

**NASD  
OFFICE OF HEARING OFFICERS**

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| <p>DEPARTMENT OF ENFORCEMENT,</p> <p style="text-align: center;">COMPLAINANT,</p> <p style="text-align: center;">v.</p> <p>ERIC W. CARLTON<br/>(CRD No. 3078425)</p> <p style="text-align: center;">RESPONDENT.</p> | <p>DISCIPLINARY PROCEEDING<br/>No. 2005000726801</p> |
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**COMPLAINT**

The Department of Enforcement alleges:

SUMMARY

1. Between January 2003 and January 2005, Respondent Eric Carlton, through falsified and forged Letters of Authorization (LOAs), transferred funds from customers NH's and EH's Family Trust Account to other clients who had suffered losses and/or complained of overcharges. EH was deceased when Carlton submitted most of the LOAs that purportedly bear her signature. And her husband, NH, was over 90 years old, ill, unable to handle his financial affairs and had no relationship with any of the recipients. In yet another customer account, Carlton altered account documents, executed an unauthorized trade, and then repeatedly lied about what he had done. Carlton's submission of falsified documents to his firm, misuse of customer funds, forgery, and his execution of an unauthorized trade violated NASD Conduct Rules 2330(a) and 2110.

2. By this Complaint, the Department of Enforcement seeks findings of facts and conclusions of law that Carlton committed the charged violations and an order imposing sanctions and costs in accordance with NASD Procedural Rule 8310.

#### RESPONDENT AND JURISDICTION

3. From January 12, 2001 through January 26, 2005, Respondent Eric W. Carlton was associated with NASD member UBS Financial Services, Inc. as a General Securities Representative and General Securities Sales Supervisor. Carlton is currently associated with another NASD member firm.

#### STATEMENT OF FACTS

##### NH AND EH

4. In January 2001, NH and EH opened a securities account, entitled NH and EH trustees of the H Family Trust ("Family Trust Account"), at a Newport Beach, California branch office of UBS. Eric Carlton was the financial advisor assigned to the account.

5. By 2002, NH, who was 91 years old, and EH, who was 89 years old, were both ill and frail. In September 2002, they signed General Powers of Attorney that designated their son, SH, as their attorney-in-fact. From at least September 2002, SH was responsible for paying his parents' bills and handling their financial affairs.

6. In early 2002, NH moved from his Huntington Beach, California home into a board and care facility. He was unable to use the telephone because he was severely hard of hearing. He suffered from congestive heart failure, chronic renal failure, had short term memory loss and Alzheimer's disease. NH never returned to his Huntington Beach home and died on January 23, 2005.

7. EH was diagnosed with multiple myeloma in 1999. By January 2002, her illness rendered her virtually immobile. In February 2003, she was hospitalized with congestive heart failure. She was later moved to a board and care facility where she remained until she died on August 30, 2003.

8. UBS' written supervisory procedures required employees to notify their Branch Office Manager immediately upon learning of a client's death. Although Carlton learned of EH's death by September 2003, he never notified his branch manager that she was deceased.

JANUARY 2, 2003 LOA: THE LRJ LETTER OF AUTHORIZATION

9. In 2002, LRJ held an IRA Rollover account at UBS' Newport Beach branch. Carlton was his financial advisor. In December 2002, LRJ realized a \$10,485 loss on the sale of a Unit Investment Trust that Carlton had purchased for his account.

10. On January 2, 2003, Carlton sent an e-mail to his sales assistant. Its subject line identified the account number for the NH and EH Family Trust account. The e-mail's text stated, "Client would like to issue a third party check out of the account and mailed directly. Please create LOA for this. I will be seeing them this afternoon to get signature. Do both parties have to sign the LOA?"

11. On January 8, 2003, Carlton presented a Letter of Authorization, dated January 2, 2003, purportedly signed by both NH and EH, directing that a check drawn from their family trust account be sent to LRJ. On January 8, 2003, UBS sent a \$9,000 check to LRJ, from funds in the NH and EH Family Trust Account.

12. In fact, the signatures were forged. LRJ had never heard of NH and EH and had no reason to receive any amount of money from them. NH's and EH's son, SH, who acted as

his parents' agent and attorney-in-fact and who handled all of their financial affairs, had never heard of LRJ, and had neither signed nor authorized anyone to sign the LOA.

**SEPTEMBER 23, 2003 LOA: THE EB FAMILY TRUST LETTER OF AUTHORIZATION**

13. In June 2002, EB opened a Family Trust Account at the Newport Beach, California branch office of UBS PaineWebber. Carlton was her financial advisor.

14. On June 25, 2003, Carlton directed the purchase of a GNMA for EB's account. By August 23, 2003, that security had an unrealized loss of \$7,203.

15. On September 23, 2003, Carlton sent an e-mail to a UBS sales assistant. Its subject line identified the NH and EH Family Trust Account number and name. The e-mail's text stated, "Client would like to journal \$8000 to another account, [EB Family Trust Account]. Please create an LOA to complete this . . . Thank you. I will be seeing the client this afternoon around 12:00 p.m. if you have the time this morning..."

16. In fact, Carlton could not have seen "the client" that afternoon. EH had died three weeks earlier and NH, who was 92 years old, was in a board and care facility.

17. On September 26, 2003, Carlton presented a Letter of Authorization, dated September 23, 2003, purportedly signed by both NH and EH, directing a journal transfer of \$8,000 from the NH and EH Family Trust Account to the EB Family Trust Account. On September 26, 2003, UBS transferred \$8,000 from the NH and EH Family Trust Account to the EB Family Trust Account.

18. In fact, NH's and EH's signatures were forged. EB had never heard of NH and EH and had no reason to receive any amount of money from them. Nor did she know SH. SH

did not know EB nor did he sign or authorize anyone to sign NH's or EH's name to a Letter of Authorization.

SEPTEMBER 24, 2003 LOA: THE DW LETTER OF AUTHORIZATION

19. In February 2002, DW opened an individual account at the Newport Beach, California branch of UBS Paine Webber. Carlton was his financial advisor.

20. Carlton purchased, for DW's account, three individual Freddie Mac mortgaged back securities that, by August 2003, had an unrealized loss of \$6,725.

21. Notwithstanding EH's August 30, 2003 death, on September 26, 2003, Carlton presented a Letter of Authorization, dated September 23, 2003, purportedly signed by both NH and EH, directing a transfer of \$8,000 from their Family Trust Account to DW's individual account. On September 26, 2003, UBS transferred \$8,000 from the NH and EH Family Trust Account to DW's individual account.

22. In fact, NH's and EH's signatures were forged. DW had never heard of NH and EH and had no reason to receive any amount of money from them. Nor did he know SH, NH's and EH's son and attorney in fact. SH did not know DW nor did he sign or authorize anyone to sign NH's or EH's name to a Letter of Authorization.

NOVEMBER 5, 2003 LOA: THE CW FAMILY TRUST LETTER OF AUTHORIZATION

23. In August 2001, CW and her husband opened a Family Trust Account at the Newport Beach, California branch of UBS Paine Webber. Carlton was their financial advisor.

24. Carlton purchased for her account, mortgaged back securities, bond funds and Government securities. Between February 2003 and October 31, 2003, the CW Family Trust Account declined in value by about \$5,533.49 from \$183,869.55 to \$178,336.06.

25. On November 5, 2003, UBS Sales Associate Cynthia Moreno sent an e-mail to Eric Carlton at 9:30 a.m. that contained an attached form of a Letter of Authorization in Microsoft Word format.

26. Notwithstanding the fact that EH had been dead for nearly 3 months, on November 14, 2005, Carlton presented a Letter of Authorization, dated November 5, 2003, purportedly signed by both NH and EH, directing the transfer of \$8,000 from their family trust account to the CW Family Trust Account. On November 14, 2003, UBS transferred \$8,000 from the NH and EH Family Trust Account to the CW Family Trust Account. Carlton told CW that \$8,000 was transferred into her account to make up for losses on some of the bonds in her account.

27. In fact, NH's and EH's signatures were forged on this Letter of Authorization. CW had never heard of NH and EH and had no reason to receive any amount of money from them. Nor did she know SH. SH did not know CW or FW nor did he sign or authorize anyone to sign NH's or EH's name to a Letter of Authorization.

JANUARY 14, 2005 LOA: THE CP LETTER OF AUTHORIZATION

28. In February 2004, CP and his wife, JP, agreed to transfer their separate IRA accounts to the Newport Beach California branch of UBS PaineWebber. Carlton was their UBS financial advisor.

29. CP and JP also discussed with Carlton the possibility of opening a joint cash account ("Joint Cash Account"). Although an account number was assigned, the account was never funded or activated.

30. In 2004, CP repeatedly complained to Carlton that the fees and charges on his accounts were in excess of what Carlton represented they would be. He also complained about the poor performance of one of his accounts.

31. In early January 2005, CP contacted Carlton after he received his 2004 year end account summaries and complained that the fees and charges on his account were approximately double what Carlton had represented they would be.

32. Shortly thereafter, notwithstanding the fact that EH had been dead for nearly 16 months and NH was 93 years old, critically ill and close to death, Carlton presented a Letter of Authorization, purportedly signed by NH and EH, directing the transfer of \$5,250 from the NH and EH Family Trust Account to the CP and JP Joint Cash Account. When Carlton presented the LOA, he assured UBS personnel that NH and EH were acquainted with CP and JP.

33. In fact, Carlton's statement was false and NH's and EH's signatures were forged. CP and JP had no relationship with NH and EH whatsoever. CP and JP had never heard of NH and EH. And they had no reason to receive any amount of money from them. Nor did they

know SH. Moreover, SH did not know CP or JP. And SH did not sign or authorize anyone to sign NH's or EH's name.

FALSIFYING RK'S ACCOUNT APPLICATION – AUGUST 2003

34. RK is a widow and a retired high school teacher. In June 2003, Carlton cold-called her and attempted to persuade her to transfer her existing brokerage account to UBS. After that initial call, he periodically appeared at her home to persuade her to transfer her existing account to UBS. In late July, 2003, RK told Carlton that she would transfer the cash balance of her Financial Network Investment Corp ("FNIC") account but that she wanted American Funds to be the custodian of the cash balance.

35. On July 29, 2003, Carlton went to RK's home and brought (i) an Account Transfer Form and (ii) an IRA Application and Adoption Agreement. RK signed but did not date either form, because, as she explained to Carlton, she was not yet ready to make the transfer.

36. RK was ready on August 15, 2003. She wrote the date "8/15/03" on the IRA Application and Adoption Agreement and completed, signed, and dated the Account Transfer form. On the Account Transfer Form, in response to the question, "Do you wish to transfer the entire account," RK checked "No." Alongside that she wrote, "The cash balance approx. \$467,371.42 as of 8/13/03." RK also wrote the date "8/15/03" on the Account Transfer Form. Carlton told RK he would provide her with a copy of each document after he completed the forms.

37. On August 26, 2003, Carlton provided RK with copies of both documents. She did not immediately notice that the documents that Carlton gave her had been altered. Although RK had dated the Application "8/15/03" the date had been altered to read "7/29/03." Also, the

first page of the Account Transfer Form had been rewritten in someone else's handwriting.

When RK inquired about the changes, Carlton told her they were inconsequential.

38. Unbeknownst to RK, Carlton created yet a third version of the Account Transfer Form which he provided to his firm. On that third version, Carlton altered RK's answer to the question, "Do you wish to transfer the entire account," to make it appear as though RK checked, "Yes." On that third version, Carlton also deleted RK's handwritten notation that said, "The cash balance approx. \$467,371.42 as of 8/13/03."

39. In early September 2003, RK learned that, contrary to her wishes, her entire IRA account had been transferred from FNIC to UBS. When RK spoke to Carlton, he falsely stated that he had requested that only the cash balance be transferred.

40. On September 5, 2003, Carlton told RK that the cash balance had been placed into an American Funds money market account. That statement too was false. On that day, Carlton purchased \$467,000 of Class "A" shares of American Funds' U.S. Government Securities Fund. American Funds classifies its U.S. Government Securities Fund as a bond fund rather than as a money market fund. The Order Ticket falsely indicated that a Letter of Intent dated September 4, 2003, indicated that RK would purchase shares worth \$1 million in that fund. In fact, RK neither asked for nor authorized a purchase of shares in American Funds' U.S. Government Securities Fund and never executed a Letter of Intent.

41. When RK learned that Carlton had purchased shares of the Government Securities Fund for her IRA account, she immediately telephoned Carlton. In the ensuing telephone conversation, Carlton falsely told RK that the Government Securities Fund was a money market fund.

**FIRST CAUSE OF ACTION**  
**Submission of Falsified Records**  
**(Violation of NASD Conduct Rule 2110)**

42. Paragraphs 1 through 41 are hereby realleged and incorporated by this reference.

43. By submitting the documents referenced above, namely, by submitting:

(i) the January 2, 2003 LOA which directed that \$9,000 be transferred from the NH and EH Family Trust account to LRJ's account;

(ii) the September 23, 2003 LOA which directed that \$8,000 be transferred from the NH and EH Family Trust Account to the EB Family Trust Account;

(iii) the September 24, 2003 LOA which directed that \$8,000 be transferred from the NH and EH Family Trust Account to DW's account;

(iv) the November 5, 2003 LOA which directed that \$8,000 be transferred from the NH and EH Family Trust account to the CW Family Trust account;

(v) the January 14, 2005 LOA which directed that \$5,250 be transferred from the NH and EH Family Trust account to CP's and JP's account;

(vi) RKs IRA Application and Adoption Agreement; and

(vii) RK's Account Transfer Form,

Carlton implicitly represented the documents to be genuine, when he knew or should have known that the signatures were not genuine and/or the documents had been altered. In so doing, Carlton submitted forged and falsified documents to his firm and caused its records to be falsified.

44. The submission of each falsified record constituted conduct inconsistent with high standards of commercial honor and just and equitable principles of trade and a separate and distinct violation of NASD Conduct Rule 2110 by Carlton.

**SECOND CAUSE OF ACTION**

**Misuse of Customer Funds**

**(Violation of NASD Conduct Rules 2330(a) and 2110)**

45. Paragraphs 1 through 27 are hereby realleged and incorporated by this reference.

46. Carlton misused his customers' funds by causing unauthorized transfers from NH's and EH's Family Trust Account. This misuse included causing the transfer of:

- (i) \$9,000 from the NH and EH Family Trust Account to LRJ's account;
- (ii) \$8,000 from the NH and EH Family Trust Account to EB's Family Trust Account;
- (iii) \$8,000 from the NH and EH Family Trust Account to DW's account; and
- (iv) \$8,000 from the NH and EH Family Trust Account CW's Family Trust Account.

47. Each such transfer was an improper use of customer funds and constituted conduct inconsistent with high standards of commercial honor and just and equitable principles of trade and a separate and distinct violation of NASD Conduct Rule 2330(a) and 2110 by Carlton.

**THIRD CAUSE OF ACTION**  
**Unauthorized Trading**  
**(Violation of NASD Conduct Rule 2110 and IM 2310-2)**

48. Paragraphs 1 through 8 and 34 through 41, inclusive, are hereby realleged and incorporated by this reference.

49. By purchasing shares in American Funds' U.S. Government Securities Fund in RK's account, without her knowledge, authorization or consent, Carlton engaged in unauthorized trading, and violated NASD Conduct Rule 2110 and IM 2310-2.

**FOURTH CAUSE OF ACTION**  
**Forgery**  
**(Violation of NASD Conduct Rule 2110)**

50. Paragraphs 1 through 8 and 28 through 33, inclusive, are hereby realleged and incorporated by this reference.

51. In January 2005, Carlton forged, or caused to be forged, the signatures of NH and EH on a Letter of Authorization that directed the transfer of \$5,250 out of the NH and EH Family Trust account.

52. This constituted conduct inconsistent with high standards of commercial honor and just and equitable principles of trade and a separate and distinct violation of NASD Conduct Rule 2110 by Carlton.

**PRAYER**

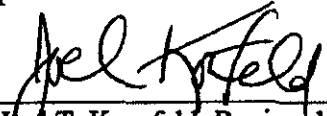
WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under NASD Rule 8310(a), including monetary sanctions, be imposed.

- B. order that the Respondent Eric Carlton bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330.

**NASD DEPARTMENT OF ENFORCEMENT**

Date: February 20, 2007

  
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