

NASD OFFICE OF HEARING OFFICERS**DEPARTMENT OF ENFORCEMENT,****Complainant,****v.****REBECCA A. CLAYTON
(CRD No. 3228952),****Respondent.****Disciplinary Proceeding
No. C04050003****Hearing Officer - DRP****DEFAULT DECISION****June 14, 2005**

Respondent is barred from associating with any NASD member in any capacity for converting customer funds, in violation of NASD Conduct Rule 2110, and for failing to respond to requests for information, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

Appearances

James M. Stephens, Senior Regional Attorney, Kansas City, MO (Rory C. Flynn, Esq., Washington, DC, Of Counsel), for Complainant.

No appearance by or for Rebecca A. Clayton.

DECISION**I. Background**

On January 27, 2005 the Department of Enforcement filed a two-count Complaint in this proceeding, attached to this Decision as Exhibit A. The Complaint alleges that Respondent Rebecca A. Clayton (Clayton or Respondent) converted customer funds, in violation of NASD Conduct Rule 2110, and failed to respond to requests for information, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110. Respondent did not file an Answer to the Complaint.

Accordingly, on April 18, 2005, Enforcement filed a Motion for Entry of Default Decision, supported by the declaration of James M. Stephens and four exhibits. Respondent did not file a response to the motion.

For the reasons set forth below, Enforcement's motion is granted.¹

II. Respondent's Default

On January 24, 2005, Enforcement served the Complaint and Notice of Complaint on Respondent by certified and first class mail, sent to her current residential address, as reflected in the Central Registration Depository (the CRD address). Respondent did not file an Answer. (Declaration ¶15; CX-2, CX-3.)

On February 22, 2005, Enforcement served the Complaint and Second Notice of Complaint on Respondent by certified and first class mail sent to the same address. Again, Respondent failed to file an Answer or otherwise respond to the Complaint.² (Declaration ¶16; CX-4.)

Enforcement complied with Procedural Rule 9134(b)(1) by mailing the Complaint and Notices of Complaint to Respondent's CRD address, thereby providing constructive notice of this proceeding. By failing to file an Answer or otherwise respond to the Complaint, Respondent defaulted. Pursuant to Rules 9215(f) and 9269(a)(2), the allegations in the Complaint are deemed admitted.

¹ The factual determinations in this Decision are based on the allegations of the attached Complaint, which are deemed admitted, and the declaration and exhibits filed by Enforcement with its motion.

² In each instance, the Postal Service stamped the certified mail sent by Enforcement to Respondent's CRD address as "unclaimed" and returned the mail to sender. Neither of the first class mailings was returned.

III. Jurisdiction

From May 7, 1999 through March 26, 2004, Respondent was associated with NASD member EquiTrust Marketing Services, LLC (EquiTrust) and was registered with NASD as an investment company/variable contracts representative. Since then, she has not been registered with any NASD member. (Declaration ¶4; CX-1.)

Respondent is subject to NASD jurisdiction pursuant to Art. V, Section 4 of NASD's By-Laws, because the Complaint, which was filed within two years of Respondent's termination from EquiTrust, alleges misconduct that occurred while she was registered, and with failing to comply with requests for information made during the two-year period following termination of her registration.

IV. Findings of Fact and Conclusions of Law

The first cause of the Complaint charges that Respondent violated NASD Conduct Rule 2110 by converting customer funds in the amount of \$5,883.18.³ More specifically, the Complaint alleges that on eleven occasions from September 2003 through March 2004, customers gave Respondent checks in order to pay their insurance premiums. Respondent endorsed each check without the customer's knowledge, consent or authorization, and converted the proceeds to her own use.

NASD Conduct Rule 2110 states a broad ethical principle that members "shall observe high standards of commercial honor and just and equitable principles of trade." Rule 115 extends this requirement to persons associated with members. The ethical and legal obligations

³ According to Enforcement's motion, Respondent was a Farm Bureau Financial Services agent. The customers involved in this matter were Respondent's property/casualty insurance customers through Farm Bureau, which offers securities through EquiTrust.

set forth in Rule 2110 are not limited to the sale of securities but encompass a wide variety of unethical business-related conduct.⁴

Here, Respondent is charged with conversion, a term that is often used interchangeably with misuse or misappropriation of customer funds. Regardless of the term used, the gravamen of the offense is the same -- the intentional and unauthorized taking of money or property, i.e., theft.⁵ It is well settled that conversion of customer funds violates Conduct Rule 2110.⁶

The allegations, which are deemed admitted, are sufficient to establish for purposes of this default decision that Respondent converted the customers' funds, in violation of NASD Conduct Rule 2110, as alleged in the first cause of the Complaint.

The second cause of the Complaint charges that Respondent violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by failing to respond to the staff's requests for information. The Complaint alleges that on June 15 and August 2, 2004, the staff sent letters to Respondent, pursuant to NASD Procedural Rule 8210, requesting that she provide information in

⁴ See *Vail v. SEC*, 101 F.3d 37, 39 (5th Cir. 1996) (citations omitted); *Daniel J. Alderman*, Exchange Act Release No. 35,997, 1995 SEC LEXIS 1823, at *7 (July 20, 1995), *aff'd*, 104 F.3d 285 (9th Cir. 1997); *Dep't of Enforcement v. Bendisen*, No. C01020025, 2004 NASD Discip. LEXIS 13, at *16 (NAC Aug. 9, 2004) ("[W]e have determined that disciplinary hearings under Rule 2110 are 'ethical proceedings, and one may find a violation of the ethical requirements where no legally cognizable wrong occurred [and that] NASD has authority to impose sanctions for violations of 'moral standards' even if there was no 'unlawful' conduct.'" quoting *Dep't of Enforcement v. Shvarts*, No. CAF980029, 2000 NASD Discip. LEXIS 6, at *11 (NAC June 2, 2000)).

⁵ Cf. *NASD Sanction Guidelines* at 38, n. 2 (2005 ed.).

⁶ See, e.g., *Dep't of Enforcement v. Brinton*, No. C04990005, 1999 NASD Discip. LEXIS 36, at *8 (NAC Dec. 14, 1999) (respondent violated Rules 2110 and 2330 by converting customer's check); *Dep't of Enforcement v. Kendzierski*, No. C9A980021, www.nasd.com/web/groups/enforcement/documents/nac_disciplinary_decisions/nasdw_007276.pdf (NAC Nov. 12, 1999); *Dep't of Enforcement v. Yancey*, No. C07970024, 1998 NASD Discip. LEXIS 57 (NAC June 4, 1998) (respondent violated Rule 2110 by depositing in his account funds collected from customer).

writing regarding her alleged misconduct while associated with EquiTrust. The Complaint further alleges that the staff sent the letters to Respondent at her CRD address by certified and first class mail and that Respondent failed to respond to either request.⁷ The staff served the requests in accordance with Rule 8210(d), and pursuant to that rule Respondent is deemed to have received them.

In the absence of subpoena power, NASD must rely on Rule 8210 to obtain information from members in the course of its investigations.⁸ Members and associated persons have a duty to cooperate fully and promptly with NASD requests for information.⁹ Failure to comply is a serious violation, because it subverts NASD's ability to carry out its regulatory responsibilities.¹⁰

The allegations, which are deemed admitted, are sufficient to establish for purposes of this default decision that Respondent failed to respond to the staff's requests for information, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110, as alleged in the second cause of the Complaint.

V. Sanctions

The first cause of the Complaint charges conversion. For conversion, NASD Sanction Guidelines recommend that the respondent be barred, regardless of the amount converted.¹¹ Under the Guidelines, a bar is also standard for failure to respond to requests for information,

⁷ The Complaint also alleges that the Postal Service stamped the certified mail as "unclaimed" and returned it to Enforcement, but the first class mail was not returned.

⁸ *Dep't of Enforcement v. Quattrone*, No. CAF030008, 2004 NASD Discip. LEXIS 17, at *46 (NAC Nov. 22, 2004), *appeal docketed*, No. 3-11786 (SEC Dec. 28, 2004).

⁹ *Brian L. Gibbons*, Exchange Act Rel. No. 37170, 1996 SEC LEXIS 1291, at *7 (May 8, 1996), *aff'd*, 112 F.3d 516 (9th Cir. 1997).

¹⁰ *Joseph P. Hannan*, Exchange Act Rel. No. 40,438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998) (citations omitted).

¹¹ *Guidelines* at 38 (2005 ed.).

which is the second cause of the Complaint.¹² There is no evidence of any mitigating circumstances that would justify a lesser sanction in this case for either violation. Accordingly, a bar is warranted and imposed for each violation.¹³

VI. Conclusion

Respondent Rebecca A. Clayton is barred from associating with any NASD member firm in any capacity for converting customer funds, in violation of NASD Conduct Rule 2110, and for failing to respond to requests for information, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110. The bars are effective immediately if this Decision becomes the final disciplinary action of NASD.

SO ORDERED.



Dana R. Pisanelli
Hearing Officer

Dated: June 14, 2005
Washington, DC

Copies to: Rebecca A. Clayton (*via overnight and first class mail*)
James M. Stephens, Esq. (*via electronic and first class mail*)
Rory C. Flynn, Esq. (*via electronic and first class mail*)

¹² *Id.* at 35.

¹³ Enforcement did not request restitution or disgorgement of the converted funds.

NASD OFFICE OF HEARING OFFICERS**Department of Enforcement,****Complainant,****v.****Rebecca A. Clayton
Investment Company/Variable Contracts
Representative (CRD No. 3228952)****Respondent.****Disciplinary Proceeding No. C04050003****Hearing Officer - _____****COMPLAINT**

Upon information and belief, Complainant alleges as follows:

1. From May 7, 1999 through March 26, 2004, Respondent Rebecca A. Clayton ("Respondent Clayton") was associated with NASD member EquiTrust Marketing Services, LLC ("EquiTrust") and was registered with NASD as an investment company/variable contracts representative.

2. On April 23, 2004, EquiTrust filed a Uniform Termination Notice for Securities Industry Registration ("Form U-5") in NASD's Central Registration Depository for Respondent Clayton. This Form U-5 disclosed that EquiTrust had terminated Respondent Clayton's registration with EquiTrust on March 26, 2004.

3. This Complaint is being filed within two years of the Form U-5 filed by EquiTrust disclosing the termination of Respondent Clayton's registration with EquiTrust. Accordingly, NASD retains jurisdiction over Respondent Clayton pursuant to Article V, Section 4 of the NASD By-Laws.

FIRST CAUSE OF COMPLAINT**Conversion of Customer Non-Securities Funds**
NASD Conduct Rule 2110

4. Complainant realleges Paragraphs 1 through 3 as if fully set forth herein.
5. On eleven occasions from September 4, 2003 through March 16, 2004, Respondent Clayton's customers gave her checks to pay insurance premiums. These checks totaled \$5,883.18. Details on the customers and checks are as follows:

Customer	Date of Check	Amount of Check
J.&M.P.	September 4, 2003	\$1,000.00
M.&I.D.	November 28, 2003	\$1,400.00
M.&I.D.	January 23, 2004	\$ 599.10
G.&S.P.	January 27, 2004	\$ 603.52
G.P.	February 18, 2004	\$ 109.57
G.P.	February 18, 2004	\$ 271.38
J.A.	March 2, 2004	\$ 429.00
R.&N.C.	March 9, 2004	\$ 230.86
K.V.	March 9, 2004	\$ 380.00
R.A.	March 11, 2004	\$ 843.31
G.&S.P.	March 16, 2004	\$ 16.44
		TOTAL: \$5,883.18

6. Instead of using these checks to pay the customers' insurance premiums, Respondent Clayton, without the knowledge, consent or authorization of the customers, endorsed these checks and converted the \$5,883.18 to her own use.

7. Such acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 by Respondent Clayton.

SECOND CAUSE OF COMPLAINT

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

8. Complainant realleges Paragraphs 1 through 7 as if fully set forth herein.

9. On June 15, 2004, NASD staff sent a written information request citing NASD Procedural Rule 8210 to Respondent Clayton seeking material and relevant information regarding her alleged misconduct while associated with EquiTrust ("First Request"). NASD staff sent the First Request by certified mail, return receipt requested, and first class mail to Respondent Clayton'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.

10. Respondent Clayton's response to the First Request was due by June 29, 2004. Respondent Clayton has not responded to the First Request.

11. On August 2, 2004, NASD staff sent a second written information request citing NASD Procedural Rule 8210 to Respondent Clayton seeking material and relevant information regarding her alleged misconduct while associated with EquiTrust ("Second Request"). NASD staff sent the Second Request by certified mail, return receipt requested, and first class mail to Respondent Clayton'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.

12. Respondent Clayton's response to the Second Request was due by August 9, 2004. Respondent Clayton has not responded to the Second Request.

13. Such acts, practices and conduct constitute separate and distinct violations of NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by Respondent Clayton.

PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

Findings of fact and conclusions of law that Respondent Clayton committed the violations charged and alleged herein;

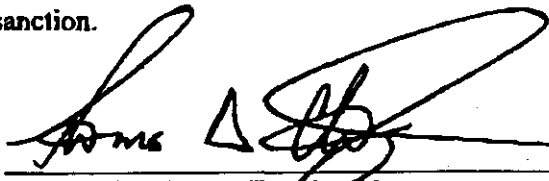
An order imposing sanctions upon Respondent Clayton in accordance with NASD Procedural Rule 8310;

An order requiring Respondent Clayton to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest;

An order imposing such costs of any proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Procedural Rule 8330; and

An order imposing any other fitting sanction.

Date: January 24, 2005
Kansas City, Missouri



Thomas D. Clough, District Director



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