

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

STUART M. HAMMERLE
(CRD No. 1008986),

Respondent.

Disciplinary Proceeding
No. C9A050017

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

July 11, 2005

Respondent converted funds from a customer, in violation of NASD Conduct Rules 2330(a) and 2110, and failed to respond to requests for information, in violation of NASD Conduct Rule 2110 and NASD Procedural Rule 8210. The Respondent is barred from association with any member firm in any capacity for each violation.

Appearances

Thomas M. Huber, Regional Counsel, Philadelphia, PA (Rory C. Flynn, Chief Litigation Counsel, Washington, D.C., Of Counsel) for the Department of Enforcement.

No appearance for the Respondent.

DECISION

I. Introduction

On April 6, 2005, the Department of Enforcement ("Enforcement") filed the Complaint against the Respondent Stuart M. Hammerle ("Hammerle" or the "Respondent"). The Complaint contains two causes of action. In the first cause of action, the Complaint alleges that the Respondent violated NASD Conduct Rules 2330(a) and 2110 by converting a total of \$15,000 from customer BR. In the second cause of action,

the Complaint alleges that the Respondent violated NASD Conduct Rule 2110 and NASD Procedural Rule 8210 by failing to respond to three written requests that he appear for an on-the-record interview at NASD's Philadelphia office. NASD staff issued the requests pursuant to Rule 8210.

Hammerle did not answer or otherwise respond to the Complaint. Consequently, on June 24, 2005, Enforcement filed a Motion for Entry of Default Decision ("Motion"). Enforcement's Motion is supported by the Declaration of Thomas M. Huber ("Huber Decl.") and six exhibits. Hammerle did not respond to the Motion. Thus, pursuant to NASD Procedural Rules 9215 and 9269, the Hearing Officer grants Enforcement's Motion.

II. Respondent's Default

Enforcement served Hammerle by certified mail in accordance with NASD Procedural Rules 9134(a)(2) and 9134(b)(1). Enforcement mailed copies of the Complaint, Notice of Complaint, and Second Notice of Complaint to Hammerle at his last known residential address shown in the Central Registration Depository (the "CRD address").¹ Hammerle thus received valid constructive notice of this proceeding.² Accordingly, the Hearing Officer finds Hammerle in default and deems the allegations of the Complaint admitted.³

¹ Huber Decl. ¶¶ 11-12.

² See NASD Procedural Rule 9134(b)(1), (2) (allowing for service at address listed in CRD). See also *Department of Enforcement v. Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at * 5 n.1 (N.A.C. Dec. 9, 2003) (finding respondent received constructive notice when complaint was mailed to respondent's CRD address).

³ The following Findings of Fact incorporate the allegations in the attached Complaint.

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

Article V, Section 4 of the NASD By-Laws allows NASD to retain jurisdiction over a formerly registered person for two years following the effective date his or her registration terminated. Moreover, Article V, Section 4 of the NASD By-Laws grants NASD the power to request information from formerly registered persons during this period of retained jurisdiction. According to Hammerle's record in the Central Registration Depository ("CRD"), he was associated with Rutherford, Brown & Catherwood, LLC ("Rutherford"), an NASD member firm, from July 31, 2003, until October 20, 2004, during which time he was registered as a General Securities Representative.⁴ His registration with NASD terminated effective November 1, 2004, and he has not been registered with NASD or associated with a member firm since that date. NASD staff mailed the information requests that are the subject of the Second Cause of Complaint, and Enforcement filed the Complaint, within two years after Hammerle's registration terminated. Accordingly, the Hearing Officer finds that NASD has jurisdiction of this proceeding.

B. Conversion of Customer Funds

The First Cause of Complaint alleges that on October 13, 2004, the Respondent, without BR's knowledge or consent, submitted a letter to Rutherford directing the firm to send a \$10,000 check to the Respondent's landlord and another for \$5,000 to an entity with which the Respondent had personal business dealings.⁵ Based upon this written instruction, Rutherford forwarded a check to each designated payee, and each negotiated

⁴ Ex. 1, at 2.

⁵ Compl. ¶¶ 4-5.

the check upon receipt. The Complaint further alleges that the Respondent intended to benefit personally by the payments from BR's account.

The foregoing allegations are sufficient to establish that Hammerle converted a total of \$15,000 from BR, in violation of NASD Conduct Rules 2330(a) and 2110.

C. Failure to Provide Information

The Second Cause of Complaint alleges that NASD staff served Hammerle with four written requests for information pursuant to NASD Procedural Rule 8210. Each request was sent to the Respondent at his CRD address.

NASD staff sent the first request on December 6, 2004, and the Respondent provided a partial response dated December 27, 2004.⁶ Thereafter, NASD staff issued a second Rule 8210 request to the Respondent dated January 19, 2005, which required that he appear on February 2, 2005, for an on-the-record interview at NASD's Philadelphia office. Although NASD staff used the wrong postal zip code, the Respondent received the request. On the morning of February 2, 2005, the Respondent called NASD's Philadelphia office and left a voice mail message in which he stated that he could not appear and testify that day.⁷ The Respondent did not give a reason for his claimed inability to appear, and he did not appear at the designated time.

The next day, NASD staff sent the Respondent a third Rule 8210 request. This request required the Respondent to appear on February 15, 2005, for an on-the-record interview. The Respondent did not respond to the request.⁸

⁶ Compl. ¶ 11.

⁷ *Id.* ¶ 12: Ex. 2.

⁸ Once again, NASD staff sent the request using the wrong zip code. However, the receipt for the certified mailing was returned bearing an illegible signature. (Compl. ¶ 13: Ex. 3.)

On March 15, 2005, NASD staff sent the Respondent a final Rule 8210 request for him to appear and testify. Although NASD staff received a receipt for the certified mailing bearing the signature of "Peter Hammerle," the Respondent did not comply with the request.⁹

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.¹⁰ Here, although the Respondent received valid notice of three requests that he provide testimony, he failed to comply. Hammerle thereby violated Procedural Rule 8210 and Conduct Rule 2110.

IV. Sanctions

Enforcement seeks a bar both for Hammerle's conversion of customer funds and for his failures to respond to the staff's requests for information. Enforcement does not seek a fine in light of its request that he be barred. The Hearing Officer will impose the requested sanctions.¹¹

For conversion of customer funds, the NASD Sanction Guidelines ("Guidelines") recommend a bar unless there are mitigating factors, such as evidence of a misunderstanding regarding the customer's intention regarding the use of his or her

⁹ Compl. ¶ 14; Ex. 4.

¹⁰ See, e.g., *Department of Enforcement v. Valentino*, No. FP1010004, 2003 NASD Discip. LEXIS 15, at *12 (N.A.C. May 21, 2003), *aff'd*, 2004 SEC LEXIS 330 (Feb. 13, 2004) ("It is well established that because NASD lacks subpoena power over its members, a failure to provide information fully and promptly undermines NASD's ability to carry out its regulatory mandate.") (citation omitted); *Joseph G. Chiulli*, Exchange Act Release No. 42,359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for the NASD effectively to conduct its investigations, and emphasizing that NASD members and associated persons must fully cooperate with requests for information).

¹¹ The Hearing Officer will not order restitution because the record indicates that Rutherford reimbursed BR for her loss.

funds.¹² Here, there is no evidence of any mitigating factors that would reduce the level of sanctions. Accordingly, a bar is the appropriate sanction for this violation.

With respect to the Second Cause of Complaint, failing to respond in any manner to the requests for information NASD Staff issued pursuant to NASD Procedural Rule 8210, the Guidelines recommend the imposition of a bar unless mitigating circumstances exist warranting a lesser sanction.¹³ Here, the record discloses no mitigating factors. Accordingly, a bar also is appropriate for this violation.

V. Order

Stuart M. Hammerle is barred from association with any member firm in any capacity for conversion of customer funds, in violation of NASD Conduct Rules 2330(a) and 2110, and for failing to respond to three requests for information, in violation of NASD Conduct Rule 2110 and NASD Procedural Rule 8210.

These sanctions shall become effective once this Default Decision becomes the final disciplinary action of NASD.



Andrew H. Perkins
Hearing Officer

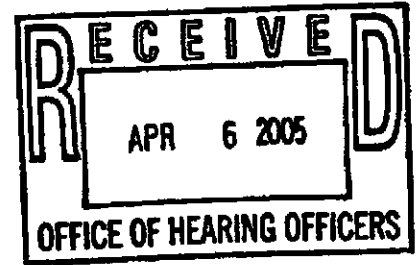
Copies to:

Stuart M. Hammerle (by overnight courier and first-class mail)
Thomas M. Huber, Esq. (by first-class and electronic mail)
Rory C. Flynn, Esq. (by first-class and electronic mail)

¹² NASD Sanction Guidelines 38 (2005 ed.).

¹³ *Id.* at 35.

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Department of Enforcement,

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v.

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CRD No. 1008986

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No. C9A050017

Hearing Officer -

COMPLAINT

Date: April 4, 2005

Upon information and belief, Complainant alleges as follows:

1. Respondent Stuart M. Hammerle ("Hammerle") first became registered with NASD in 1981 as a General Securities Representative. He was registered with Rutherford, Brown & Catherwood ("RBC") in that capacity from July 31, 2003 to November 1, 2004. He has not been registered with any member since November 1, 2004. NASD retains jurisdiction over Hammerle for purposes of this Complaint pursuant to Article V, Section 4 of NASD's By-Laws in that: the misconduct alleged in Cause One occurred while Hammerle was associated with RBC; and, this Complaint was filed within, and the violations of Procedural Rule 8210 alleged in Cause Two occurred within, two years after RBC filed a Form U5 with NASD for Hammerle.

CAUSE ONE OF COMPLAINT
(Conduct Rules 2330(a) and 2110)

2. The allegations in Paragraph 1 above are re-alleged and incorporated herein by reference.
3. At the times relevant herein, BR maintained an account [REDACTED] at RBC. Hammerle was the account executive for BR's account.
4. On about October 13, 2004, and without BR's knowledge, consent or authorization, Hammerle submitted to RBC a letter (hereinafter "LOA") that reflected BR's purported signature and stated, "Please send checks payable to the businesses below from my Rutherford, Brown & Catherwood margin account, [REDACTED] Typed below that sentence were the names of two entities, GWC and WAD, their respective address and the name of a person to whose attention the check should be directed. The amount \$10,000 was typed to the immediate right of GWC and the amount \$5,000 was typed to the immediate right of WAD.
5. GWC was Hammerle's landlord. WAD was a business with which Hammerle had personal business-related dealings.
6. Hammerle knew BR had not prepared or signed the LOA. In submitting the LOA to RBC, Hammerle intended for the checks, if issued and negotiated, to be applied by GWC and WAD for his benefit.
7. On about October 13, 2004, RBC issued a check payable for \$10,000 to GWC and sent the check to GWC. GWC negotiated the check.
8. On about October 13, 2004, RBC issued a check payable for \$5,000 to WAD and sent the check to WAD. WAD negotiated the check.
9. Based on the foregoing, Hammerle violated NASD Conduct Rules 2330(a) and 2110.

CAUSE TWO OF COMPLAINT
(Procedural Rule 8210 and Conduct Rule 2110)

10. The allegations in Paragraph 1 above are re-alleged and incorporated herein by reference.
11. By a letter dated December 6, 2004, NASD requested, pursuant to Procedural Rule 8210, information and documents from Hammerle concerning the two checks drawn on BR's account on about October 13, 2004 that were payable to GWC and WAD. On about January 4, 2005, NASD received a letter from Hammerle that responded, at least in part, to NASD's letter dated December 6, 2004.
12. By a letter dated January 19, 2005, NASD required Hammerle, pursuant to Rule 8210, to appear in the Philadelphia District Office on February 2, 2005 to testify under oath and to produce certain documents specified in the letter including copies of bills, invoices and correspondence relating to GWC and WAD. The letter warned Hammerle that failure to appear to testify or failure to produce the documents requested could result in disciplinary action against him by NASD and that the sanctions that could be imposed against him included a bar. The letter was sent to Hammerle's residential address shown in the CRD, which is an address in Philadelphia, Pennsylvania, by first class and certified mail except that an incorrect zip code was used inadvertently. Hammerle's CRD zip code is 19119, but the address to which the letter was mailed used the zip code of the District Office, which is 19103. The envelope sent by first class mail was not returned. The District Office received a return receipt card for the envelope sent by certified mail on which illegible initials appeared, above which was printed "Joseph Brooks." On the morning of February 2, 2005, Hammerle called NASD's Philadelphia District Office and left a voice message in which he stated, in substance, that he could not appear to testify that day. He provided no reason or explanation as to why he could not appear. Hammerle failed to

appear to testify on February 2, 2005 and he failed to provide NASD any information or documents as requested by February 2 or thereafter.

13. By a letter dated February 3, 2005, NASD requested, pursuant to Rule 8210, that Hammerle appear in the Philadelphia District Office on February 15, 2005 to testify under oath and to produce certain documents specified in the letter including copies of bills, invoices and correspondence he had received from GWC and WAD. The letter warned Hammerle that failure to appear to testify or failure to produce the documents requested could result in disciplinary action against him by NASD and that the sanctions that could be imposed against him included a bar. The letter was sent to Hammerle's residential address shown in the CRD by first class and certified mail except that, again, the zip code of the District Office was used in the address rather than the correct zip code. The envelope sent by first class mail was not returned. A return receipt card bearing an illegible signature was received for the envelope sent by certified mail. Hammerle failed to appear to testify on February 15, 2005 and he failed to provide NASD any information or documents as requested by February 15 or thereafter.
14. By a letter dated March 15, 2005, NASD requested, pursuant to Rule 8210, that Hammerle appear in the Philadelphia District Office on March 24, 2005 to testify under oath and to produce certain documents specified in the letter including copies of bills, invoices and correspondence he had received from GWC and WAD. The letter warned Hammerle that failure to appear to testify or failure to produce the documents requested could result in disciplinary action against him by NASD and that the sanctions that could be imposed against him included a bar. The letter was sent in accordance with Rule 8210. Specifically, the letter was sent to Hammerle's residential address shown in the

CRD by first class and certified mail. The envelope sent by first class mail was not returned. The staff received, on March 17, 2005, a signed return receipt card for the envelope sent by certified mail. The signature on the card appears to be "Peter Hammerle" (the signer did not print their name on the card). Hammerle failed to appear to testify on March 24, 2005 and he failed to provide NASD any information or documents by March 24 or thereafter.

15. To the date of this Complaint, Hammerle has failed to appear to testify and has failed to provide NASD any of the documents it requested from him.
16. Based on the foregoing, Hammerle violated NASD Procedural Rule 8210 and Conduct Rule 2110.

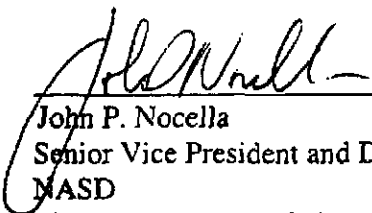
PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

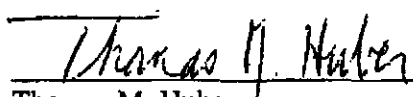
- A. Findings of fact and conclusions of law that Hammerle committed the violations charged and alleged herein;
- B. An order imposing sanctions upon Hammerle in accordance with NASD Rule 8310;
- C. An order requiring Hammerle to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest;
- D. An order imposing such costs relating to this proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330; and

E. An order granting all further relief that is warranted under the circumstances.

Date: April 4, 2005



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