

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

STEVEN C. CLYDE
(CRD No. 1512386),

Respondent.

Disciplinary Proceeding
No. E062004019501

Hearing Officer – AWH

Default Decision

May 26, 2006

Formerly registered person (1) misappropriated customer funds, in violation of Conduct Rules 2110 and 2330; (2) forged customers' signatures on documents, in violation of Conduct Rule 2110; and (3) failed to appear for testimony, in violation of Procedural Rule 8210 and Conduct Rule 2110. Respondent barred from association with any member firm in any capacity.

Appearances

Karen E. Whitaker, Esq., for Department of Enforcement.

No appearance by or for Steven C. Clyde.

DECISION

Introduction

On December 29, 2005, the Department of Enforcement ("Enforcement") issued the Complaint in this proceeding, alleging that Steven C. Clyde ("Respondent" or "Clyde") misappropriated customer funds, in violation of NASD Conduct Rules 2110 and 2330; forged customers' signatures on documents, in violation of Conduct Rule 2110; and failed to appear for on-the-record testimony, 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 31, 2006, to which Clyde 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 Fact¹

The Respondent

Clyde first entered the securities industry in February 1986 when he was associated with an NASD member firm. Pertinent to the Complaint, he was registered as a General Securities Representative and General Securities Principal with NASD member firm Veritrust Financial, LLC ("Veritrust"), from July 29, 2003, through April 2, 2004, when Veritrust terminated his registration by filing a Uniform Termination for Securities Industry Registration ("Form U-5"). Clyde is not currently associated with an NASD member firm.

Misappropriation of Customer Funds and Forgery of Customers' Signatures

During the period from October 2003 through April 2004, Clyde made unauthorized withdrawals, totaling at least \$43,000, from the accounts of Veritrust customers BB and RB, without their knowledge, authorization, or consent. To facilitate those withdrawals, Clyde forged, or caused to be forged, the signatures of those customers on documents, and provided the customers with other documents to assuage their concerns about the withdrawals from their accounts.

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

Customer BB

In the Fall of 2003, BB received her American Funds mutual fund account statement showing that all of the shares in her account had been redeemed, and \$22,000 had been wired out of the account. BB immediately complained to her broker, Clyde, who told her that the withdrawal was a clerical mistake. He later provided her with documents falsely showing that there had been no activity in the account.

BB then contacted American Funds, and was told that the company had received written instructions, purportedly signed by BB, requesting the liquidation of shares and a \$22,000 wire transfer to an account in the name of Carey Bryan, a person unknown to BB. The account into which the funds were wired was the same account into which Clyde had instructed Veritrust to directly deposit his commission checks. Clyde forged, or caused to be forged, BB's signature on the written instructions to American Funds.

BB did not request or authorize the liquidation of her mutual fund shares or the withdrawal of any funds from her account. She had no prior knowledge of, and did not sign, the written instructions sent to American Funds.

Customer RB

In January 2004, and again in April 2004, RB received confirmations showing withdrawals totaling over \$21,000 from his variable annuity account at AIG SunAmerica. The confirmations also showed that the funds were mailed to a person named Carey Bryan at Clyde's CRD address of record. RB immediately contacted his broker, Clyde, who told him that the confirmations were errors, and that he would get the mistakes resolved.

In July 2004, Clyde gave RB a document that was addressed to RB, contained his variable account number, and indicated that a withdrawal in the amount of \$12,631.58 was being reversed. The document also indicated that a new account number had been assigned to RB, and it noted the new number.

In September 2004, RB contacted AIG SunAmerica, requesting information about his new account. He was told that no new account had been set up for him, and that the purported new number did not exist. RB also learned that two "Withdrawal/Surrender Request" forms had been submitted in January and April 2004 to facilitate the withdrawals amounting to over \$21,000. The forms purported to be signed by RB. However, Clyde forged, or caused to be forged, RB's signature on the forms.

RB did not sign the withdrawal request forms, nor did he instruct or give permission to Clyde or any other person to effect withdrawals from the variable annuity account or to mail checks to Carey Bryan, a person unknown to RB.

RB retained an attorney who sent a demand letter to Clyde, threatening suit to recover the unauthorized withdrawals from RB's account. Thereafter, Clyde delivered a cashier's check in the amount of \$25,000 to RB's attorney.

Failure to Appear for On-the-Record Testimony

Pursuant to NASD Procedural Rule 8210, on April 22, 2005, May 9, 2005, June 2, 2005, and on June 17, 2005, NASD Staff sent Clyde requests that he appear at the NASD Dallas District Office and provide on-the-record testimony regarding the withdrawals from BB's and RB's accounts. The requests were sent to Clyde by first class regular and certified mail to his residential address of record as contained in the Central Registration Depository ("CRD address"). All mailings to the CRD address were returned. The

returned mailings indicated that they were unclaimed, undeliverable, or unable to be forwarded. However, the receipts for the April 22 and May 9 certified mailings contained a new address for Clyde (the "secondary address"). Consequently, the Staff sent copies of the June 2 and June 17 requests for his testimony by first class regular and certified mail to Clyde at the secondary address. Those mailings were also returned indicating that they were unclaimed, undeliverable, or unable to be forwarded. Clyde failed to appear for testimony in response to any of the requests for his testimony.

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 individual's termination of registration. 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.

Clyde was registered with Veritrust from July 29, 2003, through April 2, 2004, when Veritrust filed the Form U-5 terminating his registration. Enforcement issued its Complaint on December 29, 2005, within two years of Clyde's termination of registration. The Complaint is based upon Clyde's conduct while he was registered through Veritrust, and his failures to respond to requests for his testimony occurred during the two-year period following termination of his registration. Therefore, NASD has jurisdiction over this proceeding.

Respondent's Default

Enforcement properly served the Complaint and the Second Notice of Complaint on Clyde at his CRD address and a secondary address that Enforcement discovered during the investigation. Each mailing was sent by first class regular and certified mail. Pursuant to Procedural Rule 9134, those mailings establish that Clyde 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.

Misappropriation of Customer Funds and Forgery

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."² 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."³

By forging documents and customers' signatures on withdrawal instructions, Clyde withdrew approximately \$43,000 from the accounts of two customers, and had those funds wired to the account, or sent to the address, of a person unknown to either of the customers. The withdrawals were made without the knowledge, authorization, or consent of the customers. Furthermore, to conceal his conduct once the customers became aware of the withdrawals, he falsified documents to indicate that the withdrawals were error and that the transactions would be reversed.

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

³ See *Dep't of Enforcement v. Brinton*, No. C04990005, 1999 NASD Discip. LEXIS 36, at *8 (NAC Dec. 14, 1999).

The intentional and unauthorized use of those funds constitutes conversion and misappropriation of those funds in violation of NASD Conduct Rules 2110 and 2330(a). The forgeries of the documents and signatures to conceal that misconduct violate Conduct Rule 2110.

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 allows NASD to carry out its regulatory functions without subpoena power.⁴ When an individual fails to respond to information requests, NASD's ability to perform its regulatory responsibilities is subverted.⁵ Further, a violation of Procedural Rule 8210 is also a violation of Conduct Rule 2110, contravening "high standards of commercial honor."⁶

Enforcement sent four requests for testimony to Clyde's CRD address and two of those requests to a second address the Staff discovered for Clyde. The requests sought information regarding an investigation into his use of BB's and RB's funds. Pursuant to Procedural Rule 8210(d), the mailings sent to those addresses provide him with constructive notice of the Staff's requests for his testimony. Therefore, Clyde's failures to respond to those requests violate Procedural Rule 8210 and Conduct Rule 2110.

⁴ 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.").

⁵ *Joseph P. Hannan*, Exchange Act Release No. 40,438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998).

⁶ *Dep't of Enforcement v. Baxter*, No. C07990016, 2000 NASD Discip. LEXIS 3, at *25 (NAC, Apr. 19, 2000).

Sanctions

Conversion of Customer Funds and Forgery

For conversion, the NASD Sanction Guidelines provide that, regardless of the amount, a bar is standard.⁷ 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 circumstances. Accordingly, Clyde will be barred from association with any NASD member firm in any capacity for conversion and misuse of customer funds.

For forgery, the Sanction Guidelines recommend a fine of \$5,000 to \$100,000, and a suspension of up to two years where mitigating factors exist. In egregious cases, a bar should be considered.⁸ Here, the forgeries were egregious because they aggravated the conversion of funds. No mitigating circumstances exist. Accordingly, Clyde will be barred for the forgeries.

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.⁹ There are no mitigating factors that would justify a lesser sanction. Accordingly, Clyde 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.

⁷ SANCTION GUIDELINES, p. 38.

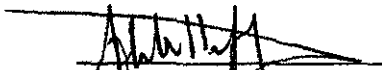
⁸ *Id.*, p. 39.

⁹ *Id.*, p. 35.

Conclusion

Steven C. Clyde 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); for forgery, in violation of Conduct Rule 2110; and for failing to respond to staff requests for testimony, 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

Copies to:

Via Overnight and First Class Mail

Steven C. Clyde

Via Electronic and First Class Mail

Karen E. Whitaker, Esq.

Roger D. Hogoboom, Esq.

Rory C. Flynn, Esq.

**NASD
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

Steven C. Clyde,
CRD No. 1512386

Respondent.

Disciplinary Proceeding
No. E062004019501

Hearing Officer:

COMPLAINT

Upon information and belief, Complainant alleges as follows:

1. Respondent Steven C. Clyde ("Clyde" or "Respondent") entered the securities industry in February 1986, when he associated with an NASD member firm. During the period from March 1990 to June 2003, Clyde associated with six member firms. He registered with Veritrust Financial, LLC ("Veritrust") in July 2003, and remained there until his termination on March 31, 2004. He is not currently associated with a member firm. During his career in the securities industry, Clyde obtained Series 6, 7 and 24 securities licenses.
2. Although Clyde is not currently registered with an NASD member, he remains subject to NASD's jurisdiction 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. Accordingly, NASD retains jurisdiction over Clyde until March 30, 2006.
3. During the period from October 2003 through April 2004, Clyde made unauthorized withdrawals, totaling at least \$43,000, from at least two Veritrust customers' accounts without the knowledge, authorization, or consent of the customers. To facilitate the unauthorized withdrawals, Clyde forged, or caused to be forged, the customers' signatures

on certain documents and created other false documents to assuage the customers' concerns about the withdrawals from their accounts.

FIRST CAUSE OF COMPLAINT

Respondent Misappropriated Customer BB's Funds

(Violations of NASD Conduct Rules 2110 and 2330)

4. Paragraph numbers 1 and 2 above, are realleged and incorporated herein by reference.
5. During the period from October 2003 through April 2004, Clyde made unauthorized withdrawals, totaling at least \$43,000, from Veritrust customers BB's and RB's accounts without their knowledge, authorization, or consent of the customers. To facilitate the unauthorized withdrawals, Clyde forged, or caused to be forged, the customers' signatures on certain documents and provided the customers with false documents to assuage their concerns about the withdrawals from their accounts.

Customer BB

6. In the fall of 2003, Veritrust customer BB learned that all of the shares in her mutual fund account held at American Funds had been redeemed, and that \$22,000 had been withdrawn from her account via a wire transfer.
7. Customer BB learned of the activity in her account when she received a statement from American Funds. Upon receipt of the statement, BB immediately called Clyde, her registered representative, to inquire about the activity in her account.
8. Clyde told BB that the withdrawal from her account was just "paper stuff," and that the account would be restored to its original position within a few days.

9. Over the next several months, BB contacted Clyde several times about the missing money from her account. Each time BB spoke to Clyde, he assured her that the mistake would be corrected very soon.
10. Unable to resolve the matter after several months, BB insisted on a meeting with Clyde in March 2004. At the meeting, Clyde gave BB a document that he told her evidenced the fact that there had been no transactions in her account in 2003. The document was not on letterhead, but was titled "American Funds Group Substitute Form 1099-B," and contained the following statement, "[n]o transactions occurred in the year 2003 to generate Gain (Loss) due to sales of Shares."
11. The document given to BB was false in that there had actually been transactions in BB's account in 2003.
12. Shortly after the meeting with Clyde, BB contacted American Funds because the money had not been returned to her account. American Funds informed BB that it had received written instructions, which were purportedly signed by BB, requesting the liquidation and \$22,000 wire transfer.
13. Upon receipt of a copy of the purported instructions from American Funds, BB learned that funds from her account had been wired to a bank account owned by a Carey Bryan, a person unknown to BB.
14. The account to which BB's funds were wired was the same account into which Clyde had instructed Veritrust to directly deposit his commission checks.
15. BB did not request or authorize the liquidation of her mutual funds shares or the withdrawal of funds from her account. She had no prior knowledge of, and did not sign the written instructions sent to American Funds.

SECOND CAUSE OF COMPLAINT

Respondent Misappropriated Customer RB's Funds

(Violations of NASD Conduct Rules 2110 and 2330)

Customer RB

16. In January 2004, Veritrust customer RB received a confirmation showing a withdrawal in the amount of \$9,351.55 from his variable annuity account at AIG SunAmerica. The confirmation indicated that a \$9,000 check had been mailed to a person named Carey Bryan at [REDACTED]
17. The address to which the check was mailed was the same as Clyde's CRD address of record.
18. Upon receipt of the confirmation, RB immediately contacted his broker, Clyde, who told him that the confirmation was an error and that he (Clyde) would get the mistake resolved.
19. In April 2004, RB received another confirmation, which showed another withdrawal in the amount of \$12,631.58 from his annuity account. The confirmation indicated that \$12,000 had been mailed to Carey Bryan at the same address.
20. RB contacted Clyde, who again told him that the withdrawal was an error and that he (Clyde) would get the matter resolved.
21. In July 2004, Clyde hand-delivered to RB a document entitled "Polaris Platinum Variable Annuity Transaction Confirmation / Reversal." The document was addressed to RB, contained his variable account number, and indicated that the withdrawal in the amount of \$12,631.58 was being reversed. The document also indicated that a new account number had been assigned to RB, and noted the new number.
22. In September 2004, RB contacted AIG SunAmerica to request information about his new account. He was told that no new account had been set up for him, and that the purported

account number did not exist. RB also learned that two *Withdrawal/Surrender Request* forms had been submitted in January 2004 and April 2004, respectively, to facilitate the above-described withdrawals from his annuity account.

23. RB did not sign the withdrawal request forms, did not give Clyde or any other person instructions or permission to effect the withdrawals from his variable annuity account, and did not instruct or authorize Clyde or any other person to mail checks from his account to a person unknown to him named Carey Bryan. RB did not receive any benefit from the improperly withdrawn funds.

24. RB subsequently retained an attorney to assist him in getting his money back. After the attorney sent Clyde a letter threatening to sue him to recover the unauthorized withdrawals from RB's account, Clyde delivered a cashier's check in the amount of \$25,000 to RB's attorney.

25. The aforementioned acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rules 2110 and 2330 by Steven C. Clyde.

THIRD CAUSE OF COMPLAINT

Respondent Forged, Or Caused to be Forged, Customers' Signatures On Certain Documents

(Violation of NASD Conduct Rule 2110)

26. Paragraph numbers 1 through 25 above are realleged and incorporated herein by reference.

27. In connection with the conduct described in paragraphs 5 through 23 above, Clyde forged, or caused to be forged, the signatures of customers BB and RB on certain documents needed to facilitate the unauthorized withdrawals from the customers' accounts.

28. Clyde forged, or caused to be forged, customer BB's name on a letter to American Funds that requested the liquidation of all of BB's mutual funds shares and the issuance of a wire transfer in the amount of \$22,000.
29. Customer BB did not authorize Clyde to sign her name to the letter.
30. Clyde also forged, or caused to be forged, customer RB's name on two forms entitled, *"Withdrawal/Surrender Request,"* that were used to make withdrawals totaling over \$21,000 from RB's account.
31. Customer RB did not authorize Clyde to sign his name to the forms.
32. The aforementioned acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 by Steven C. Clyde.

FOURTH CAUSE OF COMPLAINT

Respondent Failed to Appear for On-The-Record Testimony

(Violations of NASD Conduct Rules 2110 and 8210)

33. Paragraph numbers 1 and 2 and 4 through 31, above, are realleged and incorporated herein by reference.
34. By letter dated April 22, 2005, the staff requested, pursuant to Rule 8210, that Clyde appear at the District Office and provide on-the-record testimony on May 6, 2005, regarding the above-described withdrawals. The request letter was sent via first class regular and certified mail to Clyde's CRD address of record: [REDACTED] ("CRD address").
35. The letter sent via regular mail was returned to the District Office on May 16, 2005, marked "Unclaimed" and "Returned To Sender." The letter sent via certified mail was returned to the District Office on May 23, 2005, marked "Not Deliverable As Addressed, Unable To

Forward" and "Returned To Sender." It also contained a new address for Clyde: [REDACTED]
[REDACTED] ("secondary address").

36. By letter dated May 9, 2005, the staff again requested, pursuant to Rule 8210, that Clyde appear at the District Office and provide on-the-record testimony on May 23, 2005. The letter was sent to Clyde at his CRD address via first class regular and certified mail.
37. The letter sent via regular mail was returned to the District Office on May 31, 2005, marked "Returned To Sender, No Forwarding Address." The letter sent via certified mail was returned to the District Office on June 6, 2005, marked "Unclaimed." It also contained the secondary address.
38. On June 2, 2005, the staff sent a third letter, pursuant to Rule 8210, requesting that Clyde appear at the District Office and provide on-the-record testimony on June 16, 2005. The letter was sent to Clyde at his CRD and secondary addresses via first class regular and certified mail.
39. The letter sent via regular mail to the CRD address was returned to the District Office on June 29, 2005, marked "Not Deliverable As Addressed, Unable To Forward." The letter sent to the CRD address via certified mail was returned to the District Office on July 22, 2005, marked "Unclaimed." The letter sent via regular mail to the secondary address was returned to the District Office on June 24, 2005, marked "Not Deliverable As Addressed, Unable To Forward" and "Returned To Sender." The letter sent via certified mail was returned to the District Office on July 22, 2005, marked "Unclaimed" and "Returned To Sender."
40. On June 17, 2005, the staff sent a final letter, pursuant to Rule 8210, requesting that Clyde appear for on-the-record testimony on July 1, 2005. The letter was sent to Clyde's CRD and secondary addresses via first class regular and certified mail. The letter sent to Clyde via regular mail at his CRD address was returned to the District Office on July 18, 2005,

marked "Not Deliverable As Addressed, Unable To Forward." The letter sent to the CRD address via certified mail was returned to the District Office on July 22, 2005, and was marked "Unclaimed." The letter sent via regular mail to the secondary address was returned to the District Office marked "Not Deliverable As Addressed, Unable To Forward" and "Returned To Sender." The letter sent via certified mail was returned to the District Office on July 22, 2005, marked "Unclaimed" and "Returned To Sender."

41. Clyde never appeared for sworn testimony.

42. The aforementioned acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 and NASD Procedural Rule 8210 by Steven C. Clyde.

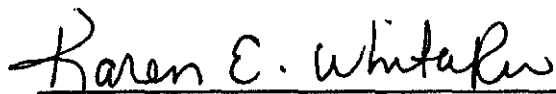
PRAYER FOR RELIEF

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.

NASD DEPARTMENT OF ENFORCEMENT

Date: December 29, 2005



Karen E. Whitaker, Regional Counsel
NASD Department of Enforcement
12801 N. Central Expressway, Suite 1050
Dallas, TX 75243
Phone 972-716-7610; Fax 972-716-7646