

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT

Complainant,

v.

BRIAN JAMES DUNN
(CRD No. 3056636)

Respondent.

Disciplinary Proceeding
No. 2006004809201

Hearing Officer – AWH

DEFAULT DECISION

May 7, 2007

Formerly registered representative falsified firm expense reports and received payment for those expenses, in violation of NASD Conduct Rule 2110, and failed to respond to NASD staff requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2110. Respondent barred for both violations.

Appearances:

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

No appearance by or for Brian James Dunn.

DECISION

Background

On December 22, 2006, the Department of Enforcement ("Enforcement") filed the Complaint in this proceeding, alleging that Brian James Dunn falsified firm expense reports and received payment for those expenses, in violation of NASD Conduct Rule 2110, and failed to respond to requests for information, in violation of NASD Procedural Rule 8210 and Conduct Rule 2110. Dunn did not file an Answer to the Complaint, or to a Second Notice of Complaint. As a result, Enforcement filed a Motion for Entry of Default Decision on March 2, 2007, to which Dunn did not respond. Accordingly,

pursuant to Procedural Rules 9215(f) and 9269, Enforcement's Motion will be granted, and the allegations in the Complaint, which is attached to this Decision, will be deemed admitted.

Findings of Fact¹

Respondent

Dunn was registered as a General Securities Representative with member firm ING Funds Distributor, LLC, ("ING") from February 26, 2003, through March 16, 2006, when he was discharged for theft of company funds by falsification of expense reports and receipts. Dunn is not currently associated with any member firm.

Falsification of Expense Reports and Receipts

In May 2005, ING issued Dunn a corporate credit card for the purpose of paying business expenses only. Dunn was personally responsible for paying amounts owed on the card, and ING would reimburse him for business related expenses upon submission of properly completed expense reports. Representatives were not to use the corporate card for personal expenses.

In November and December 2005, Dunn submitted to ING three fraudulent expense reports containing four altered receipts. As a result, Dunn received payments from ING in the amount of \$1,403.05 to which he was not entitled. When confronted by the firm, he admitted that he had submitted the false expense reports and received payments on them.

On December 3, 2005, Dunn purchased a personal item for \$33.00 and charged the expense on the firm credit card. He submitted an expense report for the item and

¹ All findings of fact are based upon the admitted allegations in the Complaint, the Declaration Supporting Motion for Entry of Default Decision, and the exhibits attached thereto.

received reimbursement for this personal charge. Dunn admitted to the firm that he had charged the item on the corporate card and received reimbursement for it.

Failure to Respond to Requests for Information

On July 24, 2006, pursuant to Procedural Rule 8210, NASD staff sent Dunn a request to provide information concerning his alleged theft of firm funds. The request was sent both by first class and certified mail to Dunn's residential address listed in the Central Registration Depository ("CRD" address). The certified letter was returned with a notation that it could not be forwarded because no forwarding order was on file. The first class letter was not returned. Dunn failed to respond to the request for information.

On August 10, 2006, pursuant to Procedural Rule 8210, NASD staff again sent a request for information concerning his alleged theft of firm funds. The request was sent by regular and certified mail to his CRD address. Both the certified mailing and the first class mailing were returned, noting that they were undeliverable as addressed and unable to be forwarded. Dunn did not respond to the request.

The staff determined that ING had no other address for Dunn, but the staff was able to obtain from an outside source what appeared to be his most current residential address: two variations of a Boston, Massachusetts, address. On October 6, 2006, the staff sent a third 8210 request to Dunn at the CRD address and to the two Boston addresses. The certified mailing to the CRD address and the first class mailing to one of the Boston addresses were not returned. The other mailings were returned, noting that they could not be forwarded. Dunn did not respond to the October 6 request.

Service of the Complaint

On December 22, 2006, Enforcement served Dunn with the Complaint and Notice of Complaint by both first class and certified mail, sent to his CRD address. The certified mailing and the first class mailing were returned, and no forwarding address was provided on the returned mailings. Dunn did not file an Answer.

On January 22, 2007, Enforcement served the Complaint and Second Notice of Complaint on Dunn by first class and certified mail sent to his CRD address. Both mailings were returned undelivered and unable to be forwarded. Dunn did not file an Answer to the Complaint. The staff was unable to obtain a more current address for Dunn.

Discussion and Conclusions

Jurisdiction

Article V, Section 4 of the NASD By-Laws provides for a two-year period of retained jurisdiction over a registered person after the effective date 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 December 22, 2006, within two years of the termination of Dunn's registration. The Complaint alleges misconduct while Dunn 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 Dunn by sending it via first class and certified mail to his CRD address. Pursuant to NASD Procedural Rule 9134, the mailings provide constructive notice of the instant proceeding.² Because Dunn failed to file an answer 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.

Falsification of Expense Reports and Receipts

NASD Conduct Rule 2110 requires that associated individuals "observe high standards of commercial honor, and just and equitable principles of trade." NASD's "disciplinary authority is broad enough to encompass business-related conduct that is inconsistent with just and equitable principles of trade, even if that activity does not involve a security."³ Conduct Rule 2110 applies when the misconduct reflects on the associated person's ability to comply with the regulatory requirements of the securities business and to fulfill his fiduciary duties in handling other people's money.⁴

Submitting false expense reports and receiving reimbursement for those expenses violates Conduct Rule 2110.⁵ Doing so is the equivalent of conversion, "an intentional and unauthorized taking of and/or exercise of ownership over property by one who

² Under Rule 9134, Enforcement was not required to serve the Complaint on Dunn at the Boston, Massachusetts addresses because it did not have evidence that those addresses were, in fact, more recent than the CRD address.

³ *Daniel D. Manoff*, Exchange Act Release No. 46,708, 2002 SEC LEXIS 2684, at *12 (Oct. 23, 2002).

⁴ *Id.* (citing *James A. Goetz*, Exchange Act Release No. 39,796, 1998 SEC LEXIS 499 (Mar. 25, 1998)).

⁵ *District Business Conduct Comm for District No. 3, v. Bruun*, No C3B960004, 1998 NASD Discip. LEXIS 18, at **10-14 (NAC Jan. 23, 1998).

neither owns the property nor is entitled to possess it.”⁶ Conversion of firm funds to a representative’s own use is an intentional disregard for the “high standards of commercial honor and just and equitable principles of trade,” mandated by NASD Conduct Rule 2110.⁷ Dunn’s false expense reports and receipt of reimbursement for the expenses claimed converted firm funds for his own use and clearly violated Conduct Rule 2110.

Failures 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.⁸ When an individual fails to respond to information requests, NASD’s ability to perform its regulatory responsibilities is subverted.⁹ A violation of Procedural Rule 8210 is also a violation of Conduct Rule 2110.¹⁰

Dunn received constructive notice of three requests for information that were sent to him pursuant to Procedural Rule 8210. His complete failure to respond to those requests violated both Procedural Rule 8210 and Conduct Rule 2110.

⁶ NASD SANCTION Guidelines, p. 38 n.2 (2006 ed.).

⁷ See *District Business Conduct Comm. For Dist. No. 2S v. Frank Bernard Varites*, No. LA-4293, 1991 NASD Discip. LEXIS 16 (Jan. 22, 1991).

⁸ 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.”).

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

¹⁰ *Dep’t of Enforcement v. Baxter*, No. C07990016, 2000 NASD Discip. LEXIS 3, at *25 (NAC Apr. 19, 2000).

Sanctions

Falsification of Expense Reports and Receipts

Because the falsification of expense reports and receipt of reimbursement for those expenses is the equivalent of conversion, the Hearing Officer will look to the NASD Sanction Guideline for conversion of funds which provides that a bar is standard, regardless of the amount of funds converted.¹¹ Accordingly, Dunn will be barred for his falsification of expense reports and receipt of reimbursement for the expenses claimed.

Failure to Provide Information

For failure to provide information and documents in response to requests made pursuant to Rule 8210, NASD Sanction Guidelines provide that a bar is standard where, as here, the individual fails completely to provide any information or documents.¹² There are no mitigating circumstances that would warrant a sanction less than a bar for Dunn's complete failures to respond to the requests for information. Accordingly, Dunn will be barred for failing to respond in any manner to requests for information made pursuant to Procedural Rule 8210.

Conclusion

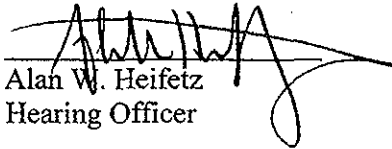
Brian James Dunn is barred from association with any NASD member firm in any capacity for falsification of expense reports and receipt of reimbursement for the expenses claimed, in violation of NASD Conduct Rule 2110, and for failing to provide information in response to NASD staff requests, in violation of Procedural Rule 8210 and

¹¹ SANCTION GUIDELINES p. 38.

¹² SANCTION GUIDELINES p. 35.

Conduct Rule 2110. The bars shall become effective immediately if this Decision becomes the final disciplinary action of NASD.

SO ORDERED.

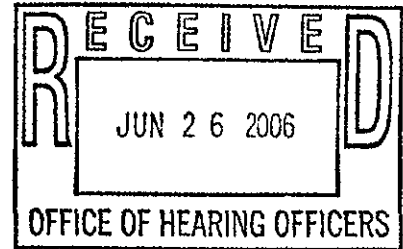

Alan W. Heifetz
Hearing Officer

Copies to:
Via First Class Mail & Overnight Courier
Brian James Dunn

Via First Class Mail & Electronic Mail
Heather Hawker, Esq.
Mark P. Dauer, Esq.
Rory C. Flynn, Esq.

**NASD
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,	)	Disciplinary Proceeding
	)	No. 2006004809201
Complainant,	)	
	)	Hearing Officer
v.	)	COMPLAINT
	)	
BRIAN JAMES DUNN	)	
CRD No. 3056636	)	
	)	
Respondent.	)	
_____	)	



The Department of Enforcement alleges:

1. Respondent Brian James Dunn (Dunn) was associated with NASD member, ING Funds Distributor, LLC (ING or the Firm), from on or about February 24, 2003, through March 16, 2006, when he was terminated. Since his termination, Dunn has not associated with another member firm. The conduct that is the subject of this proceeding occurred in late 2005.

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

**FIRST CAUSE OF ACTION
(Unethical Misconduct - NASD Conduct Rule 2110)**

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

4. For approximately three years, Dunn was employed by ING. In May 2005, the Firm issued Dunn a corporate credit card for the purpose of paying business expenses. The card was not to be used for personal expenses.

5. Dunn was responsible for paying business expenses charged on the card. ING, however, promptly reimbursed representatives, such as Dunn, for permissible business expenses upon submission of properly completed expense reports.

6. Following the issuance of the corporate credit card to Dunn, ING became concerned when Dunn was unable to make payments on the card sufficient to cover the previous month's charges. Consequently, the Firm conducted an internal audit that involved a review and investigation of Dunn's submitted expense reports and credit card statements for the period of May 2005 through December 2005.

7. As a result of the audit, ING discovered that in November and December 2005, Dunn submitted three fraudulent expense requests consisting of four altered receipts. By submitting falsified expense requests, Dunn received payments from ING in the approximate amount of \$1,403.05 to which he was not entitled.

8. When confronted by the Firm with the audit results, Dunn admitted that he had submitted and received payments on the falsified expense reports.

9. ING's audit further revealed that on or about December 3, 2005, Dunn purchased a personal item in the amount of approximately \$33.00 and then submitted an expense report and received reimbursement for this personal charge from the Firm.

10. Dunn subsequently admitted to the Firm that he charged the \$33.00 personal item on the corporate card and then submitted the charge to and received reimbursement from the Firm. Had Dunn properly disclosed to the Firm that this expense was for a personal item, no reimbursement would have been issued because the corporate card was only to be used for business expenses.

11. The alteration of receipts, submittal of falsified expense reports, and receipt of expense report payments to which Dunn was not entitled constitutes conduct inconsistent with the high standards of commercial honor and just and equitable principles of trade and the foregoing conduct constitutes separate and distinct violations of NASD Conduct Rule 2110 by Dunn.

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

12. Complaint paragraph numbers 1-11, above, are re-alleged and incorporated herein by reference.

July 24, 2006 Request Letter

13. On July 24, 2006, pursuant to Rule 8210, NASD staff sent a written request to Dunn for information related to its investigation into the conduct set forth in Complaint paragraphs 6-11. This request was sent by both certified and first-class mail to Dunn's CRD residential address (CRD Address). The requested information was to be provided to NASD by August 7, 2006.

14. The certified letter was returned to NASD with the notation "Unable to Forward – No Forward Order on File – Return to Postmaster of Addressee for Review." The first class letter was not returned to NASD. NASD never received a response to the July 2006 Rule 8210 request.

August 10, 2006 Request Letter

15. On August 10, 2006, NASD sent Dunn a second written Rule 8210 request by both certified and first-class mail to the CRD Address. The information sought was identical to that requested in the July 2006 letter. Dunn was to respond to the August 10,

2006 letter by August 24, 2006. Both the certified and the first class letters were returned "Not Deliverable as Addressed – Unable to Forward." Dunn did not respond to the August 2006 Rule 8210 request.

16. Following the return of the second written Rule 8210 request, staff contacted ING to inquire if the Firm had a more current address for Dunn. ING represented that the only address it had for Dunn was the CRD Address.

17. Staff then obtained a report on Dunn from National Comprehensive Report Plus Associates in an attempt to obtain a current residential address. The most current residential address contained in the report were two variations of a Boston, Massachusetts address – [REDACTED] and [REDACTED]
[REDACTED]

October 6, 2006 Request Letter

18. On October 6, 2006, staff sent a third written Rule 8210 request to Dunn. The third request was sent via certified and first class mail to the CRD Address and to the two variations of the Boston, Massachusetts address. Dunn was to respond to the third written Rule 8210 request by October 20, 2006. As of November 16, 2006, the certified letter to the CRD Address had not been returned. The first class mailing to the CRD address was returned marked "Not Deliverable as Addressed – Unable to Forward." The certified mailings to the two variations of the Boston, Massachusetts address were both returned with the hand written notation "UTF" (unable to forward). The first class mailing to [REDACTED] was also returned marked "UTF." The first class mailing to [REDACTED] has not been returned. Dunn failed to respond to the October 2006 Rule 8210 request.

19. The three written Rule 8210 requests for information were sent within two years of Dunn's most recent association with an NASD member and, therefore, he was required by Procedural Rule 8210 to provide the requested information.

20. Each failure to provide information constitutes a separate and distinct violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by Dunn.

PRAYER FOR RELIEF

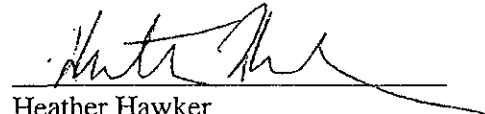
WHEREFORE, the Department of Enforcement respectfully requests that the Panel:

A. Order that one or more of the sanctions provided under NASD Rule 8310(a), including monetary sanctions be imposed; and

B. Order that Dunn bear such costs of proceedings as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8310.

Dated: December 22, 2006

NASD DEPARTMENT OF
ENFORCEMENT



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