

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

KENNETH STUART NIERENBERG (CRD No.
1596132),

RESPONDENT.

DISCIPLINARY PROCEEDING
No. 2006006630101

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Kenneth S. Nierenberg converted a total of \$92,469.22 from two elderly customers of his employer firm. He also willfully failed to amend his Uniform Application for Securities Industry Registration or Transfer (Form U4) to disclose two Internal Revenue Service (IRS) liens filed against him. This conduct violated NASD Conduct Rules 2330 and 2110 and IM-1000-1.

RESPONDENT AND JURISDICTION

2. On December 17, 1986, Nierenberg first became registered with FINRA (f/k/a National Association of Securities Dealers or NASD) as an Investment Company and Variable Contracts Products Representative through a former member firm.

000112247 2008

3. On February 24, 1998, Nierenberg became registered in the same capacity through member firm M&T Securities, Inc. On August 25, 1998, he became registered as a General Securities Representative, and, on August 9, 2004, he became registered as an Investment Company and Variable Contracts Products Principal.
4. On October 19, 2006, M&T Securities filed a Form U5 on Nierenberg's behalf disclosing that he was discharged on September 22, 2006.
5. Nierenberg remains subject to FINRA's jurisdiction pursuant to Article V, Section 4 of FINRA's By-Laws in that the misconduct alleged herein occurred while he was associated with a member firm and this Complaint was filed within two years of his last association with a member firm.

FIRST CAUSE OF ACTION

Conversion of Funds from Customer OT (NASD Conduct Rules 2330 and 2110)

6. The Department realleges and incorporates by reference paragraphs 1-5 above.
7. From February 1998 to September 2006, Nierenberg was assigned to work in various M&T Bank (an affiliate of M&T Securities) retail banking locations in New York State, where he would service bank customers that had investment needs.
8. In or about April 2005, OT, then a 78-year-old widow, became Nierenberg's customer at M&T Securities.
9. On or about March 14, 2005, an insurance company informed OT that she would be receiving approximately \$16,835 in insurance proceeds as a result of her husband's death.

10. The \$16,835 was subsequently placed into a checking account at the insurance company in OT's name where it earned interest.
11. On or about May 27, 2005, a check in the amount of \$16,969.22 was written out of that account to OT.
12. OT intended that the \$16,969.22 be used for her benefit in an investment, insurance and/or banking transaction.
13. On or about June 2, 2005 and without OT's authorization or consent, Nierenberg deposited her \$16,969.22 into his personal M&T Securities account.
14. Without OT's authorization or consent, Nierenberg subsequently used her \$16,969.22 to pay for his personal expenses.
15. On or about August 19, 2005, Nierenberg filled out an M&T Bank triplicate debit ticket in the amount of \$26,000, to remove that amount from OT's M&T Bank account.
16. On or about August 19, 2005, the \$26,000 was debited from OT's M&T Bank account.
17. OT intended that the \$26,000 be used for her benefit in an investment, insurance and/or banking transaction.
18. On or about August 22, 2005 and without OT's authorization or consent, Nierenberg deposited her \$26,000 into his personal M&T securities account.
19. Without OT's authorization or consent, Nierenberg subsequently used her \$26,000 to pay for his personal expenses.

20. On or about September 21, 2005, Nierenberg debited \$10,000 from OT's account at M&T Bank, and used the funds to purchase an official bank check in that same amount.
21. OT intended that the \$10,000 be used for her benefit in an investment, insurance and/or banking transaction.
22. On or about December 6, 2005 and without OT's authorization or consent, Nierenberg applied the \$10,000 bank check to insurance policies in the name of himself and his wife.
23. By misappropriating OT's funds, Nierenberg violated NASD Conduct Rules 2330 and 2110.

SECOND CAUSE OF ACTION

Conversion of Funds from Customer AD (NASD Conduct Rules 2330 and 2110)

24. The Department realleges and incorporates by reference paragraphs 1-23 above.
25. In or about September 2004, AD, then 70, became Nierenberg's customer at M&T Securities.
26. On or about April 22, 2005, an M&T Bank triplicate debit ticket in the amount of \$18,500 was filled out to remove those funds from AD's M&T Bank account.
27. On or about April 22, 2005, the \$18,500 was debited from AD's M&T Bank account.
28. AD intended that the \$18,500 be used for her benefit in an investment, insurance and/or banking transaction.

total 93,000

29. On or about April 26, 2005 and without AD's authorization or consent, Nierenberg deposited her \$18,500 into his personal M&T Securities account.
30. Without AD's authorization or consent, Nierenberg subsequently used her \$18,500 to pay for his personal expenses.
31. On or about May 16, 2005, an M&T Bank triplicate debit ticket in the amount of \$21,000 was filled out to remove those funds from AD's M&T Bank account.
32. On or about May 16, 2005, the \$21,000 was debited from AD's M&T Bank account.
33. AD intended that the \$21,000 be used for her benefit in an investment, insurance and/or banking transaction.
34. On or about May 18, 2005 and without AD's authorization or consent, Nierenberg deposited her \$21,000 in his personal M&T Securities account.
35. Without AD's authorization or consent, Nierenberg subsequently used her \$21,000 to pay for his personal expenses.
36. By misappropriating AD's funds, Nierenberg violated NASD Conduct Rules 2330 and 2110.

THIRD CAUSE OF ACTION

Willful Failure to Disclose Material Information on Form U4 (NASD Conduct Rule 2110 and IM-1000-1)

37. The Department realleges and incorporates by reference paragraphs 1-36 above.
38. Pursuant to Article V, Section 2(c), of FINRA's By-Laws, the information provided on a Form U4 must be kept current by means of amendments not later than 30 days

after the registered representative learns of “the facts or circumstances giving rise to the amendment.”

39. On or about February 23, 1998, Nierenberg submitted or caused to be submitted to NASD an initial Form U4 through M&T Securities that included a question as to whether Nierenberg had any unsatisfied judgments or liens against him. Nierenberg answered “no” to this question.
40. On or about March 21, 2005, the IRS imposed a lien on Nierenberg due to unpaid federal taxes in the amount of \$19,670.79. That lien remained unsatisfied until May 17, 2006.
41. On or about December 6, 2005, the IRS imposed a lien on Nierenberg due to unpaid federal taxes in the amount of \$50,172.26. That lien remained unsatisfied until May 17, 2006.
42. The unsatisfied liens constituted material facts for purposes of question 14M on Nierenberg’s Form U4.
43. From in or about April 2005 to in or about May 2006, Nierenberg willfully failed to amend his Form U4 at M&T Securities to disclose those material facts.
44. By failing to disclose material facts on his Form U4, Nierenberg violated NASD Conduct Rule 2110 and IM-1000-1.

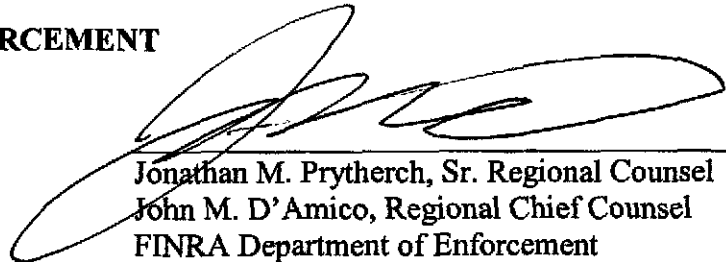
RELIEF REQUESTED

WHEREFORE, the Department 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.
- B. order that the Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330.
- C. make specific findings that Respondent's conduct, as alleged in the Third Cause of Action, was willful; the omitted information was material; and, the omission to state material facts was on a Form U4 application.

FINRA DEPARTMENT OF ENFORCEMENT

Date: August 26, 2008



Jonathan M. Prytherch, Sr. Regional Counsel
John M. D'Amico, Regional Chief Counsel
FINRA Department of Enforcement
581 Main Street, Suite 710
Woodbridge, NJ 07095
(732) 596-2078; Fax: (202) 721-6571
jonathan.prytherch@finra.org
john.d'amico@finra.org