

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

RICKY EUGENE BELL,
(CRD No. 2065556),

Respondent.

Disciplinary Proceeding
No. 2013039439301

Hearing Officer— David R. Sonnenberg

DEFAULT DECISION

September 10, 2014

Respondent is barred for: (1) engaging in private securities transactions, in violation of NASD Rule 3040 and FINRA Rule 2010; (2) receiving unauthorized loans from customers, in violation of FINRA Rules 3240 and 2010; and (3) failing to respond to requests for information and to provide on-the-record testimony, in violation of FINRA Rules 8210 and 2010. Respondent is also ordered to pay restitution, plus interest, to the customers who loaned funds to him.

Appearances

For the Department of Enforcement, Complainant: Frank D. Mazzarelli, Esq., Rockville, Maryland.

For Ricky Eugene Bell, Respondent: no appearance.

DECISION

Ricky Eugene Bell was formerly registered with FINRA as a General Securities Representative at Cape Fear Securities, Inc. (the "Firm") from June 2012 through December 2013. The Firm terminated Bell for failing to inform it of an arbitration claim filed against him by his prior firm, for borrowing funds from multiple clients and not disclosing the loans to the Firm, and for failing to perform client service functions satisfactorily. He is not currently associated with a FINRA member.

After receiving a Uniform Termination Notice for Securities Industry Registration ("Form U5") filed by the Firm on Bell's behalf, FINRA staff began investigating Bell's

activities. As a result of that investigation, Enforcement filed a Complaint with the Office of Hearing Officers charging Bell with engaging in unauthorized private securities transactions, in violation of NASD Rule 3040 and FINRA Rule 2010 (First Cause of Action); with receiving unauthorized loans from customers, in violation of FINRA Rules 3240 and 2010 (Second Cause of Action); and for failing to respond to requests for information and testimony, in violation of FINRA Rules 8210 and 2010 (Third Cause of Action).

Bell did not answer or otherwise respond to the Complaint. Accordingly, Enforcement moved for entry of a default decision.¹ For the reasons discussed below, the Hearing Officer grants Enforcement's motion and bars Bell from association with a FINRA member firm in any capacity based on his violations of NASD Rule 3040 and FINRA Rules 2010, 3240 and 8210.

I. Jurisdiction

Bell is not currently registered with a FINRA member firm. Nevertheless, FINRA has jurisdiction over this proceeding because, pursuant to Article V, Section 4 of FINRA's By-Laws,² (1) the Complaint was filed within two years after the termination of Bell's last registration with FINRA,³ and (2) the Complaint charges him with misconduct committed while he was associated with a FINRA member and with failing to respond to requests for information and testimony that FINRA staff issued during the two-year period after the date upon which he ceased to be registered or associated with a FINRA member.

¹ Enforcement filed a motion ("Motion") and supplement to motion ("Suppl. Motion") for entry of default decision supported by a declaration ("Decl.") and supplemental declaration ("Suppl. Decl.") from Frank D. Mazzealli and six exhibits ("CX-___").

² See Article V, Sec. 4(a), FINRA By-Laws, available at www.finra.org/rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: By-Laws").

³ The Complaint was filed on April 29, 2014. FINRA terminated Bell's last registration on December 10, 2013. CX-1, at 3

II. Enforcement's Motion for Entry of a Default Decision Is Granted

Enforcement filed the attached Complaint with the Office of Hearing Officers on April 29, 2014. On that day, Enforcement served Bell with a Notice of Complaint and Complaint by U.S. Postal Service ("USPS") first-class certified mail, return receipt requested, at his residential address as reflected in the Central Registration Depository ("CRD Address").⁴ Bell did not file an Answer to the Complaint by May 27, 2014, the date specified in the Notice of Complaint.⁵

Accordingly, on May 28, 2014, Enforcement served Bell with a Second Notice of Complaint and Complaint by USPS first-class certified mail, return receipt requested, to the CRD Address.⁶ Bell did not file an Answer to the Complaint by June 16, 2014, the deadline specified in the Second Notice of Complaint,⁷ or thereafter.

Therefore, on July 21, 2014, Enforcement filed a motion for entry of default decision with the Office of Hearing Officers. Bell did not respond to the motion. The Hearing Officer concludes that Bell received valid constructive service of this proceeding in accordance with FINRA Rules 9134(a)(2) and (b)(1), and he therefore defaulted by failing to answer the Complaint. Accordingly, the Hearing Officer grants Enforcement's motion.

III. Findings of Fact

The Hearing Officer treated the allegations in the attached Complaint as admitted pursuant to FINRA Rules 9215(f) and 9269(a).

⁴ Decl. ¶ 25; CX-3.

⁵ Decl. ¶ 26; CX-3. The certified mailing was returned by the USPS marked "Return to Sender, Unclaimed." Decl. ¶ 27; CX-4.

⁶ Decl. ¶ 28; CX-5.

⁷ Decl. ¶ 31; CX-5. The certified mail receipt was returned by the USPS to FINRA reflecting that the mailing had been delivered and signed by "G. Brock." Decl. ¶ 30; CX-6.

A. Ricky Eugene Bell

Bell began his career in the securities industry in May 1990.⁸ Over the course of that career, he was employed by six FINRA member firms.⁹ In June 2012, Bell became registered as a General Securities Representative with the Firm.¹⁰ He remained employed there until November 11, 2013, when he was permitted to resign, and on December 10, 2013, his registration was terminated.¹¹ Thereafter, he has not been registered with a FINRA member.¹²

B. Bell Engaged in Private Securities Transactions without Giving Notice to, or Receiving Approval from, the Firm

1. Transactions with Customers JM, DB and VB

Between January 2011 and January 2014 (“the relevant time period”),¹³ Bell served as the registered representative for JM, who had an account at the Firm, and for DB and VB, a retired married couple, who also had an account at the Firm.¹⁴ In early 2011, Bell solicited JM to invest in Bell’s “lending program.”¹⁵ Later, in February 2012, Bell also solicited DB and VB to invest in that program,¹⁶ referring to it as “HLT Investments.”¹⁷ Bell provided these customers with the same description of the lending program.¹⁸ Specifically, Bell told these customers: (1) that his lending program and HLT Investments were reserved for his select customers and close

⁸ CX-1, at 5–6.

⁹ *Id.* at 3–6.

¹⁰ *Id.* at 3.

¹¹ CX-1, at 3.

¹² *Id.* at 3.

¹³ Compl. ¶ 1. While the Complaint alleges that the relevant period ended in January 2014, Bell’s registration with the Firm terminated on December 10, 2013. Accordingly, all findings regarding Bell’s conduct while registered with the Firm are limited to the time period ending December 10, 2013.

¹⁴ Compl. ¶¶ 8, 11.

¹⁵ Compl. ¶ 9; Suppl. Decl. ¶ 5.

¹⁶ Compl. ¶ 12.

¹⁷ Compl. ¶ 12.

¹⁸ Compl. ¶ 12.

friends;¹⁹ (2) that investors' funds would be pooled together and used to provide high-interest loans to small businesses, thereby generating profits for investors;²⁰ and (3) that they should not inform the Firm about these investments because it would attempt to share in the deal, thereby reducing their profits.²¹

From January 2011 through October 2013, JM invested \$164,500 in Bell's lending program.²² And between February 2012 and November 2012, DB and VB invested \$83,000 in the program.²³ These customers solely relied upon Bell's statements and recommendations in making their investment decisions concerning his lending program and HTL Investments,²⁴ and but for Bell's recommendation and their trust in him, they would not have invested.²⁵

The customers' knowledge of, and involvement in, the lending program were as follows: (1) they were unaware of the specifics of the loan details and the loan recipients' identities; (2) they were unaware of the existence of any specific collateral; (3) they expected funds to be pooled together; (4) they relied on Bell to operate and manage the investment and to subsequently generate, collect, and distribute the anticipated profits and were not involved in the operations of the lending program or HTL Investments; (5) they did not receive any promissory notes, loan agreements, contracts, statements, or other similar documentation from Bell; (6) they anticipated a rate of return ranging between 10%–12% and the term of the investment to be at least one year; (7) they understood that the investments were not payable upon demand; and (8) they received sporadic and unscheduled "interest payments" from Bell.

¹⁹ Suppl. Decl. ¶ 5.

²⁰ Compl. ¶ 9; Suppl. Decl. ¶ 6 ("customers expected funds to be pooled together").

²¹ Suppl. Decl. ¶ 5.

²² Compl. ¶ 9.

²³ Compl. ¶ 13.

²⁴ Suppl. Decl. ¶ 5.

²⁵ Suppl. Decl. ¶ 5.

During the period January 2011 through October 2013, Bell made interest payments to JM totaling \$3,500.26, but did not return any of his principal.²⁷ Bell paid approximately \$1,000 in interest to DB and VB, but did not return any of their principal.²⁸

2. Bell Failed to Notify the Firm of His Private Securities Transactions

During the relevant period, Bell did not notify the Firm that he intended to solicit or obtain investments in a lending program or in HTL Investments, or that he had done so.²⁹ Further, during the relevant period, he did not seek the Firm's approval to participate in any manner in any private securities transaction.³⁰ During the relevant period, the Firm did not offer positions in any such lending program or in HTL Investments to customers,³¹ and did not authorize Bell to solicit or obtain such investments.³²

C. Bell Received Unauthorized Loans from Two Customers

During the relevant time period, Bell served as the registered representative for Firm customer PT.³³ Between approximately February 2011 and December 2012, Bell solicited and received at least \$10,650 in personal loans from PT.³⁴ During the relevant time period, Bell also served as the registered representative for BA, who had an account at the Firm.³⁵ During that

²⁶ Compl. ¶ 9.

²⁷ Compl. ¶ 9.

²⁸ Compl. ¶ 13.

²⁹ Compl. ¶ 15.

³⁰ Compl. ¶ 15.

³¹ Compl. ¶ 14.

³² Compl. ¶ 14.

³³ Compl. ¶ 18.

³⁴ Compl. ¶ 19.

³⁵ Compl. ¶ 20.

period, Bell solicited and received a \$9,000 personal loan from BA.³⁶ Bell has not repaid the loans.³⁷

During the relevant time period, Bell did not request or receive approval from the Firm to solicit or receive the loans from customers PT and BA.³⁸ Moreover, during the relevant time period, the Firm's procedures prohibited, without exception, registered representatives from borrowing or lending money from or to any Firm customer.³⁹ Further, the Firm notified Bell of its policies and prohibitions against borrowing from customers.⁴⁰

D. Bell Failed to Respond to Requests for Information and to Provide On-the-Record Testimony

On December 17, 2013, pursuant to Rule 8210, FINRA staff sent Bell an information request, with a due date of January 3, 2014. Among other things, the request sought information and documents regarding: (1) loans he received from customers; and (2) his outside business activities.⁴¹ Also on December 17, 2013, pursuant to Rule 8210, the staff sent Bell a separate request to appear in person on January 10, 2014, to provide on-the-record testimony.⁴²

When Bell failed to respond to the request for information and documents, FINRA staff sent him a second request, pursuant to Rule 8210, on January 6, 2014, reminding him that his

³⁶ Compl. ¶ 21.

³⁷ Compl. ¶ 21; Decl. ¶ 15.

³⁸ Compl. ¶ 23.

³⁹ Compl. ¶ 23.

⁴⁰ Decl. ¶ 17.

⁴¹ CX-2, at 1-4.

⁴² Compl. ¶ 23. Both requests were sent via first-class mail and certified mail, return receipt requested, to the CRD Address. Compl. ¶ 26. Both certified mail receipts were returned to FINRA reflecting that the letters had been delivered and that "G. Brock" had signed for them. Compl. ¶ 27.

response was past due and directing him to respond “forthwith.”⁴³ Also on January 6, 2014, the staff spoke with Bell by telephone, reminding him that his response to the information request was past due and that he was scheduled to appear and provide on-the-record testimony on January 10, 2014.⁴⁴ During that call, Bell told the staff that he would not appear on January 10 to provide testimony.⁴⁵ Also, he neither requested, nor received, an extension of time to produce the requested information.⁴⁶

When Bell failed to appear for his scheduled testimony on January 10, the staff sent him a second request on January 15, 2014, pursuant to Rule 8210, to provide on-the-record testimony on January 28.⁴⁷ Bell did not provide the requested information and failed to appear on January 28 to provide on-the-record testimony.⁴⁸ From Enforcement’s perspective, the information sought by the Rule 8210 requests “was of the utmost importance”⁴⁹ and “critical to Enforcement’s investigation to determine the full extent of customer loss and the scope of the misconduct.”⁵⁰

⁴³ Compl. ¶ 28; CX-2, at 10. The second request was sent via first-class mail and certified mail, return receipt requested, to the CRD Address. Compl. ¶ 28. The USPS returned the certified mail receipt reflecting that it had been signed by “G Brock.” CX-2, at 12.

⁴⁴ Compl. ¶ 29.

⁴⁵ Compl. ¶ 29.

⁴⁶ Compl. ¶ 29.

⁴⁷ Compl. ¶ 30. The staff sent the request to the CRD Address by Federal Express, first-class mail, and certified mail, return receipt requested. Compl. ¶ 30. Federal Express tracking indicated that the letter was delivered. The certified mail receipt was returned to FINRA and indicated that the letter was delivered and that “G. Brock” had signed for it. Compl. ¶ 31.

⁴⁸ Compl. ¶ 32.

⁴⁹ Suppl. Decl. ¶ 8.

⁵⁰ Suppl. Decl. ¶ 8.

IV. Conclusions of Law

A. Bell Violated NASD Rule 3040 and FINRA Rule 2010

NASD Rule 3040 prohibits associated persons from participating in private securities transactions in any manner without prior written notification to the member firm.⁵¹ If the associated person is to receive selling compensation, the representative must also receive written approval from the firm before engaging in the transactions.⁵² The Rule applies to “any securities transaction outside the regular course or scope of an associated person’s employment with a member.”⁵³ The Rule has two purposes: “protecting investors from unsupervised sales and protecting member firms from exposure to loss and litigation in connection with such sales.”⁵⁴

The transactions at issue involved the sale of securities, namely, investment contracts that meet the test set forth in *SEC v. W. J. Howey Co.* (“the *Howey* test”).⁵⁵ The *Howey* test requires a showing of: “(1) an investment of money, (2) in a common enterprise, (3) with the expectation of profits, (4) to come solely from the efforts of the promoter or a third party.”⁵⁶ Here, JM, DB, and VB invested expecting that their funds would be pooled together with other investors’ funds and used to provide high-interest loans to businesses, thereby generating profits for investors. These

⁵¹ NASD Rule 3040(a), (b).

⁵² NASD Rule 3040(c)(1). Enforcement states that the rule prohibits associated persons from participating in a private securities transaction without providing written notice and obtaining permission from the firm even if the representative does not receive any compensation from the transactions. Motion at 3. The prior approval requirement of Rule 3040, however, only applies if the representative is to receive selling compensation. *See Dep’t of Enforcement v. De Vietien*, No. 2006007544401, 2010 FINRA Discip. LEXIS 45, at *13–14 (NAC Dec. 28, 2010). Because Bell did not provide written notice to the Firm of the private securities transactions, it is unnecessary for the Hearing Officer to decide if he received selling compensation. *See Dep’t of Enforcement v. Friedman*, No. 2005000835801, 2010 FINRA Discip. LEXIS 10, at *20 n.17 (NAC July 26, 2010).

⁵³ Rule 3040(e).

⁵⁴ *Dep’t of Enforcement v. Calandro*, No. C05050015, 2007 FINRA Discip. LEXIS 17, at *70 (NAC Dec. 14, 2007).

⁵⁵ 328 U.S. 293, 298–99 (1946). The Securities Act of 1933 and the Securities Exchange Act of 1934 provide that investment contracts constitute securities. *See* Section 2(a)(1) of the Securities Act of 1933 and Section 3(a)(10) of the Securities Exchange Act of 1934. The definitions are virtually identical under the Acts and may be considered the same. *Dep’t of Enforcement v. Mielke*, No. 2009019837302, 2014 FINRA Discip. LEXIS 24, at *15 n.12. (NAC July 18, 2014).

⁵⁶ *De Vietien*, 2010 FINRA Discip. LEXIS 45, at *16.

customers were not involved in the operations of the loan service, were unaware of the specifics of the loan details, and were unaware of the loan recipients' identities. Rather, they relied on Bell to operate and manage the investment and to subsequently generate, collect, and distribute the anticipated revenue. In short, the customers expected to obtain profits solely from the efforts of Bell and unnamed others. Thus, the transactions involved investment contracts constituting securities under the *Howey* test.⁵⁷

Also, while the Complaint does not allege it specifically, the transactions were outside the regular course or scope Bell's employment with the Firm, as the Firm did not offer the instruments at issue nor did it authorize Bell to sell them.

Finally, Bell told the customers that they should not tell the Firm about these investments because it would attempt to share in the deal, reducing their profits. Accordingly, Bell purposely concealed the transactions from the Firm and intentionally engaged in private securities transactions.

By virtue of the foregoing, Bell violated NASD Rule 3040 by engaging in private securities transactions without providing prior written notice to the Firm. Bell's conduct also constituted a separate and distinct violation of Rule 2010, which requires FINRA members and

⁵⁷ If the transactions at issue are deemed notes rather than investment contracts "it would be inappropriate to apply the investment contract test." *Dep't of Enforcement v. Strong*, No. E8A2003091501, 2008 FINRA Discip. LEXIS 19, at *9 n.7 (NAC Aug. 13, 2008) (citing *Reves v. Ernst & Young*, 494 U.S. 56, 58, 64 (1990)). Instead, the principles set forth in *Reves* ("*Reves* test") would govern whether the notes are securities under the federal securities laws. Here, certain facts raise a question as to whether the transactions involved notes, rather than investment contracts: Bell made certain "interest payments" to the customers but "has not returned any principal" to them. Compl. ¶¶ 10, 13. *See also* Suppl. Decl. ¶ 6 ("the customers received sporadic and unscheduled 'interest payments' from Respondent"). Nonetheless, the record does not reflect that Bell told the customers that they were buying notes or that they thought they were doing so. Further, the customers received no documentation evidencing note purchases. Additionally, "[n]otes pay a specified[] sum of money based on the terms of the note." *Dep't of Enforcement v. Strong*, 2008 FINRA Discip. LEXIS 19, at *9 n.7. The record does not reflect that these transactions involved instruments that paid a specified sum of money based on the terms of the instrument. Therefore, the Hearing Officer did not find that the transactions involved notes. Accordingly, it was appropriate to analyze the transactions at issue under the *Howey* rather than the *Reves* test.

their associated persons to observe high standards of commercial honor and just and equitable principles of trade in connection with the conduct of their business.⁵⁸

B. Bell Violated FINRA Rules 3240 and 2010

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 arrangements prior to entering into the arrangements and obtains pre-approval in writing.

Bell's solicitation and receipt of loans from customers violated Rule 3240. Bell neither requested nor received approval from the Firm to solicit or receive loans from customers. Moreover, during the relevant time period, the Firm's procedures prohibited, without exception, its registered representatives from borrowing or lending money from or to any Firm customer. Accordingly, Bell's conduct violated Rules 3240 and 2010.⁵⁹

C. Bell Violated FINRA Rules 8210 and 2010

FINRA Rule 8210 requires FINRA members and their associated persons to cooperate with FINRA investigations by providing information when requested by FINRA staff. Pursuant to Rule 8210, FINRA may require an associated person "to provide information orally, in writing, or electronically . . . and to testify at a location specified by FINRA staff, under oath or affirmation" in connection with any investigation. The Rule is crucial to FINRA's ability to

⁵⁸ See *Dep't of Enforcement v. Hanson*, No. C9A000027, 2001 NASD Discip. LEXIS 41, at *17 (NAC Dec. 13, 2001) (finding conduct that violated Rule 3040 also violated the predecessor to Rule 2010). Additionally, "[a] violation of any FINRA rule, including NASD Rule 3040 violates NASD Rule 2110 and FINRA Rule 2010." *Mielke*, 2014 FINRA Discip. LEXIS 24, at *8 n.3.

⁵⁹ See footnote 58.

oversee and regulate member firms and associated persons because FINRA does not have subpoena power. Instead, FINRA must depend on member firms and associated persons to cooperate fully and promptly with requests for information.⁶⁰ Further, a failure to cooperate in an investigation frustrates FINRA's ability to detect misconduct and protect investors and markets.⁶¹ It is well established that a violation of the duty to cooperate and provide information pursuant to Rule 8210 also violates Rule 2010.⁶²

In this case, pursuant to FINRA Rule 8210, FINRA staff issued two requests for information to Bell—dated December 17, 2013, and January 6, 2014. The staff also sent Bell, pursuant to Rule 8210, requests on December 17, 2013, and January 15, 2014, to appear for an on-the-record interview. The staff sent each request to the CRD Address. Therefore, Bell is deemed to have received the requests pursuant to Rule 8210(d).⁶³ Additionally, Bell also had actual knowledge of the December 17 information and testimony requests because the staff discussed those requests with him by telephone on January 6, 2014.

Bell never provided any of the requested information and never appeared for the on-the-record interview requested by the staff. Accordingly, Bell violated FINRA Rules 8210 and 2010.

⁶⁰ See, e.g., *Dep't of Enforcement v. Valentino*, No. FPI010004, 2003 NASD Discip. LEXIS 15, at *12 (NAC May 21, 2003), *aff'd*, Exchange Act Rel. No. 49255, 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). See also *Morton Bruce Erenstein*, 316 Fed. App'x 865, 871 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.").

⁶¹ *PAZ Sec., Inc.*, Exchange Act Rel. No. 57656, 2008 SEC LEXIS 820, at *13 (Apr. 11, 2008), *petition for review denied sub nom. PAZ Sec. v. SEC*, 566 F.3d 1172 (D.C. Cir. May 29, 2009).

⁶² See *CMG Inst. Trading, LLC*, Exchange Act Rel. No. 59325, 2009 SEC LEXIS 215, at *30 (Jan. 30, 2009); *Mielke*, 2014 FINRA Discip. LEXIS 24, at *46 n.40; *Dep't of Enforcement v. Reichman*, No. 200801201960, 2011 FINRA Discip. LEXIS 18, at *28–29 (NAC July 21, 2011).

⁶³ Rule 8210(d) provides that a notice issued under Rule 8210 shall be deemed received if it is sent to the person's last known business address as reflected in CRD and the staff does not have actual knowledge that that address is out of date or inaccurate. Here, the staff had no such knowledge. Decl. ¶ 21.

V. Sanctions

A. Bell is Barred for Engaging in Private Securities Transactions, in Violation of NASD Rule 3040 and FINRA Rule 2010

For selling away (private securities transactions), the Sanction Guidelines recommend a fine of \$5,000 to \$50,000 and a suspension of 10 businesses days to a bar, depending upon certain considerations.⁶⁴ The Guidelines direct the adjudicator to apply a two-step process in assessing sanctions. First, the adjudicator should assess the extent of the selling away (including the dollar amount of the sales, the number of customers, and the length of time over which the selling away occurred). Here, Bell's sales to three customers over a two-year time period totaled approximately \$247,500. For sales in the \$100,000 to \$500,000 range, the Guidelines recommend a three to six-month suspension.

After this initial assessment, according to the Guidelines, the adjudicator should consider the factors identified in the Principal Considerations for this Guideline and the General Principles Applicable to all Sanction Determinations.⁶⁵ The Guidelines advise that the presence of one or more mitigating or aggravating factors may either raise or lower the length of the suspension.⁶⁶

Here, there are numerous aggravating factors that compel a bar, rather than a suspension or fine. First, Bell sold the investments to three customers.⁶⁷ Second, the wrongful conduct

⁶⁴ *FINRA Sanction Guidelines* ("Guidelines"), at 14 (2013) (Private Securities Transactions).

⁶⁵ The Principal Considerations for selling away include the factors identified in the first step of the sanctions' determination analysis. *Guidelines*, at 14 (Principal Considerations for Private Securities Transactions, Nos. 1–3)

⁶⁶ *Guidelines*, at 14.

⁶⁷ *Guidelines*, at 14 (Principal Considerations for Private Securities Transactions, No. 2) ("The number of customers").

occurred over a two-year period.⁶⁸ Third, the customers lost nearly their entire investment.⁶⁹ Fourth, the investors were Firm customers.⁷⁰ Fifth, Bell did not simply participate in the sales to customers by referring them to another person or entity. Instead, he sold the investments directly to them.⁷¹ Finally, Bell attempted to conceal his selling away activities by urging the customers not to tell his Firm about their investment.⁷² Bell's misconduct "was serious, and 'deprive[d] investors of a member firm's oversight and due diligence, protections they have a right to expect.'"⁷³

In view of these aggravating factors, and the lack of mitigation warranting a sanction less than a bar,⁷⁴ Bell is barred for engaging in private securities transactions, in violation of NASD Rule 3040 and FINRA Rule 2010.⁷⁵

⁶⁸ *Guidelines*, at 14 (Principal Considerations for Private Securities Transactions, No. 3) ("The length of time over which the selling away activity occurred"); *see also id.* at 6 (Principal Considerations in Determining Sanctions, No. 9) ("Whether the respondent engaged in the misconduct over an extended period of time").

⁶⁹ *Guidelines*, at 15 (Principal Considerations for Private Securities Transactions, No. 7) ("Whether the respondent's selling away activity resulted, either directly or indirectly, in injury to the investing public and, if so, the nature and extent of the injury"); *see also id.* at 6 (Principal Considerations in Determining Sanctions, No. 11).

⁷⁰ *Guidelines*, at 15 (Principal Considerations for Private Securities Transactions, No. 8) ("Whether the respondent sold away to customers of his or her employer (member firm)").

⁷¹ *Guidelines*, at 15 (Principal Considerations for Private Securities Transactions, No. 11) ("Whether the respondent participated in the sale by referring customers or selling the product directly to customers").

⁷² *Guidelines*, at 15 (Principal Considerations for Private Securities Transactions, No. 13) ("Whether the respondent misled his or her employer (member firm) about the existence of the selling away activity or otherwise concealed the selling away activity from the firm"); *see also id.* at 6 (Principal Considerations in Determining Sanctions, No. 10) ("Whether the respondent attempted to conceal his . . . misconduct [from] the member firm with which he . . . was associated").

⁷³ *Calandro*, 2007 FINRA Discip. LEXIS 17, at *70 (quoting *Keyes*, Exchange Act Rel. No. 54723, 2006 SEC LEXIS 2631, at *15 (Nov. 8, 2006)).

⁷⁴ Bell did, however, disclose to his customers that he was affiliated with the lending program. *See Guidelines*, at 15 (Principal Considerations for Private Securities Transactions, No. 5) ("Whether the respondent had a proprietary or beneficial interest in, or was otherwise affiliated with, the selling enterprise or issuer and, if so, whether respondent disclosed this information to his or her customers").

⁷⁵ In light of the bar, the Hearing Officer exercises his discretion not to impose a fine. *Guidelines*, at 10. Further, the Hearing Officer also declines to award restitution, as requested by Enforcement. The Guidelines for selling away do not recommend restitution as an appropriate sanction. *See Dep't of Enforcement v. Hanson*, No. C8A000059, 2002 NASD Discip. LEXIS 5, at *6 (NAC March 28, 2002) (declining to award restitution, noting that that the Guideline for selling away "does not recommend that adjudicators consider ordering restitution or partial restitution to customers."). *Cf. Dep't of Enforcement v. Kapara*, No. C10030110, 2005 NASD Discip. LEXIS 41, at *35 (NAC

B. Bell is Barred for Borrowing Funds from Customers, in Violation of FINRA Rules 3240 and 2010

The Guidelines do not specifically address violations of FINRA Rule 3240. However, in a Notice to Members regarding Rule 3240's predecessor, NASD explained that:

[L]oans 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.⁷⁶

Additionally, according to the General Principles, adjudicators should impose sanctions that are designed to deter future misconduct and improve overall business standards.⁷⁷ Also, the Principal Considerations in Determining Sanctions applicable to all violations direct adjudicators to consider, among other things, whether: (1) whether respondent's misconduct was intentional;⁷⁸ (2) whether the misconduct resulted in the potential for monetary gain;⁷⁹ (3) whether the respondent engaged in the misconduct over an extended period of time;⁸⁰ and (4) whether the misconduct resulted directly or indirectly in injury to other parties and the nature and extent of the injury.⁸¹ All are aggravating factors in this case. Over a two-year period, in violation of his Firm's policies (of which he had been notified), Bell solicited and borrowed \$19,650 from two customers and did not repay the loans.

May 25, 2005) ("Where a respondent has engaged in private securities transactions, but no other violations are proven establishing causation for the customer's harm, restitution is an inappropriate sanction.").

⁷⁶ NASD Notice to Members 03-62 (Oct. 2003).

⁷⁷ *Guidelines*, at 2 (General Principles Applicable to All Sanction Determinations, No. 1).

⁷⁸ *Guidelines*, at 6 (Principal Considerations in Determining Sanctions, No. 13).

⁷⁹ *Guidelines*, at 6 (Principal Considerations in Determining Sanctions, No. 17).

⁸⁰ *Guidelines*, at 6 (Principal Considerations in Determining Sanctions, No. 9).

⁸¹ *Guidelines*, at 6 (Principal Considerations in Determining Sanctions, No. 11).

The Hearing Officer finds Bell's misconduct egregious. The record reflects no mitigation. Therefore, to protect the investing public, the Hearing Officer bars Bell for this violation. Further, because Bell proximately caused PT and BA's losses by not repaying the loans he received from them, he is ordered to pay restitution to PT in the principal amount of \$10,650, plus interest, and to BA in the principal amount of \$9,000, plus interest. Interest shall be calculated as set forth in the Order, below.

C. Bell is Barred for Failing to Respond to Requests for Information and to Provide On-the-Record Testimony, in Violation of FINRA Rules 8210 and 2010

Under the Guidelines, a bar should be standard if the respondent did not respond in any manner to a Rule 8210 request. If mitigation exists, the adjudicator should consider a suspension for up to two years. The Guidelines also suggest a fine of \$25,000 to \$50,000. Additionally, an adjudicator should consider the "[i]mportance of the information requested as viewed from FINRA's perspective."⁸²

Applying the foregoing principles to this case, the Hearing Officer concludes that a bar from associating with any FINRA member firm in all capacities is an appropriately remedial sanction. Bell did not respond in any manner to two requests for information or the two requests for his on-the-record testimony. Additionally, according to Enforcement, the information requested was critically important to its investigation. Finally, the record does not disclose any mitigating factors that would warrant permitting Bell to remain in the securities industry. Accordingly, the Hearing Officer finds that a bar is the appropriate sanction for Bell's failure to provide information and investigative testimony.⁸³

⁸² *Guidelines*, at 33 (Failure to Respond).

⁸³ In light of the bar, the Hearing Officer imposes no monetary sanctions. *See Guidelines*, at 10.

VI. Order

Ricky Eugene Bell is barred from associating with any member firm in any capacity for: (1) engaging in private securities transactions, in violation of NASD Rule 3040 and FINRA Rule 2010; (2) for receiving unauthorized loans from customers, in violation of FINRA Rules 3240 and 2010; and (3) for failing to provide information and testimony, in violation of FINRA Rules 8210 and 2010.

Additionally, Bell is ordered to pay restitution to: (1) PT in the principal amount of \$10,650, plus interest thereon from December 31, 2012, until paid;⁸⁴ and (2) BA in the principal amount of \$9,000, plus interest thereon from January 31, 2014, until paid.⁸⁵ Interest shall accrue

⁸⁴ In the Motion, at 10, Enforcement sought interest on the entire loan from February 16, 2011. But this date is not identified in either the exhibits or the declarations. (Presumably, this is the date on which Bell received his first loan from PT, as the Complaint alleges that Bell received his first loan from PT in February 2011, Compl. ¶ 19, and the Motion, at 8, requests that interest run “from the date [Bell] first obtained the funds from his customers.”). Moreover, running interest from February 16, 2011, on the entire loan amount would result in computing interest on amounts not yet borrowed, as PT did not make his final loan to Bell until December 2012. Compl. ¶ 19. Accordingly, the Hearing Officer selected the end of December 2012 as the date on which to commence the running of interest on the total unrepaid loan amounts.

⁸⁵ In the Motion, at 10, Enforcement sought interest on the unrepaid loan from November 30, 2013. Again, this date is not identified in either the exhibits or the declarations. The Complaint alleges that Bell received the loan “during the relevant time period,” which the Complaint defined as between January 2011 and January 2014. Compl. ¶ 21. Accordingly, the Hearing Officer selected the end of January 2014 as the date on which to commence the running of interest on the unrepaid loan amount.

at the rate set in 26 U.S.C. § 6621(a)(2).⁸⁶ If this decision becomes FINRA's final disciplinary action, the bars will take effect immediately.


David R. Sonnenberg
Hearing Officer

Copies to:

Ricky Eugene Bell (via overnight courier and first-class mail)

Frank D. Mazzairelli, Esq. (via electronic and first-class mail)

Jeffrey D. Pariser, Esq. (via electronic mail)

⁸⁶ The interest rate set in Section 6621(a)(2) of the Internal Revenue Code is used by the Internal Revenue Service to determine interest due on underpaid taxes, is adjusted each quarter, and reflects market conditions. In the event that customers PT and BA cannot be located, unpaid restitution plus accrued interest should be paid to the appropriate escheat, unclaimed-property, or abandoned-property fund for the states in which PT and BA were last known to reside. Satisfactory proof of payment of the restitution (with accrued interest), or of reasonable and documented efforts undertaken to effect restitution (with accrued interest), shall be provided to the staff of FINRA's Department of Enforcement no later than 90 days after the date when this decision becomes FINRA's final action. The customers are identified here by their initials. In an addendum to this decision, which is served only on the parties, the customers are identified by name.

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

RICKY EUGENE BELL,
(CRD No. 2065556),

Respondent.

Disciplinary Proceeding
No. 2013039439301

Hearing Officer— David R. Sonnenberg

ADDENDUM TO DEFAULT DECISION

Customer PT: Peggy Thompson

Customer BA: Barry Amos

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Ricky Eugene Bell
(CRD No.2065556)

Respondent.

DISCIPLINARY PROCEEDING
No. 2013039439301

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Between January 2011 and January 2014 (“the relevant time period”), registered representative Ricky Eugene Bell sold securities away from his member firm, engaged in unauthorized customer loans, failed to respond to FINRA’s requests for information, and failed to provide on-the-record testimony.
2. During the relevant time period, without providing notice to, or receiving approval from, his member firm, Bell solicited firm customers to invest in an outside “lending program” that Bell offered, from which he received customer investments totaling approximately \$247,500. By soliciting these investments, Bell violated NASD Rule 3040 and FINRA Rule 2010.

3. During the relevant time period, Bell also borrowed a total of approximately \$19,650 from firm customers without seeking permission, or obtaining approval, from his member firm. By engaging in unauthorized customer loans, Bell violated FINRA Rules 3240 and 2010.
4. Further, Bell failed to respond to FINRA's requests for information and failed to provide on-the-record testimony, thereby violating FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

5. Bell entered the securities industry in 1993 and held Series 7, 63 and 65 licenses. Bell was associated with various member firms from 1993 through 2012, and in May 2012 he registered with FINRA member firm Cape Fear Securities, Inc. ("Cape Fear;" CRD No. 156359). Bell remained registered with Cape Fear until he was permitted to resign in December 2013.
6. Although Bell 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 Bell's registration with Cape Fear Securities, Inc., namely, December 10, 2013, and (2) the Complaint charges Bell with misconduct committed while he was registered or associated with a FINRA member and with failing to respond to FINRA requests for information and failing to appear for on-the-record testimony during the two-year period after the date upon which Bell ceased to be registered or associated with a FINRA member.

FIRST CAUSE OF ACTION
PRIVATE SECURITIES TRANSACTIONS
NASD RULE 3040 AND FINRA RULE 2010

7. The Department realleges and incorporates by reference paragraphs 1-6 above.
8. During the relevant time period, customer JM had an account at Cape Fear for which Bell served as the registered representative.
9. In early 2011, Bell solicited JM to invest in Bell's "lending program," which Bell described to JM as an investment opportunity reserved for Bell's select customers and closest friends. Bell told JM that investors' funds would be pooled together and used to provide high-interest loans to small businesses, thereby generating profits for investors.
10. JM invested a total of \$164,500 in Bell's lending program from January 2011 through October 2013, and Bell made interest payments to JM during that same time period which totaled approximately \$3,500; however, to date, Bell has not returned any principal to JM.
11. During the relevant time period, customers DB and VB, a retired married couple, had an account at Cape Fear for which Bell served as the registered representative.
12. In February 2012, Bell solicited DB and VB to invest in Bell's lending program. Bell provided DB and VB with the same description of the lending program that he had provided to JM, and referred to it as "HLT Investments."
13. DB and VB invested a total of \$83,000 into Bell's lending program between February 2012 and November 2012, and Bell gave personal checks to DB and VB during that

same time period as “interest payments” but requested that DB and VB refrain from cashing the checks and to consider them only as collateral in the event the lending program faltered. To date, Bell has paid approximately \$1,000 in interest to DB and VB; however, Bell has not returned any principal to DB and VB.

14. During the relevant time period, Cape Fear did not offer, nor did Cape Fear authorize Bell to solicit or sell, positions in any such “lending program” or in “HTL Investments” to customers.
15. Moreover, during the relevant time period, Bell did not notify Cape Fear that he intended to solicit or obtain investments in a “lending program” or in “HTL Investments,” or that he had done so. Bell also did not seek approval or receive permission from Cape Fear to participate in any manner in any private securities transactions.
16. By virtue of the foregoing conduct, Bell violated NASD Rule 3040 and FINRA Rule 2010.

SECOND CAUSE OF ACTION
UNAUTHORIZED CUSTOMER LOANS
FINRA RULES 3240 AND 2010

17. The Department realleges and incorporates by reference paragraphs 1-16 above.
18. During the relevant time period, customer PT had an account at Cape Fear for which Bell served as the registered representative.
19. Between approximately February 2011 and December 2012, Bell solicited and received at least \$10,650 in personal loans from customer PT.

20. During the relevant time period, customer BA had an account at Cape Fear for which Bell served as the registered representative.
21. Also during the relevant time period, Bell informed BA that Bell was having financial difficulties and solicited and received a \$9,000 personal loan from BA. To date, Bell has not repaid BA.
22. 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 arrangements prior to entering into the arrangements and obtains pre-approval in writing.
23. During the relevant time period, Bell did not request or receive approval from Cape Fear to solicit or receive the aforementioned loans from customers. Moreover, during the relevant period, Cape Fear's procedures prohibited registered representatives from borrowing or lending money from or to any firm customer, and Cape Fear did not allow exceptions to this policy.
24. By virtue of the foregoing conduct, Bell violated FINRA Rules 3240 and 2010.

THIRD CAUSE OF ACTION

FAILURE TO RESPOND TO REQUESTS FOR INFORMATION

FINRA RULES 8210 AND 2010

25. The Department realleges and incorporates by reference paragraphs 1-24 above.

26. On December 17, 2013, pursuant to FINRA Rule 8210, FINRA staff sent Bell an information request, with a due date of January 3, 2014, and a separate request to appear in person on January 10, 2014 to provide on-the-record testimony. Both requests were sent via first class mail and certified mail, return receipt requested, to Bell's residential address listed in CRD.
27. Both certified mail receipts were returned to FINRA and indicated that the letters had been delivered on December 19, 2013 to Bell's residential address listed in CRD and that "G. Brock" had signed for the letters.
28. When Bell failed to submit a written response by the due date, on January 6, 2014, FINRA staff sent Bell a second request for information, pursuant to FINRA Rule 8210. This second request was sent via first class mail and certified mail, return receipt requested, to Bell's residential address listed in CRD.
29. Also on January 6, 2014, FINRA staff contacted Bell on his mobile phone and informed Bell that his response to the request for information was past due, and reminded Bell that he was scheduled to appear and provide on-the-record testimony on January 10, 2014. Bell informed FINRA staff that he would not appear on January 10 to provide on-the-record testimony. Bell neither requested, nor received, an extension of time to produce the requested information.
30. After Bell failed to appear, FINRA staff, on January 15, 2014, sent Bell a second request pursuant to FINRA Rule 8210 for Bell to appear on January 28, 2014 and provide on-the-record testimony. The request was sent via Federal Express, first class mail, and certified mail, return receipt requested, to Bell's residential address listed in CRD.

31. Federal Express tracking indicated that the letter was delivered on January 16, 2014 at 9:15am to Bell's residential address listed in CRD. The certified mail receipt was returned to FINRA and indicated that the letter had been delivered on January 17, 2014 to Bell's residential address listed in CRD and that "G. Brock" had signed for the letter.
32. Bell failed to produce the requested information to FINRA and failed to appear on January 28 to provide on-the-record testimony.
33. By virtue of the foregoing, Bell violated FINRA Rules 8210 and 2010.

RELIEF REQUESTED

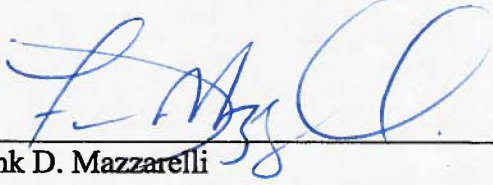
WHEREFORE, the Department respectfully requests that the Panel:

- 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) be imposed, including that Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest;
- 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:

April 29, 2014



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