

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

MIKE A. KETCHAM
(CRD No. 4945897),

Respondent.

Disciplinary Proceeding
No. 2006006434701

Hearing Officer – DRP

DEFAULT DECISION

June 20, 2007

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

Appearances

Dale A. Glanzman, Regional Counsel, Chicago, IL (Mark P. Dauer, New Orleans, LA and Rory C. Flynn, Washington, DC, Of Counsel) for the Complainant.

No appearance by or for Mike A. Ketcham.

DECISION

I. Procedural History

On March 26, 2007, the Department of Enforcement filed a two-count Complaint in this proceeding, attached to this Decision as Exhibit A. The Complaint alleges that Respondent Mike A. Ketcham (Respondent or Ketcham) converted customer funds, in violation of NASD Conduct Rule 2110, and failed to respond to the staff's requests for information, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110. Respondent did not file an Answer to the Complaint.

Accordingly, on May 29, 2007, Enforcement filed a motion for entry of default decision, supported by the declaration of counsel for Enforcement and nine exhibits. Ketcham did not file a response to the motion. For the reasons set forth below, Enforcement's motion is granted.¹

II. Respondent's Default

On or about March 22, 2007, Enforcement served the Complaint and Notice of Complaint on Respondent by first class and certified mail sent to Respondent's last known residential address, as reflected in the Central Registration Depository (CRD address), and to an address that was discovered during the course of the investigation (alternate address).² Respondent did not file an Answer.

On or about April 19, 2007, Enforcement served the Complaint and Second Notice of Complaint on Respondent by first class and certified mail sent to Respondent's CRD and alternate addresses.³ Again, Respondent failed to file an Answer.

Enforcement complied with Procedural Rule 9134(b)(1) by mailing the Complaint and Notices of Complaint to Respondent's CRD address, thereby providing constructive notice of this proceeding.⁴ By failing to file an Answer or otherwise respond to the Complaint,

¹ The factual determinations in this Decision are based on the allegations of the attached Complaint, which are deemed admitted, and the declaration and exhibits filed by Enforcement.

² Respondent's CRD address is [REDACTED]. Both mailings to the CRD address were returned to Enforcement. The alternate address is [REDACTED]. The certified mailing to the alternate address was also returned to Enforcement, but the first class mailing to the alternate address was not returned.

³ The certified mailing to each address was returned to Enforcement. Neither first class mailing was returned.

⁴ It is well settled that NASD Procedural Rule 9134(b)(1) provides for constructive notice by mailing a complaint to the respondent's most recent address. *See, e.g., Lubeck v. SEC*, 156 F.3d 1237 (9th Cir. 1998) (NASD complied with notice requirements by mailing complaint to respondent's last known address); *Eric M. Diehm*, 51 S.E.C. 938, 941 n.14 (1994). Furthermore, it was Respondent's responsibility to provide CRD with any new address, even after he left the industry. *Dep't of Enforcement v Hodde*, No. C10010005, 2002 NASD Discip LEXIS 4, at *12 (NAC Mar. 27, 2002). In any event, Enforcement also served Respondent at the address the staff found during the investigation.

Respondent defaulted. Pursuant to Rule 9215(f) and 9269(a)(2), the allegations in the Complaint are deemed admitted.

III. Jurisdiction

Respondent was registered as an investment company/variable contracts products representative with NASD member Chase Investment Services Corp. (Chase Investment) from July 2005 until September 2006. Since then, Respondent has not been registered or associated with any NASD member.

Respondent is subject to NASD jurisdiction pursuant to Art. V, Section 4 of NASD's By-Laws, because the Complaint, which was filed within two years of the termination of Respondent's registration with Chase Investment, alleges misconduct that occurred while he was registered, and a failure to comply with requests for information made during the two-year period following the termination.

IV. Findings of Fact and Conclusions of Law

A. Conversion

The first cause of the Complaint charges that Respondent violated NASD Conduct Rule 2110 by converting funds for his personal use. The Complaint alleges that, while working as a personal banker for an affiliate of Chase Investment, Respondent exercised control over bank customer CP's account and used CP's personal information to create an account under the name CB. From approximately June to September 2006, Respondent created positive balances in each account by reversing overdraft fees that had never, in fact, been assessed by the affiliate.

Without the affiliate's knowledge or consent, Respondent then withdrew \$7,141 from the two accounts for his personal use, or to benefit someone other than the affiliate.⁵

Conversion is the intentional and unauthorized taking of property by one who does not own it.⁶ It is well-settled that conversion violates NASD Conduct Rule 2110, which requires member firms to observe high standards of commercial honor and just and equitable principles of trade. Rule 2110 applies to all business-related activities, regardless of whether the conduct involves securities.⁷ Rule 115 extends Rule 2110 to persons associated with members.

Respondent caused the affiliate to deposit funds in two accounts under false pretenses, then withdrew the funds for his personal use. Accordingly, the allegations in the first cause of Complaint, which are deemed admitted, are sufficient to establish for purposes of this default decision, that Respondent converted funds, in violation of NASD Conduct Rule 2110.

B. Failure to Respond to Requests for Information

The second cause of the Complaint charges that Respondent violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by failing to respond to the staff's requests for information. The Complaint alleges that on or about October 20, 2006, the staff sent Respondent a request for information pursuant to Rule 8210, related to its investigation of Respondent's conversion of the affiliate's funds. The request was sent by first class and certified mail to Respondent's CRD address. Ketcham did not respond in any manner to the request.

⁵ According to Enforcement's declaration, the affiliate initiated an investigation after CP noticed activity in the account, which was to have been closed. When questioned by the affiliate about the accounts at issue, Respondent admitted having repeatedly reversed fees in both accounts and having withdrawn from the accounts a total of \$7,141.57 for his personal use.

⁶ See *NASD Sanction Guidelines* (2006 ed.) at 38, n. 2.

⁷ See, e.g., *Dep't of Enforcement v. Brinton*, No. C04990005, 1999 NASD Discip. LEXIS 36 (NAC Dec. 14, 1999).

The Complaint further alleges that on October 30 and November 15, 2006, the staff sent Respondent requests for information by first class and certified mail to Respondent's CRD address, as well as to the alternate address, which the staff confirmed as Respondent's most recent address via investigation. To date, Ketcham has not responded to any of the staff's requests.

Rule 8210 provides that NASD staff may require a person subject to jurisdiction to provide information and imposes an absolute obligation on members and associated persons to cooperate with NASD investigations. By mailing the requests for information to Respondent at his last known residential address as reflected in CRD and to a more current address, the staff complied with Rule 8210(d), and pursuant to that Rule, Respondent is deemed to have received them.

Accordingly, the allegations in the second cause of the Complaint, which are deemed admitted, are sufficient to establish for purposes of this default decision that Respondent failed to respond to requests for information, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

V. Sanctions

NASD Sanction Guidelines provide that a bar is standard for conversion, regardless of the amount converted.⁸ Under the Guidelines, a bar is also standard for failure to respond to requests for information.⁹ There is no evidence of any mitigating circumstances that would warrant any sanction less than a bar for either violation. Accordingly, Respondent will be barred in all capacities for each violation.

⁸ *Guidelines* at 38.

⁹ *Id.* at 35.

VI. Conclusion

Respondent Mike A. Ketcham is barred from association with any member firm in any capacity for conversion of customer funds, in violation of NASD Conduct Rule 2110, and for failure to respond to requests for information, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110. The bars shall become effective immediately if this Decision becomes the final disciplinary action of NASD.

SO ORDERED.



Dana R. Pisanelli
Hearing Officer

Dated: June 20, 2007
Washington, DC

Copies to: Mike A. Ketcham (*via overnight and first-class mail*)
Dale A. Glanzman, Esq. (*via electronic and first-class mail*)
Mark P. Dauer, Esq. (*via electronic and first-class mail*)
Rory C. Flynn, Esq. (*via electronic and first-class mail*)

EXHIBIT A

**NASD
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant

v.

MIKE A. KETCHAM,
Registered Representative
(CRD No. 4945897)

Respondent.

**Disciplinary Proceeding
No. 2006006434701**

Hearing Officer

COMPLAINT

The Department of Enforcement alleges:

1. Mike A. Ketcham ("Ketcham") was registered with Chase Investment Services Corp. ("Member"), a member of NASD, as an Investment Company/Variable Contracts Products Representative from approximately July 2005 until September 2006 at which time he was terminated by the Member. Ketcham is not currently registered with a NASD member. Ketcham 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 times relevant hereto, in addition to his registration with the Member, Ketcham was employed by Chase Bank, an affiliate of the Member, as a personal banker.

4. From approximately June 2006 until on or about September 6, 2006, Ketcham exercised control over bank customer CP's account (account # [REDACTED]) and used CP's personal information to create an account under the name CB (account # [REDACTED]).

5. During this time, Ketcham reversed overdraft fees on these accounts that were never actually charged, thus creating positive balances in each account.

6. Subsequently, Ketcham withdrew \$7,141 from the two accounts, without the knowledge or consent of Chase Bank, and used the funds for his own personal use or for some purpose other than the benefit of Chase Bank.

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

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

8. The Department realleges and incorporates by reference paragraph 1-7 above.

9. On or about October 20, 2006, NASD staff, pursuant to NASD Procedural Rule 8210, sent Ketcham a letter inquiring about the alleged activities, as outlined above. This letter was sent by regular and certified mail to [REDACTED], Ketcham's address of record as contained in the CRD records ("CRD Address"). The regular and certified mailings were returned to NASD staff, marked "Not Deliverable As Addressed, Unable To Forward."

10. On October 30, 2006, NASD staff sent Ketcham a second request pursuant to NASD Procedural Rule 8210. This request was sent by regular and certified mail to Ketcham's CRD Address and to [REDACTED] ("[REDACTED] Westminster").

NASD staff confirmed that [REDACTED] Westminster was Ketcham's most recently known address through the use of a recent National Comprehensive Report. The regular and certified mailings sent to the CRD Address were returned to NASD staff, marked "Not Deliverable As Addressed, Unable To Forward." The certified mailing sent to [REDACTED] Westminster was returned to NASD staff, marked "Unclaimed, Unable To Forward." The regular mailing sent to [REDACTED] Westminster was not returned.

11. On November 15, 2006, NASD staff sent a final 8210 request to Ketcham at his CRD Address and [REDACTED] Westminster. This letter was also sent by regular and certified mail. The mailings sent to Ketcham's CRD address were returned to staff, marked "Not Deliverable As Addressed, Unable To Forward." The certified mailing sent to [REDACTED] Westminster was returned to staff, marked "Unclaimed." The regular mailing sent to [REDACTED] Westminster was not returned.

12. To date, Ketcham 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.

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

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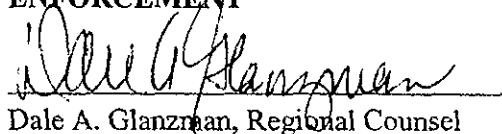
PRAYER FOR RELIEF

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 Ketcham bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330.

**NASD DEPARTMENT OF
ENFORCEMENT**

Date: March 22, 2007



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