

**NASD
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

Russell J. Bjerke,
CRD No. 3178233

Respondent.

Disciplinary Proceeding
No. C3B050015

Hearing Officer:

COMPLAINT

Upon information and belief, Complainant alleges as follows:

1. Respondent Russell J. Bjerke ("Bjerke") was initially associated with a member of NASD in January 1999. He became registered as a General Securities Representative in March 1999. From on or about November 11, 2001, until on or about December 18, 2002, he was registered through Linsco / Private Ledger Corporation ("LPL") as a General Securities Representative.
2. On or about January 21, 2004, LPL filed an amended Uniform Termination Notice for Securities Industry Registration ("Form U-5") on behalf of Respondent Bjerke. The amended Form U-5 disclosed that a customer of LPL alleged that Respondent Bjerke was supposed to have invested \$6,187 in checks that she provided to him in 2002, but that Bjerke deposited the money into his personal bank account instead.
3. Respondent Bjerke is not currently registered or associated with any member firm; however, pursuant to Article V, Section 4 of the NASD By-Laws, NASD retains jurisdiction over him for purposes of this Complaint.

FIRST CAUSE OF COMPLAINT

[NASD Conduct Rules 2110 and 2330(a), Conversion of Customer Funds]

4. Paragraphs number 1 through 3, above, are realleged and incorporated herein by reference.
5. On or about June 26, 2002, Respondent Bjerke obtained a check from SB, a customer of LPL, in the amount of \$800.00. SB intended that the funds provided to Respondent Bjerke would be used to make an investment on her behalf.
6. Respondent Bjerke did not use the funds obtained from SB to make an investment on her behalf, as she intended. Respondent Bjerke deposited SB's funds in a bank account that he controlled, without SB's knowledge, authorization, or consent. Respondent Bjerke thereby converted \$800 of SB's funds to his own use and benefit, without SB's knowledge, authorization, or consent.
7. On or about August 14, 2002, Respondent Bjerke obtained a check from SB, in the amount of \$600.00. SB intended that the funds provided to Respondent Bjerke would be used to make an investment on her behalf.
8. Respondent Bjerke did not use the funds obtained from SB to make an investment on her behalf, as she intended. Respondent Bjerke deposited SB's funds in a bank account that he controlled, without SB's knowledge, authorization, or consent. Respondent Bjerke thereby converted \$600 of SB's funds to his own use and benefit, without SB's knowledge, authorization, or consent.
9. On or about September 3, 2002, Respondent Bjerke obtained a check from SB, in the amount of \$875.00. SB intended that the funds provided to Respondent Bjerke would be used to make an investment on her behalf.

10. Respondent Bjerke did not use the funds obtained from SB to make an investment on her behalf, as she intended. Respondent Bjerke deposited SB's funds in a bank account that he controlled, without SB's knowledge, authorization, or consent. Respondent Bjerke thereby converted \$875 of SB's funds to his own use and benefit, without SB's knowledge, authorization, or consent.
11. On or about November 14, 2002, Respondent Bjerke obtained a check from SB, in the amount of \$1,477.00. SB intended that the funds provided to Respondent Bjerke would be used to make an investment on her behalf.
12. Respondent Bjerke did not use the funds obtained from SB to make an investment on her behalf, as she intended. Respondent Bjerke deposited SB's funds in a bank account that he controlled, without SB's knowledge, authorization, or consent. Respondent Bjerke thereby converted \$1,477 of SB's funds to his own use and benefit, without SB's knowledge, authorization, or consent.
13. On or about December 13, 2002, Respondent Bjerke obtained a check from SB, in the amount of \$2,435.00. SB intended that the funds provided to Respondent Bjerke would be used to make an investment on her behalf.
14. Respondent Bjerke did not use the funds obtained from SB to make an investment on her behalf, as she intended. Respondent Bjerke deposited SB's funds in a bank account that he controlled, without SB's knowledge, authorization, or consent. Respondent Bjerke thereby converted \$2,435 of SB's funds to his own use and benefit, without SB's knowledge, authorization, or consent.

15. Such acts, practices and conduct constitute a violation of NASD Conduct Rule 2330(a).

Such conduct is inconsistent with high standards of commercial honor and just and equitable principles of trade and a violation of Conduct Rule 2110 by Respondent Bjerke.

SECOND CAUSE OF COMPLAINT

[NASD Procedural Rule 8210 and Conduct Rule 2110, Failure to Respond to Requests for Information]

16. Paragraphs number 1 through 3 and 5 through 15, above, are realleged and incorporated herein by reference.

17. In or about January 2004, NASD initiated an investigation concerning Respondent Bjerke's receipt of funds from a customer of LPL. The investigation focused, among other things, on whether Respondent Bjerke had received funds from customer SB, which she intended would be used to make investments on her behalf, but were converted by Respondent Bjerke to his own use and benefit.

18. Respondent Bjerke's last known residential address, as reflected in the NASD Central Registration Depository, is [REDACTED] ("the CRD Address").

First Request for Information

19. On February 3, 2004, NASD staff sent a request for information pursuant to Procedural Rule 8210 relating to the subject matter of the NASD investigation, via U.S. Postal Service first class mail and certified mail, return receipt requested, to the CRD Address. The first request letter required a response no later than February 17, 2004.

20. The U.S. Postal Service returned the envelope sent to the CRD Address via first class mail, marked "Not Del As Addressed." The U.S. Postal Service returned the envelope sent to the CRD Address via certified mail, marked "Not Del As Addressed."

21. No response to the staff's first request was received from Respondent Bjerke.

Second Request for Information

22. On February 13, 2004, NASD staff obtained another address for Respondent Bjerke. The address that NASD staff obtained did not match the CRD Address. It listed Respondent Bjerke's current address as [REDACTED] (the "New Address").
23. On February 17, 2004, the staff sent a second request for information pursuant to NASD Procedural Rule 8210 relating to the subject matter of the NASD investigation, via U.S. Postal Service first class mail and certified mail, return receipt requested, to the CRD Address and the New Address. The second request letter provided the same information and requests as the February 3, 2004, letter. The second request letter required a response by March 2, 2004.
24. The U.S. Postal Service returned the envelope sent to the CRD Address via first class mail, marked "Not Del As Addressed." The U.S. Postal Service returned the envelope sent to the CRD Address via certified mail, marked "Not Del As Addressed."
25. The U.S. Postal Service did not return the envelope sent to the New Address via first class mail. The U.S. Postal Service returned the envelope sent to the New Address via certified mail, marked "Unclaimed."
26. No response to the staff's second request was received from Respondent Bjerke.

Third Request for Information

27. On March 3, 2004, the staff sent a third request for information pursuant to NASD Procedural Rule 8210 relating to the subject matter of the NASD investigation, via U.S. Postal Service first class mail and certified mail, return receipt requested, to the CRD

Address and the New Address. A copy of the staff's request letter of February 17, 2004, was enclosed. The third request letter required a response by March 17, 2004.

28. The U.S. Postal Service did not return the envelope sent to the CRD Address via first class mail. The U.S. Postal Service returned the envelope sent to the CRD Address via certified mail, marked "Not Del As Addressed."

29. The U.S. Postal Service did not return the envelope sent to the New Address via first class mail. The U.S. Postal Service returned the envelope sent to the New Address via certified mail, marked "Unclaimed."

30. No response to the staff's third request was received from Respondent Bjerke.

31. To date, NASD has not received any response to the foregoing requests for information.

32. Such acts, practices and conduct constitute separate and distinct violations of NASD Procedural Rule 8210. Such conduct is inconsistent with high standards of commercial honor and just and equitable principles of trade and a violation of Conduct Rule 2110 by Respondent Bjerke.

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: 6/23/2005

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