

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT

Complainant,

v.

JONATHAN D. POLAND
(CRD No. 4456200),

Respondent.

Disciplinary Proceeding
No. 2005000895501

Hearing Officer – AWH

DEFAULT DECISION

May 10, 2007

Formerly registered representative barred for failure to appear for testimony, in violation of Procedural Rule 8210 and Conduct Rule 2110. In light of the bar, no further sanctions imposed for effecting two unauthorized transactions in a customer's account.

Appearances:

Laura Leigh Blackston, Esq., for the Department of Enforcement.

No appearance by or for Jonathan D. Poland.

DECISION

Background

On December 11, 2006, the Department of Enforcement ("Enforcement") filed the Complaint in this proceeding, alleging that Jonathan D. Poland effected unauthorized transactions in a customer's account and failed to appear for testimony, in violation of NASD Procedural Rule 8210 and Conduct Rule 2110. Poland did not file an Answer to the Complaint, but he sent a response to Enforcement, asserting that (1) he would not be able to appear for testimony; (2) the customer had knowledge of, and authorized, the transactions; and (3) he was no longer registered with a member firm and did not plan on returning to a member firm. Because it was not clear from his response how he wished to

resolve the matter, an initial telephone pre-hearing conference was noticed for March 2, 2007. Poland did not appear at the pre-hearing conference. As a result, Enforcement filed a Motion for Entry of Default Decision on March 29, 2007, to which Poland did not file a response. However, on April 11, 2007, Enforcement received a letter from Poland, written after his receipt of the Motion for Entry of Default Decision. The letter stated that he would “never admit any guilt or wrongdoing in this matter,” and he offered to disgorge his net commission of \$330.00, but not the gross commission of \$550.00 paid to the firm. Because he failed to appear at the pre-hearing conference, pursuant to Procedural Rules 9215(f) and 9269, Enforcement’s Motion will be granted, and the allegations in the Complaint, which is attached to this Decision, will be deemed admitted.

Findings of Fact¹

Respondent

Poland first entered the securities industry in 2002 and was registered as a General Securities Representative of LH Ross & Company, Inc., a former member of NASD. As pertinent to the Complaint, he was registered with member firm LaSalle St. Securities, L.L.C., from September 1, 2004, until his termination on February 23, 2005. Since that time, he has not been associated with any member firm.

Unauthorized Transactions

Without the knowledge or consent of public customer RT, on or about December 30, 2004, Poland sold 12,000 shares of Horizon Offshore, Inc., at \$1.130852 per share and purchased 2,265 shares of Salton Inc., at \$5.7240109 per share for the account of RT. The commission on the sale was \$550.00. RT realized gains of \$8,664.45 on the two

¹ All findings of fact are based upon the admitted allegations in the Complaint, the Declaration Supporting Motion for Entry of Default Decision, and the exhibits attached thereto.

transactions.² RT sent a written complaint to the firm shortly after his monthly statement that disclosed the purchase transaction. RT's account was not a discretionary account.

Failure to Appear for Testimony

On July 17, 2006, pursuant to Procedural Rule 8210, NASD staff sent Poland a request to provide on-the-record testimony on July 25, 2006, concerning his alleged unauthorized transactions in RT's account. The request was sent by first class mail, certified mail, and overnight courier to Poland's residential address listed in the Central Registration Depository ("CRD" address) and a more current address that Poland had provided during a telephone conversation with NASD staff, [REDACTED] address"). Poland did not appear for testimony as he was requested.

On November 6, 2006, pursuant to Procedural Rule 8210, NASD staff sent Poland a similar request to testify on November 27, 2006. The request was sent by first class, certified mail, and overnight delivery to his CRD address and the [REDACTED] address. Poland did not appear for testimony on November 27, 2006, as requested.

Service of the Complaint

On December 11, 2006, Enforcement served Poland with the Complaint and Notice of Complaint by certified mail, sent to his CRD address and the [REDACTED] address. The receipt for the certified mailing to the CRD address was signed by Mary Poland, and the receipt for the one sent to the [REDACTED] address was signed by David

² Although, in his letters to Enforcement, Poland alleged that RT knew of, and approved, the transactions, and that his commission on the sale was a net \$330.00, Poland did not appear in this proceeding to dispute the allegations in the Complaint. Because he has chosen not to participate in this proceeding, he has been defaulted, and in this proceeding, cannot contest the allegations in the Complaint.

Poland. In a letter to the staff, dated January 8, 2007, Poland responded to the Complaint, acknowledging that he had received the Complaint.³

Discussion and Conclusions

Jurisdiction

Article V, Section 4 of the NASD By-Laws provides for a two-year period of retained jurisdiction over a registered person after the effective date of the person's termination of registration. During this period of retained jurisdiction, NASD may file a complaint based upon conduct that occurred while the individual was registered through a member firm, or based upon such person's failure to provide information requested pursuant to NASD Procedural Rule 8210, if the request was made, and the complaint is filed, during the foregoing period of retained jurisdiction.

Enforcement filed the Complaint on December 11, 2006, within two years of the termination of Poland's registration. The Complaint is based on conduct that occurred while he was registered, and his failures to appear for on-the-record testimony during the period of retained jurisdiction. Therefore, NASD has jurisdiction over this proceeding.

Respondent's Default

Enforcement properly served the Complaint on Poland by sending it via certified mail to his CRD address and the 1st Street ■■■ address. Pursuant to NASD Procedural Rule 9134, the mailings provide constructive notice of the instant proceeding. Because the receipt for the certified mailing to the 1st Street ■■■ address was returned bearing the

³ The letter indicated Poland's address as 1st Street #13. However, the Hearing Officer concludes that use of "#13" must have been a typographical error because Poland's April 11, 2007, letter to the staff states his address as 1st Street ■■■. Moreover, Poland was responding to correspondence sent to 1st Street ■■■ address.

signature of David Poland, and his letter to the staff on January 8, 2007, admits he received the Complaint, Poland had actual knowledge of the Complaint.

Poland did not file an Answer with the Office of Hearing Officers as required by NASD Procedural Rules. The letter he sent to Enforcement did not satisfy the standards for an Answer because it did not directly respond to the allegations of the Complaint. Therefore, he defaulted under Procedural Rules 9251(f) and 9269.

Nevertheless, in an effort to determine how he intended to resolve this matter, by Order dated February 15, 2007, a pre-hearing conference was scheduled for March 2, 2007. The Order was sent to Poland by first class mail and overnight courier to his CRD and 1st Street ■■■ addresses. Poland failed to appear at the pre-hearing conference. Because he failed to appear at that conference, Procedural Rules 9241(f) and 9269 authorize entry of a default decision against him. Accordingly, the allegations in the Complaint are deemed admitted.

Unauthorized Transactions

Unauthorized trading in a customer account amounts to a serious violation of just and equitable principles of trade.⁴ Both the SEC and NASD have characterized unauthorized trading as “a fundamental betrayal of the duty owed by a salesman to his customers.”⁵

By effecting two transactions in RT’s account without the customer’s knowledge and approval, Poland Violated NASD Conduct Rule 2110 as alleged in the Complaint.

⁴ *Jeffrey B. Hodde*, No. C10010005, 2002 NASD Discip. LEXIS 4, at **13-14 (NAC Mar. 27, 2002) (citations omitted); *see also Robert Lester Gardner*, Exchange Act Release No. 35899, 1995 SEC LEXIS 1532 (June 27, 1995); *Department of Enforcement v. Baxter*, 2000 NASD Discip. LEXIS 3 (NAC April 19, 2000).

⁵ *Keith L DeSanto*, Exchange Act Release. No. 35860, 1005 SEC LEXIS 1500 (June 19, 1995), *aff’d*, 1996 U.S. App. LEXIS 39269 (2d Cir. 1996); *District Business Conduct Committee v. Ted. D. Wells*, No. C07970045, 1998 NASD Discip. LEXIS 32 (NAC July 24, 1998).

Failures to Appear for Testimony

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.⁶ When an individual fails to respond to information requests, NASD's ability to perform its regulatory responsibilities is subverted.⁷ A violation of Procedural Rule 8210 is also a violation of Conduct Rule 2110.⁸

Poland received constructive notice of the two requests for his on-the-record testimony. Both requests were sent to his CRD and most recent addresses. His complete failure and refusal to appear for testimony violated both Procedural Rule 8210 and Conduct Rule 2110.

Sanctions

Failure to Appear for Testimony

For failure to respond to requests for information made pursuant to Rule 8210, NASD Sanction Guidelines provide that a bar is standard where, as here, the individual fails completely to respond in any manner.⁹ There are no mitigating circumstances that would warrant a sanction less than a bar for Poland's complete failures to respond to the

⁶ See *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 NASD effectively to conduct its investigations, and emphasizing that NASD members and associated persons must fully cooperate with requests for information); *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.").

⁷ *Joseph P. Hannan*, Exchange Act Release No. 40,438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998).

⁸ *Dep't of Enforcement v. Baxter*, No. C07990016, 2000 NASD Discip. LEXIS 3, at *25 (NAC Apr. 19, 2000).

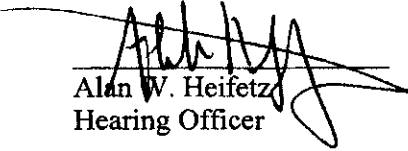
⁹ NASD SANCTION GUIDELINES p. 35.

requests for his testimony. Accordingly, Poland will be barred for failing to respond in any manner to requests for information made pursuant to Procedural Rule 8210. The Sanction Guidelines for unauthorized transactions recommend a fine of \$5,000 to \$75,000, a suspension in any or all capacities for 10 business days to one year, or a longer suspension or bar in egregious cases.¹⁰ There were only two trades and there was no customer loss. Accordingly, the Hearing Officer concludes that this is not an egregious violation as defined in the Sanction Guidelines. Therefore, in light of the bar, no additional sanctions will be imposed for the two unauthorized transactions.

Conclusion

Jonathan D. Poland is barred from association with any NASD member firm in any capacity for failing to respond to requests for testimony, in violation of Procedural Rule 8210 and Conduct Rule 2110. The bar shall become effective immediately if this Decision becomes the final disciplinary action of NASD.

SO ORDERED.


Alan W. Heifetz
Hearing Officer

Copies to:

Via First Class Mail & Overnight Courier
Jonathan D. Poland

Via First Class Mail & Electronic Mail
Laura Leigh Blackston, Esq.
Mark P. Dauer, Esq.
Rory C. Flynn, Esq.

¹⁰ *Id.*, p. 103.

**NASD
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

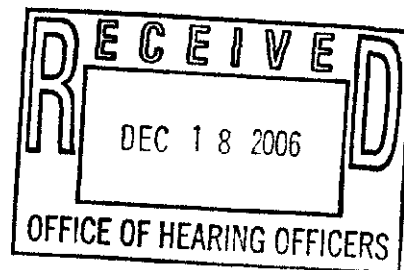
COMPLAINANT,

v.

JONATHAN D. POLAND,
General Securities Representative
(CRD No. 4456200),

RESPONDENT.

**DISCIPLINARY PROCEEDING
No. 2005000895501**



COMPLAINT

The Department of Enforcement alleges:

1. Jonathan D. Poland entered the securities industry on January 9, 2002 as a General Securities Representative of LH Ross & Company, Inc., a former member of NASD. Jonathan D. Poland, during all periods mentioned herein, was associated with member firm LaSalle Street Securities, L.L.C., and was registered with NASD under Article V of the By-Laws as a General Securities Representative. Poland is not currently associated with a member firm. Although Poland is not currently registered, he remains subject to the jurisdiction of NASD until February 22, 2007, pursuant to Article V, Section 4 of NASD's By-Laws, which provides for a two-year period of retained jurisdiction over formerly registered persons.

FIRST CAUSE OF ACTION
NASD Conduct Rule 2110, Unauthorized Transactions,
Against Respondent Poland

2. On or about December 30, 2004, Jonathan D. Poland effected the following two transactions in the account of public customer RT without the knowledge or consent of public customer RT. Specifically, Poland sold 12,000 shares of Horizon Offshore, Inc. (HOFF) at \$1.130852 per share and purchased 2,265 shares of Salton Inc. at \$5.7240109 per share for the account of public customer RT without the knowledge or consent from the customer to engage in the transactions.
3. Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 by Respondent Poland.
4. Customer RT realized gains of \$8,664.45 on the two unauthorized transactions described in paragraph 2 above.
5. Respondent Poland received commissions totaling \$550.00 on the HOFF unauthorized transaction described in paragraph 2 above.

SECOND CAUSE OF ACTION
NASD Procedural Rule 8210 and NASD Conduct Rule 2110, Failure to
Appear for On-the-Record Interview, Against Respondent Poland

6. By letters dated July 17, 2006 and November 6, 2006, the NASD District staff requested that Jonathan Poland appear for an on-the-record interview and provide certain information to the staff. The requests for information were sent by certified mail to Jonathan Poland's address as reflected in the Central Records Depository and to a more current address that Jonathan Poland had provided during a telephone conversation with the NASD staff, and were sent pursuant to, and in accordance with,

the provisions of Procedural Rule 8210. Jonathan Poland did not appear to provide the information requested at either scheduled interview. A schedule of the staff's attempts to contact Poland is attached hereto as Exhibit "A."

7. Such acts, practices, and conduct constitute separate and distinct violations of NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by Respondent Poland.

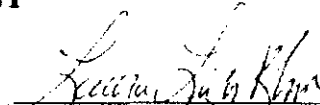
PRAYER

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 including that the Respondent be required to disgorge fully any and all ill-gotten gains.
- B. Order that the Respondent 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: December 11, 2006


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