

**NASD OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

CHRISTOPHER D. SOLOMON  
(CRD No. 4470012),

Respondent.

Disciplinary Proceeding  
No. 2006005220901

Hearing Officer—Andrew H. Perkins

**DEFAULT DECISION**

April 20, 2007

**Respondent is barred from associating with any member firm in any capacity for engaging in outside business activities, in violation of Conduct Rules 3030 and 2110; converting customer funds, in violation of Conduct Rule 2110; and failing to respond to requests for information issued by NASD staff, in violation of Procedural Rule 8210 and Conduct Rule 2110.**

**Appearances**

Gene E. Carasick, Regional Counsel, Atlanta, GA (Rory C. Flynn, Chief Litigation Counsel, Washington, D.C., Of Counsel) for the Department of Enforcement.

No appearance by or on behalf of Christopher D. Solomon.

**DECISION**

**I. Introduction**

On November 27, 2006, the Department of Enforcement (“Enforcement”) filed the attached Complaint against Christopher D. Solomon (“Solomon” or the “Respondent”). The Complaint charges the Respondent with: (1) engaging in outside business activities without first providing his firm with written notice of his activities, in violation of NASD Conduct Rules 3030 and 2110, (2) converting customer funds, in violation of NASD Conduct Rule 2110; and (3)

failing to respond to NASD staff's requests for information concerning the foregoing charges, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

The Respondent did not answer or otherwise respond to the Complaint. Consequently, on February 16, 2007, Enforcement filed a Motion for Entry of Default Decision, supported by the Affidavit of Gene E. Carasick ("Carasick Aff.") and three exhibits. Solomon did not reply to the motion. Accordingly, for the reasons set forth below, the Hearing Officer grants Enforcement's motion.<sup>1</sup>

## **II. Respondent's Default**

On November 22, 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").<sup>2</sup> The Respondent did not file an Answer. Thus, on December 22, 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.<sup>3</sup> The Respondent did not file an Answer in response to the Second Notice of Complaint.<sup>4</sup>

The evidence shows that Enforcement properly served the Respondent with the Complaint and Notices of Complaint by mailing them to his CRD address by certified mail.<sup>5</sup> 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

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<sup>1</sup> The factual findings in this Default Decision are based on the attached Complaint, the allegations of which are deemed admitted pursuant to Procedural Rule 9215(f), and on the affidavit and exhibits Enforcement filed with the Motion.

<sup>2</sup> Carasick Aff. ¶ 5.

<sup>3</sup> *Id.* ¶ 6.

<sup>4</sup> *Id.* ¶ 7.

<sup>5</sup> *Department of Enforcement v. Reynolds Verdiner*, No. CAF020004, NASD 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 (9<sup>th</sup> Cir. Aug. 12, 1998).

9269(a)(2), the Hearing Officer finds the Respondent in default and deems the allegations in the attached Complaint admitted.

### **III. Findings of Fact and Conclusions of Law**

#### **A. Jurisdiction**

Solomon entered the securities industry in 2001.<sup>6</sup> From March 2003 until January 2006, Solomon was registered as a General Securities Representative with Investors Capital Corp. (“Investors Capital”), an NASD member firm.<sup>7</sup> Since he left Investors Capital, the Respondent has not been associated with any NASD member firm.<sup>8</sup>

Article V, Section 4(a) of the NASD By-Laws provides for a two-year period of retained jurisdiction over formerly registered persons who are no longer associated with any member firm. During this period of retained jurisdiction, the NASD may file a complaint against such persons based upon conduct that occurred before their registrations terminated or for failure to respond to requests for information issued by NASD staff during the period of retained jurisdiction. The two-year period of retained jurisdiction runs from the effective date of termination of registration. Here, the alleged misconduct occurred while Solomon was registered with Investors Capital, and Enforcement filed the Complaint and issued the subject requests for information pursuant to Procedural Rule 8210 within two years of the date his registration terminated. Accordingly, the Hearing Officer finds that NASD has jurisdiction of this proceeding.

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<sup>6</sup> CX-1, at 4 (Respondent’s CRD record).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

## **B. Outside Business Activity**

The First Cause of the Complaint alleges that in September 2004 the Respondent registered Investors Capital Associates, LLC (“ICA”) as a limited liability company under Florida law. ICA’s office address was the same as the Respondent’s CRD address.

In or about January 2005, Respondent Solomon solicited AW to invest \$49,000 in ICA. In return, Solomon told AW that he would receive 12% annual interest payable in monthly checks of \$480. AW agreed and gave Solomon a personal check for \$49,000 made out to ICA. Solomon deposited the check into ICA’s bank account.

The Complaint further alleges that Solomon stopped making the monthly interest payments after the thirteenth month. Solomon never returned AW’s \$49,000 investment.

NASD Conduct Rule 3030 provides that no person registered with a member “shall be employed by, or accept compensation from, another person as a result of any business activity ... outside the scope of his relationship with his employer firm, unless he has provided prompt written notice to the member ... in the form required by the member.” The purpose of Conduct Rule 3030 is to provide member firms with an opportunity to raise any objections to such activities at a meaningful time and to exercise appropriate supervision as necessary under applicable law.<sup>9</sup> Conduct Rule 3030 requires disclosure of all outside business activity, not just securities-related activity.<sup>10</sup> Based on the foregoing, the Hearing Officer finds that Solomon violated NASD Conduct Rules 3030 and 2110.

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<sup>9</sup> *Proposed Rule Change by NASD Relating to Outside Business Activities of Associated Persons*, Exchange Act Release No. 26,063, 1988 SEC LEXIS 1841 (Sept. 6, 1988), adopted at Exchange Act Release No. 26,178, 1988 SEC LEXIS 2032 (Oct. 13, 1988).

<sup>10</sup> *District Bus. Conduct Comm. v. Cruz*, No. C8A930048, 1997 NASD Discip. LEXIS 62, at \*96 (N.B.C.C. Oct. 31, 1997).

In this case, the allegations in the Complaint are sufficient to establish that Solomon's activities violated Conduct Rule 3030. Solomon's actions in forming and raising funds for ICA were outside the scope of his employment relationship with Investors Capital. Nonetheless, Solomon did not provide his firm with the written notice required by Conduct Rule 3030.

Accordingly, the Hearing Officer finds that Solomon violated NASD Conduct Rules 2110 and 3030 by engaging in outside business activities without first providing his firm with written notice of his intended activities.

### **C. Conversion of Customer Funds**

The Second Cause of Complaint alleges that on or about December 4, 2004, Solomon solicited AG to invest \$8,000 in McFarlan Real Estate Investment Services, which is on Investor Capital's list of approved investments. AG, who did not have an account with Investors Capital, made the \$8,000 check payable to ICA and gave it to Solomon. He then deposited the check into ICA's bank account, but he never invested the funds in accordance with his customer's instructions.

AG became concerned when he failed to receive any documentation relating to his investment. When AG questioned Solomon about his investment, Solomon sent AG an account statement from McFarlan Real Estate, which showed that AG's investment had been applied to the purchase of a short-term promissory note. In fact, the account statement was fictitious. Solomon had fabricated the statement to conceal his conversion of AG's funds.

Based on the foregoing allegations, the Hearing Officer finds that Solomon converted \$8,000 belonging to customer AG and thereby violated NASD Conduct Rule 2110.

#### **D. Failure to Respond to Requests for Information**

The Third Cause of the Complaint alleges that Solomon failed to respond to two requests for information that NASD staff sent in connection with their investigation of Solomon's outside business activities and conversion of customer funds.

The Complaint alleges that the staff sent the first request by first-class mail on June 5, 2006, to Solomon at his CRD address. The mailing was returned by the U.S. Postal Service with the notation, "return to sender, unable to forward." The staff then sent Solomon a second request on June 20, 2006, by certified and first-class mail. Both the first-class mailing and the certified mailing were returned by the Postal Service with the notation, "return to sender, unable to forward."

Solomon did not respond to any of the staff's information requests. Accordingly, the Hearing Officer finds that Solomon violated Procedural Rule 8210 and Conduct Rule 2110, as alleged in the Third Cause of the Complaint.

#### **IV. Sanctions**

##### **A. Outside Business Activities**

The NASD Sanction Guidelines governing outside business activities recommend a fine of \$2,500 to \$50,000 and a suspension of up to 30 business days where there are no aggravating circumstances.<sup>11</sup> When the outside business activities involve aggravating conduct, the Guidelines provide for a longer suspension of up to one year.<sup>12</sup> Finally, in egregious cases, the Guidelines provide for a bar.<sup>13</sup>

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<sup>11</sup> NASD SANCTION GUIDELINES 14 (2006 ed.).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

“NASD adopted Rule 3030 to prevent harm to the investing public and to limit member firms’ entanglements in legal difficulties that can result from unsupervised outside business activities, which may be unrelated to the securities industry.”<sup>14</sup> In light of these important protective goals, engaging in unreported outside business activities is considered a serious violation. Viewed with these protective goals in mind, the Hearing Officer concludes that this case involved an egregious violation. The Respondent’s activities resulted in direct injury to customers of his firm, and he pursued these activities for his personal financial gain. Accordingly, the Hearing Officer concludes that a bar is the appropriate sanction for this violation.

#### **B. Conversion**

For conversion of customer funds, the Sanction Guidelines recommend a bar regardless of the amount converted.<sup>15</sup> Here, there is no evidence of any mitigating factors. Accordingly, a bar is the appropriate sanction for the violations under the Second Cause of the Complaint.

#### **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.<sup>16</sup> Here, the record discloses no mitigating factors. Accordingly, a bar also is appropriate for this violation.

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<sup>14</sup> See Notice to Members 88–86, 1988 NASD LEXIS 207 (Nov. 1988). See also, e.g., *District Bus. Conduct Comm. v. Micah C. Douglas*, Nos. C06920046 and C06930068, 1995 NASD Discip. LEXIS 217, at \*18 (N.A.C. Sept. 19, 1995). Rule 3030 requires disclosure of all outside business activity, not just securities-related activity. (*District Bus. Conduct Comm. v. Cruz*, No. C8A930048, 1997 NASD Discip. LEXIS 62, at \*96 (N.B.C.C. Oct. 31, 1997)).

<sup>15</sup> NASD SANCTION GUIDELINES at 38.

<sup>16</sup> NASD SANCTION GUIDELINES at 35.

**V. Order**

Christopher D. Solomon is barred from associating with any member firm in any capacity for: (1) engaging in outside business activities, in violation of NASD Conduct Rules 3030 and 2110; (2) converting customer funds, in violation of Conduct Rule 2110; and (3) failing to respond in any manner to requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2110.

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 'A. Perkins', written over a horizontal line.

Andrew H. Perkins  
Hearing Officer

Copies to:

Christopher D. Solomon (by FedEx, next day delivery, and first-class mail)  
Gene E. Carasick, 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**

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**NASD  
OFFICE OF HEARING OFFICERS**

**DEPARTMENT OF ENFORCEMENT,**

**COMPLAINANT,**

**v.**

**CHRISTOPHER D. SOLOMON  
CRD No. 4470012**

**RESPONDENT.**

**DISCIPLINARY PROCEEDING  
No. 2006005220901**

**Hearing Officer:**

**COMPLAINT**

The Department of Enforcement alleges:

1. Respondent Christopher D. Solomon entered the securities industry in October 2001 with an NASD member, and became registered as a general securities representative in December 2001. He was most recently registered as a general securities representative with NASD member Investors Capital Corp. (ICC). His employment end date with ICC was January 20, 2006, and his registration was terminated on that date. Solomon currently is not registered with an NASD member and has no NASD disciplinary history. NASD retains jurisdiction over Solomon pursuant to Article V, Section 4 of the NASD By-laws.

**FIRST CAUSE OF ACTION**

**Outside Business Activity**

**NASD Conduct Rules 2110 and 2030**

2. On or about September 10, 2004, Respondent Solomon registered Investors Capital Associates, LLC ("ICA"), as a limited liability company in Florida. According to its Articles

of Organization, the stated purpose of the company was to “transact all lawful activities and businesses that may be conducted by a limited liability company under the laws of Florida.”

ICA’s registered address is the same as Respondent Solomon’s residential CRD address.

3. In or about January 2005, Respondent Solomon solicited AW to invest \$49,000 in ICA. Solomon told AW that he would receive 12% annual interest payable in monthly checks of \$480. AW agreed, and gave Respondent Solomon a personal check for \$49,000 made out to ICA. Solomon deposited the check into ICA’s bank account. Solomon made thirteen monthly interest payments to AW of \$480 each. Thereafter, the interest payments stopped. Solomon never returned AW’s \$49,000.
4. Respondent Solomon’s actions in forming and raising funds for ICA were outside the scope of his employment relationship with ICC, and constitute an outside business activity.
5. Respondent Solomon did not provide any written notice to ICC of his formation and association with ICA, or that he was raising funds for ICA.
6. Respondent Solomon’s failure to provide written notice to ICC as described above constitutes separate and distinct violations of NASD Conduct Rules 2110 and 3030 by Respondent Solomon.

**SECOND CAUSE OF ACTION**  
**Conversion/Misrepresentation**  
**NASD Conduct Rule 2110**

7. On or about December 4, 2004, Respondent Solomon solicited AG to invest \$8,000 in McFarlan Real Estate Investment Services, whose products had been approved by ICC to offer to ICC customers. AG gave Solomon a check for \$8,000 made payable to Investors

Capital Associates (“ICA”). AG did not have an account with ICC at the time of the solicitation.

8. Respondent Solomon deposited AG’s check into ICA’s bank account, never transmitted the funds to either McFarlan or to ICC for investment, and never opened an account at ICC for AG.
9. By about June 2005, AG became concerned because he had not received any documentation relating to his investment in McFarlan. AG questioned Respondent Solomon, and in response Solomon sent AG a purported McFarlan account statement showing that AG had invested \$8,000 in a six to twelve month mortgage note with a 12% annual interest rate. In fact, the account statement was not an actual McFarlan account statement, but rather a false statement created by Solomon to convince AG that the investment had been made when in fact there was no such investment.
10. The deposit of AG’s funds into ICA’s bank account by Respondent Solomon and the subsequent failure by Solomon to transmit the funds from ICA’s bank account for investment in McFarlan constitutes a conversion of AG’s funds by Solomon, in violation of NASD Conduct Rule 2110.
11. Respondent Solomon’s actions in providing AG with a false account statement in order to convince AG that the McFarlan investment had been made constitutes a material misrepresentation by Respondent Solomon, in violation of NASD Conduct Rule 2110.

**THIRD CAUSE OF ACTION**

**Failure to Respond to Information Requests**

**NASD Conduct Rule 2110; NASD Procedural Rule 8210**

12. By letter dated June 5, 2006, sent via first class mail to Respondent Solomon's CRD residential address [REDACTED] the staff requested that Solomon provide, pursuant to Rule 8210, a written signed statement by June 19, 2006, in response to specific questions related to the subject matter of the First and Second Causes of Complaint. The mailing was returned by the U.S. Postal Service, marked "return to sender, unable to forward".
13. By letter dated June 20, 2006, sent via certified and first class mail to Respondent Solomon's CRD residential address, the staff again requested Solomon to provide a written statement concerning the foregoing matters, this time by July 5, 2006. Both the first class mailing and the certified mailing were returned by the Postal Service, marked "return to sender, unable to forward".
14. The staff attempted to locate a more recent address for Respondent Solomon by means of an Internet search, but was unsuccessful.
15. To date, Respondent Solomon has not responded to the staff's Rule 8210 information requests.
16. Respondent Solomon's failure to respond to the staff's Rule 8210 information requests constitutes separate and distinct violations of NASD Conduct Rule 2110 and Procedural Rule 8210 by Solomon.

**PRAYER**

**WHEREFORE**, the Department respectfully requests that the Panel:

- A. Findings of fact and conclusions of law that the Respondent committed the violations charged and alleged herein.
- B. order that one or more of the sanctions provided under NASD Rule 8310(a), including monetary sanctions, be imposed.
- C. order that the Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330.

November 22, 2006

**NASD Department of Enforcement**

  
Gene E. Carasick, Regional Counsel  
NASD Department of Enforcement  
One Securities Centre, Suite 500  
3490 Piedmont Road, N.E.  
Atlanta, GA 30305  
404-239-6125; (202) 721-6536 (fax)

Andrew A. Favret, Reg'l Chief Counsel  
NASD Department of Enforcement  
1100 Poydras Street  
Energy Centre, Suite 850  
New Orleans, LA 70163  
(504) 412-2402; (202) 721-6527 (fax)

**NASD DISTRICT DIRECTOR**

Daniel J. Stefek  
NASD, District 7  
3490 Piedmont Road, N.E.  
Suite 500  
Atlanta, GA 30305  
(404) 239-6125

**OF COUNSEL**

Rory C. Flynn, Of Counsel  
NASD Department of Enforcement  
1801 K Street, N.W., Suite 800  
Washington, D.C. 20006  
(202) 974-2874; (202) 721-8318 (fax)

Mark P. Dauer, Of Counsel

NASD Department of Enforcement  
1100 Poydras Street  
Energy Centre, Suite 850  
New Orleans, LA 70163  
(504) 412-2405