

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JAMIN M. EPSTEIN
(CRD No. 1897974),

Respondent.

Disciplinary Proceeding
No. 2005003508101

Hearing Officer – DRP

DEFAULT DECISION

March 23, 2007

Respondent is barred from association with any member firm in any capacity for making misrepresentations of fact, in violation of NASD Conduct Rule 2110, and for failing to provide testimony, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

Appearances

Thomas K. Kilkenny, Regional Counsel, Philadelphia, PA (Rory C. Flynn, Washington, DC, Of Counsel) for Complainant.

No appearance by or for Jamin M. Epstein.

DECISION

I. Background

On November 6, 2006, the Department of Enforcement filed a two-count Complaint in this proceeding, attached to this Decision as Exhibit A. The Complaint alleges that Respondent Jamin M. Epstein (Respondent or Epstein) made misrepresentations, in violation of NASD Conduct Rule 2110, and failed to provide testimony, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110. Respondent did not file an Answer to the Complaint.

Accordingly, on February 5, 2007, Enforcement filed a motion for entry of default decision, supported by the declaration of Thomas K. Kilkenny and six exhibits. Epstein 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 or about November 2, 2006, Enforcement served the Complaint and Notice of Complaint on Respondent by first-class and certified mail sent to Respondent's residential address, as reflected in the Central Registration Depository (CRD address).² Respondent did not file an Answer.

On or about December 6, 2006, Enforcement served the Complaint and Second Notice of Complaint on Respondent by first-class and certified mail sent to Respondent's CRD address. As before, Respondent did not file an Answer.

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

III. Jurisdiction

Respondent entered the securities industry in 1988 and was registered with two NASD member firms prior to registering with NASD member Quick & Reilly, Inc. (Quick) in November 2003, as a general securities representative and investment company/variable contracts representative. Respondent moved from Quick to NASD member Kovack 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.

² Respondent's CRD address is [REDACTED]

Inc. (Kovack) in September 2004. Respondent held the same registrations with Kovack from September 2004 until his registration was terminated in November 2005. Since then, Respondent has not been associated or registered with any NASD member.

Respondent is subject to NASD jurisdiction pursuant to Art. V, Section 4 of NASD's By-Laws, because the Complaint, which was filed within two years of the termination of Respondent's registration with Kovack, alleges misconduct that occurred while he was registered, and a failure to comply with requests for information made during the two-year period following the termination.

IV. Findings of Fact and Conclusions of Law

A. Misrepresentations

The first cause of the Complaint alleges that in 2005, \$46,000 was disbursed from a variable annuity policy that customer RL had purchased through Respondent, via two checks made payable to a third party with the same last name as Respondent.³ Respondent subsequently deposited the checks in a joint account he held with the third party. When questioned by his firm about the third-party checks in or about June 2005, Respondent replied that customer RL was the third party's grandmother and provided a notarized document to that effect. However, Epstein's representations were false, because RL is not related to the third party.

The Complaint further alleges that in 2004 and 2005, \$84,955.70 was disbursed from a variable annuity policy that customers W and ET had purchased through Respondent, via four checks made payable to the third party with the same last name as Respondent. Respondent subsequently deposited the checks in a joint account he held with the third party.

³ The Complaint alleges that the third party was a "relative." In his declaration, counsel states that the third party was Respondent's wife.

In October 2005, questions about these disbursements were raised by PT, the daughter and executrix of the estates of W and ET. Respondent informed PT in writing that a Form 1099 had been issued by the insurance company due to a “1035 exchange.”⁴ Epstein’s representations were false, because no such exchange had occurred; the Form 1099 reflected the reportable portion of the disbursements that had been made via checks issued in the third party’s name. Furthermore, in or about October 2005, Respondent informed his firm in writing that customer ET was the third party’s aunt. Once again, Epstein’s representations were false, because ET was not related to the third party.

NASD Conduct Rule 2110 requires member firms to observe “high standards of commercial honor and just and equitable principles of trade,” and applies to all business-related activities, regardless of whether the conduct involves securities.⁵ Rule 115 extends Rule 2110 to persons associated with members. Respondent’s false representations regarding disbursements from two variable annuity policies violated Conduct Rule 2110.⁶

Accordingly, the allegations in the first cause of the Complaint, which are deemed admitted, are sufficient to establish for purposes of this default decision that Respondent made misrepresentations, in violation of NASD Conduct Rule 2110.

B. Failure to Respond to Requests for Information

The second cause of the Complaint charges that Respondent violated NASD Procedural Rule 8210 and Conduct Rule 2110 by failing to comply with the staff’s request to provide

⁴ A 1035 exchange refers to the tax-free replacement of an existing annuity or insurance contract with a new one. See 26 U.S.C. § 1035.

⁵ See, e.g., *Dep’t of Enforcement v. Davenport*, No. C05010017, 2003 NASD Discip. LEXIS 4, at *8-9 (NAC May 7, 2003).

⁶ *Id.* at *10; see also *Ramiro Jose Sugranes*, Exchange Act Release No. 35,311, 1995 SEC LEXIS 234, at *3-4 (Feb. 1, 1995) (misrepresentations violated Article III, Section I, predecessor to Conduct Rule 2110).

testimony. The Complaint alleges that on or about May 22, 2006, the staff sent a letter by first-class and certified mail to Respondent's CRD address, requesting that he provide testimony on June 15, 2006 at NASD's Philadelphia District Office. The request was made pursuant to Rule 8210. Though a delivery receipt for the certified mailing was returned bearing what appeared to be Respondent's signature, Epstein did not appear or provide testimony, as requested.

The Complaint further alleges that on or about August 18, 2006, the staff sent another letter by first-class and certified mail to Respondent's CRD address. Pursuant to Rule 8210, the staff requested that Respondent provide testimony on August 30, 2006 at NASD's Philadelphia District Office, and advised that a failure to comply could be grounds for disciplinary action. Epstein did not appear or provide testimony, as requested.

Rule 8210 provides that NASD staff may require a person subject to jurisdiction to "testify at a location to be specified by Association staff . . ." and imposes an absolute obligation on members and associated persons to cooperate with NASD investigations. By mailing the requests for testimony to Respondent at his last known residential address as reflected in CRD, the staff complied with Rule 8210(d), and pursuant to that rule, Respondent is deemed to have received them.

Accordingly, the allegations in the second cause of the Complaint, which are deemed admitted, are sufficient to establish for purposes of this default decision that Respondent failed to provide testimony, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

V. Sanctions

Under NASD Sanction Guidelines, a bar is standard for failure to respond in any manner to requests for information or testimony.⁷ There is no evidence of any mitigating circumstances

⁷ *NASD Sanction Guidelines* at 35 (2006 ed.).

here that would warrant a lesser sanction. Accordingly, Respondent will be barred in all capacities for this violation.

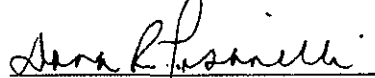
For misrepresentations, the Guidelines recommend a fine of \$2,500 to \$50,000 and a suspension up to 30 days for negligent misconduct, and a fine of \$10,000 to \$100,000 and a suspension up to two years for intentional or reckless misconduct. In egregious cases, the Guidelines suggest a bar.⁸

Enforcement contends this is an egregious case, and the Hearing Officer concurs. The circumstances support the conclusion that Respondent knowingly made false statements in an attempt to conceal serious misconduct, i.e., that he had misdirected disbursements from variable annuities away from his customers to an account he held jointly with his wife. Respondent's actions demonstrated a complete lack of integrity. Accordingly, Respondent is also barred in all capacities for this violation.

VI. Conclusion

Respondent Jamin M. Epstein is barred from association with any member firm in any capacity for failing to respond to requests for information, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110, and for misrepresentations, in violation of NASD Conduct Rule 2110. The bars shall become effectively immediately if this Decision becomes the final disciplinary action of NASD.

SO ORDERED.


Dana R. Pisanelli
Hearing Officer

Dated: March 23, 2007
Washington, DC

⁸ Guidelines at 93.

Copies to: Jamin M. Epstein (*via overnight and first-class mail*)
Thomas K. Kilkenny, Esq. (*via electronic and first-class mail*)
Mark P. Dauer, Esq. (*via electronic and first-class mail*)
Rory C. Flynn, Esq. (*via electronic and first-class mail*)

EXHIBIT A

**NASD
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT	:	
	:	
Complainant	:	Disciplinary Proceeding
	:	No. 2005003508101
v.	:	
	:	Hearing Officer—
Jamin M. Epstein	:	
CRD No. 1897974	:	
	:	
Respondent	:	
	:	
	:	

COMPLAINT

The Department of Enforcement alleges that

1. Jamin M. Epstein entered the securities industry in 1988. From 1989 to November 2003, he was associated with Financial Investment Analysts, Inc. and was registered with NASD as a Representative. From November 2003 to September 2004, he was associated with Quick & Reilly, Inc. and was registered with NASD as a Representative. From September 2004 to November 8, 2005, he was associated with Kovack Securities Inc. and was registered with NASD as a Representative. Since then, he has not been associated with any member of NASD or registered in any capacity.

2. NASD retains jurisdiction over Jamin M. Epstein until at least November 7, 2007 pursuant to Article V, Section 4 of NASD's By-Laws.

FIRST CAUSE OF COMPLAINT

Misrepresentations NASD Conduct Rule 2110

3. The Department realleges and incorporates by reference paragraphs 1 and 2 above.
4. R.L. is the owner of a variable annuity which she had purchased in 2003 through Jamin M. Epstein. During 2005, a total of \$46,000.00 was disbursed from that policy through two checks issued in the name of one of Jamin M. Epstein's relatives (the "relative"). Jamin M. Epstein subsequently deposited those checks into an account he jointly owned with the relative.
5. In June 2005, before effecting the second of the two disbursements, the insurance company noticed that the check was to be made payable to a third party, the relative, with the same last name as the representative. It then contacted Kovack Securities, with which Jamin M. Epstein was then registered.
6. In or about June 2005, Jamin M. Epstein falsely represented to Kovack Securities that R.L. is the grandmother of the relative. R.L. is not related to the relative in any way. Kovack Securities requested that he provide a notarized writing from R.L. stating that she was the

grandmother of the relative. Jamin M. Epstein obtained such a notarized writing and caused the false document to be sent to Kovack Securities.

7. W. and E.T. were the owners of a variable annuity which they had purchased in 2003 through Jamin M. Epstein. During 2004 and 2005, a total of \$84,955.70 was disbursed from that policy through four checks issued in the name of the relative. Jamin M. Epstein subsequently deposited those checks into an account he jointly owned with the relative.
8. Following the deaths of W. and E.T., their daughter P.T., as executrix of their estates, sought to obtain information about the withdrawals which had been made from their policy. She contacted both the issuer of the variable annuity policy and Kovack Securities, with which Jamin M. Epstein was then registered.
9. On or about October 10, 2005, Jamin M. Epstein sent P.T. a written statement in which he falsely stated that "1035 exchanges" had been made from the policy which caused a 1099 form to be issued by the insurance company. No such exchanges had occurred, however, and the 1099 form actually reflected the reportable portion of the disbursements which had in fact been made through checks issued in the name of the relative. Jamin M. Epstein subsequently deposited those checks into an account he jointly owned with the relative.
10. On or about October 31, 2005, Jamin M. Epstein sent Kovack Securities a letter concerning the disbursements in which he falsely stated that E.T. was the relative's aunt. They are, however, not related.

11. The aforesaid conduct is inconsistent with high standards of commercial honor and just and equitable principles of trade and constitutes violations by Jamin M. Epstein of NASD Conduct Rule 2110.

SECOND CAUSE OF COMPLAINT

Failure to Provide Testimony NASD Procedural Rule 8210 and Conduct Rule 2110

12. The Department realleges and incorporates by reference paragraphs 1 and 2 above.
13. On or about May 22, 2006, the staff of NASD sent written notice to Jamin M. Epstein requiring him to appear and provide testimony on June 15, 2006 at NASD's Philadelphia District Office. The notice stated that it was made pursuant to NASD Procedural Rule 8210. It was sent by certified mail and by first class mail to [REDACTED] [REDACTED] which is the residential address maintained for Jamin M. Epstein by the Central Registration Depository (the "CRD address"). A delivery receipt signed "Jamin Epstein" reflecting a delivery date of May 31, 2006 was received for the certified mailing. The first class mailing was not returned to the District Office.
14. Jamin M. Epstein did not appear to provide testimony as required on June 15, 2006.
15. On or about August 18, 2006, the staff of NASD sent written notice to Jamin M. Epstein requiring him to appear and provide testimony on August 30, 2006 at NASD's Philadelphia

District Office. The notice stated that it was made pursuant to NASD Procedural Rule 8210 and enclosed a copy of that rule. It also warned that failure to comply could be grounds for disciplinary action. The notice was sent to the CRD address by both certified mail and by first class mail. The certified mailing was returned to the District Office marked "return to sender, unclaimed, unable to forward." The first class mailing was not returned to the District Office.

16. Jamin M. Epstein did not appear to provide testimony as required on August 30, 2006.

17. The staff of NASD knows of no more current residential or business address for Jamin M. Epstein.

18. The aforesaid conduct constitutes violations by Jamin M. Epstein of NASD Conduct Rule 2110 and Procedural Rule 8210.

PRAYER

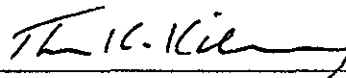
WHEREFORE, the Department respectfully requests that the Panel:

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 determined fair and appropriate under the circumstances in accordance with NASD Rule 8330.

NASD DEPARTMENT OF ENFORCEMENT

Dated: November 2, 2006



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