

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant

v.

**LAWRENCE NALLIE
(CRD No. 2364153),**

Respondent.

**Disciplinary Proceeding
No. C8A050004**

Hearing Officer – RSH

DEFAULT DECISION

November 22, 2005

Respondent is barred from associating with any NASD member in any capacity for misuse of customer funds, in violation of Rule 2110. In light of the bar, no additional sanctions are imposed for Respondent's failure to notify his member firm of his outside business activities, in violation of Rules 3030 and 2110 and for failure to timely respond to requests for information, in violation of Rules 8210 and 2110.

Appearances

Pamela Shu, Esq., Chicago, IL (Rory C. Flynn, Esq., Washington, DC, Of Counsel), for
Complainant.

No appearance by or for Respondent.

DECISION

I. Procedural History

The Department of Enforcement ("Enforcement") filed a Complaint on January 18, 2005, alleging that Respondent Lawrence Nallie misused customer funds in violation of Conduct Rule 2110; engaged in outside business activities, in violation of Conduct Rules 3030 and 2110; and failed to timely respond to requests for information from NASD staff, in violation of Procedural Rule 8210 and Conduct Rule 2110. On February 10, 2005, Respondent filed an Answer contesting most allegations and requesting a hearing in Columbus, Ohio. Enforcement filed an

Amended Complaint (attached to this Decision as Exhibit A) that added four new customer names. Respondent did not submit an Amended Answer.

On August 12, 2005, the undersigned Hearing Officer issued an order holding Respondent Nallie in default for failing to appear at a scheduled August 5, 2005 pre-hearing conference and for not responding to an August 5, 2005 Order to Show Cause. On September 9, 2005, Enforcement filed a Motion For a Default Decision, supported by the declaration of Pamela Shu¹ and thirty-six exhibits.² Respondent did not reply to the motion.³ Accordingly, for the reasons set forth below, Enforcement's motion is granted.

II. Respondent's Default

On July 29, 2005, the Office of Hearing Officers ("OHO") served an Order Setting Pre-Hearing Conference on Respondent by overnight courier and first class mail to Respondent's most current residential address listed in the Central Registration Depository (the "CRD address"), as well as to three additional addresses for Respondent that had been obtained by NASD staff.⁴ The July 29, 2005 order specifically stated, "...parties are reminded that a failure to appear at the Conference, in person or through counsel or representative, may be deemed a default." Respondent failed to appear at the August 5, 2005 pre-hearing conference. Therefore, on August 5, 2005, OHO served the Order to Show Cause on Respondent by overnight courier and first class mail to the same addresses. Respondent did not respond to the Order to Show Cause. By not appearing at the pre-hearing conference, not replying to the Order to Show Cause,

¹ "Shu Decl."

² CA through C-32.

³ The factual determinations in this decision are based on the allegations of the attached Amended Complaint, which are deemed admitted, and the additional materials filed by Enforcement with its motion.

⁴ The 3 addresses in addition to Respondent's CRD address are: 1) [REDACTED]
[REDACTED]
[REDACTED]

and failing to respond to the Motion for Default Decision, Respondent effectively abandoned his defense.

The Order Setting Pre-Hearing Conference and Order to Show Cause were served on Respondent in accordance with Rules 9132 and 9134. Pursuant to Rule 9241(f), the Hearing Officer may issue a default decision against a party that fails to appear at a pre-hearing conference, of which the party has due notice.

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

Respondent was last registered with the NASD as a General Securities Representative from October 1996 until November 2003 through member firm American Express Financial Advisors, Inc., ("AEFA"). Although Respondent is not currently registered or associated with any NASD member, the Complaint and Amended Complaint were filed within two years after the termination of his registration with AEFA. The Complaint charges him with misconduct that is alleged to have occurred while he was registered with AEFA and with failing to respond to requests for information from NASD staff during the two-year period following termination of his last registration. Therefore, Respondent remains subject to NASD jurisdiction for purposes of this proceeding, pursuant to Art. V, § 4 of NASD's By-Laws.

B. Misuse of Customer Funds

The first cause of the Amended Complaint alleges that from on or about March 17, 2003 until October 7, 2003, while Respondent was associated with AEFA, he obtained \$11,000 in the form of personal checks payable to "Lawrence Nallie and Associates" from ten customers.⁵ The customers wrote the checks in payment for expected financial planning services from Nallie.

⁵ Amended Complaint at ¶3; C1—C24.

Nallie cashed the checks, but did not provide his customers with financial planning services and did not issue refunds to those customers.⁶ These allegations, which are deemed admitted, are sufficient to establish for purposes of this Default Decision, that Respondent misused customer funds⁷ and thereby violated Conduct Rule 2110.⁸ In addition, Enforcement has provided ample support, in the form of customers' cancelled checks and written statements, for these allegations.⁹

C. Outside Business Activities

The second cause of the Amended Complaint alleges that from on or about March 17, 2003 until October 7, 2003, Respondent engaged in outside business activities by selling financial planning services to 10 customers, for which he collected approximately \$11,000. Respondent failed to provide prompt written notification of his activities to AEFA.¹⁰ Rule 3030 requires a registered person to provide notice of outside business activities to his member firm. These allegations, which are deemed admitted, are sufficient to establish that Respondent violated NASD Conduct Rules 2110 and 3030.

D. Failure to Timely Respond

The third cause of the Amended Complaint alleges that during the course of the NASD's investigation, on or about December 19, 2003 and January 8, 2004, NASD staff sent Respondent requests for information, pursuant to Rule 8210, relating to the subject matter of its investigation.¹¹ Because NASD staff sent the requests to Respondent at his CRD address, pursuant to Rule 8210(d), he is deemed to have received them. In addition, the certified mailing

⁶ C-A, ¶14.

⁷ Daniel D. Manoff, Exch. Act Rel. No. 46708, 2002 SEC Lexis 2684, at *12 (October 23, 2002).

⁸ Conduct Rule 2110 provides that a member shall observe high standards of commercial honor and just and equitable principles of trade.

⁹ See C1--C23.

¹⁰ Amended Complaint, ¶6; C-A, ¶15.

¹¹ Amended Complaint, ¶9 -10.

receipt signed by his wife, Cheryl Nallie, shows that he had actual notice of the January 8, 2004 request.¹² Respondent failed to timely respond to the requests, instead responding nearly one year late. His late responses were also incomplete.¹³

These allegations, which are deemed admitted, are sufficient to establish for purposes of this proceeding that Respondent failed to respond in a timely and complete manner to Enforcement's requests for information. Procedural Rule 8210 authorizes NASD to require any person subject to its jurisdiction to provide information and testimony 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.¹⁴ The Hearing Officer finds that Respondent failed to respond in a timely manner to Enforcement's requests for information and so violated NASD Procedural Rule 8210. A violation of Procedural Rule 8210 is also a violation of Conduct Rule 2110.

IV. Sanctions

For misuse of customer funds, the NASD Sanction Guidelines ("Guidelines") recommend that adjudicators consider a bar, or a suspension, if mitigating factors such as a misunderstanding of the customer's intended use of the funds are shown.¹⁵ In this case, there is no evidence of any mitigating factors that would warrant a sanction of less than a bar.¹⁶

For outside business activities, in egregious cases such as this, the Guidelines recommend consideration of a suspension of more than one year, or a bar, as well as a fine. [Guidelines at

¹² Complainant's Exhibit C-32.

¹³ C-A.

¹⁴ Department of Enforcement v. Baxter, No. C07990016, 2000 NASD Discip. LEXIS 3, at *25 (N.A.C. Apr. 19, 2000).

¹⁵ NASD Sanction Guidelines at 38 (2005).

¹⁶ According to Enforcement's motion, the Member firm restored all the misused funds to the customers, so restitution is not appropriate.

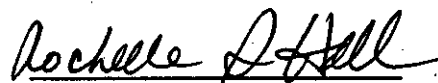
14]. In this case, the appropriate sanctions would be a lengthy suspension and a substantial fine, but in light of the bar being imposed for Respondent's misuse of customer funds, such sanctions would serve no remedial purpose, and therefore no sanctions will be imposed for this violation.

For failure to respond to 8210 requests for information the Guidelines recommend a bar, and for failure to respond in a timely manner, the Guidelines recommend a suspension in any or all capacities for up to two years, as well as a substantial fine. In this case, Respondent failed to respond in a timely manner, and his belated response was incomplete. As a result, a lengthy suspension and a substantial fine, or even a bar, would be appropriate, but they would serve no remedial purpose in light of the bar for Respondent's misuse of customer funds, and therefore no sanctions will be imposed for this violation.

V. Conclusion

Respondent Lawrence Nallie is barred from associating with any NASD member firm in any capacity for misuse of customer funds, in violation of Rule 2110. In light of the bar, no additional sanctions are imposed for his other violations. The bar will become effective immediately if this decision becomes NASD's final disciplinary action.

SO ORDERED.


Rochelle S. Hall
Hearing Officer

Copies to: Lawrence Nallie (*via overnight courier and first class mail*)
 Pamela Shu, Esq. (*via electronic and first class mail*)
 Rory C. Flynn, Esq. (*via electronic and first class mail*)