

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT

Complainant,

v.

MICHAEL J. MENENDEZ
(CRD No. 4895632)

Respondent.

Disciplinary Proceeding
No. 2006005688201

Hearing Officer – AWH

DEFAULT DECISION

July 9, 2007

Formerly registered representative misappropriated funds belonging to his member firm's affiliated bank, 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 misappropriation of funds and failing to respond to requests for information.

Appearances:

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

No appearance by or for Michael J. Menendez.

DECISION

Background

On February 16, 2007, the Department of Enforcement ("Enforcement") filed the Complaint in this proceeding, alleging that Respondent Michael J. Menendez misappropriated funds from his member firm's affiliated bank, 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. Menendez 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 May 18, 2007, to which Menendez 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

Michael J. Menendez first entered the securities industry in December 2004, eventually becoming registered as an Investment Company/Variable Contracts Products Representative with Chase Investment Services Corp. (CISC) on September 16, 2005. While registered with CISC, Menendez also worked as a bank teller at CISC's bank affiliate, JP Morgan Chase Bank (the "Bank"). On June 6, 2006, the Bank terminated Menendez's employment for misappropriating Bank funds. On June 23, 2006, CISC filed a Form U-5, terminating his registration. Menendez is not currently associated with any member firm.

Misappropriation of Funds

On June 2, 2006, the Bank conducted a surprise cash audit of Menendez's teller drawer, revealing a shortage of approximately \$3,000. Upon discovery of the shortage, the Bank's Fraud Prevention and Investigations Group began an investigation. Menendez admitted to Bank investigators that he took the funds for personal reasons, without the Bank's knowledge or consent. He signed a written statement of admission and signed a release declaring that his written statement was truthful, accurate, and voluntarily made. On June 5, 2006, Menendez reimbursed the Bank for the missing funds. On the

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.

following day, the Bank terminated Menendez's employment. On June 23, 2006, CISC terminated Menendez's registration.

Failure to Respond to Requests for Information

1. The first request

On September 11, 2006, pursuant to Procedural Rule 8210, NASD staff sent Menendez a request for information concerning the allegations of misappropriation. The request was sent by both certified and first class mail to Menendez's residential address listed in the Central Registration Depository ("CRD address"). The requested information was to be provided by September 25, 2006. The certified letter was returned, marked "Return to Sender—Moved Left No Address—Unable to Forward." The first class letter was returned, marked "Return to Sender—Not Deliverable as Addressed—Unable to Forward." Menendez did not respond to the request for information.

2. The second request

On October 20, 2006, the staff sent Menendez a second Rule 8210 request by both certified and first class mail to his CRD address, again seeking information concerning his alleged misappropriation of funds. The certified letter was returned, marked "Unclaimed." The first class letter was returned, marked "Return to Sender—Moved Left No Address—Unable to Forward." Menendez did not respond to the request. The staff sought, but was unable to obtain, an address for Menendez more current than his CRD address.

Service of the Complaint

On February 16, 2007, Enforcement sent Menendez the Complaint and Notice of Complaint by both first class and certified mail to his CRD address. Menendez did not

file an Answer to the Complaint. On March 20, 2007, Enforcement served the Complaint and Second Notice of Complaint on Menendez by first class and certified mail sent to the same address. Although it appears from the returned envelopes that his CRD address may be out of date, the returns did not provide a forwarding address, and Enforcement was unable to obtain a more recent address for Menendez. Menendez did not file an Answer to the Complaint.

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 February 16, 2007, within two years of the termination of Menendez's registration. The Complaint alleges misconduct while Menendez 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 and the Second Notice of Complaint on Menendez at his CRD address. Each mailing was sent by first class and

certified mail. Enforcement tried, but was unable, to obtain an address for Menendez more recent than his CRD address.² Pursuant to NASD Procedural Rule 9134, the mailings provide Menendez with valid constructive notice of the Complaint. Because he failed to respond to the Complaint, Procedural Rules 9215(f) and 9269 authorize the entry of a default decision against him. Accordingly, the allegations in the Complaint are deemed admitted.

Misappropriation of Funds

Menendez admitted that he took \$3,000 from his teller drawer at the Bank, and, without the knowledge or consent of the Bank, used those funds for personal reasons. He reimbursed the Bank only after the shortage was discovered in an audit. Under those circumstances, his misappropriation of Bank funds amounted to conversion, "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."³ Conversion of 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. By misappropriating \$3,000 that belonged to CISC's bank affiliate, Menendez violated Conduct Rule 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

² Registered representatives have a continuing obligation to update their information in CRD. *See David I. Cassuto*, Exchange Act Release No. 48,087, 2003 SEC LEXIS 1496, at *9 (June 25, 2003); *William T. Banning*, Exchange Act Release No. 28,588, 1990 SEC LEXIS 3453, at *4 n. 6 (Oct. 31, 1990).

³ NASD SANCTION GUIDELINES, p. 38 (2006 ed.).

allows NASD to carry out its regulatory functions without subpoena power.⁴ When an individual fails to respond to information requests, NASD's ability to perform its regulatory responsibilities is subverted.⁵ A violation of Procedural Rule 8210 is also a violation of Conduct Rule 2110.⁶

Menendez received constructive notice of both requests for information. His complete failures to respond to those requests for information constitute violations of Procedural Rule 8210 and Conduct Rule 2110.

Sanctions

Misappropriation of Funds

Menendez's misappropriation of funds is the equivalent of conversion of those funds. NASD Sanction Guidelines provide that a bar is standard for conversion, regardless of the amount of funds converted.⁷ There are no mitigating circumstances that would warrant a lesser sanction. Accordingly, Menendez will be barred for misappropriation of funds.

Failures 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,

⁴ 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.").

⁵ *Joseph P. Hannan*, Exchange Act Release No. 40,438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998).

⁶ *Dep't of Enforcement v. Baxter*, No. C07990016, 2000 NASD Discip. LEXIS 3, at *25 (NAC Apr. 19, 2000).

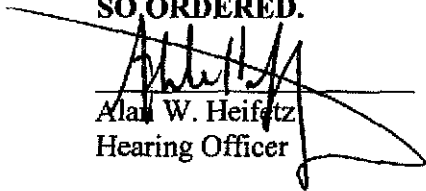
⁷ SANCTION GUIDELINES p. 38 (2006 ed.).

as here, the individual fails to respond in any manner.⁸ There are no mitigating circumstances that would warrant a lesser sanction. Accordingly, Menendez will be barred for failing to respond in any manner to requests for information made pursuant to Procedural Rule 8210.

Conclusion

Michael J. Menendez is barred from association with any NASD member firm in any capacity for misappropriating funds, in violation of NASD Conduct Rule 2110, and for failing to provide information and documents in response to NASD staff requests, 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

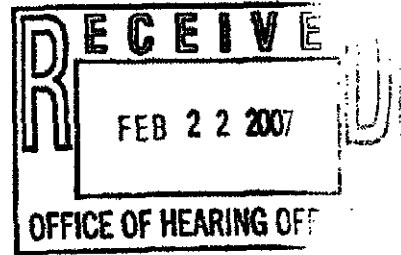
Copies to:
Via First Class Mail & Overnight Courier
Michael J. Menendez

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

⁸ SANCTION GUIDELINES p. 35 (2006 ed.).

**NASD
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,	)	Disciplinary Proceeding
	)	No. 20060056882
Complainant,	)	
	)	Hearing Officer
v.	)	
	)	COMPLAINT
MICHAEL J. MENENDEZ	)	
CRD No. 4895632	)	
	)	
Respondent.	)	



The Department of Enforcement alleges:

1. Respondent Michael J. Menendez (Menendez) was associated with NASD member, Chase Investment Services Corp. (CISC or the Firm), from on or about April 19, 2005 through June 6, 2006, when he was terminated. Since his termination, Menendez has not associated with another member firm.
2. Menendez is subject to NASD jurisdiction pursuant to Article V, § 4 of NASD's By-Laws.

**FIRST CAUSE OF ACTION
(Misappropriation of Funds Belonging to Bank Affiliate -
NASD Conduct Rule 2110)**

3. Complaint paragraph numbers 1-2, above, are re-alleged and incorporated herein by reference.
4. While registered with CISC, Menendez worked as a teller at CISC's bank-affiliate, JP Morgan Chase Bank.
5. On or about June 2, 2006, a surprise cash audit was conducted on Menendez's teller drawer. That audit revealed a shortage of approximately \$3,000.

Upon learning of the missing funds, the Fraud Prevention and Investigations Group (FPI) of the bank affiliate commenced an investigation.

6. As part of its investigation, FPI interviewed Menendez. Menendez admitted that he took the funds for personal reasons. At the time Menendez misappropriated the funds for his own use or benefit, he did so without the bank's knowledge or consent.

7. On June 5, 2006, Menendez gave FPI a written statement acknowledging yet again that he took the \$3,000 dollars from his teller drawer for personal reasons. On that same date, Menendez executed a release attesting that his written statement was truthful, accurate and voluntarily made.

8. Menendez reimbursed the bank affiliate for the missing funds on June 5, 2006. Reimbursement was in the form of a cashier's check in the amount of \$3,000, official check number 005517273.

9. The above acts, practices and conduct set forth in paragraphs 5-7, constitute a violation of NASD Conduct Rule 2110 by Menendez.

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

10. Complaint paragraph numbers 1-9, above, are re-alleged and incorporated herein by reference.

September 11, 2006 Request Letter

11. On September 11, 2006, pursuant to Procedural Rule 8210, NASD staff sent a written request to Menendez for information related to its investigation into the conduct set forth in Complaint paragraphs 4-9. This request was sent by both certified

and first-class mail to Menendez's CRD residential address – [REDACTED] [REDACTED] (CRD Address). The requested information was to be provided to NASD by September 25, 2006.

12. The certified letter was returned to NASD with the notation "Return to Sender – Moved Left No Address – Unable to Forward." The first class letter was returned to NASD with the notation "Return to Sender – Not Deliverable as Addressed – Unable to Forward." NASD never received a response to the July 2006 Rule 8210 request.

October 20, 2006 Request Letter

13. On October 20, 2006, NASD sent Menendez 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 September 2006 letter. Menendez was to respond to the October 20, 2006 letter by November 3, 2006. The certified letter was returned marked "Unclaimed." The first class letter was returned with the notation "Return to Sender – Moved Left no Address - Unable to Forward." Menendez did not respond to the October 2006 Rule 8210 request.

14. Following the return of the second written Rule 8210 request, staff obtained a report on Menendez from National Comprehensive Report Plus Associates in an attempt to obtain a current residential address. The most current residential address contained in the report was the CRD Address.

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

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

PRAYER FOR RELIEF

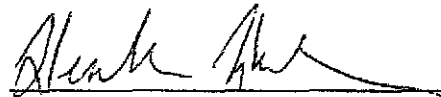
WHEREFORE, the Department of Enforcement respectfully requests that the Panel:

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

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

Dated: February 16, 2007

NASD DEPARTMENT OF
ENFORCEMENT



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