

**NASD
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

Kenneth James Nemetz
CRD No. 1299654

Respondent.

Disciplinary Proceeding
No. E0620030534-02

Hearing Officer:

COMPLAINT

Upon information and belief, Complainant alleges as follows:

1. Respondent Kenneth James Nemetz ("Nemetz") entered the securities industry in July 1984, when he became associated with an NASD member firm. He subsequently obtained Series 6, 26 and 63 securities licenses. In August 1993, Nemetz registered with NASD member firm Linsco/Private Ledger Corporation ("Linsco"), where he remained until his termination on November 14, 2003. Since that time, Nemetz has not been registered with any other NASD member firm. NASD has jurisdiction over Nemetz pursuant to Article V, Section 4 of the Association's By-Laws, which provides for a two-year period of retained jurisdiction over formerly associated persons.

CAUSE OF COMPLAINT

Respondent Misused Customer Funds

(Violation of NASD Conduct Rules 2110 and 2330)

2. Paragraph number 1, above, is realleged and incorporated herein by reference.
3. In March 2003, Nemetz advised customers PM and SM, husband and wife, to liquidate two of their mutual fund holdings, and invest the proceeds in a fixed annuity offered by Jackson National Life.
4. Nemetz told the customers that the Jackson National annuity paid an interest rate of 7% annually. He initially told the customers that interest payments would be made monthly. He later told them that the payments would be made quarterly.
5. The customers followed Nemetz' advice, and in late March 2003, wrote a check payable to Nemetz in the amount of \$23,000 for an investment in a Jackson National Life fixed annuity.
6. The amount paid to Nemetz consisted of proceeds received from the liquidation of the customers' mutual funds.
7. Upon receipt, Nemetz endorsed the customers' check, and admitted that he deposited it into a bank account that he controlled.
8. In July 2003, Nemetz made a purported quarterly interest payment to the customers in the amount of \$409.60 from his personal funds.
9. Nemetz never told the customers where he deposited their funds, or the source of the purported interest payment.
10. Nemetz never provided the customers with a receipt or any other type of documentation evidencing his receipt of their funds.

11. Beginning in June 2003, and continuing through at least August 2003, the customers expressed concern to Nemetz over the lack of documentation for their investment.
12. After trying unsuccessfully for several months to get some evidence of their investment from Nemetz, the customers filed a complaint with Linsco.
13. After learning of the customers' complaint, Nemetz returned their \$23,000 plus one additional interest payment in the amount of \$409.60. These payments were made from Nemetz' wife's Charles Schwab account.
14. Nemetz' actions were taken without the customers' knowledge, authorization or consent.
15. The aforementioned acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rules 2110 and 2330 by Kenneth James Nemetz.

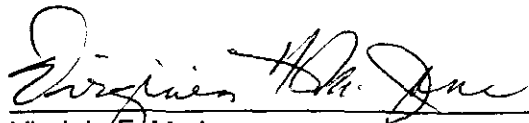
PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

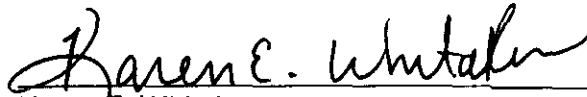
- A. Findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;
- B. An order imposing sanctions upon the Respondent in accordance with NASD Rule 8310.
- C. An order imposing such costs of any proceeding as are deemed fair and appropriate under the circumstances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

7-8-05

Date



Virginia E. M. Jans
Associate Vice President and District Director
NASD, District 6
12801 North Central Expressway
Suite 1050
Dallas, TX 75243
972-701-8554



Karen E. Whitaker
Regional Counsel
NASD, District 6
12801 North Central Expressway
Suite 1050
Dallas, TX 75243
972-701-8554

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

Andrew A. Favret
Associate Vice President and
Regional Chief Counsel
Department of Enforcement
NASD
1100 Poydras St., Suite 850
New Orleans, LA 70163
(504) 522-6527