

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant

v.

JAMES A. DVORZNAK
(CRD No. 2874901)

and

Respondent.

Disciplinary Proceeding
No. C07040097

Hearing Officer – DIV I

DEFAULT DECISION

March 15, 2005

Respondent (1) effected unauthorized trades in customer accounts, in violation of Rule 2110; and (2) failed to appear and provide requested testimony, in violation of Rules 8210 and 2110. For each of these violations, he is barred from associating with any NASD member in any capacity.

Appearances

Gene E. Carasick, Esq., Atlanta, GA (Andrew A. Favret, Esq., New Orleans, LA
and Rory C. Flynn, Esq., Washington, DC, Of Counsel), for Complainant.

No appearance by or for Respondent.

DECISION

I. Introduction

The Department of Enforcement filed a Complaint (attached to this Decision as Exhibit A) on November 29, 2004, alleging that Respondent (1) effected unauthorized trades in customer accounts, in violation of Rule 2110; and (2) failed to appear and provide requested testimony, in violation of Rules 8210 and 2110. Respondent did not

file an Answer to the Complaint. On February 17, 2005, Enforcement filed a motion for default decision, supported by the declaration of Gene E. Carasick and three exhibits.¹ Respondent did not file any response to the motion.

II. Respondent's Default

Enforcement sent the Complaint and Notice of Complaint to Respondent on November 23, 2004, by certified and first class mail to the two most current residential addresses listed for Respondent in the Central Registration Depository (the "CRD addresses"). Enforcement sent the Complaint and Second Notice of Complaint to Respondent on December 22, 2004, by certified and first class mail to the CRD address. Respondent did not file an Answer.

Enforcement served the Complaint and the First and Second Notices of Complaint on Respondent in accordance with Rule 9134, giving him constructive notice of the proceeding. By failing to respond, he defaulted.

III. Jurisdiction

From October 2003 to February 2004, Respondent was registered as a General Securities Representative through NASD member GunnAllen Financial, Inc. He was subsequently registered through another NASD member from March to April 2004. Although he is not currently registered, he remains subject to NASD jurisdiction pursuant to Art. V, § 4 of NASD's By-Laws, because (1) the Complaint charges Respondent with misconduct while he was associated with GunnAllen and with failure to appear and provide testimony requested during the two-year period following termination

¹ The factual determinations in this decision are based on the allegations of the attached Complaint, which are deemed admitted, and the additional materials filed by Enforcement in support of its motion.

of his most recent registration, and (2) the Complaint was filed within the two-year period.

IV. Violations

The First Cause of the Complaint alleges that from about October 29, 2000 until about January 12, 2004, while he was registered with GunnAllen, Respondent effected and caused to be effected a total of eight unauthorized 100-share purchases of Thoratec Corporation stock in the accounts of eight customers. These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent effected unauthorized trades, in violation of Rule 2110.

The Second Cause of the Complaint alleges that on May 21, 2004, pursuant to Rule 8210, NASD staff requested that Respondent appear on June 11, 2004, at NASD's Atlanta District Office and provide testimony. The staff sent the requests by certified first class mail to Respondent at his CRD addresses, and received a receipt, signed by Respondent, for one of the certified mailings. Nevertheless, Respondent failed to appear for his scheduled testimony on June 11. These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent failed to appear and provide requested testimony, in violation of Rules 8210 and 2110.

V. Sanctions

For unauthorized transactions, the Guidelines recommend a fine of \$5,000 to \$75,000 and a suspension of 10 business days to one year, or in egregious cases, a suspension of up to two years, or a bar. NASD Sanction Guidelines at 100 (2004). This case involves eight unauthorized transactions in the accounts of eight different customers in the same stock over a period of several months. The Hearing Officer finds that this

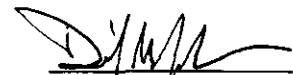
sufficient to establish, for purposes of this default decision, that Respondent's misconduct was quantitatively egregious, and that a bar is therefore warranted.

For failure to respond to requests for information, a bar is standard. NASD Sanction Guidelines at 37 (2004). There is no evidence of any mitigating factors that would warrant anything less than a bar in this case.

VI. Conclusion

Respondent James A. Dvorznak (1) effected unauthorized trades in customer accounts, in violation of Rule 2110 and (2) failed to appear and provide requested testimony, in violation of Rules 8210 and 2110. For each of these violations, he is barred from associating with any NASD member in any capacity. The bars will become effective immediately if this decision becomes NASD's final disciplinary action.

SO ORDERED.


David M. FitzGerald
Hearing Officer

Copies to: James A. Dvorznak (*via overnight courier and first class mail*)
Gene E. Carasick, Esq. (*via electronic and first class mail*)
Andrew A. Favret, 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.

James A. Dvorznak
CRD No. 2874901

Respondent.

Disciplinary Proceeding
No. C07040097

Hearing Officer:

COMPLAINT

Upon information and belief, Complainant alleges as follows:

1. Respondent Dvorznak first became registered, as a general securities representative, with SD member in May 1997. He was registered as a general securities representative with NASD member GunnAllen Financial, Inc. from October 9, 2003, until February 9, 2004. He was subsequently registered, as a general securities representative, with Vision Securities, Inc., from March 04, until April 21, 2004. Dvorznak is not currently registered with an NASD member. NASD has jurisdiction over Dvorznak pursuant to Article V, Section 4 of NASD Bylaws.

**FIRST CAUSE OF COMPLAINT
Unauthorized Trades
NASD Conduct Rules 2110 and IM-2310-2**

2. From about October 29, 2003 until about January 12, 2004, Respondent Dvorznak effected or caused to be effected a total of eight unauthorized purchases of Thoratec Corporation common stock in the accounts of customers MD, WC, JM, DH, EM, LP, BS, and LS, as follows:

Customer	Date	Share Am't
MD	10/29/2003	100
WC	11/07/2003	100
JM	11/11/2003	100
DH	11/11/2003	100
EM	11/12/2003	100
LP	11/14/2003	100
BS	12/17/2003	100
LS	01/12/2004	100

3. Each such unauthorized purchase constitutes separate and distinct violations of NASD Conduct Rules 2110 and IM- 2310-2 by Respondent Dvorznak.

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

4. By letter dated May 21, 2004, sent via first class and certified mail to the two resident addresses listed in CRD for Dvorznak, at: (1) [REDACTED] ("Locust Place" address); and (2) [REDACTED] ("Lynn Place" address), the staff requested Respondent Dvorznak, pursuant to Rule 8210, to appear to give testimony at the Atlanta District office on June 11, 2004. The staff received a delivery receipt, signed by Dvorznak, for the mailing to the Lynn Place address; the certified mailing to the Locust Place address was returned by the Postal Service, marked "Moved, Left No Address". Neither of the first class mailings was returned by the Postal Service.
5. Respondent Dvorznak did not appear for the June 11 interview.
6. Respondent Dvorznak's failure to appear to give testimony as requested by the staff in violation of Procedural Rule 8210 constitutes separate and distinct violations of NASD Conduct Rule 2110 and Procedural Rule 8210 by Respondent Dvorznak.

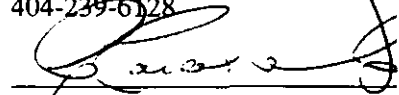
PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Respondent Dvorznak committed the violations charged and alleged herein;
- B. An order imposing sanctions upon the Respondent in accordance with NASD Rule 8210.

- C. An order requiring Respondent to disgorge fully any and all ill-gotten gains and/or profits and complete restitution, together with interest;
- D. An order imposing such costs of any proceeding as are deemed fair and appropriate in the circumstances in accordance with NASD Rule 8330; and
- E. An order imposing any other fitting sanction.


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