

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,	:	
	:	
Complainant,	:	Disciplinary Proceeding
	:	No. 2005000934401
v.	:	
	:	Hearing Officer – DMF
HENRY C. BAREFIELD	:	
(CRD No. 4075146),	:	DEFAULT DECISION
	:	
Respondent.	:	December 20, 2006

Summary

Respondent is barred from associating with any NASD member in any capacity for misuse of customer funds, in violation of Rules 2330(a) and 2110, and failing to respond to requests for information, in violation of Rules 8210 and 2110.

Appearances

Richard S. Schultz, Esq., Chicago, IL (Rory C. Flynn, Esq., Washington, DC, and Mark P. Dauer, Esq., New Orleans, LA, Of Counsel), for Complainant.

No appearance by or for Respondent.

DECISION

I. Introduction

The Department of Enforcement filed the attached Complaint on April 18, 2006, alleging that Respondent Henry C. Barefield misused customer funds, in violation of Rules 2330(a) and 2110, and failed to respond to requests for information, in violation of Rules 8210 and 2110. Respondent did not file an Answer to the Complaint. On July 12,

2006, Enforcement filed a motion for a default decision, supported by the declaration of Richard S. Schultz and eight exhibits. Respondent did not reply to the motion.¹

II. Respondent's Default

On or about April 17, 2006, Enforcement sent the Complaint and Notice of Complaint to Respondent by regular and certified first class mail addressed to Respondent's most current residential address listed in the Central Registration Depository (the CRD address). On May 19, 2006, Enforcement sent the Complaint and Second Notice of Complaint to Respondent by regular and certified first class mail addressed to the CRD address. Respondent did not file an Answer or otherwise respond to the Complaint.

Enforcement served the Complaint and the Notices of Complaint on Respondent in accordance with Rule 9134, giving him constructive notice of this proceeding. By failing to respond to the Complaint, he defaulted. Pursuant to Rule 9269, the Hearing Officer will deem the allegations in the Complaint admitted.

III. Jurisdiction

Respondent was registered as a general securities representative through NASD member Pruco Securities, LLC, from July 2001 until March 2005, and from August 2004 until March 2005 he was also registered through Pruco as an investment company and variable contracts products limited representative. Although Respondent has not been associated with any NASD member since then, he remains subject to NASD jurisdiction for purposes of this proceeding, pursuant to Art. V, § 4 of NASD's By-Laws, because the

¹ The factual determinations in this decision are based on the allegations of the attached Complaint, which are deemed admitted, and the additional materials filed by Enforcement with its motion.

Complaint was filed within two years after the termination of his association, and it charges him with misconduct while he was registered and with failing to provide information requested during the two-year period.

IV. Violations

The first three causes of the Complaint allege that Respondent misused customer funds while associated with Pruco. The first cause alleges that in or about September 2004, customer JW withdrew two checks from her Pruco IRA totaling \$10,000, endorsed the checks and gave them to Respondent with instructions that the funds be credited to a different mutual fund within her IRA. Respondent did not follow these instructions. Instead, he co-endorsed the checks and deposited them in his own account and used the funds for some purpose other than to benefit JW, without JW's knowledge or consent. After JW complained to Pruco, Respondent gave JW a cashier's check in the amount of \$14,500 to reimburse her for the amount Respondent misused and any losses JW may have incurred as a result of Respondent's failure to invest the funds.

The second cause alleges that in or about February 2004, Respondent forged MT's signature, or caused it to be forged, on a form requesting a distribution from MT's Pruco IRA. The form directed Pruco to send the distribution funds to Respondent's CRD address. Respondent sent the form to Pruco with a request that it send the funds "as soon as available," and in reliance on the form Pruco issued a check in the amount of \$20,690, payable to MT, and sent it to Respondent's CRD address. Respondent then forged MT's signature, or caused it to be forged, on the check, deposited it in his bank account and used the funds for some purpose other than to benefit MT, all without MT's knowledge or consent.

In June 2004, Respondent forged MT's signature, or caused it to be forged, on a form requesting a distribution from MT's Pruco annuity and that the distribution funds be sent to Respondent's CRD address. Respondent sent the form to Pruco, and in reliance on the form Pruco issued a \$20,000 check, made payable to MT, and sent it to Respondent's CRD address. Respondent then forged MT's signature, or caused it to be forged, on the check, deposited it in his bank account and used the proceeds for some purpose other than to benefit MT, all without MT's knowledge or consent.

In or about October 2004, Respondent telephoned Pruco and stated that MT wanted to withdraw \$5,000 from her annuity. Pruco then sent MT a check for \$5,000, which MT endorsed and deposited in her bank account. In fact, however, MT had wanted to withdraw only \$1,000 from her annuity, not \$5,000. At Respondent's request, she gave him a check in the amount of \$4,000, made payable to him, with instructions to re-deposit the funds in her annuity. Instead, Respondent endorsed the check, deposited it in his bank account and used the funds for some purpose other than to benefit MT, all without MT's knowledge and consent.

The third cause of the Complaint alleges that in December 2004, customer DBW gave Respondent a check for \$13,000, made payable to Respondent on his instructions, for the purpose of purchasing shares of a mutual fund through Pruco. Instead of purchasing the mutual fund shares, Respondent used the funds for some purpose other than to benefit DBW. DBW subsequently complained to Respondent that she had not received a confirmation of her intended mutual fund purchase, and in April 2005 Respondent returned \$9,000 of DBW's funds to DBW; he did not return the balance.

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent misused customer funds, in violation of Rules 2330(a) and 2110.

The fourth cause of the Complaint alleges that on or about May 16, June 14, June 30, September 26, October 10 and October 25, 2005, NASD staff sent Respondent requests, pursuant to Rule 8210, for various documents and information regarding his receipt of funds from JW, MT and DBW. NASD staff sent the requests by certified and regular first class mail to Respondent at his CRD address. Respondent did not respond in any manner to any of these requests.

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent failed to respond to requests for information, in violation of Rules 8210 and 2110.

V. Sanctions

Based on the allegations in the Complaint, Respondent's misuse of customer funds in this case rises to the level of conversion. For conversion, the Sanction Guidelines recommend a bar as the standard sanction, regardless of the amount converted. NASD Sanction Guidelines at 38 (2006). There is no evidence of any mitigating facts in this case that would justify a lesser sanction.

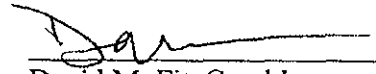
For failing to respond to requests for information, the Guidelines recommend a bar. NASD Sanction Guidelines at 35. Again, there is no evidence of any mitigating facts that would justify a lesser sanction in this case.²

² Enforcement did not request an order of restitution for customers MT and DBW.

VI. Conclusion

Respondent Henry C. Barefield is barred from associating with any NASD member in any capacity for misuse of customer funds, in violation of Rules 2330(a) and 2110, and for failing to respond to requests for information, in violation of Rules 8210 and 2110. The bars will be effective immediately if this decision becomes NASD's final disciplinary action.

SO ORDERED.



David M. FitzGerald
Hearing Officer

Copies to: Henry C. Barefield (*via overnight and first class mail*)
 Richard S. Schultz, Esq. (*via electronic and first class mail*)
 Mark P. Dauer, Esq. (*via electronic and first class mail*)
 Rory C. Flynn, Esq. (*via electronic and first class mail*)

**NASD
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant

vs.

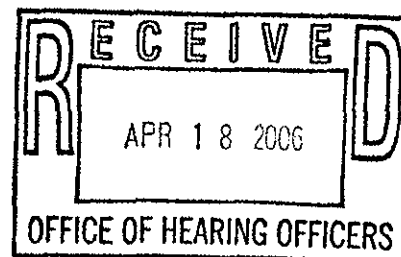
HENRY C. BAREFIELD
Limited Registered Principal
(CRD No. 4075146)

Respondent

**Disciplinary Proceeding
No. 2005000934401**

Hearing Officer

COMPLAINT



Upon information and belief, Complainant alleges as follows:

1. From on or about July 10, 2001 to on or about March 11, 2005, Henry C.

Barefield ("Respondent Barefield") was registered as a General Securities Representative and an Investment Company and Variable Contracts Products Principal with Pruco Securities, L.L.C. ("Member"), a member of NASD. Respondent Barefield is not currently registered with any member of NASD. Since this Complaint is filed within two years of the termination of Respondent Barefield's registration with the Member, Respondent Barefield is subject to the jurisdiction of NASD, pursuant to Article V, Section 4 of the NASD's By-Laws.

2. During all times mentioned herein, JW, MT and DBW were members of the public, who maintained securities accounts or individual retirement accounts with the Member, which were serviced by Respondent Barefield.

FIRST CAUSE FOR COMPLAINT

**Conduct Rules 2110 and 2330 by Respondent Barefield - Misuse of JW's Funds by
Respondent Barefield.**

3. Paragraph numbers 1 and 2 above are re-alleged and incorporated herein by reference as paragraph 3.

4. In or about September 2004, JW withdrew two checks from her securities IRA account with the Member. One of the checks was for \$9,000 and the other check was for \$1,000. JW endorsed the checks and gave them to Respondent Barefield with instructions that the funds be credited to a different mutual fund within her same IRA account with the Member. Respondent Barefield failed to follow JW's instructions in that he co-endorsed the checks, deposited them in his own account with Northern Trust Bank in Chicago, Illinois, and used the funds for some purpose other than the benefit of JW, without the knowledge or consent of JW. After JW complained to the Member, Respondent Barefield produced a cashier's check for \$14,500, dated January 15, 2005, made payable to JW to reimburse her for the amount misused and any losses from the misuse of funds.

5. The acts, practices and conduct set forth above constitute separate and distinct violations of NASD Conduct Rules 2110 and 2330 by Respondent Barefield.

SECOND CAUSE FOR COMPLAINT

Conduct Rules 2110 and 2330 by Respondent Barefield - Misuse of MT's funds and Affixing MT's Signature Without her Knowledge or Consent by Respondent Barefield.

6. In or about February 2004, Respondent Barefield affixed MT's signature or caused MT's signature to be affixed on a form entitled IRA Distribution Command & Investor Accounts ("IRA Distribution Form"), which requested that there be a distribution of \$23,000 from MT's IRA account with the Member, without MT's knowledge and consent. The IRA Distribution Form directed that the proceeds check be mailed to [REDACTED] [REDACTED] which is Respondent Barefield's address as listed on the Central Registration Depository ("CRD Address").

7. On or about February 9, 2004, Respondent Barefield sent or caused the IRA Distribution Form by facsimile to the Member, with the statement "please process and mail out

DISCIPLINARY PROCEEDING No. E8A2003091501

first class as soon as available,” without the knowledge and consent of MT. Based on the submission of the IRA Distribution Form, the Member issued a check dated February 20, 2004, in the amount of \$20,690, made payable to MT, and mailed the check to Respondent Barefield’s CRD Address.

8. On or about February 24, 2004, Respondent Barefield affixed MT’s name to the check, or caused MT’s name to be affixed to the check for \$20,690, deposited the proceeds of the check to be deposited in Respondent Barefield’s account with Northern Trust Bank and used the funds for some purpose other than the benefit of MT, all without the knowledge and consent of MT.

9. In or about June 2004, Respondent Barefield affixed MT’s signature or caused MT’s signature to be affixed on a form entitled Request for Partial of Automated Withdrawal Form (“Annuity Distribution Form”), which requested that there be a distribution of \$20,000 from MT’s Annuity Account with the Member, without MT’s knowledge and consent. The Annuity Distribution Form directed that the proceeds check be mailed to Respondent Barefield’s CRD Address.

10. On or about June 30, 2004, Respondent Barefield sent or caused the Annuity Distribution Form by facsimile to the Member without the knowledge and consent of MT. Based on the submission of the Annuity Distribution Form, the Member issued a check dated August 24, 2004, in the amount of \$20,000, made payable to MT, and mailed the check to Respondent Barefield’s CRD Address.

11. On or about August 26, 2004, Respondent Barefield affixed MT’s name to the check, or caused MT’s name to be affixed to the check for \$20,000, deposited the proceeds of the check to be deposited in Respondent Barefield’s account with Northern Trust Bank and used the

funds for some purpose other than the benefit of MT, all without the knowledge and consent of MT.

12. In or about October 2004, Respondent Barefield telephoned the Member and stated that MT wanted to withdraw \$5,000 from her annuity. Pursuant to the request, a check for \$5,000 was mailed to MT, and she endorsed and deposited the check into her account.

13. MT only wanted to make a \$1,000 withdrawal from the annuity account, so Respondent Barefield told her to give him a check, made payable to him and he would deposit the \$4,000 back into her annuity. Based on these instructions, on or about October 30, 2004, MT wrote a check for \$4,000 made payable to Respondent Barefield, and gave it to him with instructions that he return the \$4,000 to her annuity. Contrary to those instructions, Respondent Barefield endorsed the check, deposited the check in his bank account with Northern Trust Bank and used the funds for some purpose other than the benefit of MT, all without the knowledge and consent of MT.

14. The acts, practices and conduct set forth above constitute separate and distinct violations of NASD Conduct Rules 2110 and 2330 by Respondent Barefield.

THIRD CAUSE FOR COMPLAINT
Conduct Rules 2110 and 2330 by Respondent Barefield - Misuse of DBW's Funds by
Respondent Barefield.

15. Paragraph numbers 1 through 14 above are re-alleged and incorporated herein by reference as paragraph 15.

16. On or about December 29, 2004, DBW gave Respondent Barefield a check for \$13,000 made payable to Respondent Barefield, based on his instructions. DBW told Respondent Barefield that the funds should be used to purchase shares of a mutual fund through the Member. Rather than using the funds as directed, Respondent Barefield used the funds for

some purpose other than the benefit of DBW. DBW complained to Respondent Barefield after she did not receive a confirmation of any purchase with the Member, and on or about April 14, 2005, Respondent Barefield returned \$9,000 of DBW's funds. Respondent Barefield did not return the remainder of DBW's funds to DBW.

17. The acts, practices and conduct set forth above constitute separate and distinct violations of NASD Conduct Rules 2110 and 2330 by Respondent Barefield.

FOURTH CAUSE FOR COMPLAINT

Conduct Rule 2110 and Procedural Rule 8210 by Respondent Barefield - Failure to Respond to the Staff's Requests for Information by Respondent Barefield.

18. Paragraph numbers 1 through 17 above are re-alleged and incorporated herein by reference as paragraph 18.

19. On or about May 16, 2005, NASD staff ("Staff") sent to Respondent Barefield a request that he provide certain documents and information related to the complaints of JW and MT, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210. The request for information was sent by first class mail and by certified mail, return receipt requested, to Respondent Barefield's addresses of record as contained in the records of the Central Registration Depository ("CRD Address"). The first class mailing was not returned to the Staff and the certified mailing was returned marked "Refused."

20. On or about June 14, 2005, the Staff sent to Respondent Barefield a Second Request that he provide certain documents and information related to the complaints of JW and MT, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210. The request for information was sent by first class mail and by certified mail, return receipt requested, to Respondent Barefield's CRD Addresses. The first class mailing to Respondent Barefield's CRD Address was not returned to the Staff. The certified mailing to Respondent Barefield's

DISCIPLINARY PROCEEDING No. E8A2003091501

CRD Address was returned marked "Return to Sender – Unclaimed."

21. On or about June 30, 2005, the Staff sent to Respondent Barefield a Final Request that he provide certain documents and information related to the complaints of JW and MT, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210. The request for information was sent by first class mail and by certified mail, return receipt requested, to Respondent Barefield's CRD Addresses. The first class mailing to Respondent Barefield's CRD Address was not returned to the Staff. The certified mailing to Respondent Barefield's CRD Address was returned marked "Return to Sender – Unclaimed."

22. On or about September 26, 2005, the Staff sent to Respondent Barefield a request that he provide certain documents and information related to the complaint of DBW, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210. The request for information was sent by first class mail and by certified mail, return receipt requested, to Respondent Barefield's CRD Addresses. The first class mailing to Respondent Barefield's CRD Address was not returned to the Staff. The certified mailing to Respondent Barefield's CRD Address was returned marked "Return to Sender – Unclaimed."

23. On or about October 10, 2005, the Staff sent to Respondent Barefield a Second Request that he provide certain documents and information related to the complaint of DBW, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210. The request for information was sent by first class mail and by certified mail, return receipt requested, to Respondent Barefield's CRD Addresses. The first class mailing to Respondent Barefield's CRD Address was not returned to the Staff. The certified mailing to Respondent Barefield's CRD Address was returned marked "Return to Sender – Unclaimed."

DISCIPLINARY PROCEEDING No. E8A2003091501

24. On or about October 25, 2005, the Staff sent to Respondent Barefield a Final Request that he provide certain documents and information related to the complaint of DBW, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210. The request for information was sent by first class mail and by certified mail, return receipt requested, to Respondent Barefield's CRD Addresses. The first class mailing to Respondent Barefield's CRD Address was not returned to the Staff. The certified return receipt was returned to the Staff signed by someone with the last name "Barefield."

25. Respondent Barefield failed to respond to each and all of the requests for documents and information described in paragraphs 19 through 24 above, and the time for Respondent Barefield to respond has passed.

26. The aforementioned acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 and NASD Procedural Rule 8210 by Respondent Barefield.

PRAYER FOR RELIEF

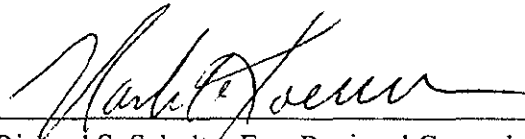
WHEREFORE, Complainant respectfully requests:

- 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 requiring Respondent to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest;

DISCIPLINARY PROCEEDING No. E8A2003091501

- 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

Richard S. Schultz, Esq. Regional Counsel
Mark A. Koerner, Esq. Regional Chief Counsel
NASD, District 8
55 West Monroe Street
Chicago, IL 60603-5052
(312) 899-4330; Fax. No. (312) 899-4600

NASD District Director

Carlotta A. Romano
Senior Vice President
and Regional Director
NASD, District 8
55 West Monroe Street
Chicago, IL 60603-5052
(312) 899-4400; Fax. No. (312) 606-0742

Of Counsel:

Rory C. Flynn, Esq. Of Counsel
NASD Department of Enforcement
1801 K Street, N.W., Suite 800
Washington, D.C. 20006
(202) 974-2974; Fax. No. (202) 721-8318

Roger D. Hogoboom, Esq. Of Counsel
NASD Department of Enforcement
370 17th Street, Suite 2900
Denver, CO 80202
(303) 446-3114; Fax. No. (303) 620-9540