

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

TIMOTHY L. PITTMAN
(CRD No. 2955718),

Respondent.

Disciplinary Proceeding
No. 2010021627601

Hearing Officer—Andrew H. Perkins

**AMENDED HEARING PANEL
DECISION**

December 29, 2011

Respondent failed to appear and provide testimony in connection with a FINRA investigation, in violation of Rules 8210 and 2010, and borrowed money from a customer, in violation of Rules 2370 and 2110. Respondent is barred from associating with any FINRA registered firm in any capacity.

Appearances

Soo H. Im, Sandra J. Harris, and Jacqueline D. Whelan, for the
DEPARTMENT OF ENFORCEMENT, Complainant, Los Angeles, CA.

Respondent Timothy L. Pittman, *pro se*, Chico, CA.

AMENDED DECISION¹

I. INTRODUCTION

The Department of Enforcement (“Enforcement”) brought this disciplinary proceeding against Respondent Timothy L. Pittman (“Pittman”), formerly a registered representative with Signature Financial Group, Inc. (“Signature”), following an examination of Signature relating to the sales of notes issued by six Special Purpose

¹ After the Hearing Panel Decision in this case was issued on November 4, 2011, Pittman advised the Office of Hearing Officers that he had filed a Petition in Bankruptcy in the United States Bankruptcy Court for the Eastern District of California on January 26, 2011, Case No. 11-21964-D-7. FINRA and Customer KD were listed as creditors. The Bankruptcy Court granted Pittman a discharge on May 31, 2011. Accordingly, this Amended Decision is issued to eliminate the award of restitution to Customer KD and the assessment of costs against Pittman.

Corporations, including Medical Provider Funding Corporation VI (“MP VI”). The Securities and Exchange Commission had filed an emergency court action in July 2009 to halt an alleged offering fraud perpetrated by MP VI and other related entities and individuals. In August 2009, a California federal court entered an order freezing the assets of and appointing a temporary receiver over MP VI and two related corporations.² Pittman was one of two Signature registered representatives who sold MP VI notes.³

In connection with FINRA’s investigation into the sales of MP VI notes, FINRA staff sent questionnaires to Pittman’s customers who purchased the notes. KD, one of his customers who received a questionnaire, called FINRA staff and told the staff that she had loaned Pittman \$30,000 in July 2008, which he had not repaid. FINRA staff attempted to further investigate Pittman’s role in the MP VI offering, but he failed to respond to the staff’s requests that he appear and provide testimony at an on-the-record interview. Thereafter, Enforcement filed the Complaint against Pittman.

The Complaint contains two causes of action. The first cause of action charges Pittman with borrowing \$30,000 from customer KD in violation of Signature’s written policy,⁴ which prohibited its registered representatives from borrowing money from the firm’s customers, and NASD Conduct Rules 2370 and 2110.⁵ The second cause of action charges Pittman with failing to appear and provide testimony in connection with

² CX-2.

³ Pittman also sold notes to 11 other investors. The notes were issued by MP VI and five other Special Purpose Corporations that were formed and operated by Medical Capital Holdings, Inc. and its wholly owned subsidiary, Medical Capital Corporation. *See* CX-11, at 2.

⁴ *See* CX-6.

⁵ Following consolidation of NASD and the member regulation, enforcement, and arbitration functions of NYSE Regulation into FINRA, FINRA began developing a new “Consolidated Rulebook” of FINRA Rules. The first phase of the consolidated rules became effective on December 15, 2008. *See* FINRA Regulatory Notice 08-57, 2008 FINRA LEXIS 74 (Dec. 8, 2008). Because the Complaint in this case was filed after December 15, 2008, the procedural rules that apply are the FINRA rules of procedure. The conduct rules that apply are those that existed at the time of the conduct at issue.

FINRA's investigation into his sales of MP VI notes, in violation of FINRA Procedural Rule 8210 and FINRA Conduct Rule 2010.

Based upon a careful review of the entire record, the Hearing Panel, which is composed of the Hearing Officer and two current members of FINRA's District 2 Committee, makes the following findings of fact and conclusions of law.

II. BACKGROUND

A. Procedural History

Enforcement filed the Complaint on January 21, 2011. Pittman responded by letter dated March 6, 2011. His response consists of a single sentence, stating that he waives his right to a hearing. Following receipt of Pittman's letter, the Hearing Officer ordered Pittman to file an answer that complies with Rule 9215(b). Specifically, the Hearing Officer ordered Pittman to respond to each allegation in the Complaint. Pittman responded with a second letter dated March 21, 2011, which he sent to Enforcement counsel in Los Angeles. Pittman did not separately address each allegation in the Complaint. In the letter, he stated that he "was unaware that borrowing money from a family friend that happens to be a client was against the rules." He also stated that he could not afford an attorney, and he would not be present in any form in a legal proceeding without one. Finally, he stated that his "mental capacity does not allow [him] to participate at this time." Pittman did not provide any details to support his claims.

The Office of Hearing Officers issued an order on March 28, 2011, granting Pittman's request to waive a hearing and directing the parties to file briefs addressing the

allegations in the Complaint. Enforcement filed a brief, exhibit list, and exhibits on May 18, 2011.⁶ Pittman did not file anything further.

B. Respondent

Pittman entered the securities industry in 1997. Between 1998 and 2006, Pittman worked at several other FINRA member firms before joining Signature. From February 28, 2006, until March 18, 2010, he was registered as a General Securities Representative and a General Securities Principal through Signature. Signature discharged Pittman in March 2009⁷ after it discovered that he had borrowed money from one of its customers and had not repaid the loan.⁸ Pittman has not been registered with FINRA since March 18, 2010.⁹

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. FINRA has Jurisdiction over Pittman

Although Pittman is not currently registered with FINRA or associated with any 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 the Complaint was filed within two years after the termination of his last registration, and it charges him with misconduct while he was registered with FINRA and with failure to comply with Rule 8210 requests issued within two years after he was last registered with FINRA.

⁶ Enforcement filed 27 exhibits (CX-1 through CX-27), which include the sworn declaration of Michael Hegeman (CX-27), the FINRA Principal Examiner assigned to investigate this matter.

⁷ Signature did not file a Uniform Termination Notice for Securities Industry Registration (Form U5) with FINRA on Pittman's behalf until a year after he was discharged. See CX-1.

⁸ CX-1, at 1.

⁹ *Id.* at 2.

B. Borrowing from Customer

1. Signature's Written Policies and Procedures Prohibited Pittman from Borrowing Money from Customers

Signature's written policies and procedures strictly prohibited registered representatives from borrowing money from any of the firm's customers.¹⁰ The firm did not exempt loans from relatives or friends. Pittman admitted in his response to the Rule 8210 request for information dated February 11, 2010,¹¹ that he was aware of Signature's policies and procedures prohibiting loans between customers and the firm's representatives.¹² Nonetheless, Pittman claimed that he did not believe the policy applied in this case "because of the almost family relationship" he had with customer KD.¹³

2. Pittman Borrowed Money from Customer KD

Pittman admits that he borrowed \$30,000 from KD on July 10, 2008, to pay personal expenses.¹⁴ Pittman claims that KD insisted on loaning him the money because he and KD were long-time friends and he was in bad financial shape.¹⁵ The loan is evidenced by handwritten notes that Pittman signed.¹⁶ According to the handwritten notes, Pittman agreed to make monthly interest payments of \$250 each during the one-year term of the loan.¹⁷ The evidence shows that Pittman made interest payments of \$250

¹⁰ CX-6.

¹¹ CX-10.

¹² CX-11, at 5.

¹³ *Id.* See also CX-7 (Pittman's Wells response).

¹⁴ CX-11, at 3.

¹⁵ *Id.* at 3-4.

¹⁶ CX-5, at 2.

¹⁷ *Id.*

each on November 11, 2008, and January 11, 2009.¹⁸ Pittman made no other payments.¹⁹

Pittman further admits that he did not tell anyone at Signature about the loan and did not receive Signature's approval to borrow money from KD.²⁰ Signature learned of the loan when KD filed the arbitration claim, which named Signature as a respondent.²¹

Based on the evidence, including Pittman's admissions, the Hearing Panel finds that he violated NASD Conduct Rule 2370 by borrowing money from KD without Signature's approval. At the time, NASD Conduct Rule 2370(a) provided, in pertinent part, that "[n]o person associated with a member in any registered capacity may borrow money from or lend money to any customer of such person unless: (1) the member has written procedures allowing borrowing and lending of money between such registered persons and customers of the member."²² Signature did not permit such loans. Pittman also thereby violated NASD Conduct Rule 2110.²³

C. Failure to Appear and Provide Testimony

Pittman received multiple requests issued by FINRA staff pursuant to Rule 8210 that he appear and provide testimony under oath regarding his sales of MP VI notes. Nonetheless, Pittman refused to appear as requested.

FINRA staff sent Pittman the first Rule 8210 request on January 29, 2010, which directed him to provide the staff with documents relating to his sales of MP VI notes and

¹⁸ *Id.*

¹⁹ In January 2010, KD filed an arbitration claim against Pittman and Signature. (*See* CX-3) Among her claims, she requested damages in the amount of the unpaid loan.

²⁰ CX-11, at 4.

²¹ *Id.*; CX-3.

²² Rule 2370 contained other circumstances under which a registered representative could borrow from customers; however, they are not relevant here because Signature's written procedures prohibited borrowing from customers under any circumstance.

²³ *Stephen J. Gluckman*, Exchange Act Rel. No. 41628, 1999 SEC LEXIS 1395, at *22 (July 20, 1999) (citations omitted) (conduct that violates an NASD Conduct Rule is a violation of Conduct Rule 2110).

required that he appear for an on-the-record interview on February 17, 2010.²⁴ On February 4, 2010, Pittman responded. He told the staff that he could not afford an attorney because of Medical Capital's wrongdoing, and he would not attend an on-the-record interview without an attorney present.²⁵ By letter dated February 11, 2010, the staff postponed the interview to give Pittman additional time to retain an attorney.²⁶ The letter directed Pittman to contact the staff to reschedule his on-the-record interview. In addition, the staff also asked Pittman to provide additional information and documents regarding Medical Capital and his sales of MP VI notes and the loan from customer KD.

On March 5, 2010, the staff received two letters from Pittman, which included some of the information the staff requested in the Rule 8210 request dated February 11, 2010.²⁷ As to the on-the-record interview, Pittman again stated that he could not afford an attorney.²⁸ Pittman represented that he would not be able to attend an on-the-record interview for several months because it would likely take that long for him to sell his home and find a new job.²⁹

By letter dated March 23, 2010, the staff rescheduled Pittman's on-the-record interview for April 8, 2010.³⁰ On March 26, 2010, the staff received a voicemail message from Pittman in which he reiterated his unwillingness to participate in an on-the-record interview without an attorney. He also reiterated his claim that he lacked sufficient funds

²⁴ CX-8.

²⁵ CX-9.

²⁶ CX-10.

²⁷ CX-11; CX-12.

²⁸ CX-11, at 1.

²⁹ *Id.*

³⁰ CX-13. Pittman received the Rule 8210 request dated March 23, 2010. *See* CX-14 (signed certified mail receipt).

to retain an attorney. On March 30, 2010, the staff sent Pittman a letter confirming that he was obligated nonetheless to appear for the on-the-record interview on April 8, 2010, as scheduled.³¹

On April 5, 2010, the staff received an undated letter from Pittman in further response to the staff's requests for information dated February 11 and January 29, 2010.³² Pittman stated that his financial condition had not changed and that he had no funds for travel or an attorney. He further claimed that he was in the process of filing for bankruptcy.³³ For these reasons, Pittman stated that he would be unable to attend the on-the-record interview on April 8, 2010. FINRA staff convened the on-the-record interview on April 8; Pittman did not appear.³⁴

On April 22, 2010, the staff sent Pittman a Rule 8210 request that he appear for an on-the-record interview on May 20, 2010.³⁵ Taking into account Pittman's claims that it would be a financial hardship to travel to Los Angeles, the staff scheduled the interview in FINRA's San Francisco office, which is closer to Pittman's home.³⁶

On May 13, 2010, the staff received a letter from Pittman dated May 11, 2010, stating that he would be "unable to attend" the on-the-record interview on May 20, 2010, because he was "suffering great financial and physical harm over the fraud perpetrated by Medical Capital," which left him "emotionally and financially" bankrupt.³⁷ According to Pittman, he was unemployed and unable to travel. As an alternative, he offered to

³¹ CX-15.

³² CX-16.

³³ *Id.* at 1.

³⁴ CX-17.

³⁵ CX-18.

³⁶ *Id.* at 1.

³⁷ CX-21.

participate in an on-the-record interview over the telephone or in person in his hometown.³⁸ Based on Pittman's representations, the staff canceled the on-the-record interview scheduled for May 20, 2010, and sent him a final Rule 8210 request that he appear for an on-the-record interview on September 2, 2010.³⁹ Because Pittman offered to participate by telephone, the staff instructed Pittman to provide a telephone number where he could be reached for the on-the-record interview. Pittman did not provide a telephone number or otherwise contact the staff to participate in the on-the-record interview on September 2, 2010. FINRA staff convened the on-the-record interview on September 2; Pittman did not appear.⁴⁰

Based on the evidence considered as a whole, the Hearing Panel finds that Pittman violated FINRA Rules 8210 and 2010 by failing to appear and testify on April 8 and September 2, 2010. Pittman's alleged inability to retain an attorney does not excuse his failure to appear at the scheduled on-the-record interviews. Although FINRA procedural rules permit the participation of counsel, there is no constitutional or statutory right to counsel in FINRA disciplinary proceedings.⁴¹ Moreover, reliance on counsel is immaterial to the obligation of an associated person to supply information upon FINRA's request.⁴²

³⁸ *Id.*

³⁹ CX-22.

⁴⁰ CX-26.

⁴¹ *Falcon Trading Group, Ltd.*, 52 S.E.C. 554, 559 (1995), *aff'd*, 102 F.3d 579 (D.C. Cir. 1996). *See also SEC v. Jerry T. O'Brien, Inc.*, 467 U.S. 735, 742 (1984).

⁴² *Michael Markowski*, 51 S.E.C. 553, 557 (1993), *aff'd*, 34 F.3d 99 (2d Cir. 1994).

IV. SANCTIONS

A. Borrowing Money from a Customer

The FINRA Sanction Guidelines (“Sanction Guidelines”) do not provide specific sanctions for borrowing money from a customer in violation of Conduct Rule 2370.

However, an NASD Notice to Members provides guidance on Rule 2370’s importance:

“Loans between registered persons and their customers are of legitimate interest to NASD and member firms because of the potential for misconduct. NASD has brought disciplinary action against registered persons who have violated just and equitable principles of trade by taking unfair advantage of their customers by inducing them to lend money in disregard of the customers’ best interests, or by borrowing funds from, but not repaying, customers.”⁴³

According to the General Principals Applicable to All Sanction Determinations, adjudicators should impose sanctions that are designed to deter future misconduct and improve overall business standards.⁴⁴

Enforcement recommends a six-month suspension, a \$10,000 fine, and restitution in the amount of the unpaid loan. The Hearing Panel agrees with Enforcement’s recommendation, taking into account the serious nature of Pittman’s misconduct.

The Hearing Panel finds that Pittman’s violation of Conduct Rule 2370 was aggravated because he borrowed money from a customer even though he knew that Signature prohibited such loans. Signature’s written policy was unambiguous; it flatly prohibited all loans with customers regardless of their relationship to the firm’s registered representatives. Accordingly, the Hearing Panel does not find credible Pittman’s claim

⁴³ NASD Notice to Members 03-62, October 2003.

⁴⁴ FINRA Sanction Guidelines 2 (2011), www.finra.org/sanctionguidelines.

that he understood that the policy was inapplicable to loans from relatives and friends. Pittman further aggravated the violation by failing to repay the loan, causing KD to have to resort to filing an arbitration claim to enforce the terms of the loan agreement. On the other hand, the record contains no mitigating factors.

Based on the foregoing considerations, the Hearing Panel finds that the appropriate sanctions are a six-month suspension and a \$10,000 fine. The Hearing Panel however will not impose these sanctions because the Hearing Panel will bar Pittman for his failure to comply with the staff's Rule 8210 requests.⁴⁵

B. Failure to Appear and Testify

FINRA must rely upon Rule 8210 "to police the activities of its members and associated persons because it lacks subpoena power."⁴⁶ "[A member's] failure to respond to [FINRA's] information requests frustrates [FINRA's] ability to detect misconduct, and such inability in turn threatens investors and markets...."⁴⁷ Because compliance with Rule 8210 is necessary for FINRA to carry out its regulatory functions, the Sanction Guidelines provide that for failure to respond to requests for information made pursuant to Rule 8210, a bar is the standard sanction.⁴⁸ The Sanction Guidelines, as recently amended, make clear that where a person provided a partial but incomplete response, a bar is standard unless the person can demonstrate that the information provided "substantially complied with all aspects of the request." In this case, Pittman provided some of the information FINRA staff requested in connection with the investigation of

⁴⁵ In addition, no monetary sanctions will be imposed because Pittman was granted a discharge under Section 727 of Title 11, United States Code (the Bankruptcy Code) on May 31, 2011.

⁴⁶ *Joseph Patrick Hannan*, Exchange Act Rel. No. 40438; 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998).

⁴⁷ *PAZ Sec.*, Exchange Act Rel. No. 57656, 2008 SEC LEXIS 820, at *13 (Apr. 11, 2008), *aff'd sub nom.*, *PAZ Sec. v. SEC*, 566 F.3d 1172, 2009 U.S. App. LEXIS 11500 (May 29, 2009).

⁴⁸ *FINRA Sanction Guidelines* 33 (2011), <http://www.finra.org/sanctionguidelines>.

Pittman's sales of MP VI notes, but he refused to appear and testify at an on-the-record interview.

The Hearing Panel concludes that Pittman should be barred from associating with any member firm in any capacity. Pittman has not demonstrated any mitigating factors to "rebut the presumption that [he presents] too great a risk to the markets and investors to be permitted to remain in the securities industry."⁴⁹

V. ORDER

Respondent Timothy L. Pittman is barred for violating FINRA Rules 8210 and 2010 by failing to appear and testify at two scheduled on-the-record interviews. If this Amended Decision becomes FINRA's final action in this proceeding, the bar shall become effective immediately.

Andrew H. Perkins
Hearing Officer
For the Hearing Panel

Copies to:

Timothy L. Pittman (*via FedEx, next day delivery, and first-class mail*)
Soo H. Im, Esq. (*via electronic and first-class mail*)
Sandra J. Harris, Esq. (*via electronic mail*)
Jacqueline D. Whelan, Esq. (*via electronic mail*)
Mark P. Dauer, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

⁴⁹ *Paz Sec., Inc.*, 2008 SEC LEXIS 820, at *13.