

NASD
OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Otto K. Vaughan,
CRD No. 453757

Respondent.

Disciplinary Proceeding
No. E3A2003052101

Hearing Officer RSH

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: March 23, 2006

INTRODUCTION

Disciplinary Proceeding No. E3A2003052101 was filed on August 24, 2005, by the Department of Enforcement of NASD ("Complainant"). Respondent Otto K. Vaughan ("Vaughan") submitted an Offer of Settlement ("Offer") to Complainant on March 3, 2006. Pursuant to Code of Procedure Rule 9270(e), the Complainant and the National Adjudicatory Council ("NAC") Review Subcommittee or the Office of Disciplinary Affairs ("ODA") have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to Code of Procedure Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.

Under the terms of the Offer, Respondent has consented, without admitting or denying the allegations of the Complaint, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of NASD, or to which NASD is a party, to the entry of findings and violations consistent with the allegations of the Complaint, and to the imposition of the sanctions set forth below, and fully understands that this Order will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by NASD.

BACKGROUND

Vaughan, age 61, has been registered with ten member firms since 1970. During the period relevant to this Complaint, Vaughan was associated with Multi-Financial Securities Corporation ("Multi-Financial"). This association commenced on June 20, 1988 and ceased on December 12, 2003. According to CRD, Vaughan was discharged from Multi-Financial Securities Corporation for violating the firm's policies and procedures and NASD rules and regulations relating to correspondence and misappropriation of customer funds. After leaving Multi-Financial, Vaughan became registered with Synergy Investment Group in November 2004 as a General Securities Representative. His registration with Synergy Investment Group was terminated on May 18, 2005 and Vaughan has not been registered or associated with another NASD member firm since that time. Vaughan's disciplinary history is limited to one incident. On November 9, 2005, Vaughan was suspended for failing to comply with an arbitration award in arbitration case #04-08463.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:

In or about 1997 Vaughan began acting as the Trustee for the BJS Testamentary Trust ("the Trust") established by the will of BJS. As Trustee for the BJS Trust, Respondent Vaughan had complete authority over the Trust's assets. The Trust's beneficiaries consisted of the Trustor's daughter and two minor grand children.

During various times from 1997 to 2003, the Trust maintained bank accounts with Tri-State Bank and Vectra Bank Colorado ("Bank Accounts"). The Trust also had an account with Oppenheimer Funds and

MFS. The MFS account was numbered [REDACTED], and entitled "Keith Vaughan TTEE, BJS Trust".

Vaughan had check writing authority on these accounts. Vaughan also managed the MFS account.

Vaughan engages in self-dealing with the Trust.

In or about April 1998 Vaughan, acting as Trustee, purchased a condominium for himself using \$75,000 that he borrowed from the Trust's account with Tri-State Bank. Vaughan did not disclose this loan to the beneficiaries of the Trust. Vaughan began making monthly mortgage payments to the Trust, as required, starting in June 1998. However, Vaughan stopped making mortgage payments in December 1999. In or about January and February 2002, Vaughan refinanced the property.

In March 1996 Vaughan filed for Chapter 13 bankruptcy in the U.S. Bankruptcy Court in Denver, Colorado. The bankruptcy was discharged in December 2000. Therefore, Vaughan was in bankruptcy at the time that he, as Trustee, lent himself funds to purchase the condominium.

In addition to the \$75,000 withdrawal of Trust Funds set forth in paragraph 6 above, from approximately February 1997 through to June 2003, Vaughan, in his capacity as Trustee, withdrew a total of approximately \$247,000 from the Trust's Bank Accounts and from accounts the Trust maintained with Oppenheimer Funds and MFS. He withdrew certain of these funds to pay for personal expenses and failed to keep any records or documents detailing such withdrawals used for personal expenses. Each year from 2000 to 2003, Vaughan withdrew on average, funds equaling 19% of the value of the Trust's portfolio with MFS.

Of the \$247,000 he withdrew, Vaughan used approximately \$16,489 to purchase an automobile in February 2001. Vaughan withdrew the \$16,489 from the Trust's MFS account. Vaughan did not disclose this withdrawal or any withdrawal used for his personal expenses to the beneficiaries of the Trust.

The Trust was also charged 2.25% by MFS in annual advisory fees in connection with Vaughan's handling of this account. Vaughan received approximately 84% of the fees. The Trust paid MFS approximately \$20,000 in advisory fees from its inception in March 2000 to its closure.

By using Trust property for his own personal purposes, Vaughan engaged in self-dealing and thereby breached the duty of loyalty he owed to the Trust.

Vaughan failed to keep the beneficiaries reasonably informed and failed to provide a complete accounting as required by Colorado statute and under the terms of the Trust.

A Trustee in Colorado is required by statute to keep the beneficiary reasonably informed of the activities of the Trust. Moreover, the Trust provisions of BJS's will required Respondent to provide the beneficiaries with annual accountings, showing receipts, disbursements and distributions of the Trust. From approximately February 1997 through to June 2003, Vaughan did not provide the beneficiaries with an accounting containing details of all disbursements from the Trust assets, such as the date of withdrawals from bank and brokerage accounts and the amount and reason for such withdrawals. During the relevant time period, Vaughan kept no records (and therefore did not provide any accountings) detailing the amount of fees he paid to himself. For example, he kept no records reflecting the dates he provided services to the Trust, the nature of the services or the amount of time he expended in performing such services. Vaughan himself does not know what amounts he withdrew from the Trust for personal expenses and what amounts he withdrew to pay his Trustee fees.

By failing to keep the beneficiaries reasonably informed of disbursements of Trust funds and by failing to provide an accounting reflecting Trust receipts, disbursements and distributions, Vaughan violated his statutory duty to account to the beneficiaries and failed to adhere to the terms of the Trust.

Based on the foregoing, Vaughan failed to observe high standards of commercial honor and just and equitable principles of trade. Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 by Respondent Vaughan.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondent from any future misconduct, and represent a proper discharge by NASD, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

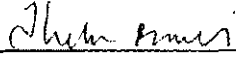
It is ordered that Respondent be

1. Barred from association with any NASD member in any capacity; and
2. Ordered to pay restitution to V.S, E.S. and K.S., as identified in Attachment A, in the total amount of \$129,348 (50% to V.S. and 25% each for E.S. and K.S.). Restitution amounts ordered pursuant to this disciplinary action, are due and payable prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding. The imposition of a restitution order or any other monetary sanction herein, and the timing of such ordered payments, does not preclude customers from pursuing their own actions to obtain restitution or other remedies.
3. If for any reason Respondent cannot locate any persons identified in Attachment A after reasonable and documented efforts within such period, or such additional period agreed to by the staff, Respondent shall forward any undistributed restitution and interest to the appropriate escheat, unclaimed property, or abandoned property fund for the state in which the customer is last known to have resided.

The sanctions imposed herein shall be effective on a date set by NASD staff. Pursuant to IM-8310-2(f), a bar or expulsion shall become effective upon approval or acceptance of this Order by the NAC.

SO ORDERED.

NASD
Signed on behalf of the
Director of ODA, by delegated authority



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