

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,	:	
	:	
Complainant,	:	Disciplinary Proceeding No. C07040069
	:	
v.	:	DEFAULT DECISION
	:	
MICHAEL B. REYNOLDS	:	
(CRD No. 4721573)	:	Hearing Officer – SW
	:	
	:	Dated: January 18, 2005
Respondent.	:	
	:	

Respondent is barred from associating with any member firm in any capacity for: (i) violating NASD Conduct Rule 2110 by converting funds of his supervisor to his own use and benefit; and (ii) violating NASD Conduct Rule 2110 and NASD Procedural Rule 8210 by failing to respond to requests for information issued by the NASD staff.

Appearances

Gene E. Carasick, Esq., Regional Counsel, Atlanta, GA, and Rory C. Flynn, Esq., Of Counsel, Washington, DC, for the Department of Enforcement.

No appearance for Michael B. Reynolds.

DECISION

I. Introduction

On August 24, 2004, the NASD Department of Enforcement (“Enforcement”) filed a two-count Complaint against Respondent Michael B. Reynolds (“Respondent”). The first cause of the Complaint alleges that Respondent, while associated with NASD member firm Northwestern Mutual Investment Services, LLC (“Northwestern Mutual”), converted to his own use and benefit \$650 from his supervisor, a registered representative, in violation of NASD Conduct Rule 2110. The second cause of the

Complaint alleges that Respondent failed to respond to two requests for information issued by the NASD staff, in violation of NASD Conduct Rule 2110 and NASD Procedural Rule 8210.

On November 17, 2004, Enforcement filed a Motion for Entry of Default Decision ("Motion"), supported by the Declaration of Gene E. Carasick, Esq., Regional Counsel in NASD's Atlanta, GA office, and one exhibit.¹ For the reasons set forth below, the Hearing Officer grants Enforcement's Motion.

II. Respondent's Default

On August 20, 2004, Enforcement served the Complaint and Notice of Complaint on Respondent, via certified and first class mail, at his last known residential address provided to the NASD staff by Northwestern Mutual.² (DECL at ¶5). On September 23, 2004, Enforcement served the Complaint and Second Notice of Complaint, via certified and first class mail, on Respondent at his last known residential address. (DECL at ¶8). Respondent did not file a response to the Complaint or Second Notice of Complaint. (DECL at ¶9).

The Hearing Officer finds that Enforcement complied with NASD Procedural Rule 9134(b)(1) by sending the mailings to Respondent's last known residential address, in the absence of an address listed in NASD's Central Registration Depository System. Accordingly, the Hearing Officer finds that Respondent received effective constructive notice of this proceeding and defaulted by failing to answer the Complaint.

¹ Hereinafter, the statements in the Motion will be designated as "Motion, p."; statements in the Carasick Declaration will be designated as "DECL at ¶"; and Enforcement's one page exhibit will be designated as "CX-1."

² Respondent was a sales assistant for a registered representative at Northwestern Mutual. (DECL at ¶¶4-5). As a sales assistant, Respondent did not file an application to register with NASD, was not registered with NASD, and, accordingly, did not have an address listed in NASD's Central Registration Depository System. (Id.).

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

Respondent was a sales assistant to a Series 6 registered representative at Northwestern Mutual from October 16, 2003 until April 13, 2004. (DECL at ¶4). Consequently, Respondent was engaged in Northwestern Mutual's securities business, and was an associated person within the meaning of the NASD By-Laws.³ (Id.).

Respondent has not been associated with any NASD member since April 13, 2004, but he remains subject to NASD jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of the NASD By-Laws, because (1) the Complaint was filed within two years after Respondent's association with Northwestern Mutual terminated, and (2) the Complaint charges Respondent with misconduct while he was associated with Northwestern Mutual and with failures to provide information requested pursuant to Rule 8210 during the period that he was associated with Northwestern Mutual.

B. Respondent Converted the Funds of his Supervisor

The first cause of the Complaint, attached to this Default Decision as Exhibit A, alleges that in April 2004 Respondent: (i) stole a check from his supervisor, a registered representative; (ii) forged the supervisor's signature on the check; (iii) made the check payable to Respondent's landlord for \$650; and (iv) caused the check to be negotiated to pay his rent, without the consent or authorization of his supervisor. (Complaint at ¶3).

³ Article I (dd) of the NASD By-Laws defines an "associated person" to include "a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with the NASD under these By-Laws or Rules." IM-1011-1 expressly provides that associated persons include sales assistants.

Under Rule 9215(f) and NASD Notice to Members 99-77, the allegations of the first cause of the Complaint are deemed admitted, and they are hereby incorporated into this Default Decision as findings of fact.

Conversion generally is an intentional and unauthorized taking of and/or exercise of ownership over property by one who neither owns the property nor is entitled to possess it.⁴ NASD Conduct Rule 2110 requires that “a member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade.” Misappropriation or conversion of another’s funds is conduct inconsistent with just and equitable principles of trade.⁵

Based on the allegations deemed admitted, the Hearing Officer finds that Respondent violated NASD Conduct Rule 2110, as alleged in the first cause of the Complaint, by converting the funds of his supervisor when he stole a check from his supervisor’s desk, forged his supervisor’s signature on the check, and caused the check to be negotiated to pay his rent.

C. Respondent Failed to Respond to NASD Requests for Information

The second cause of the Complaint alleges that Respondent failed to respond to two requests for information and documents sent by the NASD staff. (Complaint at ¶¶5-7). Each request was made pursuant to NASD Procedural Rule 8210. (Id.).

On June 7, 2004, the NASD staff sent Respondent a written request for information, via first class mail, at Respondent’s last known residential address. (Complaint at ¶6). On June 24, 2004, the NASD staff sent a second request for

⁴ NASD Sanction Guidelines, p. 40 (2004).

⁵ See District Bus. Conduct Comm. v. Kwikkel-Elliott, Complaint No. C0496004 (NAC Jan. 16, 1998) (NAC barred Ms. Kwikkel-Elliott for cheating on her expense account because her lack of honesty and veracity presented a risk to the investing public); District Bus. Conduct Comm. v. Bruun, Complaint No. C3B960004 (NAC Jan. 23, 1998) (NAC barred Mr. Bruun for cheating on his expense account).

information to Respondent at his last known residential address. (Complaint at ¶7).

Respondent failed to provide any information in response to the two requests issued by the NASD staff. (Complaint at ¶¶6-7).

Under Rule 9215(f) and NASD Notice to Members 99-77, the allegations of the second cause of the Complaint are deemed admitted, and they are hereby incorporated into this Default Decision as findings of fact.

Under NASD Procedural Rule 8210, NASD may require any person subject to its jurisdiction to provide information regarding any matter under investigation. The obligation to respond is unqualified. Because NASD lacks subpoena power, Rule 8210 is the means by which NASD carries out its regulatory functions. It is a “key element in the NASD’s efforts to police its members.”⁶ Failure to comply with Rule 8210 requests for information is a serious violation because it subverts NASD’s ability to perform its regulatory responsibilities.⁷ A violation of Rule 8210 is also a violation of NASD Conduct Rule 2110.⁸

Pursuant to Rule 8210(d), Respondent is deemed to have received the requests for information sent to his last known residential address. Accordingly, based on the allegations deemed admitted, the Hearing Officer finds that Respondent received notice of the requests for information, and he violated NASD Conduct Rule 2110 and NASD Procedural Rule 8210 by failing to respond to those requests.

⁶ See, e.g., Richard J. Rouse, Exchange Act Release No. 32,685, 1993 SEC LEXIS 1831, at *7 (1993); 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 to conduct its investigations effectively, and emphasizing that NASD members and associated persons must fully cooperate with requests for information).

⁷ Id.

⁸ See Dep’t of Enforcement v. Baxter, No. C07990016, 2000 NASD Discip. LEXIS 3, at **21, 25 (NAC Apr. 19, 2000).

IV. Sanctions

A. Conversion

The NASD Sanction Guidelines for conversion or improper use of customer funds recommend a bar “regardless of the amount converted.”⁹ Enforcement argued that Respondent should be barred for converting the funds of his supervisor.

Finding that Respondent’s lack of honesty presents a threat to the investing public, the Hearing Officer agrees that Respondent’s conduct warrants a bar.

B. Failure to Respond to Rule 8210 Requests for Information

The NASD Sanction Guideline for failure to respond to Rule 8210 requests for information states that a bar should be standard where the respondent failed to respond in any manner.¹⁰ Enforcement requested, and the Hearing Officer agrees, that Respondent should be barred. The record is devoid of any mitigating factors that might justify a lesser sanction.

V. Order

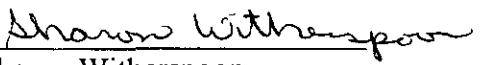
Respondent Michael B. Reynolds is barred from associating with any NASD member firm in any capacity for the following violations: (1) converting \$650 of his supervisor’s funds, in violation of NASD Conduct Rule 2110; and (2) failing to respond to requests for information issued by the NASD staff, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

⁹ Guidelines, at 40.

¹⁰ Id. at 37.

If this Default Decision becomes the final disciplinary action of NASD, the bars shall become effective immediately.

SO ORDERED.


Sharon Witherspoon
Hearing Officer

Dated: Washington, DC
January 18, 2005

Copies to:

Michael B. Reynolds (via Federal Express and first class mail)
Gene E. Carasick, Esq. (via electronic and first class mail)
Rory C. Flynn, Esq. (via electronic and first class mail)

EXHIBIT A

NASD OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Michael B. Reynolds
CRD No. 4721573

Respondent.

Disciplinary Proceeding
No. C07040069

Hearing Officer:

COMPLAINT

Upon information and belief, Complainant alleges as follows:

1. Respondent Michael B. Reynolds was employed by and associated with NASD member Northwestern Mutual Investment Services, LLC (NMIS) as a non-registered sales assistant to a Series 6 registered representative from about October 16, 2003 until about April 13, 2004. As a sales assistant to a Series 6 registered representative at NMIS, Reynolds was engaged in the firm's securities business, and thus meets the definition of associated person as set forth in Rule 1011(b). Reynolds has never been registered with NASD and currently is not associated with an NASD member. NASD retains jurisdiction over Reynolds pursuant to Article V, Section 4(c) of the NASD Bylaws.

FIRST CAUSE OF COMPLAINT **Conversion** **NASD Conduct Rule 2110**

2. Respondent Reynolds was employed by NMIS as a sales assistant to NMIS registered representative Matthew DeLillo in Ft. Lauderdale, Florida.
3. On or about April 7, 2004, Respondent Reynolds, without DeLillo's knowledge or authorization, removed a check from a checkbook that DeLillo kept in the drawer of his office desk to pay business

expenses, forged DeLillo's signature on the check, made it payable to Reynolds' landlord for \$650, and used the check to pay his rent.

4. The conversion of DeLillo's funds constitutes a separate and distinct violation of NASD Conduct Rule 2110 by Respondent Reynolds.

SECOND CAUSE OF COMPLAINT
Failure to Respond to Staff Information Requests
NASD Conduct Rule 2110; Procedural Rule 8210

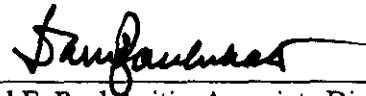
5. Because Respondent Reynolds was never registered, he was not required to complete a Form U-4 and no address for him exists in CRD. Accordingly, the staff requested Reynolds' last known home address from NMIS, which, according to NMIS was: [REDACTED]
[REDACTED]
6. By letter dated June 7, 2004, sent via first class mail to the Lighthouse Point address, the staff requested Respondent Reynolds, pursuant to Procedural Rule 8210, to provide a signed statement responding to the allegations that he converted DeLillo's funds, by June 23, 2004. Reynolds did not respond. The first class mailing was not returned by the Postal Service.
7. By letter dated June 24, 2004, sent via first class and certified mail to the Lighthouse Point address, the staff again requested Respondent Reynolds, pursuant to Rule 8210, to provide a written statement in response to the allegations, this time by July 8, 2004. Reynolds did not respond to this letter either. The certified mailing was returned by the Postal Service, marked "attempted not known" and "not at this address." The first class letter was not returned.
8. NMIS also provided a telephone number for Reynolds, but it was no longer in service when the staff tried to call it.

PRAYER FOR RELIEF

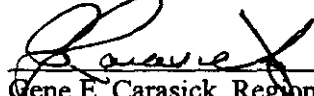
WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Respondent Reynolds 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.



David E. Paulukaitis, Associate Director
NASD, District 7
One Securities Centre, Suite 500
3490 Piedmont Road, N.E.
Atlanta, GA 30305
404-239-6128



Gene E. Carasick, Regional Counsel
Department of Enforcement
NASD, District 7
One Securities Centre, Suite 500
3490 Piedmont Road, N.E.
Atlanta, GA 30305
404-239-6125

Rory C. Flynn, Of Counsel
NASD Department of Enforcement
1801 K Street, N.W., Suite 800
Washington, D.C. 20006
(202) 974-2874