

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DONALD J. TINTLE
(CRD No. 4855119),

Respondent.

Disciplinary Proceeding
No. 2005003330001

Hearing Officer – DMF

DEFAULT DECISION

November 13, 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

David B. Klafter, Esq., Woodbridge, NJ (Rory C. Flynn, Esq., Washington, DC, and Mark 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 August 2, 2006, alleging that Respondent Donald J. Tintle 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 October 12,

2006, Enforcement filed a motion for a default decision, supported by the declaration of David B. Klafter and three exhibits. Respondent did not reply to the motion.¹

II. Respondent's Default

On July 31, 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 August 31, 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 associated with NASD member NYLIFE Securities Inc. from January to May 2005, by reason of having applied for registration with NASD through NYLIFE. 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 Complaint was filed within two years after the termination of his association, and it charges him with misconduct while he was associated and with failing to provide information requested during that two-year period.

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.

IV. Violations

The first cause of the Complaint alleges that while associated with NYLIFE, in April 2005, Respondent accepted three checks from customer ME made payable to Respondent totaling \$22,000. ME gave the checks to Respondent after he solicited her to purchase the stock in a public company traded in the pink sheets and falsely represented to ME that he held various securities licenses. ME gave the checks to Respondent to be used to purchase shares of the stock, and Respondent sent ME an email assuring her that she owned more than 326,000 shares of the company's stock, but in fact Respondent deposited ME's checks in a bank account he controlled. He did not furnish ME with any of the stock he purportedly purchased on her behalf, or, except for \$248.40, return her funds.

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 second count of the Complaint alleges that in May 2005, while he was associated with NYLIFE, Respondent accepted a \$5,000 check from customer JF to purchase the same pink sheet listed stock. Instead of using the funds to purchase stock, Respondent deposited JF's check in a bank account he controlled. Respondent has not provided any stock to JF or returned any part of the \$5,000.

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 third cause of the Complaint alleges that on or about December 6 and December 23, 2005, NASD staff sent Respondent letters, pursuant to Rule 8210, requesting various documents and information regarding his receipt of funds from ME and JF and their purported investment of those funds in the pink sheet listed stock. NASD staff sent the December 6 letter by regular first class mail to the CRD address and the December 23 letter by regular and certified first class mail to the CRD address. The staff received a return receipt for the December 23 letter signed "Luz N. Tintle." Respondent did not, however, 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, the 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

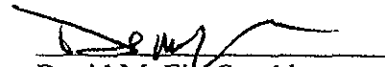
VI. Conclusion

Respondent Donald J. Tintle 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: Donald J. Tintle (*via overnight courier and first class mail*)
David B. Klafter, 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.

DONALD J. TINTLE (CRD No.4855119),

RESPONDENT.

DISCIPLINARY PROCEEDING
No. 2005003330001

COMPLAINT

The Department of Enforcement alleges:

1. On or about January 28, 2005, Respondent Donald J. Tintle ("Tintle") became associated with NYLIFE Securities Inc., an NASD member firm.
 2. On or about January 28, 2005, a Form U4 was filed on Tintle's behalf with NASD.
 3. On or about March 15, 2005, Tintle took the Series 6 examination, but failed.
 4. On or about May 20, 2005, Tintle took the Series 63 examination, but failed.
 5. On or about May 25, 2005, NYLIFE Securities Inc. filed a Form U5 on behalf of Tintle terminating his association with that firm as of May 20, 2005.
 6. Tintle is not currently registered with any NASD member firm, but is still within the jurisdiction of NASD pursuant to Article V, Section 4, of NASD's By-Laws.
- Jurisdiction over Tintle expires on or about May 19, 2007, which is two years after he was last associated with an NASD member firm.

FIRST CAUSE OF ACTION

7. The Department realleges and incorporates by reference paragraphs 1 through 6 above.
8. On or about April 13, 2005, April 15, 2005 and April 24, 2005, Tintle accepted three checks made payable to himself from customer ME.
9. The amount of these checks totaled \$22,000.
10. These checks were issued by ME to Tintle after he had solicited her to invest in Database Solutions, Ltd., (DBSJ.PK), a public company whose shares are traded in the pink sheets.
11. In soliciting ME to invest in DBSJ.PK, Tintle falsely represented to ME that he possessed various securities licenses.
12. ME provided Tintle with her funds for the sole purpose that he purchase shares of the common stock of DBSJ.PK on her behalf.
13. On May 12, 2005, Tintle sent ME an e-mail representing that she now owned 326,229 shares of DBSJ.PK and that she was the company's 41st largest shareholder.
14. Tintle, however, did not use ME's funds to purchase shares of the common stock of DBSJ.PK for her. Instead, Tintle deposited the funds in a bank account he controlled.
15. To date, despite several requests, ME has not received any shares of DBSJ.PK from Tintle and, except for receiving \$248.40 from him on August 15, 2005, ME has not received her funds back from him.
16. By reason of the foregoing, Tintle violated NASD Conduct Rules 2330(a) and 2110.

SECOND CAUSE OF ACTION

17. The Department realleges and incorporates by reference paragraphs 1 through 16 above.
18. On or about May 2, 2005, Tintle accepted a check made payable to himself from customer JF.
19. The amount of this check totaled \$5,000.
20. This check was issued by JF to Tintle after he had solicited her to invest in DBSJ.PK.
21. In soliciting JF to invest in DBSJ.PK, Tintle falsely represented to JF that he possessed various securities licenses.
22. JF provided Tintle with her funds for the sole purpose that he purchase shares of the common stock of DBSJ.PK on her behalf.
23. Rather than use these funds to purchase shares of the common stock of DBSJ.PK for JF, Tintle deposited the funds in a bank account he controlled.
24. To date, despite several requests, JF has not received any shares of DBSJ.PK from Tintle and she has not received her funds back from him.
25. By reason of the foregoing, Tintle violated NASD Conduct Rules 2330(a) and 2110.

THIRD CAUSE OF ACTION

26. The Department realleges and incorporates by reference paragraphs 1 through 25 above.
27. On or about December 6, 2005, NASD staff sent Tintle a written request, pursuant to NASD Procedural Rule 8210, requesting him to provide, among other things, various documents and information pertaining to his receipt of funds from ME and JF and

their purported investment in DBSJ.PK (hereinafter the "December 6th Request").

The response date of the December 6th Request was December 20, 2005.

28. The December 6th Request was sent by first class mail to Tintle at his CRD residential address of record, [REDACTED]

29. By December 20, 2005, NASD staff had not received any response from Tintle to the December 6th Request and the staff's mailings had been returned. Accordingly, on December 23, 2005, the staff sent Tintle a second request, pursuant to NASD Procedural Rule 8210, notifying Tintle that he failed to respond to the staff's previous letter and requesting that he provide the documents and information which were the subject of the staff's December 6th Request (hereinafter the "December 23rd Request"). In addition, the December 23rd Request advised Tintle that a failure to provide the requested documents and information could result in disciplinary action.

30. The response date of the December 23rd Request was January 6, 2006.

31. The December 23rd Request was sent by first class and certified mail to Tintle at his CRD residential address of record, [REDACTED]
[REDACTED]

32. On January 3, 2006 the returned receipt card for the certified mailing of the December 23rd Request to Tintle was returned to the District Office by the United States Postal Service and signed by "Luz N. Tintle."

33. The first class mailing of the December 23rd Request to Tintle has not been returned to the District Office.

34. To date, Tintle has failed to respond to any of the staff's requests for documents and information.

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

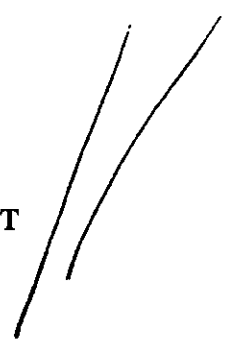
PRAYER

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; and
- 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: July 31, 2006



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