

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

KENT LEHMAN  
(CRD No. 5071373),

Respondent.

Disciplinary Proceeding  
No. 2011029916501

Hearing Officer – LOM

**DEFAULT DECISION**

March 4, 2014

**Respondent violated NASD Conduct Rules 2370 and 2110, and FINRA Rule 2010, when he borrowed money from a customer, contrary to the dictates of NASD Conduct Rule 2370 and the policies and procedures of the FINRA member firm that employed him (First Cause of Action). For this misconduct Respondent would be suspended three months and fined \$2,500. In light of the bar imposed for the violations alleged in the Third Cause of Action, however, these sanctions are not imposed.**

**Respondent separately violated FINRA Rule 2010 by providing false information on a firm questionnaire representing that he had not borrowed money from any customer (Second Cause of Action). For this misconduct Respondent would be suspended three months and fined \$2,500. In light of the bar imposed for the violations alleged in the Third Cause of Action, however, these sanctions are not imposed.**

**Respondent failed to provide information requested by FINRA staff pursuant to FINRA Rule 8210, in violation of that Rule and FINRA Rule 2010 (Third Cause of Action). For this misconduct, Respondent is barred from associating with any FINRA member firm in any capacity.**

**Appearances**

Soo H. Im, and Scott M. Andersen, Los Angeles, California, for the Department of Enforcement.

No appearance on behalf of Kent Lehman.

## **I. Introduction**

The Respondent, Kent Lehman ("Respondent" or "Lehman"), failed to answer the Complaint filed and served on him by the Department of Enforcement ("Enforcement") for the Financial Industry Regulatory Authority ("FINRA").<sup>1</sup> As a consequence, Enforcement filed a Motion For Entry Of Default Decision ("Default Motion"). The Default Motion is accompanied by a Declaration In Support Of Motion For Entry Of Default Decision by Soo H. Im, an Enforcement attorney ("Declaration" or "Im Decl."). The Declaration is supported by factual documentation in the form of attached exhibits (CX-1 through CX-34).

The Declaration details Enforcement's two efforts to serve Respondent with the Complaint. Enforcement first served the Complaint and Notice of Complaint by certified mail, return receipt requested, and first-class mail to six different addresses. One of the six addresses was Respondent's residential address as shown in the Central Registry Depository ("CRD"). Respondent never filed an Answer or otherwise responded. Enforcement made a second attempt to serve the Complaint, along with a Second Notice of Complaint in the same manner. Respondent never filed an Answer or otherwise responded.

The Declaration's exhibits include the Complaint.<sup>2</sup> Pursuant to FINRA Rule 9269, Enforcement seeks to have the allegations of the Complaint deemed admitted.

The Complaint alleges in the First Cause of Action that Lehman borrowed a total of \$2,835.00 from customer LE in four separate loan transactions between January 2008 and

---

<sup>1</sup> FINRA, which is responsible for regulatory oversight of securities firms that do business with the public and their associated persons, was formed in July 2007 by the consolidation of NASD and the regulatory arm of the New York Stock Exchange ("NYSE"). FINRA is developing a new "Consolidated Rulebook" of FINRA Rules that includes NASD Rules. The first phase of the new consolidated rules became effective on December 15, 2008. See FINRA Regulatory Notice 08-57 (Oct. 2008). Because the Complaint in this case was filed after December 15, 2008, FINRA's procedural rules apply. The conduct rules that apply are those that existed at the time of the conduct at issue. FINRA's Rules (including NASD Rules) and its By-Laws are available at [www.finra.org](http://www.finra.org).

<sup>2</sup> Exs. 21 (Notice of Complaint, with Complaint) and 28 (Second Notice of Complaint, with Complaint).

February 2009. The firm where Lehman was employed at the time prohibited registered representatives from borrowing from any client. The only exception was for loans from family members. Even that exception was subject to a procedure for obtaining pre-approval. Customer LE was not a member of Lehman's family, and Lehman did not submit any request for pre-approval to his firm in connection with his borrowing from LE. Based on these facts, the First Cause of Action charges that Lehman violated NASD Conduct Rules 2370 and 2110 and FINRA Rule 2010.

The Complaint alleges in the Second Cause of Action that Lehman provided his firm false information when he completed a firm questionnaire on January 15, 2009, indicating that he had not received any loans from any of his clients in the last twelve months. The Second Cause of Action charges that this misrepresentation violated FINRA Rule 2010.

The Complaint alleges in the Third Cause of Action that Lehman failed to provide documents and information FINRA staff requested pursuant to FINRA Rule 8210. The Complaint charges that this failure to cooperate in the investigation violated FINRA Rules 8210 and 2010.

For the reasons set forth below and pursuant to authority granted by FINRA Rule 9269(a), the Hearing Officer finds Respondent in default, grants Enforcement's Default Motion, and deems the allegations against Respondent admitted. On that basis and the undisputed evidence provided by the Declaration and attached exhibits, the Hearing Officer finds that Respondent committed the violations alleged. Respondent is barred from associating with any FINRA member firm in any capacity for failure to provide documents and information pursuant to FINRA Rule 8210, as alleged in the Third Cause of Action.

The Hearing Officer would suspend Respondent from associating with any FINRA member firm in any capacity for three months and fine him \$2,500 as sanctions for the misconduct found in the First Cause of Action, and would separately suspend him for three months and fine him \$2,500 for the misconduct found in the Second Cause of Action. However, in light of the bar, the lesser sanctions are not imposed.

## **II. Findings And Conclusions Relating To Grant Of Default Motion**

On October 1, 2013, Enforcement served the Notice of Complaint and Complaint on Lehman by certified mail, return receipt requested, and first-class mail to six mailing addresses, including his residential address in the CRD. The papers sent by first-class mail to Lehman's CRD address were not returned to Enforcement. The return receipt card for the certified mailing to the CRD address was returned with an illegible signature. As for the other five addresses, only one of the first class mailings was returned to Enforcement. Only one of the certified mailings was returned to Enforcement. The return receipt cards for the four other certified mailings were returned with illegible signatures.<sup>3</sup>

The Notice of Complaint specified October 29, 2013, as the deadline for filing an Answer. Respondent failed to file an Answer or otherwise respond by that deadline.<sup>4</sup>

Enforcement served a Second Notice of Complaint, accompanied by the Complaint, on October 31, 2013, by certified mail, return receipt requested, and first-class mail to the same six mailing addresses, including Lehman's CRD address. As before, the first class mailing to the CRD address was not returned. The return receipt card for the certified mailing to the CRD

---

<sup>3</sup> Im Decl. ¶¶ 31-37; Exs. 21, 22-27.

<sup>4</sup> Im Decl. ¶ 38; Ex. 21.

address was returned with an illegible signature. Some of the other first class and certified mailings were returned, and others were not.<sup>5</sup>

The Second Notice of Complaint specified November 18, 2013, as the deadline for filing an Answer. Respondent failed to file an Answer or otherwise respond by that deadline.<sup>6</sup>

Enforcement filed its Default Motion on December 19, 2013. As of the date of this decision, Lehman still has not filed an Answer with the Office of Hearing Officers.

Service here was valid under FINRA Procedural Rule 9134 because Enforcement served Lehman by certified mail at Lehman's residential address as reflected in the CRD. The Respondent had constructive notice. Furthermore, Enforcement served the Complaint at five other residential addresses that might belong to Lehman. It did so in order to increase the likelihood that Lehman would receive actual notice. Pursuant to FINRA Rules 9215(f) and 9269(a) and based on Lehman's failure to file an Answer, the Hearing Officer grants Enforcement's Default Motion, finds Lehman in default, and deems the allegations in the attached Complaint admitted.

### **III. Findings And Conclusions Relating To Underlying Violations**

#### **A. Lehman's Background**

According to the Complaint, Lehman first became registered with FINRA as a General Securities Representative ("GSR") through his association with a member firm in 2006. He subsequently associated with other member firms where he was registered as a GSR. From January 2008 to February 2009, Lehman was associated with Morgan Stanley & Co. LLC ("Morgan Stanley"). From July 2009 to June 2011, Lehman was associated with Securian Financial Services, Inc. ("Securian"). On or about July 11, 2011, Securian filed a Form U5

---

<sup>5</sup> Im Decl. ¶¶ 39-45; Exs. 28-34.

<sup>6</sup> Im Decl. ¶ 46; Ex. 28.

(notice of termination) reporting Lehman's voluntary termination from the firm. Lehman's CRD shows that the termination of his registration was effective on or about the same date, July 11, 2011.<sup>7</sup> On or about December 16, 2011, Securian filed an amended Form U5 (notice of termination) on Lehman's behalf reporting a customer complaint.<sup>8</sup> Lehman is no longer registered or associated with a FINRA member.<sup>9</sup>

## **B. Jurisdiction**

FINRA has jurisdiction over Lehman in this disciplinary proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws. The Complaint was filed on October 1, 2013, which was within two years after the date on which Lehman's Form U5 was amended, and the amendment was within two years of the date that the original Form U5 became effective. The Complaint charges Lehman with misconduct that occurred from January 2008 to February 2009, while he was registered with FINRA member firms Morgan Stanley and Securian.<sup>10</sup> In addition, the Complaint charges Lehman with failure to provide information requested pursuant to FINRA Rule 8210 during a period running from October 2012 through April 2013. This misconduct also was within the period when FINRA retained jurisdiction over Lehman by virtue of the amendment of his Form U5.

## **C. Violations**

**First Cause of Action – Borrowing From Customer.** Lehman was associated with Morgan Stanley when he borrowed money from customer LE in four separate transactions: (i)

---

<sup>7</sup> Compl. ¶ 3; Ex. 1 at 28.

<sup>8</sup> Compl. ¶ 4; Ex. 2 at 1, 9-10.

<sup>9</sup> Compl. ¶ 5.

<sup>10</sup> See Article V, Sec. 4(a)(i), FINRA By-Laws, available at [www.finra.org](http://www.finra.org) (then follow "FINRA Manual" hyperlink to "Corporate Organization: By-Laws") specifying that jurisdiction continues for two years after an amendment to a notice of termination if the amendment is filed within two years of the effective date of the original termination notice.

\$1,200 on or about July 14, 2008; (ii) \$135 on or about July 17, 2008; (iii) \$500 on or about August 3, 2008; and (iv) \$1,000 on or about January 25, 2009. LE was not a member of Lehman's family. Lehman did not submit any request to his firm, Morgan Stanley, for approval to borrow money from LE.<sup>11</sup>

Lehman's firm, Morgan Stanley had written policies and procedures relating to the borrowing of money from a customer.<sup>12</sup> The firm prohibited borrowing from any client, unless the client was a family member and the borrowing arrangement was submitted to the branch manager for pre-approval.

Lehman failed to comply with those written policies and procedures. LE, the customer from whom Lehman borrowed money, was not a member of Lehman's family, and Lehman did not notify his firm of, or seek pre-approval for, the loans from LE.<sup>13</sup>

In borrowing money from LE, Lehman violated NASD Rule 2370. NASD Conduct Rule 2370<sup>14</sup> allows a registered representative to borrow money from a customer only in specific limited circumstances and pursuant to oversight by the representative's firm. Rule 2370(a)(1) specifies that the representative's member firm must have written procedures allowing the borrowing arrangement at issue. Rule 2370(a)(2) further specifies that the borrowing arrangement must meet one of five conditions: (A) either the customer is a member of the representative's immediate family (as defined in Rule 2370(c)); (B) or the customer is an institution or person regularly engaged in the business of providing credit or financing; (C) or the

---

<sup>11</sup> Compl. ¶¶ 6-10.

<sup>12</sup> Im Decl. ¶ 5.

<sup>13</sup> *Id.*

<sup>14</sup> NASD Conduct Rule 2370 was in effect at the time of the alleged misconduct, but it has, since then, been superseded by the similar FINRA Rule 3240. NASD Conduct Rule 2370 is spoken of here in the present tense.

customer and representative are both registered persons of the same member firm; (D) or the lending arrangement is based on a personal relationship outside of the broker/customer relationship; or (E) the lending arrangement is based on a business relationship outside of the broker/customer relationship.

Rule 2370(b) sets forth procedures for ensuring that the requisite conditions are met. Those procedures must be incorporated, as appropriate, in a firm's written procedures regarding borrowing arrangements. If a loan is to or from a family member, Rule 2370(b)(2) permits a member firm to implement written procedures that do not require member firm notice or approval for borrowing arrangements involving immediate family members. Implicitly, however, prior notice and approval are otherwise required. If a loan is to or from a financial institution regularly engaged in providing credit in the ordinary course of business, and the terms of the loan are the same as offered to members of the public, Rule 2370(b)(3) also permits a member firm to eliminate any requirement for notice and approval. Again, implicitly, prior notice and approval are otherwise required. As to loans to or from registered persons of the same member firm, or loans based on a personal or business relationship outside of the broker/customer relationship, Rule 2370(b)(1) expressly requires that the member firm must pre-approve the arrangement in writing. Implicitly, the representative must seek that prior approval of the firm.

When the Securities and Exchange Commission ("SEC") approved the adoption of FINRA Rule 3240 to supersede NASD Rule 2370, the SEC explained the purpose of NASD Rule 2370. It said that the Rule "is to give FINRA member broker-dealers the opportunity to evaluate



the appropriateness of particular lending arrangements between their registered persons and customers ... and the potential for conflicts of interests.”<sup>15</sup>

An NASD Notice to Members also provides guidance on the importance of Rule 2370: “Loans between registered persons and their customer 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.”<sup>16</sup>

The First Cause of Action also alleges that the same conduct violated NASD Conduct Rule 2110 and the identical Rule that superseded it, FINRA Rule 2010. They are referred to here as the “J&E Rule.” The J&E Rule requires that “[a] member, in the conduct of [his] business, shall observe high standards of commercial honor and just and equitable principles of trade.” It is a broad prohibition of unlawful, unfair or unethical activities.<sup>17</sup> It is well established that conduct in violation of other NASD (and now FINRA) Rules also violates the J&E Rule.<sup>18</sup> Accordingly, Lehman’s violation of NASD Rule 2370 was also a violation of the J&E Rule.

#### **Second Cause Of Action – False Information On Firm Questionnaire.**

On January 15, 2009, Lehman completed Morgan Stanley’s “Sales Questionnaire.” He checked a box stating “No,” in answer to the following question: “8.1 Have you ever made loans to or received loans from any of your clients or family members who have account(s) at Morgan

---

<sup>15</sup> SEC Rel. No. 34-61537, 2010 SEC LEXIS 452, \*3-4 (Feb. 18, 2010).

<sup>16</sup> NASD Notice to Members 03-62, 2003 NASD LEXIS 70 (Oct. 8, 2003).

<sup>17</sup> *E.g., Stephen J. Gluckman*, 54 S.E.C. 175, 185, 1999 SEC LEXIS 1395 (July 20, 1999); *Dep’t of Enforcement v. Trende*, No. 2007008935010, 2011 FINRA Discip. LEXIS 54, \*11 and nn.12 & 13 (OHO Oct. 4, 2011).

<sup>18</sup> *See Dep’t of Enforcement v. Gallagher*, No. 2008011701203, 2012 FINRA Discip. LEXIS 61, \*11 n.9 (NAC Dec. 12, 2012) (finding that respondent’s violation of FINRA Rule 8210 also violated FINRA Rule 2010); *Dep’t of Enforcement v. Reichman*, No. 200801201960, 2011 FINRA Discip. LEXIS 18, at \*28-29 (NAC July 21, 2011) (same).

Stanley within the last 12 months.” At the time he had borrowed money from LE in three of the four transactions set forth in the First Cause of Action. Those three transactions took place in the summer of 2008, well within the last twelve months from the date that Lehman completed his firm’s questionnaire.<sup>19</sup>

Lehman separately violated the J&E Rule when he falsely informed his firm that he had not borrowed money from any customer within the last twelve months.<sup>20</sup> As noted above, the J&E Rule is an ethical rule.<sup>21</sup> It does not prohibit specific conduct, but, rather, requires adherence to high standards of commercial conduct and integrity.<sup>22</sup> Conduct does not have to violate other NASD or FINRA Rules in order to constitute a violation of the J&E Rule.<sup>23</sup>

Misrepresentations of this sort deprive a firm from the ability to oversee its employees and to effectively fulfill its duty to supervise representatives registered through it. Such misrepresentations also reflect negatively on a regulated person’s ability to comply with regulatory requirements. Compliance with regulatory requirements and, in particular, with

---

<sup>19</sup> Compl. ¶¶ 6-10.

<sup>20</sup> *Heath* at 133-34 (citing SEC decisions in which misrepresentations by a respondent to his member firm employer were held to be J&E violations – *Kauffman v. SEC*, Exchange Act Rel. No., 33219, 51 S.E.C. 838 (Nov. 18, 1993), *aff’d*, 40 F.3d 1240 (3d Cir. 1994); *Calvin David Fox*, Exchange Act Rel. No., 48731, 2003 SEC LEXIS 2603 (Oct. 31, 2003)).

<sup>21</sup> *See Dep’t of Enforcement v. Gallagher*, 2011 FINRA Discip. LEXIS 40, at \*17-18 and n.46 (OHO June 13, 2011) (“Rule 2110 is an ethical rule...FINRA’s authority to pursue disciplinary action for violations of Rule 2110 is sufficiently broad to encompass any unethical business-related misconduct, regardless of whether it involves a security.”) *aff’d*, 2012 FINRA Discip. LEXIS 61 (NAC Dec. 12, 2012); *Dep’t of Enforcement v. Mullins*, Nos. 20070094345, 20070111775, 2011 FINRA Discip. LEXIS 61, at \*22 (NAC Feb. 24, 2011) (“FINRA’s disciplinary authority under NASD Rule 2110 is also broad enough to encompass business-related conduct that is inconsistent with just and equitable principles of trade, even if that activity does not involve a security.”) (internal citations and quotations omitted); *Dep’t of Enforcement v. DiFrancesco*, 2010 FINRA Discip. LEXIS 37, at \*16 n.11 (NAC Dec. 17, 2010) (citing cases) (“There is a long line of cases stating that a member can be disciplined for “business-related conduct” that violates NASD Rule 2110, even when the activity does not involve a security.”) *aff’d*, Exchange Act Rel. No. 66113, 2012 SEC LEXIS 54 (Jan. 6, 2012); *Dep’t of Enforcement v. Shvarts*, No. CAF980029, 2000 NASD Discip. LEXIS 6, at \*12 (NAC June 2, 2000) (citing *Daniel Joseph Alderman*, 52 S.E.C. 366, 369 (1995), *aff’d*, 104 F.3d 285 (9th Cir. 1997)).

<sup>22</sup> *Heath v. SEC*, 586 F.3d 122, 132-33 (2d Cir. 2009).

<sup>23</sup> *E.g.*, *Heath*, *supra* (mere unethical conduct can violate J&E Rule; unlawful act not required); *Timothy L. Burkes*, Exchange Act. Rel. No. 32142, 51 S.E.C. 356 (Apr. 14, 1993), *aff’d mem.* *Burkes v. SEC*, 29 F. 3d 630 (9th Cir. 1994) (J&E Rule not limited to law violations).

requests for information regarding regulated activities, is necessary for the proper functioning of the self-regulatory system and the protection of the investing public.

**Third Cause Of Action – Failure To Comply With FINRA Rule 8210.**

As noted above, Lehman left Morgan Stanley, and, in July 2009, became associated with Securian. He worked at a Securian Office known as the Tax & Financial Planning Group (“TFG”). He was permitted to make referrals to TFG financial advisors for advisory and planning services, but he was not authorized to provide such services himself. Representatives like Lehman were forbidden to engage in activities such as assisting customers in preparing trusts, wills, and deed transfers. They also were prohibited from receiving payments from customers and from depositing such payments in personal bank accounts.<sup>24</sup>

FINRA staff learned that while Lehman worked at Securian and TFG he accepted checks from two customers, DF (one check, dated Feb. 23, 2011 for \$1,650) and PM (two checks, one dated Mar. 11, 2011, for \$1,500, and the other dated Mar. 28, 2011, for \$250). Lehman deposited the checks into his personal bank account. Pursuant to FINRA Rule 8210, FINRA staff sought further information regarding these matters in a letter dated October 4, 2012.<sup>25</sup>

As recited in the October 4, 2012 letter, Lehman had previously advised FINRA staff that he had prepared information to assist DF in having an attorney draw up a living trust. Then, after he left Securian/TFG, he lost contact with her without executing his agreement with her. With respect to the other customer, PM, Lehman told the staff different things. He advised the staff at one point that he had accepted PM’s check for professional services that he intended to perform

---

<sup>24</sup> Ex. 3 (Oct. 4, 2012 letter).

<sup>25</sup> *Id.* As mentioned in the October 4, 2012 letter, the staff had previously obtained information from Lehman, including bank records showing that Lehman had deposited checks from customers into his personal bank account. The October 4, 2012 letter, however, sought much more information and was specifically focused on the customer payments Lehman received.

but never did. At another point, after Lehman left Securian/TFG, he said that he had sent PM a statement for services that included a living trust, deed transfer, and review of a will. The statement represented services covered by PM's payments to Lehman while he was employed at Securian/TFG.<sup>26</sup>

The October 4, 2012 letter was the start of a lengthy but unavailing process of inquiry by FINRA staff to gain a complete and accurate understanding of the facts relating to DF and PM and any other outside business activities that Lehman had conducted without authorization from his firm. The letter requested a detailed, signed, written statement addressing allegations that the payments he received from DF and PM were made to Lehman in connection with outside business activities he pursued without proper authorization. The letter required that the written statement from Lehman address thirteen specific matters. Among other things, he was asked to describe the extent to which he understood that Securian had approved and authorized him to provide financial advisory and planning services he purported to have provided to the two customers who had written him the checks. He also was asked to describe the services he provided to the customers in return for the payments they made to him, to describe efforts to repay one of the customers who had not actually received the services promised to her, and to explain any errors in the examiner's description of the facts regarding Lehman's interactions with the two customers. The letter further sought information regarding all other outside business activities Lehman performed while registered with Securian, his understanding of FINRA and NASD Rules relating to outside business activities, and his understanding of Securian's policies and procedures relating to these activities.<sup>27</sup>

---

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

Lehman did not respond to the October 4, 2012 by the due date. However, FINRA staff emailed him on October 22, 2012, and he emailed back, seeking an extension of time. The staff extended the due date to November 1, 2012.<sup>28</sup>

On October 29, 2012, the staff emailed Lehman seeking additional information to be included in the November 1, 2012 response to the October 4, 2012 letter. The staff sought to know more about payments made by PM's husband to Lehman. Lehman's check records showed that he had deposited in his personal account four checks from PM's husband:

October 6, 2010	\$ 1,700
December 6, 2010	\$10,000
December 14, 2010	\$10,000
March 21, 2011	\$ 420 <sup>29</sup>

On November 1, 2012, the staff extended the due date for responding to both the October 4, 2012 letter and the October 29, 2012 supplemental request to November 9, 2012.<sup>30</sup>

Lehman did not respond. On November 26, 2012, FINRA staff sent Lehman a letter by certified and regular mail stating that it was "imperative" that the previously requested information be provided by December 10, 2012.<sup>31</sup>

On December 3, 2012, Lehman sent FINRA staff a brief email of a few sentences. This was Lehman's only attempt to respond to the staff's inquiries. In this email, he said he had "been settling" the issue with DF by sending her a check for \$1650. Lehman claimed that she had deposited the check. There was no canceled check or supporting statement from the

---

<sup>28</sup> Ex. 6.

<sup>29</sup> Ex. 7.

<sup>30</sup> Ex. 8.

<sup>31</sup> Ex. 9.

customer. There was no detail regarding when this had happened. Nor did Lehman set forth any information regarding the circumstances in which he had originally taken DF's check.<sup>32</sup>

In the December 3, 2012 letter, Lehman asserted that PM's husband could not find any proof that he had paid his ex-wife the \$1,500 she had paid to Lehman. Lehman said that PM's husband had paid Lehman \$10,000 because Lehman had sold him a collector's item. The item was not specified; there was no documentary evidence or customer statement to support Lehman's assertion. Lehman provided no information regarding the circumstances in which he received payments from PM, which had been requested in the October 4, 2012 letter, or the circumstances in which PM's husband had made other payments to Lehman in addition to the \$10,000 payment.<sup>33</sup>

FINRA staff spoke to Lehman, and advised him that if he did not respond by December 24, 2012, the staff would proceed on the assumption that he would not be responding. The staff memorialized this discussion in a December 17, 2012 email. On December 26, 2012, having received no response, the staff sent another email reminding Lehman that if he failed to respond he might be subject to disciplinary action that could result in a fine, suspension or bar.<sup>34</sup>

On April 4, 2013, FINRA staff again notified Lehman that he had failed to respond to the October 4, 2012 letter or the supplemental request of November 26, 2012. The staff set a due date of April 18, 2013 to respond.<sup>35</sup>

Lehman provided no further substantive response to the staff's inquiries.<sup>36</sup>

---

<sup>32</sup> Ex. 12.

<sup>33</sup> *Id.*

<sup>34</sup> Ex. 13.

<sup>35</sup> Ex. 14.

<sup>36</sup> The Declaration outlines the chronology of the staff's attempts to obtain the information requested by the October 4, 2012 letter and the October 29, 2012 letter. Im Decl. ¶¶ 7-30. Those attempts span roughly six months. In summary, the communications between Lehman and the staff were as follows:

On October 1, 2013, Enforcement filed the Complaint, which included a charge of failure to respond to either the October 4, 2012 letter or the November 26, 2012 request for information. Both requests were made pursuant to FINRA Rule 8210.<sup>37</sup>

FINRA Rule 8210 requires FINRA members and their associated persons “to provide information orally, in writing, or electronically” in connection with any investigation. This Rule is crucial to FINRA's ability to oversee and regulate broker-dealers because FINRA does not have subpoena power.<sup>38</sup> Instead, FINRA must depend on member firms and their associated persons to cooperate fully and promptly with requests for information pursuant to Rule 8210.<sup>39</sup> A failure to respond promptly and completely to such information requests frustrates FINRA's

---

October 4, 2012 FINRA staff letter setting October 18, 2012 deadline (Ex. 3)

October 22, 2012 FINRA staff email reiterating prior request and advising that response was overdue (Ex. 6)

October 22, 2012 Lehman email request for delay, granted by FINRA staff until November 1, 2012 (Ex. 6)

October 29, 2012 FINRA staff email request for additional information regarding checks received by Lehman (Ex. 7)

November 1, 2012 Lehman email request for delay, granted by FINRA staff until November 9, 2012 (Ex. 8)

November 26, 2012 FINRA staff letter reiterating prior requests (Ex. 9)

December 3, 2012 Lehman email with a few sentences in ostensible partial response (Ex. 12)

December 17, 2012 FINRA staff email granting extension until December 24, 2013 (Ex. 13)

April 4, 2013 FINRA staff letter reiterating prior requests and granting last extension until April 18, 2013 (Ex. 14)

<sup>37</sup> Ex. 21.

<sup>38</sup> See, e.g., *Dep't of Enforcement v. Valentino*, No. FPI010004, 2003 NASD Discip. LEXIS 15, at \*12 (NAC May 21, 2003), *aff'd*, 2004 SEC LEXIS 330 (Feb. 13, 2004) (“It is well established that because NASD [FINRA’s predecessor] lacks subpoena power over its members, a failure to provide information fully and promptly undermines NASD’s ability to carry out its regulatory mandate.”) (citation omitted); *Joseph G. Chiulli*, 54 S.E.C. 515, 2000 SEC LEXIS 112, at \*16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for FINRA to effectively conduct its investigations, and emphasizing that FINRA members and associated persons must fully cooperate with requests for information). See also *Morton Bruce Erenstein*, 316 Fed. App’x. 865, 871, 2008 U.S. App. LEXIS 19746, at \*13 (11th Cir. Sept. 16, 2008) (“[I]t is critically important to the self-regulatory system that members and associated persons cooperate with NASD investigations, especially because the NASD lacks subpoena power.”); *Robert Fitzpatrick*, 55 S.E.C. 419, 2001 SEC LEXIS 2185, at \*11-12 (Oct. 19, 2001).

<sup>39</sup> *PAZ Sec., Inc.*, 2008 SEC LEXIS 820, at \*13 (Apr. 11, 2008), *petition for review denied sub nom. Paz Sec. v. SEC*, 566 F.3d 1172, 2009 U.S. App. LEXIS 11500 (D.C. Cir. May 29, 2009).

ability to detect misconduct and protect investors and markets.<sup>40</sup> A person who fails to provide information requested pursuant to FINRA Rule 8210 violates both FINRA Rule 8210 and the J&E Rule.<sup>41</sup>

Lehman's email correspondence with the staff falls so far short of an adequate response to either the October 4, 2012 letter or the October 29, 2012 supplemental request, as to be the equivalent of a complete failure to respond. In any event, it certainly was only a barely minimal, partial response. The requests for information sought a wide range of information regarding the circumstances of particular payments to Lehman and of Lehman's outside business activities, including his understanding of what was permitted by Securian regarding his activities, his understanding of any approval he received from Securian to accept payments from customers, copies of estate planning documents and the like that he either offered or planned to offer customers, and descriptions of the services he offered customers.

Lehman's failure to respond prevented the staff from fully investigating potential violations.<sup>42</sup> His failure to cooperate with the FINRA staff's investigation violated FINRA Rule 8210 and the J&E Rule.

#### **IV. Sanctions**

FINRA's Sanction Guidelines ("Sanction Guidelines") provide the guideposts for sanctions in FINRA disciplinary proceedings.<sup>43</sup> The Sanction Guidelines set forth recommendations regarding sanctions for violations of specific violations. The Sanction Guidelines also instruct adjudicators to consult the Principal Considerations applicable to all

---

<sup>40</sup> See *CMG Inst. Trading, LLC*, Exchange Act Rel. No. 59325, 2009 SEC LEXIS 215, at \*30 (Jan. 30, 2009); *Gluckman*, 1999 SEC LEXIS 1395, at \*22.

<sup>41</sup> *Dep't of Enforcement v. Baxter*, No. C07990016, 2000 NASD Discip. LEXIS 3, at \*25 (NAC Apr. 19, 2000).

<sup>42</sup> Im Decl. ¶ 29.

<sup>43</sup> FINRA Sanction Guidelines (2011) are available at [www.finra.org/SanctionGuidelines](http://www.finra.org/SanctionGuidelines).



determinations of sanctions, and the General Principles for all sanction determinations.<sup>44</sup> The Overview to the Sanction Guidelines expresses the overarching purpose of FINRA's disciplinary actions and the objectives served by sanctions where violations are found:

The regulatory mission of FINRA is to protect investors and strengthen market integrity through vigorous, even-handed and cost-effective self-regulation. . . . As part of FINRA's regulatory mission, it must stand ready to discipline member firms and their associated persons by imposing sanctions when necessary and appropriate to protect investors . . . and to promote the public interest.<sup>45</sup>

**A. First Cause Of Action**

The First Cause of Action involves violations of NASD Conduct Rule 2730 and the J&E Rule, FINRA Rule 2010. As alleged in the First Cause of Action, Lehman improperly borrowed money from a customer, LE, contrary to FINRA Rule 2730 and his firm's policies and procedures.

The Sanction Guidelines contain no guidance specific to improper borrowing from customers. According to the General Principles Applicable to All Sanction Determinations, adjudicators should impose sanctions that are designed to deter future misconduct and improve overall business standards. In addition, pursuant to the Principal Considerations in Determining Sanctions, adjudicators are directed to consider whether the respondent accepted responsibility for and acknowledged the misconduct to his employer or a regulator prior to detection and intervention by the employer or regulator. While Lehman's borrowing involved relatively small amounts of money, he failed to recognize his misconduct. Substantial sanctions would be

---

<sup>44</sup> Sanction Guidelines at 1, 88, 90. The General Principles are found in the Sanction Guidelines at 2-5. The Principal Considerations are found in the Sanctions Guidelines at 6-7.

<sup>45</sup> Sanction Guidelines at 1.

appropriate both to deter him from engaging in such conduct in the future and to deter others from engaging in such misconduct.

For the violations found in the First Cause of Action, the Hearing Officer would suspend Lehman three months and fine him \$2,500. In light of the bar imposed for the violations found in the Third Cause of Action, however, the lesser sanctions are not imposed.

**B. Second Cause Of Action**

The Second Cause of Action involves a violation of the J&E Rule alone. It does not depend on a finding of a violation of the Rule against borrowing. As alleged in the Second Cause of Action, Lehman attempted to conceal what he had done by falsely answering the inquiry on the firm's questionnaire regarding borrowing from customers. This misconduct falls far short of the high standards of commercial honor required by the J&E Rule.

For the violation found in the Second Cause of Action, the Hearing Officer would suspend Lehman for three months and fine him \$2,500. In light of the bar imposed for the violations found in the Third Cause of Action, however, the lesser sanctions are not imposed.

**C. Third Cause Of Action**

Lehman's response to the October 4, 2012 letter and October 29, 2012 supplemental inquiry were so inadequate as to be the equivalent of a complete failure to respond. Lehman's December 3, 2012 email with a few sentences of unsupported assertions intended to suggest that he had resolved any issues did not even begin to provide information regarding the circumstances in which he had taken customer monies into his personal bank account or his understanding of what outside business activities his firm permitted him to conduct.

However, the December 3, 2012 email provided a little information, and Lehman had previously provided other information prior to the October 4, 2012 letter.<sup>46</sup> Accordingly, Lehman's December 3, 2012 email is treated here as a partial response to the inquiries made by the staff on October 4, 2012 and October 29, 2012.

Where an individual provides a partial but incomplete response, the Sanction Guidelines specify that a bar is still standard, unless the individual can demonstrate that the information provided "substantially complied with all aspects of the request."<sup>47</sup> Lehman certainly cannot do that here. His December 3, 2012 email does not address the thirteen specific questions in the staff's October 4, 2012 letter. It does not attempt to explain the circumstances in which he was receiving payments from his firm's customers and depositing them in his personal bank account. The email is so lacking in detail or corroboration that it cannot be relied upon. The investigation was not aided by it.

Where an individual provides a partial but incomplete response, the Sanction Guidelines also suggest analyzing three factors. The first factor is the importance of the information requested from FINRA's point of view, and whether the information provided was relevant and responsive. In this case the information was critical to understanding Lehman's justification for taking money from customers for services he was not authorized to provide and how extensive his outside business activities were. The information provided in his December 3, 2012 email did not address those issues. The second factor is the number of requests made and the time it took the respondent to respond. This factor evaluates the degree of regulatory pressure required to obtain a response. Here, the response only came after the staff granted at least two extensions

---

<sup>46</sup> *John Joseph Plunkett*, Exchange Act Rel. No. 69766, 2013 SEC LEXIS 1699, at \*53-57 (June 14, 2013) (where some response made, analysis of sanction for partial failure to respond is appropriate).

<sup>47</sup> Sanction Guidelines at 33.

to respond. The third factor is whether the respondent thoroughly explains valid reasons for the deficiencies in the response. Here, Lehman several times apologized for delay, saying he was sick or busy. These excuses were highly generalized and not specific. There is no explanation why he could not have responded appropriately at some point between the October 4, 2012 inquiry and the last date the staff specified as a deadline, April 18, 2013.<sup>48</sup>

The most stringent sanction of a bar is appropriate here and in the best interests of the investing public. The Principal Considerations applicable to determining sanctions in all cases instruct that sanctions should be designed to deter future misconduct and improve overall business standards. Only with full cooperation can FINRA perform its self-regulatory duties and ensure that those purposes are served. Accordingly, even if Lehman's email is treated as a partial response, it is appropriate to bar Lehman from associating with any FINRA member firm in any capacity for his violation of FINRA Rule 2010.

#### **V. Order**

Enforcement's Default Motion is granted, and the allegations in the attached Complaint are deemed admitted.

For failing to provide information and documents requested by FINRA staff pursuant to FINRA Rule 8210, in violation of FINRA Rules 8210 and 2010, as alleged in the Third Cause of Action, Respondent is barred from associating with any member firm in any capacity. If this decision becomes FINRA's final disciplinary action, the bar shall take effect immediately.

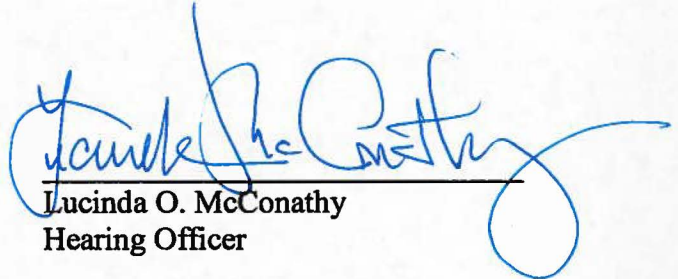
For improperly borrowing money from customers and then falsely representing to his firm that he had not, in violation of NASD Rules 2370 and 2110 and FINRA Rule 2010, as alleged in the First and Second Causes of Action. Respondent would be suspended from

---

<sup>48</sup> Ex. 14.

association with any FINRA member firm in any capacity for six months and fined \$5,000.

However, because of the bar imposed for the other violation, this sanction is not imposed.



Lucinda O. McConathy  
Hearing Officer

Copies to:

Kent Lehman (via overnight courier and first-class mail)  
Soo H. Im, Esq. (via electronic and first-class mail)  
Scott M. Andersen, Esq. (via electronic)  
Jeffrey D. Pariser, Esq. (via electronic mail)

**FINANCIAL INDUSTRY REGULATORY AUTHORITY**

**OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

KENT LEHMAN  
(CRD No. 5071373),

Respondent.

DISCIPLINARY PROCEEDING  
No. 2011029916501

**COMPLAINT**

The Department of Enforcement alleges:

**SUMMARY**

1. While associated with a member firm, Kent Lehman (Lehman) borrowed money from a customer without permission from his employing firm, in violation of NASD Rules 2370 and 2110 and FINRA Rule 2010, provided false information on a firm's questionnaire about the borrowing, in violation of FINRA Rule 2010, and failed to provide information to the staff, in violation of FINRA Rules 8210 and 2010.

**RESPONDENT AND JURISDICTION**

2. Lehman first became registered with FINRA as a General Securities Representative (GSR) through his association with a member firm in 2006. Subsequently he was associated with other member firms where he was registered as a GSR. From January 2008 to February 2009, Lehman was associated with Morgan Stanley & Co. LLC (Morgan Stanley)

where he was registered as a GSR. From July 2009 to June 2011, Lehman was associated with Securian Financial Services, Inc. (Securian) where he was registered as a GSR.

3. On or about July 11, 2011, Securian filed a Form U5 reporting Lehman's voluntary termination from the firm.

4. On or about December 16, 2011, Securian filed an amended Form U5 on Lehman's behalf reporting a customer complaint.

5. Although Lehman is no longer registered or associated with a FINRA member, he remains subject to FINRA's jurisdiction for 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 filing of an amended Form U5 disclosing a customer complaint referenced above; and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member and with failing to respond to FINRA requests for information during the two-year period after the date upon which he ceased to be registered or associated with a FINRA member.

**FIRST CAUSE OF ACTION**  
**(Borrowing From Customer)**  
**(NASD Conduct Rules 2370 and 2110 and FINRA Rule 2010)**

6. The Department realleges and incorporates by reference paragraphs 1 through 5 above.

7. From January 2008 to February 2009, Lehman was associated with Morgan Stanley. During this time, Lehman borrowed a total of \$2,835.00 from customer LE in four separate loan transactions. More specifically, Lehman borrowed: \$1,200.00 on or about July 14,

2008, \$135.00 on or about July 17, 2008, \$500.00 on or about August 3, 2008, and \$1,000.00 on or about January 25, 2009.

8. During this time, Morgan Stanley had a borrowing policy that prohibited all registered representatives from, “[b]orrowing from, or lending to, any client (except that requests for borrowing or lending arrangements with clients who are family members may be submitted to your Branch Manager for approval, as described below).” The policy further stated that exceptions to the prohibition would occur only under “rare and extenuating circumstance.”

9. Lehman did not submit any requests to borrow money from LE. Further, the loans from LE were impermissible pursuant to Morgan Stanley’s policy because LE was not a member of Lehman’s family.

10. By reason of the foregoing, Lehman violated NASD Conduct Rules 2370 and 2110 and FINRA Rule 2010.

**SECOND CAUSE OF ACTION**  
**(Providing False Information on Firm’s Questionnaire)**  
**(FINRA Rule 2010)**

11. The Department realleges and incorporates by reference paragraphs 1 through 10 above.

12. On January 15, 2009, Lehman completed Morgan Stanley’s “Sales Questionnaire” in which he checked the box stating “No,” to the question: “8.1 Have you ever made loans to or received loans from any of your clients or family members who have account(s) at Morgan Stanley within the last 12 months.”



13. This answer was false in that in the 12 month period prior to January 15, 2009 (the date that Lehman executed the questionnaire), Lehman had borrowed \$1,835.00 from LE as described in paragraph 7 above.

14. By reason of the foregoing, Lehman violated FINRA Rule 2010.

**THIRD CAUSE OF ACTION**  
**(Failure to Respond to Rule 8210 Requests)**  
**(FINRA Rules 8210 and 2010)**

15. The Department realleges and incorporates by reference paragraphs 1 through 14 above.

16. Lehman initially responded to the staff's requests for information. However, the responses caused the staff to request additional information from Lehman regarding possible outside business activity, specifically the preparation of trust documents for certain of his customers while associated with Securian.

*October 4, 2012 Letter*

17. On October 4, 2012, the staff issued a request for information to Lehman, pursuant to FINRA Rule 8210. The letter was sent by first class and certified mail to Lehman's CRD address in Orange, CA (the CRD Address) and to another address in Lake Forest, CA (the Second Address). It was also sent by electronic mail to an e-mail address Lehman previously provided to the staff (Lehman's e-mail address). The letter requested, among other things, that Lehman provide information regarding the scope of his outside business activities through an entity named Tax and Financial Group (TFG) and services provided by Lehman to customers DF and PM through TFG. The requested information was due on or before October 18, 2012.

18. The first class mailing to the CRD Address was not returned. The certified mail delivery receipt for the certified mailing to the CRD Address was returned with the signature of "Sarial Lehman."

19. The first class mailing to the Second Address was not returned. The certified mailing to the Second Address as was returned marked "Return to Sender Unclaimed Unable to Forward."

20. On October 22, 2012, the staff sent an email to Lehman's e-mail address advising him that the information requested in the staff's October 4 letter was overdue. That same day Lehman replied by email, apologizing for and explaining the delay. He requested an extension until the first week of November. The staff extended the due date to November 1, 2012.

21. On October 29, 2012, the staff, by email, requested that Lehman provide, in addition to the previously-requested information, information concerning specific payments made by another customer, TM, to Lehman.

22. On November 1, 2012, Lehman contacted the staff by email to request additional time to respond. The staff granted an extension to November 9, 2012 for Lehman to respond to the October 4 request and the October 29 email. Lehman did not provide any of the requested information by November 9, 2012. On November 19, the staff sent another email to Lehman advising him that his responses were overdue.

23. The staff did not receive a response to the October 4 request letter or to the October 29 email request.

*November 26, 2012 Letter*

24. On November 26, 2012, the staff sent to Lehman another request for the information previously requested in the October 4, 2012 request and the October 29, 2012, e-mail, pursuant to FINRA Rule 8210. The request was sent by first class and certified mail to Lehman's CRD Address and the Second Address. The requested information was due on or before December 10, 2012.

25. The first class mailing to the CRD Address was not returned. The certified mailing to the CRD Address was returned marked "Return to Sender Refused Unclaimed."

26. The first class mailing to the Second Address was not returned. The certified mailing to the Second Address was returned marked "Return to Sender Unclaimed Unable to Forward."

27. On December 3, 2012, Lehman emailed the staff and again apologized for his delay in providing the requested information. In his email, Lehman provided information that was responsive to the requests, but did not provide a response to each item of information requested.

28. On December 17, 2012, having received no other information from Lehman, the staff, by email, advised Lehman that if he did not provide the remaining information requested by the staff by December 24, 2012, the staff would assume that Lehman did not intend to respond. An additional email was sent by the staff to Lehman on December 26, 2012, advising Lehman in part that his failure to respond could subject him to disciplinary action.

29. Lehman did not respond provide any additional information responsive to the November 26 letter or in response to the staff's email.

*April 4, 2013 Letter*

30. On April 4, 2013, the staff issued another request for information to Lehman, pursuant to FINRA Rule 8210. The letter requested the information that was previously requested in the staff's October 4 and November 26, 2012, requests, but not provided by Lehman in his email sent on December 3, 2012. The requested information was due on or before April 18, 2013.

31. The April 4, 2013, request was sent by first class and certified mail to Lehman's CRD Address and the Second Address. The letter was also sent to the following addresses obtained by the staff in its investigation:

- Address located on N. Vista Canyon Rd. (the N. Vista Canyon Address);
- Address located on E. Vista Canyon Rd. (the E. Vista Canyon Address);
- Address located on Lake Forest Dr. (the Lake Forest Address); and
- Address located in Irvine, CA (the Irvine Address).

32. The first class mailing to the CRD Address was not returned. The certified mail delivery receipt for the certified mailing to the CRD Address was returned with what appears to be the signature of "Saria Lehman."

33. The first class mailing to the Second Address was not returned. The certified mailing to the Second Address was returned marked "Return to Sender Unclaimed Unable to Forward."

34. The first class mailing to the N. Vista Canyon Address was not returned. The certified mail delivery receipt for the certified mailing to the N. Vista Canyon Address was returned with what appears to be the signature of "Saria Lehman."

35. The first class mailing to the E. Vista Canyon Address was not returned. The certified mail delivery receipt for the certified mailing to the E. Vista Canyon Address was returned with what appears to be the signature of "Saria Lehman."

36. The first class mailing to the Lake Forest Address was returned with the designation, "Return to Sender Attempted – Not Known Unable to Forward Return to Sender." The certified mailing to the Lake Forest Address was returned marked "Return to Sender Unable to Forward."

37. The first class mailing to the Irvine Address was not returned. The certified mail delivery receipt for the certified mailing to the Irvine Address was returned with an illegible signature.

38. Lehman did not provide any of the information requested in the April 4, 2013, letter. The information provided by Lehman in December 2012 did not constitute substantial compliance with all aspects of the information requests described above.

39. By reason of his failure to respond to the staff's requests dated November 26, 2012 and April 4, 2013, Lehman violated FINRA Rules 8210 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 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: October 1, 2013



---

Soo H. Im, Senior Regional Counsel  
Scott M. Andersen, Deputy Regional Chief  
Counsel  
Jacqueline D. Whelan, Regional Chief Counsel  
FINRA Department of Enforcement  
300 S. Grand Avenue, Suite 1600  
Los Angeles, CA 90071  
(213) 229-2321; Fax No. (213) 617-1570  
Soo.Im@finra.org  
Scott.Andersen@finra.org  
Jacqueline.Whelan@finra.org