

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT

Complainant,

v.

ANTHONY ABNER
(CRD No. 4311057)

Respondent.

Disciplinary Proceeding
No. C8A040057

Hearing Officer – SNB

DEFAULT DECISION

October 20, 2005

Respondent forged customer signatures, in violation of Rule 2110, and failed to respond to NASD requests for information, in violation of Rules 8210 and 2110. For forgery and failing to respond, he is barred from associating with any NASD member in any capacity.

Appearances

UnBo Chung, Esq., Senior Regional Counsel, Chicago, Illinois and Rory C. Flynn, Esq., Washington, DC, Of Counsel, for the Department of Enforcement.

No appearance by Respondent.

DECISION

I. Background

On July 9, 2004, the Department of Enforcement filed a two-cause Complaint in this proceeding, attached to this Decision as Exhibit A. The Complaint alleges that Respondent Anthony Abner affixed the signatures of 28 customers to various documents without the permission or knowledge of these customers, in violation of NASD Conduct Rule 2110, and that he failed to respond to requests for information, in violation of NASD Procedural Rule 8210 and Conduct Rule 2110. Respondent did not file an Answer to the Complaint. On October 4, 2004, Enforcement filed a Motion for Entry of Default Decision, supported by the declaration of UnBo

Chung and ten exhibits.¹ Respondent did not reply to the Motion. For the reasons set forth below, the Motion is granted.²

II. Respondent's Default

On July 7, 2004, Enforcement sent the Complaint and Notice of Complaint to Respondent by first class and certified mail to his residential address as listed in the Central Registration Depository (the "CRD address").³ On August 12, 2004, Enforcement sent the Complaint and Second Notice of Complaint to Respondent by first class and certified mail to the CRD address.⁴ Respondent did not file an Answer to the Complaint.

Enforcement complied with Procedural Rule 9134(b)(1) by mailing the Complaint and the Second Notice of Complaint to Respondent's CRD address, thereby giving Respondent constructive notice of this proceeding.⁵ By failing to file an Answer, Respondent defaulted. Pursuant to Rules 9215(f) and 9269(a)(2), the allegations in the Complaint are deemed admitted.

III. Jurisdiction

Respondent was registered as a General Securities Representative with NASD member Northwestern Mutual Investment Services, LLC from August 27, 2001, until he was permitted to resign on March 26, 2003. He has not been registered with any NASD member since that date,

¹ On November 24, 2004, the Hearing Officer granted Respondent's motion to stay the proceedings, on the grounds that Respondent was called to active duty by the U.S. Army for overseas deployment. On October 4, 2005, the Hearing Officer granted Enforcement's motion to lift the stay on the grounds that Respondent has now returned and is released from active duty status.

² 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.

³ The copy sent by certified mail was returned marked "unclaimed." The first class mailing was not returned.

⁴ The copy sent by certified mail was returned marked "unclaimed." The first class mailing was not returned.

⁵ Respondent also had actual notice of the proceeding, because he sent a letter requesting that it be stayed while he was on active duty in the U.S. Army. See, October 21, 2004, letter from Respondent to the Office of Hearing Officers.

but he remains subject to NASD jurisdiction for purposes of this proceeding, pursuant to Art. V, § 4 of NASD's By-Laws, because (1) the Complaint was filed within two years after his registration was terminated, and (2) the Complaint charges him with misconduct while he was registered and with failing to respond to requests for information during the two-year period following the termination of his registration.

IV. Violations

A. Forgery

The first cause of the Complaint alleges that between October 27, 2001, and December 12, 2002, Respondent forged the signatures of 28 customers on various documents without the knowledge or consent of these customers. The forged signatures appeared on life insurance applications, policy receipt acknowledgments, and investment product purchase and sell forms, with respect to both securities and insurance accounts.

It is well established that forgery is not consistent with high standards of commercial honor and just and equitable principles of trade as required by Rule 2110.⁶ The allegations of forgery, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent forged customer signatures on various documents without the knowledge or consent of these customers, in violation of Rule 2110.

B. Failure to Respond

The second cause of the Complaint alleges that on October 24 and November 12, 2003, NASD staff sent Respondent requests for information pursuant to NASD Procedural Rule 8210.

⁶ See, e.g., *Donald M. Bickerstaff*, Exchange Act Release No. 35,607, 1995 SEC LEXIS 982 (Apr. 17, 1995).

The staff sent the requests to Respondent at his CRD address and to an alternative address by first class and certified mail.⁷ Respondent did not respond to the requests.

The staff served the requests in accordance with Rule 8210(d), and therefore Respondent is deemed to have received them. 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.⁸ Here, although Respondent received valid constructive notice of the Staff's requests,⁹ he failed to respond to them. Respondent thereby violated Rules 8210 and 2110.

The allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision that Respondent failed to respond to requests for information, in violation of Rules 8210 and 2110.

V. Sanctions

For forgery, the Sanction Guidelines recommend a bar in egregious cases.¹⁰ Respondent forged the signatures of 28 customers on documents that included life insurance applications, policy receipt acknowledgments, and investment product purchase and sell forms. Respondent's misconduct is egregious and warrants a bar.

⁷ Respondent received actual notice of the request, because on or about October 27, 2003, Respondent called and informed NASD staff that the alternative address belonged to his father, and that no further mail should be sent to that address. In that conversation, Respondent confirmed the CRD address was his current address.

⁸ See, e.g., *Toni Valentino*, 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).

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

¹⁰ *NASD SANCTION GUIDELINES* at 39 (2005 ed.).

A bar is standard for failure to respond to a request for information.¹¹ There is no evidence of any mitigating circumstances that would justify a lesser sanction for the violation. Therefore, Respondent will be barred for failing to respond to requests for information.

VI. Conclusion

Respondent is barred from associating with any NASD member in any capacity for forging customer signatures in violation of Rule 2110 and for failing to respond to requests for information, in violation of Rules 8210 and 2110. In light of the bars, no further sanction is imposed. The bars will become effective immediately if this decision becomes NASD's final disciplinary action.

SO ORDERED.


Sara Nelson Bloom
Hearing Officer

Dated: October 20, 2005

Copies to: Anthony Abner (via overnight and first class mail)
UnBo Chung, Esq. (via electronic and first class mail)
Rory C. Flynn, Esq. (via electronic and first class mail)

¹¹ *Id.* at 35.

**NASD
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant

vs.

ANTHONY ABNER
Registered Representative
(CRD No. 4311057)

Respondent

**Disciplinary Proceeding
No. C8A040057**

Hearing Officer

COMPLAINT

Upon information and belief, Complainant alleges as follows:

1. Anthony Abner ("Respondent Abner") entered the securities industry in August 2001 as a General Securities Representative of a member of NASD. Between August 2001 and March 2003, Abner was registered as a General Securities Representative with Northwestern Mutual Investment Services, LLC ("Member"). On April 2, 2003, the Member filed a Uniform Termination Notice for Securities Industry Registration (Form U-5) that disclosed that Respondent Abner engaged in conduct actionable under NASD rules. Respondent Abner therefore is, pursuant to Article V, Section 4 of the NASD's By-Laws, subject to the jurisdiction of the NASD.

**FIRST CAUSE FOR COMPLAINT
NASD Conduct Rules 2110
Forgery**

2. Between the approximate dates of October 27, 2001 and December 12, 2002, Respondent Abner affixed the signatures of 28 customers to various documents without their

permission or knowledge, including life insurance applications, policy receipt acknowledgments, and investment product purchase and sell forms.

3. Such acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rule 2110.

SECOND CAUSE FOR COMPLAINT
NASD Conduct Rule 2110 and NASD Procedural Rule 8210
Failure to Respond to Requests for Information

4. On or about October 24, 2003, NASD staff sent to Respondent Abner a request that he provide certain information, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210. That request for information was sent by first class mail and by certified mail, return receipt requested, to Respondent Abner's address of record as contained in the records of the Central Registration Depository ("CRD address"), and to an alternative address discovered by NASD staff in a computer search in Carrollton, Ohio ("Carrollton address"). The first class mailings to the CRD address was not returned to the NASD staff, but the certified mailing to the CRD address was returned, marked "Unclaimed." On or about October 27, 2003, Respondent Abner telephoned NASD staff and stated the Carrollton address belonged to his father and requested no further mail be sent to that address. Respondent Abner confirmed that the CRD address was his current address. Respondent Abner did not provide the information requested.

5. On or about November 12, 2003, NASD staff sent to Respondent Abner a request that he provide the information initially requested on October 24, 2003, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210. That request for information

was sent by first class mail and by certified mail, return receipt requested, to Respondent Abner's CRD address. The first class mailing to the CRD address was not returned. The receipt for the certified mailing to the Burnham address was not returned.

6. Respondent Abner has failed to respond to the requests for information described in Paragraphs 4 and 5 above to date, and the dates for responding to the requests have passed.

7. The acts, practices and conduct described above constitute separate and distinct violations of NASD Conduct Rule 2110 and Procedural Rule 8210 by Respondent Abner.

PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

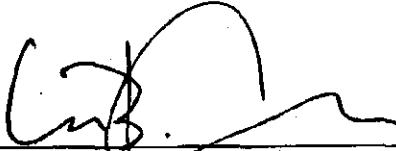
- A. Findings of fact and conclusions of law that Respondent Abner committed the violations charged and alleged herein;
- B. An order imposing sanctions upon Respondent Abner in accordance with NASD Procedural Rule 8310;
- C. An order imposing such costs of any proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Procedural Rule 8330;
- D. An order imposing any other fitting sanction.

July 7, 2004

Date



Carlotta A. Romano
Senior Vice President and District Director
NASD, District 8



UnBo Chung
Regional Attorney
NASD, District 8
55 West Monroe Street, 27th Floor
Chicago, IL 60603-5052
(312) 899-4641

Rory C. Flynn, Of Counsel
Department of Enforcement
NASD
1801 K Street, N.W., Suite 800
Washington, D.C. 20006