

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

CHARLES LOUIS BOLTON III
(CRD No. 1753380),

Respondent.

Disciplinary Proceeding
No. 2006004356201

Hearing Officer – AWH

DEFAULT DECISION

June 29, 2007

Formerly registered representative (1) misused customer funds, in violation of NASD Conduct Rules 2330 and 2110, and (2) failed to respond to NASD staff requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2110. Respondent barred for each violation.

Appearances:

Heather Hawker, Esq., for the Department of Enforcement.

No appearance by or for Charles Louis Bolton III.

DECISION

Background

On January 9, 2007, the Department of Enforcement ("Enforcement") issued the Complaint in this proceeding, alleging that Charles Louis Bolton III ("Bolton") misused customer funds, in violation of NASD Conduct Rules 2330 and 2110, and failed to provide information, in violation of NASD Procedural Rule 8210 and Conduct Rule 2110.

Bolton did not file an Answer to the Complaint. However, on January 26, 2007, an attorney for Bolton filed with the Office of Hearing Officers a Notice of Bankruptcy Filing and of Imposition of Automatic Stay of 11 U.S.C. § 362, asserting that this

proceeding could not continue in light of the filing with the bankruptcy court. On February 1, 2007, Enforcement filed its response to the Notice of Bankruptcy Filing, asserting that the filing of the Notice proved that Bolton had notice of this proceeding, and that the United States Bankruptcy Code specifically exempts an enforcement proceeding, such as this one, by a self-regulatory organization other than for monetary sanctions.¹ Accordingly, on February 12, 2007, Enforcement mailed to Bolton and to the attorney who represented him in the bankruptcy proceeding a Second Notice of Complaint to which Bolton did not respond. On March 13, 2007, Enforcement mailed to Bolton and the attorney who represented him in the bankruptcy proceeding a Third Notice of Complaint. Bolton did not respond to the Notice of Complaint and Complaint. As a result, Enforcement filed a Motion for Entry of Default Decision on May 2, 2007. Bolton failed to respond to the Motion. Accordingly, pursuant to Procedural Rules 9215(f) and 9269, Enforcement's Motion will be granted, and the allegations of the Complaint, which is attached to this decision, will be deemed admitted.

Findings of Fact²

Respondent

Bolton was registered through NASD member firm Advantage Capital Corporation from November 1988 until the termination of his registration on December 20, 2005. On December 19, 2006, Advantage Capital amended Bolton's Form U-5 to disclose a complaint that he may have misused customer funds. Bolton is not currently associated with any member firm.

¹ Enforcement's citation to the exemption in the Bankruptcy Code is correct. Because this proceeding does not seek monetary sanctions, it may properly go forward.

² All findings of fact are based upon the admitted allegations in the Complaint, the Declaration Supporting a Motion for Entry of Default Decision, and the exhibits attached thereto.

Misuse of Customer Funds

In December 2005, a representative who worked for Bolton informed the compliance department at Advantage Capital that he had been unable to contact Bolton for over a week. Bolton's supervisor discovered that Bolton had abandoned the Advantage Capital branch office that Bolton operated in Phoenix, Arizona, under the trade name Pillar Financial Group. Advantage Capital then terminated Bolton's employment and notified his customers that he was no longer affiliated with the firm. The notice also requested that customers review their account statements for any questionable transactions and contact the firm with any related issues. Two customers contacted the firm with allegations of impropriety.

One of those customers, DB, advised the firm that, in 2003, he had given Bolton two checks totaling \$99,000, made payable Pillar Financial Group, to be invested in his Pillar/Advantage Capital account. Upon reviewing his account statements, DB found that the two checks were not reflected on the statements, although both checks had cleared DB's bank account. DB also informed the firm that, during the period May 2004 through September 2005, several questionable purchases of cash reserve funds, totaling \$43,500, had been made in the account. DB had not written any checks to Bolton or Pillar during that time period, and he had no recollection of making those purchases. The mutual fund confirmed that at least two of the purchases were made by Pillar, another was made by a person unknown to DB, and for the two remaining purchases, the name of the purchaser was unknown.

Failure to Respond to Requests for Information

On March 7, 2006, pursuant to Procedural Rule 8210, NASD staff sent Bolton a request to provide information regarding his alleged misuse of customer funds. The request was sent both by first class and certified mail to Bolton's residential address listed in the Central Registration Depository ("CRD" address). The first class mailing was not returned. The certified mailing was returned with the notation "Unclaimed." Bolton did not respond to the request.

On April 18, 2006, pursuant to Procedural Rule 8210, NASD staff sent a second request to provide the same information to Bolton, by certified and first class mail to his CRD address. The first class mailing was not returned. The certified mailing was returned with the notation "Unclaimed." Bolton did not respond to the request.

After sending the second request, NASD staff learned from Advantage Capital that Bolton might be residing at a home his then wife was renting ("Forwarding address"). On November 27, 2006, NASD staff sent a third Rule 8210 request by first class and certified mail to Bolton at his CRD address and his Forwarding address. The first class mailings were not returned. The certified mailing to the CRD address was not returned. The certified mailing to the Forwarding address was returned unclaimed. Bolton did not respond to the request.

Service of the Complaint

On January 9, 2007, Enforcement served Bolton with the Complaint and Notice of Complaint by both first class and certified mail, sent to his CRD address. As noted above, on January 26, 2007, Bolton's bankruptcy attorney filed a Notice of Bankruptcy

Filing, but did not file an Answer to the Complaint. Bolton did not file an Answer to the Complaint.

On February 12, 2007, Enforcement served the Complaint and Second Notice of Complaint on Bolton by first class and certified mail to his CRD address. A copy was sent to Bolton's bankruptcy attorney.

On March 13, 2007, the Postal Service notified Enforcement of a forwarding address for Bolton. It was the same address that Advantage Capital had suggested to NASD staff where Bolton might be residing (noted above as the "Forwarding address"). As a result, Enforcement sent a Third Notice of Complaint by first class and certified mail to Bolton at his CRD and Forwarding addresses, and a copy was sent to his bankruptcy attorney. Bolton failed to respond to the Complaint.

Discussion and Conclusions

Jurisdiction

Article V, Section 4 of the NASD By-Laws provides for an extended two-year period of retained jurisdiction over a registered person in the event an amended notice of termination disclosing possible misconduct is filed within two years of the original notice of the person's termination of registration. During this period of retained jurisdiction, NASD may file a complaint based upon conduct that occurred while the individual was registered through a member firm, or based upon such person's failure to provide information requested pursuant to NASD Procedural Rule 8210, if the request was made, and the complaint is filed, during the foregoing period of retained jurisdiction.

Enforcement filed the Complaint on January 9, 2007, within two years of the amendment to Bolton's notice of termination of registration. The Complaint alleges

misconduct while Bolton was registered with an NASD member firm, as well as failures to provide information during the period of retained jurisdiction. Therefore, NASD has jurisdiction over this proceeding.

Respondent's Default

Enforcement properly served the Complaint on Bolton by sending it via first class and certified mail to his CRD address, as well as to the Forwarding address, the latest alternate address obtained during the course of the investigation. Pursuant to NASD Procedural Rule 9134, the mailings provide constructive notice of the instant proceeding. The submission of the Notice of Bankruptcy Filing by his attorney demonstrates that he had actual notice of the Complaint. Because Bolton failed to respond to the Complaint, Procedural Rules 9215(f) and 9269 authorize entry of a default decision against him. Accordingly, the allegations in the Complaint are deemed admitted.

Misuse of Customer Funds

NASD Conduct Rule 2330(a) mandates that “[n]o member or person associated with a member shall make improper use of a customer’s securities or funds.” A person misuses funds by failing to use or apply them as directed by the customer.³ Misuse of funds is “patently antithetical to high standards of commercial honor and just and equitable principles of trade,” and thus a violation of NASD Conduct Rule 2110.⁴

Bolton misused \$99,000 belonging to customer DB when, without the knowledge or consent of DB, he failed to invest those funds as DB intended. That misuse occurred even if some of those funds were eventually invested for the benefit of DB. By failing

³ See *Alderman v. SEC*, 104 F.3d 285; 1997 U.S. App. LEXIS 242 (9th Cir. 1997).

⁴ *Wheaton D. Blanchard*, Exchange Act Release No. 12,484, 1976 SEC LEXIS 1571, at *2 (May 27, 1976); *Joel Eugene Shaw*, Exchange Act Release No. 34,509, 1994 SEC LEXIS 2493, at *6 (Aug. 10, 1994).

immediately to invest those funds, which remained under Bolton's own control and use, Bolton violated NASD Conduct Rules 2330 and 2110.

Failure to Provide Information

Procedural Rule 8210 authorizes NASD to require any person subject to its jurisdiction to provide information and testimony related to any matter under investigation. The Rule serves as a key element in NASD's oversight function and allows NASD to carry out its regulatory functions without subpoena power.⁵ When an individual fails to respond to information requests, NASD's ability to perform its regulatory responsibilities is subverted.⁶ A violation of Procedural Rule 8210 is also a violation of Conduct Rule 2110.⁷

Bolton received at least constructive notice of the three requests for information. His complete failure to comply with any of them plainly constituted violations of Procedural Rule 8210 and Conduct Rule 2110.

Sanctions

Misuse of Funds

The NASD Sanction Guideline for misuse of funds recommends consideration of a bar.⁸ Where the misuse occurred as a result of the respondent's misunderstanding of the customer's intended use of the funds, or where other mitigating factors exist, a

⁵ See *Joseph G. Chiulli*, Exchange Act Release No. 42,359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for NASD effectively to conduct its investigations, and emphasizing that NASD members and associated persons must fully cooperate with requests for information); *Dep't of Enforcement v. Benz*, No. C01020014, 2003 NASD Discip. LEXIS 11, at *18 (OHO Mar. 4, 2003) ("Because NASD has no subpoena power, timely and full compliance with information requests is essential to NASD's self-regulatory function.").

⁶ *Joseph P. Hannan*, Exchange Act Release No. 40,438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998).

⁷ *Dep't of Enforcement v. Baxter*, No. C07990016, 2000 NASD Discip. LEXIS 3, at *25 (NAC Apr. 19, 2000).

⁸ NASD SANCTION GUIDELINES 38 (2006 ed.).

suspension of six months to two years may be considered. Here there are no mitigating factors. The misuse was intentional and clearly contrary to the customer's intended use of his funds. Accordingly, a bar is the appropriate sanction.⁹

Failure to Respond to Requests for Information

For failure to respond to requests for information made pursuant to Rule 8210, NASD Sanction Guidelines provide that a bar is the standard sanction where, as here, the individual did not respond in any way.¹⁰ There are no mitigating circumstances that would warrant a sanction less than a bar. Accordingly, Bolton will be barred in all capacities for failing to respond in any manner to requests for information made pursuant to Rule 8210.

Conclusion

Charles Louis Bolton III is barred from association with any NASD member firm in any capacity for misusing customer funds, in violation of NASD Conduct Rules 2330 and 2110, and failing to respond to NASD staff requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2110. The bars shall become effective immediately if this Decision becomes the final disciplinary action of NASD.

SO ORDERED.


Alan W. Heifetz
Hearing Officer

Copies to:

Charles Louis Bolton, III (*via first class mail & overnight courier*)

Heather Hawker, Esq. (*via first class & electronic mail*)

Mark P. Dauer, Esq. (*via first class & electronic mail*)

Rory C. Flynn, Esq. (*via first class & electronic mail*)

⁹ Enforcement does not seek restitution.

¹⁰ SANCTION GUIDELINES, at 35.

**NASD
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

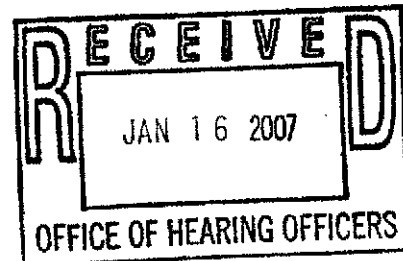
CHARLES LOUIS BOLTON III,
CRD No. 1753380

Respondent.

Disciplinary Proceeding
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COMPLAINT



The Department of Enforcement alleges:

1. Respondent Charles Louis Bolton III (Bolton) was associated with NASD member, Advantage Capital Corporation (ACC or the Firm), from November 23, 1988 through December 19, 2005, when he was terminated. During this period, Bolton operated a branch office of ACC in Phoenix, Arizona under the trade name, Pillar Financial Group (Pillar). Since his termination, Bolton has not associated with another member firm.

2. Bolton is subject to NASD jurisdiction pursuant to Article V, § 4 of NASD's By-Laws.

**FIRST CAUSE OF ACTION
(Misuse of Customer Funds - NASD Conduct Rules 2330 and 2110)**

3. Complaint paragraph numbers 1-2, above, are re-alleged and incorporated herein by reference.

4. In December 2005, ACC discovered that Bolton had vacated the Pillar office without providing any notification to or otherwise advising ACC.

5. On or about December 19, 2005, ACC terminated Bolton's registration with the Firm for violation of firm policy, namely failing to make meaningful contact with the home office and for failing to maintain contact with his representatives.

6. Also on or about December 19, 2005, ACC sent letters to Bolton's customers informing them that Bolton was no longer with ACC and asking them to review their account statements and to contact the Firm if they found questionable transactions or transactions not reflected on their account statements.

7. Customer DB responded to ACC's December 19, 2005 letter and advised the Firm of discrepancies that he had found upon a review of his account statements covering the period 2002 through 2005. One of the complaints lodged by DB was that the statements did not evidence or otherwise reflect funds in the amount of \$99,000 that he had given to Bolton in 2003 and that were to be invested at Pillar/ACC.

8. On or about March 10, 2003, DB gave Bolton a check for \$74,000 made payable to Pillar that was to be used for investment purposes. At that period of time, all of DB's investments with Pillar/ACC were in Oppenheimer Funds. Bolton endorsed the check and the check cleared DB's bank on March 13, 2003. Statements received by DB with respect to his investments with Pillar/ACC did not reflect the \$74,000 payment DB gave to Bolton.

9. On or about November 25, 2003, DB gave Bolton a check for \$25,000, made payable to Pillar that was to be used for investment purposes. At that period of time, all of DB's investments with Pillar/ACC were in Oppenheimer Funds. Bolton endorsed the check and the check cleared DB's bank on November 26, 2003. Statements received by DB with respect to his investments with Pillar/ACC did not reflect the \$25,000 payment DB made to Bolton.

10. In summary, at the time DB tendered the funds to Bolton on March 10, and November 25, 2003, DB intended that the funds be invested at Pillar/ACC. Notwithstanding the above, these funds were not deposited into or otherwise reflected in DB's securities accounts at Pillar/ACC.

11. DB further informed ACC that unauthorized deposits had been made into his Pillar/ACC accounts. Specifically, from approximately May 2004 through September 2005, five purchases of shares of Oppenheimer Cash Reserves Fund, representing a total amount of approximately \$43,500, had been made in DB's account. DB did not authorize these purchases. In fact, prior to DB's receipt of ACC's December 2005 letter and his subsequent review of his account statements, DB had no knowledge of these purchases. At least two of the purchases were made by Pillar.

12. As described in paragraphs 7-10 above, DB gave Bolton two checks totaling \$99,000 and made payable to Pillar with the intention that the funds be invested for his benefit. Bolton, however, failed to invest DB's funds with Pillar/Advantage. By failing to invest DB's funds as DB intended, Bolton made improper use of the customer's funds. The foregoing acts, practices and conduct constitute separate and distinct violations of Rules 2330 and 2110 by Bolton.

SECOND CAUSE OF ACTION
(Failure to Respond to Rule 8210 Requests for Information -
NASD Procedural Rule 8210 and NASD Conduct Rule 2110)

13. Complaint paragraph numbers 1-12, above, are re-alleged and incorporated herein by reference.

14. As referenced in Complaint paragraph 6, ACC sent letters to Bolton's customers in December 2005 requesting that they review their account statements for any irregularities.

ACC received two responses to that letter, one from customer DB and one from the Estate of customer HR.

15. As set forth in the First Cause of Action, DB notified the Firm that he could not account for \$99,000 that he had given to Bolton in 2003 for investment purposes. HR's Estate notified the Firm that HR had lost in excess of \$550,000 due in part, to the fraudulent and/or negligent conduct of Bolton. The Estate of HR further maintained that Bolton had made unsuitable investment recommendations.

16. On March 7, 2006, pursuant to Rule 8210, NASD staff sent Bolton a written request for information related to the customer complaints made by DB and HR's Estate. In brief, staff requested that Bolton provide a written statement (and all supporting documentation) responding to the allegations raised by DB and HR's Estate. Bolton was requested to: address the circumstances surrounding the customers' allegations; admit or deny whether the customers' claims were true; produce copies of his bank statements and any other documentation reflecting the funds that were the subject of DB's and HR's respective complaints; address whether or not he had obtained permission from DB and HR prior to withdrawing funds from their respective accounts; and, provide his rationale for investment recommendations made with respect to HR's accounts.

17. The March 7, 2006 request was sent by certified mail, return receipt requested, and by first class mail to Bolton's address as listed in CRD (CRD Address) – [REDACTED]

[REDACTED] The requested information was to be provided by March 21, 2006. The certified letter sent to the CRD Address was returned to NASD with the notation "Unclaimed." The letter sent via first class mail to the CRD Address was not returned.

18. A second Rule 8210 request was sent to Bolton on April 18, 2006. This request was sent by certified mail, return receipt requested, and by first class mail to Bolton's CRD Address. The certified letter sent to the CRD Address was returned to the NASD with the notation "Unclaimed." The letter sent via first class mail to the CRD Address was not returned.

19. Staff subsequently contacted ACC and inquired whether the Firm had a more current address for Bolton. ACC represented that for a period of time following his termination from the Firm, Bolton resided at [REDACTED] On November 27, 2006, a third Rule 8210 request was sent via certified mail, return receipt requested, and first class mail to Bolton's CRD address and to the [REDACTED] address. The November 2006 request provided that Bolton's response was due on or prior to December 11, 2006. Notwithstanding this deadline, Bolton failed to respond to the November 2006 request.

20. To date, Bolton has not provided the information requested pursuant to NASD Procedural Rule 8210, as described in paragraphs 14-19 above.

21. Bolton's failure to respond to the March 7, April 18, and November 27, 2006 Rule 8210 requests interfered with NASD's investigation of the complaints HR's Estate and DB made against Bolton. Bolton's non-responsiveness prevented NASD from, among other things: investigating any defenses Bolton might claim; determining whether additional funds belonging to HR and/or DB were misused; and, obtaining information that would either substantiate or refute the claims raised by HR's Estate.

22. The above conduct set forth in Complaint paragraphs 14-21 constitutes separate and distinct violations of NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by Bolton.

PRAYER FOR RELIEF

WHEREFORE, the Department of Enforcement 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 Bolton bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330.

NASD DEPARTMENT OF ENFORCEMENT

Dated: January 9, 2007



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