

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,	:	
	:	
Complainant	:	Disciplinary Proceeding
	:	No. C07050019
v.	:	
	:	Hearing Officer – RSH
JORDAN E. SCALES	:	
(CRD No. 4419495),	:	DEFAULT DECISION
	:	
Respondent.	:	August 1, 2005

Respondent made unauthorized transactions, in violation of NASD Conduct Rule 2110, and failed to respond to NASD requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2110. For failing to respond to information requests, Respondent is barred from associating with any NASD member in any capacity. In light of the bar, no further sanctions are imposed for the unauthorized transactions.

Appearances

David E. Paulukaitis, Esq., Atlanta, GA, Gene E. Carasick, Esq., Atlanta, GA, Andrew A. Favret, Esq., New Orleans, LA (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 March 29, 2005, alleging that Respondent Jordan E. Scales violated Conduct Rule 2110 by

making unauthorized transactions in two customers' accounts and violated Procedural Rule 8210 and Conduct Rule 2110 by failing to respond to NASD requests for information.

Respondent did not file an Answer to the Complaint. On June 10, 2005, Enforcement filed a Motion for Entry of Default Decision, which was supported by the Affidavit of Gene E. Carasick, the Supplemental Affidavit of Gene E. Carasick and three exhibits. Respondent did not file a response to the motion. Accordingly, for the reasons set forth below, Enforcement's motion is granted.¹

II. Respondent's Default

Enforcement sent the Complaint and Notice of Complaint to Respondent on March 23, 2005, by both certified and first class mail to his residential address listed in the Central Registration Depository ("CRD address").² Enforcement received a signed certified delivery receipt from the Postal Service indicating that delivery was made on March 26.³ The first class mailing was not returned by the Postal Service. Respondent did not file an Answer by the due date of April 20, 2005. On April 21, 2005, Enforcement sent the Complaint and Second Notice of Complaint by certified and first class mail to Respondent's CRD address. The certified mailing was returned by the Post Office with a forwarding address⁴ and the first class mailing was not returned. Again, Respondent failed to answer or otherwise respond to the Complaint. On June 9, 2005, Enforcement sent the Motion for Entry of Default Decision by first class mail

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

² Carasick Aff. ¶ 6.

³ *Id.*; Complainant's Exhibit ("CX")-2.

⁴ CX-3.

to both Respondent's CRD address as well as the forwarding address identified on the second certified mailing.⁵

Enforcement served the Complaint and Notices of Complaint on Respondent in accordance with Rule 9134, thereby giving him constructive notice of this proceeding. By failing to file an Answer or otherwise respond to the Complaint, Respondent defaulted. Consequently, pursuant to Procedural Rule 9269(a)(2), the Hearing Officer will deem the allegations in the Complaint admitted.

III. Jurisdiction

The Complaint alleges, and the Respondent's CRD record⁶ shows, that Respondent was registered with NASD member LH Ross & Company, Inc. ("LH Ross") during three separate periods: (1) from March 15, 2002 until April 2, 2003; (2) from May 19, 2003 until November 11, 2003; and (3) from April 2, 2004 until April 9, 2004. He was last employed by LH Ross on April 8, 2004. Respondent is not currently registered with an NASD member firm. Respondent remains subject to NASD jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of NASD's Bylaws, because (1) the Complaint was filed within two years following the termination of Respondent's most recent employment and registration with LH Ross and (2) the Complaint charges him with misconduct committed while he was associated with LH Ross and with failing to respond to NASD requests for information made during the two-year period following his termination.

⁵ Carasick Supp. Aff. ¶ 3. Enforcement was not required to mail the Complaint to the forwarding address. Rule 9134(b)(3) provides that service by mail is complete upon mailing; therefore, Respondent was given adequate service upon mailing of the Second Notice of Complaint and Complaint.

⁶ CX-1.

IV. Findings of Fact and Conclusions of Law

A. Unauthorized Transactions

The First Cause of the Complaint alleges that Respondent violated Conduct Rule 2110 and IM-2310-2 by effecting or causing to be effected transactions in customers' accounts without the customers' prior knowledge or authorization. On August 11, 2003, Respondent caused the purchase of 100 shares of Stake Technology, Ltd. in the joint account of W&F J. On September 12, 2003, Respondent caused the purchase of 1000 shares of Synergx Systems in SM's account. Both customers made sworn declarations that the purchases in question were unauthorized.⁷

These allegations, which are deemed admitted, are sufficient to establish that Respondent made unauthorized trades in two customers' accounts. Conduct Rule 2110 provides that a member "shall observe high standards of commercial honor and just and equitable principles of trade." NASD IM-2310-2 (b)(4)(iii) specifically lists unauthorized trading among practices that violate a member's responsibility for fair dealing with customers. The Securities and Exchange Commission and NASD have consistently held that unauthorized trading in a customer's account violates Conduct Rule 2110.⁸ Accordingly, the Hearing Officer finds that Respondent violated NASD Conduct Rule 2110 by effecting unauthorized purchases in two customers' accounts.

B. Failure to Respond to NASD Requests for Information

The Second Cause of the Complaint alleges that Respondent failed to respond to two requests for a written statement regarding allegations made by customers W&FJ and SM. The Complaint alleges that, pursuant to Procedural Rule 8210, Enforcement sent Respondent requests for information on October 15, 2004 and November 1, 2004. Both requests were sent to Respondent's CRD residential address by first class mail. The second request was also sent by

⁷ Carasick Aff. ¶9.

⁸ *Robert Lester Gardner*, 52 SEC 343, 344 (1995), aff'd, 89 F.3d 845 (9th Circ. 1996); *Dep't of Enforcement v. Jeffrey B. Hodde*, No. C10010005, 2002 NASD Discip. LEXIS 4, at *13 (NAC Mar. 27, 2002).

certified mail.⁹ None of the mailings were returned. Respondent did not respond to either of Enforcement's requests.

These allegations, which are deemed admitted, are sufficient to establish for purposes of this proceeding that Respondent failed to respond to Enforcement's requests for 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.¹⁰ The Hearing Officer finds that Respondent failed to respond in any manner to Enforcement's requests for information and so violated NASD Procedural Rule 8210. A violation of Procedural Rule 8210 is also a violation of Conduct Rule 2110.¹¹

V. Sanctions

For failing to respond in any manner to NASD staff requests for information issued pursuant to NASD Procedural Rule 8210, the NASD Sanction Guidelines recommend the imposition of a bar unless mitigating circumstances exist to warrant a lesser sanction.¹² Here, there is no evidence of mitigating circumstances that would warrant a lesser sanction. Accordingly, Respondent will be barred from associating with any member firm in any capacity.

⁹ The Respondent received valid constructive notice of the information requests. Procedural Rule 8210(d) provides in part that, "A notice under this Rule shall be deemed received by the member or person to whom it is direct by mailing or otherwise transmitting the notice to the last known business address of the member or the last known residential address of the person as reflected in the Central Registration Depository."

¹⁰ See *Joseph G. Chiulli*, Exchange Act Release No. 42,359, 2000 NASD Discip. LEXIS 112, at *16; *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.").

¹¹ *Dep't of Enforcement v. Baxter*, No. C07990016, 2000 NASD Discip. LEXIS 3, at *25 (N.A.C. Apr. 19, 2000); *Joseph P. Hannan*, Exchange Act Release No. 40,438, 1998 LEXIS 1955, at *9 (September 14, 1998).

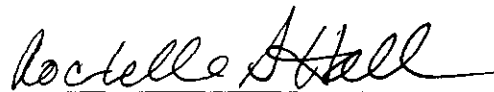
¹² NASD Sanction Guidelines at 35 (2005 ed.)

Enforcement has requested a bar for Respondent's other violation, unauthorized trading. However, neither the Complaint nor the Affidavit supporting the Motion for Entry of Default Decision contains any allegations of egregious or aggravating conduct that would warrant the imposition of sanctions in excess of the minimum fine and suspension recommended by the NASD Sanctions Guidelines.¹³ Therefore, in light of the bar imposed for failing to respond to the information requests, no remedial purpose would be served by the imposition of additional sanctions in this case.¹⁴

VI. Order

Jordan E. Scales is barred from association with any member firm in any capacity for failing to respond to two NASD requests for information, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110. The bar shall become effective once this decision becomes the final disciplinary action of the NASD.

SO ORDERED.



Rochelle S. Hall
Hearing Officer

Copies to:

Jordan E. Scales (*via overnight courier and first class mail*)
Gene E. Carasick, Esq. (*electronically and via first class mail*)
Rory C. Flynn, Esq. (*electronically and via first class mail*)

¹³ See Jeffrey B. Hodde, 2002 NASD Discip. LEXIS 4 (N.A.C. Mar. 27, 2002); *DBBC v. Daniel S. Hellen*, No. C3A970031, 1999 NASD Discip. LEXIS 22 (N.A.C. June 15, 1999).

¹⁴ *Id.*

EXHIBIT A

**NASD
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

Jordan Scales
CRD No. 4419495

Respondent.

Disciplinary Proceeding
No. C07050019

Hearing Officer:

COMPLAINT

Upon information and belief, Complainant alleges as follows:

1. Respondent Jordan Scales was registered with NASD member L.H. Ross & Company, Inc. ("L.H. Ross") on three separate occasions: (1) from about March 15, 2002, until about April 2, 2003; (2) from about May 19, 2003, until about November 11, 2003; and (3) from about April 2, 2004 until about April 9, 2004. His most recent employment end date with L.H. Ross was April 8, 2004. Scales first became registered with NASD in November 1996. He is not currently registered with an NASD member firm. NASD retains jurisdiction over Scales pursuant to Article V, Section 4 of NASD Bylaws.

**FIRST CAUSE OF COMPLAINT
Unauthorized Transactions
NASD Conduct Rule 2110, IM-2310-2**

2. In or about August and September 2003, Respondent Scales effected or caused to be effected the following stock purchases in the following customer accounts, without the customers' prior knowledge or authorization:
 - the purchase of 100 shares of Stake Technology Ltd. stock for \$840.95 on August 11, 2003, in the joint account of customers W&FJ;

- the purchase of 1000 shares of Synergx Systems stock for \$3,309.95 on September 12, 2003, in the account of customer SM.

3. Each such unauthorized purchase constitutes a separate and distinct violation of NASD Conduct Rule 2110 by Respondent Scales.

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

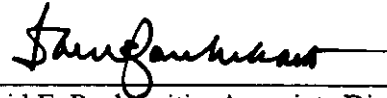
4. By letter dated October 15, 2004, sent via first class mail to Respondent Scales' CRD address, at [REDACTED] the staff requested Scales, pursuant to Rule 8210, to provide a written statement by October 29, 2004, in response to specific questions relating to the allegations made by customers W&FJ and SM. The mailing was not returned by the Postal Service.
5. No response having been received, by letter dated November 1, 2004, sent via first class and certified mail to Respondent Scales' CRD address, the staff again requested, pursuant to Rule 8210, that Scales provide the same information as requested in the October 15 letter, this time by November 12, 2004. Neither the first class mailing nor the certified mailing was returned by the Postal Service; nor did the staff receive a delivery receipt for the certified mailing.
6. To date, Respondent Scales has not responded to the staff's Rule 8210 requests.
7. Respondent Scales' failure to respond to the staff's Rule 8210 information requests constitutes separate and distinct violations of NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

PRAYER FOR RELIEF

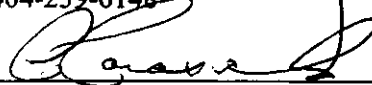
WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Respondent Scales 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
404-239-6148



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

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

Andrew A. Favret, Regional Chief Counsel
NASD Department of Enforcement
1100 Poydras Street
Energy Centre, Suite 850
New Orleans, LA 70163
(504) 412-2404