

NASD

OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DAVID J. SHAW,
CRD No. 1003961

Respondent.

Disciplinary Proceeding
No. C8A040121

Hearing Officer – SW

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: February 11, 2005

INTRODUCTION

Disciplinary Proceeding No. C8A040121 was filed on December 22, 2004, by the Department of Enforcement of NASD ("Complainant"). Respondent David J. Shaw submitted an Offer of Settlement ("Offer") to Complainant on January 31, 2005. Pursuant to Code of Procedure Rule 9270(e), the Complainant and the National Adjudicatory Council ("NAC") Review Subcommittee or the Office of Disciplinary Affairs ("ODA") have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to Code of Procedure Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.

Under the terms of the Offer, Respondent has consented, without admitting or denying the allegations of the Complaint, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of NASD, or to which NASD is a party, to the entry of

findings and violations consistent with the allegations of the Complaint, and to the imposition of the sanctions set forth below, and fully understands that this Order will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by NASD.

BACKGROUND AND JURISDICTION

David J. Shaw ("Respondent") was registered as a General Securities Representative between December 1999 and May 2002, and as a General Securities Principal between May 2001 and May 2002, with Raymond James & Associates, Inc. ("Member"), a member of NASD. On August 22, 2003, the Member filed an amended Uniform Termination Notice for Securities Industry Registration (Form U-5) regarding Respondent. Respondent therefore is subject to the jurisdiction of NASD pursuant to Article V, Section 4 of the NASD's By-Laws.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:

A. Conversion

Between approximately January 1, 1994 and December 30, 2002, Respondent converted approximately \$977,547 in funds belonging to public customer ILETB, Inc. ("ILETB") by transferring funds from three of ILETB's accounts into accounts controlled by Respondent, without the knowledge or consent of ILETB, and used the funds for his own use or benefit, and not the use or benefit of ILETB.

Based on the foregoing, Respondent violated NASD Conduct Rules 2110 and 2330(a).

B. Fraud in the Offer and Sale of Securities

Between approximately January 10, 2001 and April 18, 2002, by use of the instrumentalities of interstate commerce or the mails, Respondent intentionally or recklessly employed devices to defraud public customers by making untrue statements of material facts or omitting to state material facts necessary to make the statements, in light of the circumstances in which they were made, not misleading. More specifically, Respondent told public customers L.W. and D.W., J.R. and L.R., BGUMC, and B.P. and M.P., about an investment opportunity that he claimed would provide a guaranteed rate of return coupled with a guaranteed return of principal. Respondent also told these customers that the investment opportunity was with “Capital Investment, Inc.” and was offered by the Member. After listening to Respondent’s presentation, all of these customers invested in the opportunity, as described by Respondent, in the manner set forth in Paragraphs 6 through 9 below. In fact, however, the investment opportunity never existed. Instead, Respondent had opened a bank account with a credit union under his name and home address that he entitled “Capital Investments,” and he deposited all of the funds he received from these customers, a total of approximately \$336,000, into this bank account, and used the funds for his own use and benefit.

Based on the foregoing, Respondent violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and NASD Conduct Rules 2110 and 2120.

C. Conversion

Customers L.W. and D.W., after listening to the representations made by Respondent as described in Paragraph 4 above, invested a total of \$26,000 with Respondent between April 10, 2001 and January 22, 2002. Respondent, without the knowledge or consent of L.W. or D.W.,

used the \$26,000 in funds for Respondent's own use or benefit, and not for the benefit of L.W. or D.W.

Customers J.R. and L.R., after listening to the representations made by Respondent as described in Part B above, invested a total of \$115,000 with Respondent between January 10, 2001 and March 18, 2002. Respondent, without the knowledge or consent of J.R. or L.R., used the \$115,000 in funds for Respondent's own use or benefit, and not for the benefit of J.R. or L.R.

Customer BGUMC, after listening to the representations made by Respondent as described in Part B above, invested a total of \$145,000 with Respondent between January 24, 2001 and April 18, 2002. Respondent, without the knowledge or consent of BGUMC, used their \$145,000 in funds for Respondent's own use or benefit, and not for the benefit of BGUMC.

Customers B.P. and M.P., after listening to the representations made by Respondent as described in Part B above, invested \$50,000 with Respondent on or about June 6, 2001. Respondent, without the knowledge or consent of B.P. or M.P., used the \$50,000 in funds for Respondent's own use or benefit, and not for the benefit of B.P. or M.P.

Based on the foregoing, Respondent violated of NASD Conduct Rules 2110 and 2330(a).

D. Forgery and Conversion

On three separate occasions, on or about October 24, 2000, March 2, 2001 and March 6, 2001, Respondent affixed the signatures of L.W. and D.W. on the Member's "Authority to Transfer Funds" forms and submitted the forms to the Member, authorizing the transfer of \$10,000 from the account(s) of L.W. and D.W. to an account controlled by Respondent, without the knowledge or consent of L.W. and D.W. On each occasion, \$10,000 was transferred to the credit union account controlled by Respondent, who then, without the knowledge or consent of

L.W. or D.W., used the total of \$30,000 in funds for Respondent's own use or benefit, and not the benefit of L.W. or D.W.

Based on the foregoing, Respondent violated of NASD Conduct Rules 2110 and 2330(a).

E. Forgery and Conversion

On two separate occasions, on or about December 27, 2000 and January 2, 2001, Respondent affixed the signatures of J.R. and L.R. on the Member's "Authority to Transfer Funds" forms and submitted the forms to the Member, authorizing the transfer of \$10,000 from the account(s) of J.R. and L.R. to an account controlled by Respondent, without the knowledge or consent of J.R. and L.R. On each occasion, \$10,000 was transferred to the credit union account controlled by Respondent, who then, without the knowledge or consent of J.R. and L.R., used the total of \$20,000 in funds for Respondent's own use or benefit, and not the benefit of J.R. and L.R.

Based on the foregoing, Respondent violated of NASD Conduct Rules 2110 and 2330(a).

F. Failure to Respond to Requests for Information

On or about August 20, 2002, NASD staff sent to Respondent a request that he provide certain documents and 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's address of record as contained in the records of the Central Registration Depository ("CRD address"). The first class mailing was not returned to NASD staff. The receipt for the certified mailing to Respondent was returned, apparently signed by "David Shaw."

On or about September 9, 2002, NASD staff sent to Respondent the same request, described in Paragraph 17 above, that he provide certain documents and 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's CRD address. The first class mailing was not returned to NASD staff. The receipt for the certified mailing to Respondent was returned, apparently signed by "David Shaw."

On or about May 2, 2003, NASD staff sent to Respondent a different request that he provide certain documents and 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's CRD address of record as contained in the records of the Central Registration Depository ("CRD address"). The first class and certified mailings were not returned to NASD staff.

On or about September 9, 2002, NASD staff sent to Respondent the same request, described in Paragraph 19 above, that he provide certain documents and 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's CRD address. The first class and certified mailings were not returned to NASD staff.

Respondent has failed to respond to each and all of the requests for documents and information described in Paragraphs 15 through 18 above to date, and the dates for responding to the requests have passed.

Based on the foregoing, Respondent violated NASD Conduct Rule 2110 and Procedural Rule 8210.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondent from any future misconduct, and

represent a proper discharge by NASD, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

It is ordered that Respondent be barred from association in any capacity with any NASD firm.

The sanctions imposed herein shall be effective on a date set by NASD staff. Pursuant to IM-8310-2(f), a bar or expulsion shall become effective upon approval or acceptance of this Order by the NAC.

SO ORDERED.

NASD

By: 

Carlotta A. Romano

Senior Vice President and Regional Director
on behalf of the Director of ODA, pursuant to
delegated authority