

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JEFFREY CHARLES PLUNKETT
(CRD No. 2731884),

Respondent.

Disciplinary Proceeding
No. 2005003235201

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

August 20, 2007

Respondent is barred from associating with any member firm for forgery and conversion of customer funds, in violation of Conduct Rules 2330(a) and 2110, and for failure to respond to requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2110.

Appearances

George C. McGuigan, Jr., Regional Counsel, Dallas, TX (Rory C. Flynn, Chief Litigation Counsel, and Mark P. Dauer, Of Counsel) for the Department of Enforcement.

No appearance by or on behalf of Jeffrey Charles Plunkett.

DECISION

I. Introduction

On April 27, 2007, the Department of Enforcement ("Enforcement") filed the attached Complaint against Jeffrey Charles Plunkett ("Plunkett" or the "Respondent"). The Complaint charges that Plunkett converted \$539,252 from two customers' bank accounts by forging their signatures to checks drawn on their accounts, in violation of NASD Conduct Rules 2330(a) and 2110, and that he failed to respond to requests for information, in violation of NASD Procedural

Rule 8210 and NASD Conduct Rule 2110.¹ Plunkett did not answer or otherwise respond to the Complaint. On July 30, 2007, Enforcement filed a Motion for Entry of Default Decision, which is supported by the Declaration of George C. McGuigan, Jr., and five attached exhibits. The Respondent did not reply to the motion.

II. Findings of Fact and Conclusions of Law

A. Respondent's Default

The Hearing Officer finds that Enforcement properly served the Respondent with the Complaint by mailing three Notices of Complaint to his most current residential address shown in the Central Registration Depository (the "CRD address") and the Third Notice of Complaint to a second address Enforcement obtained after it mailed the first two notices. Enforcement sent each notice by first-class certified mail. Enforcement mailed the First Notice of Complaint on April 26, 2007, the Second Notice of Complaint on May 30, 2007, and the Third Notice of Complaint on June 6, 2007. Plunkett did not respond to any of the notices, and he has not to date filed an Answer with the Office of Hearing Officers. Accordingly, the Hearing Officer finds Plunkett in default and, pursuant to Procedural Rules 9215(f) and 9269(a)(2), deems the allegations in the attached Complaint admitted.²

B. Jurisdiction

Plunkett first entered the securities industry as an Investment Company and Variable Contracts Products Representative (Series 6) in May 1996 through Pruco Securities Corporation

¹ NASD is now the Financial Industry Regulatory Authority (FINRA). FINRA's rules, which include NASD Conduct and Procedural Rules, are available on FINRA's Internet site at <http://www.finra.org/RulesRegulation/FINRARules/index.htm>.

² *Department of Enforcement v. Reynolds Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at *5 (N.A.C. Dec. 9, 2003) (NASD Procedural Rule 9134(b)(1) allows for constructive notice by mailing a complaint to the respondent's most recent CRD address) (quoting *Lubeck v. SEC*, 1998 U.S. App. LEXIS 18849, at *20 (9th Cir. Aug. 12, 1998)).

("Pruco"), a FINRA member firm.³ Plunkett voluntarily ended his employment with Pruco in April 2000; but then in December 2000 he rejoined Pruco and registered as a General Securities Representative (Series 7). On May 6, 2005, Plunkett voluntarily left Pruco to join MML Investors Services, Inc. ("MML"). On May 13, 2005, Plunkett registered as a General Securities Representative and a General Securities Principal. Plunkett's association with MML ended in October 2005, and his FINRA registrations terminated on November 1, 2005.⁴

Plunkett is not currently registered with a member firm; however, he remains subject to FINRA's jurisdiction for the purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's Bylaws, because (1) the Complaint was filed within two years following the termination of his registration with FINRA and (2) the Complaint charges him with misconduct committed while he was associated with a FINRA member firm and with failing to respond to FINRA's requests for information made during the two-year period following his registration termination.

C. Forgery and Conversion

The First Cause of Action alleges that, between September 1999 and December 2003 and while Plunkett was associated with Pruco, he drew approximately 43 checks on two accounts belonging to customer W.M. by forging W.M.'s signature on the checks and then cashing them. W.M. did not authorize Plunkett to sign the checks and withdraw funds from W.M.'s account. Plunkett converted \$240,769 for his own use and benefit.

The First Cause of Action further alleges that, between December 2003 and August 2005 and while Plunkett was associated with Pruco, he drew approximately 47 checks on an account belonging to customer R.K. by forging R.K.'s signature on the checks and then cashing them.

³ Ex. 1, at 3 (CRD record).

⁴ *Id.* at 2.

R.K. did not authorize Plunkett to sign the checks and withdraw funds from R.K.'s account. Plunkett converted \$298,483 for his own use and benefit.

Enforcement's foregoing allegations, which are deemed admitted, are sufficient to establish for purposes of this proceeding that Plunkett forged two customers' signatures on bank checks to covert a total of \$539,252 from their accounts and that he thereby violated NASD Conduct Rules 2330(a) and 2110.⁵

D. Failure to Respond to Requests for Information

The Second Cause of Action alleges that Plunkett failed to respond to three requests for information. The Complaint alleges that pursuant to, and in accordance with, Procedural Rule 8210, FINRA staff sent Plunkett requests for information on December 2, 2005, and January 4, 2006. Each request was sent to Plunkett's CRD address. The first request was sent by first-class mail, and the other two were sent by first-class certified mail. To date Plunkett has not supplied the requested information.

These allegations, which are deemed admitted, are sufficient to establish for purposes of this proceeding that Plunkett failed to respond in any manner to Enforcement's requests for information, and so violated NASD Procedural Rule 8210. A violation of Procedural Rule 8210 is also a violation of Conduct Rule 2110.⁶

⁵ *Department of Enforcement v. Cooper*, No. C04050014, 2007 NASD Discip. LEXIS 15, at *9 (N.A.C. May 7, 2007) (holding that forgery is inconsistent with the requirements of Conduct Rule 2110 and "violates the high standards of commercial honor to which the NASD holds registered individuals.") *quoting District Bus. Conduct Comm. v. Peters*, Complaint No. C02960024, 1998 NASD Discip. LEXIS 42, at *4-5 (N.A.C. Nov. 13, 1998). *See also Prime Investors, Inc.*, Exchange Act Release No. 38,487, 1997 SEC LEXIS 761 at *25-26 (Apr. 8, 1997) (holding that the use of customer funds for any purpose not directed by the customer violates Rule 2110).

⁶ *Department of Enforcement v. Baxter*, No. C07990016, 2000 NASD Discip. LEXIS 3, at *25 (N.A.C. Apr. 19, 2000); *Joseph P. Hannan*, Exchange Act Release No. 40,438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998).

III. Sanctions

The FINRA Sanction Guidelines recommend a bar as the standard sanction for conversion of customer funds, regardless of the amount converted,⁷ and for forgery in egregious cases.⁸ The Hearing Officer finds that this is an egregious case and that there is no evidence of any mitigating facts that would justify a lesser sanction. Plunkett's misconduct resulted in customer losses totaling \$539,252.

For failing to respond to requests for information, the Sanction Guidelines recommend a bar.⁹ Again, there is no evidence of any mitigating facts that would justify a lesser sanction in this case. Accordingly, the Hearing Officer will bar the Respondent from associating with any member firm in any capacity for this violation.¹⁰

IV. Order

Jeffrey Charles Plunkett violated NASD Conduct Rules 2330(a) and 2110 by forging his customers' signatures to withdraw cash from their bank accounts without their knowledge or consent, and Procedural Rule 8210 and Conduct Rule 2110 by failing to respond to requests for information issued in connection with the investigation of his forgery and conversion. For each violation, he is barred from associating with any member firm in any capacity. The bars will

⁷ FINRA Sanction Guidelines 38 (2007), available at <http://www.finra.org/web/groups/enforcement/documents/enforcement/p011038.pdf>.

⁸ *Id.* at 39.

⁹ *Id.* at 35.

¹⁰ Restitution has not been ordered because there is no evidence in the record to determine if the customers recovered any of the funds the Respondent took from their accounts.

become effective immediately if this decision becomes FINRA's final disciplinary action in this proceeding.

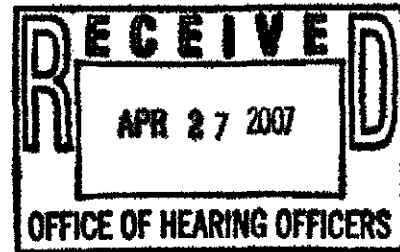
A handwritten signature in black ink, appearing to read 'Andrew H. Perkins', written over a horizontal line.

Andrew H. Perkins
Hearing Officer

Copies to:

Jeffrey Charles Plunkett (by FedEx, next day delivery, and first-class mail)
George C. McGuigan, Jr., Esq. (by electronic and first-class mail)
Rory C. Flynn, Esq. (by electronic and first-class mail)
Mark P. Dauer, Esq. (by electronic and first-class mail)

NASD
OFFICE OF HEARING OFFICERS



Department of Enforcement,

Complainant

v.

Jeffrey Charles Plunkett
Registered Representative
CRD No. 2731884

Respondents

DISCIPLINARY PROCEEDING
2005003235201

Hearing Officer: _____

COMPLAINT

The Department of Enforcement alleges:

1. Respondent Jeffrey Charles Plunkett entered the securities industry in May 1996 as an Investment Company and Variable Contracts Products Representative with member firm Pruco Securities Corporation. In April 2000, he voluntarily ended his employment with Pruco Securities; however in December 2000, he re-registered with the firm as, among other things, a General Securities Representative. Plunkett voluntarily terminated his employment with Pruco Securities on May 6, 2005. On May 13, 2005, he registered with member firm MML Investors Services, Inc. as, among other things, a General Securities Representative; however, on October 28, 2005, he ended his employment with MML Investors, and since that time he has not been registered with any other

NASD member firm.

2. NASD retains jurisdiction to file this complaint against Plunkett pursuant to Article V, Section 4 of the NASD By-Laws, which provides that the NASD shall retain jurisdiction over a formerly associated person for two years after the effective date of termination of registration. Plunkett's Form U-5 was filed on October 28, 2005, which gave the NASD until October 27, 2007 to file a complaint against him. This complaint against Plunkett was timely filed because it was filed prior to October 28, 2007. Therefore, NASD has jurisdiction over Plunkett during the pendency of this proceeding.

FIRST CAUSE OF ACTION

(Plunkett Forged Customer Signatures and

Converted Customer Funds (Rules 2110 and 2330(a))

3. Paragraphs 1 and 2 above are incorporated herein by reference.
4. During the period from September 1999 to December 2003, Respondent Jeffrey Charles Plunkett, while associated with member firm Pruco Securities Incorporated, drew approximately 43 checks against two accounts belonging to customer W. M., forged the customer's signature on each check, and then cashed the checks, all without the customer's authorization, knowledge or consent. By forging W. B.'s checks, Plunkett converted approximately \$240,769 to his own use and benefit.
5. During the period from about December 2003 to about August 2005, Plunkett,

while associated with Pruco Securities Incorporated, drew approximately 47 checks against an account belonging to customer R. K., forged the customer's signature on each check, and then cashed the checks, all without the customer's authorization, knowledge or consent. By forging R. K.'s checks, Plunkett converted approximately \$298,483 to his own use and benefit. Plunkett also transferred \$73,189 from R. K.'s account to account belonging to customer W. M., again without R. K.'s authorization, knowledge, or consent.

6. Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rules 2110 and 2330(a) by Respondent Jeffrey Charles Plunkett.

SECOND CAUSE OF ACTION

(Plunkett Failed to Respond To Requests for Information (Rules 2110 and 8210))

7. Paragraphs 1 – 5 above are incorporated herein by reference.
8. By letter dated December 2, 2005, the District staff requested, pursuant to Rule 8210, that Plunkett provide information to the staff regarding his handling of W. B.'s accounts and R. K.'s account. This request letter was mailed to Plunkett, via regular mail, at his CRD home address. According to the terms of the letter, Plunkett was to provide the requested information no later than December 16, 2005. Plunkett never provided any of the requested information, and the December 2nd letter has never been returned to the District office.
9. By letter dated January 4, 2006, the District staff requested, pursuant to Rule

8210, that Plunkett provide the previously requested information. A copy of the previous request letter was enclosed with the January 4th letter.

10. The January 4th request letter was mailed, via certified mail and regular mail, to Plunkett at his CRD home address, and requested that he provide the information no later than January 18, 2006. Plunkett never provided the requested information.
11. The January 4th letters have never been returned to the District office. The District staff obtained a "Track & Confirm" receipt from the US postal service's website which reflected that the certified mailing of the January 4th letter was delivered on January 11, 2006.
12. By letter dated October 12, 2006, the District staff again requested that Plunkett provide the previously requested information. Copies of all previous request letters mailed to Plunkett were included with the October 12th letter. In the October 12th letter, the District staff requested, pursuant to Rule 8210, that Plunkett provide the previously requested information no later than October 26, 2006.
13. The October 12th request letter was mailed, via certified mail and regular mail, to Plunkett at his CRD home address. The return receipt card for the certified mailing was signed by K. Plunkett and returned to the District office. The regular mailing of the October 12th request letter has never been returned to the District office. Plunkett never provided any response to the October 12th request letter.
14. To date, Plunkett has not responded, in any manner, to any of the letters referenced in this Cause of Complaint.

15. Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 and NASD Procedural Rule 8210 by Respondent Jeffrey Charles Plunkett.

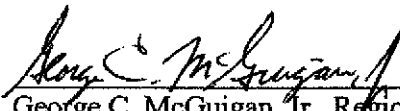
PRAYER FOR RELIEF

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under NASD Rule 8310(a), including monetary sanctions, be imposed;
- 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.

NASD DEPARTMENT OF
ENFORCEMENT

Date: April 26, 2007


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Formal Complaint
2005003235201/Jeffrey Charles Plunkett

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