

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ABRAHAM SCHILLER
(CRD No. 2375377),



Respondent.

Disciplinary Proceeding
No. C07040080

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

January 24, 2005

Respondent misappropriated funds, in violation of NASD Conduct Rule 2110, and failed to respond to a written request for information, in violation of NASD Conduct Rule 2110 and NASD Procedural Rule 8210. The Respondent is barred from association with any member firm in any capacity for each violation.

Appearances

Joel R. Beck, Senior Regional Attorney, Atlanta, GA (Rory C. Flynn, Chief Litigation Counsel, Washington, D.C., Of Counsel) for the Department of Enforcement.

No appearance for Respondent.

DECISION

I. Introduction

On October 7, 2004, the Department of Enforcement (“Enforcement”) filed the Complaint against the Respondent Abraham Schiller (“Schiller” or the “Respondent”). The Complaint contains two causes of action. In the first cause of action, the Complaint

alleges that the Respondent violated NASD Conduct Rule 2110 by misappropriating \$55,077.19 from his employer, VALIC Financial Advisors, Inc. ("VALIC"). In the second cause of action, the Complaint alleges that the Respondent violated NASD Conduct Rule 2110 and NASD Procedural Rule 8210 by failing to produce documents and failing to appear for his on-the-record interview, as requested by NASD staff pursuant to Procedural Rule 8210.

Schiller did not answer or otherwise respond to the Complaint. Consequently, on December 17, 2004, Enforcement filed a Motion for Entry of Default Decision ("Motion"). Enforcement's Motion is supported by the Declaration of Joel R. Beck ("Beck Decl.") and three exhibits. Schiller did not respond to the Motion. Thus, pursuant to NASD Procedural Rules 9215 and 9269, the Hearing Officer grants Enforcement's Motion.

II. Respondent's Default

Enforcement served Schiller by first class and certified mail in accordance with NASD Procedural Rules 9134(a)(2) and 9134(b)(1). Enforcement mailed copies of the Complaint, Notice of Complaint, and Second Notice of Complaint to Schiller at his last known residential address shown in the Central Registration Depository (the "CRD address").¹ Schiller thus received valid constructive notice of this proceeding.² Accordingly, the Hearing Officer finds Schiller in default and deems the allegations of the Complaint admitted.³

¹ Beck Decl. ¶¶ 6-8.

² Enforcement did not know of a more current address for the Respondent. (Beck Decl. ¶ 11.)

³ The following Findings of Fact incorporate the allegations in the attached Complaint.

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

Article V, Section 4 of the NASD By-Laws allows NASD to retain jurisdiction over a formerly registered person for two years following the effective date his or her registration terminated. Moreover, Article V, Section 4 of the NASD By-Laws grants NASD the power to request information from formerly registered persons during this period of retained jurisdiction.

According to Schiller's CRD record, he was associated with VALIC, an NASD member firm, from October 1, 1998, until March 26, 2004, when he was terminated for submitting false claims for commissions.⁴ In addition, Schiller was registered with NASD as an Investment Company and Variable Contracts Products Representative from November 5, 1998, until April 19, 2004.⁵ NASD staff mailed the information requests that are the subject of the Second Cause of Complaint, and Enforcement filed the Complaint, within two years after Schiller's registration terminated. Accordingly, the Hearing Officer finds that NASD has jurisdiction of this proceeding.

B. Misappropriation of Funds

The First Cause of Complaint alleges that, between September 2002 and March 2004, the Respondent entered fictitious entries in VALIC's computer system, falsely representing that certain customers had increased their periodic contributions to their retirement plans. By reporting these false increases, the Respondent was paid a total of

⁴ Ex. 1, at 2.

⁵ *Id.* at 3.

\$55,077.19 in unearned commissions.⁶ The Respondent was not entitled to these commission payments.

The foregoing allegations are sufficient to establish that Schiller misappropriated \$55,077.19 from VALIC, in violation of NASD Conduct Rule 2110.⁷

C. Failure to Provide Information

The Second Cause of Complaint alleges that, on August 12, 2004, NASD staff served Schiller with a written request for information pursuant to NASD Procedural Rule 8210 in connection with its investigation into the facts and circumstances surrounding the Respondent's termination from VALIC. The request asked the Respondent to produce documents relating to the entries VALIC claimed were fictitious and to appear for an on-the-record interview on September 1, 2004.⁸ The staff sent the request to Schiller at his CRD address by first class and certified mail, in accordance with Procedural Rule 8210. Schiller did not respond to the Rule 8210 request.⁹

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

⁶ Compl. ¶¶ 5–6. Under VALIC's system, representatives were paid commissions in advance on increases in participants' contributions. (*Id.* ¶ 4.)

⁷ See *District Bus. Conduct Comm. v. Burkes*, No. C01900024, 1992 NASD Discip. LEXIS 72 (N.B.C.C. May 15, 1992).

⁸ Compl. ¶¶ 11–12.

⁹ *Id.* ¶ 13.

NASD to carry out its regulatory functions without subpoena power.¹⁰ Here, although Schiller received valid constructive notice of the request, he failed to respond in any manner. Schiller thereby violated Procedural Rule 8210 and Conduct Rule 2110.

IV. Sanctions

For misappropriation of funds from his employer, the Hearing Officer will apply the NASD Sanction Guidelines (“Guidelines”) for conversion, which recommend a bar unless there are mitigating factors.¹¹ Here, there is no evidence of any mitigating factors that would warrant allowing the Respondent to ever return to the securities industry. The evidence demonstrates a pattern of deceitful behavior, including an effort to conceal his misconduct by entering further false entries into VALIC’s computer system.¹² Accordingly, the Hearing Officer finds that a bar is the appropriate sanction for this violation.

With respect to the Second Cause of Complaint, failing to respond in any manner to the staff’s written request for information, the Guidelines recommend the imposition of a bar unless mitigating circumstances exist warranting a lesser sanction.¹³ Here, the record discloses no mitigating factors. Accordingly, a bar also is appropriate for this violation as well.

¹⁰ See, e.g., *Department of Enforcement v. Valentino*, No. FP1010004, 2003 NASD Discip. LEXIS 15, at *12 (N.A.C. 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).

¹¹ NASD Sanction Guidelines 40 (2004 ed.).

¹² See Compl. ¶ 5.

¹³ Guidelines 37.

V. Order

Abraham Schiller is barred from association with any member firm in any capacity for misappropriation of funds, in violation of NASD Conduct Rule 2110, and for failing to respond to a written request for information, in violation of NASD Conduct Rule 2110 and NASD Procedural Rule 8210.

In addition, Schiller is ordered to pay restitution to VALIC in the sum of \$55,077.19, plus interest thereon calculated pursuant to 26 U.S.C. § 6621(2)(2) from April 1, 2004, until paid.

These sanctions shall become effective on a date set by the NASD, but not earlier than 30 days after this Decision becomes the final disciplinary action of the NASD, except, if this Decision becomes the final disciplinary action of NASD, each bar shall become effective once this Default Decision becomes the final disciplinary action of NASD.



Andrew H. Perkins
Hearing Officer

Copies to:

Abraham Schiller (by overnight courier and first-class mail)
Joel R. Beck, Esq. (by first-class and electronic mail)
Rory C. Flynn, Esq. (by first-class and electronic mail)

**NASD
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

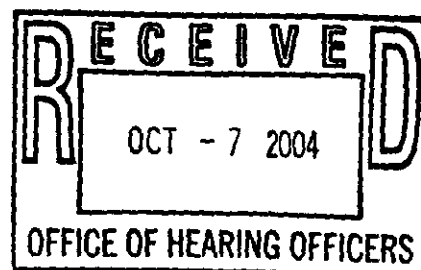
Abraham Schiller
Investment Company and Variable Contracts
Products Representative
CRD No. 2375377

Respondent.

Disciplinary Proceeding
No. C07040080

Hearing Officer -

COMPLAINT



Upon information and belief, Complainant alleges as follows:

1. Respondent Abraham Schiller entered the securities industry in about March 1993, and was first registered as an investment company and variable contracts products representative of an NASD member firm in July 1993. From about October 1998 to March 2004, Schiller was registered with NASD member VALIC Financial Advisors, Inc. Schiller is not currently registered with an NASD member, though he remains subject to NASD's jurisdiction pursuant to Article V, § 4 of the NASD By-Laws.

**FOR A FIRST CAUSE OF COMPLAINT
Misappropriation of Commissions
Conduct Rule 2110**

2. Paragraph one is realleged and incorporated herein by reference.
3. While employed at VALIC, Schiller's duties included sales and servicing of group variable annuity contracts for employer-sponsored tax-deferred retirement plans. In the course of his service to clients, Schiller would obtain information from plan sponsors regarding changes in

plan participants' payroll contributions to the retirement plan, and would enter that information into VALIC's computer system.

4. Schiller's compensation from VALIC included commissions on increases in plan contributions by plan participants. The commissions would often be paid to Schiller in advance. If, after a period of approximately 90 days, the plan participant's anticipated contributions were not received, the advanced commissions would be charged back to Schiller.
5. During the period from September 2002 through about March 2004, Schiller entered fictitious contribution changes into VALIC's computer system falsely representing that plan participants had increased their periodic contributions into their retirement plans. During this period, Schiller also made other entries into VALIC's system to attempt to conceal his unearned commissions, and prevent VALIC from reversing the commissions.
6. As a result of his fictitious entries, Schiller received about \$55,077.19 in commissions to which he was not entitled.
7. Such conduct constitutes misappropriation of commissions, and violates NASD Conduct Rule 2110.

FOR A SECOND CAUSE OF COMPLAINT
Failure to Testify
NASD Procedural Rule 8210 and Conduct Rule 2110

8. The allegations contained in paragraph one through eight are realleged and incorporated herein by reference.
9. In April 2004, NASD received a termination notice from VALIC filed on behalf of Schiller. The termination notice disclosed that Schiller had "submitted unsubstantiated client

contributions resulting in the payment to the rep. of unearned commissions.” NASD commenced an examination into Schiller’s conduct as a result of this filing.

10. During the course of NASD’s examination, NASD staff sought to obtain testimony and documents from Schiller. On August 12, 2004, an NASD staff member sent a letter to Schiller at his CRD residential address of [REDACTED]

This letter was sent by both first class and certified mail.

11. The August 12th letter requested that Schiller provide copies of any salary reduction agreements (SRAs) corresponding to contribution increases alleged by VALIC to be fictitious. According to the letter, the SRAs were to be provided by August 26, 2004, pursuant to Rule 8210.
12. The August 12th letter also requested that Schiller appear at the Atlanta District Office on September 1, 2004, for an on-the-record interview, pursuant to Rule 8210.
13. Schiller did not produce any SRAs as requested, and did not appear and testify on September 1, 2004.
14. Schiller’s failure to respond to the document request and to appear and testify on September 1, 2004, violates Procedural Rule 8210 and Conduct Rule 2110.

PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

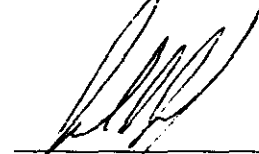
- A. Findings of fact and conclusions of law that the Respondent committed the violations charged and alleged herein;
- B. An order imposing sanctions upon the Respondent in accordance with NASD Rule 8310.
- C. An order imposing such costs of any proceeding as are deemed fair and appropriate under the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

D. An order imposing any other fitting sanction.

October 4, 2004.



Daniel J. Stefek, District Director
NASD, Atlanta District Office



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