

**NASD
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

Shawn D. Burke
(CRD No. 1463381)

Respondent.

Disciplinary Proceeding
No. 2005000924701

Hearing Officer -

COMPLAINT

Upon information and belief, Complainant alleges as follows:

1. Respondent Shawn D. Burke ("Burke") first became registered with an NASD member in 1986 as a *Variable Contracts Representative*. He was registered with New England Securities ("NES") in that capacity from approximately February 1986 to approximately May 2, 2005. He has not been registered with any member since May 2, 2005. NASD retains jurisdiction over Burke for purposes of this Complaint pursuant to Article V, Section 4 of NASD's By-Laws in that: the misconduct alleged in Causes One through Five occurred while Burke was associated with NES; and, this Complaint was filed within, and the violations of Procedural Rule 8210 alleged in Cause Six occurred within, two years of Burke's last registration with a member firm.

CAUSE ONE OF COMPLAINT

Misuse of Customer DA's Funds Violation of NASD Conduct Rules 2330(a) and 2110

2. The allegations in Paragraph 1 above are re-alleged and incorporated herein by reference.
3. On or about May 3, 2004 and on or about May 11, 2004, Burke accepted two checks made payable to himself, as an agent of a Pennsylvania company ("HPS"), from customer DA as an investment in HPS. DA issued the checks against her New England Securities ("NES") account after Burke stated that he and several agents were moving to a new company. The amount of these checks totaled \$10,700 (\$5,000 and \$5,700, respectively).
4. Rather than use these funds to benefit customer DA, Burke deposited the funds in a bank account he controlled.
5. By doing so, Burke violated NASD Conduct Rules 2330(a) and 2110.

CAUSE TWO OF COMPLAINT

Misuse of Customer CB's Funds Violation of NASD Conduct Rules 2330(a) and 2110

6. The allegations in Paragraphs 1 through 5 above are re-alleged and incorporated herein by reference.
7. On or about May 21, 2004 and on or about June 14, 2004, Burke accepted two checks made payable to himself, as an agent of HPS, from customer CB. The checks were issued against CB's account at NES after Burke advised WB, who holds power of attorney for his mother CB, to purchase municipal bonds for customer CB. The amount of these checks totaled \$50,000 (\$25,000 each).

8. Rather than use these funds to purchase municipal bonds for CB, Burke deposited the funds in a bank account he controlled.
9. By doing so, Burke violated NASD Conduct Rules 2330(a) and 2110.

CAUSE THREE OF COMPLAINT

Misuse of Customer CC's Funds Violation of NASD Conduct Rules 2330(a) and 2110

10. The allegations in Paragraphs 1 through 9 above are re-alleged and incorporated herein by reference.
11. On or about July 19, 2004, August 16, 2004, and September 13, 2004, Burke accepted three checks made payable to himself, as an agent of HPS, from customer CC. The amount of these checks totaled \$90,000 (\$30,000 each).
12. CC gave the funds to Burke as an investment in HPS. However, at the time Burke accepted these checks from CC, HPS was no longer in business.
13. Rather than use these funds to benefit CC, Burke deposited the funds in a bank account he controlled and converted them for his own use and benefit.
14. By doing so, Burke violated NASD Conduct Rules 2330(a) and 2110.

CAUSE FOUR OF COMPLAINT

Misuse of Customers HH and JH's Funds Violation of NASD Conduct Rules 2330(a) and 2110

15. The allegations in Paragraphs 1 through 14 above are re-alleged and incorporated herein by reference.
16. On or about October 22, 2004, November 13, 2004, and December 8, 2004, Burke accepted three checks made payable to himself, as an agent of HPS, from customers HH

and JH. The amount of these checks totaled \$79,500 (\$30,000, \$30,000, and \$19,500, respectively).

17. HH and JH gave these funds to Burke as an investment in HPS. However, at the time Burke accepted these checks from HH and JH, HPS was no longer in business.
18. Rather than use these funds to benefit HH and JH, Burke deposited the funds in a bank account he controlled.
19. By doing so, Burke violated NASD Conduct Rules 2330(a) and 2110.

CAUSE FIVE OF COMPLAINT

***Misuse of Customer WB's Funds* Violation of NASD Conduct Rules 2330(a) and 2110**

20. The allegations in Paragraphs 1 through 19 above are re-alleged and incorporated herein by reference.
21. On or about January 14, 2005 and on or about January 20, 2005, Burke accepted two checks made payable to himself, as an agent of HPS, from customer WB. The amount of these checks totaled \$83,056.84 (\$5,000 and \$78,056.84, respectively).
22. At the time Burke accepted these checks from WB, HPS was no longer in business.
23. Burke told WB that he was going to use these monies to fund a variable annuity contract issued to WB. Rather than use these funds to fund a variable annuity contract for WB's benefit, however, Burke deposited the funds in a bank account he controlled.
24. By doing so, Burke violated NASD Conduct Rules 2330(a) and 2110.

CAUSE SIX OF COMPLAINT

Failure to Respond Violation of NASD Procedural Rule 8210 and Conduct Rule 2110

25. *The allegations in Paragraphs 1 through 24 above are re-alleged and incorporated herein by reference.*
26. By two letters dated May 25, 2005, NASD requested, pursuant to Procedural Rule 8210, information and documents from Burke regarding allegations that he had misappropriated client funds. Both letters, one by certified mail, and a second by regular mail, were sent to Burke's CRD address at [REDACTED] Baldwin Street, [REDACTED] and requested a response by June 9, 2005. On June 6, 2005, both letters were returned as not deliverable as addressed-unable to forward.
27. By two letters dated June 16, 2005, NASD again requested, pursuant to Procedural Rule 8210, information and documents from Burke regarding allegations that he had misappropriated client funds. One letter, sent by certified mail, was sent to the [REDACTED] Baldwin Street address and a second letter, sent by certified mail, was sent to [REDACTED] Canterbury Drive, [REDACTED]. NASD obtained the Canterbury Drive address from an Equifax report. On June 27, 2005, NASD received returned receipts evidencing successful delivery for both letters, with what appears to be Burke's signature on both receipt cards. The letters warned Burke that failure to produce the documents requested could result in disciplinary action against him by NASD. The letter sent to the Baldwin Street address required a response by June 27, 2005, and the letter sent to the Canterbury Drive address required a response by June 30, 2005. To date, Burke has failed to produce any requested information to NASD.

28. By four letters dated July 12, 2005, NASD requested, pursuant to Procedural Rule 8210, Burke's response to previous request letters dated May 25, 2005 and June 16, 2005.

These letters, which were included with the July 12 letter, requested information and documents from Burke regarding allegations that he had misappropriated client funds.

The letters required a response from Burke by July 21, 2005, and warned that failure to respond could subject Burke to disciplinary action. Two letters, one sent by certified mail, and a second by regular mail, were sent to the [REDACTED] Baldwin Street address. Two additional letters, one sent by certified mail and the second by regular mail, were sent to the [REDACTED] Canterbury Drive address. On July 19, 2005, the [REDACTED] Baldwin Street certified letter was returned to NASD as not deliverable as addressed-unable to forward. On July 25, 2005, the [REDACTED] Baldwin Street letter sent by regular mail was returned to NASD as not deliverable as addressed-unable to forward. On August 2, 2005, the [REDACTED] Canterbury Drive letter sent by certified mail was returned to NASD as unclaimed. The [REDACTED] Canterbury Drive letter sent by regular mail was not returned.

29. By two letters dated July 22, 2005, NASD requested, pursuant to Procedural Rule 8210, that Burke respond to previous request letters dated June 16, 2005 and July 12, 2005. These letters, which were included with the July 22 letter, requested information and documents from Burke regarding allegations that he had misappropriated client funds. The letters were sent by certified mail and regular mail to the [REDACTED] Canterbury Drive address, and required a response by August 2, 2005. The letters also warned Burke that a failure to respond could result in disciplinary action being taken against him. On August 15, 2005, the certified letter was returned to NASD as unclaimed. The letter sent by regular mail was not returned.

30. By four letters dated August 4, 2005, NASD made a final request, pursuant to Procedural Rule 8210, to Burke for his response to the May 25, 2005 and June 16, 2005 letters.

These letters, which were included with the August 4 letter, requested information and documents from Burke regarding allegations that he had misappropriated client funds.

Two letters, one sent by certified mail and the other by regular mail, were sent to the

1105 Baldwin Street address. Two additional letters, one sent by certified mail and the

other by regular mail, were sent to the [REDACTED] Canterbury Drive address. Each letter

required Burke to respond by August 15, 2005, and each warned that a failure to provide

the requested information could result in disciplinary action being taken against him. On

August 11, 2005, the [REDACTED] Baldwin Street letter sent by certified mail was returned to

NASD as not deliverable as addressed-unable to forward. On August 25, 2005, the [REDACTED]

Canterbury Drive letter sent by certified mail was returned to NASD as unclaimed.

Neither of the letters sent by regular mail were returned to NASD.

31. To date, Burke has failed to provide NASD any response to the letters requesting information from him.

32. Based on the foregoing, Burke violated NASD Procedural Rule 8210 and Conduct Rule 2110.

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 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.

Date: 11/22/05



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