

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

RONALD VAUGHN
(CRD No. 453836),

Respondent.

Disciplinary Proceeding
No. 2006004213401

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

April 20, 2007

Respondent is barred from associating with any member firm for: (1) misappropriating customer funds, in violation of Conduct Rule 2110; (2) forgery of a customer's check, in violation of Conduct Rule 2110; (3) failure to appear for his on-the-record interview, in violation of Procedural Rule 8210 and Conduct Rule 2110; and (4) failure to disclose two criminal convictions on his Form U-4, in violation of Conduct Rule 2110 and IM-1000-1.

Appearances

Michael J. Newman, Regional Counsel, Woodbridge, NJ (Rory C. Flynn, Chief Litigation Counsel, Washington, D.C., Of Counsel) for the Department of Enforcement.

No appearance by or on behalf of Ronald Vaughn.

DECISION

I. Introduction

On December 26, 2006, the Department of Enforcement ("Enforcement") filed the attached Complaint against Ronald Vaughn ("Vaughn" or the "Respondent"). The Complaint charges the Respondent with: (1) misappropriating customer funds, in violation of NASD Conduct Rule 2110; (2) forging a customer's endorsement on a check, in violation of Conduct Rule 2110; (3) failing to appear for his on-the-record interview, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110; and (4) failure to update his Form U-4 to disclose two

criminal convictions, in violation of Conduct Rule 2110 and IM-1000-1. The Respondent did not answer or otherwise respond to the Complaint. On March 16, 2007, Enforcement filed a motion for a default decision. The Respondent did not reply to the motion.¹

I. Findings of Fact and Conclusions of Law

A. Respondent's Default

On December 20, 2006, Enforcement served the Complaint and Notice of Complaint on the Respondent by certified and first-class mail sent to his residential address shown in the Central Registration Depository (the "CRD address"). The Respondent signed for delivery of the certified mailing on December 22, 2006, but he did not file an Answer.

On January 19, 2007, Enforcement served the Complaint and Second Notice of Complaint on the Respondent by certified and first-class mail sent to the Respondent at his CRD address. The Respondent signed for delivery of the certified mailing on January 22, 2007, but he did not file an Answer.

The Hearing Officer finds that Enforcement properly served the Respondent with the Complaint and Notices of Complaint by mailing them to his CRD address by first-class certified mail.² Moreover, the papers Enforcement submitted show that the Respondent received actual notice of this proceeding. He therefore defaulted by failing to answer the Complaint.

Accordingly, pursuant to Procedural Rules 9215(f) and 9269(a)(2), the Hearing Officer finds the Respondent in default and deems the allegations in the attached Complaint admitted.

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.

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)).

B. Jurisdiction

Vaughn was most recently registered as a General Securities Representative through NASD member Cadaret, Grant & Co., Inc. ("Cadaret") from September 1982 until January 2006. Although Vaughn has not been associated with any NASD member since then, he remains subject to NASD jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of NASD's By-Laws, because the Complaint, which was filed within two years after the termination of his last registration, charges him with misconduct while he was registered and with failure to comply with requests pursuant to Procedural Rule 8210 that he appear for an on-the-record interview that the staff issued within the period of retained jurisdiction.

C. Misappropriation of Customer Funds

The First Cause of Action alleges that, in December 2002, while he was associated with Cadaret, the Respondent contacted Conseco Insurance Company ("Conseco") and falsely represented that his customer E.H. had not received \$74,240.41 due him from the liquidation of his fixed annuity. In fact, E.H. had received the payment and had used those proceeds to purchase a fixed annuity through another insurance company. In reliance on Vaughn's falsehood, Conseco mailed Vaughn a second check payable to customer E.H. in the amount of \$74,240.41. On or about December 26, 2002, Vaughn forged E.H.'s endorsement to the Conseco check and deposited it in his personal bank account for his own use and benefit.

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this decision, that the Respondent misappropriated customer funds, in violation of Conduct Rule 2110.

D. Forgery

The Second Cause of Action alleges that Vaughn forged E.H.'s endorsement to the Conseco check when he deposited it into his personal bank account.

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this decision, that the Respondent forged E.H.'s endorsement to the Consecro check, in violation of Conduct Rule 2110.

E. Failure to Respond to Requests for Information

The Third Cause of Action alleges that Vaughn failed to appear for his on-the-record interview, which NASD staff had scheduled pursuant to Procedural Rule 8210. NASD requested his testimony in the course of its investigation into the facts and circumstances surrounding his discharge from Cadaret, which had reported that it permitted Vaughn to resign for his failure to notify the firm of the two criminal charges referenced in the Fourth Cause of Action.

According to the Complaint, on June 6, 2006, NASD staff sent Vaughn a letter by first-class mail and FedEx (overnight delivery) to his CRD address, requesting that he appear for an on-the-record interview on June 14, 2006. The FedEx mailing was delivered to Vaughn's CRD Address on June 7, 2006. Vaughn did not respond to this request.

On June 14, 2006, NASD staff sent a second letter to Vaughn, requesting him to appear for an on-the-record interview on June 28, 2006. The letter notified Vaughn that if he failed to appear he could face disciplinary action. The letter was sent to Vaughn at his CRD address by first-class and certified mail. Although Vaughn received the certified mailing on June 17, 2006, he did not appear for his on-the-record interview on June 28, 2006, or otherwise respond to this request.

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this decision, that the Respondent violated Procedural Rule 8210 and Conduct Rule 2110, by failing to appear for an on-the-record interview in connection with NASD staff's investigation of the facts and circumstances regarding his resignation from Cadaret.

F. Failure to Update Form U-4

The Fourth Cause of Action alleges that, on July 26, 2005, the Office of the Prosecutor of Camden County, New Jersey, charged Vaughn with Theft by Deception (N.J.S.A. 2C:20-4) and Forgery (N.J.S.A. 2C:21-1), which under New Jersey law are defined as crimes of the Third Degree.³ These charges arose from Vaughn's misappropriation of the Conseco check and his forged endorsement on that check, as described in the First and Second Causes of Action. Vaughn pled guilty to the charges on December 22, 2005. However, Vaughn did not update his Form U-4 to disclose these convictions, which were material facts that he was required to disclose to Cadaret.

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this decision, that the Respondent violated Conduct Rule 2110 and IM-1000-1 when he failed to update his Form U-4 to disclose his criminal convictions.

II. Sanctions

A. Misappropriation of Customer Funds

Although Enforcement denoted Vaughn's misconduct as misappropriation, his actions constituted conversion. Accordingly, the Hearing Officer applied the NASD Sanction Guidelines for conversion in determining the appropriate sanction for this violation.

The NASD Sanction Guidelines for conversion recommend a bar regardless of the amount converted.⁴ Here, there is no evidence of any mitigating factors. Accordingly, the Hearing Officer finds that a bar is the appropriate sanction for this violation.

³ New Jersey does not classify crimes as a felony or a misdemeanor; however, a third-degree crime is the equivalent of a felony for purposes of disclosure on a Form U4 because under New Jersey law a conviction carries a maximum jail sentence of five years.

⁴ NASD Sanction Guidelines at 38 (2006).

B. Forgery

For forgery and falsification of records, the NASD Sanction Guidelines recommend a fine of \$5,000 to \$100,000 and a suspension of up to two years. In egregious cases, the Sanction Guidelines recommend that a bar be considered.⁵ This is an egregious case, and there is no evidence of any mitigating factors. Accordingly, the Hearing Officer finds that a bar is the appropriate sanction for this violation.

C. Failure to Respond to Requests for Information

The applicable Sanction Guideline for failing to respond to a request for information made pursuant to NASD Procedural Rule 8210 suggests that a bar should be standard where no mitigating circumstances exist.⁶ Here, the record discloses no such mitigating factors. Accordingly, a bar also is appropriate for this violation.

D. Failure to Update Form U-4

The NASD Sanction Guidelines for failing to file forms or amendments recommends a fine of \$2,500 to \$50,000 and a suspension in all capacities for 5 to 30 business days. Further, in egregious cases, the Sanction Guidelines recommend a longer suspension or a bar.⁷ Vaughn's failure to amend his Form U-4 was willful and egregious. Accordingly, a bar is the appropriate sanction for this violation as well.

III. Order

Ronald Vaughn is barred from associating with any member firm in any capacity for each of the following violations: (1) misappropriation of customer funds, in violation of Conduct Rule 2110; (2) forgery, in violation of Conduct Rule 2110; (3) failure to appear for his on-the-record

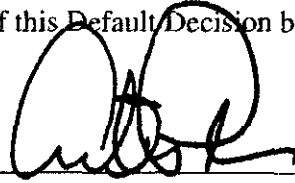
⁵ *Id.* at 39.

⁶ *Id.* at 35.

⁷ NASD Sanction Guidelines at 74-75.

interview, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110; and (4) failure to update his Form U-4 to disclose two criminal convictions, in violation of Conduct Rule 2110 and IM-1000-1.

The bars shall become effective immediately if this Default Decision becomes the final disciplinary action of NASD.

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

Andrew H. Perkins
Hearing Officer

Copies to:

Ronald Vaughn (by FedEx, next day delivery, and first-class mail)
Michael J. Newman, 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)

ATTACHMENT

NASD
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

RONALD VAUGHN
(CRD No. 453836),

RESPONDENT.

DISCIPLINARY PROCEEDING
No. 2006004213401

COMPLAINT

The Department of Enforcement alleges:

1. Respondent Ronald Vaughn first became registered with NASD as a General Securities Representative in 1973. From on or about August 1, 1982, through on or about January 31, 2006, Vaughn was registered with member firm Cadaret, Grant & Co. (Cadaret Grant).
2. On January 31, 2006, Cadaret Grant filed a Form U5 on Vaughn's behalf stating that he had been permitted to resign that day for "failure to notify firm of two felony charges."
3. Vaughn has not been associated with a member firm since his termination from Cadaret Grant.
4. Accordingly, pursuant to Article V, Section 4 of NASD's By-Laws, NASD has jurisdiction over Vaughn until at least January 30, 2008.

FIRST CAUSE OF ACTION

MISAPPROPRIATION OF FUNDS (NASD Conduct Rule 2110)

5. The Department realleges and incorporates by reference paragraphs 1-4 above.
6. In or about November 2002, customer E.H. liquidated a fixed annuity worth \$74,240.41 held with Conseco Insurance Company (Conseco) and used those proceeds to purchase a fixed annuity through another insurance company, Midland National Life Insurance Company (Midland). At this time, in addition to being registered with Cadaret Grant, Vaughn was also an insurance agent appointed directly with Conseco and Midland. He served as customer E.H.'s agent for this transaction.
7. In or about early December 2002, Vaughn contacted Conseco, directly or through an intermediary, and falsely represented to Conseco that customer E.H.'s liquidation check had never been received and requested that another check be issued. In fact, as Vaughn was aware, the first liquidation check had been cashed and used by E.H. to purchase another fixed annuity.
8. Based on this representation, Conseco mailed another check payable to customer E.H. in the amount of \$74,240.41. The check was mailed to Vaughn's residential address, [REDACTED]
[REDACTED]
9. On or about December 26, 2002, Vaughn endorsed the Conseco check by signing his name and customer E.H.'s on the back, deposited the check in his bank account and then converted the proceeds for his own use and benefit. Vaughn never received Conseco's consent or permission to use these funds for himself.
10. By reason of the foregoing, Vaughn violated NASD Conduct Rule 2110.

SECOND CAUSE OF ACTION
FORGERY (NASD Conduct Rule 2110 and IM-2310-2)

11. The Department realleges and incorporates by reference paragraphs 1-10 above.
12. When Vaughn signed customer E.H.'s signature to the back of the liquidation check, as described in paragraph 9 above, he did so without the customer's consent or authority.
13. By reason of the foregoing, Vaughn violated NASD Conduct Rule 2110 and IM-2310-2.

THIRD CAUSE OF ACTION
FAILURE TO RESPOND (NASD Procedural Rule 8210 and Conduct Rule 2110)

14. The Department realleges and incorporates by reference paragraphs 1-13 above.
15. By letter dated June 6, 2006, sent via regular first-class mail and Federal Express (overnight delivery) to Vaughn's last known residential address as reflected in the records of NASD's Central Registration Depository, [REDACTED] [REDACTED] (CRD address), NASD staff requested that Vaughn appear for an on-the-record interview (OTR) on June 14, 2006. This request was made pursuant to NASD Procedural Rule 8210. The Federal Express mailing was delivered to Vaughn's CRD Address on June 7, 2006. The first-class mailing was not returned to the staff.
16. Vaughn never appeared for testimony on June 14, 2006 or otherwise responded to this request.
17. On June 14, 2006, the NASD staff sent a second letter to Vaughn pursuant to Rule 8210 requesting his appearance for an OTR on June 28, 2006. The letter notified Vaughn that if he failed to appear he could face disciplinary action. The letter was sent to Vaughn at his CRD address via regular first-class mail and certified mail. The certified mailing was delivered to Vaughn's CRD address on June 17, 2006. Vaughn signed the certified receipt acknowledging delivery. The first-class mailing was not returned to the staff.

18. Vaughn never appeared for testimony on June 28, 2006 or otherwise responded to this request.
19. The staff is not aware of a more current residential or business address for Vaughn.
20. By reason of the foregoing, Vaughn violated NASD Procedural Rule 8210 and Conduct Rule 2110.

FOURTH CAUSE OF ACTION

FAILURE TO DISCLOSE ON FORM U4 (NASD Conduct Rule 2110 and IM-1000-1)

21. The Department realleges and incorporates by reference paragraphs 1-20 above.
22. Based on the conduct described in paragraphs 6-9 above, the Office of the Prosecutor of Camden County (New Jersey) charged Vaughn on July 26, 2005 with Theft by Deception (N.J.S.A. 2C:20-4) and Forgery (N.J.S.A. 2C:21-1), both crimes of the Third Degree.
23. New Jersey does not use the felony/misdemeanor distinction to classify crimes; however, both of these third degree crimes are the equivalent of felony offenses for purposes of disclosure on a Form U4 because they provide for maximum jail sentences of five years.
24. On December 22, 2005, Vaughn pleaded guilty to both felony-equivalent charges and was accepted in a Pre-Trial Intervention diversionary program.
25. When he was charged with, and pleaded guilty to, the felony-equivalent violations (Theft by Deception and Forgery), Vaughn was associated with Cadaret Grant.
26. The felony charges and guilty plea were material facts that Vaughn was required to disclose on his Form U4. Vaughn, however, willfully failed to amend his Form U4 to disclose those facts.
27. By reason of the foregoing, Vaughn violated NASD Conduct Rule 2110 and IM-1000-1.

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;
- 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; and
- C. make specific findings that Respondent's conduct, as alleged in the Fourth Cause of Action, was willful; the omitted information was material; and, the omission to state material facts was on a Form U4 application.

NASD DEPARTMENT OF ENFORCEMENT

Date: December 20, 2006



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