFC and PS, in violation of NASD Conduct Rules 2110 and 2370. (Complaint at ¶¶ 3-11). Specifically, in June 2004, Respondent solicited a \$15,000 loan from customer JFC, who had been a client of Respondent at his former broker-dealer, and who had opened both an IRA and an individual account with Wachovia in late 2001. (Complaint at ¶¶ 3-4). In response to Respondent's request,

⁴ On July 12, 2001, Respondent became registered as a general securities representative with Wachovia Securities, Inc. (CX-2, p. 5). On June 15, 2002, through a mass transfer, Respondent became registered with Wachovia Securities, LLC. (CX-2, pp. 4-5).

JFC wrote a personal check dated June 10, 2004, payable to Respondent. (Complaint at ¶ 5).

Respondent executed a promissory note to JFC promising to repay customer JFC in 60 consecutive monthly installments. (Complaint at ¶ 6).

In 2003, customer PS opened a trust account with Respondent at Wachovia. (Complaint at ¶ 7). The Complaint also alleges that in August 2004, Respondent solicited a loan from customer PS in the amount of \$2,500. (Complaint at ¶ 8). On August 26, 2004, PS gave Respondent a personal check in the amount of \$2,500. (Complaint at ¶ 9).

Wachovia's written internal policies do not permit representatives to borrow from, or lend money or securities to, clients except for loans to or from clients who are immediate family members for non-securities purposes, and with prior written approval. (Complaint at ¶ 10). Respondent did not obtain prior written approval for the loans, and customers JFC and PS were not immediate family members of Respondent. (Complaint at ¶ 11).

Enforcement submitted additional information with its Motion that after approximately three payments to customer JFC, Respondent failed to make any additional payments.⁵ (DECL at ¶ 17). Respondent failed to make any payments on the loan to customer PS. (DECL at ¶ 22).

Under Rule 9215(f) and NASD Notice to Members 99-77, the allegations of the first cause of the Complaint are deemed admitted, and they are hereby incorporated into this Default Decision as findings of fact.

NASD Conduct Rule 2370, which was effective November 10, 2003, provided that no person associated with a member in a registered capacity may borrow money from or lend money to a customer of the member unless the member has written procedures authorizing such arrangements, and even then, the borrowing or lending must meet one of the following conditions: (1) the customer is a member of the registered person's immediate family; (2) the

⁵ Respondent paid JFC \$900, owing a balance of \$14,100. (Motion, p. 4 at n.7).

customer is in the business of lending money; (3) the customer and the registered person are both registered persons of the same firm; (4) the lending arrangement is based on a personal relationship outside of the broker-customer relationship; or (5) the lending arrangements is based on a business relationship outside of the broker-customer relationship. In addition, even if the financial arrangement meets one of the foregoing conditions, the member must pre-approve the borrowing or lending relationship, in writing.⁶

Effective February 18, 2004, prior to the transactions at issue in this proceeding, Rule 2370 was amended: (i) to limit the scope of Rule 2370 to those lending arrangements between registered persons and their particular customers, rather than to any customers of the firm; and (ii) to allow a member to adopt written procedures that, under certain circumstances, do not require registered persons to give notice of, or the member to pre-approve in writing, two of the five types of permissible lending arrangements.⁷

Wachovia adopted written procedures that permitted only financing arrangements with customers who are immediate family members of the registered representative. (Complaint at ¶ 10). Even as to those arrangements, Wachovia's procedures continued to require prior approval by the firm. (*Id.*). JFC and PS were customers of Respondent and were not immediate family members of Respondent. (Complaint at ¶ 11). In addition, Respondent failed to obtain Wachovia's prior written approval for these loans. (*Id.*)

Accordingly, the JFC and PS loans, which were solicited after the effective date of Conduct Rule 2370, did not fall within the exceptions to the general prohibition against

⁶ NASD Notice to Members, 03-62 (Oct. 2003).

⁷ Specifically, the amendments permitted member firms to adopt written procedures exempting from the prior notice and approval requirements borrowing or lending arrangements involving a registered person and a customer that is: (1) a member of his or her immediate family (as defined in the Rule); or (2) a financial institution, regularly engaged in the business of providing credit, financing, or loans (or other entity or person that regularly arranges or extends credit in the ordinary course of business), provided the loan has been made on commercial terms that the customer generally makes available to members of the general public similarly situated as to need, purpose, and creditworthiness. NASD Notice to Members, 04-14 (Mar. 2004).

borrowing from customers as set forth in Conduct Rule 2370. Therefore, Respondent violated Conduct Rule 2370 when he borrowed funds from customers JFC and PS in 2004. It is well settled that any conduct that violates an NASD Conduct Rule is viewed as a violation of NASD Conduct Rule 2110.⁸

Based on the allegations deemed admitted, the Hearing Officer finds that Respondent violated NASD Conduct Rules 2370 and 2110, as alleged in the first cause of the Complaint, by improperly borrowing funds from his clients.

C. Respondent Failed to Respond to NASD Requests for Information

After receiving a Form U-5 from Wachovia advising that it had received a customer complaint regarding Respondent, NASD began an investigation. (CX 1, p. 5). The second cause of the Complaint alleges that Respondent failed to respond to requests for information that were sent by the NASD staff to Respondent on February 9, 2005 and March 7, 2005, at his CRD address, via first class and certified mail. (Complaint at ¶¶ 14-19). Each request was made pursuant to NASD Procedural Rule 8210. (*Id.*).

Under Rule 9215(f) and NASD Notice to Members 99-77, the allegations of the second cause of the Complaint are deemed admitted, and they are hereby incorporated into this Default Decision as findings of fact.

Under NASD Procedural Rule 8210, NASD may require any person subject to its jurisdiction to provide information regarding any matter under investigation. The obligation to respond is unqualified. Because NASD lacks subpoena power, Rule 8210 is the means by which NASD carries out its regulatory functions. It is a “key element in the NASD’s efforts to police

⁸ Dep’t of Enforcement v. Shvarts, No. CAF980029, 2000 NASD Discip. LEXIS 6, at *12-13 (NAC June 2, 2000).

its members.”⁹ Failure to comply with Rule 8210 requests for information is a serious violation because it subverts NASD’s ability to perform its regulatory responsibilities.¹⁰ A violation of Rule 8210 is also a violation of NASD Conduct Rule 2110.¹¹

Pursuant to Rule 8210(d), Respondent is deemed to have received the requests for information sent to his CRD address. Accordingly, based on the allegations deemed admitted, the Hearing Officer finds that Respondent received notice of the requests for information, and he violated NASD Conduct Rule 2110 and NASD Procedural Rule 8210 by failing to respond to those requests.

IV. Sanctions

A. Respondent Violated Conduct Rules 2370 and 2110

The NASD Sanction Guidelines do not list a specific sanction for violating Conduct Rule 2370. Enforcement recommended that Respondent be barred and directed to pay \$14,100 to customer JFC, plus interest, and repay \$2,500 to customer PS, plus interest. Enforcement argued that Respondent’s conduct was egregious because Respondent failed to repay the prohibited loans in full.

The Hearing Officer agrees that Respondent’s conduct was egregious because (i) Respondent’s actions were intentional, (ii) the conduct involved two separate loan transactions and two separate customers evidencing a pattern of misconduct, (iii) the customers were harmed because Respondent failed to completely repay customer JFC in violation of his agreement with JFC and he failed to make any arrangements to repay PS, and (iv) Respondent

⁹ See, e.g., Richard J. Rouse, Exchange Act Release No. 32,685, 1993 SEC LEXIS 1831, at *7 (1993); Joseph G. Chiulli, Exchange Act Release No. 42,359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for NASD to conduct its investigations effectively, and emphasizing that NASD members and associated persons must fully cooperate with requests for information).

¹⁰ Id.

¹¹ See Dep’t of Enforcement v. Baxter, No. C07990016, 2000 NASD Discip. LEXIS 3, at *21, 25 (NAC Apr. 19, 2000).

profited by his misconduct.¹² Accordingly, the Hearing Officer finds that Respondent's actions were egregious and warrant a bar.

Respondent is barred from associating with any member firm in any capacity, and ordered to pay \$14,100 to customer JFC plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2), from June 10, 2005, the date of the violative conduct, until paid. In addition, Respondent is ordered to repay \$2,500 to customer PS plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2), from August 26, 2004, the date of the violative conduct, until paid.

B. Respondent Failed to Respond to Two Rule 8210 Requests for Information

The NASD Sanction Guideline for failure to respond to Rule 8210 requests for information states that a bar should be standard where the respondent failed to respond in any manner.¹³

In the instant case, where Enforcement has not identified any mitigating factors and the recommended bar is standard for this type of violation, the Hearing Officer accepts Enforcement's recommended sanction and bars Respondent from association with any member firm in any capacity.

V. Order

Respondent Randy A. Bold is barred from associating with any NASD member firm in any capacity for: (i) violating NASD Conduct Rules 2370 and 2110 by borrowing customer funds without receiving prior approval from his employer; and (ii) violating NASD Conduct Rule 2110 and NASD Procedural Rule 8210 by failing to respond to two requests for information issued by the NASD staff.

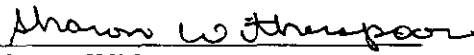
¹² See Terry Wayne White, 50 S.E.C. 211 (1990).

¹³ NASD Sanction Guidelines, p. 35 (2005).

In addition to the bars, Respondent is directed to reimburse customer JFC \$14,100 plus interest from June 10, 2005, until paid, and to reimburse customer PS \$2,500 plus interest from August 26, 2004, until paid. The interest to be charged is at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2).

These sanctions shall become effective on a date set by NASD, but not before the expiration of 30 days after the date this Default Decision becomes the final disciplinary action of NASD; provided, however, that the bars shall become effective immediately upon this Default Decision becoming the final disciplinary action of NASD.

SO ORDERED.


Sharon Witherspoon
Hearing Officer

Dated: Washington, DC
 February 16, 2006

Copies to:
Randy A. Bold (via FedEx and first class mail)
William Brice La Hue, Esq. (via electronic and first class mail)
Rory C. Flynn, Esq. (via electronic and first class mail)

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

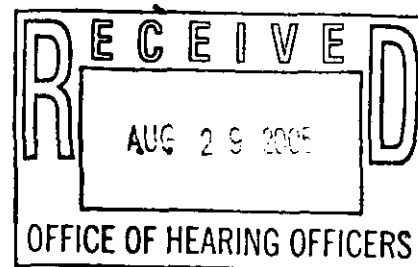
RANDY A. BOLD
(CRD No. 2772699)

Respondent.

Disciplinary Proceeding
No. E072004082001

Hearing Officer -

COMPLAINT



Upon information and belief, Complainant alleges as follows:

1. Respondent Randy A. Bold ("Bold") was first registered as a general securities representative in July 1996, while associated with Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"). He left Merrill Lynch in July 2001 and was employed by Wachovia Securities, LLC ("Wachovia"), where he remained until September 2004. Bold is not currently employed by a NASD member, however he remains subject to the jurisdiction of the NASD pursuant to Article V, Section 4 of the NASD Bylaws.

FOR A FIRST CAUSE OF COMPLAINT

NASD Conduct Rule 2370 and 2110

(Borrowing From Customers)

2. The allegations contained in Paragraph 1 are hereby realleged and incorporated herein by reference.
3. Bold served as the registered representative for customer J.F.C. for at least eight years beginning at Merrill Lynch. Customer J.F.C. followed Bold to Wachovia, opening both an IRA and an individual account with Wachovia in late 2001.
4. In or about June 2004, Respondent Bold, while associated with Wachovia, solicited a loan from customer J.F.C. in the amount of \$15,000.

5. Customer J.F.C. drafted a personal check, dated June 10, 2004, in the amount of \$15,000 made payable to Bold and provided it to him.
6. Bold signed a promissory note promising to repay Customer J.F.C. in 60 consecutive monthly installments and provided it to customer J.F.C.
7. Customer P.S. opened a trust account with Bold at Wachovia in 2003.
8. In or about August 2004, Bold, while associated with Wachovia, solicited a loan from customer P.S. in the amount of \$2,500.
9. On or about August 26, 2004, P.S. drafted a personal check in the amount of \$2,500 made payable to Bold and provided it to him.
10. Wachovia's internal policies do not allow representatives to borrow from, or lend money or securities to, clients except for loans to or from clients who are immediate family members for non-securities purposes. Any such loans must also have prior written approval.
11. Customers J.F.C. and P.S. were not immediate family members of Bold and he did not obtain prior written approval for the loans he obtained from these customers.
12. Such borrowing from customers constitutes a violation of NASD Conduct Rules 2370 and 2110 by Respondent Bold.

FOR A SECOND CAUSE OF COMPLAINT

NASD Conduct Rule 2110 and Procedural Rule 8210

(Failure To Respond to NASD Request for Information)

13. The allegations contained in paragraphs 1 through 12, above, are hereby realleged and incorporated herein by reference.
14. In or about November 2004, the NASD Atlanta District office received an amended Uniform Notice of Termination for Securities Industry Registration ("Form U-5") filed by Wachovia on behalf of Respondent Bold. The amended Form U-5 alleged that Bold

borrowed funds from a customer and failed to repay the loan. The NASD Atlanta District office initiated an investigation into the allegations on the amended Form U-5.

15. Bold was requested, by letter dated February 9, 2005 (sent via first class mail to Bold at his CRD address of [REDACTED] and pursuant to Procedural Rule 8210), to provide a written statement to the NASD and certain specifically identified documents no later than March 2, 2005.
16. The February 9 letter sent by first class mail was not returned. Bold failed to provide the requested information by March 2, 2005.
17. Consequently, Bold was again requested, by letter dated March 7, 2005, to provide the information originally requested in the February 9 letter. The March 7 letter was sent to Bold's CRD address via both certified and first class mail and requested a response, pursuant to Procedural Rule 8210, no later than March 28, 2005.
18. The March 7 letter sent by first class mail was not returned but the letter sent by certified mail was returned to the NASD Atlanta District office indicating that it was "unclaimed."
19. Bold failed to respond by March 28, 2005, and, as of the date hereon, has not responded.
20. Such failures to respond to the February 9 and March 7, 2005, request letters constitute separate and distinct violations of NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by Respondent Bold.

PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Respondent committed the violations alleged within this Complaint;
- B. An order imposing sanctions upon the Respondent in accordance with NASD Rule 8310;

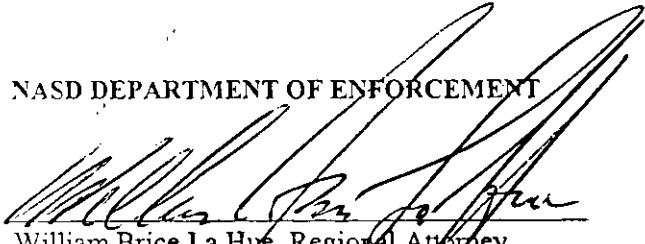
C. An order imposing such costs of any proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330;
and

D. An order imposing any other fitting sanction.

Date:

8/25/05

NASD DEPARTMENT OF ENFORCEMENT


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