

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

KATHERINE ANN WHITE
(CRD No. 1362036),

Respondent.

Disciplinary Proceeding
No. 2015045601401

Hearing Officer – RES

HEARING PANEL DECISION

April 7, 2017

Respondent borrowed \$10,000 from a customer. In doing so, Respondent violated FINRA rules. Respondent is suspended from associating with any FINRA member firm in any and all capacities for six months and fined \$10,000.

Appearances

For the Complainant: Emily D. Barnes, Esq., Lane A. Thurgood, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Katherine White, *pro se*

DECISION

I. Introduction

The Hearing Panel conducted a hearing in this disciplinary proceeding in St. Louis, Missouri on February 7, 2017.¹ The evidence shows that Respondent Katherine White, a FINRA registered person, violated FINRA Rules 3240 and 2010 by borrowing \$10,000 from a 69-year-old customer, RP. White received a \$10,000 cashier's check from RP and paid RP the \$10,000 (plus a \$600 "profit") back over the following six months, knowing she was not permitted to borrow money from a customer. When White's employer member firm found out about the loan and confronted her, White took the position that the \$10,000 was not a loan, but the purchase price for the sale of her tractor to RP, and she paid \$10,600 to buy the tractor back

¹ The hearing transcript is cited as "Tr." Enforcement's exhibits are cited as "CX." White's exhibits are cited as "RX."

from RP. As discussed below, White’s defense is not supported by the law or the evidence. Instead, the Hearing Panel finds that White borrowed money from her customer in violation of FINRA rules.

II. Complaint

The Department of Enforcement filed the Complaint against White on July 13, 2016. The single cause of action charged White with accepting an unauthorized customer loan in violation of FINRA Rules 3240 and 2010. White answered the Complaint on August 15, 2016, denying the substantive allegations and requesting a hearing.

III. Jurisdiction

The Department of Enforcement filed the Complaint within two years after White’s employer member firm had terminated her registration. She was registered with the firm at the time of the conduct alleged in the Complaint. For these reasons, FINRA has jurisdiction over White according to FINRA By-Laws Article V, Section 4. In her Answer, White admits she is subject to FINRA’s jurisdiction for purposes of this proceeding.²

IV. Findings of Fact

A. Background

White testified that she entered the securities industry in 1985 when she became employed by Prudential Bache Securities in Long Beach, California.³ She was promoted to operations manager of her branch.⁴ She received her Series 7 and 63 licenses in 1994.⁵ She later received Series 24, 27, and 66 licenses.⁶ After Prudential Bache Securities, she was associated with five member firms in succession before associating with U.S. Bancorp Investments, Inc. (“U.S. Bancorp”).⁷ She was associated with U.S. Bancorp from December 1, 2001, until April 30, 2015.⁸ She worked in a U.S. Bancorp branch in Springfield, Illinois.

² Answer (“Ans.”) ¶ 4.

³ Tr. 70.

⁴ Tr. 71.

⁵ Tr. 71; CX-1, at 8.

⁶ Tr. 72.

⁷ Ans. ¶ 2. U.S. Bancorp Investments, Inc. operates as a subsidiary of U.S. Bancorp, a financial services holding company based in Minneapolis, Minnesota. At the branch where White worked, U.S. Bancorp offered banking and brokerage services to customers. RP had bank and brokerage accounts at U.S. Bancorp.

⁸ Ans. ¶ 2.

B. White Obtained \$10,000 from Customer RP

In 2014 and 2015, U.S. Bancorp's policy provided that associated persons like White "may not loan or borrow money or securities to or from clients ... with the exception of a client that is a family member. Prior written approval ... is required if money is borrowed from or loaned to a family member who is also a client."⁹ Firm policy prohibited associated persons from "[a]ccepting, converting, or otherwise using client or firm funds for personal benefit."¹⁰ With regard to the firm's policy, White admitted that "[m]y understanding is you never borrow money from a client."¹¹ She knew as a general rule that loans were prohibited by FINRA.¹²

White began to manage RP's investments with U.S. Bancorp in September 2011.¹³ White testified that RP was retired and, in October 2014, had just turned 69 years of age.¹⁴ Before retirement, RP had worked for St. John's Hospital in central supply.¹⁵ White admitted that RP "had just limited resources from her job and her pension."¹⁶

On October 14, 2014, White met with RP in White's U.S. Bancorp office. As a result of that meeting, White obtained a \$10,000 cashier's check from RP payable to the order of White.¹⁷ White testified that this came about after she and RP had

been talking all summer and she knew about my brother's situation with his teeth.¹⁸ And I had talked to her and she had agreed to purchase my tractor.¹⁹

⁹ CX-7, at 2. As White's supervisor testified, "we have a rule within ... US Bancorp Investments that says you can never take a loan or use clients' funds for your own personal use." Tr. 47.

¹⁰ CX-7, at 1.

¹¹ Tr. 71.

¹² Tr. 75.

¹³ Tr. 78-79. With regard to RP, White testified that "I was actually her mom's financial advisor the whole period of time, the whole 18 years I've been at that branch." Tr. 78.

¹⁴ Tr. 79, 133.

¹⁵ Tr. 133.

¹⁶ Tr. 134.

¹⁷ CX-3.

¹⁸ White paid many of her brother's expenses because he was unable to work full time as a result of an accident in which he had broken his back. Sometime before the October 14 meeting, White's brother received dental treatment costing \$5,000. White had saved money to pay property taxes owed by herself and her brother, but she had to use a large portion of this money to pay her brother's dental bill. Tr. 85.

¹⁹ White owned a tractor that she had purchased under a written contract from an individual in 2007. Tr. 92. She testified that she bought the tractor because "I live in the country and you know, you have to fix fence posts or move hay or whatever." Tr. 93. By the time of the October 2014 meeting between White and RP, the tractor was eight years old. CX-13.

At first she wanted to come in and she said she would just give me \$10,000. And I told her: Oh, no, no, no, no, no, absolutely not. You can't give me any money.

And then she said she would loan me \$10,000. And I explained that we could not develop any loans. Not only is she a good friend of mine, but she's also a client. And you can't—you can't accept loans. And technically, you could if you got prior approval, but I wasn't taking any loans from her.²⁰

So, I had been talking to her and I had mentioned about my tractor. And she asked how much would I need. And I said: Well, I need to sell it for at least \$10,000. And at that time I had explained to her about [BR], my hay man, who had asked me several times throughout the year about purchasing the tractor pending an appraisal.²¹

White testified that RP agreed to purchase the tractor “purely as an investment ... and she was helping me by purchasing it.”²²

Thus, White testified that her plan was to sell her tractor to RP and then, on behalf of RP, sell the tractor to BR and turn all of the sale proceeds over to RP. But the evidence shows that White's real plan was to borrow \$10,000 from RP, make the loan look like the sale of her tractor, sell the tractor to BR and, from the sale proceeds, pay RP back the \$10,000 plus a “profit” to be determined by White.

After their meeting, White and RP walked together to the U.S. Bancorp teller window to obtain a \$10,000 cashier's check drawn from RP's bank account. With White present, RP signed a debit advice withdrawing \$10,000.²³ White testified that she instructed the U.S. Bancorp teller to print the notation “tractor” on the memo line of the cashier's check “because this served as [RP's] receipt ... tractors don't have titles. So, I wanted to make sure she had a copy of this check.”²⁴ The memo line on the cashier's check says “[RP] Tractor.”²⁵

²⁰ In fact, U.S. Bancorp would not have given White prior approval to accept a loan from RP because the firm limited loans from customers to those originating from family members. CX-7, at 2. White and RP were not family members. Tr. 208 (White closing statement) (“[RP]’s not a family member of mine”).

²¹ Tr. 83-84.

²² Tr. 94. With regard to the sale of her tractor, White testified that “I was the one that brought it up. I was the one who asked her if, you know, she'd do me a favor.” Tr. 136; *accord* Tr. 86 (testimony of White) (RP “wanted to help me”).

²³ CX-2; Tr. 82. White testified that the \$10,000 “could have been a liquidation from one of her investments.” Tr. 82. Thus, according to White, RP traded a \$10,000 securities investment maintained in one of her U.S. Bancorp accounts for a \$10,000 investment in a used tractor.

²⁴ Tr. 87.

²⁵ CX-3.

The cashier's check was for \$10,000 and payable to the order of White.²⁶ RP received the cashier's check from the teller and handed it to White.²⁷ White admitted that, at the same time RP was filling out the paperwork for her cashier's check, "I was filling out my information to grab two cashier's check[s] for my taxes and then depositing the remainder of the funds into my account to pay on the dental bill."²⁸ According to White, after she obtained her two cashier's checks in exchange for RP's cashier's check, "I had said to [RP]: Well, congratulations. You're a proud owner of a tractor. And she just sort of laughed."²⁹

C. White Did Not Deliver the Tractor to Customer RP

Following the claimed sale, White did not try to deliver the tractor to RP: "No. I mean, she lives in town. She ... would never have took possession of the tractor."³⁰ RP did not own a farm, or even a garage, but instead "rented out a little house in Springfield."³¹ When asked by Enforcement whether RP ever saw the tractor, White testified:

She'd seen pictures of the tractor. She—her—her sister, actually, her aunt, her mom's sister ... they raised and showed horses for years and years and years and years. So, I mean, it's not like [RP] doesn't know what a tractor is.³²

Under further questioning, White admitted that, before RP gave White the \$10,000 cashier's check, RP had not seen the tractor and did not know what kind of shape it was in.³³ White testified that she did not have an estimate performed to value the tractor because "I knew based on what I'd paid for it just a few years before and how many hours it had on it that it was worth at least, I would say, \$15,000."³⁴

There was no bill of sale. White testified that "the cashier's check was our bill of sale."³⁵ There was no written contract.³⁶ White testified that when she purchased the tractor in 2007,

²⁶ CX-3.

²⁷ Tr. 88.

²⁸ Tr. 88; CX-4, at 1-2; CX-5.

²⁹ Tr. 188-89.

³⁰ Tr. 96; *accord* Tr. 109 (RP "had no intention of taking possession of the tractor").

³¹ Tr. 90; *see* CX-11, at 1 (aerial-view photograph of the house RP rented and lived in), 2 (anterior-view photograph of the house RP rented and lived in).

³² Tr. 100.

³³ Tr. 100.

³⁴ Tr. 99. The putative price for the tractor was \$10,000. At the hearing, the Hearing Officer asked White if she was willing to sell the tractor to RP at an approximate \$5,000 loss so she could get \$10,000. White answered: "I was just trying to pay off debt before year end, that was my whole issue. Yeah." Tr. 137.

³⁵ Tr. 110.

³⁶ Tr. 110.

there was a written contract because she “didn’t know this other person [*i.e.*, the seller],” because the seller was represented by an attorney, and “because I was paying payments to purchase the tractor.”³⁷ According to White, if RP “had planned on keeping that tractor, you know, long-term for herself then, yeah, we would have gone through this whole process of drawing up a contract. Okay. But [RP] never intended to keep it long term.”³⁸ Except for the memo line on the \$10,000 cashier’s check, there was no document suggesting that White had sold the tractor to RP.³⁹ There is no evidence that anyone knew about the purported sale of the tractor except White and RP.⁴⁰

After the putative sale of the tractor to RP, White tried to sell the tractor to BR, White’s hay man.⁴¹ She testified this was all according to plan:

That was the understanding that it would eventually be sold to [BR]. And that was the whole point was that [BR] was supposed to purchase it before year end ... We fully expected [BR] to purchase that tractor and [RP] would receive whatever [BR] paid for it.⁴²

RP never met BR and never talked with him.⁴³

At the hearing, White proffered a letter from BR, which the Hearing Officer admitted into evidence. The letter corroborates White’s testimony that BR participated in discussions about the possibility of his purchasing the tractor—but there is a notable omission. The letter reads in full:

In 2014 I considered buying a small tractor *from Kathy White*. We didn’t come up with any price or agreement. We thought she might take the price of the tractor out of hay I supplied to her.⁴⁴

³⁷ Tr. 110.

³⁸ Tr. 111.

³⁹ In the State of Illinois, tractors do not carry certificates of title. White testified that if they did, she would have signed over the certificate for the tractor to RP. Tr. 110-11.

⁴⁰ White testified that RP “had said to me that ... she didn’t want [her daughter] to know that she purchased a tractor.” Tr. 114. White testified that the reason for this secrecy was “probably because [RP] thought her kid would think she’s crazy for buying a tractor, which you know, she’s not crazy, but her kid is.” Tr. 132. According to White, RP’s daughter eventually found out about the transaction between White and RP “by snooping through her mom’s information when she’s in the hospital.” Tr. 171.

⁴¹ Tr. 101.

⁴² Tr. 101. White testified that “[t]he understanding was that I sold the tractor to [RP] for ... less than I needed ... and then she would later sell that to [BR].” Tr. 90. White testified that RP “didn’t buy the tractor to ride it around her yard. She bought it to have it resold to [BR].” Tr. 189.

⁴³ Tr. 107.

⁴⁴ RX-2 (emphasis added).

The letter makes no mention of RP.

A condition to BR's possible purchase of the tractor was that it had to be appraised.⁴⁵ White testified that RP "understood that the tractor was going to be picked up at my house. I have it serviced every year. I was going to have it serviced and appraised."⁴⁶ The service and appraisal occurred at the end of November—more than a month after the claimed sale to RP—and the appraisal showed the tractor was worth \$14,000 to \$16,000.⁴⁷ Sloan Implement of Petersburg, Illinois performed the service and appraisal.⁴⁸ White, instead of RP, paid the \$602 cost for this because it "was our agreement. I was going to pay that just so I could get the appraisal so [BR] would see the value of the appraisal."⁴⁹ The invoice from Sloan Implement was addressed to White, and the tractor was eventually returned to her.⁵⁰ Sloan Implement did not deliver the tractor to RP.

It was at this time that White's plan began to unravel. According to White, the day after the appraisal she spoke with BR about the sale of the tractor, and he was "trying to lowball us. And basically, what he's trying to say is he would give us \$8,000."⁵¹ As an alternative, BR "wanted to barter in hay."⁵² White testified that she declined the \$8,000 offer because RP "purchased the tractor for \$10,000. There's no way that I'm going to allow him to purchase that tractor for less than what [RP] paid for it when the actual appraisal was a lot higher than that."⁵³

D. White Paid \$10,600 to Customer RP

White testified that, after the sale to BR fell through, she bought the tractor back from RP:

What happened was this is like when you first got the appraisal, when I first found out that [BR] wasn't going to go through with the deal, that's when I came right back to [RP] right away and I explained that to her. So, I told her that I wanted to make sure she got a profit. So, I would repurchase the tractor from her, you know. She doesn't need a tractor. So, we agreed for me to buy back the

⁴⁵ Tr. 83-84, 90, 95.

⁴⁶ Tr. 95.

⁴⁷ CX-13; Tr. 97.

⁴⁸ CX-13. With regard to the one-month-plus delay in getting the tractor appraised, White testified that "I called [Sloan Implement] to have it picked up. They just happened to come get it whenever they were free at Sloan Implement and just pick it up." Tr. 191-92.

⁴⁹ Tr. 110.

⁵⁰ CX-13; Tr. 96-97.

⁵¹ Tr. 101; *accord* Tr. 138.

⁵² Tr. 101.

⁵³ Tr. 101.

tractor ... If she had sold it to [BR] [her profit] would have been whatever the appraisal value would have been.⁵⁴

White testified that she was to pay RP a purchase price of \$10,600 in \$1,000 monthly installments.⁵⁵ The extra \$600 was RP's "profit in the tractor."⁵⁶ White testified that "when the deal fell through, then our agreement was I was going to pay [RP] a thousand dollars a month or more if more money came in."⁵⁷ Each time White made a payment, she recorded it by hand on the back of a document entitled "Balances/Positions (as of 08/01/14 16:43 ET) Page 2 of 2" under the handwritten heading "[RP] Repayment Tractor Re-Purchase."⁵⁸ The handwritten back of the document "was just our informal agreement when [BR] didn't buy the tractor and I came back to [RP]."⁵⁹ White testified that she was going to pay the purchase price in future installments because "I didn't have \$10,000 to just give [RP], plus the \$600. So, I had to work out a payment arrangement of a thousand dollars a month."⁶⁰

White's \$10,600 purchase price was \$3,400 to \$5,400 less than the \$14,000 to \$16,000 appraisal value.⁶¹ When asked why \$10,600 was a fair price for RP, White testified that "[i]f [RP] had said: Well, here's the appraisal, Kathy, why don't you pay me \$15,000, then we would have come up with an agreement and I would have paid her \$15,000."⁶²

Beginning in December 2014, White made the following payments to RP:

⁵⁴ Tr. 103.

⁵⁵ See CX-6, at 1.

⁵⁶ Tr. 103. If one ignores the monthly reduction in principal, the \$600 was equal to a 6 percent interest rate over six months, or a 12 percent interest rate on an annual basis. Tr. 104. With regard to the \$600, White testified that RP "didn't even want to take that." Tr. 104.

⁵⁷ Tr. 113.

⁵⁸ CX-6, at 1. White testified that the document "was just a piece of scratch paper we used." Tr. 131.

⁵⁹ Tr. 114.

⁶⁰ Tr. 120.

⁶¹ CX-13.

⁶² Tr. 104.

Payments From White to RP⁶³

Date	Amount
December 4, 2014	\$1,000
December 31, 2014	\$1,000
February 2, 2015	\$1,000
March 4, 2015	\$1,000
April 1, 2015	\$500
April 22, 2015	\$1,500
May 5, 2015	\$1,000
May 7, 2015	\$3,600
Total	\$10,600

The appraisal of the tractor was dated November 28, 2014, the Friday after Thanksgiving. White's first payment to RP under the schedule was Thursday, December 4.⁶⁴ Thus, in a six-day period that included Thanksgiving weekend, White received the appraisal, negotiated with BR over the sale of the tractor, decided not to accept BR's offer, informed RP that White was buying the tractor back from RP, set up a payment plan, and made the first payment according to the plan.

White made almost all of the payments in cash.⁶⁵ White testified that RP asked to be paid in this form "because she was getting ready to go on a trip to Florida" and did not want her daughter to "know that I was paying her those payments in cash like she had requested."⁶⁶ In the middle of April 2015, RP's daughter found out about the \$10,000 cashier's check that RP had given to White. RP's daughter visited U.S. Bancorp with a copy of the cashier's check and angrily inquired of White why RP had putatively purchased a tractor.⁶⁷ White testified that she responded:

⁶³ CX-6, at 1.

⁶⁴ CX-6, at 1.

⁶⁵ With regard to the payment on December 31, 2014, White testified that "I had the money and [RP] called and said she couldn't come in and just to put it in her bank account." Tr. 116. Each time White made a payment, she had RP initial the date on the schedule to signify that she had received it. With regard to the payment on April 1, 2015, White testified that RP "didn't get a chance to initial this, because [RP's daughter] walked back into our office and she didn't want [the daughter] to know that she'd purchased a tractor and that I'm repurchasing it from her." Tr. 176.

⁶⁶ Tr. 94.

⁶⁷ Tr. 105. In addition to contending that the transaction was the sale of a tractor, White's defense is that RP's daughter constantly tried to take RP's money and bore an animus against White because White was the claimed protector of RP's assets—the "gatekeeper." See Tr. 114, 169-70, 179-81, 194, 205-06, 208-09, 211. This defense is irrelevant to the issue of whether the transaction between White and RP was a loan or the sale of a tractor. The Hearing Panel takes no position on the actions or motives of RP's daughter.

Look, obviously, your mom doesn't need a tractor. She didn't buy the tractor to take physical delivery of the tractor. Like when people buy commodities, they don't buy hog bellies or corn or whatever to have it dumped on their doorstep, right? They buy it to hopefully resell and make some money.⁶⁸

A couple of weeks later, RP's daughter complained to U.S. Bancorp that White had borrowed \$10,000 from RP.⁶⁹ Three days later, U.S. Bancorp investigators and supervisors interviewed White.⁷⁰ White's supervisor, Brett Kasak, testified that the purpose of the interview was "to allow Kathy to share and hopefully provide us with some detail as it related to the sale of this tractor and be able to determine if she had some documents that would support that."⁷¹ White did not produce a bill of sale.⁷² Still, she denied the transaction was a loan and maintained it was the sale of her tractor. Kasak testified that, after concluding the transaction was a loan, the U.S. Bancorp investigators and supervisors "all agreed that our alternative here was to terminate employment based on the rules that ... guide us with our compliance manual and our code of ethics."⁷³

RP did not testify in the hearing.

E. White's Testimony Was Not Credible

In the above narrative of facts, the Hearing Panel has sought to tell White's story in her own words. That story and those words do not ring true. The linchpin of the story does not make sense: no 69-year-old retired person, without experience in business or farm equipment, would make a rational and voluntary decision to invest \$10,000 in an unseen, used, eight-year-old tractor. From there each link in the chain of events becomes more improbable.

For example, White testified that: (1) she would have memorialized the transaction in a written contract if RP had planned on keeping the tractor long-term; (2) if White had sold the tractor to BR for its appraisal value, she would have turned the entire \$14,000-to-\$16,000 sale proceeds over to RP, instead of simply returning the \$10,000 plus a lesser "profit" determined

⁶⁸ Tr. 90. In the block quote above, White refers to a commodity futures contract which, according to Investopedia, "is an agreement to buy or sell a predetermined amount of a commodity at a specific price on a specific date *in the future*." <http://www.investopedia.com/terms/c/commodityfuturescontract.asp> (emphasis added). There is no sale but only a *contract* to buy or sell in the future. A sale would not occur until the date of performance arrives and the seller delivers the commodity in exchange for the price. White's attempted analogy of her tractor to a commodity futures contract is inapposite.

⁶⁹ Tr. 38.

⁷⁰ Six U.S. Bancorp investigators and supervisors participated in the interview. Tr. 42-43. Some of them participated in person, some by telephone.

⁷¹ Tr. 42.

⁷² Tr. 43. As Kasak told White at the hearing: "We were hoping that you would be able to produce something that would show that there was a valid sale of a tractor. There was no bill of sale." Tr. 66.

⁷³ Tr. 47. As Kasak told White at the hearing: "You left us no choice." Tr. 66.

by White; and (3) when purportedly buying the tractor back for \$10,600, White would have paid RP \$15,000 if only RP had asked for that price.⁷⁴ The Hearing Panel does not find this testimony credible.

V. Conclusions of Law

Considering White’s suspect testimony, Kasak’s testimony, and the hearing exhibits, the evidence shows that White violated FINRA rules by borrowing \$10,000 from a customer.

A. The Transaction Between White and RP Was a Loan

The Hearing Panel finds that the transaction between White and RP was not the sale of a tractor. Illinois law defines a sale as the transfer of property for a price and money:

A sale is the transfer of property for price and money; the transfer of the property in things sold from a seller to a buyer for a price is the essence of the transaction, and the transfer, in order to constitute a sale, must be a transfer of the general or absolute property with no further rights in the property reserved unto the seller. ... The consummation of a sale means a closing must have occurred and consideration delivered.⁷⁵

The transaction here was not a sale because White did not transfer the tractor to RP. As White testified, Illinois does not require that tractors carry certificates of title. Thus, if White had made a sale, she would have transferred the tractor by physically delivering it to RP and placing it in RP’s control and possession. This is what happened when White bought the tractor in 2007. The written contract for that sale provided that White “shall be entitled to possession of the property on or before November 1, 2007.”⁷⁶

Although delivery or transfer is the critical element missing here, there are other compelling factors showing this was not a sale:

⁷⁴ Tr. 101, 103-04, 111.

⁷⁵ *Thoms v. Private Ledger Financial Services, Inc.*, 155 Ill. App. 3d 289, 292, 507 N.E.2d 1327, 1330 (Ill. App. 1987); *accord Chapin v. Tampoorlos*, 325 Ill. App. 219, 223, 59 N.E.2d 334, 335 (Ill. App. 1945) (same); *Bloomington Coca-Cola Bottling Co. v. Commissioner of Internal Revenue*, 189 F.2d 14, 16 (7th Cir. 1951) (“A ‘sale’ is a transfer of property for a price in money or its equivalent ... That is to say, in a sale, the property is transferred in consideration of a definite price expressed in terms of money.”).

⁷⁶ RX-8, at 2. Because the transaction between White and RP was not a sale, the Hearing Panel takes no position whether a registered person violates FINRA Rule 2010 if she sells to her brokerage customer a \$10,000 chattel for which the customer has no need. Also, White contends that RP bought the tractor for an investment purpose—reselling the tractor to BR for a short-term profit. Again, because the transaction was not a sale, the Hearing Panel takes no position whether a registered person violates FINRA rules if, instead of recommending a securities investment to her customer, she sells the customer a \$10,000 chattel as a form of investment. Finally, according to White, she bought the tractor back from RP for \$10,600 even though she knew the appraisal value was \$14,000 to \$16,000. The Hearing Panel takes no position whether such a one-sided purchase transaction violates FINRA Rule 2010.

- RP was a 69-year-old retired person living on a small rental property in a small city and “obviously, she did not need a tractor,” as White testified.⁷⁷
- RP never saw the tractor, before or after the transaction.⁷⁸
- Before the transaction, there was no appraisal of the tractor’s value.⁷⁹
- At the time of the transaction, White was trying to sell the tractor to BR.⁸⁰
- The \$10,000 putative purchase price was determined by White, without reference to the tractor’s value.⁸¹
- The transaction was not documented by a written contract or bill of sale.⁸²
- After the transaction, White was the one who continued the sale discussions with BR. RP never met or talked with BR.⁸³
- White was the one who arranged and paid for the service and appraisal of the tractor in preparation for its sale to BR.⁸⁴
- White was the one who made the decision not to accept BR’s offer to purchase the tractor for \$8,000 or its equivalent in hay.⁸⁵
- No one knew about the transaction except White and RP.⁸⁶
- There was no objective evidence by which a third party could know that RP was the owner of the tractor.

The notation “tractor” on the \$10,000 cashier’s check was not a transfer of the tractor. That notation did not indicate there were “no further rights in the property reserved unto the

⁷⁷ Tr. 103. White testified that RP’s rental property was a “little bitty tiny rental house.” Tr. 180.

⁷⁸ Tr. 100.

⁷⁹ Tr. 99.

⁸⁰ Tr. 83-84.

⁸¹ Tr. 83-84, 137.

⁸² Tr. 110.

⁸³ Tr. 107.

⁸⁴ Tr. 95, 136.

⁸⁵ Tr. 101.

⁸⁶ In her closing statement, White stated that RP “agrees to buy the tractor, but on the condition [RP’s daughter] doesn’t know about it and *nobody knows the situation.*” Tr. 207 (emphasis added).

seller,” as required by Illinois law.⁸⁷ There were no words of conveyance or transfer. No consideration was delivered by virtue of the notation.

The Hearing Panel finds that the transaction between White and RP was a loan. Illinois law defines a loan as the “delivery by one party to another of a sum of money upon agreement, express or implied, to repay it with or without interest.”⁸⁸ That is what occurred here: RP delivered to White a cashier’s check for \$10,000, which White repaid with interest. At the time of the transaction, RP expected to be paid back before the end of December 2014. But even if the original transaction was not a loan, the claimed repurchase arrangement less than two months later allowed White to delay full payment of the repurchase price by making \$1,000 monthly installment payments. Through this arrangement, RP financed White’s repurchase—*i.e.*, made a loan to her. When Enforcement pointed this out to White at the hearing, she responded: “I can understand why you would say that, but it was never intended to be a loan if it wasn’t for the fact that [BR] didn’t go through with his commitment like he’d told me.”⁸⁹ Even if White’s testimony as to the parties’ original intention were true, it misses the mark: regardless of the parties’ intention, the reality was that, when the sale of the tractor to BR did not go through and White allegedly decided to buy it back, White owed RP the repurchase price and decided to pay it on credit, in \$1,000 monthly installments.

B. White Violated FINRA Rules 3240 and 2010 by Borrowing \$10,000 from a Customer

FINRA Rule 3240 provides that no person associated with a member firm in a registered capacity may borrow money from or lend money to any customer of such person unless: (1) the member has written procedures allowing the borrowing and lending of money; (2) the borrowing or lending arrangement meets one of five conditions stated in the Rule; and (3) the associated or registered person notifies the member of the borrowing or lending arrangement prior to entering into the arrangement.⁹⁰ The loan from RP to White did not meet the

⁸⁷ *Thoms v. Private Ledger Financial Services, Inc.*, 155 Ill. App. 3d at 293, 507 N.E.2d at 1330.

⁸⁸ *Crabtree v. Illinois Department of Agriculture*, 128 Ill. 2d 510, 519, 539 N.E.2d 1252, 1257 (Ill. 1989); *accord In re Estate of Lalla*, 362 Ill. 621, 627, 1 N.E.2d 50, 53 (Ill. 1936) (a loan is “the putting out of money for compensation”); *Chapin v. Tampoorlos*, 325 Ill. App. at 223, 59 N.E.2d at 335 (“[a] loan of money has been defined as an advancement of money upon a contract or stipulation, express or implied, to repay it at some future day”).

⁸⁹ Tr. 121.

⁹⁰ FINRA Rule 3240(a), (b); *accord Dep’t of Enforcement v. Quinn*, No. 2013038136101, 2015 FINRA Discip. LEXIS 65, at *7 (OHO Oct. 23, 2015) (FINRA Rule 3240 “prohibited Quinn from borrowing funds from a non-family member unless his firm had a written procedure allowing such borrowing and preapproved the loan in writing”); *Dep’t of Enforcement v. Kapasi*, No. 2011028003001, 2014 FINRA Discip. LEXIS 18, at *21 (OHO May 27, 2014) (“NASD Rule 2370 [FINRA Rule 3240’s predecessor] imposes conditions on when an associated person may borrow from customers, and expressly prohibits such borrowing except under very limited circumstances not applicable here”); *John Edward Mullins*, Exchange Act Release No. 66373, 2012 SEC LEXIS 464, at *43 (Feb. 10, 2012) (“NASD Rule 2370 prohibited associated persons from borrowing funds from a

requirements of FINRA Rule 3240. Although White’s employer member firm, U.S. Bancorp, had written procedures on borrowing money from customers, those procedures provided that an “Associated Person may not loan or borrow money or securities to or from clients ... with the exception of a client that is a family member.”⁹¹ RP is not a family member of White.⁹²

Nor did the loan from RP to White satisfy any of the five conditions of FINRA Rule 3240(a)(2): (1) RP was not a member of White’s immediate family; (2) RP was not a financial institution regularly engaged in the business of providing loans; (3) RP was not a registered person with U.S. Bancorp; (4) the loan was not based on a personal relationship between White and RP independent of the broker-customer relationship; and (5) the loan was not based on a business relationship between White and RP outside of the broker-customer relationship. White did not notify U.S. Bancorp of the loan, as required by FINRA Rule 3240(b). White has made no attempt to show that the loan met the requirements of FINRA Rule 3240.

The rationale for FINRA Rule 3240 is that “[l]oans between registered persons and their customers are of legitimate interest to [FINRA] and member firms because of the potential for misconduct.”⁹³ Here, the potential for misconduct was palpable. RP was a 69-year-old retired person with little or no background in business or farming. She had placed her trust in White as her financial advisor. For six months, no one knew about the loan from RP to White except RP and White. There was no documentation memorializing RP’s rights. The only “documentation” that White gave RP was to have the U.S. Bancorp teller print “tractor” on the \$10,000 cashier’s check. White began to pay the loan back in installment payments in early December 2014, but did so mostly in the non-traceable form of cash instead of check. White retained the only record of the installment payments and how much remained outstanding. This “record” consisted of a schedule that White wrote by hand on the back of an unrelated document—a document she described as “just a piece of scratch paper we used.”⁹⁴

In sum, White violated FINRA Rule 3240 by borrowing \$10,000 from RP. A violation of FINRA Rule 3240 also violates FINRA Rule 2010.⁹⁵

customer unless that person’s firm has a written procedure allowing such borrowing and the arrangement meets certain conditions”).

⁹¹ CX-7, at 2.

⁹² Tr. 208.

⁹³ NASD Notice to Members 03-62, 2003 NASD LEXIS 70, at *1-2 (Nov. 10, 2003).

⁹⁴ Tr. 131; CX-6.

⁹⁵ *Dep’t of Enforcement v. Quinn*, 2015 FINRA Discip. LEXIS 65, at *8 (“Because a violation of an NASD or FINRA rule is inconsistent with just and equitable principles of trade, Quinn’s acceptance of the loans also violated FINRA Rule 2010.”); *Dep’t of Enforcement v. Kapasi*, 2014 FINRA Discip. LEXIS 18, at *23 (same); *John Edward Mullins*, 2012 SEC LEXIS 464, at *44 n.45 (same).

VI. Sanctions

The Complaint has a single cause of action for borrowing money from a customer in violation of FINRA Rules 3240 and 2010. There is no specific guideline applicable to such a violation in the FINRA Sanction Guidelines. The Hearing Panel considered the Sanction Guidelines' Principal Considerations, which are applicable to all sanction determinations.

The evidence shows that White formulated and implemented a premeditated plan to use her customer's money for a period of months and to have a cover story ready—the sale of White's tractor—just in case the plan became known to her employer member firm.⁹⁶ White had pending financial obligations—property taxes and a large dental bill—and turned to RP for help. She knew borrowing from RP was against the rules. When she obtained the \$10,000 cashier's check from RP she instructed the U.S. Bancorp teller to print “tractor” on the cashier's check to create “evidence” for her cover story. RP bore the risk of not recovering on this undocumented loan in the event White became insolvent or simply decided not to pay the loan back.

With this in mind, the Hearing Panel turns to the Principal Considerations. First, White did not accept responsibility for or acknowledge her misconduct prior to detection.⁹⁷ Instead, at the time her misconduct was detected, she sought to avoid responsibility by characterizing the \$10,000 loan as the sale of her tractor. She has stuck to this implausible story even though the overwhelming evidence shows the transaction was a loan. Second, White violated U.S. Bancorp's policy, which limited borrowing and lending arrangements to registered persons' family members. White did not inform the firm of the loan, and RP is not a family member. Third, the loan remained outstanding for six months—from October 14, 2014, to May 7, 2015. Thus, White engaged in the misconduct over an extended period of time.⁹⁸

⁹⁶ The purpose of FINRA Rule 3240 is investor protection. The Rule would be a nullity if a registered person could evade it simply by having “tractor” printed on a \$10,000 cashier's check issued to advance funds to a registered person. Adjudicators should interpret the Rule's term “borrowing arrangement” broadly, and in a way that promotes the Rule's remedial purpose and emphasizes the economic substance of the subject transaction over its form. This should be the approach even if the form is elaborate. Here, the form was not elaborate at all: it consisted of nothing more than the printed word “tractor” on a cashier's check.

⁹⁷ FINRA Sanction Guidelines (“Guidelines”), at 6 (2016), <http://finra.org/industry/sanction-guidelines> (Principal Consideration No. 2: Whether the respondent accepted responsibility and acknowledged the misconduct to his or her employer prior to detection and intervention by the firm). In order not to penalize White for exercising her right to a fair hearing, the Hearing Panel does not find that White's reliance on her tractor story constitutes the act of providing inaccurate or misleading testimony to FINRA. *Id.* at 7 (Principal Consideration No. 12: whether the respondent attempted to conceal information from FINRA, or to provide inaccurate or misleading testimony or documentary information to FINRA).

⁹⁸ *Id.* (Principal Consideration No. 9: Whether the respondent engaged in the misconduct over an extended period of time). Because there was only a single loan, the Hearing Panel does not find that White engaged in numerous acts or a pattern of misconduct. *Id.* (Principal Consideration No. 8: Whether the respondent engaged in numerous acts and/or a pattern of misconduct).

Fourth, White's decision not to have a written agreement or promissory note created unnecessary risk to RP. If White were to default on paying the loan back, RP's rights against White's estate and other creditors would be subject to doubt and litigation cost. Fifth, by seeking to characterize the loan as the sale of her tractor, White attempted to conceal her misconduct and mislead U.S. Bancorp.⁹⁹ Having the \$10,000 cashier's check reference a tractor created a false bank document. Sixth, White's misconduct was the result of an intentional act.¹⁰⁰ Pursuing a premeditated plan, she obtained the loan from RP when she knew she was prohibited from borrowing money from customers.

Seventh, White's misconduct resulted in the potential for her monetary gain.¹⁰¹ The word "potential" should be emphasized. White could have gained monetarily from the loan if she could not or chose not to repay it. As it turned out, she repaid it. Even so, she enjoyed the time value of \$10,000 in a period when she had pending financial obligations and used the money to pay those obligations. Eighth, RP was an unsophisticated investor: a 69-year-old retiree who trusted White.¹⁰² This made it easy for White to take advantage of her. By borrowing \$10,000 of RP's retirement assets and using it for her own purposes, White put her own immediate financial interest ahead of the interest of her customer. Ninth, White did not express remorse in the hearing. Instead, in her closing statement, she concluded by stating that "I'm very upset that I even have to be here and defend myself against these lies."¹⁰³ This statement shows that White still does not appreciate the seriousness of her misconduct.

The Hearing Panel is unable to identify mitigating factors that weigh in White's favor. Although it might be mitigating that White paid the \$10,000 back in full,¹⁰⁴ such is the conduct expected of a debtor in a loan transaction. A respondent in a FINRA Rule 3240 case should not get mitigating credit for her decision not to convert the customer's money. The Hearing Panel considered but decided not to give mitigating effect to the fact that U.S. Bancorp had terminated White's employment.¹⁰⁵ Because of her breach of the trust that RP had placed in her, the firm's

⁹⁹ *Id.* (Principal Consideration No. 10: Whether the respondent attempted to conceal his or her misconduct or to lull into inactivity, mislead, deceive or intimidate the member firm with which he or she is/was associated).

¹⁰⁰ *Id.* at 7 (Principal Consideration No. 13: Whether the respondent's misconduct was the result of an intentional act, recklessness or negligence).

¹⁰¹ *Id.* (Principal Consideration No. 17: Whether the respondent's misconduct resulted in the potential for his or her monetary gain).

¹⁰² *Id.* (Principal Consideration No. 18: The level of sophistication of the injured or affected customer). White gave an example of RP's lack of sophistication when she testified that "I don't think [RP] understands ... you can't take a loan from a client. I don't think she understands that concept." Tr. 165.

¹⁰³ Tr. 213.

¹⁰⁴ It should be noted that there is no evidence White intended to convert the \$10,000 from RP. White had begun to pay RP back by the time U.S. Bancorp learned of the loan.

¹⁰⁵ Guidelines at 7 (Principal Consideration No. 14: Whether the member firm with which the respondent was associated disciplined the respondent for the same misconduct at issue prior to regulatory detection); *see Dep't of Enforcement v. Iida*, No. 2012033351801, 2016 FINRA Discip. LEXIS 32, at *20 (NAC May 18, 2016) ("we apportion only de minimis mitigating effect from Iida's termination"); *Denise M. Olson*, Exchange Act Release No.

removal of White from other customers was necessary for the protection of investors and proportionate to the seriousness of the misconduct. The additional sanctions imposed in this Decision are necessary to fulfill the remedial purposes of FINRA Rules 3240 and 2010 and the Sanction Guidelines.

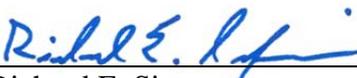
Considering the aggravating factors and lack of mitigating factors, the appropriate remedial sanction for White's violation is a six-month suspension and a \$10,000 fine. This sanction is consistent with other cases finding violations of FINRA Rules 3240 and 2010.¹⁰⁶

VII. Order

Respondent Katherine White borrowed \$10,000 from her customer in violation of FINRA Rules 3240 and 2010. For this violation, she is fined \$10,000 and suspended from associating with any FINRA member firm in any and all capacities for six months.¹⁰⁷ She is ordered to pay the costs of the hearing in the amount of \$2,372.09, consisting of an administrative fee of \$750 and the cost of the transcript, \$1,622.09.

If this decision becomes FINRA's final disciplinary action, White's six-month suspension shall become effective on the opening of business on June 5, 2017. The fine and costs shall be due on a date set by FINRA, but not less than thirty days after this decision becomes FINRA's final action in this disciplinary proceeding.

For The Hearing Panel


Richard E. Simpson
Hearing Officer

Copies to:

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75838, 2015 SEC LEXIS 3629, at *18 (Sept. 3, 2015) (“the Board erred when it declined to consider as mitigating that Wells Fargo terminated [the respondent] prior to regulatory detection”).

¹⁰⁶ *Dep't of Enforcement v. Quinn*, 2015 FINRA Discip. LEXIS 65, at *16-17 (two-year suspension and \$20,000 fine); *Dep't of Enforcement v. Kapasi*, 2014 FINRA Discip. LEXIS 18, at *46 (18-month suspension and \$15,000 fine); *John Edward Mullins*, 2012 SEC LEXIS 464, at *81 (three-month suspension and \$5,000 fine).

¹⁰⁷ The Hearing Panel considered all arguments of the parties. The arguments are rejected or sustained to the extent they are inconsistent or in accord with the views expressed in this Decision.