

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant :

v. :

LARA DEBRY
(CRD No. 1720653),

Respondent. :

Disciplinary Proceeding
No. C3A040049

Hearing Officer – RSH

DEFAULT DECISION

June 29, 2005

Respondent violated NASD Conduct Rules 2330(a) and 2110 by converting funds from a customer account for her own use and without the customer's knowledge or consent. For these violations, she is barred from associating with any NASD member in any capacity.

Appearances

Helen G. Barnhill, Esq., Denver, CO (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 January 10, 2005, alleging that Respondent Lara Debry converted approximately \$27,608 from a customer's account for her own use, without the customer's knowledge or consent, in violation of NASD Conduct Rules 2330(a) and 2110. Respondent did not file an Answer to the Complaint. On April 27, 2005,

Enforcement filed a Motion for Entry of a Default Decision, supported by the declaration of Helen G. Barnhill and eight exhibits. Respondent did not reply to the motion.¹

II. Respondent's Default

Enforcement sent the Complaint and Notice of Complaint to Respondent on January 6, 2005, by certified and first class mail to the three residential addresses listed in the Central Registration Depository (the "CRD addresses"). Enforcement sent the Complaint and Second Notice of Complaint to Respondent on February 9, 2005, by certified and first class mail to the CRD addresses and to a Post Office Box address identified by the post office (the "PO address"). Enforcement sent the Complaint and Third Notice of Complaint to Respondent on March 21, 2005, by certified and first class mail to the CRD addresses and the PO address².

Enforcement served the Complaint and the Notices of Complaint on Respondent in accordance with Rule 9134, giving her constructive notice of this proceeding. By failing to respond, she defaulted. Pursuant to Rule 9215(f), the Hearing Officer will deem the allegations in the Complaint admitted.

III. Jurisdiction

From October 7, 2002 until November 7, 2003, Respondent was associated with NASD member Eagle Gate Securities, Inc. ("Eagle Gate"). She was registered as a general securities representative with Eagle Gate from October 24, 2002 until November 10, 2003. Respondent has not been associated with any NASD member since that date, but she remains subject to NASD jurisdiction for purposes of this proceeding, pursuant to

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 with its motion.

² Enforcement sent this Third Complaint and Notice to correct a deficiency in the mailing of the first Complaint and Notice, which was sent to the PO Address by regular mail, but not by certified mail.

Article V, Section 4 of NASD's By-Laws, because (1) the Complaint was filed within two years after the termination of her registration with Eagle Gate, and (2) the Complaint charges her with misconduct committed while she was associated with Eagle Gate.

IV. Violation of Conduct Rules 2330(a) and 2110

Improper Use and Conversion

The Complaint alleges that on or about June 2003, customer A.B. (who is Respondent's brother) opened a brokerage account with check writing privileges at Eagle Gate. Respondent, the Assistant Operations Manager, was involved in opening the account. At A.B.'s request, Respondent listed her own residential address (which was also listed on the CRD as one of her residential addresses) as the address of record for A.B.'s account. She did not notify Eagle Gate that her address was being used. Thereafter, all checks, confirmations and statements for A.B.'s account were sent to Respondent's residential address. From approximately July 25, 2003 through November 5, 2003, Respondent caused sixteen checks made payable to third parties to be issued from A.B.'s account and sent to Respondent's CRD address. These checks were drawn on A.B.'s account without his knowledge or consent. While Eagle Gate stopped payment on one check, the remaining fifteen checks, totaling approximately \$27,608, were cashed by third parties. The Hearing Officer notes that there were notations on some of the checks referencing Respondent.

The Complaint alleges that Respondent's conduct violated NASD Conduct Rules 2330(a) and 2110. NASD Conduct Rule 2330 provides that "no member or person associated with a member shall make improper use of a customer's securities or funds." An associated person makes improper use of customer funds where he or she fails to

apply the funds (or uses them for some purpose other than) as directed by the customer.³ Respondent obviously made "improper use" of a customer's funds. The Hearing Officer notes that Respondent obtained control over the checks drawn on A.B.'s account by using her own address as the account's address of record and therefore concludes that Respondent intentionally took A.B.'s funds when she wrote checks on the account. Respondent's conduct thus constitutes conversion, as defined by the NASD Sanction Guidelines: "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 The conversion of customer funds violates Conduct Rule 2110 because such conduct is "patently antithetical to the 'high standards of commercial honor and just and equitable principles of trade' that the NASD seeks to promote."⁵

The Hearing Officer finds that the allegations in the Complaint, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent violated Conduct Rules 2330(a) and 2110 by converting, for her own use, approximately \$27,608 from a customer's account without the customer's knowledge or consent.

V. Sanctions

Under the NASD Sanction Guidelines, a bar is standard for conversion, regardless of amount.⁶ There is no evidence of any mitigating circumstances that would justify a lesser sanction in this case. Consequently, a bar is appropriate.

³ *DOE v. Shailesh B. Patel*, Complaint No. CO2990052, 2001 NASD Discip. LEXIS 42, at *25 (NAC, May 23, 2001).

⁴ *NASD Sanction Guidelines* at 38 (2005). See, *DOE v. Alberto E. Argomaniz*, No. C07000013, October 18, 1999 at 13, www.nasd.com/web/groups/enforcement/documents/oho_disciplinary_decisions/nasdw_006709.pdf

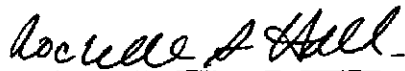
⁵ *In re Joel Eugene Shaw*, 1994 SEC LEXIS 2493, 51 S.E.C. 1224, 1226-27 (1994).

⁶ *NASD Sanction Guidelines*, 38 (2005).

VI. Conclusion

Respondent Lara Debry converted, for her own use, a customer's funds without the customer's knowledge or consent, in violation of Rules 2330(a) and 2110. For these violations, she is barred from associating with any NASD member in any capacity. The bar will become effective immediately if this decision becomes NASD's final disciplinary action in this proceeding.

SO ORDERED.



Rochelle S. Hall
Hearing Officer

Copies to: Lara Debry (*via certified mail and first class mail*)
 Helen G. Barnhill, Esq. (*via electronic and first class mail*)
 Rory C. Flynn, Esq. (*via electronic and first class mail*)

**NASD
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Respondent.

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Hearing Officer:

COMPLAINT

Upon information and belief, Complainant alleges as follows:

1. Respondent Lara Debry ("Respondent" or "Debry") has been previously registered as a General Securities Representative with nine member firms commencing in 1987. From approximately October 2, 2002 through November 10, 2003, Debry was registered as a General Securities Representative through Eagle Gate Securities ("Eagle Gate") and was employed by this member firm in its Operations Department. Debry's employment with Eagle Gate terminated on or about November 7, 2003. Debry is not currently associated with a member firm; however, she was associated with Eagle Gate at the time of the violations alleged herein and her most recent association terminated within the past two years. Therefore, NASD has jurisdiction to issue this Complaint pursuant to Article V, Section 4 of its By-Laws.

FIRST CAUSE OF COMPLAINT

NASD Conduct Rules 2110 and 2330(a) Conversion, Against Respondent Debry

2. In or about June 2003, customer A.B. opened up a brokerage account with check writing privileges at Eagle Gate. Debry, the Assistant Operations Manager, was involved in setting up the account. A.B. is Debry's brother. At A.B.'s request, Debry listed one of her residential addresses, as shown in the records of the Central Registration Depository ("CRD address"), as the address of record for the A.B. account, though this was prohibited by Eagle Gate's procedures. Debry did not advise Eagle Gate that she had listed her residential address as the address of record for A.B.'s account. By listing her address as the address of record, all third party checks, checkbooks, confirmations and statements for the A.B. account were delivered to Debry's home address.
3. As Assistant Operations Manager, Debry had the authority to process customer check requests through Eagle Gate's clearing firm. From approximately July 25, 2003, through November 5, 2003, Debry caused sixteen checks made payable to third parties, totaling approximately \$28,907, to be issued from customer A.B.'s account and sent to her CRD address. All but one of these checks showed the payee's address to be the same as Debry's CRD address. These checks were drawn on A.B.'s account without his knowledge or consent. The checks are more fully set forth in Exhibit "A", attached hereto.
4. Eagle Gate stopped payment on one check in the amount of \$1,299. The remaining checks, totaling approximately \$27,608, were negotiated by the third-party payees. By reason of the foregoing, Debry converted approximately \$27,608 from A.B.'s account.

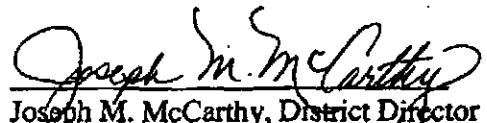
5. Debry resigned from Eagle Gate on November 6, 2003.
6. Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rules 2110 and 2330(a) by Debry.

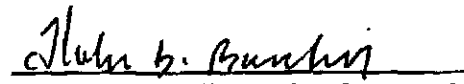
PRAYER FOR RELIEF

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 the Respondent in accordance with NASD 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 proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330; and
- E. An order imposing any other fitting sanction.

Date: January 6, 2005


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