

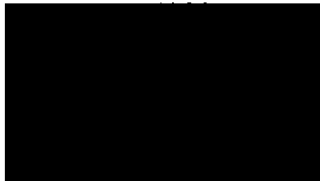
NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT

Complainant,

v.

SAMUEL DAVIS HUGHES
(CRD No. 1928041)



Respondent.

Disciplinary Proceeding
No. C07040067

Hearing Officer – AWH

DEFAULT DECISION

February 11, 2005

Formerly registered representative (1) recommended unsuitable variable annuity switches and an unsuitable variable annuity purchase, in violation of NASD Conduct Rules 2310 and 2110; (2) misled a customer by making material misrepresentations and omissions, in violation of NASD Conduct Rule 2110; (3) engaged in unauthorized transactions in a customer account, in violation of NASD Conduct Rule 2110; and (4) failed to respond to NASD staff requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2110. Respondent is barred for each violation.

Appearances:

Gene E. Carasick, Esq., for the Department of Enforcement.

No appearance by or for Samuel Davis Hughes.

DECISION

Background

On August 18, 2004, the Department of Enforcement ("Enforcement") issued the six-cause Complaint in this proceeding, alleging that Samuel Davis Hughes: (1) made four

unsuitable variable annuity switch recommendations to customer CS, in violation of NASD Conduct Rules 2310 and 2110; (2) misrepresented the benefits, fees, and costs of the transactions through omissions and misstatements of fact, in violation of NASD Conduct Rule 2110; (3) made an unsuitable variable annuity purchase recommendation to customer CB, in violation of NASD Conduct Rules 2310 and 2110; (4) misrepresented the terms of the variable annuity, in violation of NASD Conduct Rule 2110; (5) engaged in unauthorized transactions in the account of customer JB, in violation of NASD Conduct Rule 2110; and (6) failed to provide information and appear for testimony, in violation of NASD Procedural Rule 8210 and Conduct Rule 2110.

Hughes failed to file an Answer to the Complaint; he similarly failed to respond to the Second Notice of Complaint, mailed to him on September 23, 2004. As a result, Enforcement filed a Motion for Entry of Default Decision on November 23, 2004. Hughes failed to respond to the Motion. Accordingly, pursuant to Procedural Rules 9215(f) and 9269, Enforcement's Motion will be granted, and the allegations of the Complaint, attached to this decision, will be deemed admitted.

Findings of Fact¹

Respondent

Hughes was registered with NASD as a general securities representative, associated with member firm Spelman & Co., Inc., from March 28, 2000, until September 5, 2002, when he voluntarily terminated his registration. Since then, Hughes has not been associated with any member firm.

¹ All findings of fact are based upon the admitted allegations in the Complaint, the Affidavit of Gene E. Carasick in Support of Complainant's Motion for Entry of Default Decision, and the three exhibits attached thereto.

Customer CS

Between July 2000 and September 2001, Hughes recommended four variable annuity switches² to customer CS without informing him of the surrender penalties he would incur, and, in three instances, falsely promised a “bonus payment” in connection with the new purchase.³ In each case, CS sold an annuity that he had initially purchased at Hughes’ urging, and that he had held for only a short time, ranging from 13 to 28 months. At Hughes’ recommendation, he then purchased a new annuity offered by a different insurance company. As a result of the four switches, CS unknowingly incurred \$21,494.24 in surrender penalties and received the promised bonus payment in only one instance, while Hughes earned \$16,621.87 in commissions.

Three of the switches involved switching money from an annuity invested in equity sub-accounts into one providing fixed sub-accounts, or vice versa. One involved a switch from an annuity invested in total return sub-accounts to another one that would be invested in equity sub-accounts; however, in a document related to that switch, Hughes and CS state that CS’s intent was to switch to an annuity that invested in fixed sub-accounts. All the switches did in fact result in a reallocation of CS’ money into a different type of sub-account. However, the annuities CS owned all offered both fixed and equity sub-accounts. Had CS simply switched sub-accounts within those annuities, CS would not have incurred any surrender penalties. Hughes’ recommendations resulted in substantial and needless penalties, undermining any purported rationale for the switches.

Customer CB

Customer CB was 67 years old and retired at the time relevant to this proceeding. Her annual income was approximately \$10,000, and her automobile and home were her only assets.

² A variable annuity “switch” refers to the sale of one variable annuity and the purchase of another.

³ A “bonus payment” or “bonus credit” is a percentage amount added to certain annuities as an inducement to purchase the instrument, often ranging from 1-5%.

She received \$600 per month in Social Security benefits, and \$500 per month in Medicaid benefits to cover costs associated with treating a disease. When her mother died in 2001, CB inherited \$150,000 from three annuity policies. Because she wanted advice about investing the proceeds, CS introduced her to Hughes.

CB explained to Hughes that as a result of the inheritance, she no longer qualified for Medicaid assistance, and that her Social Security checks would not cover her monthly medical expenses. She told him that she did not want a long-term investment, and that, because of her monthly financial needs, she did not want to incur penalties for withdrawing funds. Ignoring her stated needs, Hughes recommended CB purchase a long-term variable annuity through Anchor National, falsely assuring her that she could draw upon the funds without penalty and would receive a \$7,500 bonus payment. In reality, the Anchor National annuity charged withdrawal penalties for the first seven years, and did not provide a bonus payment upon purchase.

Customer JB

In February 2000, Customer JB purchased a \$27,500 GoldenSelect Premium Plus Variable Annuity on Hughes' recommendation, choosing a 5.75% fixed sub-account for his funds. In April 2000, he invested an additional \$20,000 in a GoldenSelect annuity, eventually placing his funds in a 4% sub-account.

In February 2001, Hughes reallocated \$29,980.13 from the 5.75% sub-account to a Liquid Asset sub-account, without JB's knowledge or consent. In April 2001, Hughes reallocated \$22,308.64 from the 4% sub-account to the Liquid Asset sub-account, again without JB's knowledge or consent.

Failure to Respond to Requests for Information

On May 22, 2003, pursuant to Procedural Rule 8210, Enforcement sent Hughes a request to provide information regarding the customer complaints giving rise to this proceeding. The request was sent by both first-class and certified mail to Hughes' most recent residential addresses, as reflected in the Central Registration Depository. These addresses are listed as [REDACTED]

[REDACTED] ("Cobia Dr. Address"). The first-class mailing sent to the P.O. Box address was not returned, and the certified mailing sent to the P.O. Box address was returned, marked "refused." Both mailings sent to the Cobia address were returned, marked "return to sender unable to forward." On June 3, Hughes contacted NASD staff and confirmed that he had received the May 22 request, but noted that his current address was [REDACTED] [REDACTED] ("the Front Beach Road address"). In this conversation and in another on June 6, 2003, Hughes stated that he would not participate in an interview or provide testimony, and he understood he would likely be barred as a result.

On June 9, 2003, Enforcement wrote to Hughes, requesting his appearance at an on-the-record interview on June 30, 2003. The request was mailed to the three addresses noted previously. Hughes failed to appear for his scheduled testimony.

Service of the Complaint

On August 18, 2004, Enforcement served Hughes with the Complaint and Notice of Complaint by both first-class and certified mail, sent to his two CRD addresses (the P.O. Box address and the Cobia Dr. address), as well as to the Front Beach Road address. None of the first-class mailings was returned. Only the delivery receipt for the mailing sent to the Front Beach Road address was returned, signed by "Laura Stetter." Hughes did not file an Answer.

On September 23, 2003, Enforcement served the Complaint and Second Notice of Complaint on Hughes in an identical fashion. The first-class mailing sent to the Cobia Dr. address was returned, marked "attempted, not known." None of the other first-class mailings was returned. All three of the certified mailings were returned, each bearing a mark indicating that delivery had been unsuccessful.⁴ Hughes again failed to file an Answer or respond in any way.

Discussion and Conclusions

Jurisdiction

Article V, Section 4 of the NASD By-Laws provides for a two-year period of retained jurisdiction over a registered person after the effective termination of the individual's registration. During this period of retained jurisdiction, NASD may file a complaint based upon conduct that occurred while the individual was registered through a member firm, or based upon such person's failure to provide information requested pursuant to NASD Procedural Rule 8210, if the request was made, and the complaint is filed, during the foregoing period of retained jurisdiction.

Enforcement filed the Complaint on August 18, 2004, within two years of the September 4, 2002, termination of Respondent's registration. The Complaint alleges misconduct while Hughes was registered with an NASD member firm, as well as failures to provide information during the period of retained jurisdiction. Therefore, NASD has jurisdiction over this proceeding.

⁴ P.O. Box address mailing: "Unclaimed;" Cobia Dr. address: "Insufficient address;" Front Beach Road address: "Attempted not known."

Respondent's Default

Enforcement properly served the Complaint on Hughes by sending it via first-class and certified mail to his CRD addresses, as well as to the Front Beach Road address obtained during the course of the investigation. Pursuant to NASD Procedural Rule 9134, the mailings provide constructive notice of the instant proceeding. Because Hughes failed to respond to the Complaint, Procedural Rules 9215(f) and 9269 authorize entry of a default decision against him. Accordingly, the allegations in the Complaint against Hughes are deemed admitted.

Unsuitable Annuity Switch Recommendations to CS

NASD Conduct Rule 2310 requires that a registered representative have a "reasonable basis" for believing that a recommendation made to a customer regarding the purchase, sale, or exchange of any security is suitable for that individual. The SEC and NASD have frequently noted the potential for abuse in recommending that a customer switch between variable annuities, and reminded registered persons of their suitability obligations.⁵ A violation of Conduct Rule 2310 is also a violation of Rule 2110, in contravention of "just and equitable principles of trade."⁶

Here, Hughes recommended that CS sell variable annuities that he had held for only a short period, thereby incurring substantial surrender penalties. Hughes' recommendations had no discernable purpose other than to generate commissions. The purported rationale in the

⁵ Joint NASD/SEC Report on Examination Findings Regarding Broker-Dealer Sales of Variable Insurance Products (June 2004) at www.sec.gov/news/studies/secnasdvp.htm; Registration Form for Insurance Company Separate Accounts Registered as Unit Investment Trusts that Offer Variable Life Insurance Policies. Investment Company Act Release No. 25522, 2002 SEC LEXIS 958 (April 12, 2002) ("These transactions create a potential for sales practice abuses, through which contract owners may be induced to make disadvantageous exchanges that result in the payment of additional sales charges and broker compensation.... We remind broker-dealers of their obligation to recommend replacement transactions only when they are suitable."); Letter of Investment Management Division Regarding the "Retail Exemption" to Section 11 (June 2001) at www.sec.gov/divisions/investment/guidance/nash061901.htm (emphasizing Commission's concern with abusive switching of variable annuities).

⁶ *Dep't of Enforcement v. Daniel Richard Howard*, 2000 NASD Discip. LEXIS 16 (NAC Nov. 16, 2000).

transactions was to shift CS' funds to a different type of sub-account. However, as noted above, Hughes could have achieved an identical result by recommending that CS switch sub-accounts within the same annuity contract, thereby avoiding penalties for early withdrawal. Therefore, Hughes lacked a reasonable basis for recommending the variable annuity switches at issue, in violation of NASD Conduct Rules 2310 and 2110.

Misrepresentations and Omissions Misleading CS

NASD Conduct Rule 2110 requires that securities professionals observe "high standards of commercial honor and just and equitable principles of trade." Providing false information to a customer is a violation of this requirement.⁷ Failing to disclose the material terms, fees, and costs of an investment also constitutes a breach of this ethical standard.⁸

Here, Hughes failed to inform CS that he would incur surrender penalties by switching annuities, and falsely promised him a bonus payment in connection with the purchase of the new annuity. By so doing, Hughes violated NASD Conduct Rule 2110.

Unsuitable Variable Annuity Purchase Recommendation to CB

Conduct Rule 2310 requires that a broker have a reasonable basis for believing that a recommended purchase is suitable for a customer "upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs."⁹ Here, contrary to her professed need for current income and immediate access to invested funds, Hughes recommended CB purchase a long-term annuity that imposed surrender fees for the first seven years. Accordingly, Hughes had no reasonable basis to believe that the Anchor National variable annuity was suitable for CB. By making that recommendation to CB, Hughes violated NASD Conduct Rules 2310 and 2110.

⁷ *John F. Yakimczyk*, Exchange Act Release No. 31,462, 1992 SEC LEXIS 3039 (Nov. 16, 1992).

⁸ *Dep't of Enforcement v. Timberlake*, 2004 NASD Discip. LEXIS 11 (NAC Aug. 6, 2004).

⁹ As noted above, a violation of Conduct Rule 2310 is a violation of Rule 2110. *See supra* n. 6.

Misrepresentations and Omissions Misleading CB

As noted above, providing false information to a customer violates NASD Conduct Rule 2110.¹⁰ Hughes falsely assured CB that she could draw upon her investment without penalty, and promised her a non-existent bonus payment in connection with the annuity purchase. By so doing, Hughes violated the Conduct Rule 2110.

Unauthorized Trading

The Securities and Exchange Commission and NASD have consistently held that unauthorized trading in a customer's account violates Conduct Rule 2110.¹¹ Here, in two transactions, Hughes reallocated over \$50,000 of JB's funds to a Liquid Asset sub-account, without JB's knowledge or consent. By executing the two unauthorized transactions, Hughes violated NASD Conduct Rule 2110.

Failure to Provide Information

Procedural Rule 8210 authorizes NASD to require any person subject to its jurisdiction to provide information and testimony 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.¹² When an individual fails to respond to information requests, NASD's ability to perform its regulatory responsibilities is subverted.¹³ A violation of Procedural Rule 8210 is also a violation of Conduct Rule 2110.¹⁴

¹⁰ See *supra* n. 7.

¹¹ *Dep't of Enforcement v. Jeffrey B. Hodde*, No. C10010005, 2002 NASD Discip. LEXIS 4, at *13 (NAC Mar. 27, 2002).

¹² See *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 NASD effectively to conduct its investigations, and emphasizing that NASD members and associated persons must fully cooperate with requests for information); *Dep't of Enforcement v. Benz*, No. C01020014, 2003 NASD Discip. LEXIS 11, at *18 (OHO Mar. 4, 2003) ("Because NASD has no subpoena power, timely and full compliance with information requests is essential to NASD's self-regulatory function.").

¹³ *Joseph P. Hannan*, Exchange Act Release No. 40,438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998).

¹⁴ *Dep't of Enforcement v. Baxter*, No. C07990016, 2000 NASD Discip. LEXIS 3, at *25 (NAC, Apr. 19, 2000).

Hughes acknowledged receiving the first request for information, but informed Enforcement that he would not comply with that request. He also stated that he did not wish to participate in any interview. His failure to comply with the requests for information and testimony plainly constitute violations of Procedural Rule 8210 and Conduct Rule 2110.

Sanctions

Sales Practices Violations

Hughes' misrepresentations, unsuitable recommendations and switches, and unauthorized transactions reflect a pattern of furthering his own financial interests at his customers' expense, conduct that is fundamentally at odds with the obligations of registered representatives. Therefore, his misconduct was egregious and deserves serious sanction. NASD Sanction Guidelines for each of these violations provide that in egregious cases, a bar may be appropriate; and, based on the overall circumstances set forth above, the Hearing Officer finds that, in this case, a bar is appropriate for each violation.¹⁵

Failure to Appear and Provide Testimony

For failure to respond to requests for information made pursuant to Rule 8210, NASD Sanction Guidelines provide that a bar is the standard sanction where, as here, the individual did not respond in any way.¹⁶ Hughes' refusals to comply with the requests were unequivocal. There are no mitigating circumstances that would warrant a sanction less than a bar. Accordingly, Hughes will be barred in all capacities for failing to respond in any manner to requests for information made pursuant to Rule 8210.

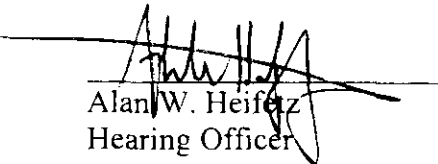
¹⁵ NASD SANCTION GUIDELINES at pp. 94, 97, 100 (2004 ed.).

¹⁶ *Id.* at 37.

Conclusion

Samuel Davis Hughes is barred from association with any NASD member firm in any capacity for (1) recommending unsuitable variable annuity switches and an unsuitable variable annuity purchase, in violation of NASD Conduct Rules 2310 and 2110; (2) misleading a customer by making material misrepresentations and omissions, in violation of NASD Conduct Rule 2110; (3) engaging in unauthorized transactions in a customer account, in violation of NASD Conduct Rule 2110; and (4) failing to respond to NASD staff requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2110. The bars shall become effective immediately if this Decision becomes the final disciplinary action of NASD.

SO ORDERED.



Alan W. Heifetz
Hearing Officer

Copies to:
Via First Class Mail & Overnight Courier
Samuel Davis Hughes

Via First Class & Electronic Mail
Gene E. Carasick, Esq.
Rory C. Flynn, Esq.

**NASD
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

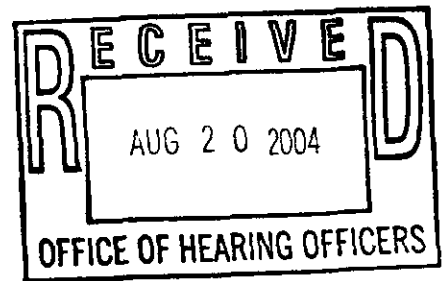
Samuel Davis Hughes
CRD No. 1928041

Respondent.

Disciplinary Proceeding
No. C07040067

Hearing Officer:

COMPLAINT



Upon information and belief, Complainant alleges as follows:

1. Respondent Hughes was registered as a general securities representative with NASD member Spelman & Co., Inc. ("Spelman") from March 28, 2000 until September 5, 2002. He first became registered with NASD in March 1989. NASD retains jurisdiction over Hughes pursuant to Article V, Section 4 of the NASD Bylaws.

**FIRST CAUSE OF COMPLAINT
Unsuitable Variable Annuity Switches
NASD Conduct Rules 2110 and 2310
Customer CS**

2. From in or about July 2000 until in or about September 2001, Respondent Hughes engaged in a series of four variable annuity switches that were unsuitable for customer CS, as follows.

Switch One

3. On or about September 13, 2001, Respondent Hughes recommended that customer CS sell Pacific Life Variable Annuity [REDACTED] which CS had purchased at Hughes' recommendation in March 2000, and use the proceeds to purchase SunAmerica Variable Annuity [REDACTED]

4. Based on Respondent Hughes' recommendation, CS sold the Pacific Life variable annuity and purchased the SunAmerica variable annuity for \$84,668.79 on or about September 25, 2001.
5. CS paid \$5,886.94 in surrender charges for selling the Pacific Life variable annuity.
6. Hughes received \$5,715.14 in commissions for the SunAmerica variable annuity purchase.
7. During the time CS' funds were invested in the Pacific Life annuity, they were invested in equity sub-accounts; when the funds were moved to SunAmerica, they were invested in a fixed sub-account. However, Pacific Life also offered fixed sub-accounts in which CS's funds could have been invested without paying a surrender charge.
8. Respondent Hughes did not have a reasonable basis for believing that his recommendation that CS sell his Pacific Life variable annuity, which had been purchased only 18 months before, and use the proceeds to purchase the SunAmerica variable annuity, was suitable for CS.
9. Respondent Hughes' failure to have a reasonable basis for recommending that CS sell his Pacific Life variable annuity to purchase the SunAmerica variable annuity constitutes separate and distinct violations of NASD Conduct Rules 2110 and 2310 by Respondent Hughes.

Switch Two

10. On or about December 6, 2000, Respondent Hughes recommended that CS sell his Pacific Life Nonqualified Variable Annuity [REDACTED] which CS had purchased at Hughes' recommendation in October 1999, and use the proceeds to purchase Manulife Variable Annuity [REDACTED]
11. Based on Hughes' recommendation, CS sold the Pacific Life annuity and purchased the Manulife annuity on December 6, 2000, for \$127,428.95.
12. CS paid \$7,589.50 in surrender charges for selling the Pacific Life annuity.
13. Respondent Hughes received \$4951.47 in commissions for the Manulife annuity purchase.
14. During the time CS' funds were invested in the Pacific Life annuity, they were invested in fixed sub-accounts; when the funds were moved to Manulife, they were invested in equity sub-accounts.

However, Pacific Life also offered equity sub-accounts in which CS's funds could have been invested without paying a surrender charge.

15. Respondent Hughes did not have a reasonable basis for believing that his recommendation that CS sell his Pacific Life variable annuity, which had been purchased only 14 months before, and use the proceeds to purchase the Manulife variable annuity, was suitable for CS.
16. Respondent Hughes' failure to have a reasonable basis for recommending that CS sell his Pacific Life variable annuity to purchase the Manulife variable annuity constitutes separate and distinct violations of NASD Conduct Rules 2110 and 2310 by Respondent Hughes.

Switch Three

17. On or about July 25, 2000, Respondent Hughes recommended that CS sell ING Golden Select Premium Plus Variable Annuity [REDACTED] which CS had purchased at Hughes' recommendation in March 1998, and use the proceeds to purchase Pacific Life Nonqualified Variable Annuity [REDACTED]
18. Based on Hughes' recommendation, CS sold the ING annuity and purchased the Pacific Life annuity on July 31, 2000, for \$61,043.03.
19. CS paid \$4,320.00 in surrender charges for selling the ING annuity, and received a \$2,347.81 bonus payment in connection with the Pacific Life annuity purchase.
20. Respondent Hughes received \$2,970.00 in commissions for the Pacific Life annuity purchase.
21. During the time CS' funds were invested in the ING annuity, they were invested in total return sub-accounts; when the funds were moved to Pacific Life, they were invested in equity sub-accounts. In connection with this switch, Respondent Hughes and CS executed a Pacific Life document reflecting that they were engaging in this switch to take advantage of fixed rates. However, as noted above, CS' funds were not invested in a fixed sub-account; they were invested in equity sub-accounts.

Moreover, ING offered both fixed and equity sub-accounts in which CS' funds could have been invested without a surrender charge.

22. Respondent Hughes did not have a reasonable basis for believing that his recommendation that CS sell his ING variable annuity, which had been purchased only two years before, and use the proceeds to purchase the Pacific Life variable annuity, was suitable for CS.
23. Respondent Hughes' failure to have a reasonable basis for recommending that CS sell his ING variable annuity to purchase the Pacific Life variable annuity constitutes separate and distinct violations of NASD Conduct Rules 2110 and 2310 by Respondent Hughes.

Switch Four

24. On or about August 23, 2001, Respondent Hughes recommended that CS sell Pacific Life Nonqualified VA [REDACTED] which CS had purchased at Hughes' recommendation on July 31, 2000, and use the proceeds to purchase SunAmerica Seasons Select II VA [REDACTED]
25. Based on Hughes' recommendation, CS sold the Pacific Life annuity and purchased the SunAmerica annuity on August 28, 2001, for \$44,225.97.
26. CS paid \$3,697.80 in surrender charges for selling the Pacific Life annuity.
27. Respondent Hughes received \$2985.26 in commissions for the SunAmerica annuity purchase.
28. During the time CS' funds were invested in the Pacific Life annuity, they were invested in equity sub-accounts; when the funds were moved to SunAmerica, they were invested in fixed sub-accounts. However, Pacific Life also offered fixed sub-accounts in which CS's funds could have been invested without paying a surrender charge.
29. Respondent Hughes did not have a reasonable basis for believing that his recommendation that CS sell his Pacific Life variable annuity, which had been purchased only one year before, and use the proceeds to purchase the SunAmerica variable annuity, was suitable for CS.

30. Respondent Hughes' failure to have a reasonable basis for recommending that CS sell his Pacific Life variable annuity to purchase the SunAmerica variable annuity constitutes separate and distinct violations of NASD Conduct Rules 2110 and 2310 by Respondent Hughes.

SECOND CAUSE OF COMPLAINT
Misrepresentation/Nondisclosure
NASD Conduct Rule 2110
Customer CS

31. In connection with his recommendations of the four variable annuity switches described in the First Cause of Complaint, Respondent Hughes failed to disclose to CS that CS would be assessed surrender charges for the sales associated with the switches.
32. In connection with his recommendation of Switches One, Two and Four, described in the First Cause of Complaint, Respondent Hughes falsely told CS that he would receive a bonus payment in connection with the purchases of the new variable annuity.
33. The failure of Respondent Hughes to disclose the surrender charges and his misrepresentation that he would receive a bonus payment for the three variable annuity purchases constitutes separate and distinct violations of NASD Conduct Rules 2110.

THIRD CAUSE OF COMPLAINT
Unsuitable Variable Annuity Recommendation
NASD Conduct Rules 2110 and 2310
Customer CB

34. Customer CB was introduced to Respondent Hughes in 2001 by customer CS. CB's mother had just died and CB was due to receive about \$150,000 from three Glenbrook Life Insurance annuity policies that her mother had owned. CB sought Hughes' advice as to how to invest the money.
35. At the time, CB was 67-years-old and retired. She owned her home and car outright but these were her only assets. She did not have any savings or investments. CB's annual income was about \$10,000.

36. CB received about \$600 per month in social security payments. Prior to receiving the proceeds from her mother's annuities, CB also received about \$500 per month in Medicaid benefits to defray her medical and prescription drug costs. CB has Hepatitis C and Medicaid helped her with these costs. After receiving her mother's annuity funds, however, CB no longer qualified for Medicaid assistance.
37. CB explained to Respondent Hughes that, after receiving her mother's funds, CB's social security check no longer covered monthly living expenses because of her drug costs. She also told Hughes that she needed to withdraw funds from her investment on a regular basis to pay her medical bills. CB told Hughes that she did not want a long-term investment and did not want to be charged any penalties for the withdrawal of her funds from whatever investment he recommended.
38. Respondent Hughes recommended that CB invest in variable annuities through Anchor National. Hughes told CB that she would have access to her funds at all times without penalty. Hughes also told her that she would receive a \$7,500 bonus for investing with Anchor National.
39. Based on Respondent Hughes' recommendation, CB transferred all funds from Glenbrook Life Insurance Company (where her mother's funds were held) to Anchor National.
40. CB's mother owned three different Glenbrook annuities, so three checks were issued and three new Anchor National annuities were purchased for CB. CB's funds were initially invested in a 1-Year DCA (Dollar Cost Average) Sub-Account at 8% interest. After the initial one-year period, the funds were transferred to a fixed income account. The Glenbrook annuities charged surrender fees for the first seven years.
41. In view of CB's age, low income, need for liquidity to pay living expenses, Respondent Hughes did not have a reasonable basis for recommending that CB invest all of her liquid assets in long-term variable annuities.

42. Respondent Hughes' failure to have a reasonable basis for recommending the Anchor National variable annuity to CB constitutes separate and distinct violations of NASD Conduct Rules 2110 and 2310.

FOURTH CAUSE OF COMPLAINT
Misrepresentations
NASD Conduct Rule 2110
Customer CB

43. In connection with his recommendation that customer CB purchase the Anchor National annuities described in the Fourth Cause of Complaint, Respondent Hughes falsely represented to CB: (1) that she would receive a bonus payment, when there was no bonus payment associated with this purchase; and (2) that she would have access to her funds without penalty.
44. Respondent Hughes' false representations constitute separate and distinct violations of NASD Conduct Rule 2110.

FIFTH CAUSE OF COMPLAINT
Unauthorized Transactions
NASD Conduct Rule 2110
Customer JB

45. In February 2000, customer JB opened an account Spelman, and based on Hughes' recommendation, purchased a \$27,500 GoldenSelect Premium Plus Variable Annuity. JB received a \$1,350 bonus credit and selected a 5.75% fixed sub-account for his funds. The interest rate was good for one year. In April 2000, JB invested an additional \$20,000 in the same annuity, received a \$1,000 bonus credit and selected a fixed 6.00% sub-account, good for one year.
46. In February 2001, Respondent Hughes reallocated \$29,980.13 from the 5.75% sub-account to a Liquid Asset sub-account, without JB's knowledge or authorization.
47. In April 2001 (one year after the second investment), \$22,306.24 was automatically reallocated from the 6.00% sub-account to a 4.00% sub-account, in accordance with the terms of the annuity.

However, in May 2001, Respondent Hughes reallocated \$22,308.64 from the 4.00% sub-account to the Liquid Asset sub-account, without JB's knowledge or authorization.

48. The reallocations of JB's investment funds in February and May, 2001, by Respondent Hughes without the knowledge or authorization of JB constitute separate and distinct violation of NASD Conduct Rule 2110.

SIXTH CAUSE OF COMPLAINT
Failure to Appear to Give Testimony
NASD Conduct Rule 2110; Procedural Rule 8210

49. By letter dated May 22, 2003, sent via certified and first class mail to Hughes' CRD addresses at: (1)

[REDACTED] the staff notified Respondent Hughes of the customer complaints (as set forth above) against him and that the staff wanted him to appear to give testimony regarding them. The staff requested Hughes, pursuant to Rule 8210, to contact it by June 10, 2003. Both mailings to the Cobia Drive address were returned by the Postal Service, marked "return to sender unable to forward." The certified mailing to the P.O. Box address was returned by the Postal Service, marked "refused." The first class mailing to the P.O. Box was not returned by the Postal Service.

50. Respondent Hughes telephoned the staff on June 3, 2003, and advised it that he had received the May 22 letter. Hughes further advised the staff that his current address was: [REDACTED]

51. Respondent Hughes told the staff that he was retired and not interested in giving testimony. The staff explained NASD's disciplinary process and the potential ramifications of his failure to appear, and gave Hughes a few days to think about how he wished to proceed.

52. The staff again spoke with Respondent Hughes on June 6, 2003, and Hughes informed the staff that he did not wish to participate in any interview. He said that he understood that he would likely be barred from the securities industry as a result.

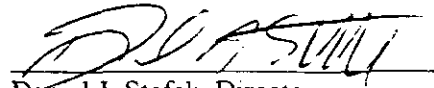
53. By letter dated June 9, 2003, sent via certified and first class mail to Respondent Hughes' three addresses noted above, the staff requested Hughes, pursuant to Rule 8210, to appear for an on-the-record interview on June 30, 2003 at 9 AM at NASD's Atlanta District Office.
54. The staff received a delivery receipt for the certified mailing to the Front Beach Road address, signed by "Laura Settler". The first class mailing to the Front Beach Road address was not returned. The certified mailing to the P.O. Box address was returned by the Postal Service, marked "unclaimed." The first class mailing was not returned. The certified mailing to the Cobia Drive address was returned by the Postal Service, marked "insufficient address." The first class mailing was also returned, marked "unable to forward".
55. Respondent Hughes did not appear for his testimony on June 30, 2003.
56. Respondent Hughes' failure to appear to give testimony on June 30, 2003, constitutes separate and distinct violations of NASD Conduct Rule 2110 and Procedural Rule 8210.

PRAYER FOR RELIEF

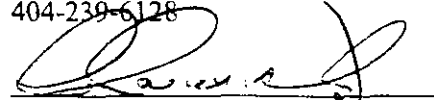
WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Respondent Hughes committed the violations charged and alleged herein;
- B. An order imposing sanctions upon the Respondent in accordance with NASD Rule 8310.
- C. An order imposing such costs of any proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330; and

D. An order imposing any other fitting sanction.



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