

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

KAI R. WALKER
(CRD No. 4094767),

Respondent.

Disciplinary Proceeding
No. 2005000688601

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

March 6, 2006

Respondent converted funds belonging to a customer and funds belonging to his employer, in violation of NASD Conduct Rules 2110 and 2330, and failed to respond to requests for information, in violation of NASD Conduct Rule 2110 and NASD Procedural Rule 8210. The Respondent is barred from association with any member firm in any capacity for each violation.

Appearances

Laura Leigh Blackstone, Regional Counsel, New Orleans, LA (Rory C. Flynn, Chief Litigation Counsel, Washington, D.C., and Roger D. Hogoboom, Deputy Chief Litigation Counsel, Denver, CO, Of Counsel) for the Department of Enforcement.

No appearance by or for the Respondent.

DECISION

I. Introduction

On November 21, 2005, the Department of Enforcement (“Enforcement”) filed the Complaint against the Respondent Kai R. Walker (“Walker” or the “Respondent”). The Complaint contains three causes of action. The First Cause of Complaint charges that the Respondent converted funds belonging to the estate of a deceased customer of his

firm, Morgan Stanley DW Inc. (“Morgan Stanley”), in violation of NASD Conduct Rules 2330 and 2110. The Second Cause of Complaint charges that the Respondent converted funds from Morgan Stanley, in violation of NASD Conduct Rule 2110. And the Third Cause of Complaint charges that the Respondent failed to respond to requests for information concerning his conversion of funds, in violation of NASD Procedural Rule 8210 and Conduct Rule 2110.

Walker did not answer or otherwise respond to the Complaint. Consequently, on February 8, 2006, Enforcement filed a Motion for Entry of Default Decision (“Motion”). Enforcement’s Motion is supported by the Declaration of Laura Leigh Blackstone (“Decl.”) and six exhibits. Walker did not respond to the Motion. Thus, pursuant to NASD Procedural Rules 9215 and 9269, the Hearing Officer grants Enforcement’s Motion.

II. Respondent’s Default

Enforcement served Walker by certified mail in accordance with NASD Procedural Rules 9134(a)(2) and 9134(b)(1). Enforcement mailed copies of the Complaint, Notice of Complaint, and Second Notice of Complaint to Walker at his last known residential address shown in the Central Registration Depository (the “CRD address”).¹ Walker therefore received valid constructive notice of this proceeding.² Accordingly, the Hearing Officer finds Walker in default and deems the allegations of the Complaint admitted.³

¹ Decl. ¶ 18.

² See NASD Procedural Rule 9134(b)(1), (2) (allowing for service at address listed in CRD). See also *Department of Enforcement v. Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at * 5 n.1 (N.A.C. Dec. 9, 2003) (finding that respondent received constructive notice when complaint was mailed to respondent’s CRD address).

³ The following Findings of Fact incorporate the allegations in the attached Complaint.

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

Article V, Section 4 of the NASD By-Laws allows NASD to retain jurisdiction over a formerly registered person for two years following the effective date his or her registration terminated. Moreover, Article V, Section 4 of the NASD By-Laws grants NASD the power to request information from formerly registered persons during this period of retained jurisdiction.

Walker was associated with Morgan Stanley DW Inc. ("Morgan Stanley"), an NASD member firm, from November 1999 until January 21, 2005, at which time he was discharged for misappropriation of customer funds. Walker was registered as a General Securities Representative from June 14, 2004, until February 18, 2005.⁴ Thereafter, he has not been registered with NASD or associated with a member firm.⁵

NASD staff mailed the information requests that are the subject of the Third Cause of Complaint, and Enforcement filed the Complaint, within two years after Walker's registration terminated. Accordingly, the Hearing Officer finds that NASD has jurisdiction of this proceeding.

B. Conversion of Customer Funds

The First Cause of Complaint charges that Walker, between November 2004 and January 2005, used his position as Operational Manager at Morgan Stanley to gain access to the account records of VM, a deceased client. Walker changed the address on VM's account to an address over which he had control and issued a debit card and checks to the

⁴ Ex. 1 at 2.

⁵ *Id.*

new address. Walker then used the debit card and checks to make purchases for his benefit totaling \$9,689.11.⁶

The allegations in the Complaint and the evidence submitted by Enforcement are sufficient to establish that Walker converted \$9,689.11 belonging to the owners of VM's account. Accordingly, the Hearing Officer finds that Walker violated NASD Conduct Rules 2330 and 2110.

C. Conversion of Employer Funds

The Second Cause of Complaint charges that Walker, between August and November 2003, wrongfully deposited to his personal account six checks that were payable to Morgan Stanley. Five of the checks were issued by the Florida Department of Corrections in the amount of \$178.46 each, and the sixth check was issued by Metropolitan Life in the amount of \$200. The funds, which totaled \$1,092.30, belonged to Morgan Stanley.⁷

The allegations in the Second Cause of Complaint and the evidence submitted by Enforcement are sufficient to establish that Walker converted \$1,092.30 belonging to Morgan Stanley. Accordingly, the Hearing Officer finds that Walker violated NASD Conduct Rule 2110.

D. Failure to Provide Information

The Third Cause of Complaint charges that Walker failed to respond to written requests for information dated May 19 and June 30, 2005, which NASD staff issued to Walker to obtain information in connection with NASD's investigation of the activities alleged in the first two causes of the Complaint. Both requests were sent to Walker at his

⁶ Compl. ¶ 2.

⁷ *Id.* ¶ 4.

CRD address by certified mail in accordance with Procedural Rule 8210. Walker did not respond in any manner to either request.⁸

The allegations in the Second Cause of Complaint and the evidence submitted by Enforcement are sufficient to establish that Walker violated Procedural Rule 8210 and thereby Conduct Rule 2110 by failing to respond to the staff's requests for information.

IV. Sanctions

For conversion of customer funds, the NASD Sanction Guidelines ("Sanction Guidelines") recommend a bar regardless of the amount converted.⁹ Here, there is no evidence of any mitigating factors. Accordingly, a bar is the appropriate sanction for the violations under both the First and Second Causes of the Complaint.

With respect to the Third Cause of Complaint, failing to respond in any manner to the requests for information NASD Staff issued pursuant to NASD Procedural Rule 8210, the Sanction Guidelines recommend the imposition of a bar unless mitigating circumstances exist warranting a lesser sanction.¹⁰ Here, the record discloses no mitigating factors. Accordingly, a bar also is appropriate for this violation.

V. Order

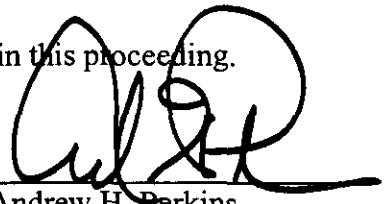
Kai R. Walker is barred from association with any member firm in any capacity for: (1) conversion of customer funds, in violation of Conduct Rules 2330 and 2110; (2) conversion of his employer's funds, in violation of NASD Conduct Rule 2110; and (3) failing to respond to requests for information, in violation of NASD Conduct Rule 2110

⁸ *Id.* ¶¶ 7-8.

⁹ NASD Sanction Guidelines 38 (2005 ed.).

¹⁰ *Id.* at 35.

and NASD Procedural Rule 8210. The bars will become effective immediately if this Default Decision becomes NASD's final disciplinary action in this proceeding.



Andrew H. Perkins
Hearing Officer

Copies to:

Kai R. Walker (by overnight courier and first-class mail)
Laura Leigh Blackstone, Esq. (by first-class and electronic mail)
Rory C. Flynn, Esq. (by first-class and electronic mail)
Roger D. Hogoboom, Esq. (by first-class and electronic mail)

**NASD
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant

v.

Kai R. Walker, General Securities
Representative
[CRD No. 4094767],

Respondent

Disciplinary Proceeding
No. 2005000688601

Hearing Officer _____

COMPLAINT

Upon information and belief, Complainant alleges as follows:

1. Respondent Kai R. Walker ("Walker") became registered with NASD on June 14, 2004.

Walker was associated with Morgan Stanley DW Inc. ("MSDW" or "firm"), a member of NASD until termination on January 21, 2005, as a General Securities Representative. MSDW terminated Walker's employment on January 21, 2005, and Walker has not subsequently become registered with another member firm. Walker has not previously been the subject of a formal disciplinary action by any regulatory body. Although Walker is not currently registered, he remains subject to the jurisdiction of NASD, pursuant to Article V, Section 4 of the NASD's By-Laws, which provides for a two-year period of retained jurisdiction over formerly registered persons.

FIRST CAUSE OF COMPLAINT
NASD Conduct Rules 2110 and 2330, Conversion Of Funds, Against Walker

2. During the period from November 2004 through January 2005, Walker, using his access as an Operational Manager, changed the address on the account of VM, a deceased client. Walker changed the account address of record to an address over which he had control and issued a debit card and checks to this new address. Using the fraudulently obtained debit card and checks, Walker made several purchases and drafted a check to himself, forging VM's signature. Walker used the funds obtained from VM's account for his personal benefit, converting a total of \$9,689.11 from the account.
3. Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rules 2110 and 2330 by Respondent Walker.

SECOND CAUSE OF COMPLAINT
NASD Conduct Rule 2110
Conversion of Funds from Employer

4. Additionally, during the period of August to November 2003, Walker deposited into his own personal account six checks made payable to MSDW. Five of the checks were issued by the Florida Department of Corrections in the amount of \$178.46 each and the sixth check was issued by Metropolitan Life in the amount of \$200.00. Walker deposited a total of \$1,092.30 of funds belonging to MSDW into his personal account.
5. Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 by Respondent Walker.

THIRD CAUSE OF COMPLAINT
NASD Conduct Rule 2110 and Procedural Rule 8210,
Failure To Respond to Requests for Information, Against Respondent Walker

6. By letters dated May 19, and June 3, 2005, the NASD District staff requested that Walker provide certain information to the staff concerning the activities described in the First Cause of Complaint. These requests for information were sent pursuant to, and in accordance with, the provisions of Procedural Rule 8210, all as more fully detailed on Exhibit "A," attached hereto.
7. Respondent Walker failed to respond to the above requests.
8. Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 and Procedural Rule 8210 by Walker.

PRAYER FOR RELIEF

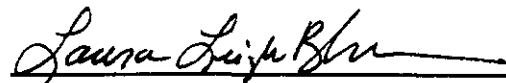
WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;
- B. An order imposing sanctions upon the Respondent in accordance with NASD Rule 8310;
- C. An order requiring Respondent 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.

NASD DEPARTMENT OF ENFORCEMENT

Date: November 15, 2005


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