

NASD OFFICE OF HEARING OFFICERS

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REGISTRATION & DISCLOSURE

DEPARTMENT OF ENFORCEMENT

Complainant,

v.

LYNETTE JOAN JACOBS
(a/k/a LYNETTE DAVIS)
(CRD No. 1932387),

Respondent.

Disciplinary Proceeding No.
2005001763401

Hearing Officer – David M. FitzGerald

DEFAULT DECISION

June 12, 2007

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 for failing to appear for an on-the-record interview, in violation of Rules 8210 and 2110.

DECISION

I. Introduction

The Department of Enforcement filed a Complaint on February 7, 2007, and filed the attached Amended Complaint on February 9, 2007. Both the Complaint and the Amended Complaint alleged that Respondent Lynette Joan Jacobs misused customer funds, in violation of Rules 2330(a) and 2110, and failed to appear for an on-the-record interview, in violation of Rules 8210 and 2110. Respondent did not file an Answer. On May 7, 2007, Enforcement filed a motion for a default decision, supported by the declaration of Paul Hare and 17 exhibits. Respondent did not reply to the motion.¹

¹ There was no material difference between the allegations in the Complaint and those in the Amended Complaint. Because the Amended Complaint superseded the Complaint, however, the factual determinations in this decision are based on the allegations of the attached Amended Complaint, which are deemed admitted, as well as the additional materials filed by Enforcement with its motion.

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II. Respondent's Default

On February 8, 2007, Enforcement sent the Amended Complaint and a Notice of Amended 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), and to an address obtained by the staff through an Equifax search and a prior address listed in CRD. On March 13, 2007, Enforcement sent the Amended Complaint and a Second Notice of Complaint to Respondent by regular and certified first class mail to the same addresses. Respondent did not file an Answer or otherwise respond to the Amended Complaint.

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

III. Jurisdiction

Respondent was registered through various NASD member firms in varying capacities beginning in 1989. She was most recently registered as a general securities representative through Wachovia Securities, LLC from August 2004 until July 2006. Although Respondent is not currently associated with any NASD member, she remains subject to NASD jurisdiction for purposes of this proceeding, pursuant to Art. V, § 4 of NASD's By-Laws, because the Complaint was filed within two years after the termination of her last registration association, and it charges her with misconduct while registered (through Citicorp Investment Services) and with failing to provide information requested during the two-year period following termination of her last registration.

IV. Violations

The first cause of the Complaint alleges that Respondent met customer ME, who is retired and 88 years old, while Respondent was registered as an investment company and variable contract products limited representative through Fleet Enterprises, Inc. ME subsequently opened an account through Respondent while Respondent was registered with Morgan Stanley DW, Inc., and in 2001 ME purchased a \$56,000 variable annuity issued by Allstate Insurance Company through Respondent.

In March 2003 Allstate received, by facsimile, an undated handwritten letter purportedly signed by ME. The letter asked Allstate to withdraw \$8,500 from ME's annuity, prepare a check in that amount made payable to "Lynette Davis," and mail the check to "Lynette Davis" at a specified address in Elizabeth, New Jersey. According to CRD records, Respondent resided at the Elizabeth, New Jersey address at the relevant time and Respondent has used the name "Lynette Davis." Allstate prepared and sent the check as the letter directed. The check was endorsed by Respondent, using the name "Lynette Davis," and by HS, an acquaintance of Respondent, and the funds were deposited in HS's bank account.

ME discovered the withdrawal from her annuity when she received her annual statement from Allstate in 2004 and with the assistance of her accountant contacted Allstate, and obtained a copy of the handwritten letter requesting the withdrawal. She determined that the letter was not in her handwriting and that her signature had been forged. ME did not consent to Allstate's issuance of the \$8,500 check or the manner in which the funds were used, and the funds were not deposited in her account.

In support of its motion, Enforcement provided, among other things, a sworn affidavit signed by ME attesting to the facts set forth above, as well as copies of the letter to Allstate purportedly written and signed by ME and the front and back of the check issued by Allstate, including the endorsements. Enforcement's exhibits also include a letter from Respondent to NASD staff, in response to a request for information, in which Respondent admitted that she received the check, but claimed that the check was sent to her address at ME's request and that upon receiving the check she accompanied ME to the bank, where ME deposited the check into ME's own account. Respondent did not explain, however, why the check was made payable to "Lynette Davis" rather than ME, and the check itself shows that it was not endorsed by ME, but rather was endorsed by HS and deposited to her account.

Thus, the allegations of the Complaint, which are deemed admitted, together with the materials submitted by Enforcement in support of its motion, are sufficient to establish, for purposes of this default decision, that Respondent misused customer ME's funds, in violation of Rules 2330(a) and 2110.

The second cause of the Complaint alleges that beginning in August 2005, NASD staff attempted to conduct an on-the-record interview (OTR) with Respondent. Respondent's OTR was scheduled on several occasions, but was re-scheduled or canceled for various reasons.

In July 2006, however, the staff sent Respondent a letter, pursuant to Rule 8210, requiring her to appear for an OTR on August 9, 2006. The staff sent the letter to Respondent at her CRD address, and pursuant to Rule 8210(d) she is deemed to have received it. Respondent did not appear for the August 9 OTR.

On August 9, Respondent called NASD staff and told them that she was not aware that she was required to appear for the OTR. She also gave the staff her cellular telephone number. On October 16, 2006, the staff sent Respondent a letter, pursuant to Rule 8210, requiring her to appear for an OTR on November 9, 2006. The staff sent the letter to Respondent at her CRD address and to an address that the staff obtained through an Equifax search. Pursuant to Rule 8210(d), Respondent is deemed to have received the letter sent to her CRD address. In addition, the staff called Respondent at the cellular telephone number she had provided and told her that she was expected to appear for the OTR on November 9. Nevertheless, she did not appear for the OTR on November 9.

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

V. Sanctions

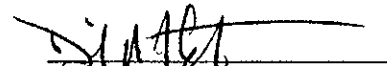
Based on the allegations in the Complaint, the misuse of customer funds in this case amounts to conversion. For conversion, the Sanction Guidelines recommend a bar as the standard sanction, regardless of the amount converted. NASD Sanction Guidelines at 38 (2006). There is no evidence of any mitigating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

For failing to respond to requests for information, including failure to appear for an OTR, 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

VI. Conclusion

Respondent Lynette Joan Jacobs 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 appear for an on-the-record interview, 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: Lynette Joan Jacobs (*via overnight courier and first class mail*)
Paul Hare, Esq. (*via electronic and first class mail*)
Mark 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

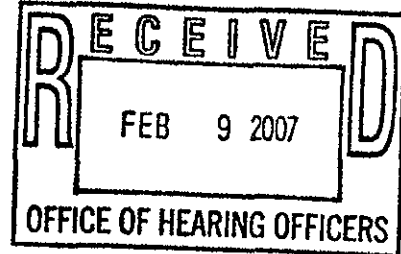
Complainant,

v.

LYNETTE JOAN JACOBS (A/K/A LYNETTE DAVIS)
(CRD No. 1932387),

Respondent.

DISCIPLINARY PROCEEDING
No. 2005001763401



AMENDED COMPLAINT

Upon information and belief, the Department of Enforcement ("Enforcement") alleges as follows:

JURISDICTION

1. In or about October 18, 1989, Respondent Lynette Joan Jacobs ("Jacobs") first became registered with NASD as an Investment Company Products/Variable Contracts Representative ("IR") through her association with an NASD member firm.
2. From on or about November 12, 1992, through on or about July 5, 1999, Jacobs was registered as an IR through her association with Fleet Enterprises, Inc. (BD No. 17434)("Fleet").
3. Jacobs worked for Fleet from within a branch of the firm's bank affiliate.
4. From on or about August 27, 1999, through on or about December 11, 2001, Jacobs was registered with NASD as an IR through her association with Morgan Stanley DW Inc. (BD No. 7556)("MSDW"). From December 7, 1999, through December 11, 2001,

Jacobs was also registered as a General Securities Representative (“GSR”) through her association with MSDW.

5. From on or about May 20, 2002, through March 9, 2004, Jacobs was registered with NASD as a GSR and IR through her association with Citicorp Investment Services (BD No. 23988)(“Citicorp”).
6. Most recently, from August 27, 2004, through July 17, 2006, Jacobs was registered with NASD as a GSR through her association with a member firm. On July 17, 2006, this member firm filed a Uniform Termination Notice for Securities Industry Registration (“Form U-5”) terminating Jacob’s registration. According to the Form U-5, Jacob’s last date of employment was July 12, 2006.
7. Although Jacobs is not currently registered with NASD, she remains subject to NASD jurisdiction pursuant to Article V, Section 4, of the Association’s By-Laws.

BACKGROUND

8. Customer ME is an 88 year-old retiree and former customer of Jacobs.
9. ME first met Jacobs when Jacobs was working for Fleet from within a New Jersey branch of the firm’s bank affiliate (hereinafter the “Bank Branch”).
10. ME eventually opened an account with Jacobs at MSDW and on or about March 19, 2001 ME purchased a \$56,000 variable annuity from Allstate. Jacobs was the broker on this investment.
11. In December 2001, Jacobs was terminated from MSDW and a new MSDW financial advisor was assigned to ME’s account.

FIRST CAUSE OF ACTION
VIOLATION OF NASD CONDUCT RULE 2330 AND 2110
(MISUSE OF CUSTOMER FUNDS)

12. Paragraphs 1 through 11 of this Complaint are re-alleged and incorporated herein by reference.
13. On or about March 3, 2003, an undated handwritten letter purportedly from ME was faxed to Allstate.
14. The letter stated that \$8,500 should be withdrawn from ME's Allstate annuity and a check should be sent to "Lynette Davis" at [REDACTED] [REDACTED] (the "Elizabeth Address").
15. On or about March 3, 2003, an \$8,500 check was drawn on the account of ME's Allstate variable annuity (the "Allstate Check") and made payable to "Lynette Davis."
16. On or about March 3, 2003, the Allstate Check was mailed to the Elizabeth Address.
17. According to the Central Registration Depository ("CRD"), Jacobs has also used the name Lynette Davis.
18. Additionally, CRD indicates that from August 1999 through November 2004, Jacobs lived at the Elizabeth Address.
19. The Allstate check bears two signature endorsements: Jacobs and HS.
20. On or about May 13, 2003, the Allstate Check was posted to the personal bank account of HS, who was an acquaintance of Jacobs.
21. Upon receipt of her statement from MSDW, in or about March 2004, ME discovered that that the Allstate Check had been issued to Jacobs.

22. ME reviewed the undated handwritten letter received by Allstate that purportedly authorized the issuance of the \$8,500, and concluded that it was not in her handwriting and that her signature had been forged.
23. ME never authorized nor consented to the issuance of the Allstate Check or the manner in which the funds were used by Jacobs.

By reason of the foregoing, Jacobs violated NASD Conduct Rules 2330 and 2110.

SECOND CAUSE OF ACTION

VIOLATION OF PROCEDURAL RULE 8210 AND NASD CONDUCT RULE 2110

(FAILURE TO APPEAR FOR AN ON-THE-RECORD INTERVIEW)

24. Paragraphs 1 through 23 of this Complaint are re-alleged and incorporated herein by reference.
25. From August 2005 through May 2006, the staff of NASD's District No. 10 office (the "Staff") attempted to conduct an on-the-record interview ("OTR") of Jacobs on four different dates. The OTRs were rescheduled, or cancelled for a variety of reasons.
26. In July and October 2006, the Staff again attempted to conduct an OTR of Jacobs. These attempts were unsuccessful. Specifically:

First Request for an OTR

- a. By letter dated July 24, 2006, sent to Jacobs, pursuant to and in accordance with NASD Procedural Rule 8210, at her last known residential address as reflected on CRD [REDACTED] (the "CRD Address"), the staff of NASD's District No. 10 office (the "Staff") requested that Jacobs appear for an OTR on August 9, 2006 (the "August 9th OTR").
- b. Jacobs did not appear for the August 9th OTR.

- c. On August 9th, Jacobs called the Staff and informed them that she unaware she needed to appear for the OTR.
- d. Jacobs also gave the Staff her cellular phone number.

Second Request for an OTR

- a. By letter dated October 16, 2006, sent pursuant to and in accordance with NASD Procedural Rule 8210 at the CRD Address the Staff requested that Jacobs appear for an OTR on November 9, 2006 (the "November 9th OTR").
- b. The Staff conducted an Equifax search and discovered an alternate address for Jacobs [REDACTED] (the "Irvington Address").
- c. This second request letter was sent to the CRD Address and the Irvington Address.
- d. On October 16, 2006, the Staff called Jacobs at the cellular telephone number she provided and, after reaching her, informed Jacobs that she was expected to appear for the November 9th OTR.
- e. Jacobs did not appear for the November 9th OTR.

By reason of the foregoing, Respondent violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

PRAYER

WHEREFORE, Enforcement respectfully requests that the Panel:

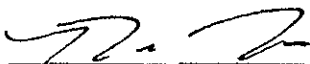
- A. order that one or more of the sanctions provided under NASD Rule 8310(a) be imposed, including that the Respondent be required to disgorge fully any

and all ill-gotten gains and/or make full and complete restitution, together with interest;

- 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.

Dated: February 8, 2007

DEPARTMENT OF ENFORCEMENT



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