

NASD OFFICE OF HEARING OFFICERS**DEPARTMENT OF ENFORCEMENT,****Complainant,****v.****ROBERT W. KRUSEC
(CRD No. 4633666),****Respondent.****Disciplinary Proceeding
No. C8A050061****Hearing Officer – DRP****DEFAULT DECISION****December 20, 2005**

Respondent is barred from associating with any NASD member firm in any capacity for converting funds, in violation of NASD Conduct Rule 2110, and for failing to respond to a NASD staff request for testimony, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

Appearances

Richard A. March, Senior Regional Attorney, Chicago, IL (Rory C. Flynn, Washington, DC, Of Counsel) for Complainant.

No appearance by or for Robert W. Krusec.

DECISION**I. Background**

On July 6, 2005, the Department of Enforcement filed a two-count Complaint in this proceeding, attached to this Decision as Exhibit A. The Complaint alleges that Respondent Robert W. Krusec (Respondent or Krusec) converted funds, in violation of NASD Conduct Rule 2110, and failed to appear at an on-the-record interview (OTR), in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110. Respondent did not file an Answer to the Complaint.

Accordingly, on September 21, 2005, Enforcement filed a motion for entry of default decision, supported by the declaration of Richard March and seven exhibits. Krusec 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 July 1, 2005, 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). The certified mailing was returned marked unclaimed. The first class mailing was not returned. Respondent did not file an Answer. (Decl. ¶ 6; CX-1, CX-2, CX-3.)

On July 29, 2005, Enforcement served the Complaint and Second Notice of Complaint on Respondent at the CRD Address by certified and first class mail, and by courier.² The certified mailing was signed for by "A. Isbell," while the mail sent by courier was signed for by "E. Isbell." The first class mailing was not returned. Respondent failed to file an Answer or otherwise respond to the Complaint. (Decl. ¶¶ 7-8; CX-4, CX-5, CX-6.)

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. 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.

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 Enforcement sent a copy of the Second Notice of Complaint via Federal Express two-day service. (Decl. ¶ 7; CX-6.)

III. Jurisdiction

Respondent entered the securities industry on September 7, 2001, as a controller with NASD member firm Dresner Investment Services, Inc. (Dresner). Respondent applied to sit for examinations to obtain Series 27, 28 and 63 licenses, but failed to take the examinations. His employment with Dresner was terminated on June 17, 2004. Since that time, he has not been associated or registered with any NASD member. (Decl. ¶5; CX-1, CX-2.)

Although he was never registered, Respondent was associated with Dresner, because a "person associated with a member" includes "a natural person who . . . has applied for registration"³ Respondent is thus 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 association with Dresner, alleges misconduct that occurred while he was an associated person, and a failure to comply with requests for testimony made during the two-year period following the termination.

IV. Findings of Fact and Conclusions of Law

A. Conversion

The first cause of the Complaint charges that Respondent violated NASD Conduct Rule 2110 by converting funds totaling \$129,173 from a Dresner affiliate (Affiliate).⁴ More specifically, the Complaint alleges that as controller of Affiliate, Respondent caused the electronic transfer of corporate funds to his personal bank accounts without knowledge or approval of Affiliate, from in or about May 2002 to in or about June 2004. (Compl. ¶ 2; Decl. ¶¶ 9-10.)

³ NASD By-Laws, Art. I (dd).

⁴ The Complaint, which alleges that Respondent was associated with Dresner from in or about May 2002 to in or about June 2004, appears to refer to the period when Respondent was also controller of Dresner Capital, a Dresner affiliate.

In a letter to the president of Dresner dated July 2004, Respondent admitted taking money from Affiliate, and authorized Dresner to withdraw approximately \$11,000 from his 401(k) account as partial repayment for the funds he converted.⁵ (Decl. ¶ 10.)

NASD Conduct Rule 2110 states a broad ethical principle that members "shall observe high standards of commercial honor and just and equitable principles of trade." Rule 115 extends this requirement to persons associated and registered 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.⁶ Conversion is "an intentional and unauthorized taking of and/or exercise of ownership over property by one who neither owns the property nor is entitled to possess it."⁷ It is well settled that conversion of funds violates Rule 2110.⁸

In this case, Respondent deliberately transferred corporate funds to his own accounts without authorization and admitted as much in his e-mails and letters to Dresner's president.⁹ Accordingly, the allegations in the first cause of Complaint, which are deemed admitted, are

⁵ In several emails and letters to Dresner's president, Respondent admitted using the funds to pay personal bills, including mortgage, car and insurance payments. Respondent explained that he was experiencing financial difficulties due to his wife's medical condition, which precluded her from "obtaining gainful employment." (Decl. ¶ 10.)

⁶ See *Vail v. SEC*, 101 F.3d 37, 39 (5th Cir. 1996) (citations omitted); *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); *Dep't of Enforcement v. Bendtsen*, No. C01020025, 2004 NASD Discip. LEXIS 13, at *16 (NAC Aug. 9, 2004) ("[W]e have determined that disciplinary hearings under Rule 2110 are 'ethical proceedings, and one may find a violation of the ethical requirements where no legally cognizable wrong occurred [and that] NASD has authority to impose sanctions for violations of 'moral standards' even if there was no 'unlawful' conduct,'" quoting *Dep't of Enforcement v. Shvarts*, No. CAF980029, 2000 NASD Discip. LEXIS 6, at *11 (NAC June 2, 2000)).

⁷ *NASD Sanction Guidelines* (2005 ed.) at 38 n.2.

⁸ See *Dep't of Enforcement v. Brinton*, No. C04990005, 1999 NASD Discip. LEXIS 36, at *8 (NAC Dec. 14, 1999).

⁹ A criminal action has been brought against Respondent by the State of Illinois in the Circuit Court of Cook County. (Decl. ¶ 14, n.3)

sufficient to establish for the purposes of this default decision that Respondent violated NASD Conduct Rule 2110.

B. Failure to Respond to Requests for Information

The second cause of the Complaint charges that Respondent violated Procedural Rule 8210 and Conduct Rule 2110 by failing to appear at an on-the-record interview (OTR). The Complaint alleges that on May 18, 2005, the staff sent a letter to Respondent by first class and certified mail to his CRD address, pursuant to NASD Procedural Rule 8210, requesting that he appear for an OTR on June 2, 2005, to provide information regarding the conversion of funds from Affiliate. The first class mailing was not returned, and the return receipt for the certified mailing was returned, bearing the signature "L. Krusec." (Compl. ¶ 5; Decl. ¶¶12-13.)

The Complaint further alleges that on June 1, 2005, the staff sent a letter by facsimile to Respondent's attorney, inquiring whether Krusec would appear at the OTR. Though the transmission sheet indicated that the facsimile was transmitted successfully, neither Respondent nor his attorney responded to the letter. On June 2, Respondent did not appear for the OTR and has failed to respond to the request in any fashion. The staff served the request in accordance with Rule 8210(d), and pursuant to that rule, Respondent is deemed to have received it. (Compl. ¶¶ 6-8; Decl. ¶¶ 14-17.)

Procedural Rule 8210 provides that NASD "staff shall have the right to require a member . . . to provide information . . . and to testify . . . with respect to any matter involved in [an] investigation" Rule 8210 further states that "no . . . person shall fail to provide information . . . pursuant to this Rule." In the absence of subpoena power, NASD must rely on Rule 8210 to obtain information from members in the course of its investigations.¹⁰ Accordingly, members

¹⁰ *Dep't of Enforcement v. Quattrone*, No. CAF030008, 2004 NASD Discip. LEXIS 17, at *46 (NAC Nov. 22, 2004), *appeal docketed*, No. 3-11786 (SEC Dec. 28, 2004).

and associated persons have a duty to cooperate fully and promptly with NASD requests for information.¹¹

Thus, the allegations in the second cause of the Complaint, which are deemed admitted, are sufficient to establish for purposes of this default decision that Respondent failed to respond to the staff's request for testimony, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

V. Sanctions

NASD Sanction Guidelines provide that a bar is standard for conversion, regardless of the amount converted.¹² Under the Guidelines, a bar is also standard for failure to respond to requests for information.¹³ There are no mitigating circumstances that would warrant any sanction less than a bar for either violation. Accordingly, Respondent will be barred in all capacities for each violation.

VI. Conclusion

Respondent Robert W. Krusec is barred from association with any member firm in any capacity for conversion of funds, in violation of NASD Conduct Rule 2110, and for failure to

¹¹ *Brian L. Gibbons*, Exchange Act Release No. 37,170, 1996 SEC LEXIS 1291, at *7 (May 8, 1996), *aff'd*, 112 F.3d 516 (9th Cir. 1997).

¹² *Guidelines* (2005 ed.) at 38.

¹³ *Id.* at 35.

respond to requests for information, in violation of NASD Procedural Rule 8210 and Conduct Rule 2110. The bars shall become effective immediately if this Decision becomes the final disciplinary action of NASD.

SO ORDERED.



Dana R. Pisanello
Hearing Officer

Dated: December 20, 2005
Washington, DC

Copies to: Robert W. Krusec (*via overnight and first class mail*)
Richard A. March, Esq. (*via electronic and first class mail*)
Roger D. Hogoboom, 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.

ROBERT W. KRUSEC
Associated Person
(CRD No. 4633666)

Respondent

**Disciplinary Proceeding
No. C8A050061**

Hearing Officer:

COMPLAINT

Upon information and belief, Complainant alleges as follows:

1. Between in or about May 2002 and in or about June 2004, Robert Krusec ("Krusec") was associated with Dresner Investment Services, Inc. ("Member"), a member of NASD. In or about August 2004, the Member filed a Uniform Termination Notice for Securities Industry Registration (Form U-5), which terminated Respondent's association with the Member. Given that this complaint was filed within two years of the effective date of the termination of association of Respondent with the Member, Respondent is subject to the jurisdiction of NASD, pursuant to Article V, Section 4 of NASD's By-Laws.

**CAUSE FOR COMPLAINT
NASD Conduct Rule 2110
Conversion**

2. Between in or about May 2002 and in or about June 2004, Krusec, as a Controller of Dresner Capital, the Member's affiliate ("Affiliate"), caused the electronic transfer of funds

totaling \$129,173 from the Affiliate, to his own personal bank accounts, without the knowledge and approval of the Affiliate, and converted the funds to his own person use.

3. Such acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 on the part of Krusec.

SECOND CAUSE FOR COMPLAINT
NASD Conduct Rule 2110 and NASD Procedural Rule 8210
Failure to Appear at an OTR

4 Paragraphs 1 through 3 above are realleged and incorporated herein by reference.

5. On or about May 18, 2005, NASD staff sent Krusec a letter requesting that he appear at an on-the-record interview ("OTR") on June 2, 2005 to provide certain information regarding the allegation of conversion, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210. The request for information was sent via first class mail and certified mail, return receipt requested, to Krusec's address of record as contained in the records of the Central Registration Depository ("CRD address"). The first class mail was never returned and the return receipt was sent back with the signature of L. Krusec.

6. On or about June 1, 2005, NASD staff sent Krusec's attorney a letter inquiring whether Krusec would appear at the OTR on June 2, 2005. The letter was sent by facsimile and received by Krusec's attorney.

7. Neither Krusec nor Krusec's attorney ever contacted the NASD staff with regard to the letters sent on May 18, 2005 and June 1, 2005.

8. On June 2, 2005, Krusec failed to appear for his OTR.

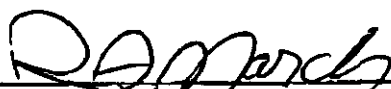
9. The acts, practices and conduct described above constitute separate and distinct violations of NASD Conduct Rule 2110 and Procedural Rule 8210 by Krusec.

PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Krusec committed the violations charged and alleged herein;
- B. An order imposing sanctions upon Krusec in accordance with NASD Procedural Rule 8310;
- C. An order requiring Krusec 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.

6-29-05
Date


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6-30-05
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