

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JOSEPH G. VITETTA
(CRD No. 1536695),

Respondent.

Disciplinary Proceeding
No. E1020041225-01

Hearing Officer _____

COMPLAINT

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

JURISDICTION

1. On or about September 17, 1986, Respondent first became registered with NASD as a General Securities Representative ("GSR") through his association with a member firm.
2. Respondent has been registered as a GSR with NASD through a variety of member firms including:
 - (a) Citigroup Global Markets, Inc., (BD No. 7059) ("Citigroup") from January 23, 1998, through March 9, 2001;
 - (b) Prudential Equity Group, LLC, (BD No. 7471) ("Prudential") from March 9, 2001, through July 1, 2003;
 - (c) Wachovia Securities, LLC, (BD No. 19616) ("Wachovia") from July 1, 2003 through January 18, 2005; and
 - (d) GunnAllen Financial, Inc., (B.D. No. 17609) ("GunnAllen") from January 21, 2005 through December 30, 2005.

3. Respondent is not currently registered with NASD. On January 3, 2005, GunnAllen filed with NASD a Uniform Termination Notice for Securities Industry Registration ("Form U-5") concerning Respondent. The Form U-5 indicated that Respondent's last day of employment at GunnAllen was December 30, 2005.
4. Respondent remains subject to the jurisdiction of NASD pursuant to Article V, Section 4 of NASD's By-Laws.

BACKGROUND

5. Paragraphs one through four of this Complaint are re-alleged and incorporated herein by reference.
6. Respondent serviced the brokerage account for customer ML at Citigroup, Prudential, and Wachovia.
7. ML and Respondent were related, as ML was Respondent's mother's cousin.
8. ML was a retired schoolteacher with limited assets and limited investment experience.
9. ML did not own a home. ML depended on social security and a small pension to live.

FIRST CAUSE OF COMPLAINT (Qualitative Unsuitability) Violation of NASD Conduct Rules 2310 and 2110

10. Paragraphs one through nine of this Complaint are re-alleged and incorporated herein by reference.
11. In March 1999, ML's net worth was approximately \$100,000, money she obtained from the proceeds of her husband's life insurance policy and her early retirement package.
12. In March 1999, Respondent recommended that ML place this money in a variable annuity.
13. ML followed his recommendation and invested \$95,600 of her assets in a Travelers/Citigroup variable annuity.

14. At the time that he made this recommendation, Respondent worked at Citigroup.
15. Respondent changed jobs in 2001 and began to work at Prudential.
16. The variable annuity purchased by ML at Citigroup could not be transferred to an account at Prudential, where Respondent now worked.
17. In August 2002, Respondent recommended that ML surrender the variable annuity and deposit the proceeds in a Prudential account with Respondent as her broker.
18. ML followed Respondent's recommendation and surrendered her variable annuity.
19. ML received approximately \$55,534 when the annuity was surrendered, significantly less than the \$96,500 she initially invested.
20. At the time of the surrender, ML had held the variable annuity sold to her by Respondent for less than four years. Accordingly, under the terms of the policy, when ML surrendered the variable annuity she paid a \$2,524.35 surrender charge.
21. By surrendering the variable annuity, ML forfeited the death benefit she had in this variable annuity policy. That benefit provided that when ML died, the beneficiaries of her variable annuity would receive a value no less than the highest value of her annuity on the anniversary of her initial investment, minus any withdrawals that she had taken from the account. The total value of the death benefit in her annuity prior to surrender was over \$136,664.50, about \$78,000 more than the cash value that ML received.
22. In recommending that ML surrender her variable annuity, Respondent lacked reasonable grounds to believe the sale was suitable for ML, in light of ML's financial situation, investment objectives and the contract terms of the annuity product.

By reason of the foregoing, Respondent violated NASD Conduct Rules 2310 and 2110.

SECOND CAUSE OF COMPLAINT
(Conversion and/or Improper Use)
Violation of NASD Conduct Rule 2110 and 2330(a)

23. Paragraphs one through twenty-two of this Complaint are re-alleged and incorporated herein by reference.
24. The \$55,534 that ML received from the surrender of her variable annuity was deposited in a Prudential account that ML had recently opened through Respondent. Respondent then advised her to transfer \$25,000 of the money into a bank account and give the funds directly to him.
25. On or about August 19, 2002, Respondent obtained a check from ML in the amount of \$25,000.
26. ML intended that the \$25,000 paid to Respondent would be used to make an investment on her behalf. Respondent agreed to invest the money on ML's behalf.
27. Respondent did not use the funds obtained from ML to make an investment on her behalf. Instead, Respondent deposited ML's funds in a personal bank account that he controlled and, without ML's knowledge, authorization, or consent, used the funds for his own benefit. Respondent thereby converted or misused \$25,000 of ML's funds, without ML's knowledge, authorization, or consent.
28. On or about July 2004, Respondent approached ML seeking additional money. ML understood that the money Respondent sought was for investment purposes and did not give the money to Respondent for his personal use. Respondent agreed to invest the money on ML's behalf.
29. Respondent obtained a check for \$12,000 from ML, which he cashed on or around July 23, 2004.

30. Respondent used the funds for himself without ML's knowledge, authorization, or consent.

Respondent thereby converted or misused an additional \$12,000 of ML's funds to his own use and benefit.

31. In total, Respondent converted or misused \$37,000 of ML's money.

32. Such acts, practices and conduct constitute a violation of NASD Conduct Rule 2330(a).

Such conduct is inconsistent with high standards of commercial honor and just and equitable principles of trade and is a violation of NASD Conduct Rule 2110 by Respondent.

By reason of the foregoing, Respondent violated NASD Conduct Rules 2110 and 2330(a).

THIRD CAUSE OF COMPLAINT
(Alternative to the Second Cause)
(Borrowing From a Customer)
Violation of NASD Conduct Rules 2110 and 2370

33. Paragraphs one through thirty-two of this Complaint are re-alleged and incorporated herein by reference.

34. As an alternative to the second cause of Complaint, to the extent that the \$37,000 (\$25,000 obtained in August 2002 and \$12,000 obtained in July 2004) Respondent obtained from ML was a loan, as he claims, he violated NASD Rules in the manner in which he obtained such monies.

The Entire \$37,000 "Loan"

35. Respondent has maintained that the \$37,000 he obtained from ML was loaned to him. If so, Respondent obtained the money through pressure, misrepresentation, or advantage.

36. Respondent obtained the money through misrepresentation because ML was not aware that Respondent considered the money to be a loan.

37. Respondent took advantage of ML to obtain this money. ML was a retired schoolteacher with limited assets and limited investment experience who trusted Respondent because his mother was her cousin. Respondent took advantage of ML because she lacked sophistication and used the trust ML placed in him based on the family relationship.
38. Such conduct is inconsistent with high standards of commercial honor and just and equitable principles of trade and a violation of NASD Conduct Rule 2110 by Respondent.

The \$12,000 "Loan"

39. Respondent has maintained that the \$12,000 he obtained from ML in July 2004 was loaned to him.
40. In July 2004, the member firm that employed Respondent, Wachovia, had written policies and procedures in place that governed the circumstances under which brokers could obtain loans from customers. Respondent failed to follow his firm's procedures.
41. To the extent that Respondent obtained a \$12,000 loan from ML in July 2004 he did so in violation of the requirements of NASD Conduct Rules 2370 and 2110.

By reason of the foregoing, Respondent violated NASD Conduct Rules 2370 and 2110.

FOURTH CAUSE OF COMPLAINT
(Failure to Disclose Material Facts on a Form U-4)
Violation of NASD Conduct Rule 2110 and NASD IM-1000-1

42. Paragraphs one through forty-one of this Complaint are re-alleged and incorporated herein by reference.
43. Respondent signed a Uniform Application for Securities Industry Registration or Transfer ("Form U-4") on or about January 31, 2005, seeking registration with NASD through GunnAllen.

Respondent's Unsatisfied Judgment

44. On or about March 4, 2005, a judgment was entered against Respondent in New Jersey Superior Court case number L001934. The plaintiff was the Boardwalk Regency Corporation and the amount of the judgment was \$12,004.11. The judgment was not satisfied but later was discharged through a bankruptcy proceeding filed by Respondent.
45. The Form U-4 requires an applicant to make certain financial disclosures including disclosure of any unsatisfied judgments or liens (question 14M). An unsatisfied judgment or lien against a GSR is a material fact.
46. Pursuant to Article V, Section 2(c) of NASD's By-Laws, Respondent was required to submit to NASD an amendment to his Form U-4 to NASD within thirty days of the filing of this unsatisfied judgment or lien.
47. Respondent willfully failed to amend his Form U-4 to disclose this unsatisfied judgment or lien.

Respondent's Bankruptcy Filing

48. On or about April 14, 2005, Respondent filed a petition for Chapter 7 bankruptcy protection in United States Bankruptcy Court, District of New Jersey, Trenton Division.
49. The Form U-4 requires an applicant to make certain financial disclosures including disclosure of any bankruptcy filings within the past ten years (question 14K). A bankruptcy filing by a GSR is a material fact.
50. Pursuant to Article V, Section 2(c) of NASD's By-Laws, Respondent was required to submit to NASD an amendment to his Form U-4 to NASD within thirty days of filing for bankruptcy.

51. To date, Respondent has willfully failed to amend his Form U-4 to disclose that he filed for bankruptcy.

By reason of the foregoing, Respondent acted in contravention of Article V, Section 2 of NASD's By-Laws and thus violated NASD IM-1000-1 and NASD Conduct Rule 2110.

PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Respondent committed the violations alleged within this Complaint;
- B. Specific findings that Respondent willfully failed to amend his Form U-4 to disclose material facts;
- C. An order imposing sanctions upon the Respondent in accordance with NASD Rule 8310;
- D. An order requiring Respondent to disgorge fully any and all ill gotten gains and/or make full and complete restitution, together with interest;
- E. An order imposing such costs of any proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330; and
- F. An order imposing any other fitting sanction.

NASD DEPARTMENT OF ENFORCEMENT

Date: February 23, 2006


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