

NASD
OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

David J. Palen,
CRD No. 2321162

Respondent.

Disciplinary Proceeding
No. E3A2004036501

Hearing Officer

COMPLAINT

Upon information and belief, Complainant alleges as follows:

1. Respondent David J. Palen ("Palen") became registered with NASD in April 1993 as a general securities representative with American Express Financial Advisors, Inc. ("AEFA") and IDS Life Insurance Company. Palen's association with AEFA and IDS Life Insurance Company ended in January 2005. Palen has not been registered or associated with an NASD member since that time. Although Palen is not presently associated with a member, NASD has jurisdiction to issue this Complaint, pursuant to Article V, Section 4 of the NASD By-laws, until January 2007.

CAUSE ONE

NASD Rules 2330 and 2110: Misuse of Customer Funds and Failure to Observe High Standards of Commercial Honor and Just and Equitable Principles of Trade

2. Between approximately February 2001 and October 2004, Palen withdrew approximately \$203,464 from sixteen customer accounts at AEFA to pay for financial planning fees that had not been authorized or approved by the customers. These withdrawals are more fully set forth on Schedule A attached hereto and made a part hereof.
3. To obtain the withdrawals from each customer account, Palen provided AEFA with an Advisory Service Agreement or a Good Until Changed or Cancelled Service Agreement "GUC Agreement" purportedly signed by each customer. Each agreement authorized Palen to charge the customers for

the creation of a financial plan for that customer. None of the customers set forth on Schedule A either signed their agreement, authorized the creation of a financial plan on their behalf or authorized the withdrawal of fees from their accounts for the payment of such a plan.

4. The funds withdrawn from the sixteen customer accounts were deposited into AEFA's revenue account. Palen was paid approximately 80% of the financial planning fees he improperly withdrew or had withdrawn from these sixteen customer accounts.
5. Palen failed to provide the sixteen customers with the financial plans, for which he had charged their accounts without their knowledge, authorization or consent.
6. In one instance, when an unauthorized withdrawal was detected, Palen lied about his conduct to a customer. In or about October 2004, after learning of an unexplained and unauthorized \$5000 withdrawal from his account, customer J.D. contacted Palen. Palen assured J.D. that his money had merely been moved from one investment to another and that no money was lost. The foregoing conduct constitutes misuse of customer funds and a violation of Conduct Rule 2330. By engaging in such acts, practices, and conduct Palen 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

NASD Conduct Rule 2110: Forgery

7. Paragraph numbers 1 through 7 above are realleged and incorporated herein by reference.
8. On or about January 5, 2004, Respondent Palen, submitted or caused to be submitted to AEFA, an Advisory Service Agreement purportedly signed by customer GH. The agreement authorized AEFA to charge GH for the creation of a financial plan.
9. GH did not sign the Advisory Service Agreement; did not authorize the creation of a financial plan on his behalf and did not authorize Palen to withdraw funds from his investment account to pay for a financial plan.

10. Palen signed customer G.H.'s name to the Advisory Service Agreement without the authorization of customer G.H.

11. The foregoing conduct constitutes separate and distinct violations of NASD Conduct Rule 2110.

CAUSE THREE

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

12. Paragraph numbers 1 through 12 above are realleged and incorporated herein by reference.

13. On or about September 7, 2005, the staff sent Palen a letter, by first class and certified mail to [REDACTED], his CRD address, requesting that he appear for an on-the-record ("OTR") interview on September 28, 2005 in Denver, Colorado. NASD staff wanted to question Palen at the OTR about the matters alleged in paragraph 2 through 7 above. The certified letter was returned marked "return to sender, not deliverable as addressed, unable to forward." The first class letter was not returned. Palen did not contact the staff concerning the OTR request letter. Nor did he appear for his OTR on September 28, 2005.

14. Palen's failure to appear for his OTR violated 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: March 13, 2006



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Exhibit A

	Customer	Funds wrongfully taken from customer account	Approximate Date Funds taken from accounts
1	L.A. and L.A.	\$5,000	June 21, 2002
2	D.A. and S. A.	\$5,000	May 19, 2003
3	F. A and B. A.	\$55,000	March 30, 2001, March 18, 2002, January 27, 2003, December 8, 2003 and August 26, 2004
4	M.B.	\$18,000	January 10, 2002 and October 11, 2004
5	A. C. and J. C.	\$4,455	November 20, 2003
6	J.D.	\$5,000	October 11, 2004
7	J.D. and J. D.	\$3,000	November 20, 2003
8	O. H. and R.B.	\$34,000	May 9, 2001, March 18, 2002, January 27, 2003 and November 20, 2003
9	G.H.	\$5,000	January 12, 2004
10	M.L.	\$16,000	February 13, 2001 and February 10, 2003
11	K.L.	\$5,000	September 12, 2003
12	H.M and J. M.	\$5,000	March 15, 2004
13	J.P.	\$5,000	October 11, 2004
14	A.R. and C.R.	\$18,000	May 9, 2001, June 7, 2002 April 23, 2004, and September 13, 2004
15	S.S.	\$5,000	February 2, 2004
16	J.S.	\$15,009	June 19, 2001, July 17, 2002, July 16, 2003
	Total	\$203,464	