

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

BRYAN C. TERRA
(CRD No. 4717215),

Respondent.

Disciplinary Proceeding
No. 2005000870801

Default Decision

Hearing Officer – SNB

June 14, 2006

For conversion of customer funds, in violation of Rule 2110, and for failure to provide requested information, in violation of Rules 8210 and 2110, Respondent is barred from associating with any NASD member in any capacity.

Appearances

Gene E. Carasick, Esq., Regional Counsel, NASD, Atlanta, GA, Andrew A. Favret, Esq., of Counsel, New Orleans, LA, and Rory C. Flynn, Esq., of Counsel, Washington, DC, for the Department of Enforcement.

No appearance by Respondent.

DECISION

I. Background

On August 29, 2005, the Department of Enforcement (“Enforcement”) filed a two-cause Complaint in this proceeding, attached to this Decision as Exhibit A. The Complaint alleges that Respondent Bryan C. Terra (“Respondent”) violated NASD Rule 2110 by converting customer funds. The Complaint also alleges that Respondent violated NASD Rules 8210 and 2110 by failing to respond to NASD Staff requests for information. On November 10, 2005, Respondent filed an Answer to the Complaint.

II. Respondent's Default

The Hearing Officer issued an Order setting a final Pre-Hearing Conference for April 10, 2006. The Order was sent to Respondent on January 4, 2006, by first class and overnight mail to his last known residential address listed in the Central Registration Depository (the "CRD address"). In the same manner, on January 25, 2006, the Office of Hearing Officers sent Respondent a Notice referencing the April 10, 2006, final Pre-Hearing Conference. Finally, on March 23, 2006, the Hearing Officer issued a Notice reminding the parties of the April 10, 2006 Pre-Hearing Conference, and noting that "a failure to appear at the conference in person or through counsel or representative may be deemed a default." This Notice was sent to Respondent, by first class, overnight, and certified mail to his CRD address.¹ Nonetheless, Respondent failed to appear. Accordingly, on April 12, 2006, pursuant to Rule 9241(f), the Hearing Officer issued an Order Holding Respondent in Default. On May 1, 2006, Enforcement filed a Motion for Entry of Default Decision. For the reasons set forth below, the Motion is granted.²

III. Jurisdiction

Respondent was first registered as an investment company and variable contracts products representative with NASD member Banc One Securities Corporation ("Banc One") in January 2004. He ceased employment with Banc One in February 2005 and his registration terminated in March 2005. Respondent is not currently associated with a member firm.

Although Respondent is not currently associated with a member firm, NASD has jurisdiction to bring this proceeding, pursuant to Art. V, § 4 of NASD's By-Laws,

¹ The certified mail return receipt is signed "T. Terra."

² The factual determinations in this decision are based on the allegations of the attached Complaint, which are deemed admitted, and the declaration and exhibits filed by Enforcement with its Motion for Default.

because (1) the Complaint charges Respondent with misconduct while he was registered and with failing to comply with requests for information made during the two-year period following termination of his last registration, and (2) the Complaint was filed within that two-year period.

IV. Violations

A. Conversion

The Complaint alleges that in August 2004, in his capacity as a personal banker at Bank One, Respondent came into possession of a \$650 check for deposit to an unspecified customer's bank account. Respondent converted these funds by depositing the \$650 check into his personal bank account. These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent violated Rule 2110.

B. Failure to Respond

The Complaint also alleges that, on April 29, 2005, NASD Staff sent Respondent a request for information. The Staff sent this request via first class mail. On May 16, 2005, NASD staff sent a second request for information to Respondent at his CRD address by first class and certified mail. The Staff served the requests in accordance with Rule 8210(d), and therefore Respondent is deemed to have received them. Respondent did not respond to the requests for information.

Rule 8210 authorizes NASD to require any person subject to its jurisdiction to provide information 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.³ Here, although Respondent received valid constructive notice of the Staff's requests,⁴ he failed to respond to them. Respondent thereby violated Rules 8210 and 2110.

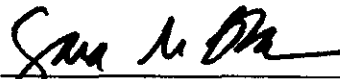
V. Sanctions

For conversion, the Sanction Guidelines recommend a bar, regardless of the amount converted. A bar is also standard for failure to provide requested information. NASD Sanction Guidelines at 35, 38 (2006 ed.). There is no evidence of any mitigating circumstances that would justify a lesser sanction in this case for either violation. Therefore, Respondent is barred from associating with any NASD member in any capacity.

VI. Conclusion

For conversion of customer funds, in violation of Rule 2110, and for failure to provide requested information, in violation of Rules 8210 and 2110, Respondent is barred from associating with any NASD member in any capacity. These bars shall become effective immediately if this Decision becomes the final disciplinary action of NASD.

SO ORDERED.


Sara Nelson Bloom
Hearing Officer

Dated: June 14, 2006

³ See, e.g., Dep't of Enforcement v. Valentino, No. FPI010004, 2003 NASD Discip. LEXIS 15, at *12 (NAC May 21, 2003), aff'd, 2004 SEC LEXIS 330 (Feb. 13, 2004) ("It is well established that because NASD 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); Joseph G. Chiulli, Exchange Act Release No. 42,359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for the NASD effectively to conduct its investigations, and emphasizing that NASD members and associated persons must fully cooperate with requests for information).

⁴ See David I. Cassuto, Exchange Act Release No. 48,087, 2003 SEC LEXIS 1496, at *9 (June 25, 2003).

Copies to:

Bryan C. Terra (via overnight, certified and first class mail)

Gene E. Carasick, Esq. (via facsimile and first class mail)

Rory C. Flynn, Esq. (via first class mail)

Andrew A. Favret, Esq. (via first class mail)

ORIGINAL

**NASD
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

Bryan C. Terra
CRD No. 4717215

Respondent.

Disciplinary Proceeding
No. 2005000870801

Hearing Officer:

COMPLAINT

Upon information and belief, Complainant alleges as follows:

1. Respondent Bryan C. Terra was registered as an investment company and variable contracts products representative with NASD member Banc One Securities Corporation ("BOSC") from January 20, 2004 until March 4, 2005. His employment end date with BOSC was February 17, 2005. Terra is not currently employed by an NASD member. NASD retains jurisdiction over Terra pursuant to Article V, Section 4 of NASD Bylaws.

**FIRST CAUSE OF COMPLAINT
Conversion of Funds
NASD Conduct Rule 2110**

2. During the relevant time period, Respondent Terra was employed by BankOne, N.A. as a personal banker, in addition to being registered with NASD member BOSC as an investment company and variable contracts products representative.
3. In or about August 2004, Respondent Terra, in his capacity as a personal banker with BankOne, came into possession of a \$650 check received by the bank for deposit to an unspecified customer's bank account.
4. On or about August 21, 2004, Respondent Terra converted the funds by depositing the \$650 check into his personal bank account.

5. The conversion of funds by Respondent Terra constitutes a violation of NASD Conduct Rule 2110 by Terra.

SECOND CAUSE OF COMPLAINT
Failure to Respond to Information Requests
NASD Procedural Rule 8210; NASD Conduct Rule 2110

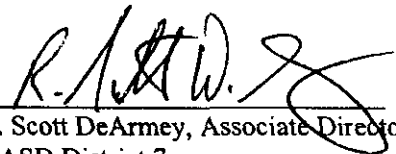
6. By letter dated April 29, 2005, sent via first class mail to Respondent Terra's CRD residential address at [REDACTED], the staff requested Terra, pursuant to Rule 8210, to provide certain specified information by May 13, 2005, relating to the subject matter of the First Cause of Complaint. The mailing was not returned by the Postal Service.
7. No response having been received, by letter dated May 16, 2005, sent via first class and certified mail to Respondent Terra's CRD residential address, the staff again requested, pursuant to Rule 8210, that Terra provide the same information requested in the April 29 letter, this time by May 31, 2005. The certified mailing was returned by the Postal Service, marked "Unclaimed"; the first class mailing was not returned.
8. To date, Respondent Terra has not responded to the Rule 8210 requests.
9. Respondent Terra's failure to respond to the staff's Rule 8210 information requests constitutes separate and distinct violations of NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by Respondent Terra.

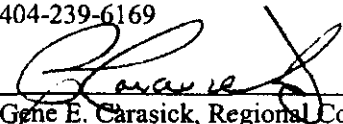
PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Respondent Terra committed the violations charged and alleged herein;
- B. An order imposing sanctions upon the Respondent in accordance with NASD Rule 8310.
- C. An order imposing such costs of any proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330; and

D. An order imposing any other fitting sanction.


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