

NASD OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

**Charles P. Clark, III,
General Securities Representative
(CRD No. 2379623)**

Respondent.

Disciplinary Proceeding No. C04040034

Hearing Officer - AWH

ORDER ACCEPTING OFFER OF SETTLEMENT

I. INTRODUCTION

NASD's Department of Enforcement (DOE) filed the Complaint in Disciplinary Proceeding No. C04040033 on July 14, 2004. Respondent Charles P. Clark, III (Respondent Clark) submitted an Offer of Settlement (Offer) to the DOE on January 4, 2005. Pursuant to Code of Procedure Rule 9270(e), the DOE and the National Adjudicatory Council (NAC) Review Subcommittee or the Office of Disciplinary Affairs (ODA) have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to Code of Procedure Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the DOE and approved by the NAC.

Under the terms of the Offer, Respondent Clark has consented, without admitting or denying the allegations of the Complaint, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of NASD, or to which NASD is a party, to the entry of findings and violations consistent with the allegations of the Complaint, and to the imposition of the sanctions set forth below, and fully understands that this Order will become part of

Respondent Clark's permanent disciplinary record and may be considered in any future actions brought by NASD.

II. BACKGROUND

From December 11, 1996 through May 24, 2002, Respondent Clark was associated with NASD member Wachovia Securities, Inc. (Wachovia) as a sales representative and was registered with NASD as general securities representative.

From May 24, 2002 through December 28, 2002, Respondent Clark was associated with another NASD member as a sales representative and was registered with NASD as a general securities representative.

On June 12, 2003, Wachovia filed an amended Uniform Termination Notice for Securities Industry Registration (Form U-5) in NASD's Central Registration Depository for Respondent Clark. This amended Form U-5 disclosed that Respondent Clark may have engaged in conduct actionable under NASD rules. Respondent Clark has not been associated with any NASD member firm or registered with NASD since December 28, 2002. However, NASD retains jurisdiction over Respondent Clark pursuant to Article V, Section 4 of the NASD By-Laws.

III. FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:

FIRST CAUSE OF COMPLAINT

Conversion of Customer Funds **NASD Conduct Rules 2110 and 2330**

From January 15, 1999 through November 5, 2001, customer L.C. gave Respondent Clark 16 checks totaling \$44,425.24. Customer L.C. instructed Respondent Clark to use these

funds to purchase investments for customer's L.C.'s benefit. Instead, Respondent Clark deposited these funds into his personal bank account and used these funds for his personal use and benefit without customer L.C.'s knowledge, consent or authorization. These conversions of customer funds are more fully detailed as follows.

Date of Conversion	Amount	Check Number
01/15/99	\$ 957.00	
04/21/00	\$ 1,400.00	
05/17/00	\$ 3,000.00	
09/08/00	\$ 600.00	
10/24/00	\$ 1,097.24	
11/22/00	\$ 1,980.00	
01/10/01	\$ 2,791.00	
03/04/01	\$ 3,500.00	
06/06/01	\$ 2,800.00	
06/22/01	\$ 2,700.00	
07/23/01	\$ 2,800.00	
08/14/01	\$ 2,800.00	
08/31/01	\$ 1,100.00	
09/14/01	\$ 1,500.00	
10/26/01	\$ 2,900.00	
11/05/01	\$ 12,500.00	
TOTAL	\$44,425.24	

SECOND CAUSE OF COMPLAINT

Failure to Respond to Requests for Information **NASD Conduct Rule 2110 and NASD Procedural Rule 8210**

On August 22, 2003, NASD staff sent a written information request citing NASD Procedural Rule 8210 to Respondent Clark seeking material and relevant information regarding his alleged misconduct while associated with Wachovia, as described above in part (First Request). NASD staff sent the First Request by certified mail, return receipt requested, and first class mail to Respondent Clark's last known residential address, as listed in NASD's Central Registration Depository (CRD Address). The certified mailing was returned to NASD staff, marked "Returned to Sender, Unclaimed." The first class mailing was not returned to NASD

staff. Accordingly, NASD staff completed service of the First Request upon Respondent Clark pursuant to and in accordance with NASD Procedural Rule 8210.

Respondent Clark's response to the First Request was due by September 5, 2003. Respondent Clark did not respond to the First Request.

On September 9, 2003, NASD staff sent a written information request citing NASD Procedural Rule 8210 to Respondent Clark seeking material and relevant information regarding his alleged misconduct while associated with Wachovia, as described above in part (Second Request). The Second Request cited NASD Procedural Rule 8210. NASD staff sent the Second Request by certified mail, return receipt requested, and first class mail to Respondent Clark's CRD Address. The certified mailing was returned to NASD staff, marked "Returned to Sender, Unclaimed." The first class mailing was not returned to NASD staff. Accordingly, NASD staff completed service of the Second Request upon Respondent Clark pursuant to and in accordance with NASD Procedural Rule 8210.

Respondent Clark's response to the Second Request was due by September 23, 2003. Respondent Clark did not respond to the Second Request.

IV. SANCTIONS

It is ordered that Respondent Clark be (1) barred from association with any NASD member in any capacity; and (2) ordered to pay restitution to customer L.C. in the total amount of \$44,425.24, plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. §6621(a)(2), from November 5, 2001 until the date of payment. This restitution amount is due and payable prior to any application or request from relief from any statutory disqualification resulting from this or any other event or proceeding. The imposition of this restitution order, and the timing of such ordered payments, does not preclude customer L.C. from

pursuing his own actions to obtain restitution or other remedies. If for any reason Respondent Clark cannot locate customer L.C. after reasonable and documented efforts within 90 days of payment being due and payable, or such additional period agreed to by the NASD staff, Respondent Clark shall forward any undistributed restitution and interest to the appropriate escheat, unclaimed property or abandoned property fund for the state in which customer L.C. is last known to have resided.

The sanctions imposed herein shall be effective on a date set by NASD staff.

SO ORDERED.

Dated: January 5, 2004

A handwritten signature in black ink, appearing to read 'Thomas D. Clough', is written over a horizontal line.

**Thomas D. Clough, District Director, on
behalf of the Director of the Office of
Disciplinary Affairs, pursuant to
delegated authority**