

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT

Complainant,

v.

FRANK MAYOL
(CRD No. 4494246)
Yonkers, NY 10704,

Respondent.

Disciplinary Proceeding
No. C10040122

DEFAULT DECISION

Hearing Officer – SW

Dated: June 2, 2005

Respondent is barred from associating with any member firm in any capacity for violating NASD Conduct Rule 2110 and NASD Procedural Rule 8210 by failing to respond to requests for information issued by the NASD staff. In light of the bar for the Rule 8210 violation, no additional sanction was imposed on Respondent for violating NASD Conduct Rule 2110 when he forged a customer's signature.

Appearances

Soo H. Im, Esq., Regional Attorney, New York, NY, and Rory C. Flynn, Of Counsel, Washington, DC, for the Department of Enforcement.

No appearance for Frank Mayol.

DECISION

I. Introduction

On December 30, 2004, the NASD Department of Enforcement ("Enforcement") filed a two-count Complaint against Frank Mayol ("Respondent"). The first cause of the Complaint alleges that Respondent forged a customer's signature, in violation of NASD Conduct Rule 2110. The second cause of the Complaint alleges that Respondent failed to respond to three

written requests for information issued by the NASD staff, in violation of NASD Conduct Rule 2110 and NASD Procedural Rule 8210.

On March 29, 2005, Enforcement filed a Motion for Entry of Default Decision ("Motion"), supported by the Declaration of Soo H. Im, Esq., Regional Attorney in NASD's New York office, and twenty-three exhibits.¹ For the reasons set forth below, the Hearing Officer grants Enforcement's Motion.

II. Respondent's Default

On December 29, 2004, Enforcement served the Complaint and a Notice of Complaint on Respondent, via certified and first class mail, at his current residential address, as reflected in the Central Registration Depository ("CRD address") and at two alternative addresses, the Equifax address and the LEXIS address.² (CX-1, p. 1; CX-4, p. 11; DECL at ¶¶12, 13). Respondent did not file a response to the Complaint. (DECL at ¶20).

On February 4, 2005, Enforcement served the Complaint and a Second Notice of Complaint on Respondent, by certified and first class mail, at his CRD address and the two alternative addresses. (CX-11; DECL at ¶21). Again, Respondent failed to file an Answer to the Complaint. (DECL at ¶27).

Enforcement complied with NASD Procedural Rule 9134(b)(1) by sending the mailings to Respondent's CRD address and the alternative addresses. 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 Im Declaration will be designated as "DECL at ¶"; and Enforcement's exhibits will be designated as "CX-" with the appropriate exhibit and page number.

² Respondent's CRD address is [REDACTED] (CX-1, p. 1). The NASD staff obtained the first alternative address through an Equifax search, [REDACTED] (the "Equifax address"), and obtained the second alternative address through a LEXIS search, [REDACTED] (the "LEXIS address"). (DECL at ¶13; CX-5; CX-6).

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

Article V, Section 4 of the NASD's By-Laws creates a two-year period of retained jurisdiction over former registered persons, covering misconduct occurring before the registration terminated and failures to provide information requested during the period of retained jurisdiction.

Respondent was registered as a general securities representative with NASD member firm BNY Investment Center Inc. ("BNY") from January 2004 to April 2004. (CX-1, p. 4). On April 22, 2004, BNY filed a Form U-5 terminating Respondent's registration.³ (CX-2).

Enforcement filed the Complaint on December 30, 2004, within two years of the April 22, 2004 termination of registration. The Complaint alleges misconduct that occurred while Respondent was registered through BNY, as well as failures to respond to requests issued during the period of retained jurisdiction. NASD thus has jurisdiction over this proceeding.

B. Respondent Forged a Customer's Signature

The first cause of the Complaint, attached to this Default Decision as Exhibit A, alleges that Respondent forged customer AL's signature on an IRA authorization for release of transfer of assets form. (Complaint at ¶¶7-9; DECL ¶¶30-31; CX-3, p. 5; CX-16; CX-17; CX-18). Specifically, after meeting with customer AL on April 13, 2004 to implement an IRA rollover, Respondent realized that AL had signed all the necessary paperwork for the rollover except for the IRA transfer form. (*Id.*). Instead of contacting AL to obtain her signature, Respondent signed

³ The April 22, 2004 Form U-5 disclosed that Respondent had signed a bank document for a customer without the customer's consent. (CX-2, p. 1). Thereafter, BNY filed a Form U-5 amendment on June 10, 2004 to disclose that, when questioned about the forged document, Respondent admitted that he destroyed the forged document by tearing it up. (CX-3, p. 5).

or caused the customer's name to be signed on the IRA transfer form, without her knowledge or authorization. (Id.).

The Complaint further alleges that Respondent destroyed the IRA transfer form by tearing it up when he was questioned by senior management about the forgery.⁴ (Complaint at ¶10; CX-3, p. 5). Respondent subsequently admitted to his sales manager that he had forged the IRA transfer form and that he had destroyed the forged document. (DECL ¶32; CX-3, p. 5).

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.

Forgery is wholly inconsistent with NASD's requirement that registered individuals maintain high standards of ethical conduct and observe just and equitable principles of fair trade.⁵ Based on the allegations in the first cause of the Complaint, which are deemed admitted, the Hearing Officer finds that Respondent violated NASD Conduct Rule 2110 by forging his customer's signature to an IRA transfer form.

C. Respondent Failed to Respond to NASD Requests for Information

The second cause of the Complaint alleges that Respondent failed to respond to three letters from the NASD staff regarding the allegations in cause one of the Complaint. (Complaint at ¶¶12-21). Each request was sent pursuant to NASD Procedural Rule 8210. (Complaint at ¶¶12, 15, 18).

⁴ Respondent's assistant manager subsequently contacted customer AL who signed the IRA transfer form to complete the rollover transaction. (CX-16).

⁵ See, e.g., In re Donald M. Bickerstaff, Exchange Act Release No. 35,607, 1995 SEC LEXIS 982 (Apr. 17, 1995) (finding that forgery constituted a violation of Article III, Section 1 of NASD's Rules of Fair Practice, the predecessor to NASD Conduct Rule 2110).

The NASD staff sent Respondent written requests for information on June 23, 2004, July 12, 2004, and July 27, 2004, via first class and certified mail, to Respondent's CRD address. (Complaint at ¶¶12, 15, 18; DECL at ¶¶35, 37, 40; CX-19; CX-20; CX-22). The July 27, 2004 request was also sent via first class and certified mail to Respondent at the Equifax address. (Complaint at ¶18; DECL at ¶40; CX-22). Respondent failed to respond to the NASD staff's requests for information. (Complaint at ¶¶14, 17, 21; DECL at ¶¶37, 39, 43).

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 the NASD's ability to perform its regulatory responsibilities.⁷ A violation of Rule 8210 is also a violation of NASD Conduct Rule 2110.⁸

The Hearing Officer finds that pursuant to Rule 8210(d), Respondent is deemed to have received the requests for information sent to his CRD address and the Equifax address.

⁶ Richard J. Rouse, Exchange Act Release No. 32,658, 1993 SEC LEXIS 1831, at *7 (1993). See also Dep't of Enforcement v. Valentino, No. FPI010004, 2003 NASD Discip. LEXIS 15, at *12 (N.A.C. May 21, 2003), aff'd, 2004 SEC LEXIS 330 (Feb. 13, 2004) ("[i]t 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 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).

Accordingly, the Hearing Officer finds that Respondent received adequate notice of the requests for information, and that he violated NASD Conduct Rule 2110 and NASD Procedural Rule 8210 by failing to respond to those requests.

IV. Sanctions

A. Respondent Failed to Respond to Rule 8210 Requests for Information

For failing to produce the requested information as requested in the NASD staff's letters dated June 23, 2004, July 12, 2004, and July 27, 2004, Enforcement recommended that Respondent be barred. The NASD Sanction Guidelines provide that a bar should be standard when an individual respondent does not respond in any manner to a request issued pursuant to Rule 8210.⁹ The record does not reflect the existence of any mitigating factors that would warrant a lesser sanction. Accordingly, the Hearing Officer accepts Enforcement's recommendation, and bars Respondent from associating with any member firm in any capacity

B. The Hearing Officer Imposes No Separate Sanction for Respondent's Forgery Violation

Because the Hearing Officer barred Respondent for his failure to respond to the requests for information issued pursuant to NASD Procedural Rule 8210, no separate sanction will be imposed for Respondent's violation of NASD Conduct Rule 2110 when he forged his customer's signature on a form that the customer initially did not sign, without the customer's knowledge or authorization.¹⁰

⁹ NASD Sanction Guidelines, p. 35 (2005).

¹⁰ Although the violation was serious, after considering the nature of the document and the surrounding circumstances, the Hearing Officer did not find that a bar would necessarily be appropriate. In light of the bar for failing to respond, a suspension and/or fine for the Rule 2110 violation was deemed redundant and unnecessary.

V. Order

Respondent Frank Mayol is barred from association with any NASD member firm in any capacity for failing to respond to requests for information, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110. If this Default Decision becomes the final disciplinary action of NASD, the bar shall become effective immediately.

SO ORDERED.

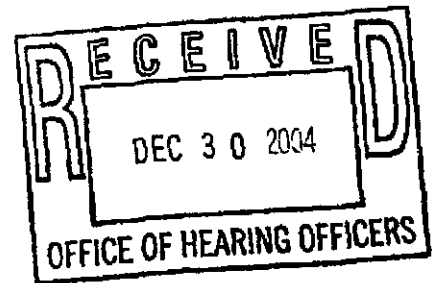
Sharon Witherspoon
Sharon Witherspoon
Hearing Officer

Dated: Washington, DC
June 2, 2005

Copies to:
Frank Mayol (via Federal Express and first class mail)
Soo H. Im, Esq. (via electronic and first class mail)
David M. Jaffe, 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,

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(CRD No. 4494246),

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COMPLAINT

Upon information and belief, the Department of Enforcement alleges that:

JURISDICTION

1. Respondent Frank Mayol ("Respondent") first became registered with NASD as a General Securities Representative on March 8, 2002.
2. From approximately January 21, 2004 until approximately April 15, 2004, Respondent was registered as a General Securities Representative with NASD through an association with member firm BNY Investment Center Inc. (BD No. 47683) ("BNY").
3. On April 22, 2004, BNY electronically filed with NASD a Uniform Termination Notice for Securities Industry Registration ("Form U-5") concerning Respondent. The Form U-5 indicated that Respondent's last day of employment at BNY was April 15, 2004 and that he had been terminated by the firm for signing a bank document without the customer's consent.
4. BNY filed an amended Form U-5 on June 10, 2004, on which it disclosed that Respondent had destroyed the document that he had forged by tearing it up.

5. Currently, Respondent is not associated with any member firm. However, NASD retains jurisdiction over Respondent pursuant to Article V, Section 4 of its By-Laws.

FIRST CAUSE OF COMPLAINT
(Forgery)
(Violation of NASD Conduct Rule 2110)

6. Paragraphs 1 through 5 are re-alleged and incorporated herein by reference.
7. On or about April 13, 2004, Respondent met with customer AL, at a BNY office located in an affiliate bank branch, in connection with an IRA rollover.
8. After the meeting, it was determined that AL had signed all the necessary paperwork for the rollover except one additional document - the IRA Authorization for Release of Transfer of Assets form (the "Transfer Form").
9. Instead of contacting AL for her signature, Respondent signed or caused to be signed the customer's name on the Transfer Form without her knowledge, authorization or consent.
10. When senior managers asked him about the forgery, he destroyed the document by tearing it up.

By reason of the foregoing, Respondent violated NASD Conduct Rule 2110.

SECOND CAUSE OF COMPLAINT
(Failure to Respond)
(Violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110)

11. Paragraphs 1 through 10 are re-alleged and incorporated herein by reference.

First Request

12. By letter dated June 23, 2004, the staff of NASD's District No. 10 office (the "Staff") requested that Respondent provide information concerning his

termination. The letter was sent via certified mail, return receipt requested and regular mail to Respondent's current residential address as reflected in the records of the NASD Central Registration Depository, [REDACTED] (the "CRD Address"). The request was made pursuant to, and in accordance with, NASD Conduct Rule 8210, and required a response by July 7, 2004.

13. The letter sent by regular mail was not returned to the Staff. The certified mailing, including the return receipt, was also not returned.

14. The Staff did not receive a response from Respondent.

Second Request

15. By letter dated July 12, 2004, the Staff requested that Respondent provide information concerning his termination. The letter was sent via certified mail, return receipt requested and regular mail to the CRD Address. This request was made pursuant to, and in accordance with, NASD Conduct Rule 8210, and required a response by July 26, 2004.

16. The letter sent by regular mail was not returned to the Staff. The certified mailing was returned to the Staff stamped "Unclaimed." The return receipt accompanying the certified mailing was also returned unsigned.

17. The Staff did not receive a response from Respondent.

Third Request

18. By letter dated July 27, 2004, the Staff once again requested that Respondent provide information concerning his termination. The letter was sent via certified mail, return receipt requested and regular mail to the CRD Address as well as an

additional address obtained by the Staff: [REDACTED]

[REDACTED] This request was made pursuant to, and in accordance with, NASD Conduct Rule 8210, and required a response by August 10, 2004.

19. The letters sent by regular mail were not returned to the Staff.
20. The certified mail return receipts for the mailings to both addresses were received by the Staff bearing the signature "E. Riley."
21. The Staff did not receive a response from Respondent.

By reason of the foregoing, Respondent violated 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 committed the violations charged and alleged herein;
- B. An order imposing sanctions upon Respondent in accordance with NASD Procedural Rule 8310;
- C. An order requiring Respondent to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest;
- D. An order imposing such costs of any proceedings as are deemed fair and appropriate under the circumstances in accordance with NASD Procedural Rule 8330; and
- E. An order imposing any other fitting sanction.

Dated: December 29, 2004

DEPARTMENT OF ENFORCEMENT



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