

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS¹

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REGISTRATION & DISCLOSURE

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

PAUL GERARD HITCHCOCK
(CRD No. 2047398),

Respondent.

Disciplinary Proceeding
No. 20070094149

Hearing Officer – LBB

DEFAULT DECISION

November 6, 2008

Respondent is barred for failure to provide requested information, in violation of Procedural Rule 8210 and Conduct Rule 2110.

Appearances

Clarence E. Sanders, Jr., Senior Counsel, FINRA, New York, NY, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

The Department of Enforcement (“Enforcement”) filed the Complaint in this proceeding on May 16, 2008, asserting one cause of action against Respondent Paul Gerard Hitchcock (“Respondent”), for failing to respond to Rule 8210 requests for information, thereby violating NASD Procedural Rule 8210 and Conduct Rule 2110.

Despite being properly served with the Complaint, Notice of Complaint, and Second Notice of Complaint, Respondent has not filed an answer to the Complaint. On September 8,

¹ As of July 30, 2007, NASD consolidated with the member firm regulation functions of NYSE and began operating under a new corporate name, the Financial Industry Regulatory Authority (FINRA).

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2008, Enforcement filed a Motion for Entry of Default Decision, to which Respondent did not respond. Accordingly, pursuant to NASD Procedural Rules 9215(f) and 9269, the allegations in the Complaint will be deemed admitted, and Enforcement's motion will be granted.²

I. Respondent's Default

Enforcement served the Complaint and Notice of Complaint on Respondent by Federal Express at his current residential address and on his attorney, on May 14, 2008. Enforcement received notification from Federal Express that the Notice and Complaint were delivered to the office of Respondent's attorney on May 16, 2008.

Enforcement served the Complaint and Second Notice of Complaint on Respondent by Federal Express at his current address on June 12, 2008. On or about June 20, 2008, Federal Express returned the Second Notice and Complaint to Enforcement. The Second Notice and Complaint were also sent by Federal Express to Respondent's attorney at his office. Enforcement received notification from Federal Express that the Second Notice and Complaint were delivered to the attorney's office on June 13, 2008.

On June 20, 2008, a Third Notice of Complaint and Complaint were sent to Respondent via certified mail, return receipt requested, and first-class mail to Respondent at his last known residential address as reflected in the Central Registration Depository, and to his current residential address. The Domestic Return Receipt for the certified mail sent to Respondent's current residential address was returned to Enforcement with a signature appearing to be Respondent's, acknowledging receipt on July 2, 2008. The copies of the Third Notice of Complaint and Complaint sent to Respondent by first-class mail at his current address were not returned to Enforcement. The copies sent to Respondent at his CRD address were returned to

² The factual determinations in this decision are based on the allegations of the attached Complaint and the materials filed by Enforcement with its motion.

Enforcement. The Third Notice of Complaint and Complaint were also sent to Respondent's attorney by certified mail, return receipt requested, and first-class mail. The Domestic Return Receipt for the certified mail was returned to Enforcement with a signature acknowledging receipt on July 9, 2008. The copy sent by first-class mail was not returned.

On July 22, 2008, a Fourth Notice of Complaint and Complaint were sent to Respondent via certified mail, return receipt requested, and first-class mail to Respondent at his last known residential address reflected in the Central Registration Depository, and to his current residential address. The copies of the Fourth Notice of Complaint and Complaint sent to Respondent at his current address were not returned to Enforcement. The copies sent to Respondent at his CRD address were returned to Enforcement. The Fourth Notice of Complaint and Complaint were also sent to Respondent's attorney by certified mail, return receipt requested, and first-class mail. The Domestic Return Receipt for the certified mail was returned to Enforcement with a signature acknowledging receipt on July 29, 2008. The copy sent by first-class mail was not returned.

Enforcement served the Complaint and the Notices of Complaint on Respondent in accordance with Procedural Rule 9134, giving him constructive notice of this proceeding. Respondent has failed to respond to the Complaint. By failing to respond, he defaulted.

II. Jurisdiction

Respondent was registered with FINRA member firms from 1990 until his employment was terminated by FINRA member firm Wachovia Securities LLP. Respondent was a registered representative at Wachovia Securities LLP from October 31, 2002, until July 18, 2006. The Rule 8210 requests to which Respondent did not respond were issued within two years after the termination of his employment with Wachovia. Although Respondent has not been associated with any FINRA member since then, he remains subject to FINRA jurisdiction for purposes of

this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because the Complaint was filed within two years after the termination of his registration with a member firm, and it charges him with misconduct while he was registered with a member firm and with failing to respond to Rule 8210 requests issued within two years following the termination of his registration with a member firm.

III. Origin of the Investigation

The Department of Enforcement initiated this investigation as a result of the filing of a Form U5 by FINRA member firm Wachovia Securities LLP on July 31, 2006. According to the U5, Respondent was terminated for violating firm policy. In particular, the Form U5 states that checks drawn on brokerage accounts for three different clients were credited to Respondent's loan or credit card accounts, while the clients asserted that the funds were intended for investments away from the firm.

IV. Violation – Failure to Respond to Requests for Information

Procedural Rule 8210 authorizes FINRA to require any person subject to its jurisdiction to provide information related to any matter under its investigation. Upon receiving the Form U5, the Preliminary Investigations Unit of the Division of Enforcement of NYSE Regulation issued a request to Respondent for a written response concerning the allegations that he may have misappropriated customer funds and recommended investments away from the firm. Respondent provided a written statement by letter dated November 21, 2006.

On March 1, 2007, as part of its formal investigation, the Division of Enforcement of NYSE Regulation sent a letter to Respondent pursuant to Rules 476 and 477³ of the New York Stock Exchange, LLC, requiring Respondent to provide certain financial records and a written

³ The text of the rules is available on NYSE.com. Rules 476 and 477 required persons associated with member firms to provide documents and information in response to requests from the NYSE while employed at a member firm or within one year of leaving a member firm.

statement concerning the allegations in the Form U5.⁴ The letter was sent by certified mail, return receipt requested, and first-class mail to Respondent's CRD address. The Domestic Return Receipt was returned to Enforcement with a signature appearing to be Respondent's, acknowledging receipt. The copy sent by first-class mail was not returned to Enforcement.

On March 27, 2007, Enforcement contacted Respondent by telephone. Respondent acknowledged receipt of the March 1 letter, and informed Enforcement that he was represented by an attorney in connection with the investigation. On April 10, 2007, Respondent's attorney contacted Enforcement, acknowledged that he had received a copy of the March 1 letter, and told Enforcement that he was considering advising Respondent not to cooperate with the investigation. He said he would contact Enforcement by the end of the week to advise Enforcement staff whether Respondent would cooperate with the investigation. The attorney did not call Enforcement, and Respondent has not provided the written statement and financial records as required by the March 1 letter.

Following the merger between NASD and portions of NYSE Regulation, on September 19, 2007, Enforcement sent a letter by facsimile and certified mail to Respondent's attorney, which requested pursuant to NASD Rule 8210 that Respondent appear before Enforcement to testify on October 5, 2007. Enforcement received a facsimile confirmation indicating that the fax was properly transmitted, and a signed Domestic Return Receipt indicating that the letter was received at the attorney's office on October 1, 2007. Enforcement sent another letter to Respondent's attorney on September 27, 2007, advising him that Respondent's testimony was still scheduled for October 5, 2007. On September 28, 2007, Enforcement received a telephone

⁴ Although the Complaint is not completely clear, it appears to charge Respondent with a violation only for failing to respond to requests issued after the merger between NASD and portions of NYSE Regulation, and not for failing to respond prior to the merger. The information relating to Respondent's failure to respond to requests from NYSE Regulation is discussed as the background for Respondent's failure to respond to FINRA's post-merger requests.

call from a representative from the office of Respondent's attorney, stating that Respondent would not appear and testify on October 5. On October 5, 2007, Respondent failed to appear and testify.

On December 3, 2007, Enforcement sent a letter to Respondent, requesting that he appear and testify on December 10, 2007. The letter was sent by Federal Express and first-class mail to Respondent's current residential address. Enforcement received notification from Federal Express that the letter was delivered to Respondent's current residential address on December 5, 2007. The copy sent by first-class mail was not returned to Enforcement. On December 10, 2007, Respondent failed to appear and testify.

Respondent has failed to appear and testify as required by to requests served on him pursuant to Rule 8210. These allegations, 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 Procedural Rule 8210 and Conduct Rule 2110. A violation of Rule 8210 is also a violation of Rule 2110. *Dep't of Enforcement v. Hoeper*, No. C02000037, 2001 NASD Discp. LEXIS 37, at *5 (N.A.C. Nov. 2, 2001).

V. Sanctions

For failing to respond to requests for information, the Guidelines recommend a bar. *FINRA Sanction Guidelines* at 35. One of the Principal Considerations is the nature of the information requested, which is an aggravating factor in this matter. The information requested was important to a determination of whether Respondent engaged in two types of serious violations – conversion, and selling investments away from the firm. There is no evidence of any mitigating facts that would support a lesser sanction.

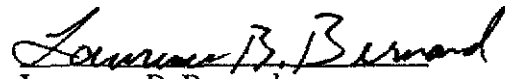
A bar is appropriate for Respondent's failure to respond to requests for information in violation of Rules 8210 and 2110.

VI. Conclusion

Respondent is barred from associating with any FINRA member firm for failure to provide requested information, in violation of Procedural Rule 8210 and Conduct Rule 2110.

The bar will be effective immediately if this decision becomes FINRA's final disciplinary action.

SO ORDERED.

A handwritten signature in cursive script, reading "Lawrence B. Bernard".

Lawrence B. Bernard
Hearing Officer

Copies to: Paul G. Hitchcock (*via overnight courier and first-class mail*)
Clarence E. Sanders, Jr., Esq. (*via email and first-class mail*)
David R. Sonnenberg, Esq. (*via email and first-class mail*)

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

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

**PAUL GERARD HITCHCOCK
(CRD No. 2047398),**

RESPONDENT.

**DISCIPLINARY PROCEEDING
No. 20070094149**

COMPLAINT

The Department of Enforcement ("Enforcement") alleges:

1. As part of an ongoing investigation, Enforcement issued two requests pursuant to NASD Rule 8210 under the FINRA Code of Procedure, requiring respondent Paul Gerard Hitchcock ("Hitchcock") to appear and testify regarding allegations that, while employed at Wachovia Securities, LLC (the "Firm"), Hitchcock caused checks drawn on brokerage accounts for three different customers to be credited to his own personal loan or credit card accounts at another institution, although clients asserted that the funds were intended for investments away from the Firm. Hitchcock has not provided the testimony requested by Enforcement.

2. By virtue of this conduct, Hitchcock has violated, and continues to violate, NASD Rules 8210 and 2110.

RESPONDENT

3. Hitchcock has been registered with FINRA (f/k/a NASD or National Association of Securities Dealers) since approximately December 1993. Hitchcock was a registered representative at the Firm from October 31, 2002 to July 18, 2006, when he was terminated for non-compliance with Firm policy. Hitchcock is no longer associated with a member firm. However, pursuant to Article V, Section 4 of FINRA's By-Laws, Hitchcock remains subject to FINRA's jurisdiction.

BACKGROUND

Prior Regulatory Communications with Hitchcock

4. On November 7, 2006, the Enforcement Division of New York Stock Exchange Regulation, Inc. ("NYSE Enforcement") issued a request to Hitchcock for a written statement concerning the circumstances surrounding his discharge by the Firm. On November 21, 2006, Hitchcock provided a written statement.

CAUSE OF ACTION

Failure To Provide INFORMATION and TESTIMONY In Response To Requests By Enforcement

5. Enforcement realleges and incorporates by reference paragraphs 1-4 above.
6. On March 1, 2007, NYSE Enforcement sent a letter to Hitchcock pursuant to Rules 476 and 477 of the New York Stock Exchange, LLC, requiring Hitchcock to provide certain financial records and a written statement regarding three customer complaints. The letter was sent by certified mail, return receipt requested, and first-class mail to the address that was recorded on Hitchcock's CRD report. A Domestic Return Receipt was received by NYSE

Enforcement, which indicated that the letter was delivered to Hitchcock. Hitchcock was required to produce the requested written statement and financial records by March 21, 2007.

7. Hitchcock failed to provide the requested financial records and written statement to Enforcement by March 21, 2007. On March 27, 2007, Enforcement staff contacted Hitchcock by telephone. Hitchcock acknowledged that he had received Enforcement's March 1, 2007 letter and told Enforcement staff that he was represented by an attorney in connection with Enforcement's investigation of his activities at Wachovia.

8. On April 10, 2007, Hitchcock's attorney called Enforcement and acknowledged that he represented Hitchcock and that he had received a copy of the March 1, 2007 letter. Further, the attorney informed Enforcement staff that he was considering advising Hitchcock to refuse to cooperate with Enforcement's investigation and that he would call the Enforcement staff by the end of that week to advise whether Hitchcock would in fact, cooperate. Thereafter, Hitchcock's attorney did not call and Hitchcock did not produce the written statement or financial records as required by Enforcement's March 1, 2007 letter.

9. On April 13, 2007, Enforcement sent a letter to Hitchcock's attorney advising him, among other things, that Hitchcock had not produced the written statement and financial records required by the March 1, 2007 letter and Hitchcock's production of this requested information was required to be produced immediately. The letter was sent by facsimile and electronic mail. A facsimile confirmation for the April 13th letter was received by Enforcement, indicating that the letter was transmitted to Hitchcock's attorney's office. There was no response to the April 13th letter.

10. To date, Hitchcock has not produced the written statement or financial records as required by Enforcement's March 1, 2007 letter.

11. On September 19, 2007, Enforcement sent a letter to Hitchcock's attorney, pursuant to NASD Rule 8210, requesting that *Hitchcock appear for testimony before* Enforcement on October 5, 2007. Enforcement's letter further advised that pursuant to NASD Rule 8210, Hitchcock's failure to appear and testify on the scheduled date could result in formal disciplinary proceedings against Hitchcock. The letter was sent by facsimile and certified mail. A facsimile confirmation for the September 19, 2007 letter was received by Enforcement indicating that it was transmitted.

12. On September 28, 2007, Enforcement staff received a telephone call from a representative from Hitchcock's attorney's office who stated that Hitchcock would not appear as requested on October 5th. Enforcement staff explained to the representative that Hitchcock had an obligation to comply with all requests by FINRA for information and testimony, and that the scheduled date for his testimony would remain as October 5, 2007. Further, the staff advised the representative that Hitchcock's failure to appear and testify on October 5th could result in formal disciplinary proceedings against Hitchcock pursuant to NASD Rule 8210. On September 28, 2007, Enforcement sent a letter to Hitchcock's attorney advising him of the same. The letter was sent by facsimile and electronic mail. A facsimile confirmation and electronic mail confirmation for the September 28th letter was received by Enforcement, indicating that the letter was transmitted.

13. On October 5, 2007, Hitchcock failed to appear and testify as required.

14. On December 3, 2007, Enforcement sent a letter to Hitchcock pursuant to NASD Rule 8210, requesting that he appear for testimony on December 10, 2007. The letter further advised Hitchcock that his failure to appear and testify on December 10, 2007, could result in formal disciplinary proceedings against him. A copy of the letter was sent to Hitchcock's

attorney. The letter was sent by Federal Express and first class mail. Enforcement received delivery confirmations from Federal Express that the letter was delivered to Hitchcock's home and his attorney's office. The copy of the letter sent to Hitchcock by first class mail was not returned to Enforcement.

15. On December 10, 2007, Hitchcock failed to appear and testify as required.

16. By virtue of the foregoing, Hitchcock has violated, and is continuing to violate, NASD Rules 8210 and 2110.

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.

FINRA DEPARTMENT OF ENFORCEMENT

Date: May 14, 2008

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