

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ADRIAN COOPER
(CRD No. 3271084),

Respondent.

Disciplinary Proceeding
No. E052004028001

Hearing Officer – AWH

Default Decision

April 28, 2006

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

Appearances

Ralph J. Veth, Esq., for Department of Enforcement.

No appearance by or for Adrian Cooper.

DECISION

Introduction

On December 5, 2005, the Department of Enforcement ("Enforcement") issued the two-cause Complaint in this proceeding, alleging that Adrian Cooper ("Respondent" or "Cooper") converted customer funds to his own use and benefit, in violation of NASD Conduct Rules 2110 and 2330(a), and failed to respond to NASD requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2110. Respondent failed to file an Answer to the Complaint, or to a Second Notice of Complaint. As a result, Enforcement filed a Motion for Entry of Default Decision on March 8, 2006, to

which Cooper did not respond. Accordingly, pursuant to Procedural Rules 9215(f) and 9269, the Motion will be granted, and the allegations in the Complaint, which is attached to this decision, will be treated as admitted.

***Findings of Fact*¹**

The Respondent

Cooper was registered with NASD member firm Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") from August 17, 1999, through September 1, 2004, when Merrill Lynch terminated his registration by filing a Uniform Termination for Securities Industry Registration ("Form U-5"). Cooper is not currently associated with an NASD member firm.

Conversion of Customer Funds

On two occasions in June 2004, Cooper received a total of \$40,000 from public customer AM to invest in securities. Specifically, on June 14, 2004, Cooper instructed AM to wire transfer \$20,000 to Cooper's personal checking account; and, on June 29, 2004, Cooper instructed AM to provide a cashier's check in the amount of \$20,000 to a third party who then wired the funds to Cooper's personal checking account. Instead of investing the funds in securities on behalf of AM, Cooper used the funds to pay his personal expenses, without the knowledge or consent of AM.

Failure to Respond to Requests for Information

Pursuant to NASD Procedural Rule 8210, on November 29, 2004, January 3, 2005, and January 18, 2005, NASD staff sent to Cooper requests that he provide documents and information pertaining to his handling of AM's funds. The requests were

¹ All findings of fact are based on the admitted allegations in the Complaint, the Declaration Supporting a Motion for Entry of Default Decision by Ralph J. Veth ("Declaration"), and the exhibits attached thereto.

sent to Cooper by first class and certified mail to his residential address of record as contained in the Central Registration Depository ("CRD address"). The first class mailings were not returned to NASD staff. The certified mailing receipts were returned, unclaimed. Cooper failed to respond to any of the requests for documents and information.

Discussion and Conclusions

Jurisdiction

Article V, Section 4 of the NASD By-Laws provides for a two-year period of retained jurisdiction over an associated person² after the effective date of the individual's termination of association. During this period of retained jurisdiction, NASD may file a complaint based upon conduct that occurred while the individual was associated with a member firm, or based upon such person's failure to provide information requested pursuant to NASD Procedural Rule 8210, if the request was made, and the complaint is filed, during the foregoing period of retained jurisdiction.

Cooper was registered with Merrill Lynch from August 17, 1999, through September 1, 2004, when Merrill Lynch filed the Form U-5 terminating his registration. Enforcement issued its Complaint on December 5, 2005, within two years of Cooper's termination of registration. The Complaint is based upon Cooper's conduct while he was registered through Merrill Lynch, and his failures to respond to information requests occurred during the two-year period following termination of his registration. Therefore, NASD has jurisdiction over this proceeding.

² NASD defines an associated person of a member as, *inter alia*, "a natural person who is registered or has applied for registration under the Rules of the Association." See Article I(dd) of NASD By-Laws

Respondent's Default

Enforcement properly served the Complaint and the Second Notice of Complaint on Cooper at his CRD address. Each mailing was sent by first class certified mail. Pursuant to Procedural Rule 9134, those mailings establish that Cooper had valid constructive notice of the Complaint. Because he failed to respond to the Complaint, Procedural Rules 9215(f) and 9269 authorize the entry of a default decision against him. Accordingly, the allegations in the Complaint are deemed admitted.

Conversion of Customer Funds

Conversion generally 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."³ Conversion of customer funds constitutes an "improper use" of those funds, in violation of NASD Conduct Rule 2330(a), and violates Conduct Rule 2110's requirement of "high standards of commercial honor and just and equitable principles of trade."⁴

Cooper failed to invest \$40,000 that he received from AM for the purpose of making such an investment. Instead, he converted her funds to his own use and benefit without her knowledge, consent, or authorization. Such intentional and unauthorized use of those funds violates NASD Conduct Rules 2110 and 2330(a).

Failure to Respond to 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

³ NASD SANCTION GUIDELINES, p. 38, n.2 (2006 ed.).

⁴ See *Dep't of Enforcement v. Brinton*, No. C04990005, 1999 NASD Discip. LEXIS 36, at *8 (NAC Dec. 14, 1999).

allows NASD to carry out its regulatory functions without subpoena power.⁵ When an individual fails to respond to information requests, NASD's ability to perform its regulatory responsibilities is subverted.⁶ Further, a violation of Procedural Rule 8210 is also a violation of Conduct Rule 2110, contravening "high standards of commercial honor."⁷

Enforcement sent three requests for information to Cooper's CRD address, requesting information regarding an investigation into his use of AM's funds. Pursuant to Procedural Rule 8210(d), the mailings sent to his CRD address provide him with constructive notice of the Staff's requests for information. Therefore, Cooper's failures to respond to NASD requests for information violate Procedural Rule 8210 and Conduct Rule 2110.

Sanctions

Conversion of Customer Funds

For conversion, the NASD Sanction Guidelines provide that, regardless of the amount, a bar is standard.⁸ A bar is also the standard where the improper use of customer funds is not predicated on a misunderstanding of the customer's intended use of the funds, or where other mitigating factors do not exist. Here, there was no misunderstanding of the customer's intended use, nor are there any other mitigating

⁵ See *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 NASD effectively to conduct its investigations, and emphasizing that NASD members and associated persons must fully cooperate with requests for information); *Dep't of Enforcement v. Benz*, No. C01020014, 2003 NASD Discip. LEXIS 11, at *18 (OHO Mar. 4, 2003) ("Because NASD has no subpoena power, timely and full compliance with information requests is essential to NASD's self-regulatory function.").

⁶ *Joseph P. Hannan*, Exchange Act Release No. 40,438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998).

⁷ *Dep't of Enforcement v. Baxter*, No. C07990016, 2000 NASD Discip. LEXIS 3, at *25 (NAC Apr. 19, 2000).

⁸ SANCTION GUIDELINES, p. 38.

circumstances.⁹ Accordingly, Cooper will be barred from association with any NASD member firm in any capacity for conversion and misuse of customer funds.

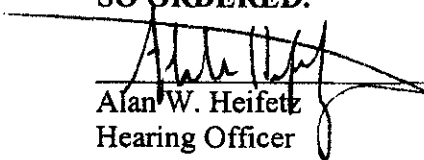
Failure to Respond to NASD Requests for Information

When a respondent fails to respond in any manner to a request made pursuant to Procedural Rule 8210, the NASD Sanction Guidelines recommend a bar as the standard sanction.¹⁰ There are no mitigating factors that would justify a lesser sanction. Accordingly, Cooper will be barred from association with any NASD member firm in any capacity for failing to respond to Staff information requests, in violation of Procedural Rule 8210 and Conduct Rule 2110.

Conclusion

Adrian Cooper is barred from association with any member firm in any capacity for conversion and misuse of funds, in violation of Conduct Rules 2110 and 2330(a), and for failing to respond to Staff information requests, in violation of 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.


Alan W. Heifetz
Hearing Officer

⁹ Cooper reimbursed AM the \$40,000 he had converted, plus an additional \$6,500 which he falsely told AM represented profits from investments. He never disclosed to her that he had used her funds for his own personal expenses.

¹⁰ *Id.*, p. 35.

Copies to:

Via First Class Mail & Overnight Courier

Adrian Cooper

Via First Class Mail & Electronic Mail

Ralph J. Veth, Esq.

Roger D. Hogoboom, Esq.

Rory C. Flynn, Esq

**NASD
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant

v.

Adrian Cooper
General Securities Representative
[CRD No. 3271084],

Respondent

Disciplinary Proceeding
No. E052004028001

Hearing Officer _____

COMPLAINT

Upon information and belief, Complainant alleges as follows:

1. Adrian Cooper ("Cooper") entered the industry in August 17, 1999 as a General Securities Representative of member firm Merrill Lynch, Pierce, Fenner & Smith Incorporated. Adrian Cooper was associated with Merrill Lynch, Pierce, Fenner & Smith Incorporated during all periods mentioned herein until his termination on August 6, 2004. Merrill Lynch filed Cooper's Uniform Termination Notice for Securities Industry Registration (Form U-5) on September 10, 2004. Although Cooper is not currently registered, he remains subject to the jurisdiction of NASD, pursuant to Article V, Section 4 of NASD's By-Laws, which provides for a two-year period of retained jurisdiction over formerly registered persons.

FIRST CAUSE OF COMPLAINT
NASD Conduct Rules 2110 and 2330(a), Conversion of Funds, Against Respondent Cooper

2. During the period from on or about June 14, 2004, through on or about June 30, 2004, Adrian Cooper received a total of \$40,000.00 from public customer AM to invest in securities. Specifically, on June 14, 2004, Cooper instructed AM to wire transfer \$20,000.00 to Cooper's personal checking account. Additionally, on June 29, 2004, Cooper instructed AM to provide a cashier's check in the amount of \$20,000.00 to a third party who then wired the funds to Cooper's personal checking account. Rather than make investments on behalf of AM, Cooper converted the funds to his own use and benefit, all without the knowledge or consent of AM.
3. Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rules 2110 and 2330(a) by Respondent Adrian Cooper.

SECOND CAUSE OF COMPLAINT
NASD Conduct Rule 2110 and Procedural Rule 8210,
Failure to Respond to Requests for Information, Against Respondent Cooper

4. By letters dated November 29, 2004, January 3, 2005, and January 18, 2005, the NASD District staff requested that Cooper provide certain information to the staff concerning the activities described in the First Cause of Complaint. These requests for information were sent pursuant to, and in accordance with, the provisions of Procedural Rule 8210, all as more fully detailed on Exhibit "A," attached hereto.
5. Respondent Cooper failed to respond to the above requests.

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6. Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 and Procedural Rule 8210 by Respondent Adrian Cooper.

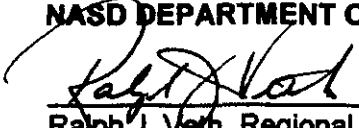
PRAYER FOR RELIEF

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: December 5, 2005

NASD DEPARTMENT OF ENFORCEMENT



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**NASD Senior Vice President and
Regional Director**

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