

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ROBERT WADE JOHNSON
(CRD No. 2966137),

Respondent.

Disciplinary Proceeding
No. E3A2004027901

Hearing Officer – DMF

DEFAULT DECISION

April 6, 2006

Summary

Respondent is barred from associating with any NASD member in any capacity for misusing funds, in violation of Rules 2330 and 2110, and for failing to provide requested information, in violation of Rules 8210 and 2110.

Appearances

Helen G. Barnhill, Esq., Denver, CO (Rory C. Flynn, Esq., Washington, DC, and Roger D. Hogoboom, Esq., Denver, CO, Of Counsel), for Complainant.

No appearance by or for Respondent.

DECISION

I. Introduction

The Department of Enforcement filed the attached Complaint on December 5, 2005, alleging that Respondent Robert Wade Johnson misused funds, in violation of Rules 2330 and 2110, and failed to provide requested information, in violation of Rules 8210 and 2110. Respondent did not file an Answer to the Complaint. On February 27,

2006, Enforcement filed a motion for a default decision, supported by the declaration of Helen G. Barnhill and 10 exhibits. Respondent did not reply to the motion.¹

II. Respondent's Default

Enforcement sent the Complaint and Notice of Complaint to Respondent on December 2, 2005, by regular and certified first class mail to Respondent's most current residential address listed in the Central Registration Depository (the CRD address) and to a more recent address that Respondent gave NASD staff during the investigation.

Enforcement sent the Complaint and Second Notice of Complaint to Respondent by regular and certified first class mail to the same addresses on January 6, 2006.

Respondent did not file an Answer or otherwise respond to the Complaint.

Enforcement served the Complaint and the Notices of Complaint on Respondent in accordance with Rule 9134, giving him constructive notice of this proceeding. By failing to respond, he defaulted. Pursuant to Rule 9215(f), the Hearing Officer will deem the allegations in the Complaint admitted.

III. Jurisdiction

Respondent was registered as an Investment Company and Variable Contracts Products Limited Representative through Walnut Street Securities, Inc. (WSSI) from April 1998 to February 2003, and as a General Securities Representative from May 2001 through February 2003. He was subsequently registered as a General Securities Representative through SII Investments, Inc. from March 2003 to November 3, 2003. On September 17, 2004, both WSSI and SII filed amendments to the Uniform Termination

¹ The factual determinations in this decision are based on the allegations of the attached Complaint, which are deemed admitted, and the additional materials filed by Enforcement with its motion.

Notice for Securities Industry Registration forms (U-5 Forms) they had previously submitted for Respondent. These amendments disclosed for the first time that an individual had complained that he had given Respondent a series of checks to invest, but the money was not invested as the customer intended and the customer did not know what had become of it. The amendments thus suggested that Respondent might have misused or converted the funds.

Although Respondent has not been associated with any NASD member since his termination from SII, he remains subject to NASD jurisdiction for purposes of this proceeding, pursuant to Art. V, § 4 of NASD's By-Laws, because the Complaint, which was filed within two years after the U-5 Forms were amended, charges him with misconduct while he was registered and with failing to provide information requested during that two-year period.

IV. Violations

The first cause of the Complaint alleges that from approximately July 26, 2000 through January 31, 2003, while Respondent was registered with WSSI, customer MC gave Respondent approximately 26 checks totaling approximately \$122,000 that were made payable to Respondent or to cash. MC gave the checks to Respondent to invest the proceeds on MC's behalf. Instead, Respondent cashed the checks and received the proceeds, but did not deposit them in MC's WSSI securities account. Respondent did not return any of the funds and he was unable to provide any evidence that he invested the funds on MC's behalf. These allegations, which are deemed admitted, are sufficient to establish for purposes of this default decision that Respondent misused customer funds, in violation of Rules 2330 and 2110.

The second cause of the Complaint alleges that from approximately June 27, 2003 through August 2003, while Respondent was associated with SII, he obtained from MC eight additional checks totaling approximately \$35,000. MC also made these checks payable to Respondent or to cash, and gave them to Respondent to invest the proceeds on MC's behalf. Respondent cashed the checks and obtained the proceeds, but did not invest them on MC's behalf. Respondent did not return the funds and he was unable to provide any evidence that he invested the funds on MC's behalf. These allegations, which are deemed admitted, are sufficient to establish for purposes of this default decision that Respondent misused MC's funds, in violation of Rule 2110.²

The third cause of the Complaint alleges that in the course of its investigation of the circumstances described above, NASD staff sent Respondent requests for information, pursuant to Rule 8210, on October 14, November 12 and December 20, 2004, and on January 19, 2005. Each of the requests was properly served by certified and regular first class mail to Respondent at his CRD address, and, when additional, possible more recent addresses came to the staff's attention, at those addresses as well.

On February 11, 2005, Respondent made a partial response to the requests, but failed to provide any of his bank account statements or deposit slips for the accounts in which he had deposited MC's funds, as the staff had requested. On February 22, 2005, the staff sent Respondent another request, pursuant to Rule 8210, requesting that Respondent provide the documents omitted from his February 11 response and that he appear for an on-the-record interview (OTR). Respondent did appear for the OTR, during

² In its motion Enforcement explained that it did not charge a violation of Rule 2330 in the second cause of the Complaint because MC was not a customer of SII.

which he stated that he was not going to provide the requested bank records. Further, during the OTR Respondent represented that he had given MC's funds to two other registered individuals for investment, but refused to identify those individuals.

These allegations, which are deemed admitted, are sufficient to establish for purposes of this default decision that Respondent failed to provide requested information, in violation of Rules 8210 and 2110.

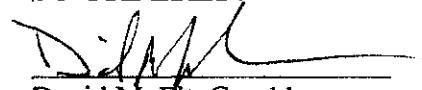
V. Sanctions

For misuse or conversion of funds, the Sanction Guidelines recommend a bar, or a suspension and a fine if mitigating facts are shown. NASD Sanction Guidelines at 38. In this case there is no evidence of any mitigating facts and Respondent's misconduct clearly calls for a bar. For failing to provide requested information, the Guidelines also recommend a bar. NASD Sanction Guidelines at 35. Once again there is no evidence of any mitigating facts that could justify a lesser sanction.³

VI. Conclusion

Respondent Robert Wade Johnson is barred from associating with any NASD member in any capacity for misusing funds, in violation of Rules 2330 and 2110, and for failing to provide requested information, in violation of Rules 8210 and 2110. The bars will be effective immediately if this decision becomes NASD's final disciplinary action.

SO ORDERED.


David M. FitzGerald
Hearing Officer

³ In its motion, Enforcement states that it is not seeking restitution because WSSI and SII made MC whole.

Copies to: Robert Wade Johnson (*via overnight courier and first class mail*)
Helen G. Barnhill, Esq. (*via electronic and first class mail*)
Roger D. Hogoboom, Esq. (*via electronic and first class mail*)
Rory C. Flynn, Esq. (*via electronic and first class mail*)

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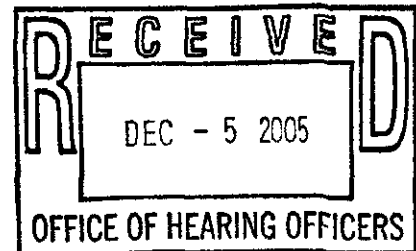
Robert Wade Johnson,
CRD No. 2966137

Respondent.

Disciplinary Proceeding
No. E3A2004027901

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COMPLAINT



Upon information and belief, Complainant alleges as follows:

1. Respondent Robert Wade Johnson ("Johnson") became registered with NASD in or about November 1997. Johnson was associated with Walnut Street Securities, Inc. ("WSSI"), a member of NASD, from about April 2, 1998 to February 20, 2003. He was later associated with SII Investments, Inc. ("SII") from about March 4, 2003 through October 31, 2003. Though Johnson was last registered with a member, SII, on October 31, 2003, NASD has jurisdiction over him until September 17, 2006, as WSSI and SII filed amendments to their notices of termination of Johnson on September 17, 2004, within two years of the original notices of termination. The amended notices disclosed that Johnson may have engaged in misuse of customer funds.

CAUSE ONE

Misuse of Customer Funds (Rule 2330) and Failure to Observe High Standards of Commercial Honor and Just and Equitable Principles of Trade (Rule 2110)

2. From approximately, July 26, 2000 through January 31, 2003, while Johnson was registered with WSSI, customer MC gave Johnson approximately 26 checks totaling approximately \$122,000. All of the checks were made payable to Johnson or to cash. Johnson cashed and received the proceeds from each of these checks.

3. MC gave the money to Johnson to be used for investments. However, the money MC gave Johnson while he was associated with WSSI was not deposited into or reflected in MC's securities accounts at WSII.
4. Johnson was unable to provide any evidence or documentation showing that he actually invested any *of MC's money and Johnson did not return to MC any of the money MC gave him for the purpose of investment.*
5. The foregoing conduct constitutes misuse of customer funds and a violation of Conduct Rule 2330. By engaging in such acts, practices, and conduct Johnson also failed to observe high standards of commercial honor and just and equitable principles of trade in violation of NASD Conduct Rule 2110.

CAUSE TWO

Failure to Observe High Standards of Commercial Honor and Just and Equitable Principles of Trade (NASD Conduct Rule 2110)

6. Paragraph numbers 1 through 5 above are realleged and incorporated herein by reference.
7. From approximately June 27, 2003 through August 2003, while Johnson was registered with SII, MC gave Johnson another eight checks worth approximately \$35,000. All of the checks were made payable to Johnson or to cash. Johnson cashed and received the proceeds from each of these checks.
8. MC gave the money to Johnson to be used for investments.
9. Johnson was unable to provide any evidence or documentation showing that he actually invested any part of the \$35,000 and Johnson did not return to MC any of the \$35,000 MC gave him for the purpose of investment.
10. By engaging in such acts, practices, and conduct Johnson failed to observe high standards of commercial honor and just and equitable principles of trade in violation of NASD Conduct Rule 2110.

CAUSE THREE

NASD Conduct Rule 2110 and Procedural Rule 8210 Refusal to Provide Information

11. Paragraph numbers 1 through 10 above are realleged and incorporated herein by reference.
12. On or about October 14, 2004, the staff sent Johnson a written request for information concerning the matters set forth above in paragraphs 2 through 9 above. The staff asked, among other things, for bank account statements and deposit slips for the accounts in which Johnson deposited MC's funds, and if applicable, documentation reflecting the investments made with the money he received from MC. This request was made pursuant to NASD Procedural Rule 8210 and was sent to Johnson by first-class and certified mail to his then most recent addresses of record with CRD: [REDACTED] [REDACTED] ("CRD address"). The information was to be provided on or before October 28, 2004. The certified letter sent to the CRD address was returned marked "Notify sender of new address Johnson Robert Wade [REDACTED]" ("Livermore address."). The first class letter was not returned.
13. On or about November 12, 2004, the staff sent Johnson a second request letter pursuant to NASD Procedural Rule 8210 via first-class and certified mail to the CRD address and the Livermore address. The information was to be provided on or before November 26, 2004. The certified letter sent to the Livermore address was returned marked "notify sender of new address Johnson Robert Wade [REDACTED]." ("Fort Collins address"). The certified letter sent to the CRD address was not returned, though staff did receive back a torn domestic return receipt. The first class mailings were not returned.
14. On or about December 20, 2004, the staff sent Johnson a third request letter pursuant to NASD Procedural Rule 8210 via first-class and certified mail to the CRD address and the Livermore and

Fort Collins addresses.¹ The requested information was to be provided on or before January 4, 2005. The first class and certified letters sent to the CRD address were returned notifying staff of the Fort Collins address. The certified letter sent to the Livermore address was returned marked "unclaimed" and notifying staff of the Fort Collins address. The certified letter sent to the Fort Collins address was returned marked "unclaimed." The first class letters sent to the Livermore and Fort Collins addresses were not returned.

15. On or about January 19, 2005, the staff sent Johnson a fourth request letter pursuant to NASD Procedural Rule 8210 via certified and first class mail to the CRD address and to the Fort Collins and Livermore addresses. The first class and certified letters sent to the CRD address were returned notifying staff of the Fort Collins address. The certified letter sent to the Livermore address was returned marked "unclaimed" and notifying staff of the Fort Collins address. The certified letter sent to the Fort Collins address was returned marked "unclaimed." The first class letters sent to the Livermore and Fort Collins addresses were not returned.
16. Johnson had actual notice of the 8210 request as he eventually responded to the staff on February 11, 2005. However, the response was incomplete in that Johnson failed to provide any of his bank account statements and deposit slips for the accounts in which he deposited MC's funds. Johnson also failed to provide any documentation evidencing investments made for the benefit of MC with the funds MC provided him even though he claimed, in his February 11, 2005, response that he had some documentation of transactions entered into for MC's benefit.

17. On or about February 22, 2005, the staff sent Johnson a final request letter pursuant to NASD Procedural Rule 8210 via certified and first class mail to the CRD address and to the Fort Collins and

¹ All letters sent to the Fort Collins address were addressed to [REDACTED] rather than [REDACTED]. However, the letters appear to have been delivered to the correct address as they were returned marked "unclaimed" rather than "undeliverable as addressed." Moreover, as discussed below, Johnson received actual notice of the 8210 request letter as he responded to the staff's request for information on February 11, 2005.

Livermore addresses. Johnson was requested to supply the requested information by March 4, 2005.

This request letter also asked Johnson to appear for an on the record interview on March 11, 2005.

The first class and certified letters sent to the CRD address were returned notifying staff of the Fort Collins address. The certified letter sent to the Livermore address was returned marked "refused".

The certified letter sent to the Fort Collins address was returned marked "unclaimed." The first class letters sent to the Livermore and Fort Collins addresses were not returned.

18. Johnson had actual notice of the February 22, 2005 letter because he appeared for his on the record testimony (OTR) on March 11, 2005. During the course of that OTR, he was advised that he was there pursuant to Rule 8210. When the staff questioned Johnson regarding his failure to provide bank statements or other materials documenting Johnson's use of MC's funds, which had been requested in the earlier Rule 8210 letter, Respondent Johnson replied that he was not going to provide bank records.

19. In his OTR, Johnson stated that funds he received from MC were sent to two registered individuals for various unspecified investments. Staff then asked him to identify the two individuals whom he gave MC's funds for investment. Johnson, however, refused to answer staff's request to identify the two registered individuals to whom he purportedly sent customer MC's funds.

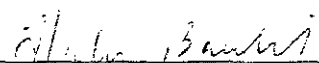
20. Respondent's failure to provide information in response to the 8210 request and subsequent failure to respond to the question posed to him at his OTR requesting that he identify the two individuals to whom he gave MC's funds constitute separate and distinct violations of NASD Procedural Rule 8210. This conduct is also inconsistent with high standards of commercial honor and just and equitable principles of trade and a violation of NASD Conduct Rule 2110 by Respondent.

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.

Date: December 2, 2005


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