

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT

Complainant,

v.

JENNIFER COCHRANE PRUSSACK
(CRD No. 4405629),

Respondent.

Disciplinary Proceeding
No. C06050006

Hearing Officer – SNB

DEFAULT DECISION

September 14, 2005

For conversion of customer funds, in violation of Rule 2110, and for failure to provide requested information, in violation of Rules 8210 and 2110, Respondent is barred from associating with any NASD member in any capacity.

Appearances

Karen Whitaker, Esq., Regional Counsel, NASD, Dallas, TX, Andrew A. Favret, Esq., of Counsel, New Orleans, LA, and Rory C. Flynn, Esq., of Counsel, Washington, DC, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

I. Background

On April 25, 2005, the Department of Enforcement ("Enforcement") filed a two-cause Complaint in this proceeding, attached to this Decision as Exhibit A. The Complaint alleges that Respondent Jennifer Cochrane Prussack ("Respondent") violated NASD Rule 2110 by converting customer funds. The Complaint also alleges that Respondent violated NASD Rules 8210 and 2110 by failing to respond to NASD Staff requests for information. Respondent did not file an Answer to the Complaint. On July

26, 2005, Enforcement filed a Motion for Entry of Default Decision, supported by the declaration of Karen E. Whitaker, Esq. and three exhibits. Respondent did not reply to the Motion. For the reasons set forth below, the Motion is granted.¹

II. Respondent's Default

Enforcement sent the Complaint and Notice of Complaint to Respondent on April 22, 2005, by first class and certified mail to her last known residential address listed in the Central Registration Depository (the "CRD address").² In the same manner, Enforcement sent the Complaint and Second Notice of Complaint to the same address on May 25, 2005.³ Respondent did not file an Answer to the Complaint.

Enforcement complied with Procedural Rule 9134(b)(1) by mailing the Complaint and Notices of Complaint to Respondent's CRD address, thereby giving Respondent constructive notice of this proceeding. By failing to file an Answer, Respondent defaulted. Therefore, pursuant to Rule 9215(f), the Hearing Officer deems the allegations in the Complaint admitted.

III. Jurisdiction

Respondent first became registered with NASD member firm Banc One Securities Corporation ("Banc One") in July 2001. Except for a break in service between April and December 2003, Respondent was registered with Banc One until her termination from Banc One on February 24, 2004. Respondent has not been registered with NASD since

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 The return receipt for the certified mailing was returned, bearing the signature "J. Prussack." The first class mailing was not returned.

³ The return receipt for the certified mailing was returned, bearing the signature "J. Prussack," and the first class mailing was not returned.

that time. During the relevant period, Respondent was also employed by Bank One Trust Company.

Although Respondent is not currently associated with a member firm, NASD has jurisdiction to bring this proceeding, pursuant to Art. V, § 4 of NASD's By-Laws, because (1) the Complaint charges Respondent with misconduct while she was registered and with failing to comply with requests for information made during the two-year period following termination of her last registration, and (2) the Complaint was filed within that two-year period.

IV. Violations

A. Conversion

The Complaint alleges that, during the period from approximately October 2001 through at least January 2004, Respondent made unauthorized debit withdrawals from the accounts of at least two Bank One Trust customers and converted these funds to her own personal use and benefit. Respondent had access to customer accounts in her capacity as a Bank One Trust Company employee. Using this access, she systematically made monthly withdrawals in the amount of \$1,390 from the account of customer GU. Over approximately 27 months she withdrew at least \$37,000 from this customer's account. During the same period, using the same technique, Respondent withdrew at least \$20,000 from the account of customer DD. As part of her scheme, Respondent completed debit tickets against customer accounts and obtained co-signatures from unwitting co-workers. Respondent then cashed the signed debit tickets in the Bank One branch located in the lobby of her office building, converting at least \$57,000 in customer funds to her own use and benefit.

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent violated Rule 2110.

B. Failure to Respond

The Complaint also alleges that, on April 5, April 19, and July 22, 2004, NASD Staff sent Respondent requests for information concerning her alleged conversion activities. The Staff sent these requests to Respondent at her CRD address by first class and certified mail.⁴ The Staff served the requests in accordance with Rule 8210(d), and therefore Respondent is deemed to have received them. Respondent did not respond to any of the requests for information.

Rule 8210 authorizes NASD to require any person subject to its jurisdiction to provide information related to any matter under investigation. The Rule serves as a key element in NASD's oversight function and allows NASD to carry out its regulatory functions without subpoena power.⁵ Here, although Respondent received valid constructive notice of the Staff's requests,⁶ she failed to respond to them. Respondent thereby violated Rules 8210 and 2110.

V. Sanctions

For conversion, the Sanction Guidelines recommend a bar, regardless of the amount converted. A bar is also standard for failure to provide requested information.

⁴ The return receipt for the certified mailing dated April 5, 2004 was returned, signed by "Rita Cochrane," and the return receipt for the certified mailing dated April 19, 2004 was returned, signed by "Jennifer Prussack," while the certified mailing sent July 22, 2004 was returned, stamped "Unclaimed." None of the letters sent by first class mail were returned.

⁵ See, e.g., Dep't of Enforcement v. Valentino, No. FP1010004, 2003 NASD Discip. LEXIS 15, at *12 (NAC May 21, 2003), aff'd, 2004 SEC LEXIS 330 (Feb. 13, 2004) ("It is well established that because NASD lacks subpoena power over its members, a failure to provide information fully and promptly undermines NASD's ability to carry out its regulatory mandate.") (citation omitted); Joseph G. Chiulli, Exchange Act Release No. 42,359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for the NASD effectively to conduct its investigations, and emphasizing that NASD members and associated persons must fully cooperate with requests for information).

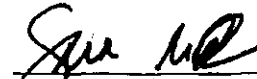
⁶ See David I. Cassuto, Exchange Act Release No. 48,087, 2003 SEC LEXIS 1496, at *9 (June 25, 2003).

NASD Sanction Guidelines at 35, 38 (2005 ed.). There is no evidence of any mitigating circumstances that would justify a lesser sanction in this case for either violation, so Respondent is barred from associating with any NASD member in any capacity.

VI. Conclusion

For unauthorized withdrawals and conversion of customer funds, in violation of Rule 2110, and for failure to provide requested information, in violation of Rules 8210 and 2110, Respondent is barred from associating with any NASD member in any capacity. These bars shall become effective immediately if this Decision becomes the final disciplinary action of NASD.

SO ORDERED.



Sara Nelson Bloom
Hearing Officer

Dated: September 14, 2005

Copies to: Jennifer Cochrane Prussack (*via overnight and first class mail*)
Karen E. Whitaker, Esq. (*via facsimile and first class mail*)
Rory C. Flynn, Esq. (*via first class mail*)

EXHIBIT A

**NASD
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

Jennifer Cochrane Prussack
CRD No. 4405629

Respondent.

Disciplinary Proceeding
No. C06050006

Hearing Officer:

COMPLAINT

Upon information and belief, Complainant alleges as follows:

1. Respondent Jennifer Cochrane Prussack ("Prussack") entered the securities industry in June 2001, when she became associated with NASD member firm Banc One Securities Corporation ("BO Securities"). She subsequently obtained Series 6 and 63 securities licenses in July 2001. During the relevant time period, Prussack was also employed by Bank One Trust Company ("BO Trust"). Except for a break in service between April and December 2003, Prussack remained at BO Securities until her termination on February 24, 2004. Since that time, Prussack has not been registered with any other NASD member firm. On March 24, 2004, BO Securities filed a Form U-5 termination notice on Prussack's behalf. Although Prussack is not currently registered with any NASD member, she remains subject to the jurisdiction of NASD, pursuant to Article V, Section 4 of the Association's By-Laws, which provides for a two-year period of retained jurisdiction over formerly associated persons. Accordingly, NASD retains jurisdiction over Prussack until February 23, 2006. Prussack has no prior disciplinary history.

FIRST CAUSE OF COMPLAINT

Respondent Made Unauthorized Withdrawals from Customer Bank Accounts

and Converted the Funds to Her Own Use and Benefit

(Violation of NASD Conduct Rule 2110)

2. Paragraph number 1, above, is realleged and incorporated herein by reference.
3. Prussack began her employment with Bank One, NA ("the bank") as a customer service representative. She later went to work for the bank's trust company, BO Trust. In her capacity as a BO Trust employee, Prussack had access to customer accounts.
4. During the period from approximately October 2001 through at least January 2004, Prussack made unauthorized debit withdrawals from the accounts of at least two BO Trust customers, GU and DD, and converted the funds for her own personal use and benefit.
5. Prussack made the unauthorized withdrawals by completing miscellaneous debit tickets against the affected customer accounts, and asking unsuspecting co-workers, other BO Trust employees, to co-sign the tickets. If the co-worker asked Prussack for an explanation, she simply stated that she was making the withdrawals at the request of one of her "little old ladies."
6. Prussack cashed the signed debit tickets in the Bank One branch located in the lobby of her office building.
7. Over an approximate twenty-seven month time period, Prussack systematically made monthly debit withdrawals in the amount of \$1,390 from customer GU's account. In total, Prussack withdrew at least \$37,000 from customer GU's account.
8. During the same time period, Prussack also withdrew at least \$20,000 from customer DD's account.

9. Prussack's activities were uncovered when a Bank One employee found one of the withdrawals to be suspicious and reported Prussack to bank authorities.
10. Prussack used all of the funds withdrawn from customers GU's and DD's accounts for her personal use and benefit.
11. The customers did not authorize Prussack's use of their funds.
12. Accordingly, Prussack converted the customers' funds without their knowledge, authorization or consent.
13. The aforementioned acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 by Jennifer Cochrane Prussack.

SECOND CAUSE OF COMPLAINT

Failure to Respond to NASD Requests for Information

(Violation of NASD Conduct Rule 2110 and Procedural Rule 8210)

14. Paragraph number 1 above, is realleged and incorporated herein by reference.
15. By letter dated April 5, 2004, NASD staff requested, pursuant to Rule 8210, that Respondent Prussack provide information regarding her alleged conversion activities at BO Trust. The letter was sent via first class regular and certified mail to Prussack's CRD home address of record: [REDACTED] ("CRD Address").
16. By letter dated April 19, 2004, NASD staff again requested, pursuant to Rule 8210, that Prussack provide the previously requested information. The letter was sent via first class regular and certified mail to Prussack's CRD Address.
17. By letter dated July 22, 2004, NASD staff made a third request, pursuant to Rule 8210, for Prussack to provide the previously requested information. The letter was sent via first class regular and certified mail to Respondent Prussack's CRD Address.

Formal Complaint
C06050006/Jennifer Cochrane Prussack

18. The Certified Receipt attached to the April 5th letter was returned to the District Office signed by "Rita Cochrane." The April 5th letter sent via regular mail was not returned.
19. The Certified Receipt attached to the April 19th letter was returned to the District Office signed by "Jennifer Prussack." The April 19th letter sent via regular mail was not returned.
20. The July 22nd letter sent via certified mail was returned to the District Office marked, "Returned To Sender," and "Unclaimed." The July 22nd letter sent via regular mail was not returned.
21. Prussack did not respond to any of NASD's request for information.
22. The aforementioned acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 and NASD Procedural Rule 8210 by Jennifer Cochrane Prussack.

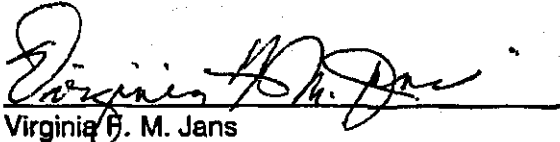
PRAYER FOR RELIEF

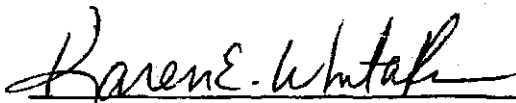
WHEREFORE, Complainant respectfully requests:

- 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.

Formal Complaint
C06050006/Jennifer Cochrane Prussack

April 22, 2005
Date


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