

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

MARK VERNON BROWN
(CRD No. 2233771)

Respondents.

Disciplinary Proceeding
No. 2005000931301

Hearing Officer -

COMPLAINT

Upon information and belief, Complainant alleges as follows:

RESPONDENT

1. Respondent Mark Vernon Brown ("Brown") was first registered as a general securities representative in November 1987, while associated with an NASD member firm. He was employed by Advest, Inc. ("Advest") until November 2004. Numerous amended Forms U-5 have been filed extending the NASD's jurisdiction over Brown until at least August 2007. Brown is not currently employed by a NASD member; however he remains subject to the jurisdiction of the NASD pursuant to Article V, Section 4 of the NASD Bylaws.

BACKGROUND

2. Respondent Brown engaged in a scheme spanning several years involving numerous switches of predominately elderly customers' investments in variable annuities between different annuities in their accounts. For the most part, Brown commenced the switching in each customer account by taking a partial distribution from an annuity already held in the customer's account directly with the annuity company without the customer's knowledge or authorization. The distribution would then be deposited into the

customer's account so that the total value of the account would not change except for any applicable surrender charge. Thereafter, he used these funds to add to another existing variable annuity or purchase a new annuity with a similar name. He further misrepresented to his employer/member that the purchase was made with new funds, thereby preventing a switch review. Brown was paid commissions on the additional investments in the variable annuities he purchased.

3. In perpetrating this scheme, Brown executed unauthorized transactions, forged customer signatures, misrepresented to customers the value of their accounts, misrepresented the source of funds to his employer/member, omitted to disclose surrender charges, made unsuitable switches in multiple customer accounts and obtained unwarranted commissions.

FOR A FIRST CAUSE OF COMPLAINT

NASD Conduct Rule 2110

(Forgery)

4. The allegations set forth in paragraphs 1 through 3 above, are hereby realleged and incorporated herein by reference.

Customer CP

5. In or about June 2004, Respondent Brown forged the signature of CP on a letter of authorization ("LOA") authorizing the transfer of at least \$90,000 to a pre-existing ING annuity owned by customer CP.
6. In or about September 2004, Respondent Brown forged the signature of CP on a LOA authorizing the transfer of \$248,000 to a pre-existing Nationwide annuity owned by customer CP.

7. In or about November 2004, Respondent Brown forged the signature of CP on a LOA authorizing the transfer of \$236,000 to an ING Golden Select ES II annuity owned by customer CP.

Customer EW

8. In or about March 2004, Respondent Brown forged the signature of EW on a LOA authorizing the transfer of \$148,800 to a pre-existing Nationwide variable annuity owned by EW.
9. In or about September 2004, Respondent Brown forged the signature of EW on a LOA authorizing the transfer of \$140,000 to a pre-existing Nationwide variable annuity owned by EW.

Customer EM

10. In or about July 2004, Respondent Brown forged the signature of EM on a LOA authorizing the transfer of \$50,000 to a pre-existing Nationwide variable annuity owned by EM.

Customer DD

11. In or about August 2004, Respondent Brown forged the signature of DD on a LOA authorizing the transfer of \$13,536 to a pre-existing Nationwide variable annuity owned by DD.

Customer GO

12. In or about April 2004, Customer GO authorized the purchase of a Nationwide Best of America ("BOA") Future Venue Annuity; however, Respondent Brown forged the signature of GO on the application for such annuity.

13. Each such forgery on the LOAs for customers CP, EW, EM and DD and on the annuity application for customer GO constitute separate and distinct violations of NASD Conduct Rule 2110 by Respondent Brown.

FOR A SECOND CAUSE OF COMPLAINT

NASD Conduct Rule 2110

(Unauthorized Transactions)

14. The allegations contained in paragraphs 1 through 13, above, are hereby realleged and incorporated herein by reference.
15. During the period beginning in January and continuing through November 2004, Brown, while employed by Advest, executed a series of transactions as listed on Exhibit A, attached hereto and made a part hereof, in CP's account without her prior knowledge or authorization.
16. During the period beginning in April and continuing through August 2004, Brown, while employed by Advest, executed a series of transactions as listed on Exhibit A, attached hereto and made a part hereof, in DD's account without her prior knowledge or authorization.
17. Each unauthorized transaction effected in the accounts of CP and DD constitute separate and distinct violations of Conduct Rule 2110 by Respondent Brown.

FOR A THIRD CAUSE OF COMPLAINT

Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder and NASD

Conduct Rules 2110, 2120 and 2211

(Scheme to Defraud)

18. The allegations contained in paragraphs 1 through 17, above, are hereby realleged and incorporated herein by reference.

Advest

19. Respondent Brown falsely represented to Advest that the source of the funds for the additional investments into the pre-existing variable annuities of Customers CP, EW, EM, and DD was from a money market fund without disclosing that these funds initially came from 1035 exchange distributions from pre-existing annuities.

Customer EW

20. Respondent Brown met with customer EW about once a month. Brown would review her account and discuss its value. During their October 2004 meeting, Brown informed her that her account was worth in excess of \$300,000. In fact, as of September 30 her account was worth approximately \$185,000 and by October 31, 2004 had only a marginal increase and was valued at less than \$186,000.
21. Moreover, Respondent Brown further wrote on EW's account statements indicating that her account had a higher value than what the statements showed. In particular, Brown wrote on EW's June 2004 account statement reflecting a value of \$330,635 when her statement showed a value of \$193,294.28.

22. Respondent Brown also provided EW with a computer printout for her account that he prepared showing a handwritten value of \$321,128.98. This value included an annuity worth \$126,879.21 that had been liquidated the previous month.

Customer EM

23. Customer EM found the Advest account statements confusing so at one point she asked Respondent Brown for information regarding her account. Brown provided EM with handwritten notes written on Advest letterhead for the Advest branch office located in Tampa, Florida, where Brown was employed.
24. The notes indicate that EM's trust account was worth \$148,711 as of July 2004. However, according to EM's account statements, the value of her account was only \$100,172.99 as of July 31, 2004.

Surrender Charges

25. Respondent Brown failed to disclose to customers CP, EW and EM, that they would be incurring surrender charges in connection with the distributions from variable annuities in their accounts, as more fully described on Exhibit A attached hereto and made a part hereof.

Materiality and Scienter

26. The forgeries, unauthorized trades, source of funds, the surrender charges incurred and the valuations of customer accounts were material facts.
27. Brown acted with scienter in connection with the transactions in customers' CP, EW, EM DD and GO accounts in that he knew that he forged their signatures on various documents, that he executed unauthorized trades, that the accounts had lower values than what he was representing, and that the customers were incurring surrender charges in

connection with the distributions from their annuities or, at a minimum, he was recklessly indifferent to whether the customers knew that he was forging their signatures, executing unauthorized trades in their accounts, that he misrepresented the true values of their accounts and that they were incurring charges in connection with the distributions.

Violations

28. Brown, by engaging in the conduct referenced in paragraphs 1 through 27, above, with scienter, directly or indirectly, in connection with the offer or sale of securities, by the use of means or instrumentalities of interstate commerce, or of the mails: 1) employed devices schemes or artifices to defraud; 2) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or 3) engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon purchasers or prospective purchasers in violation of Section 10(b) of the Securities and Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 promulgated thereunder.
29. Such acts, practices and conduct constitute separate and distinct violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and Conduct Rules 2110, 2120 and 2211 by Respondent Brown.

FOR A FOURTH CAUSE OF COMPLAINT

NASD Conduct Rule 2110 and 2310

(Unsuitable Switches)

30. The allegations contained in paragraphs 1 through 29, above, are hereby realleged and incorporated herein by reference.

31. At various times during the period from in or about January 2004 through in or about November 2004, Respondent Brown recommended that public customers CP, EW, EM and DD liquidate portions of variable annuities held in their accounts and use the proceeds from those sales to purchase additional shares of other variable annuities as more fully described on Exhibit A attached hereto and made a part hereof.
32. These recommendations lacked a reasonable basis inasmuch as the customers most often incurred surrender charges as a result of the switches.
33. In addition, the recommendations lacked a reasonable basis because they involved a series of flips through distributions from one variable annuity and an additional or new investment in another variable annuity, followed by further distributions and investments often in the very same annuity from which the initial distribution had been taken.
34. As a result of the unsuitable variable annuity switches that Brown effected, he collected unwarranted commissions totaling almost \$50,000 and caused unwarranted expenses for customers.
35. Such acts, practices and conduct constitute separate and distinct violations of Conduct Rules 2110 and 2310 by Respondent Brown.

FOR A FIFTH CAUSE OF COMPLAINT

NASD Conduct Rule 2110 and Procedural Rule 8210

(Failure To Respond to NASD Request for Information)

36. The allegations contained in paragraphs 1 through 35, above, are hereby realleged and incorporated herein by reference.
37. On or about December 9, 2004, the NASD Atlanta District office received a Uniform Notice of Termination for Securities Industry Registration ("Form U-5") filed by Advest

on behalf of Respondent Brown. The Form U-5 alleged, among other things, that Brown forged customer signatures and executed unauthorized trades. The NASD Atlanta District office initiated an investigation into the allegations on the Form U-5.

38. By letter dated September 12, 2005, sent via first class and certified mail to Brown at his CRD address of [REDACTED] Brown was requested, pursuant to Procedural Rule 8210, to appear and give sworn testimony on September 28, 2005 at 10:00 a.m. His testimony was requested regarding the allegations disclosed on his Form U-5, which the NASD was investigating.
39. The September 12, 2005 letter sent by first class mail was not returned but a receipt for the letter sent by certified mail was returned indicating that it had been delivered.
40. On or about September 22, 2005, Brown contacted the NASD staff and confirmed that he had received the NASD's request that he appear and testify. He also indicated that he would not be appearing as requested.
41. On September 28, 2005, Brown failed to appear and testify as requested.
42. Such failure to appear and testify as requested by the September 12, 2005 letter constitutes separate and distinct violations of NASD Procedural Rule 8210 and Conduct Rule 2110 by Respondent Brown.

PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Respondent Brown committed the violations charged and alleged herein;

- B. An order imposing sanctions upon Respondent Brown in accordance with NASD Rule 8310;
- C. An order requiring Respondent Brown 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: 5/24/06



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Exhibit A

CP'S ADVEST ACCOUNT				
DATE	LIQUIDATED	COST	INVESTED	VARIABLE ANNUITY
January 2004	\$50,000	None	\$65,000 ¹	ING Golden Select ES II Nationwide Best of America ("BOA") Choice Venue 2
June 2004	\$96,000	\$6,000	\$90,000	Nationwide BOA Choice Venue 2 ING Golden Select ES II
September 2004	\$260,515	\$16,628.22	\$248,000	ING Golden Select ES II Nationwide BOA Choice Venue 2
November 2004	\$250,000	\$13,500	\$236,000	Nationwide BOA Choice Venue 2 ING Golden Select ES II
TOTALS	\$656,515	\$36,128.22	\$639,000	

EW'S ADVEST ACCOUNT				
DATE	LIQUIDATED	COST	INVESTED	VARIABLE ANNUITY
January 2004	\$63,696.45	\$3,696.45	\$60,000	Nationwide BOA Choice Venue 2 GE Life Choice VA
March 2004	\$93,629.01 \$63,752.90	\$4,859.48 \$3,752.90	\$148,800	GE Life Choice VA Nationwide BOA Choice Venue Nationwide BOA Choice Venue 2
September 2004	\$149,453.84	\$9,453.84	\$140,000	Nationwide BOA Choice Venue 2 Nationwide BOA Choice Venue
TOTALS	\$236,024.20	\$21,762.67	\$348,800	

¹ The source for the additional \$15,000 over the liquidated amount came from the proceeds of the sale of mutual funds.

EM'S ADVEST ACCOUNT				
DATE	LIQUIDATED	COST	INVESTED	VARIABLE ANNUITY
July 2004	\$52,826	\$2,916	\$50,000	Putnam Allstate Advisor Nationwide BOA Choice Venue
TOTALS	\$52,826	\$2,916	\$50,000	

DD'S ADVEST ACCOUNT				
DATE	LIQUIDATED	COST	INVESTED	VARIABLE ANNUITY
April 2004			\$50,000 ²	Nationwide BOA Future Venue VA
August 2004	\$14,694.44	\$1,159.63	\$13,534.81	Nationwide Future VA Nationwide BOA Future Venue VA
TOTALS	\$14,694.44	\$1,159.63	\$63,534.81	

² This sum represents the proceeds from the home equity loan.