

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

SEAN J. LEE
(CRD No. 6023958),

Respondent.

Disciplinary Proceeding
No. 2013037833101

Hearing Officer – CC

DEFAULT DECISION

November 13, 2014

Respondent borrowed funds from a customer in contravention of his firm's policies and without the firm's knowledge or consent, in violation of FINRA Rules 3240 and 2010. For this misconduct, Respondent is suspended in all capacities for one year and fined \$5,000.

Appearances

Heather Hawker, Esq., and Aimee Williams-Ramey, Esq., for FINRA's Department of Enforcement, Complainant.

No appearance by or on behalf of Sean J. Lee, Respondent.

DECISION

I. Introduction

On July 21, 2014, FINRA's Department of Enforcement ("Enforcement") filed the attached Complaint with FINRA's Office of Hearing Officers. The Complaint alleges that, on May 8, 2013, while associated with Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"), Respondent Sean J. Lee ("Lee") borrowed \$13,000 from a Merrill Lynch customer to purchase an automobile. The Complaint alleges that Lee borrowed the funds without Merrill Lynch's knowledge or consent and in contravention of the firm's policies, which

prohibited employees from loaning money to, or accepting loans from, the firm's customers. The Complaint alleges that Lee's actions violated FINRA Rules 3240 and 2010.¹

Enforcement served Lee with the Complaint in accordance with FINRA's Code of Procedure, and Lee failed to file an Answer or otherwise respond. Accordingly, on October 1, 2014, Enforcement filed a Motion for Entry of Default Decision ("Default Motion"), together with the Declaration of Heather Hawker in Support of the Default Motion ("Hawker Decl."), and six exhibits.²

For the reasons set forth below, the Hearing Officer finds Lee in default, grants Enforcement's Default Motion, and deems the allegations of the Complaint admitted, pursuant to FINRA Rules 9215(f) and 9269(a).

II. Findings of Fact and Conclusions of Law

A. Lee's Background

Lee entered the securities industry in 2012.³ He was associated with Merrill Lynch and registered as a general securities representative from January 27, 2012, through August 1, 2013.⁴ On August 1, 2013, Merrill Lynch filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") disclosing that Lee voluntarily resigned from the firm on July 17, 2013, while he was subject to internal review for accepting a loan from a client.⁵ Lee has remained unregistered and has not re-associated with a FINRA member firm.⁶

¹ FINRA's Rules are available at www.finra.org/rules.

² Enforcement's exhibits are labeled CX-1 through CX-6.

³ Hawker Decl. ¶ 5; CX-1.

⁴ *Id.*

⁵ Hawker Decl. ¶ 5; CX-3.

⁶ Hawker Decl. ¶ 5; CX-1; CX-2.

B. FINRA's Jurisdiction

FINRA has jurisdiction over this disciplinary proceeding pursuant to Article V, Section 4(a) of FINRA's By-Laws because (1) Enforcement filed the Complaint with the Office of Hearing Officers on July 21, 2014, which is within two years of Merrill Lynch's termination of Lee's association with the firm on August 1, 2013; and (2) the Complaint alleges that Lee engaged in misconduct during the period when he was associated with Merrill Lynch.⁷

C. Origin of the Investigation

Enforcement commenced an investigation of Lee after Merrill Lynch filed a Form U5 stating that, when Lee voluntarily terminated his association with the firm, he was under internal review for borrowing funds from a client.⁸ Enforcement's investigation led to the filing of the Complaint in this matter.⁹

D. Lee's Default

At the time Enforcement issued the Complaint in July 2014, Lee's residential address as reflected in the Central Registration Depository ("CRD") was an address in Reno, Nevada ("CRD Address").¹⁰ On July 21, 2014, Enforcement served Lee with the First Notice of Complaint and Complaint by certified mail at Lee's CRD Address.¹¹ Enforcement also sent to Lee's CRD Address a copy of the First Notice of Complaint and Complaint by first-class mail.¹² The United States Postal Service ("USPS") returned the certified and first class mailings with the

⁷ See Article V, Sec. 4, FINRA By-Laws, *available at* www.finra.org/rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: By-Laws"); Hawker Decl. ¶ 6.

⁸ Hawker Decl. ¶ 5.

⁹ *Id.*

¹⁰ Hawker Decl. ¶ 7; CX-4.

¹¹ Hawker Decl. ¶ 8; CX-5.

¹² Hawker Decl. ¶ 8.

notation “not deliverable as addressed, unable to forward.”¹³ Lee’s Answer to the First Notice of Complaint was due on or before August 18, 2014, but Lee did not file an Answer or otherwise respond to the Complaint.¹⁴

On August 19, 2014, Enforcement served Lee at the CRD Address with the Second Notice of Complaint and Complaint by certified mail.¹⁵ Enforcement also sent a copy of the Second Notice of Complaint and Complaint to Lee’s CRD Address by first-class mail.¹⁶ The USPS has not returned the certified and first-class mailings.¹⁷ Lee’s Answer to the Second Notice of Complaint was due on or before September 5, 2014.¹⁸ To date, Lee has not filed an Answer or otherwise responded to the Complaint.¹⁹ Enforcement states that it attempted to locate another address for Lee and that the only address that it could identify is the CRD Address.²⁰

FINRA Rule 9134(b) provides for service of a complaint on a natural person by certified mail to the person’s residential address as indicated in the CRD. The Hearing Officer finds that Lee received constructive notice of the Complaint in this proceeding.²¹ Accordingly, the Hearing Officer finds that Lee defaulted by failing to file an Answer or otherwise respond to the Complaint.

¹³ Hawker Decl. ¶ 9; CX-5.

¹⁴ Hawker Decl. ¶¶ 8, 9; CX-5.

¹⁵ Hawker Decl. ¶ 10; CX-6.

¹⁶ Hawker Decl. ¶ 10.

¹⁷ *Id.* Nor has the USPS provided proof of delivery of the certified mailing.

¹⁸ Hawker Decl. ¶ 10; CX-6.

¹⁹ Hawker Decl. ¶ 10.

²⁰ Hawker Decl. ¶ 11.

²¹ See *Dep’t of Enforcement v. Moore*, Complaint No. 2008015105601, 2012 FINRA Discip. LEXIS 45, at *21 (FINRA NAC July 26, 2012) (finding constructive notice of a complaint served on respondent at his last known residential address, as indicated in the CRD, by first-class and certified mail).

E. Lee Violated FINRA Rules 3240 and 2010 by Borrowing from a Customer

FINRA Rule 3240 prohibits registered persons from borrowing money from or lending money to any customer unless: (1) the representative's employing member firm has written procedures allowing borrowing from or lending to customers; (2) the borrowing or lending agreement meets at least one of the conditions specified in FINRA Rule 3240(a)(2); and (3) the registered person notifies the firm of the borrowing or lending arrangement prior to entering into the arrangement and obtains pre-approval in writing or otherwise complies with the firm's procedures.

In May 2013, Lee borrowed \$13,000 from Merrill Lynch customer LE.²² At the time, Lee was the registered representative of record for LE's account.²³ The loan was not documented. Lee borrowed the money from LE without Merrill Lynch's knowledge or consent.²⁴ Moreover, during the relevant time period, Merrill Lynch's procedures prohibited, without exception, its registered representatives from borrowing from or lending to any firm customer.²⁵

Similarly, Merrill Lynch's code of ethics provided that borrowing and lending arrangements with customers were not allowed unless the loan was to or from a family member or an institution engaged in the business of lending.²⁶ LE is not a member of Lee's family or an institution engaged in the business of lending.²⁷ This notwithstanding, in May 2012 and June

²² Complaint ("Compl.") ¶ 6. Lee solicited the loan from customer LE. Hawker Decl. ¶ 15b.

²³ *Id.*

²⁴ Compl. ¶¶ 7, 9.

²⁵ Compl. ¶ 10.

²⁶ *Id.*

²⁷ Compl. ¶ 10; Hawker Decl. ¶ 13.

2013, Lee completed annual certifications wherein he certified to Merrill Lynch that he would abide by the firm's code of ethics and compliance policies.²⁸

Merrill Lynch did not learn of customer LE's May 2013 loan to Lee until July 16, 2013, when LE contacted the firm.²⁹ Lee subsequently admitted to Merrill Lynch that he accepted a \$13,000 loan from LE, and in July 2013, Merrill Lynch reimbursed LE the loan amount (\$13,000) plus a \$145 finance charge that LE had incurred.³⁰ As of May 22, 2014, Lee had not reimbursed Merrill Lynch for paying off his loan from LE.³¹

The Hearing Officer finds that Lee violated FINRA Rules 3240 and 2010³² by accepting a loan from a firm customer without the firm's knowledge or prior consent and in contravention of the firm's express prohibition against accepting a loan from a customer.

III. Sanctions

Borrowing and lending arrangements between registered representatives and their customers are particularly problematic because they enable registered representatives to take "unfair advantage of their customers by inducing them to lend money in disregard of the customers' best interest, or by borrowing funds from, but not repaying, customers."³³ FINRA adopted Rule 3240 specifically to provide member firms with control over, and supervisory

²⁸ *Id.*

²⁹ Hawker Decl. ¶ 14.

³⁰ *Id.* Lee admitted in a September 30, 2013 response to FINRA's Rule 8210 request for information that he borrowed \$13,000 from LE. Hawker Decl. ¶ 15a. He admitted in November 7, 2013 and April 20, 2014 responses to FINRA's Rule 8210 requests for information that Merrill Lynch repaid LE the money that he owed. Hawker Decl. ¶ 15b.

³¹ *Id.*

³² See *Dep't of Enforcement v. Mielke*, Complaint No. 2009019837302, 2014 FINRA Discip. LEXIS 24, at *8 n.3 (FINRA NAC July 18, 2014) (finding that a violation of any FINRA Rule violates NASD Rule 2110 and FINRA Rule 2010).

³³ See NASD Notice to Members 03-62 (Oct. 2003), 2003 NASD LEXIS 70, at *2 (announcing Commission approval of NASD rule governing lending between registered persons and customers).

responsibility for, lending arrangements between their associated persons and firm customers.³⁴ Lee's misconduct enabled him to circumvent Merrill Lynch's supervisory procedures and firm policies and contravened the intent of Rule 3240.

There are no specific FINRA Sanction Guidelines ("Guidelines") for borrowing from or lending to a customer in violation of FINRA Rule 3240.³⁵ The Guidelines' General Principles Applicable to All Sanction Determinations and Principal Considerations in Determining Sanctions, however, provide significant guidance and recommend consideration of a variety of potentially aggravating and mitigating factors.³⁶

Here, several aggravating factors exist. The Hearing Officer finds it aggravating that Lee affirmatively solicited the loan from customer LE.³⁷ Lee did not voluntarily repay LE, and after LE complained to Merrill Lynch and the firm repaid LE, Lee never reimbursed Merrill Lynch. The Hearing Officer finds these factors aggravating as well.³⁸ Also aggravating are Lee's false representations to Merrill Lynch on annual certifications that he would abide by the firm's code of ethics and compliance policies. By making such false certifications while concealing that he had solicited and accepted a loan from a customer, Lee misled Merrill Lynch.³⁹ Additionally, the fact that Lee's misconduct resulted in his monetary gain is aggravating.⁴⁰ There are no mitigating factors.

Accordingly, Lee is suspended in all capacities for one year and fined \$5,000.

³⁴ *Id.* at *3.

³⁵ FINRA Sanction Guidelines (2013), *available at* www.finra.org/Industry/Enforcement/sanctionguidelines.

³⁶ *Guidelines* at 2-7.

³⁷ Hawker Decl. ¶ 15b.

³⁸ *Guidelines* at 6 (Principal Consideration Nos. 4, 11).

³⁹ *Guidelines* at 6 (Principal Consideration No. 10).

⁴⁰ *Guidelines* at 7 (Principal Consideration No. 17).

IV. Order

Respondent Sean J. Lee is fined \$5,000 and suspended for one year from associating with any FINRA member firm in any capacity for borrowing \$13,000 from a customer without firm knowledge and approval and in contravention of firm procedures, in violation of FINRA Rules 3240 and 2010. If this Default Decision becomes the final disciplinary action of FINRA, Lee's suspension shall become effective with the opening of business on Monday, December 15, 2014, and end on Monday, December 14, 2015. The fine shall be due and payable if and when Lee re-enters the securities industry.



Carla Carloni
Hearing Officer

Copies to:

Sean J. Lee (*via overnight courier and first-class mail*)
Heather Hawker, Esq. (*via electronic and first-class mail*)
Aimee Williams-Ramey, Esq. (*via electronic mail*)
Jeffrey Pariser, Esq. (*via electronic mail*)

EXHIBIT A

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

SEAN J. LEE,
(CRD No. 6023958)

Respondent.

Disciplinary Proceeding
No. 2013037833101

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. On or about May 8, 2013, Sean J. Lee ("Lee" or "Respondent") borrowed \$13,000 from LE, a customer of his then firm, Merrill Lynch, Fenner & Smith Incorporated (the "Firm"), in violation of FINRA Rules 3240 and 2010.

RESPONDENT AND JURISDICTION

2. Lee entered the securities industry in 2012. He was associated with the Firm from on or about January 27, 2012 through on or about August 1, 2013, where he was registered as a general securities representative.
3. The Firm filed a Uniform Termination Notice for Securities Industry Registration (Form U5) on August 1, 2013 disclosing that Lee voluntarily terminated from the Firm on July 17, 2013, while he was under internal review for accepting a loan from a client.
4. Since his termination from the Firm, Lee has not associated with another member firm.

Although Lee 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 the effective date of termination of Lee's registration with the Firm, and (2) the Complaint charges Lee with misconduct committed while he was registered or associated with a FINRA member.

**FIRST CAUSE OF ACTION
(Borrowing from a Customer)
FINRA Rules 3240 and 2010**

5. The Department realleges and incorporates by reference paragraphs 1-4 above.
6. On or about May 8, 2013, Lee borrowed \$13,000 from Firm customer LE. At all relevant times, Lee was the registered representative for LE's account.
7. The loan was an undocumented personal loan. The purpose of the loan was to provide Lee with funds to purchase an automobile.
8. FINRA Rule 3240 prohibits registered persons from borrowing money from or lending money to any customer unless: (1) the representative's employing member firm has written procedures allowing borrowing from or lending to customers; (2) the borrowing or lending meets at least one of the conditions specified in Rule 3240(a)(2); and, (3) the registered person notifies the firm of the borrowing or lending arrangement and obtains pre-approval in writing.
9. Lee borrowed the funds from LE without the Firm's knowledge or consent.
10. Moreover, at all relevant times, the Firm's procedures prohibited borrowing arrangements such as the one between Lee and LE. Specifically, per the Firm's Compliance Manual, employees were prohibited from making loans to or accepting loans from clients. Similarly, the Firm's Code of Ethics provided that borrowing and lending arrangements

with customers were not allowed unless the loan was to/from a family member, or from an institution engaged in the business of lending. LE is neither a Lee family member nor an institution engaged in the business of lending. In May 2012 and June 2013, Lee completed annual certifications wherein he certified that he would abide by the Firm's Code of Ethics and compliance policies.

11. By borrowing funds from a customer in contravention of the requirements of FINRA Rule 3240, Lee violated FINRA Rules 3240 and 2010.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. Make findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;
- B. Order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed; and
- C. Order that the Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date: 7/21/14



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