

## NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

HONG JOON CHUN  
(CRD No. 3205680),

Respondent.

Disciplinary Proceeding  
No. E1020041114-01

### DEFAULT DECISION

Hearing Officer – SW

Dated: December 12, 2006

**Respondent was barred for violating NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by failing to appear for an on-the-record interview scheduled by the NASD staff pursuant to Rule 8210. In light of the bar, the Hearing Officer did not impose an additional sanction for Respondent's violation of NASD Conduct Rule 2110 when he sent a customer a letter without making the letter available for prior supervisory review by his employer.**

### Appearances

William St. Louis, Esq., Deputy Regional Chief Counsel, New York, NY, and Rory C. Flynn, Esq., Of Counsel, Washington, DC, for the Department of Enforcement.

No appearance by or for Respondent Hong Joon Chun.

### DECISION

#### I. Background

On August 23, 2006, the NASD Department of Enforcement ("Enforcement") filed the attached two-count Complaint against Respondent Hong Joon Chun ("Respondent"), alleging that: (i) he wrote and delivered a letter written in Korean ("Response Letter") to customer BI, without making the letter available for prior supervisory review by his employer, J.P.R. Capital Corp. ("JPR Capital"); and (ii) he failed to appear for two on-the-record interviews requested by

the NASD staff pursuant to NASD Procedural Rule 8210, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

On November 28, 2006, Enforcement filed a Motion for Entry of Default Decision ("Motion"), supported by the Declaration of William St. Louis, Esq., Deputy Regional Chief Counsel, in NASD's New York, NY office, and 20 exhibits.<sup>1</sup> For the reasons set forth below, the Hearing Officer grants Enforcement's Motion.

## **II. Respondent's Default**

On August 22, 2006, Enforcement served the Complaint and Notice of Complaint on Respondent, via first-class and certified mail, at his address of record in NASD's Central Registration Depository ("CRD address"), and at a variation of the CRD address (the "Flushing address").<sup>2</sup> (CX-1, p. 1; CX-2; DECL at ¶¶ 7-8, p. 3). Respondent did not file an Answer to the Complaint. (DECL at ¶ 11).

On September 29, 2006, Enforcement served the Complaint and a Second Notice of Complaint on Respondent, via first-class and certified mail, at his CRD address and the Flushing address. (CX-7; DECL at ¶¶ 12-14). Again, Respondent did not file an Answer to the Complaint. (DECL at ¶ 16).

The Hearing Officer finds that Enforcement complied with NASD Procedural Rule 9134(b)(1) by sending the mailings to Respondent's CRD address and the Flushing address.<sup>3</sup>

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<sup>1</sup> Hereinafter, the statements in the Motion for Entry of Default Decision will be designated as "Motion, p.;" the statements in the St. Louis Declaration will be designated as "DECL at ¶;" and Enforcement's exhibits will be designated as "CX-" with the appropriate page or paragraph number.

<sup>2</sup> Respondent's CRD address is [REDACTED]. (CX-1, p. 1). Enforcement obtained the alternate address, [REDACTED], from a search of the Lexis database. (DECL at ¶ 8.b, p. 3).

<sup>3</sup> See Dep't of Enforcement v. Verdiner, No. CAF020004, 2003 NASD Discip. LEXIS 42, at \* 5 n.1 (NAC Dec. 9, 2003) (finding that respondent received constructive notice when complaint was mailed to respondent's CRD address).

Accordingly, the Hearing Officer finds that Respondent received effective notice of this proceeding and further finds that Respondent defaulted by failing to answer the Complaint.<sup>4</sup>

### **III. Findings of Fact and Conclusions of Law**

#### **A. Jurisdiction**

On October 6, 2003, Respondent became registered as a general securities representative with NASD member firm JPR Capital. (CX-1, p. 3). Respondent was associated with JPR Capital until December 14, 2004, when JPR Capital filed a Form U-5 terminating Respondent's association. (CX-1, pp. 3, 30). Respondent is not currently associated with any NASD member firm. (CX-1, p. 3).

Nevertheless, Respondent remains subject to NASD jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of the NASD By-Laws, because (1) the Complaint was filed within two years after his association with JPR Capital was terminated, and (2) the Complaint charges him with misconduct while he was associated with an NASD member, and with a failure to appear for two on-the-record interviews requested by the NASD staff pursuant to NASD Procedural Rule 8210 during the period of retained jurisdiction.

#### **B. Respondent Wrote and Delivered a Letter to a Customer without JPR Capital's Knowledge or Supervisory Review**

Count one of the Complaint alleges that in May 2004, without JPR Capital's knowledge, Respondent sent the Response Letter to customer BI, concerning BI's complaints about his account. (Complaint at ¶¶ 10-11; CX-17). Respondent sent the Response Letter to customer BI without making the letter available for supervisory review, thus preventing JPR Capital from discharging its obligation to review outgoing correspondence. (Complaint at ¶ 12; CX-17).

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<sup>4</sup> The following Findings of Fact and Conclusions of Law incorporate the allegations in the attached Complaint, pursuant to Rules 9215(f) and 9269(a) and NASD Notice to Members 99-77.

In its Motion, Enforcement provided the additional information that, in September 2004, customer BI commenced an arbitration proceeding against Respondent, and that in the arbitration proceeding, Respondent admitted to writing and delivering the Response Letter to customer BI.<sup>5</sup> (CX-12; DECL at ¶¶ 20, 24). JPR Capital had written supervisory procedures that required every broker at the firm to present correspondence to a supervising principal for review and/or approval. (CX-18, pp. 1-3; DECL at ¶ 26). Respondent executed an agreement, dated December 8, 2003, in which he agreed to abide by the firm's procedures. (CX-18, pp. 4-5; DECL at ¶ 27).

The allegations in the first cause of the Complaint, and the evidence submitted by Enforcement, are sufficient to establish that Respondent violated NASD Conduct Rule 2110 by failing to present correspondence sent to a customer for prior review and approval.

**C. Respondent Failed to Appear at a Scheduled On-the-Record Interview**

The second cause of the Complaint alleges that Respondent failed to appear at two scheduled on-the-record interviews pursuant to the NASD staff's Rule 8210 requests. (Complaint at ¶¶ 14-22). Specifically, on October 27, 2005, the NASD staff sent a request that (1) Respondent appear for an on-the-record interview on November 15, 2005, and (2) Respondent contact the NASD staff no later than November 7, 2005 to confirm his attendance at the interview or to discuss re-scheduling the November 15, 2005 interview. (Complaint at ¶¶ 14, 15). Respondent did not respond to the October 27, 2005 letter by November 7, 2005. (Complaint at ¶ 18).

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<sup>5</sup> The Response Letter was written to address customer BI's complaints regarding losses in BI's account at JPR Capital. (Motion, p. 3). An English translation of the Response Letter provided to NASD by Respondent's former arbitration counsel, stated, *inter alia*, "If [you] wish, [I] would like to pay back the lost money for the rest of my life. Please forgive me for my mistake." (CX-15, p. 2; Motion, p. 5).

On November 8, 2005, the NASD staff sent a revised request that Respondent appear for an on-the-record interview on November 22, 2005.<sup>6</sup> (Complaint at ¶ 19). Respondent did not appear or otherwise respond to the November 8, 2005 letter. (Complaint at ¶ 22). Both requests were sent to Respondent at his CRD address, pursuant to NASD Procedural Rule 8210, via first-class and certified mail. (Complaint at ¶¶ 15, 19).

Pursuant to Rule 8210(d), Respondent is deemed to have received the Rule 8210 requests, which were sent to his CRD address. Failure to comply with Rule 8210 requests is a serious violation because it subverts NASD's ability to perform its regulatory responsibilities.<sup>7</sup>

The allegations in the second cause of Complaint, and the evidence submitted by Enforcement, are sufficient to establish that Respondent violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by failing to appear for the November 22, 2005 scheduled on-the-record interview.<sup>8</sup>

#### **IV. Sanctions**

##### **A. Respondent Failed to Appear at a Scheduled On-the-Record Interview**

For failing to appear at a scheduled on-the-record interview pursuant to the NASD staff's Rule 8210 requests, Enforcement recommended that Respondent be barred. The NASD Sanction Guidelines provide that a bar should be standard when an individual respondent does not respond

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<sup>6</sup> The November 8, 2005 letter is deemed to have rescheduled the November 15, 2005 interview to November 22, 2005.

<sup>7</sup> See, e.g., Richard J. Rouse, Exchange Act Rel. No. 32,685, 1993 SEC LEXIS 1831, at \*7 (1993); Joseph G. Chiulli, Exchange Act Rel. No. 42,359, 2000 SEC LEXIS 112, at \*16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for NASD to conduct its investigations effectively, and emphasizing that NASD members and associated persons must fully cooperate with requests for information).

<sup>8</sup> See Dep't of Enforcement v. Baxter, No. C07990016, 2000 NASD Discip. LEXIS 3, at \*\*21, 25 (NAC Apr. 19, 2000).

in any manner to a request issued pursuant to Rule 8210.<sup>9</sup> The record does not indicate the existence of any mitigating factors that would warrant a lesser sanction.

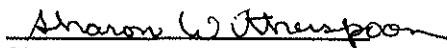
Accordingly, the Hearing Officer accepts Enforcement's recommendation, and bars Respondent from associating with any member firm in any capacity for failing to appear at an on-the-record interview scheduled pursuant to Rule 8210.

**B. The Hearing Officer Imposes No Separate Sanction for Respondent's Sending a Letter to Customer BI without his Employer's Knowledge or Approval**

Because the Hearing Officer barred Respondent for his Rule 8210 violation, the Hearing Officer will impose no separate sanction on Respondent for violating NASD Conduct Rule 2110, by sending the Response Letter to customer BI, without making the letter available for supervisory review.<sup>10</sup>

**V. Order**

Respondent Hong Joon Chun is barred from associating with any NASD member firm in any capacity for violating NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by failing to appear for an on-the-record interview scheduled pursuant to NASD Procedural Rule 8210. The bar will become effective immediately upon this Default Decision becoming the final disciplinary action of NASD.

  
Sharon Witherspoon  
Hearing Officer

Dated: Washington, DC  
December 12, 2006

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<sup>9</sup> NASD Sanction Guidelines, p. 35 (2006).

<sup>10</sup> Enforcement recommended that Respondent be sanctioned with a two-month suspension and a \$7,500 fine for violating NASD Conduct Rule 2110. (Motion p. 5).

Copies to:

Hong Joon Chun (via FedEx and first class mail)

William St. Louis, Esq. (via electronic and first class mail)

Rory C. Flynn, Esq. (via electronic and first class mail)

Mark P. Dauer, Esq. (via electronic and first class mail)

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COMPLAINT

Upon information and belief, the Department of Enforcement ("Complainant") alleges as follows:

**JURISDICTION**

1. Respondent Hong Joon Chun ("Respondent") first became been registered with NASD as a General Securities Representative in 1999.
2. Most recently, Respondent was registered as a General Securities Representative through J.P.R. Capital Corp. (BD No. 38056) ("JPR") from October 2, 2003 through December 14, 2004.
3. On December 14, 2004, JPR filed a Uniform Termination Notice for Securities Industry Registration ("Form U-5") terminating Respondent's registration.
4. Upon information and belief, Respondent is not currently registered with NASD, nor is he otherwise employed in the securities industry. However, Respondent remains subject to the jurisdiction of NASD pursuant to Article V, Section 4 of its By-Laws.

**BACKGROUND**

5. Paragraphs 1 through 4 of this Complaint are re-alleged and incorporated herein by reference.

6. Respondent serviced the JPR account of customer BI.
7. In September 2004, BI served a Statement of Claim and commenced an arbitration against, *inter alia*, Respondent.
8. Prior to commencing this arbitration, BI complained to Respondent concerning losses in the account and threatened that he would turn Respondent in for his alleged wrongdoing in relation to the account losses.

**FIRST CAUSE OF COMPLAINT**  
**(Correspondence Review)**  
**Violation of NASD Conduct Rule 2110**

9. Paragraphs 1 through 7 of this Complaint are re-alleged and incorporated herein by reference.
10. Respondent sent BI at least one letter, written in Korean and dated May 2004 (the "Korean Letter"), concerning BI's complaints.
11. Respondent sent the Korean Letter to BI without JPR's knowledge.
12. Respondent did not make the Korean Letter available for supervisory review. This prevented JPR from discharging its obligation under NASD Conduct Rule 3010(d) to review outgoing correspondence.

By reason of the foregoing, Respondent violated NASD Conduct Rule 2110.

**SECOND CAUSE OF COMPLAINT**  
**(Failure to Respond)**  
**Violation of NASD Procedural Rule 8210 and Conduct Rule 2110**

13. Paragraphs 1 through 12 of the Complaint are re-alleged and incorporated herein by reference.

*October 27, 2005 Letter*

14. By letter dated October 27, 2005, sent to Respondent pursuant to, and in accordance with, NASD Procedural Rule 8210, the Staff requested that he appear for an on-the-record

interview on November 15, 2005 and contact the Staff before-hand (by November 7, 2005) to confirm his attendance or discuss re-scheduling the interview.

15. This letter was sent to Respondent's last known home address as reflected in the records of NASD's Central Registration Depository ( [REDACTED] ) ("CRD Address") by regular and certified mail.
16. The regular first class mailing was not returned to the Staff.
17. The envelope containing the certified mailing was returned to the Staff marked "Not Deliverable as Addressed, Unable to Forward."
18. Respondent did not appear or otherwise respond to this letter.

*November 8, 2005 Letter*

19. By letter dated November 8, 2005, sent to Respondent pursuant to, and in accordance with, NASD Procedural Rule 8210, the Staff requested that he appear for an on-the-record interview on November 22, 2005 and contact the Staff before-hand (by November 14, 2005) to confirm his attendance or discuss re-scheduling the interview. The letter was sent to the CRD Address by regular and certified mail.
20. The regular first class mailing was not returned to the Staff.
21. The envelope containing the certified mailing was returned to the Staff marked "Not Deliverable as Addressed, Unable to Forward."
22. Respondent did not appear or otherwise respond to this letter.

By reason of the foregoing, Respondent violated NASD Procedural Rule 8210 and Conduct Rule 2110.

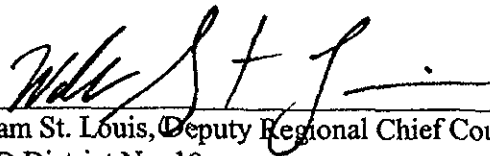
**PRAYER FOR RELIEF**

**WHEREFORE**, Complainant respectfully requests:

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

Dated: August 22, 2006

**DEPARTMENT OF ENFORCEMENT**



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