

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

GEORGE E. BROWN McMAHON III
(CRD No. 3055065),

Respondent.

Disciplinary Proceeding
No. 2005003051001

DEFAULT DECISION

Hearing Officer – SNB

November 3, 2006

For misuse of customer funds, in violation of Rules 2330(a) and 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

Thomas M. Huber, Esq., Senior Regional Counsel, and John M. D'Amico, Esq., Regional Chief Counsel, Philadelphia, PA, (Mark P. Dauer, Esq., New Orleans, LA and Rory C. Flynn, Esq., Washington, DC, of Counsel), for NASD Department of Enforcement.

No appearance by Respondent.

DECISION

I. Background

On June 26, 2006, the Department of Enforcement ("Enforcement") filed a two-cause Complaint in this proceeding, attached to this Decision as Exhibit A. The first cause of the Complaint alleges that George E. Brown McMahon III ("Respondent") violated Rules 2110 and 2330(a) by misusing customer funds. The second cause 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 September 18, 2006, Enforcement filed a motion for entry of default decision, supported by the Declaration of Thomas P. Huber and three exhibits. Respondent did not file a response to the motion.

For the reasons set forth below, Enforcement's motion is granted.¹

II. Respondent's Default

On June 26, 2006, Enforcement served the Complaint and Notice of Complaint on Respondent by certified mail, sent to Respondent's current residential address as reflected in the Central Registration Depository (the "CRD Address"), as well as four alternate addresses that NASD Staff believed might be more current residential addresses (the "Alternate Addresses"). Respondent did not file an Answer. In the same manner, on July 27, 2006, Enforcement served the Complaint and Second Notice of Complaint. Respondent again did not file an Answer.

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

III. Jurisdiction

Respondent first became registered with an NASD member in May 1998. He was registered with J. P. Turner & Company LLC ("JPT") as a General Securities

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

Representative from April 2003 to September 2004. Respondent is not currently associated with a 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 following termination of his last registration, and (2) the Complaint was filed within that two-year period.

IV. Violations

A. Misuse of Customer Funds

The Complaint alleges that between December 2003 and May 2004, Respondent instructed a customer ("TD") to sign eight checks totaling \$3,600, and make them payable to Respondent. Respondent told TD that the funds would be deposited in JPT accounts for TD or her minor children, and invested on their behalf. However, Respondent cashed the checks but did not deposit or invest the funds for TD or her children. 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.

B. Failure to Respond

The Complaint also alleges that, on January 11, 2006, NASD Staff sent Respondent a Rule 8210 request for information concerning the checks Respondent had received from TD. This request was sent by first class and certified mail to Respondent's CRD address and three additional addresses that NASD Staff believed might be more current residential addresses. In the same manner, on January 31 and February 22, 2006,

NASD Staff sent second and third requests for information to Respondent. In addition, on March 1, 2006, NASD Staff sent the request for information to Respondent at another address that was written on a certified mail envelope returned to the Staff. The Staff served the requests in accordance with Rule 8210(d), and therefore Respondent is deemed to have received them. Respondent did not respond.

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.

V. Sanctions

For misuse of customer funds, the NASD Sanction Guidelines recommend consideration of a bar, or a suspension of six months to two years and a fine, if there are mitigating circumstances. Here, Respondent cashed customer checks, and, contrary to his representation, Respondent did not invest the resulting funds for the benefit of TD or her children. There are no mitigating circumstances, and, therefore, a bar is justified. A bar is standard for failure to provide requested information.⁴ Again, there is no evidence of any mitigating circumstances that would justify a lesser sanction. Therefore,

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, Exch. Act Rel. 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, Exch. Act Rel. No. 48,087, 2003 SEC LEXIS 1496, at *9 (June 25, 2003).

⁴ NASD Sanction Guidelines ("Guidelines") at 35, 38 (2006 ed.).

Respondent is barred from associating with any NASD member in any capacity for these violations.

VI. Conclusion

For misuse of customer funds, in violation of Rules 2330(a) and 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

Copies to:

George E. Brown McMahon III *(via overnight and first-class mail)*
Thomas M. Huber, Esq. *(via electronic and first-class mail)*
Rory C. Flynn, Esq. *(via electronic and first-class mail)*
Mark P. Dauer, Esq. *(via electronic and first-class mail)*

NASD OFFICE OF HEARING OFFICERS

Department of Enforcement,

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v.

George E. Brown McMahon III
CRD No. 3055065

Respondent.

Disciplinary Proceeding
No. 2005003051001

Hearing Officer -

COMPLAINT

Date: June 26, 2006

Upon information and belief, Complainant alleges as follows:

1. Respondent George E. Brown McMahon III ("McMahon") first became registered with NASD in May 1998. He was registered with J.P. Turner & Company, LLC ("JPT") as a General Securities Representative from April 2003 to about September 14, 2004. JPT filed a Form U5 for McMahon on September 14, 2004 and he has not been registered with any member since September 14, 2004. On February 3, 2006, within two years of the date McMahon's association with JPT ended, JPT filed a Form U5 amendment for McMahon that disclosed he might have engaged in conduct actionable under applicable rules enforced by NASD. Specifically, the Form U5 amendment JPT filed included a "Yes" answer to question 7E(3)(a) and disclosed the receipt of a customer complaint alleging possible conversion of funds. NASD retains jurisdiction over McMahon for purposes of this Complaint pursuant to Article V, Section 4, of NASD's By-Laws in that: the misconduct alleged in Cause One occurred while McMahon was associated with JPT;

and, this Complaint was filed within, and the violations of Procedural Rule 8210 alleged in Cause Two occurred within, two years after JPT filed a Form U5 for McMahon.

**CAUSE ONE OF COMPLAINT
(Conduct Rules 2330(a) and 2110)**

2. The allegations in Paragraph 1 above are re-alleged and incorporated herein by reference.
3. On about December 31, 2003, TD gave McMahon two checks for \$300, each payable to "George Brown," for investment in securities at JPT. McMahon agreed to establish accounts at JPT in the names of TD's two minor children and invest the money in those accounts. McMahon directed TD to make the checks payable as she did. McMahon negotiated the checks but he did not invest the money as TD had instructed him.
4. From about May 10 to about May 21, 2004, TD gave McMahon six checks totaling about \$3,000 for investment in securities at JPT. Each check was payable to "George Brown" either preceded by or followed by the acronym "GBFC." McMahon directed TD to make the checks payable as she did and told TD that GBFC was the name of his company. McMahon agreed to deposit the checks either in an account he undertook to open for TD at JPT or in one of her children's accounts at JPT and invest the funds for her. McMahon negotiated the checks but he did not invest the money as TD had instructed him.
5. Based on the foregoing, McMahon violated NASD Conduct Rules 2330(a) and 2110.

**CAUSE TWO OF COMPLAINT
(Procedural Rule 8210 and Conduct Rule 2110)**

6. The allegations in Paragraph 1 above are re-alleged and incorporated herein by reference.
7. By a letter dated January 11, 2006, NASD requested, pursuant to Procedural Rule 8210, information in writing and documents from McMahon concerning, among other things, the checks he had received from TD. The letter warned McMahon that failure to comply

with the request would subject him to disciplinary action and it required a response by January 30. The letter was sent by first class and certified mail to [REDACTED] [REDACTED] (McMahon's residential address shown in Web CRD, hereinafter referred to as "Eagle Court") and to three other possible residential address for McMahon: [REDACTED] (hereinafter referred to as "Cave Creek Court"); [REDACTED] and, [REDACTED]

[REDACTED] The address on Cave Creek Court and the address in Merced, California were obtained from a National Comprehensive Report NASD's staff obtained for McMahon before mailing the letter requesting information and, based on that report, seemed possibly to be a current residential address. The address in Savannah, Georgia had been given to NASD's staff by TD as a possible residential address for McMahon. Both envelopes sent to Eagle Court were returned to the District Office marked, "Not Deliverable As Addressed Unable To Forward." The envelope sent by first class mail to Cave Creek Court was not returned. The envelope sent by certified mail to Cave Creek Court was returned to the District Office with no marking on it reflecting why it was returned. The envelope sent by first class mail to Savannah, Georgia was not returned. The envelope sent by certified mail to Savannah, Georgia was returned to the District Office marked, "Unclaimed." The envelope sent by first class mail to Merced, California was not returned to the District Office. The envelope sent by certified mail to Merced, California was returned to the District Office; a mark had been made on the envelope next to a word that was not legible but is believed to be the word "Unclaimed." McMahon failed to provide NASD any information or documents by January 30, 2006 or thereafter.

8. By a letter dated January 31, 2006, NASD requested, pursuant to Procedural Rule 8210, information in writing and documents from McMahon concerning, among other things, the checks he had received from TD. The letter warned McMahon that failure to comply with the request would subject him to disciplinary action and required a response by February 14. The letter was sent by first class and certified mail to the same four addresses to which the first letter had been sent. Both envelopes sent to Eagle Court were again returned marked, "Not Deliverable As Addressed Unable To Forward." The envelope sent by first class mail to Cave Creek Court was returned marked, "Not Deliverable As Addressed Unable To Forward." In addition, a heavy black ink mark had been made in a box next to the words "Moved Left No Address." The envelope sent by certified mail to Cave Creek Court was returned to the District Office marked, "Unclaimed." The envelope sent by first class mail to Savannah, Georgia was not returned to the District Office. The envelope sent by certified mail to Savannah, Georgia was returned marked, "Unclaimed." Both envelopes sent to Merced, California were returned marked, "Attempted Not Known." McMahon failed to provide NASD any information or documents by February 14, 2006 or thereafter.
9. By a letter dated February 22, 2006, NASD again requested, pursuant to Procedural Rule 8210, information in writing and documents from McMahon concerning, among other things, the checks he had received from TD. The letter warned McMahon that failure to comply with the request would subject him to disciplinary action and required a response by March 10. The letter was sent by first class and certified mail to the same four addresses to which the two prior requests had been sent. Both envelopes sent to Eagle Court were again returned marked, "Not Deliverable As Addressed Unable To Forward."

The envelope sent by first class mail to Cave Creek Court was not returned. The envelope sent by certified mail to Cave Creek Court was returned to the District Office; ink marks had been made over the address on the envelope and the address, [REDACTED] [REDACTED] had been handwritten on the envelope. The envelope sent by first class mail to Savannah, Georgia was not returned to the District Office. The envelope sent by certified mail to Savannah, Georgia was returned marked, "Unclaimed." The envelope sent by first class mail to Merced, California was returned marked, "Attempted Not Known." The envelope sent by certified mail to Merced, California was returned marked, "Unclaimed." McMahon failed to provide NASD any information or documents by March 10, 2006 or thereafter.

10. By a letter dated March 1, 2006 (i.e., before the due date specified in the letter dated February 22), NASD sent McMahon an additional letter that requested, pursuant to Procedural Rule 8210, information in writing and documents concerning, among other things, the checks he had received from TD. The letter was sent by first class and certified mail to [REDACTED] (the address written on the envelope returned from Cave Creek Court pursuant to the letter dated February 22).¹ The letter warned McMahon that failure to comply with the request would subject him to disciplinary action and required a response by March 22. The envelope sent by first class mail to this new address in Savannah was not returned. The District Office received a

¹ On February 28, 2006, the NASD examiner responsible for the investigation in this matter spoke by phone with a woman who claimed she was McMahon's former wife. The woman said she and McMahon had lived at the Cave Creek Court address before divorcing and she gave the examiner a possible address for McMahon in Daytona Beach, Florida. The examiner also sent the letter dated March 1 to the Daytona Beach address by first class and certified mail. Both envelopes sent to Daytona Beach were returned to the District Office. The letters "NSN" had been handwritten on both envelopes and "No Such Number" had been machine printed on both envelopes. Based on the results of the mailings, it is apparent the Daytona Beach address was not a valid current residential address for McMahon and NASD is disregarding the mailing to the Daytona Beach address for the purposes of this Complaint.

return receipt card signed my Dominique Garvin for the envelope sent by certified mail to the new Savannah address. McMahon failed to provide NASD any information or documents by March 22, 2006 or thereafter.

11. By a letter dated May 19, 2006, NASD again requested, pursuant to Procedural Rule 8210, information in writing and documents from McMahon concerning, among other things, the checks he had received from TD. The letter warned McMahon that failure to comply with the request would subject him to disciplinary action and required a response by May 31. The letter was sent by first class and certified mail to Eagle Court (McMahon's Web CRD address) and to [REDACTED]. The envelope sent by first class mail to Eagle Court was returned marked, "Not Deliverable As Addressed Unable To Forward." The envelope sent by certified mail to Eagle Court was also returned marked, "Not Deliverable As Addressed Unable To Forward." The envelope sent by first class mail to [REDACTED] in Savannah has not been returned. The envelope sent by certified mail to [REDACTED] in Savannah was returned marked, "Unclaimed." McMahon failed to provide NASD any information or documents by May 31, 2006 or thereafter.
12. NASD's staff has no knowledge of a residential address for McMahon that is more current than those to which the foregoing requests for information were sent and has no knowledge of a current business address for McMahon.
13. To the date of this Complaint, McMahon has failed to respond to NASD and he has failed to provide NASD any of the information or documents requested.
14. Based on the foregoing, McMahon violated NASD Procedural Rule 8210 and Conduct Rule 2110.

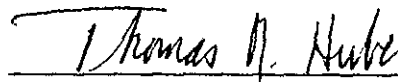
PRAYER FOR RELIEF

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 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;
- 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: June 26, 2006



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