

**NASD
OFFICE OF HEARING OFFICERS**

RECEIVED
2007 JUL 25 P 2:50
REGISTRATION & DISCLOSURE

DEPARTMENT OF ENFORCEMENT,

Complainant

vs.

Flavio G. Varone
Limited Registered Representative
(CRD No. 1204320)

Respondent

**Disciplinary Proceeding
No. 2006007101701**

Hearing Officer

COMPLAINT

Upon information and belief, Complainant alleges as follows:

SUMMARY

1. In or about August 2005, Flavio G. Varone ("Varone") misused a check for \$17,866.51 from A&BM, who are elderly members of the public, when he failed to follow their instructions and used the funds for some purpose other than their benefit. On or about March 20, 2006, Varone misused a check for \$236,963.79 from WC, an elderly member of the public, when he failed to follow WC's instructions, caused the funds to be deposited in an account in his name and used the funds for some purpose other than the benefit of WC. Varone's actions violated NASD Conduct Rule 2110.

2. On or about December 18, 2006, January 16, 2007, and February 2, 2007, the NASD Staff ("Staff") sent letters to Varone requesting information and documentation about the misuse of customers' funds, but Varone failed to respond to the requests for information, in

000016207 2007

violation of NASD Conduct Rule 2110 and Procedural Rule 8210.

RESPONDENT

3. From on or about May 3, 2004 to on or about December 1, 2006, Varone was registered as an Investment Company and Variable Contracts Products Representative with USAllianz Securities, Inc. (Member), a member of NASD. From on or about December 1, 2006 to on or about December 4, 2006, Varone was registered in the same capacity with Questar Capital Corporation (Questar), a member of NASD. In or about November 2005, Allianz Life Insurance Company of North America (Allianz) purchased Questar, and on or about December 1, 2006, Varone's registration was transferred from the Member to Questar as part of a mass transfer. Varone is not currently associated with any member of NASD. Since this Complaint is filed within two years of the termination of Varone's registration with Questar, Varone is subject to the jurisdiction of NASD, pursuant to Article V, Section 4 of the NASD's By-Laws.

**FIRST CAUSE FOR COMPLAINT
NASD Conduct Rules 2110 – Misuse of Elderly Customers' Funds by Varone.**

4. Paragraphs number 1 through 3 above are re-alleged and incorporated herein by reference.

5. In or about August 2005, A&BM were married and were customers of Varone. A&BM were interested in purchasing an investment offered by Allianz. At this time, AM was about 78 years old, and BM was about 76 years old.

6. In or about August 2005, A&BM met with Varone to discuss investments with Allianz. Following their discussions, A&BM gave Varone a check for \$17,866.51 made payable to A&BM Trust, with instructions that the funds be used to purchase an investment for A&BM

**Complaint in
Disciplinary Proceeding No. 2006007101701**

Trust through Allianz. Varone failed to follow A&BM's instructions and instead used the funds for some purpose other than the benefit of A&BM, without the knowledge and consent of A&BM.

7. The acts, practices and conduct set forth above constitute separate and distinct violations of NASD Conduct Rule 2110 by Varone.

**SECOND CAUSE FOR COMPLAINT
NASD Conduct Rules 2110 – Misuse of Elderly Customer's Funds by Varone.**

8. Paragraphs number 1 through 7 above are re-alleged and incorporated herein by reference.

9. In or about March 2006, WC was a customer of Varone. WC was interested in purchasing an investment offered by Allianz. At this time, WC was about 78 years old.

10. On or about March 20, 2006, WC met with Varone to discuss investments with Allianz. Following their discussions, WC gave Varone a check for \$236,963.79 made payable to Republic Bank, as directed by Varone. WC instructed Varone to use the funds to purchase a fixed annuity through Allianz for the benefit of WC. Varone failed to follow WC's instructions, in that he deposited or caused the check to be deposited into an account owned by Varone, and used the funds for some purpose other than the benefit of WC, without the knowledge and consent of WC.

11. The acts, practices and conduct set forth above constitute separate and distinct violations of NASD Conduct Rule 2110 by Varone.

**THIRD CAUSE FOR COMPLAINT
Conduct Rule 2110 and Procedural Rule 8210 - Failure to Respond to the Staff's Requests
for Information by Varone.**

12. Paragraph numbers 1 through 11 above are re-alleged and incorporated herein by

**Complaint in
Disciplinary Proceeding No. 2006007101701**

reference.

13. On or about December 18, 2006, NASD staff ("Staff") sent to Varone a request that he give the Staff a written statement responding to the allegation that he converted WC's funds, including responses to specific questions about his actions related to WC's check for \$236,963 and the two deposits of \$1,498 into WC's account, as noted in paragraphs 7 through 9 above, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210. The request for information was sent by first class mail and certified mail, return receipt requested, to Varone's address of record as contained in the records of the Central Registration Depository ("CRD Address"). The first class mailing was not returned to the Staff. The certified mailing was returned to the Staff marked "Return to Sender -- Unable to Forward."

14. On or about January 16, 2007, having received no response from Varone, the Staff sent to Varone a more comprehensive request for information which sought responses to questions and documentation about the allegations that he converted funds of WC and A&BM, including specific questions about his discussions with the customers and how the customers' funds were used, as noted in paragraphs 5 through 9 above, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210. The request for information was sent by first class mail, and by certified mail, return receipt requested, to Varone's CRD Address. The first class and certified mailings were returned to the Staff marked return to sender "Not deliverable as Addressed -- Unable to Forward."

15. On or about February 2, 2007, having received no response from Varone, the Staff sent to Varone a letter marked "Second Request," that he provide responses to questions and documentation about the allegations that he converted funds of WC and A&BM, including specific questions about his discussions with the customers and how the customers' funds were

**Complaint in
Disciplinary Proceeding No. 2006007101701**

used, as noted in paragraphs 5 through 9 above, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210. The request for information was sent by first class mail, and by certified mail, return receipt requested, to Varone's CRD Address. The first class mailing was returned to the Staff marked return to sender "Not deliverable as Addressed - Unable to Forward." The certified mailing receipt was returned to the Staff and apparently signed by Varone as received on February 2, 2007.

16. Varone failed to respond to each and all of the requests for documents and information described in paragraphs 12, 13 and 14 above, and the time for Varone to respond has passed.

17. The aforementioned acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 and NASD Procedural Rule 8210 by Varone.

PRAYER FOR RELIEF

WHEREFORE, the Department respectfully requests that the Panel:

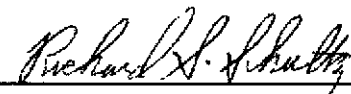
- A. order that one or more of the sanctions provided under NASD Rule 8310(a) be imposed;
and

**Complaint in
Disciplinary Proceeding No. 2006007101701**

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

NASD DEPARTMENT OF ENFORCEMENT

7/24/07
Date


Richard S. Schultz, Esq. Regional Counsel
Mark A. Koerner, Esq. Regional Chief Counsel
NASD, District 8
55 West Monroe Street
Chicago, IL 60603-5052
(312) 899-4330; Fax No. (312) 899-4600

NASD District Director

Carlotta A. Romano
Senior Vice President
and Regional Director
NASD, District 8
55 West Monroe Street
Chicago, IL 60603-5052
(312) 899-4400; Fax. No. (312) 606-0742

Of Counsel:

Rory C. Flynn, Esq. Of Counsel
NASD Department of Enforcement
1801 K Street, N.W., Suite 800
Washington, D.C. 20006
(202) 974-2974; Fax. No. (202) 721-8318

Mark P. Dauer, Esq. Of Counsel
NASD Department of Enforcement
1100 Poydras Street
Energy Centre, Suite 850
New Orleans, LA 70163
(504) 412-2405; Fax. No. (504) 522-4077