

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

RICHARD A. THAYER
(CRD No. 4123272),

Respondent.

Disciplinary Proceeding
No. 2006005175401

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

June 29, 2007

Respondent is barred from associating with any member firm for converting customer funds, in violation of Conduct Rule 2110; and for failing to respond to requests for information issued by NASD staff, in violation of Procedural Rule 8210 and Conduct Rule 2110.

Appearances

Dale A. Glanzman, Regional Counsel, Chicago, IL (Rory C. Flynn, Chief Litigation Counsel, Washington, D.C., Of Counsel) for the Department of Enforcement.

No appearance by or on behalf of Richard A. Thayer.

DECISION

Introduction

On November 10, 2006, the Department of Enforcement ("Enforcement") filed the attached Complaint against Richard A. Thayer ("Thayer" or the "Respondent"). The Complaint charges the Respondent with converting customer funds, in violation of NASD Conduct Rule 2110; and failing to respond to NASD staff's requests for information, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110. The Respondent did not answer or

otherwise respond to the Complaint. On June 20, 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 November 8, 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 did not file an Answer.

On December 6, 2006, 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 did not file an Answer or otherwise respond to the Second Notice of Complaint.

On February 2, 2007, Enforcement requested additional time to serve the Respondent at his last known address, which was granted. Accordingly, on February 12, 2007, Enforcement served the Complaint and a Third Notice of Complaint on the Respondent by certified and first-class mail sent to both his CRD address and his last known residential address. The Respondent did not file an Answer, and Enforcement moved for entry of a default decision on March 23, 2007.

On April 4, 2007, the Hearing Officer denied Enforcement's motion for entry of default decision because it appeared from Enforcement's supporting declaration that Enforcement had not properly served the Respondent. Thereafter, Enforcement re-served the Respondent with copies of the Complaint and the prior notices of Complaint. On April 10, 2007, Enforcement served the Respondent with a Fourth Notice of Complaint, and, on May 9, 2007, Enforcement

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.

served the Respondent with a Fifth Notice of Complaint. Enforcement served the Fourth and Fifth Notices of Complaint by certified and first-class mail sent to the Respondent's CRD address and his last known residential address.

To date, the Respondent has not filed a response to the Complaint or any of the Notices of Complaint.

The Hearing Officer finds that Enforcement properly served the Respondent with the Complaint and the Fourth and Fifth Notices of Complaint.² Thus, the Respondent received valid constructive notice of this proceeding and 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.

B. Jurisdiction

Respondent was most recently registered as a General Securities Representative through NASD member NatCity Investments, Inc. ("NatCity Investments") from August 2005 until May 2006. Although Thayer 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 two Rule 8210 requests for information the staff issued within the period of retained jurisdiction.

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)).

C. Conversion

The First Cause of Complaint alleges that, on or about March 17, 2006, while he was registered with NatCity Investments and employed by National City Bank, the Respondent withdrew \$2,000 from M.H.'s bank account at National City Bank. The Respondent used the funds to pay attorney's fees he had incurred defending a drunk driving charge. Thereafter, in an attempt to conceal his wrongdoing, the Respondent transferred \$2,000 from another customer's account to M.H.'s account, and then transferred \$2,000 from customer H.L.'s account to restore the funds taken from the second customer's account. On April 28, 2006, Thayer admitted to National City Bank investigators that he had embezzled \$2,000. Thayer paid full restitution to the bank.

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

D. Failure to Respond to Requests for Information

The Second Cause of the Complaint alleges that Thayer failed to respond to three requests for information that NASD staff sent in connection with their investigation of the facts and circumstances surrounding Thayer's conversion of funds, as alleged in the First Cause of the Complaint.

The Complaint alleges that the staff sent the requests to Thayer at his CRD address by certified first-class mail on July 13, August 7, and August 30, 2006, pursuant to Procedural Rule 8210. The staff also sent the second request to an alternate address the staff obtained after the U.S. Postal Service returned the first mailing as undeliverable. Thayer called the staff in response to the second request on August 10, 2006, and acknowledged receipt of the second notice. He also confirmed his current residential mailing address. Nonetheless, Thayer failed to respond to the second request for information. Thus, the staff sent Thayer the third request to both his CRD

address and Thayer's current residential address. Thayer did not supply the information the staff requested.

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, as alleged in the Second Cause of the Complaint.

II. Sanctions

A. Conversion of Customer Funds

The NASD Sanction Guidelines recommend a bar regardless of the amount converted.³ Here, there is no evidence of any mitigating factors. Accordingly, the Hearing Officer finds that a bar is the appropriate sanction for this violation.

B. 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.⁴ Here, the record discloses no such mitigating factors. Accordingly, a bar also is appropriate for this violation.

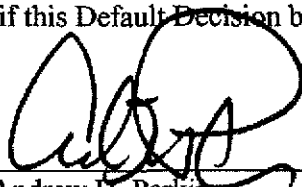
III. Order

Richard A. Thayer is barred from associating with any member firm in any capacity for converting customer funds, in violation of Conduct Rule 2110; and failing to respond in any manner to requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2110.

³ NASD SANCTION GUIDELINES at 38 (2006).

⁴ *Id.* at 35.

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



Andrew H. Perkins
Hearing Officer

Copies to:

Richard A. Thayer (by FedEx, next day delivery, and first-class mail)
Dale A. Glanzman, 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)

**NASD
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant

v.

RICHARD A. THAYER
Registered Representative
(CRD No. 4123272)

Respondent

**Disciplinary Proceeding
No. 2006005175401**

Hearing Officer

COMPLAINT

The Department of Enforcement alleges:

1. Richard A. Thayer was registered with NatCity Investments, Inc. ("Member"), a member of NASD, as an Investment Company/Variable Contracts Products Representative between April 2003 and May 2006, and as a General Securities Representative between August 2005 and May 2006. Respondent is not currently registered with a NASD member. Respondent therefore is subject to the jurisdiction of the NASD, pursuant to Article V, Section 4 of NASD's By-Laws.

**FIRST CAUSE OF ACTION
Conversion of Customer's Funds
Violation of NASD Conduct Rule 2110**

2. The Department realleges and incorporates by reference paragraph 1 above.

3. During all relevant times, M.H., C.B. and H.L. were members of the public who maintained accounts at the Member's affiliate, National City Bank.

4. During all times relevant hereto, Respondent also was an employee of National City Bank.

5. On or about March 17, 2006, Respondent withdrew \$2,000 from M.H.'s bank account without the knowledge or consent of M.H., and used the funds for his personal use or for some purpose other than the M.H.'s benefit.

6. In or about April 2006, Respondent debited the bank account of C.B. in the amount of \$2,000 and placed the \$2,000 in the bank account of M.H., without the knowledge or consent of C.B.

7. In or about April 2006, Respondent debited the account of H.L. in the amount of \$2,000 and placed the \$2,000 in the bank account of C.B., without the knowledge or consent of H.L.

8. On or about April 28, 2006, Respondent admitted to the allegations contained in Paragraphs 3 through 5 above.

9. The above acts, practices and conduct constitute a violation of NASD Conduct Rules 2110 by Respondent.

SECOND CAUSE OF ACTION
Failure to Respond to Requests for Information
Violation of NASD Conduct Rule 2110 and NASD Procedural Rule 8210

10. The Department realleges and incorporates by reference paragraph 1 above.

11. On or about July 13, 2006, NASD staff sent Respondent a letter, pursuant to NASD Procedural Rule 8210, inquiring about the alleged conversion of customer funds, as outlined above in the First Cause of Action. This letter was sent by regular and certified mail to

Respondent's CRD address of record. The regular mailing was returned to staff marked "Returned to Sender; Undeliverable as Addressed; Forwarding Order Expired" and the certified mailing was returned to staff marked "Returned to Sender; Unclaimed."

12. Upon receipt of the returned envelopes, NASD staff obtained from National Comprehensive Report Plus Associates two other addresses for Respondent, i.e. [REDACTED] ("Royal Oak address") and [REDACTED] ("Ferndale address").

13. On or about August 7, 2006, NASD staff sent Respondent another letter, pursuant to NASD Procedural Rule 8210, inquiring about the alleged conversion of customer funds, as outlined above. This letter was also sent by regular and certified mail and was addressed to Respondent's CRD address of record, the Royal Oak address and the Ferndale address. The regular mailing to the CRD address was returned to staff marked "Returned to Sender; Unable To Forward; No Forward Order on File" and the certified mailing to the CRD address was returned marked "Returned to Sender; Moved, Left No Address." The regular mailing to the Royal Oak address was not returned, and the certified mailing to the Royal Oak address was returned, marked "Returned to Sender; Unclaimed." The regular mailing to the Ferndale address was not returned, and the certified mailing to the Ferndale address was returned marked "Returned to Sender; Unclaimed."

14. On or about August 10, 2006, Respondent telephoned NASD staff, verified that the Royal Oak address was his current address, and stated that he received NASD's letter dated August 7, 2006.

15. On August 30, 2006, NASD staff sent Respondent a final request for information, pursuant to NASD Procedural Rule 8210, inquiring about the alleged conversion of customer funds, as outlined above in the First Cause of Action. This letter was also sent by regular and certified mail and was addressed to Respondent's CRD address of record and the Royal Oak address. The regular mailing to the CRD address was not returned, and the certified mailing was returned to staff marked "Returned to Sender; Not Deliverable as Addressed; Unable To Forward." The regular mailing to the Royal Oak address was not returned, and the certified mailing to the Royal Oak address was returned, marked "Returned to Sender; Unclaimed."

16. To date, Respondent has failed to respond to each and all of the requests for information as described in the paragraphs above, and the time and the dates for responding to the requests have passed.

17. The acts, practices, and conduct described above constitute a violation of NASD Conduct Rule 2110 and Procedural Rule 8210 by Respondent.

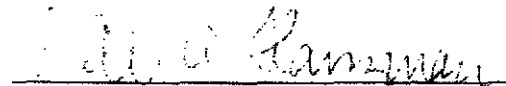
PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests that the Panel:

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

- B. order that Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330.

**NASD DEPARTMENT OF
ENFORCEMENT**



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Date: November 8, 2006

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