

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

TOMY VUKSANAJ
(CRD No. 4267663),

Respondent.

Disciplinary Proceeding
No. 20060042995-01

DEFAULT DECISION

Hearing Officer -- SW

Date: May 10, 2007

Respondent is barred from associating with any member firm in any capacity for violating NASD Conduct Rule 2110 by (i) forging his customers' signatures on bank withdrawal slips to obtain \$83,600 from their bank accounts without their authorization or consent, and (ii) converting the funds he obtained to his own use and benefit.

Appearances

William St. Louis, Esq., Deputy Regional Chief Counsel, New York, NY, and
Rory C. Flynn, Esq., Of Counsel, Washington, DC, for the Department of Enforcement.

No appearance by or for Tomy Vuksanaj.

DECISION

I. Introduction

On December 20, 2006, the Department of Enforcement ("Enforcement") filed the attached two-count Complaint against Respondent Tomy Vuksanaj ("Respondent"). Count one of the Complaint alleges that Respondent, while registered with NASD member firm Chase Investment Services Corp. ("Chase Investment") and concurrently employed by Chase Investment's banking affiliate, converted to his own use and benefit funds from the bank account of customers SF and LJ, without their knowledge, consent, or authorization, in violation of NASD Conduct Rule 2110. Count two the Complaint

alleges that Respondent accomplished the conversion by forging the signatures of customers SF and LJ on bank withdrawal slips, and using the forged withdrawal slips to withdraw funds from their bank accounts, from December 2004 through December 2005, in violation of NASD Conduct Rule 2110.

On March 19, 2007, Enforcement filed a Motion for Entry of Default Decision (“Motion”), supported by the Declaration of William St. Louis, Esq., Deputy Regional Chief Counsel in NASD’s New York City office, and by 12 exhibits.¹ Enforcement supplemented its Motion with an additional exhibit on April 25, 2007. For the reasons set forth below, Enforcement’s Motion, as supplemented, is granted.

II. Respondent’s Default

On December 19, 2006, Enforcement served copies of the Complaint and Notice of Complaint on Respondent, via certified and first class mail, at his residential address as reflected in the Central Registration Depository (“CRD address”) and at an alternate address obtained by the NASD staff from Respondent.² (DECL at ¶ 12; CX-1, p. 1; CX-6, p. 10). Respondent did not file an Answer to the Complaint. (DECL at ¶ 16). On January 24, 2007, Enforcement served copies of the Complaint and Second Notice of Complaint on Respondent, via certified and first class mail, at his CRD address and the

¹ Hereinafter, the statements in the Motion for Entry of Default Decision will be designated as “Motion, p.,” the statements in the St. Louis Declaration will be designated as “DECL at ¶;” and Enforcement’s exhibits will be designated as “CX-” with the appropriate page or paragraph number.

² Respondent’s CRD address is [REDACTED] (DECL at ¶ 12; CX-1, p. 1). The NASD staff obtained the alternate address of [REDACTED] from a letter that Respondent sent to the staff on May 24, 2006. (DECL at ¶ 12; CX-5). Enforcement also provided a courtesy copy of the Complaint and Notice of Complaint to the attorney who represented Respondent in connection with Respondent’s plea negotiations with the New York District Attorney’s office. (DECL at ¶ 13; CX-6, p. 10).

alternate address.³ (DECL at ¶¶ 17, 18; CX-10, p. 12). Again, Respondent failed to file an Answer or otherwise respond to the Complaint. (DECL at ¶ 22).

The Hearing Officer finds that Enforcement properly served Respondent in compliance with NASD Procedural Rule 9134(b)(1) by sending the Complaint, via first class and certified mail, to Respondent's CRD address and the alternate address.⁴ (DECL at ¶ 23). Accordingly, the Hearing Officer finds that Respondent received effective constructive notice of this proceeding and defaulted by failing to answer the Complaint.⁵

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

Respondent first became associated with an NASD member firm in September 2000. (CX-1, p. 2). Respondent was registered as a general securities representative with NASD member firm Chase Investment from July 3, 2003 to February 3, 2006. (CX-1, p. 3). Respondent has not been associated with a member firm since February 3, 2006. (*Id.*). However, Respondent remains subject to NASD jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of the NASD By-Laws, because (1) the Complaint was filed within two years after Respondent's association with Chase Investment was terminated, and (2) the Complaint charges Respondent with misconduct while he was associated with Chase Investment.

³ Again, NASD sent a courtesy copy of the Complaint and Second Notice of Complaint to Respondent's attorney. (DECL at ¶ 18; CX-10, p. 12).

⁴ See Department of Enforcement v. Verdiner, No. CAF020004, 2003 NASD Discip. LEXIS 42, at * 5 n.1 (NAC Dec. 9, 2003) (finding that respondent received constructive notice when the complaint was mailed to respondent's CRD address).

⁵ The following Findings of Fact and Conclusions of Law incorporate the allegations in the attached Complaint, pursuant to Rule 9215(f) and NASD Notice to Members 99-77 (Sept. 1999).

B. Respondent Forged the Signatures of Customers SF and LJ to Convert Their Funds for his Personal Use and Benefit

Counts one and two of the Complaint allege that from December 2004 through December 2005, while employed as a personal banker at Chase Investment's banking affiliate, Respondent: (i) completed bank account withdrawal slips that purported to be from customers SF and LJ; (ii) forged the signatures of SF and LJ on the withdrawal slips; (iii) withdrew a total of \$32,600 from SF's bank account and a total of \$51,000 from LJ's bank account, without their knowledge, consent, or authorization; and (iv) converted the funds he obtained to his own use and benefit, in violation NASD Conduct Rule 2110.⁶ (Complaint at ¶¶ 3, 7-9, 11).

In its Motion, Enforcement submitted the following additional information about Respondent's actions. On December 27, 2005, customer SF filed a complaint with the banking affiliate, JP Morgan Chase, concerning the fraudulent withdrawals.⁷ (CX-4, p. 1). On January 6, 2006, after initially denying the claims, Respondent admitted to JP Morgan Chase that he had forged SF's signature on withdrawal slips and had caused withdrawals to be processed without the customer's knowledge. (*Id.*). Later, after being questioned by the police and in connection with his plea agreement with the New York District Attorney's office, Respondent admitted that he had taken funds from the bank accounts of customer SF and LJ. (CX-4, p. 2). In a letter to NASD dated May 24, 2006, Respondent admitted that because of his substance addictions, he had withdrawn funds from his customers' bank accounts without their authorization. (CX-5).

⁶ Respondent was a personal banker at JP Morgan Chase Bank, working out of the branch located at 300 E. 64th Street, New York, NY 10021. (CX-2, p. 1).

⁷ SF was in the hospital at the time that the alleged withdrawals were made. (CX-8, p. 5).

In May 2006, as part of a plea agreement, Respondent pled guilty to grand larceny in the third degree and forgery in the second degree. (CX-8, pp. 7, 10-11). Respondent also agreed to pay restitution to JP Morgan Chase and to continue his participation in drug counseling.⁸ (CX-8, pp. 14-15).

Conversion generally is an intentional and unauthorized taking of and/or exercise of ownership over property by one who neither owns the property nor is entitled to possess it.⁹ NASD Conduct Rule 2110 requires that “a member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade.” Misappropriation or conversion of another’s funds is conduct inconsistent with just and equitable principles of trade.¹⁰

Forgery is wholly inconsistent with NASD’s requirement that registered individuals maintain high standards of ethical conduct and observe just and equitable principles of fair trade.¹¹

Based on the allegations deemed admitted, the Hearing Officer finds that Respondent violated NASD Conduct Rule 2110, as alleged in the first and second causes of the Complaint, by forging the signatures of customers SF and LJ on bank withdrawal slips, and withdrawing a total of \$32,600 from SF’s bank account and a total of \$51,000

⁸ If he met the conditions of his plea agreement, Respondent was to be permitted to withdraw his plea to the felonies and plead guilty to petit larceny and forgery in the third degree. (CX-8, p. 7).

⁹ NASD Sanction Guidelines, p. 38 (2006).

¹⁰ See Dep’t of Enforcement v. Brinton, Complaint No. C04990005, 1999 NASD Discip. LEXIS 36 (NAC Dec. 14, 1999) (NAC barred Mr. Brinton for (i) endorsing a customer’s check, (ii) depositing the check into his personal account without the customer’s consent or authorization, and (iii) thereafter using the deposited funds). See also Eliezer Gurfel, Exchange Act Release No. 41,229, 1999 SEC LEXIS 640 (Mar. 30 1999) (Mr. Gurfel was barred for endorsing commission checks with the name of the president of his employer without his employer’s consent and depositing the commission checks into his personal account).

¹¹ See, e.g., In re Donald M. Bickerstaff, Exchange Act Release No. 35,607, 1995 SEC LEXIS 982 (Apr. 17, 1995) (finding that forgery constituted a violation of Article III, Section 1 of NASD’s Rules of Fair Practice, the predecessor to NASD Conduct Rule 2110).

from LJ's bank account, without their knowledge, consent, or authorization, and converting the funds to his own use and benefit.

IV. Sanctions

The NASD Sanction Guidelines for conversion of customer funds recommend a bar "regardless of the amount converted."¹² The Sanction Guidelines further state that in conversion cases "Adjudicators generally should not impose a fine if an individual is barred."¹³ The Sanction Guidelines for forgery also recommend a bar in egregious cases.¹⁴

Enforcement requested that the Respondent be barred for converting \$83,600 in customer funds. Enforcement also requested that the Respondent be barred for forging the signatures of SF and LJ on withdrawal slips. Enforcement argued that a bar is warranted because the Respondent forged his customers' signatures to convert the customers' funds for his own personal use and benefit.

The Hearing Officer agrees with Enforcement's evaluation that this is an egregious case and concludes that, for forging his customers' signatures and converting his customers' funds, Respondent should be barred from associating with any member firm in any capacity. The Hearing Officer finds that an order of restitution is not appropriate.¹⁵

¹² Guidelines, p. 38.

¹³ Id. at 10.

¹⁴ Id. at 39.

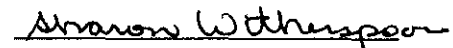
¹⁵ SF and LJ were reimbursed by JP Morgan Chase, and later Respondent, complying with his plea agreement, reimbursed JP Morgan Chase. (CX-13, p. 3).

V. Order

Respondent Tomy Vuksanaj is barred from associating with any NASD member firm in any capacity for the following violations of NASD Conduct Rule 2110:

(1) forging the signatures of two customers on bank withdrawal slips; and (2) converting \$83,600 of the customers' funds to his own use and benefit.

If this Default Decision becomes the final disciplinary action of NASD, the bars imposed for the violations in counts one and two of the Complaint shall become effective immediately.


Sharon Witherspoon
Hearing Officer

Dated: Washington, DC
May 10, 2007

Copies to:
Tomy Vuksanaj (via FedEx and first class mail)
William St. Louis, Esq. (via electronic and first class mail)
David M. Jaffe, 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)

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COMPLAINT

Upon information and belief, the Department of Enforcement ("Complainant") alleges as follows:

JURISDICTION

1. Respondent Tomy Vuksanaj ("Vuksanaj") first became registered as a General Securities Representative ("GSR") in November 2000 through his association with an NASD member firm.
2. From June 12, 2003 through January 5, 2006, Vuksanaj was employed by Chase Investment Securities Corp. (BD No. 25574) ("CISC"). Vuksanaj was registered as a GSR with NASD through his association with CISC from July 3, 2003 through January 5, 2006
3. Vuksanaj was a personal banker employed by the firm's bank affiliate, and worked within a bank branch in New York City.

4. On February 3, 2006, CISC filed a Uniform Termination Notice for Securities Industry Registration ("Form U-5") terminating Vuksanaj's registration. According to the Form U-5, Vuksanaj's last date of employment was January 5, 2006.
5. Upon information and belief, Vuksanaj is not currently registered with NASD, nor is he otherwise employed in the securities industry. However, Vuksanaj remains subject to the jurisdiction of NASD pursuant to Article V, Section 4 of its By-Laws.

FIRST CAUSE OF COMPLAINT
(Conversion)
Violation of NASD Conduct Rule 2110

6. Paragraphs 1 through 5 of this Complaint are re-alleged and incorporated herein by reference.
7. Customers SF and LJ had separate bank accounts with CISC's bank affiliate.
8. From in or around December 2004 through in or around December 2005, while he was registered with NASD, Vuksanaj converted monies from SF and LJ, by:
 - a. completing bank account withdrawal slips that purported to be from SF and LJ;
 - b. forging their signatures on such slips; and
 - c. effectuating the withdrawals from their bank accounts at teller windows in the bank branch at which he worked.
9. Specifically, Vuksanaj:
 - a. converted \$51,000 from LJ without LJ's knowledge, consent, or authorization; and
 - b. converted \$32,600 from SF without SF's knowledge, consent, or authorization.

By reason of the foregoing, Respondent violated NASD Conduct Rule 2110.

SECOND CAUSE OF COMPLAINT
(Falsification/Forgery)
Violation of NASD Conduct Rule 2110

10. Paragraphs 1 through 9 of this Complaint are re-alleged and incorporated herein by reference.
11. Without customers SF and LJ's knowledge, consent, or authorization, from in or around December 2004 through in or around December 2005, Vuksanaj:
- a. completed bank account withdrawal slips that purported to be from SF and LJ, and
 - b. forged their signatures on such slips.

By reason of the foregoing, Vuksanaj violated NASD Conduct Rule 2110.

PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under NASD Rule 8310(a) 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.

Dated: December 19, 2006

DEPARTMENT OF ENFORCEMENT



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