

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

CLIFFORD DEVASTEY
(CRD No. 4970055),

Respondent.

Disciplinary Proceeding
No. 2007008640401

Hearing Officer – AWH

DEFAULT DECISION

December 24, 2008

Respondent is suspended for two years from associating with any FINRA member in any capacity and fined \$5,000 for forging documents, in violation of NASD Rule 2110.

Appearances

Richard S. Schultz, Esq., for the Department of Enforcement.

No appearance by or for Clifford DeVastey.

DECISION

I. Background

On August 7, 2008, the Department of Enforcement filed the Complaint in this proceeding, alleging that Respondent Clifford DeVastey forged a customer's signature on eight documents and a check, for the purchase of a life insurance policy for the customer, without the knowledge and consent of the customer, in violation of NASD Rule 2110. Respondent did not file an Answer to the Complaint. On November 7, 2008, Enforcement filed a motion for a default decision. Respondent did not respond to that motion.

II. Respondent's Default

The Department of Enforcement sent Respondent the Complaint and Notice of Complaint on August 7, 2008 and the Second Notice of Complaint and Complaint on September 11, 2008. The mailings were sent by certified and first class mail to his residential address listed in the Central Registration Depository ("CRD address"). All mailings were returned as undeliverable and unable to be forwarded. After serving the Complaint and Notices of Complaint, Enforcement learned of two possible other addresses for Respondent: one in Ohio, and the other in Texas. Enforcement sent a copy of its Motion for Default to Respondent at those addresses, as well as to the CRD address. DeVastey did not file an Answer to the Complaint, nor has he responded to the Motion for Default.

Enforcement served the Complaint and Notices of Complaint on DeVastey in accordance with Rule 9134, giving him constructive notice of this proceeding. By failing to respond, he defaulted. Pursuant to NASD Procedural Rules 9215(f) and 9269, Enforcement's motion for a default decision will be granted, and the allegations in the Complaint, which is attached to this decision, will be deemed admitted.¹

III. Jurisdiction

DeVastey's only registration with FINRA was as an Investment Company and Variable Contracts Products Representative through Woodbury Financial Services, Inc. from June 17, 2005 to April 5, 2007, when Woodbury terminated his registration for forging a client's signature on a new account application. DeVastey is not currently associated with any FINRA member. Because the Complaint charges him with

¹ The factual determinations in this decision are based on the admitted allegations in the Complaint, the Declaration Supporting a Motion for the Entry of a Default Decision, and the exhibits attached thereto.

misconduct while he was registered with a FINRA member and the Complaint was filed during the two-year period following termination of his last registration, he remains subject to FINRA jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of the FINRA By-Laws.

IV. Violations

On January 31, 2007, DeVastey met with customer MW to discuss the purchase of a life insurance policy. MW agreed to purchase a policy from Hartford Life and Annuity Insurance Company, and scheduled an appointment for February 11, 2007 to complete the paperwork for the purchase. DeVastey, who was embarrassed that he had not completed any transactions during the week he met with MW, decided to complete a “mock” application and documentation for the policy on February 1, 2007, and backdated it to January 31, 2007, so that he could show his manager that he had done some business during the week in question. Accordingly, DeVastey filled out eight documents Hartford required to purchase the policy and forged MW’s signature on all of them. In addition, he wrote out a starter check from a checking account that he had previously closed, wrote MW’s name on the check to make it appear that MW owned the checking account, and forged MW’s signature on the check. The check was for \$100 and made payable to Hartford for the initial premium on the policy.

DeVastey left the documentation in a location where an administrative assistant thought it was ready for processing and mailed it to Hartford. When Hartford attempted to cash the check, the bank did not honor it, and Hartford wrote to MW requesting that he make the initial premium payment. MW contacted Woodbury and an investigation ensued. DeVastey admitted that he had forged MW’s signature on the documents and the

check, without MW's knowledge or consent. MW purchased the identical policy from Hartford, through DeVastey, on February 11, 2007 and submitted a check for \$100, written on another bank.

The Securities and Exchange Commission and FINRA have consistently held that forgery violates Conduct Rule 2110.² By forging MW's signature on eight documents and one check, DeVastey violated Conduct Rule 2110.

V. Sanctions

For forgery and/or falsification of records, the FINRA Sanction Guidelines suggest a fine of \$5,000 to \$100,000, and, where mitigating circumstances exist, a suspension in any and all capacities for up to two years, or, in egregious cases, a bar.³ The principal considerations are (1) the nature of the documents forged or falsified, and (2) whether the respondent had a good-faith, but mistaken, belief of express or implied authority.

Here, the documents included highly personal financial and medical information concerning the customer. DeVastey clearly had no express or implied authority to complete the documents or sign his customer's name on a check that he knew would not be honored. Those considerations make the violation very serious. On the other hand, DeVastey did not expect to, and did not, profit from the forgeries and executed them with the intent that the documents and check would not be submitted to the insurance company. Under the totality of the circumstances, Enforcement requests, and the

² It is well established that forgery is not consistent with high standards of commercial honor and just and equitable principles of trade as required by Rule 2110. See, e.g., *Donald M. Bickerstaff*, Exchange Act Release No. 35,607, 1995 SEC LEXIS 982 (Apr. 17, 1995). See also *Charles E. Kautz*, 1996 SEC LEXIS 994 (April 5, 1996); *Dep't of Enforcement v. Bryan L. Claggett*, 2007 NASD Discip. LEXIS 27 (NAC Sept. 28, 2007); *Dep't of Enforcement v. Brookes McIntosh Bendetsen*, 2003 NASD Discip. LEXIS 30 (OHO July 8, 2003) (unethical to sign someone else's name without written authorization).

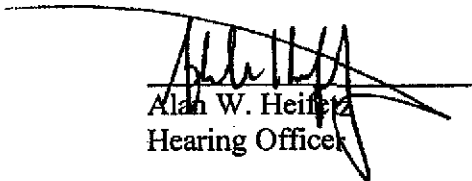
³ FINRA SANCTION GUIDELINES, p. 39.

Hearing Officer will impose a two-year suspension and assess a fine of \$5,000 for the violations.

VI. Conclusion

Clifford DeVastey is suspended for two years from associating with any FINRA member firm in any capacity and fined \$5,000 for forging a customer's signature on eight documents and a check, in violation of NASD Rule 2110. The sanctions shall become effective on a date set by FINRA, but not earlier than 30 days after this decision becomes FINRA's final disciplinary action in this matter, except that if this decision becomes FINRA's final disciplinary action, DeVastey's suspension shall begin at the opening of business on February 2, 2009, and end at the close of business on February 1, 2011.

SO ORDERED.



Alan W. Heifetz
Hearing Officer

Copies to:

Clifford DeVastey (*via first class mail & overnight courier*)
Richard S. Schultz, Esq. (*via first class & electronic mail*)
Mark P. Dauer, Esq. (*via first class & electronic mail*)
David R. Sonnenberg, Esq. (*via first class & electronic mail*)

**FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA)
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant

vs.

CLIFFORD D. DEVASTEY
Limited Registered Representative
(CRD No. 4970055)

Respondent

**Disciplinary Proceeding
No. 2007008640401**

Hearing Officer

COMPLAINT

Upon information and belief, Complainant alleges as follows:

SUMMARY

1. On February 1, 2007, Clifford D. Devastey (Devastey) completed and forged a customer's signature to nine documents and to a check for the purchase of a variable universal life insurance policy ("VUL Policy"), and submitted the documents for the purchase of the policy, without the customer's knowledge or consent. Devastey's conduct violated NASD Conduct Rule 2110.

RESPONDENT

2. From on or about June 17, 2005 to on or about April 5, 2007, Devastey was registered as an Investment Company and Variable Contracts Products Representative with Woodbury Financial Services, Inc.. (Member), a member of FINRA (f/k/a NASD). Devastey is not currently associated with any member of FINRA. Since this Complaint is filed within two years of the termination of Devastey's registration with the Member, Devastey is subject to the jurisdiction of FINRA, pursuant to Article V, Section 4 of FINRA's By-Laws.

CAUSE FOR COMPLAINT

NASD Conduct Rule 2110 – Completing and Forging A Customer's Signature to Nine Documents and a Check for The Purchase of a VUL Policy, Without the Customer's Knowledge and Consent by Devastey.

3. Paragraphs number 1 and 2 above are re-alleged and incorporated herein by reference.
4. During all relevant times, MW was a member of the public and a client of Devastey.
5. On or about January 31, 2007, Devastey met with MW to discuss the purchase of a life insurance policy. MW wanted permanent life insurance coverage in addition to building assets. Devastey recommended that MW purchase a VUL Policy from Hartford Life and Annuity Insurance Company ("Hartford"). MW agreed with the recommendation, and a second appointment was scheduled for on or about Sunday, February 11, 2007 in order to complete the paperwork.
6. On or about February 1, 2007, Devastey filled out all of the documents Hartford required to complete the purchase of the VUL insurance policy, without MW's knowledge or consent. Devastey back-dated the documents to January 31, 2007 and forged MW's signature to these documents, which are listed below:
 - a. New Account Application;
 - b. Medical Account Questionnaire;
 - c. New Account Form;
 - d. Monthly Electronic Funds Transfer Request Form;
 - e. Accelerated Death Benefit Policyholder Disclosure;

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- f. Net Premium Allocation Form;
- g. Temporary Insurance Agreement; and
- h. Authorization for Release of Health-Related Information.

7. On or about February 1, 2007, Devastey wrote out a check from a checking account that had previously been closed. Devastey made the check payable to Hartford in the amount of \$100, which represented the amount of the initial premium on the VUL Policy. The check did not have on its face the name of the owner of the checking account. Devastey wrote MW's name on the check to make it appear as if MW was the owner of the checking account, and Devastey forged MW's signature on the check.

8. On or about February 1, 2007, Devastey submitted, or allowed the submission of the documents, described in Paragraph 6 above, and the check, described in Paragraph 7 above, to Hartford for processing.

9. Hartford attempted to cash the \$100 check; however, it was returned when the bank did not honor it. Hartford sent a letter to MW, explaining that the check was not honored and requesting that he make the initial payment for his VUL Policy. MW then contacted Hartford and informed it that he did not have an account with the bank in question and that the signature on the check was not his. The Member investigated the matter and Devastey later admitted that he had completed the documents and the check and signed MW's signature to the documents, all without MW's knowledge and consent.

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

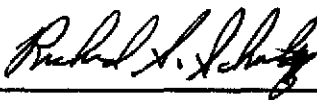
PRAYER FOR RELIEF

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

FINRA DEPARTMENT OF ENFORCEMENT

August 7, 2008
Date


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