

**NASD
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant

v.

Penson Financial Services, Inc.
CRD No. 25866



Respondents

Disciplinary Proceeding
No. C06050007
(E062002007507)

Hearing Officer: DRP

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: October 6, 2005

INTRODUCTION

Disciplinary Proceeding No. C06050007 was filed on April 28, 2005, by the Department of Enforcement of NASD ("Complainant"). Respondents Penson Financial Services, Inc. ("Penson") and [REDACTED] submitted an Offer of Settlement ("Offer") to Complainant on September 9, 2005. Pursuant to Code of Procedure Rule 9270(e), the Complainant and the National Adjudicatory Council ("NAC") Review Subcommittee of 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 Complainant and approved by the NAC.

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Under the terms of the Offer, Respondent 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's permanent disciplinary record and may be considered in any future actions brought by NASD.

BACKGROUND

Respondent Penson Financial Services, Inc. became a registered member of NASD on or about November 27, 1990, and its registration remains in effect. The firm's disciplinary history is as follows:

On June 20, 2003, NASD accepted an AWC (Case No. C06030011) whereby the firm was censured, fined \$25,000.00 and ordered to retain an independent outside consultant to conduct a review of, and prepare a written report and make recommendations as to the adequacy of the firm's supervisory and compliance policies and procedures and its system for applying such procedures, for failing to establish and maintain a supervisory system reasonably designed to address the processing of letters of authorization received from two of its correspondent firms, and including but not limited to the establishment and maintenance of written procedures as to the processing of letters of authorization, all in violation of NASD Conduct Rules 2110, 3010(a), and 3010(b).

On July 6, 2001, the firm entered into a Consent Agreement with the State of Nevada whereby the firm was fined \$50,000.00 for processing faxed copies of forged letters of instruction for wire transfers received from an employee of its introducing firm during the period of February

2000 to January 2001. The firm also agreed to offer restitution to the affected customers.

Respondent [REDACTED] entered the securities industry in January 1974. Since 1974 he has been registered with several different NASD member firms. In May 1995, he registered with member firm Penson, as among other things, a General Securities Principal and a Financial and Operations Principal, and his registrations remain in effect. During all times referenced herein, [REDACTED] was the President of Penson. According to the firm's written supervisory procedures, [REDACTED] was responsible for the firm's financial condition and he was also the firm's Chief Supervisory Officer and responsible for reviewing the firm's supervisory procedures and practices. He has no prior disciplinary history.

FINDINGS AND CONCLUSIONS

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

First Cause

On or about July 12, 2002, Penson completed a customer reserve computation for its reserve account. Its reserve computation showed that the firm was required to deposit approximately \$5,900,000 into its reserve account. [REDACTED] the firm's President and also its Financial and Operations Principal, was responsible for ensuring that the \$5,900,000 was deposited into the firm's reserve account no later than July 16, 2002, and he was also responsible for ensuring that the firm's reserve account was, at all other times, adequately funded.

On or about July 16, 2002, the date when Penson was required to deposit \$5,900,000 into its reserve account, the firm withdrew \$38,000,000 from one of its reserve accounts and transferred the funds into an operating account. Moreover, on the same day, Penson, acting through [REDACTED] failed to make the required reserve account deposit of \$5,900,000. It

was not until July 17, 2002, that Penson, acting through ■■■ discovered this error and deposited the required amount into the firm's reserve account.

By withdrawing \$38,000,000 from the firm's reserve account and transferring it into the wrong account, and by failing to make the required reserve account deposit of \$5,900,000, Penson, acting through ■■■ failed to maintain the required amount in the firm's reserve account in that the firm's reserve account was underfunded by approximately \$44,000,000.

On or about June 30, 2003, July 2, 2003, July 3, 2003 and July 7, 2003, Penson, acting through ■■■ withdrew the following approximate amounts from the firm's reserve account: \$14,000,000; \$77,000,000; \$56,000,000; and \$5,000,000 respectively. Before effecting each of the aforementioned withdrawals, Penson, acting through ■■■ prepared a reserve computation; however, its reserve computations were inaccurate because they overstated the amount the firm had on deposit in its reserve account. Upon effecting the aforementioned withdrawals, Penson's reserve account was underfunded by amounts ranging from approximately \$12,000,000 to \$33,000,000.

Second Cause

Penson maintains an interest in at least several foreign financial accounts. In connection with regulations issued by the U. S. Department of Treasury, (31 CFR 103.24) it is required to annually file, on a form entitled "Report of Foreign Bank and Financial Accounts," information about each of its foreign accounts that are subject to the Treasury's guidelines. The Reports must be filed no later than June 30th of the succeeding year and the requirement to file such Reports has been in effect for many years and predates the PATRIOT Act (Pub. L. No. 107-56, 115 Stat. 272 (2001)) and Conduct Rule 301.

On or about June 30, 2001, Penson should have filed, with the Department of Treasury, a Report relating to one of its foreign accounts; however, Penson failed to make a timely filing in that its filing was not made until about September 4, 2003, over two years late. On or about June 30, 2002, Penson should have filed four Reports concerning four of its foreign accounts; however Penson failed to make a timely filing for these four foreign accounts in that its filings were not made until about August 7, 2003, over a year late. On or about June 30, 2003, Penson should have filed two Reports for two of its foreign accounts; however, Penson failed to make a timely filing in that its filings were not made until about August 7, 2003, approximately two months late.

Based on the foregoing, Respondent Penson Financial Services violated SEC Rule 15c3-3 and Respondent [REDACTED] violated NASD Conduct Rule 2110, as alleged in the First Cause of Complaint, and Respondent Penson Financial Services violated NASD Conduct Rules 2110 and 3011(b), as alleged in the Second Cause of Complaint.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondent from any future misconduct, and represent a proper discharge by NASD, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

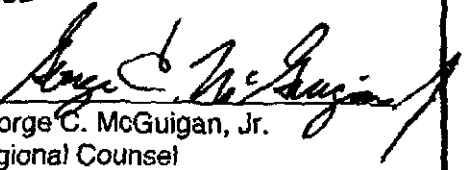
It is ordered that both Respondents Penson Financial Services and [REDACTED] be censured.

With regard to the First Cause of Complaint, a fine of \$40,000 is imposed against Penson Financial Services, of which \$7,500 is joint and several with [REDACTED]

With regard to the Second Cause of Complaint, a fine of \$10,000 is imposed against Penson Financial Services.

SO ORDERED.

NASD

By: 

George C. McGuigan, Jr.
Regional Counsel

on behalf of the Director of ODA, pursuant to
delegated authority