

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT

Complainant,

v.

SHERRI L. HERRERA
(CRD No. 4491409),

Respondent.

Disciplinary Proceeding
No. C3A050029

Hearing Officer – SNB

DEFAULT DECISION

November 2, 2005

For misuse of customer funds in violation of Rule 2110, and for failure to provide requested information in violation of Rules 8210 and 2110, Respondent is barred from associating with any NASD member in any capacity.

Appearances

Jacqueline D. Whelan, Esq., Regional Counsel, NASD, San Francisco, CA, and Rory C. Flynn, Esq., of Counsel, Washington, DC, for the Department of Enforcement.

No appearance by Respondent.

DECISION

I. Background

On June 17, 2005, the Department of Enforcement ("Enforcement") filed a two-cause Complaint in this proceeding, attached to this Decision as Exhibit A. The Complaint alleges that Respondent Sherri L. Herrera ("Respondent") violated Rule 2110 by misusing customer funds. The Complaint also alleges that Respondent violated Rules 8210 and 2110 by failing to respond to NASD Staff requests for information. Respondent did not file an Answer to the Complaint. On September 12, 2005, Enforcement filed a Motion for Entry of Default Decision, supported by

the declaration of Jacqueline D. Whelan, Esq. and four exhibits. Respondent did not reply to the Motion. For the reasons set forth below, the Motion is granted.¹

II. Respondent's Default

Enforcement sent the Complaint and Notice of Complaint to Respondent on June 15, 2005, by first class and certified mail to her last known residential address listed in the Central Registration Depository (the "CRD address"). When she did not respond by the due date listed in the initial Notice of Complaint, Enforcement sent a Second Notice of Complaint in the same manner to the same address on July 14, 2005. Respondent did not file an Answer to the Complaint.

Enforcement complied with Procedural Rule 9134(b)(1) by mailing the Complaint and Notices of Complaint to Respondent's CRD address, thereby giving Respondent constructive notice of this proceeding. By failing to file an Answer, Respondent defaulted. Therefore, pursuant to Rule 9215(f), the Hearing Officer deems the allegations in the Complaint admitted.

III. Jurisdiction

Respondent first became registered with NASD member firm Farmers Financial Solutions ("Farmers") as an Investment Company/Variable Products Representative in September 2002. Respondent was registered with Farmers until her termination on September 29, 2004, for the conduct charged in the Complaint. Respondent has not been registered with NASD since that time.

Although Respondent is not currently associated with a member firm, NASD has jurisdiction to bring this proceeding, pursuant to Art. V, § 4 of NASD's By-Laws, because (1) the Complaint charges Respondent with misconduct while she was registered and with failing to

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

comply with requests for information made during the two-year period following termination of her last registration, and (2) the Complaint was filed within that two-year period.

IV. Violations

A. Misuse of Customer Funds

The Complaint alleges that Respondent received payments for insurance policy premiums from policyholders on behalf of a Farmers' insurance affiliate. The insurance affiliate required her to promptly deposit such funds into its bank account and complete documents evidencing the receipt of premium payments. However, on two occasions Respondent failed to follow this procedure. First, on August 6, 2004, customer RS gave Respondent a check in the amount of \$404.42, with a blank payee line, as payment for an insurance premium. On August 18, 2004, Respondent entered her name in the payee line and deposited the check into her own bank account. She used the funds to pay personal expenses, rather than to pay the insurance premium. Second, on August 11, 2004, customer MA gave Respondent \$314.02 in cash to be applied toward MA's insurance premium. Respondent held this cash until approximately September 2, 2004, when she deposited a portion of it, \$153, into her company's premium account. She retained the remaining \$161.02, and used it to pay personal expenses, rather than to pay the insurance premium.

Rule 2110 requires registered persons to observe "high standards of commercial honor and just and equitable principles of trade" in the conduct of their business. Respondent did not comply with her customers' intended use of the funds, and instead used the funds to pay her own personal expenses. Respondent also exposed her customers to the risk that their insurance policies would lapse for non-payment of premiums. The allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent violated Rule 2110.

B. Failure to Respond

The Complaint also alleges that, on October 15 and November 18, 2004, NASD Staff sent Respondent requests for information pursuant to Rule 8210. The Staff sent these requests to Respondent at her CRD address by first class and certified mail. The Staff served the requests in accordance with Rule 8210(d), and therefore Respondent is deemed to have received them. Respondent did not respond to these requests for information.

Rule 8210 authorizes NASD to require any person subject to its jurisdiction to provide information 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.² Here, although Respondent received valid constructive notice of the Staff's requests,³ she failed to respond to them. Respondent thereby violated Rules 8210 and 2110.

V. Sanctions

Based on the admitted facts, the Sanction Guidelines for conversion are appropriate for Respondent's misuse of customer funds. For conversion, the Sanction Guidelines recommend a bar, regardless of the amount converted.⁴ A bar is also standard for failure to provide requested information.⁵ There is no evidence of any mitigating circumstances that would justify a lesser sanction in this case for either violation, so Respondent is barred from associating with any NASD member in any capacity for each violation.

² See, e.g., *Dep't of Enforcement v. Valentino*, No. FPI010004, 2003 NASD Discip. LEXIS 15, at *12 (NAC 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).

³ See *David I. Cassuto*, Exchange Act Release No. 48,087, 2003 SEC LEXIS 1496, at *9 (June 25, 2003).

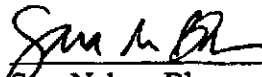
⁴ NASD SANCTION GUIDELINES 38 (2005).

⁵ *Id.* at 35.

VI. Conclusion

For misuse and conversion of customer funds, in violation of Rule 2110, and for failure to provide requested information, in violation of Rules 8210 and 2110, Respondent is barred from associating with any NASD member in any capacity. These bars shall become effective immediately if this Decision becomes the final disciplinary action of NASD.

SO ORDERED.


Sara Nelson Bloom
Hearing Officer

Dated: November 2, 2005

Copies to: Sherri L. Herrera (*via overnight and first class mail*)
Jacqueline D. Whelan, Esq. (*via facsimile and first class mail*)
Rory C. Flynn, Esq. (*via first class mail*)

**NASD
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

SHERRI L. HERRERA,
CRD No. 4491409,

RESPONDENT.

DISCIPLINARY PROCEEDING
No. C3A050029

HEARING OFFICER:

COMPLAINT

Upon information and belief, Complainant alleges as follows:

1. Respondent Sherry L. Herrera ("Herrera" or "Respondent") was associated with Farmers Financial Solutions ("FFS"), a member of NASD, from on or about January 7, 2002 until on or about October 4, 2004. Herrera became registered as an Investment Company/Variable Products Representative on or about September 19, 2002. Herrera is not presently associated with an NASD member. NASD has jurisdiction to issue this Complaint pursuant to Article V, Section 4 of the NASD By-laws.

CAUSE ONE OF COMPLAINT

NASD Conduct Rule 2110, Misuse of Funds, by Respondent Herrera

2. Paragraph number 1, above, is realleged and incorporated herein by reference.
3. Respondent was an agent of an insurance company affiliated with FFS. In connection with her agency, Respondent was permitted to receive payments of insurance policy premiums from policyholders, provided that Respondent promptly deposited the payments to a bank

account used to hold such payments and completed documentation evidencing the receipt of payments as required by the insurance affiliate.

4. On or about August 6, 2004, Respondent received from RS a check for \$404.42 in payment of a premium for an insurance policy RS owned. At the time Respondent received the check, the payee line was blank. After receiving it, Respondent entered her name on the payee line and deposited the check to a bank account she controlled and used for her benefit. She then used the funds to pay personal expenses, which was contrary to the use intended by RS.
5. On or about August 11, 2004, Respondent received from MA cash in the amount of \$314.02 to be applied to payment of a premium on an insurance policy MA owned. Between August 11, 2004 and September 2, 2004, Respondent maintained control of MA's cash payment. On or about September 2, 2004, Respondent deposited \$153.00 of it to the account to which she was required to deposit premium payments. The remaining funds, amounting to \$161.02, were not deposited to that account, but remained in Respondent's control.
6. As a result of the conduct described in paragraphs 4 and 5 above, Respondent obtained possession of approximately \$718.44 that should have been deposited to the required account for prompt application to the payment of insurance premiums. Instead, she used the funds to pay her personal expenses. As noted above, approximately three weeks after receiving MA's cash payment, she did deposit a portion of the premium owed by MA to the required account. She did not return the balance of MA's cash payment, or any portion of the proceeds of the check received from RS, until after the firm discovered her misconduct.
7. The conduct described in paragraphs 4-6 above was inconsistent with high standards of commercial honor and just and equitable principles of trade and constituted violations of NASD Conduct Rule 2110 by Respondent Herrera.

CAUSE TWO OF COMPLAINT

NASD Procedural Rule 8210 and NASD Conduct Rule 2110, *Failure to Provide Information, by Respondent Herrera*

8. The allegations of paragraphs 1 and 2-7 are realleged and incorporated herein by this reference.
9. On October 15, 2004, NASD staff sent to Respondent a written request for information pursuant to NASD Procedural Rule 8210. The request was sent by first-class and certified mail to Respondent's most recent address of record as reflected in the Central Registration Depository ("CRD") system. That address is [REDACTED]. Respondent was requested to provide the information specified in the letter on or before October 29, 2004. The staff received a certified mail delivery receipt that appears to bear the signature of Respondent evidencing acceptance of delivery of the certified mailing to the CRD address. The first-class mailing was not returned to the staff. No information was provided in response to the request.
10. On November 18, 2004, NASD staff sent to Respondent a second written request for information pursuant to NASD Procedural Rule 8210. This request was sent by first-class and certified mail to Respondent's CRD address. Respondent was requested to provide the information specified in the letter on or before December 2, 2004. The certified mailing was returned marked unclaimed. The first-class mailing was not returned to the staff. No information was provided in response to the requests.
11. The failures to provide information requested pursuant to Procedural Rule 8210, as described in paragraphs 9 and 10 above, constituted violations of Procedural Rule 8210. Further, such

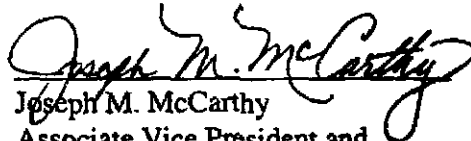
conduct was inconsistent with high standards of commercial honor and just and equitable principles of trade and a violation of NASD Conduct Rule 2110.

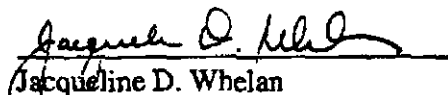
PRAAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Respondent committed the violations¹ 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.

Date: June 15, 2005


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