

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DONALD S. MARTIN
(CRD No. 1363706)



Respondent.

Disciplinary Proceeding
No. C8A040087

Hearing Officer – DRP

DEFAULT DECISION

March 7, 2005

**For forging a customer's signature, in violation of NASD Conduct Rule 2110,
Respondent is suspended for 90 days and fined \$5,000.**

Appearances

Dale A. Glanzman, Esq., Chicago, IL (Rory C. Flynn, Esq., Washington DC, Of Counsel)
for Complainant.

No appearance by or for Donald S. Martin.

DECISION

I. Background

On October 1, 2004, the Department of Enforcement filed a single-count Complaint in this proceeding, attached to this Decision as Exhibit A. The Complaint alleges that Donald S. Martin (Respondent or Martin) affixed a customer's signature to a securities-related document without the customer's knowledge or consent, in violation of NASD Conduct Rule 2110.

Respondent did not file an Answer to the Complaint. Accordingly, on December 21, 2004, Enforcement filed a motion for entry of default decision, supported by the Declaration of Dale A. Glanzman and six exhibits. Martin did not file a response to the motion.

For the reasons set forth below, Enforcement's motion is granted.¹

II. Respondent's Default

On September 30, 2004, Enforcement served the Complaint and Notice of Complaint on Respondent by certified and first class mail, sent to Respondent's current residential address, as reflected in the Central Registration Depository (the CRD address).² The return receipt for the certified mailing was signed by "Scott Martin."³ Respondent did not file an Answer.

On October 28, 2004, Enforcement served the Complaint and Second Notice of Complaint on Respondent in the same manner.⁴ Respondent did not file an Answer.

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

III. Jurisdiction

Respondent was associated with U.S. Bancorp Investments, Inc. (US Bancorp) from October 2002 until February 2004, and he was registered with NASD through that firm as a general securities representative from June 2003 until March 2004.⁶ Since March 2004, Respondent has not been associated or registered with any NASD member.

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.

² Glanzman Declaration ¶ 6; CX-1, p. 1; CX-2.

³ CX-3.

⁴ Glanzman Declaration ¶ 7; CX-4.

⁵ Respondent likely also had actual notice of this proceeding, as evidenced by the signature on the receipt for the first certified mailing.

⁶ CX-1, p. 2.

Respondent is subject to NASD jurisdiction pursuant to Art. V, Section 4 of NASD's By-Laws, because the Complaint, which was filed within two years of the termination of Respondent's registration with US Bancorp, alleges misconduct that occurred while he was registered.

IV. Findings of Fact and Conclusions of Law

The single cause of Complaint alleges that Respondent forged customer BH's signature on a securities-related document. Respondent admitted to NASD staff that, on August 28, 2003, he affixed customer BH's signature on a form requesting that an annuity company stop payment on the proceeds from an annuity that was in the name of BH's mother and of which BH was a beneficiary.⁷ Respondent explained that, after having BH sign a number of documents, he neglected to have her sign the stop payment form.⁸ BH told NASD staff that Respondent acknowledged the forgery, admitted to her that it was wrong, and apologized.⁹

NASD Conduct Rule 2110 states that members "shall observe high standards of commercial honor and just and equitable principles of trade." Rule 115 extends this requirement to persons associated with members. The ethical and legal obligations set forth in Rule 2110 are not limited to the sale of securities but encompass a wide variety of unethical business-related conduct.¹⁰ 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

⁷ Glanzman Declaration ¶ 10; Complaint ¶ 2.

⁸ Glanzman Declaration ¶ 11. Respondent also told Enforcement that he telephoned BH and spoke with her husband, who told Respondent to "sign any paperwork that still needed to be signed." Without being on the account or having power of attorney, however, BH's husband could not authorize Respondent to sign for BH.

⁹ *Id.*

¹⁰ See *Daniel J. Alderman*, Exchange Act Release No. 35,997, 1995 SEC LEXIS 1823, at *7 (July 20, 1995), *aff'd*, 104 F.3d 285 (9th Cir. 1997).

trade.¹¹ The allegations against Respondent in the Complaint, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent violated Rule 2110.

V. Sanctions

For forgery, the Sanction Guidelines recommend a fine of \$5,000 to \$100,000, a suspension for up to two years or, for egregious misconduct, a bar.¹² There are two principal considerations to consider: (1) the nature of the forged document, and (2) whether the respondent had a good faith but mistaken belief that he was acting under express or implied authority.¹³

Enforcement suggests this is not an egregious case and seeks a 90-day suspension and \$5,000 fine. Although Respondent forged BH's signature on a stop payment request, a significant document on any securities account, it was nonetheless BH's intention to submit such a request to the annuity company. Furthermore, neither the customer nor the firm suffered any monetary damage, and Respondent did not benefit economically from the incident. Finally, Respondent may have mistakenly (though incorrectly) believed he had authority to sign BH's name to the document based on his conversation with her husband.

The Hearing Officer agrees that, while forgery is a serious offense, Respondent's misconduct in this case was not egregious. Accordingly, the requested sanction will be imposed.

VI. Conclusion

Respondent Donald S. Martin is suspended for 90 days and fined \$5,000 for forging a customer's signature, in violation of NASD Conduct Rule 2110. The fine shall be due and

¹¹ See, e.g., *Donald M. Bickerstaff*, Exchange Act Release No. 35,607, 1995 SEC LEXIS 982 (Apr. 17, 1995) (forgery constituted a violation of Article III, Section 1 of NASD's Rules of Fair Practice, the predecessor to NASD Conduct Rule 2110).

¹² *NASD Sanction Guidelines* at 41 (2004 ed.).

¹³ *Id.*

payable when and if he seeks to return to the securities industry. The suspension shall become effective on a date set by NASD, but not earlier than 30 days after this Decision becomes the final disciplinary action of NASD, except that if this Decision becomes the final disciplinary action of NASD, the suspension shall become effective with the opening of business on Monday, April 18, 2005 and end with the close of business on Sunday, July 17, 2005.

SO ORDERED.


Dana R. Pisanelli
Hearing Officer

Dated: March 7, 2005
Washington, DC

Copies to: Donald S. Martin (*via overnight and first class mail*)
Dale A. Glanzman, 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,

Complainant

vs.

DONALD S. MARTIN,
Registered Representative
(CRD No. 1363706)

Respondent

**Disciplinary Proceeding
No. C8A040087**

Hearing Officer

COMPLAINT

Upon information and belief, Complainant alleges as follows:

1. Donald J. Martin ("Respondent Martin") was registered as a General Securities Representative with U.S. Bancorp Investments, Inc. ("Member"), a member of NASD, between October 2002 and February 2004. Respondent Martin therefore is subject to the jurisdiction of the NASD, pursuant to Article V, Section 4 of the NASD's By-Laws.

**CAUSE FOR COMPLAINT
Forgery
Violations of NASD Conduct Rule 2110**

2. At all relevant times, B.H. was a member of the public who maintained an account with the Member that was serviced by Respondent Martin.

2. On or about August 28, 2003, Respondent Martin, without the B.H.'s knowledge or consent, affixed B.H.'s signature on a facsimile to an annuity company

requesting that the annuity company stop payment on the proceeds from an annuity that was in the name of B.H.'s mother and of which B.H. was a beneficiary.

3. Such an act, practice and conduct constitutes a violation of NASD Conduct Rule 2110.

PRAYER FOR RELIEF

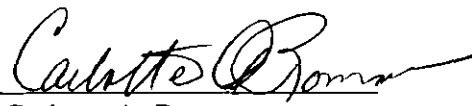
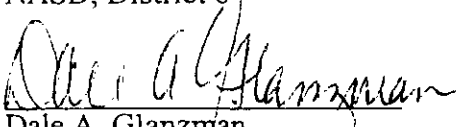
WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Respondent Martin committed the violations charged and alleged herein;
- B. An order imposing sanctions upon Respondent Martin 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; and
- D. An order imposing any other fitting sanction.

9/30/04
Date

9/30/04
Date

Rory C. Flynn, Of Counsel
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