

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JOHN B. PARTAIN
(CRD No. 4610449),

Respondent.

Disciplinary Proceeding
No. 2005000961201

Hearing Officer – SNB

Default Decision

April 3, 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

David F. Newman, Esq., Regional Counsel, Philadelphia, PA, and Rory C. Flynn, Esq., Washington, DC, of Counsel, for the Department of Enforcement.

No appearance by Respondent.

DECISION

I. Background

On November 18, 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 John B. Partain (“Respondent”) violated Rule 2110 by converting customer funds. The Complaint also alleges that Respondent violated Rules 8210 and 2110 by failing to respond to NASD Staff requests for information. Respondent did not file an Answer to the Complaint. Accordingly, on February 13, 2006, Enforcement filed a Motion for Entry of Default Decision and Imposition of Sanctions,

supported by the declaration of David Newman and 3 exhibits. Respondent did not reply to the Motion. For the reasons set forth below, the Motion is granted.¹

II. Respondent's Default

Enforcement sent the Complaint and Notice of Complaint to Respondent on November 14, 2005, by certified mail, to his last known residential address listed in the Central Registration Depository (the "CRD address"). In the same manner, Enforcement sent the Complaint and Second Notice of Complaint to the same address on December 14, 2005. Respondent did not file an Answer to the Complaint.

Enforcement complied with Rule 9134(b) (1) by mailing the Complaint and Notices of Complaint to Respondent's CRD address, thereby giving Respondent constructive notice of this proceeding. By failing to file an Answer, Respondent defaulted. Pursuant to Rules 9215(f) and 9269(a) (2), the allegations in the Complaint are deemed admitted.

III. Jurisdiction

Respondent was registered as an Investment Company and Variable Contracts Products Representative with member firm Wachovia Securities LLC ("Wachovia") in April 2003. He was associated with Wachovia from December 2002 through February 2005. He is not currently registered with an NASD 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, 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

¹ The factual determinations in this decision are based on the allegations of the attached Complaint, which are deemed admitted, and Enforcement's Motion for Entry of Default Decision and supporting materials.

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 between October 2004 and February 2005, Respondent made 13 electronic transfers totaling approximately \$6,000 from the bank accounts of three customers at Wachovia Bank to his personal bank account at Wachovia Bank. He transferred the funds without the authorization or consent of the three customers and converted the \$6,000 to his own use.

The allegations of the Complaint are sufficient to establish, for purposes of this default decision, that Respondent converted customer funds in violation of Rule 2110.

B. Failure to Respond

The Complaint also alleges that, on April 28 and May 16, 2005, NASD Staff sent Respondent requests for information concerning his alleged conversion activities. The Staff sent these requests 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.² Here, although Respondent received valid constructive notice of the Staff's requests,³ he failed to respond to them. Respondent thereby violated Rules 8210 and 2110.

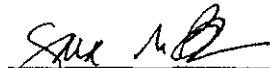
VI. Sanctions

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 (2005 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.

V. 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

² 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).

³ See David I. Cassuto, Exchange Act Release No. 48,087, 2003 SEC LEXIS 1496, at *9 (June 25, 2003).

Copies to:

John B. Partain (*via certified and first class mail*)

David F. Newman, Esq. (*via electronic and first class mail*)

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

Roger D. Hogoboom, Esq. (*via electronic and first class mail*)

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JOHN B. PARTAIN
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COMPLAINT

Upon information and belief, Complainant alleges as follows:

1. On or about April 25, 2003, John B. Partain ("Partain") became registered with NASD as an Investment Company and Variable Contracts Products Representative. Partain was associated with Wachovia Securities LLC ("Wachovia"), a member firm, from on or about December 17, 2002 until on or about February 17, 2005.
2. On or about March 15, 2005, Wachovia filed a Form U5 terminating Partain's registration with the firm.
3. Partain is not currently registered or associated with a member of NASD, but remains subject to the jurisdiction of NASD pursuant to Article V, Section 4, of the By-Laws, in that the conduct that is the subject of the First Cause of Complaint occurred while he was associated with Wachovia, the failure to respond to information requests that is the subject of the Second Cause of Complaint occurred within two years of his last association with a member firm, and this Complaint is being filed within two years from the effective date of Partain's termination of registration of his last association with an

NASD member – March 15, 2005.

**FIRST CAUSE OF COMPLAINT
(Conversion)
NASD Conduct Rule 2110**

4. Paragraphs 1 through 3 are realleged and incorporated herein by reference.
5. Between on or about October 12, 2004 and on or about February 8, 2005, Partain effected 13 electronic transfers totaling approximately \$6,000 out of the bank accounts of three customers at Wachovia Bank and into his personal bank account at Wachovia Bank. Partain transferred those funds without the authorization or consent of the three customers and converted the \$6,000 for his own purposes.
6. Such acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 by Partain.

**SECOND CAUSE OF COMPLAINT
(Failures to Respond to Requests for Information)
NASD Conduct Rule 2110 and Procedural Rule 8210**

7. Paragraphs 1 through 6 are realleged and incorporated by reference.
8. On or about April 28, 2005, pursuant to Procedural Rule 8210, NASD staff in the Philadelphia District Office sent a letter to Partain requesting that he provide information relating to allegations that he had converted customers' funds, as described above. The letter was sent by certified and first class mail to Partain at the most current residential address listed for him in Central Registry Depository ("CRD"): [REDACTED] [REDACTED] (the "CRD address"). The certified letter was returned by the Postal Service to the Philadelphia District Office and was marked as "unclaimed"; the first class letter was not returned. The April 28, 2005 letter requested that Partain provide the information by May 12, 2005. Partain did not respond to this request.

9. On or about May 16, 2005, staff in the Philadelphia District Office of NASD, pursuant to Procedural Rule 8210, sent a second letter to Partain requesting the same information as in the April 28, 2005 letter. The letter was by certified and first class mail to Partain at his CRD address. The certified letter was returned as "unclaimed" and the first class letter was not returned. The May 16 letter requested that Partain provide the information by May 31, 2005, and informed Partain that a failure to provide information constitutes a violation of Rule 8210. Partain did not respond to this request.
10. On or about June 1, 2005, pursuant to Procedural Rule 8210, NASD staff in the Philadelphia District Office sent a third letter to Partain requesting that he provide the same information as in the April 28, 2005 letter. This request was sent by certified and first class mail to Partain's CRD address. The certified letter was returned as "unclaimed" and the first class letter was not returned. The June 1 letter requested a response by June 15, 2005, and informed Partain that a failure to provide information constitutes a violation of Rule 8210. Partain did not provide the requested information.
11. NASD staff is not aware of a more current residential address for Partain or a business address.
12. Such acts, practices and conduct constitute separate and distinct violations of NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by Partain.

PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Partain committed the violations charged and alleged herein;
- B. An order imposing sanctions upon Partain in accordance with NASD Rule 8310;

- C. An order imposing such costs relating to this proceeding as is deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330; and
- D. An order granting all further relief that is warranted under the circumstances.

NASD DEPARTMENT OF ENFORCEMENT

Date: November 14, 2005



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