

**NASD OFFICE OF HEARING OFFICERS**

**DEPARTMENT OF ENFORCEMENT,**

**Complainant**

**v.**

**MICHAEL HENRY D'AMICO  
(CRD No. 2225883)**



**Respondent.**

**Disciplinary Proceeding  
No. C02040054**

**Hearing Officer – DMF**

**DEFAULT DECISION**

**April 20, 2005**

**Respondent is barred from associating with any NASD member in any capacity for misuse and conversion of customer funds, in violation of Rules 2330(a) and 2110, and for failure to provide requested testimony, in violation of Rules 8210 and 2110.**

*Appearances*

David Utevsky, Esq., Seattle, WA (Rory C. Flynn, Esq., Washington, DC, Of Counsel), for Complainant.

No appearance by or for Respondent.

**DECISION**

**I. Introduction**

The Department of Enforcement filed a Complaint (attached to this Decision as Exhibit A) on December 31, 2004 alleging that Respondent Michael Henry D'Amico misused and converted customer funds, in violation of Rules 2330(a) and 2110, and failed to provide testimony as requested by NASD staff, in violation of Rules 8210 and 2110.

Respondent did not file an Answer to the Complaint. On March 22, 2005, Enforcement

filed a motion for a default decision, supported by the declaration of David Utevsky and seven exhibits. Respondent did not reply to the motion.<sup>1</sup>

## **II. Respondent's Default**

Enforcement sent the Complaint and Notice of Complaint to Respondent on December 30, 2004, by certified and first class mail to Respondent's most current residential address listed in the Central Registration Depository (the "CRD address"), as well as to a business address that had been obtained by NASD staff. Enforcement sent the Complaint and Second Notice of Complaint to Respondent by certified and first class mail to the same addresses on February 2, 2005. Respondent did not file an Answer to the Complaint.

Enforcement served the Complaint and the Notices of Complaint on Respondent in accordance with Rule 9134, giving him constructive notice of this proceeding. By failing to respond, he defaulted. Pursuant to Rule 9215(f), the Hearing Officer will deem the allegations in the Complaint admitted.

## **III. Jurisdiction**

Respondent was registered with NASD member Round Hill Securities, Inc. as a General Securities Representative from December 1997 to July 2002. From August 2002 to September 2003, he was registered with another NASD member in the same capacity, and he was associated, but not registered, with an NASD member from October 2003 to November 2003. Although Respondent is not currently registered or associated with any NASD member, the Complaint charges him with misconduct while he was registered

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<sup>1</sup> The factual determinations in this decision are based on the allegations of the attached Complaint, which are deemed admitted, and the additional materials filed by Enforcement with its motion.

with Round Hill and with failing to appear and provide testimony as requested by NASD staff during the two-year period following termination of his last registration and association, and the Complaint was filed within that two-year period. Therefore, Respondent remains subject to NASD jurisdiction for purposes of this proceeding, pursuant to Art. V, § 4 of NASD's By-Laws.

#### **IV. Violations**

The first cause of the Complaint alleges that in or about March 2001, while he was registered with Round Hill, Respondent obtained funds belonging to a customer in the form of a \$13,937.82 check. On or about March 20, 2001, without the knowledge or consent of the customer, Respondent deposited the check into an account he controlled. Respondent subsequently returned \$11,696.35 to the customer, but retained the remaining funds. These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent misused and converted customer funds, in violation of Rules 2330(a) and 2110, as alleged in the first cause of the Complaint.

The second cause of the Complaint alleges that in or about December 2003, NASD staff opened an investigation into Respondent's receipt of the customer's funds. In the course of the investigation, NASD staff sent Respondent two requests, pursuant to Rule 8210, that he appear and provide testimony, under oath, with respect to the subject matter of the investigation. NASD staff sent the first request to Respondent on January 9, 2004 by first class mail to his CRD address and a possible business address; the request required him to appear at NASD's Los Angeles office on January 23, 2004. After Respondent failed to appear on January 23, NASD staff sent a second request to Respondent at the same addresses on January 26, 2004 by certified and first class mail;

the second request required Respondent to appear at NASD's Los Angeles office on February 9, 2004. Once again, Respondent failed to appear. Because NASD staff sent the requests to Respondent at his CRD address, pursuant to Rule 8210(d) he is deemed to have received them. By failing to appear and provide testimony, as requested, he violated Rules 8210 and 2110.

**V. Sanctions**

For conversion, the Sanction Guidelines recommend a bar, regardless of the amount converted. Under the Guidelines a bar is also standard for failure to provide requested testimony. NASD Sanction Guidelines at 37, 40 (2004 ed.). There is no evidence of any mitigating circumstances that would justify a lesser sanction in this case for either violation.

**VI. Conclusion**

Respondent Michael Henry D'Amico is barred from associating with any NASD member firm in any capacity for misuse and conversion of customer funds, in violation of Rules 2330(a) and 2110, and for failure to provide requested testimony, in violation of Rules 8210 and 2110. The bars will become effective immediately if this decision becomes NASD's final disciplinary action.

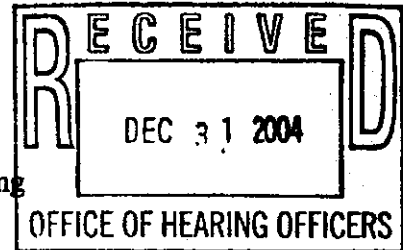
**SO ORDERED.**

  
David M. FitzGerald  
Deputy Chief Hearing Officer

Copies to: Michael Henry D'Amico (*via overnight courier and first class mail*)  
David Utevsky, 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.

Michael Henry D'Amico,  
CRD No. 2225883

Respondent.

Disciplinary Proceeding  
No. C02040054

Hearing Officer: \_\_\_\_\_

**COMPLAINT**

Upon information and belief, Complainant alleges as follows:

1. Respondent Michael Henry D'Amico ("D'Amico") was initially associated with a member of NASD in March 1992. He became registered as an Investment Company / Variable Contracts Representative in June 1992, and as a General Securities Representative in June 1993. From on or about December 18, 1997, until on or about July 25, 2002, he was registered as a General Securities Representative through Round Hill Securities, Inc. ("Round Hill"). From on or about August 9, 2002, until on or about September 11, 2003, he was registered as a General Securities Representative through another member firm. From on or about October 14, 2003, until on or about November 4, 2003, he was an associated person of another member firm.
2. On or about July 25, 2002, a Uniform Termination Notice for Securities Industry Registration ("Form U-5") was filed by Round Hill on behalf of Respondent D'Amico. The Form U-5

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disclosed that Respondent D'Amico's employment by Round Hill was terminated for lack of production.

3. On or about October 13, 2003, an Amended Form U-5 was filed by Round Hill on behalf of Respondent D'Amico. The Amended Form U-5 disclosed a complaint by customer TvH alleging, among other things, that a check for \$13,937.82 had been stolen by Respondent D'Amico and that only \$10,400 had been returned.
4. Respondent D'Amico is not currently registered or associated with any member firm; however, pursuant to Article V, Section 4 of the NASD By-Laws, NASD retains jurisdiction over him for purposes of this Complaint.

#### **FIRST CAUSE OF COMPLAINT**

##### **[NASD Conduct Rules 2110 and 2330(a), Misuse of Customer Funds]**

5. Paragraph numbers 1 through 4, above, are realleged and incorporated herein by reference.
6. In or about March 2001, while registered with Round Hill, Respondent D'Amico obtained funds belonging to customer TvH, in the form of a check from Boston Financial Data Services in the amount of \$13,937.82, payable to Bear Stearns, Round Hill Securities. On or about March 20, 2001, without the knowledge or consent of TvH, Respondent D'Amico deposited the check in an account controlled by him.
7. Subsequently \$11,696.35 was returned to TvH.
8. Respondent D'Amico thereby misused \$11,696.35 in customer funds without the customer's knowledge, authorization or consent and converted \$2,241.47 in customer funds to his own use and benefit, without the customer's knowledge, authorization or consent.
9. Such acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rule 2330(a). Such conduct is inconsistent with high standards of commercial honor and just

and equitable principles of trade and a violation of Conduct Rule 2110 by Respondent D'Amico.

## **SECOND CAUSE OF COMPLAINT**

### **[NASD Procedural Rule 8210 and Conduct Rule 2110, Failure to Appear for On-the-Record Interview]**

10. Paragraph numbers 1 through 4 and 6 through 9, above, are realleged and incorporated herein by reference.
11. In or about December 2003, NASD initiated an investigation concerning Respondent D'Amico's receipt of customer funds while registered with Round Hill. The investigation focused, among other things, on whether Respondent D'Amico had converted customer funds to his own use and benefit. Pursuant to NASD Procedural Rule 8210, NASD staff requested that Respondent D'Amico testify, under oath or affirmation administered by a court reporter or notary public, with respect to the subject matter of its investigation.
12. Respondent D'Amico's last known residential address, as reflected in the NASD Central Registration Depository, is [REDACTED] ("the CRD Address").
13. NASD staff learned of a possible business address for Respondent D'Amico. That address was [REDACTED] ("the Lindero Address").

### **First Request for Interview**

14. By letter dated January 9, 2004, NASD staff requested, pursuant to and in accordance with NASD Procedural Rule 8210, that Respondent D'Amico appear at an on-the-record interview scheduled for January 23, 2004, at 10:00 a.m., at NASD's District 2 offices in Los Angeles,

California. The request letter stated that the staff's request was made under NASD Procedural Rule 8210. An enclosed Addendum stated, "If you fail to appear and testify at the OTR you may be subject to an NASD disciplinary action and the imposition of sanctions, including a bar from the securities industry, suspension, censure and/or fine."

15. NASD staff sent the January 9, 2004, request letter and the Addendum, via U.S. Postal Service first class mail, to the CRD Address and the Lindero Address.

16. The envelope sent to the CRD Address on January 9, 2004, was not returned by the U.S. Postal Service. The envelope sent to the Lindero Address on January 9, 2004, was returned by the U.S. Postal Service, marked "Attempted, Not Known."

17. Respondent D'Amico did not appear for an on-the-record interview on January 23, 2004, as requested, and did not respond to the staff's request letter.

#### Second Request for Interview

18. By letter dated January 26, 2004, NASD staff again requested, pursuant to and in accordance with NASD Procedural Rule 8210, that Respondent D'Amico appear at an on-the-record interview scheduled for February 9, 2004, at 10:00 a.m., at NASD's District 2 offices in Los Angeles, California. The second request letter stated that the staff's request was made under NASD Procedural Rule 8210. It further stated, "If you fail to appear for the scheduled OTR, this matter will be referred to the Department of Enforcement for disciplinary action, which will result in the imposition of sanctions, including censure, fine, suspension, or permanent bar from the securities industry." Copies of the staff's January 9, 2004, request letter and the accompanying Addendum were enclosed with the second request letter.

19. NASD staff sent the January 26, 2004, request letter and the enclosures, via U.S. Postal Service first class mail and via certified mail, return receipt requested, to the CRD Address.

20. The envelope sent via first class mail to the CRD Address on January 26, 2004, was not returned by the U.S. Postal Service. The envelope sent via certified mail to the CRD Address on January 26, 2004, was returned by the U.S. Postal Service, marked "Unclaimed."
21. Respondent D'Amico did not appear for an on-the-record interview on February 9, 2004, as requested, and did not respond to the staff's second request letter.
22. To date, Respondent D'Amico has neither appeared for an on-the-record interview nor responded in any other fashion to the staff's requests.
23. Such acts, practices and conduct constitute separate and distinct violations of NASD Procedural Rule 8210. Such conduct is inconsistent with high standards of commercial honor and just and equitable principles of trade and a violation of Conduct Rule 2110 by Respondent D'Amico.

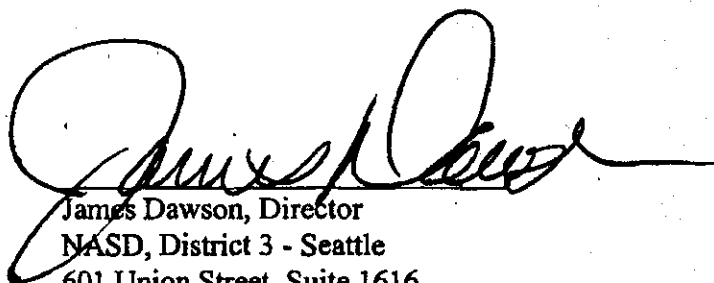
#### **PRAYER FOR RELIEF**

WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;
- B. An order imposing sanctions upon the Respondent in accordance with NASD Rule 8310;
- C. An order requiring Respondent to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest;
- D. An order imposing such costs of any proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330; and
- E. An order imposing any other fitting sanction.

Date:

12/30/04



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