

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant

v.

JOHNNY M. JORDAN
(CRD No.1972813),

Respondent.

Disciplinary Proceeding
No. 2005000126701

Hearing Officer – RSH

DEFAULT DECISION
December 13, 2005

Respondent failed to follow a customer's trading instructions, in violation of NASD Conduct Rule 2110, and failed to respond to NASD requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2110. For failing to respond to information requests, Respondent is barred from associating with any NASD member in any capacity. In light of the bar, no further sanctions are imposed for Respondent's failure to follow trading instructions.

Appearances

William Brice LaHue, Esq., Atlanta, GA, (Andrew A. Favret, Esq., New Orleans, LA, Of Counsel; Rory C. Flynn, Esq., Washington, DC, Of Counsel) for Complainant.

No appearance by or for Respondent.

DECISION

I. Introduction

The Department of Enforcement filed a Complaint (attached to this decision as Exhibit A) on July 26, 2005, alleging that Respondent Johnny M. Jordan violated Conduct Rule 2110 by failing to follow a customer's trading instructions and violated Procedural Rule 8210 and Conduct Rule 2110 by failing to respond to NASD requests for information.

Respondent did not file an Answer to the Complaint. On October 21, 2005, Enforcement filed a Motion for Entry of Default Decision, which was supported by the Affidavit of William Brice La Hue and four exhibits. Respondent did not file a response to the motion. Accordingly, for the reasons set forth below, Enforcement's motion is granted.¹

II. Respondent's Default

Enforcement sent the Complaint and Notice of Complaint to Respondent on July 22, 2005, by both certified and first class mail to his residential address listed in the Central Registration Depository ("CRD address").² Enforcement received a signed certified delivery receipt from the Postal Service indicating that delivery was made on July 26, 2005.³ The first class mailing was not returned by the Postal Service. Respondent did not file an Answer by the due date of August 18, 2005. On August 19, 2005, Enforcement sent the Complaint and Second Notice of Complaint by certified and first class mail to Respondent's CRD address. The certified mailing was returned by the Post Office, marked "unclaimed"; however, the first class mailing was not returned. Again, Respondent failed to answer or otherwise respond to the Complaint. On October 20, 2005, Enforcement sent the Motion for Entry of Default Decision by first class mail to Respondent's CRD address.⁴

Enforcement served the Complaint and Notices of Complaint on Respondent in accordance with Rule 9134, thereby giving him constructive notice of this proceeding.

By failing to file an Answer or otherwise respond to the Complaint, Respondent

¹ The factual determinations in this decision are based on the allegations in the attached Complaint, which are deemed admitted, as well as the additional materials filed by Enforcement with its motion.

² La Hue Aff. ¶ 7.

³ *Id.*; Complainant's Exhibit ("CX")-3.

⁴ Motion for Entry of Default, at Certificate of Service.

defaulted. Consequently, pursuant to Procedural Rule 9269(a)(2), the Hearing Officer will deem the allegations in the Complaint admitted.

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

The Complaint alleges, and the Respondent's CRD record⁵ shows, that Respondent was registered with NASD member American Express Financial Advisors, Inc. ("AEFA") from July 1989 until October 2004. Respondent is not currently registered with an NASD member firm; however, he remains subject to NASD jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of NASD's Bylaws, because (1) the Complaint was filed within two years following the termination of Respondent's employment and registration with AEFA and (2) the Complaint charges him with misconduct committed while he was associated with AEFA and with failing to respond to NASD requests for information made during the two-year period following his termination.

B. Failure to Follow A Customer's Trading Instructions

The First Cause of the Complaint alleges that Respondent violated Conduct Rule 2110 by failing to follow his customer's trading instructions. In July 2004 and again on August 2, 2004, Respondent's customer, J.M., instructed Respondent to liquidate his REIT and to reinvest the proceeds in a money market fund. Respondent told J.M. that he had done as instructed; however, instead of reinvesting the proceeds in a money market fund, Respondent actually reinvested them in another REIT.

⁵ CX-2 at 3.

These allegations, which are deemed admitted, are sufficient to establish that Respondent failed to follow his customer's trading instructions.⁶ Conduct Rule 2110 provides that a member "shall observe high standards of commercial honor and just and equitable principles of trade." As the National Adjudicatory Council has stated, "A registered representative's obligation to follow his customer's instructions serves as the essential foundation for the customer/registered representative relationship."⁷ Failing to follow a customer's explicit trading instructions clearly violates a registered representative's obligation to deal fairly with his customer. Accordingly, the Hearing Officer finds that Respondent violated NASD Conduct Rule 2110 by failing to follow his customer's instructions.

C. Failure to Respond to NASD Requests for Information

The Second Cause of the Complaint alleges that Respondent failed to respond to two NASD requests for a written statement and certain documents. The Complaint alleges that, pursuant to Procedural Rule 8210, Enforcement sent Respondent requests for information on February 11, 2005 and February 25, 2005. Both requests were sent to Respondent's CRD residential address by certified and first class mail. None of the mailings was returned, and certified mail receipts bearing Respondent's signature were returned, indicating that the requests were received.⁸ Respondent did not respond to either of Enforcement's requests.

These allegations, which are deemed admitted, are sufficient to establish for purposes of this proceeding that Respondent failed to respond to Enforcement's requests

⁶ See also, La Hue Aff. at 3.

⁷ *DBCC v. Ted D. Wells*, Complaint No. C07970045, 1998 NASD Discip. LEXIS 32 at *7 (NAC, July 24, 1998).

⁸ La Hue Aff. at 3,4.

for information. Procedural Rule 8210 authorizes NASD to require any person subject to its jurisdiction to provide information and testimony related to any matter under investigation. The Rule serves as a key element in NASD's oversight function and allows NASD to carry out its regulatory functions without subpoena power.⁹ The Hearing Officer finds that Respondent failed to respond in any manner to Enforcement's requests for information and so violated NASD Procedural Rule 8210. A violation of Procedural Rule 8210 is also a violation of Conduct Rule 2110.¹⁰

IV. Sanctions

For failing to respond in any manner to NASD staff requests for information issued pursuant to NASD Procedural Rule 8210, the NASD Sanction Guidelines recommend the imposition of a bar unless mitigating circumstances exist to warrant a lesser sanction.¹¹ Here, there is no evidence of mitigating circumstances that would warrant a lesser sanction. Accordingly, Respondent will be barred from associating with any member firm in any capacity.

Enforcement has requested a suspension and a fine for Respondent's failure to follow his customer's trading instructions. While that violation merits a serious sanction, in light of the bar imposed for failing to respond to the information requests, no remedial purpose would be served by the imposition of additional sanctions in this case.¹²

⁹ See *Joseph G. Chiulli*, Exchange Act Release No. 42,359, 2000 NASD Discip. LEXIS 112, at *16; *Dep't of Enforcement v. Benz*, No. C01020014, 2003 NASD Discip. LEXIS 11, at *18 (OHO Mar. 4, 2003) ("Because NASD has no subpoena power, timely and full compliance with information requests is essential to NASD's self-regulatory function.").

¹⁰ *Dep't of Enforcement v. Baxter*, No. C07990016, 2000 NASD Discip. LEXIS 3, at *25 (N.A.C. Apr. 19, 2000); *Joseph P. Hannan*, Exchange Act Release No. 40,438, 1998 LEXIS 1955, at *9 (September 14, 1998).

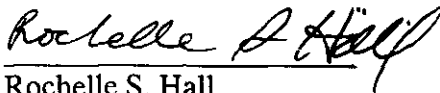
¹¹ NASD Sanction Guidelines at 35 (2005 ed.).

¹² See *Jeffrey B. Hodde*, 2002 NASD Discip. LEXIS 4 (N.A.C. Mar. 27, 2002); *DBBC v. Daniel S. Hellen*, No. C3A970031, 1999 NASD Discip. LEXIS 22 (N.A.C. June 15, 1999).

V. Order

Johnny M. Jordan is barred from association with any member firm in any capacity for failing to respond to two NASD requests for information, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110. The bar shall become effective once this decision becomes the final disciplinary action of the NASD.

SO ORDERED.


Rochelle S. Hall
Hearing Officer

Copies to: Johnny M. Jordan (*via overnight and first class mail*)
William Brice LaHue, Esq. (*electronically and via first class mail*)
Andrew A. Favret, Esq. (*via first class mail*)
Rory C. Flynn, Esq. (*via first class mail*)

EXHIBIT A

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

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v.

JOHNNY M. JORDAN
(CRD No. 1972813)

Respondent.

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COMPLAINT

Upon information and belief, Complainant alleges as follows:

RESPONDENT

1. Respondent Johnny M. Jordan ("Jordan") was first registered as an investment company and variable contracts products representative in July 1989, while associated with American Express Financial Advisors, Inc. ("AEFA"). He was later registered as a general securities representative and was employed by AEFA until October 2004. Jordan is not currently employed by a NASD member, however he remains subject to the jurisdiction of the NASD pursuant to Article V, Section 4 of the NASD Bylaws.

FOR A FIRST CAUSE OF COMPLAINT**NASD Conduct Rule 2110****(Failure to Follow Customer Directions)**

2. The allegations set forth in paragraph 1 above, are hereby realleged and incorporated herein by reference.
3. Customer J.M. maintained a securities account with AEFA that was serviced by Respondent Jordan.

4. Customer J.M. owned shares of a WP Carey CIP REIT that was maturing. In or about July 2004, J.M. called Respondent Jordan and left a voice mail message indicating that he wanted the WP Carey CIP REIT shares liquidated and the proceeds invested in a money market fund.
5. On or about August 2, 2004, J.M. e-mailed Respondent Jordan and reiterated his instructions to liquidate the WP Carey CIP REIT shares and reinvest the proceeds in a money market fund.
6. Respondent Jordan responded to customer J.M.'s e-mail on August 9, 2004 indicating that he took care of the issue and that the proceeds would be invested in Mixon's cash account.
7. However, instead of liquidating the REIT shares and purchasing shares of a money market as instructed, the proceeds were reinvested in shares of a WP Carey Corporate Property Associates REIT.
8. Such failure to follow a customer's instructions constitutes a violation of NASD Conduct Rule 2110 by Respondent Jordan.

FOR A SECOND CAUSE OF COMPLAINT

NASD Conduct Rule 2110 and Procedural Rule 8210

(Failure To Respond to NASD Request for Information)

9. The allegations contained in paragraphs 1 through 8, above, are hereby realleged and incorporated herein by reference.
10. In January 2005, the NASD Atlanta District office received an amended Uniform Notice of Termination for Securities Industry Registration ("Form U-5") filed by AEFA on

behalf of Respondent Jordan. The amended Form U-5 alleged that Jordan failed to liquidate a REIT as instructed by customer J.M. The NASD Atlanta District office initiated an investigation into the allegations on the amended Form U-5.

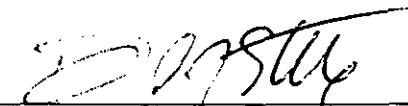
11. Jordan was requested, by letter dated February 11, 2005 (sent via both certified and first class mail to Jordan at his CRD address of 1307 Snow Mountain Circle, Keller, TX 76248 and sent pursuant to Procedural Rule 8210), to provide a written statement to the NASD and certain specifically identified documents no later than February 24, 2005.
12. The February 11 letter sent by first class mail was not returned. However, a receipt appearing to bear the signature of Respondent Jordan was returned to the NASD Atlanta District office indicating that the letter sent by certified mail was delivered. Jordan failed to provide the requested information by February 24, 2005.
13. Consequently, Jordan was again requested, by letter dated February 25, 2005 sent to his CRD address via both certified and first class mail and pursuant to Procedural Rule 8210, to provide the information originally requested in the February 11 letter. Jordan's response was due no later than March 11, 2005.
14. The February 25 letter sent by first class mail was not returned but a receipt appearing to bear the signature of Respondent Jordan was returned to the NASD Atlanta District office indicating that the letter sent by certified mail was delivered.
15. Jordan failed to respond by March 11, 2005, and, as of the date hereon, has not responded.
16. Such failure to respond to the February 11 and February 25, 2005, request letters constitutes separate and distinct violations of NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by Respondent Jordan.

PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Respondent Jordan committed the violations charged and alleged herein;
- B. An order imposing sanctions upon Respondent Jordan in accordance with NASD Rule 8310;
- C. An order requiring Respondent Jordan to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest.
- D. An order imposing such costs of any proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330; and
- E. An order imposing any other fitting sanction.

Date: 7/22/05


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