

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

TONYA A. ROBERTS
(CRD No. 4174065),

Respondent.

Disciplinary Proceeding
No. C8A050042

DEFAULT DECISION

Hearing Officer – SW

Dated: September 30, 2005

Respondent is barred from associating with any member firm in any capacity for: (i) violating NASD Conduct Rule 2110 by improperly using a customer's personal information to obtain and use credit cards for Respondent's own use and benefit; and (ii) violating NASD Conduct Rule 2110 and NASD Procedural Rule 8210 by failing to respond to requests for information issued by the NASD staff.

Appearances

Richard S. Schultz, Esq., Regional Counsel, Chicago, IL, and Rory C. Flynn, Esq., Of Counsel, Washington, DC, for the Department of Enforcement.

No appearance for Tonya A. Roberts.

DECISION

I. Introduction

On May 23, 2005, the NASD Department of Enforcement ("Enforcement") filed a two-count Complaint against Respondent Tonya A. Roberts ("Respondent"). The first cause of the Complaint alleges that Respondent, while associated with NASD member firm Charles Schwab & Co., Inc. ("Charles Schwab"), improperly used customer TR's personal information to obtain and use credit cards for Respondent's own use and benefit, in violation of NASD Conduct Rule 2110. The second cause of the Complaint alleges

that Respondent failed to respond to two requests for information issued by the NASD staff, in violation of NASD Conduct Rule 2110 and NASD Procedural Rule 8210.

On August 17, 2005, Enforcement filed a Motion for Entry of Default Decision ("Motion"), supported by the Declaration of Richard S. Schultz, Esq., Regional Counsel in NASD's Chicago office, and by nine exhibits.¹ For the reasons set forth below, the Hearing Officer grants Enforcement's Motion.

II. Respondent's Default

On May 20, 2005, Enforcement served the Complaint and Notice of Complaint on Respondent, via certified and first class mail, at her current residential address, as reflected in NASD's Central Registration Depository ("CRD address").² (DECL at ¶ 7). On June 24, 2005, Enforcement served the Complaint and Second Notice of Complaint, via certified and first class mail, on Respondent at her CRD address. (DECL at ¶ 9). Respondent did not file a response to the Complaint or Second Notice of Complaint. (DECL at ¶ 11).

The Hearing Officer finds that Enforcement complied with NASD Procedural Rule 9134(b)(1) by sending the mailings to Respondent's CRD address. Accordingly, the Hearing Officer finds that Respondent received effective constructive notice of this proceeding, and further finds that Respondent defaulted by failing to answer the Complaint.

¹ Hereinafter, the statements in the Motion will be designated as "Motion, p."; statements in the Schultz Declaration will be designated as "DECL at ¶"; and Enforcement's exhibits will be designated as "CX-" with the appropriate exhibit and page number.

² Respondent's CRD address is [REDACTED] (CX-1, p. 1).

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

Respondent was registered as a general securities representative with NASD member Charles Schwab from October 3, 2000 to May 14, 2003.³ (DECL at ¶ 5; CX-1, pp. 3-4). From May 29, 2003 to July 7, 2004, Respondent was registered in the same capacity with Scottrade, Inc. ("Scottrade"). (DECL at ¶ 5; CX-1, p. 3). Respondent is not currently associated with any NASD member firm. (CX-1, p. 3).

Nevertheless, Respondent remains subject to NASD jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of the NASD By-Laws, because (1) the Complaint was filed within two years after her association with Scottrade terminated, and (2) the Complaint charges Respondent with misconduct while she was associated with Charles Schwab and with failures to provide information requested pursuant to Rule 8210 during the period that she was associated with Charles Schwab and while she was subject to NASD's retained jurisdiction.⁴

B. Respondent Improperly Used Customer TR's Personal Information

The first cause of the Complaint, attached to this Default Decision as Exhibit A, alleges that, on December 23, 2002, Respondent completed, signed, and submitted applications for Best Buy and Household Bank Gold MasterCard credit cards ("Applications"), writing on the Applications her name and address, but writing customer TR's social security number and date of birth. (Complaint at ¶ 4). Respondent's name is similar to customer TR's name. (DECL at ¶ 12). Customer TR had a securities account at

³ On March 26, 2004, Charles Schwab filed an amended Form U-5, which disclosed that the member had initiated an internal review of Respondent after it received notice from Household Finance Corp. of a potential credit fraud and identity theft matter involving Respondent. (DECL at ¶ 5; CX-2, p. 4).

⁴ In addition, the Complaint was filed within two years of the Amended Form U-5 filed by Charles Schwab on March 26, 2004.

Charles Schwab, and Respondent had access to customer TR's personal account information, including TR's social security number and date of birth. (Complaint at ¶¶ 2-3).

After the credit Applications were approved, Respondent received Best Buy and Household Bank Gold MasterCard credit cards. (Complaint at ¶ 4). Respondent subsequently used the credit cards to purchase products, which were not for the benefit of customer TR. (Complaint at ¶ 5). In early 2004, Respondent had a total of approximately \$6,000 in outstanding charges on the accounts, which were in collection status with Household Bank. (*Id.*). Customer TR did not apply for the credit cards and was not aware that credit had been extended to Respondent based on TR's personal information. (*Id.*).

Under Rule 9215(f) and NASD Notice to Members 99-77, the allegations of the first cause of the Complaint are deemed admitted, and they are hereby incorporated into this Default Decision as findings of fact.

Enforcement submitted the additional information that Respondent admitted that she had completed the credit Applications when Respondent originally replied to the NASD staff's initial May 21, 2004 request for information. (DECL at ¶ 13; Complaint at ¶ 8). Respondent also admitted that she was responsible for paying the credit cards. (DECL at ¶ 13). In an attempt to explain her actions, Respondent claimed that she believed the social security number on the Applications was the Tax Identification Number ("TIN") of her former boyfriend's business. (*Id.*). However, when the NASD staff sought additional information regarding her claim, Respondent failed to respond when requested to provide proof of her boyfriend's business TIN number, and she failed

to explain why she did not write her birth date on the Applications, but instead wrote customer TR's birth date. (DECL at ¶ 14).

NASD Conduct Rule 2110 requires that "a member, in the conduct of her business, shall observe high standards of commercial honor and just and equitable principles of trade." NASD Conduct Rule 2110 "is not limited to securities-related conduct; instead, it covers all unethical business-related conduct."⁵

The SEC has held that Conduct Rule 2110 sets forth an elastic standard intended to encompass a wide variety of conduct that may operate as an injustice to investors or other participants in the marketplace.⁶ Respondent's actions clearly constituted identity theft, an injustice to customer TR, and therefore violated NASD Conduct Rule 2110.⁷

Based on the allegations deemed admitted, the Hearing Officer finds that Respondent violated NASD Conduct Rule 2110, as alleged in the first cause of the Complaint, by improperly using customer TR's personal account information to obtain and use credit cards for Respondent's own use and benefit.

C. Respondent Failed to Respond to NASD Requests for Information

The second cause of the Complaint alleges that Respondent failed to respond to two requests for information and documents sent by the NASD staff on July 1, 2004 and

⁵ Dep't of Enforcement v. Shvarts, No. CAF980029, 2000 NASD Discip. LEXIS 6 (NAC June 2, 2000); See also Leonard John Ialeggio, Exchange Act Rel. No. 37,910 (Oct. 31, 1996) (finding that although Ialeggio's misconduct did not involve securities, his actions cast doubt on his commitment to the fiduciary standards demanded of registered persons in the securities industry and thus properly were the subject of NASD disciplinary action).

⁶ Protective Group Securities Corporation, Exchange Act of 1934 Release No. 34,547, 1994 SEC LEXIS 2516, *21 (Aug. 18, 1994).

⁷ See District Bus. Conduct Comm. v. Kwikkel-Elliott, Complaint No. C0496004 (NAC Jan. 16, 1998) (NAC barred Ms. Kwikkel-Elliott for cheating on her expense account because her lack of honesty and veracity presented a risk to the investing public); District Bus. Conduct Comm. v. Braun, Complaint No. C3B960004 (NAC Jan. 23, 1998) (NAC barred Mr. Braun for cheating on his expense account).

July 19, 2004. (Complaint at ¶¶ 7-11). Each request was made pursuant to NASD Procedural Rule 8210 and sent to Respondent's CRD address. (Id.).

On March 26, 2004, the NASD received an amended Form U-5 disclosing potential credit fraud and identity theft by Respondent. (CX-2). Accordingly, as discussed earlier, on May 21, 2004, the NASD staff sent to Respondent at her CRD address a written request for information and certain documents regarding her knowledge of customer TR and the use of TR's personal information. (Complaint at ¶ 7). On June 4, 2004, the NASD staff received a written response from Respondent, and on June 18, 2004, the staff received a supplemental response from Respondent, which included certain documents. (Complaint at ¶ 8).

On July 1, 2004, the NASD staff sent to Respondent at her CRD address a request for additional documents and information, including proof of her boyfriend's business TIN number and an explanation of the use of customer TR's birthday. (Complaint at ¶ 9; DECL at ¶ 14). On July 19, 2004, the NASD staff sent a second request for additional documents and information to Respondent's CRD address. (Complaint at ¶ 10). Respondent failed to provide any information in response to either of the two requests for additional information issued by the NASD staff. (Complaint at ¶¶ 11).

Under Rule 9215(f) and NASD Notice to Members 99-77, the allegations of the second cause of the Complaint are deemed admitted, and they are hereby incorporated into this Default Decision as findings of fact.

Under NASD Procedural Rule 8210, NASD may require any person subject to its jurisdiction to provide information regarding any matter under investigation. The

obligation to respond is unqualified. Because NASD lacks subpoena power, Rule 8210 is the means by which NASD carries out its regulatory functions. It is a "key element in the NASD's efforts to police its members."⁸ Failure to comply with Rule 8210 requests for information is a serious violation because it subverts NASD's ability to perform its regulatory responsibilities.⁹ A violation of Rule 8210 is also a violation of NASD Conduct Rule 2110.¹⁰

Pursuant to Rule 8210(d), Respondent is deemed to have received the requests for information sent to her CRD address. Accordingly, based on the allegations deemed admitted, the Hearing Officer finds that Respondent received notice of the requests for information, and that she violated NASD Conduct Rule 2110 and NASD Procedural Rule 8210 by failing to respond to those requests.

IV. Sanctions

A. Respondent Violated Conduct Rule 2110

Enforcement argued that Respondent should be barred for improperly using the personal information of customer TR to gain credit. Enforcement argued that, although there is no separate Sanction Guideline for identify theft, such conduct was analogous to conversion. The NASD Sanction Guidelines for conversion or improper use of customer funds recommend a bar "regardless of the amount converted."¹¹

The Hearing Officer finds that Respondent intentionally misappropriated the social security number and birth date of customer TR in order to obtain a financial

⁸ See Richard J. Rouse, Exchange Act Release No. 32,658, 1993 SEC LEXIS 1831, at *7 (1993); Joseph G. Chiulli, Exchange Act Release No. 42,359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000).

⁹ Id.

¹⁰ See Dep't of Enforcement v. Baxter, No. C07990016, 2000 NASD Discip. LEXIS 3, at **21, 25 (NAC Apr. 19, 2000).

¹¹ NASD Sanction Guidelines, p. 38 (2005).

benefit. The Hearing Officer finds that Respondent's conduct exhibits a lack of honesty that is clearly a threat to the investing public, and therefore warrants a bar. The Hearing Officer finds that a bar is warranted without having to determine whether the conduct is analogous to conversion.

B. Failure to Respond to Rule 8210 Requests for Information

The NASD Sanction Guideline for failure to respond to Rule 8210 requests for information states that a bar should be standard where the respondent failed to respond in any manner.¹² Enforcement requested, and the Hearing Officer agrees, that Respondent should be barred. The record is devoid of any mitigating factors that might justify a lesser sanction.

V. Order

Respondent Tonya A. Roberts is barred from associating with any NASD member firm in any capacity for: (1) improperly using customer TR's personal information to obtain and use credit, in violation of NASD Conduct Rule 2110; and (2) failing to respond to requests for information issued by the NASD staff, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

If this Default Decision becomes the final disciplinary action of NASD, the bars shall become effective immediately.

Sharon Witherspoon
Sharon Witherspoon
Hearing Officer

Dated: Washington, DC
September 30, 2005

¹² Id. at 35.

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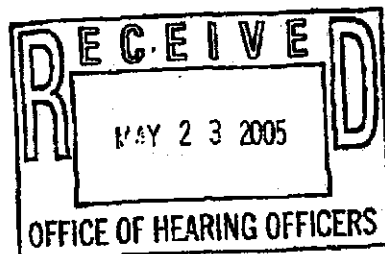
Tonya A. Roberts (via FedEx and first class mail)

Richard S. Schultz, Esq. (via electronic and first class mail)

Rory C. Flynn, Esq. (via electronic and first class mail)

EXHIBIT A

**NASD REGULATION, INC.
OFFICE OF HEARING OFFICERS**



DEPARTMENT OF ENFORCEMENT,

Complainant

vs.

**TONYA A. ROBERTS
Registered Representative
(CRD No. 4174065)**

Respondent

**Disciplinary Proceeding
No. C8A050042**

Hearing Officer

COMPLAINT

Upon information and belief, Complainant alleges as follows:

1. From on or about October 3, 2000 to on or about May 14, 2003, Tonya A. Roberts ("Respondent Roberts") was registered as a General Securities Representative with Charles Schwab & Co., Inc. ("Member") a member of NASD. On or about March 26, 2004, the Member filed an amended Form U5, which disclosed for the first time that the Member had been notified about a potential credit fraud and identity theft matter involving Respondent Roberts. From on or about May 29, 2003 to on or about July 7, 2004, Respondent Roberts was registered in the same capacity with Scottrade, Inc. ("Scottrade"), a member of NASD. Since this complaint is being filed within two years of the filing of the amended Form U-5 by the Member and the termination of Respondent Roberts' registration with Scottrade, Respondent Roberts is subject to the jurisdiction of NASD, pursuant to Article V, Section 4 of the NASD's By-Laws.

FIRST CAUSE FOR COMPLAINT

Conduct Rule 2110 by Respondent Roberts - Obtaining Credit Cards through the Use of a Customer's Personal Information by Respondent Roberts.

2. During all times mentioned herein, TR was a member of the public, who maintained a securities account with the Member.

3. While Respondent Roberts was employed with the Member, she had access to personal account information about TR, which included her social security number and her date of birth.

4. On or about December 23, 2002, Respondent Roberts completed and signed an application for a Best Buy credit card and a Household Bank Gold MasterCard ("Application"). Respondent Roberts wrote her name and address on the Application, but listed TR's Social Security number and date of birth on the Application. Respondent Roberts then submitted the Application to Best Buy and received Best Buy credit card and Household Bank MasterCard.

5. Respondent Roberts then made purchases using the Best Buy credit card and the Household Bank MasterCard, which were for products for some purpose other than the benefit of TR. In or about early 2004, Respondent Roberts had a total of about \$6,000 in outstanding charges on the accounts, which were in collection status with Household Bank. TR did not apply for these credit cards and had no knowledge of these credit cards.

6. The acts, practices and conduct set forth above constitute separate and distinct violations of NASD Conduct Rule 2110 by Respondent Roberts.

SECOND CAUSE FOR COMPLAINT

Conduct Rule 2110 and Procedural Rule 8210 by Respondent Roberts - Failure to Respond to the Staff's Requests for Information by Respondent Roberts.

7. On or about May 21, 2004, NASD staff ("Staff") sent to Respondent Roberts a request that she provide certain documents and information related to her knowledge of TR and

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her use of TR's personal information pursuant to and in accordance with the provisions of NASD Procedural Rule 8210. A response was requested by June 4, 2004. That request for information was sent by first class mail and by certified mail, return receipt requested, to Respondent Roberts' addresses of record as contained in the records of the Central Registration Depository ("CRD Addresses"), which was located on [REDACTED]

[REDACTED] The first class mailing was not returned to the Staff. The certified mailing was returned to the Staff marked "Return to Sender - Unclaimed."

8. On or about June 4, 2004, the Staff received a written response to the request for information. On or about June 18, 2004, the Staff received an additional written response from Respondent Roberts, dated June 14, 2004, with a Household Bank Gold MasterCard statement for one of the accounts in question and other documentation.

9. On or about July 1, 2004, the Staff sent to Respondent Roberts a request that she provide additional documents and information related to her knowledge of TR and her use of TR's personal information pursuant to and in accordance with the provisions of NASD Procedural Rule 8210. A response was requested by July 15, 2004. That request for information was sent by first class mail and by certified mail, return receipt requested, to Respondent Roberts' CRD Addresses. The first class mailing was not returned to the Staff. The certified mailing was returned to the Staff marked "Return to Sender - Unclaimed."

10. On or about July 19, 2004, the Staff sent to Respondent Roberts a second request that she provide the additional documents and information requested relating to her knowledge of TR and her use of TR's personal information pursuant to and in accordance with the provisions of NASD Procedural Rule 8210. A response was requested by August 2, 2004. That request for information was sent by first class mail and by certified mail, return receipt requested, to

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Respondent Roberts' CRD Address. The first class mailing was not returned to the Staff. The certified mailing was returned to the Staff marked "Return to Sender – Unclaimed."

11. Respondent Roberts failed to respond to each and all of the requests for documents and information described in paragraphs 9 and 10 above, and the time for Respondent Roberts to respond has passed.

12. The aforementioned acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 and NASD Procedural Rule 8210 by Respondent Roberts.

PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

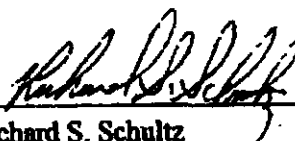
- A. Findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;
- B. An order imposing sanctions upon the Respondent in accordance with NASD Rule 8310;
- C. An order imposing such costs of any proceeding as are deemed fair and appropriate under the circumstances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

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D. An order imposing any other fitting sanction.

May 20, 2005

Date



Richard S. Schultz
Regional Counsel
NASD, District 8
55 West Monroe Street
Chicago, IL 60603-5052

May 20, 2005

Date



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

Of Counsel:

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

Mark A. Koerner, Esq.
Department of Enforcement
NASD
55 West Monroe Street
Chicago, IL 60603-5052