

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT

Complainant,

v.

HEATHER FURGASON
(CRD No. 4241326),

Respondent.

Disciplinary Proceeding
No. C8A050054

Hearing Officer – AWH

DEFAULT DECISION

November 23, 2005

Formerly registered representative misused funds in customer accounts, in violation of NASD Conduct Rules 2330 and 2110. Respondent is barred from associating with any member firm in any capacity for the violation.

Appearances:

Kevin G. Kulling, Esq., for the Department of Enforcement.

No appearance by or for Heather Furgason.

DECISION

Background

On June 15, 2005, the Department of Enforcement ("Enforcement") issued the one-cause Complaint in this proceeding, alleging that Heather Furgason misused customer funds, in violation of NASD Conduct Rules 2330 and 2110.

Furgason did not file an Answer to the Complaint; nor did she respond to the Second Notice of Complaint, mailed to her on July 22, 2005. As a result, Enforcement filed a Motion for Entry of Default Decision on September 28, 2005. Furgason failed to respond to the Motion. Accordingly, pursuant to Procedural Rules 9215(f) and 9269,

Enforcement's Motion will be granted, and the allegations of the Complaint, which is attached to this decision, will be deemed admitted.

Findings of Fact¹

Respondent

Furgason was first registered with NASD as a general securities representative in September 2000. She was last registered with NASD through member firm Banc One Securities Corporation ("Banc One"), from December 12, 2002, until the termination of her registration on January 7, 2004. Furgason is not currently associated with any member firm.

Misuse of Customer Funds

In June 2003, Furgason effected a trade in customer PE's IRA account. PE attempted to cover that trade by transferring funds from his bank account at Banc One's bank affiliate; however, due to missing paper work, the bank affiliate failed to transfer approximately \$3,791 of the amount needed to cover the trade. Unrelated to that trade, in August 2003, PE contacted Furgason because he was having difficulty withdrawing \$640 from a different branch of the bank affiliate. To assist PE with the shortfall in the IRA account and his need for cash, Furgason obtained money from the account of GR, a customer who was unrelated to PE. Without the knowledge or consent of GR, Furgason obtained a cashier's check in the amount of \$3,802 from GR's bank savings account and deposited the check in PE's IRA account.² Furgason completed a savings withdrawal slip on GR's account for \$640 that was transferred to PE's bank account. Furgason indicated

¹ All findings of fact are based upon the admitted allegations in the Complaint, the Declaration Supporting a Motion for Entry of Default Decision by Kevin G. Kulling, and the seven exhibits attached thereto.

² Some of the various amounts of money at issue do not match precisely.

on the withdrawal slip that the amount was a "debt correction," and she printed a bank employee's name on the slip to indicate approval of the transfer.

Shortly after PE's trade was covered with GR's funds, the bank affiliate transferred \$2,581, the majority of the shortfall it failed earlier to transfer to PE's IRA account. As a result, PE had a surplus in his IRA account. To remedy that situation, in October 2003, Furgason asked PE to complete an IRA "One-Time Distribution" request. As a result, Furgason obtained a check in the amount of \$2,583 from PE's IRA account. Furgason then presented the check and a copy of the distribution request signed by PE to a bank teller at Bank One's bank affiliate. Furgason cashed the check and then deposited \$1,500 into a bank account that she and a relative maintained. Furgason placed the remaining \$1,083 into an envelope that she retained.

Also in October 2003, to replace the money Furgason caused to be transferred from GR to PE, Furgason completed a withdrawal slip requesting \$4,442 from the savings account of MM, a customer who is not related to either GR or PE, and who did not give permission to Furgason to make the withdrawal. To facilitate the transaction, Furgason completed a withdrawal slip which indicated that she was purchasing a cashier's check, and she again printed the name of a bank employee on the slip. She then deposited the cashier's check into GR's account, printing on the credit slip the name of a bank employee under the approval section.

Finally, in November 2003, to replace the money she obtained from MM's savings account, Furgason deposited in MM's account the \$1,083 from PE's IRA distribution that she had retained in an envelope, \$1,400 from the account she held with a

relative, \$1,000 from her personal savings account at Bank One's bank affiliate, \$916 from another personal bank account she held, and \$48 in cash.

Service of the Complaint

On June 15, 2005, Enforcement served Furgason with the Complaint and Notice of Complaint by both first-class and certified mail, sent to her CRD address and an alternate address obtained by NASD staff. The first class mailing to the CRD address was returned marked "forwarding order expired." The certified mailing to the CRD address was returned, marked "Return to Sender." The first class mailing to the alternate address was not returned. The certified mailing to the alternate address was returned, marked "Unclaimed." Furgason did not file an Answer.

On July 22, 2005, Enforcement served the Complaint and Second Notice of Complaint on Furgason in an identical fashion. The mailings to the CRD address were not returned. Neither mailing to the alternate address was returned, nor was the delivery receipt returned. Furgason again failed to file an Answer or respond to the Complaint in any way.

Discussion and Conclusions

Jurisdiction

Article V, Section 4 of the NASD By-Laws provides for a two-year period of retained jurisdiction over a registered person after the effective date of the person's termination of registration. During this period of retained jurisdiction, NASD may file a complaint based upon conduct that occurred while the individual was registered through a member firm.

Enforcement filed the Complaint on June 15, 2005, within two years of the termination of Furgason's registration. The Complaint alleges misconduct while Furgason was registered with an NASD member firm. Therefore, NASD has jurisdiction over this proceeding.

Respondent's Default

Enforcement properly served the Complaint on Furgason by sending it via first-class and certified mail to her CRD address, as well as to an alternate address obtained during the course of the investigation. Pursuant to NASD Procedural Rule 9134, the mailings provide constructive notice of the instant proceeding. Because Furgason failed to respond to the Complaint, Procedural Rules 9215(f) and 9269 authorize entry of a default decision against her. Accordingly, the allegations in the Complaint are deemed admitted.

Misuse of Customer Funds

NASD Conduct Rule 2330(a) mandates that "[n]o member or other person associated with a member shall make improper use of a customer's securities or funds." A person misuses funds by failing to use or apply them as directed by the customer. See *Alderman v. SEC*, 104 F.3d 285 (9th Cir. 1997). Misuse of funds is "patently antithetical to high standards of commercial honor and just and equitable principles of trade," and thus a violation of NASD Conduct Rule 2110. *In re Wheaton D. Blanchard*, Exchange Act Release No. 12,484, 1976 SEC LEXIS 1571 at *2 (May 27, 1976); *In re Joel Eugene Shaw*, Exchange Act Release No. 34,509, 1994 SEC LEXIS 2493 at *6 (Aug. 10, 1994). NASD's "disciplinary authority is broad enough to encompass business-related conduct that is inconsistent with just and equitable principles of trade, even if that activity does

not involve a security.” *In re Ernest A. Cipriani, Jr.*, Exchange Act Release No. 33,675, 1994 SEC LEXIS 506 at *4 (Feb. 24, 1994).

Furgason misused the funds of customers GR and MM by applying them for the benefit of PE, without the knowledge or consent of either GR or MM. To the extent that Furgason misused PE’s IRA account, she violated NASD Conduct Rules 2330 and 2110. To the extent that she misused bank account funds of bank customers, Furgason engaged in unethical conduct that violated Conduct Rule 2110.

Sanctions

The NASD Sanction Guideline for misuse of funds recommends consideration of a bar.³ Where the misuse occurred as a result of the respondent’s misunderstanding of the customer’s intended use of the funds, or where other mitigating factors exist, a suspension of six months to two years may be considered. Here there are no mitigating factors. *The misuse was intentional and flagrant. Furgason orchestrated the kiting of two customer’s funds to benefit a third customer, while insuring that she could earn a commission on a trade in the third customer’s account. Her misconduct was aggravated by handwriting the names of bank employees on debit and credit authorization forms, giving her access to the customers’ funds, and making it appear as if those bank employees approved the transactions. Accordingly, a bar is the appropriate sanction.*

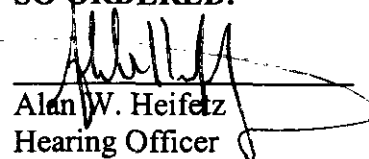
Conclusion

Heather Furgason is barred from association with any NASD member firm in any capacity for misusing customer funds, in violation of NASD Conduct Rules 2330 and

³ NASD SANCTION GUIDELINES, at 38.

2110. The bar shall become effective immediately if this Decision becomes the final disciplinary action of NASD.

SO ORDERED.

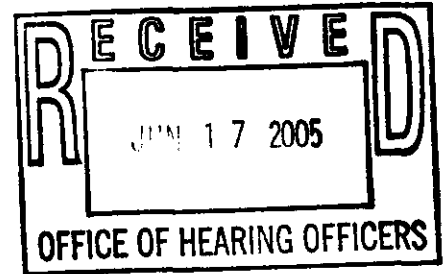

Alan W. Heifetz
Hearing Officer

Copies to:

Via First Class Mail & Overnight Courier
Heather Furgason

Via First Class & Electronic Mail
Kevin G. Kulling, Esq.
Roger D. Hogoboom, Esq.
Rory C. Flynn, Esq.

**NASD
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Department of Enforcement,

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COMPLAINT

Upon information and belief, Complainant alleges as follows:

1. Respondent Heather Furgason was associated with Banc One Securities, Inc., a member of NASD, from December 2002 until December 2003. As a result, pursuant to Article V, Section 4 of NASD's By-Laws, Respondent Furgason is subject to the jurisdiction of NASD.

**CAUSE OF COMPLAINT
NASD Conduct Rules 2110 and 2330**

2. In June 2003, Respondent Furgason effected a trade in customer PE's IRA account.
3. Customer PE transferred funds from his bank account at the member's bank affiliate in order to pay for the trade. However, due to some missing paperwork, the bank failed to transfer approximately \$3,791.
4. In order to retain the transaction in customer PE's account, Respondent Furgason obtained a cashier's check in the amount of \$3,802 from the bank savings account of customer GR, who is unrelated to customer PE, and without the knowledge or consent of customer GR.

Respondent Furgason received the check from GR's account and deposited GR's funds into PE's IRA account.

5. In August 2003, an additional \$2,581 was transferred from PE's bank account into PE's IRA account as originally requested in June 2003. This resulted in a surplus in PE's IRA account.
6. Also in August 2003, PE contacted Respondent Furgason because he wanted to withdraw \$640 from his bank account but was having difficulty with the withdrawal away from his branch bank.
7. Unable to assist PE with the withdrawal from his own account, Respondent Furgason completed a savings withdrawal slip again from customer GR's account, indicated on the slip that it was a "debit correction" and printed a bank employee's name on the slip. Accordingly, \$640 was transferred from customer GR's account to PE's bank account, without the knowledge or authority of customer GR.
8. In October 2003, at Respondent Furgason's request, customer PE completed an IRA "One-Time Distribution" request. As a result, a \$2,583 check from PE's IRA was delivered to Respondent Furgason, who then held the check. The intent of the distribution was to withdraw the surplus \$2,581 in PE's IRA account.
9. Respondent Furgason then presented a copy of the distribution request signed by PE and the distribution check to a bank teller at the Member's bank affiliate. After receiving cash, Respondent Furgason deposited approximately \$1,500 into a bank account Respondent Furgason held with a relative of hers. The remaining \$1,083 was placed in an envelope and held by Respondent Furgason.
10. Also in October 2003, Respondent Furgason completed a withdrawal slip requesting \$4,442 from the savings account of customer MM, who is unrelated to GR or PE, and who did not

give permission to Respondent Furgason to do so. In order to facilitate the transaction, Respondent Furgason completed a debit slip on which she indicated that she was purchasing a cashier's check and she printed the name of a bank employee on the request.

11. Respondent Furgason then completed a savings credit slip for GR's account. On the credit slip she wrote, "deposit cashier's check" and she printed the name of a bank employee under the approval section. Respondent Furgason then deposited the \$4,442 from customer MM into GR's account.
12. Finally, in November 2003, Respondent Furgason took the \$1,083 from PE's IRA distribution that had been placed in an envelope, \$1,400 from the deposit Respondent Furgason made into the account she held with a relative, \$1,000 from Respondent Furgason's personal bank savings account at the Member's bank affiliate, \$916 from another of Respondent Furgason's personal bank accounts, along with \$48 in cash, and deposited the funds into MM's account to make up for the earlier unauthorized withdrawal of \$4,442.
13. The above misuse of customers PE, GR and MM's funds by Respondent Furgason constitute separate and distinct violations of NASD Conduct Rules 2110 and 2330.

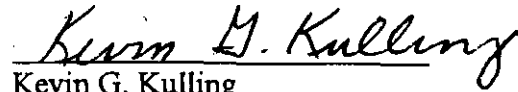
PRAYER FOR RELIEF

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 requiring Respondent to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest;
- D. An order imposing such costs of any proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330; and

E. An order imposing any other fitting sanction.

Date: June 15, 2005



Kevin G. Kulling
Regional Counsel
NASD Dept. of Enforcement
55 W. Monroe St., Suite 2700
Chicago, IL 60603
(312) 899-4348



Carlotta A. Romano
Senior Vice President and
Regional Director
NASD, District 8
55 W. Monroe St., Suite 2700
Chicago, IL 60603

Of Counsel:

Rory C. Flynn
Department of Enforcement
NASD
1801 K Street, N.W., Suite 800
Washington, D.C. 20006
(202) 974-2874

Mark A. Koerner
Department of Enforcement
NASD
55 W. Monroe St., Suite 2700
Chicago, IL 60603
(312) 899-4337