

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

EDWARD H. JOHNSON
(CRD No. 1446749),

Respondent.

Disciplinary Proceeding
No. E3B20040206-01

Hearing Officer – AWH

DEFAULT DECISION

October 3, 2006

Formerly associated person barred from association with any member firm in any capacity for failure to appear for an on-the-record interview, in violation of NASD Procedural Rule 8210 and Conduct Rule 2110. In light of the bar, no further sanctions imposed for private securities transactions, in violation of Conduct Rules 3040 and 2110, or for failure to respond timely to requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2110.

Appearances:

David Utevsky, Esq., for the Department of Enforcement.

No appearance by or for Edward H. Johnson.

DECISION

On May 17, 2006, the Department of Enforcement ("Enforcement") issued the three-cause Complaint in this proceeding, alleging that Edward Hinton Johnson ("Respondent" or "Johnson"): (1) engaged in private securities transactions, in violation of NASD Conduct Rules 3040 and 2110; (2) failed to respond timely to requests for information, in violation of NASD Procedural Rule 8210 and Conduct Rule 2110; and (3) failed to appear for an on-the-record interview ("OTR"), in violation of Procedural Rule 8210 and Conduct Rule 2110. Respondent failed to file an Answer to the Complaint, or to a Second Notice of Complaint. As a result,

Enforcement filed a Motion for Entry of Default Decision on August 8, 2006, to which Johnson did not respond. Accordingly, pursuant to Procedural Rules 9215(f) and 9269, the Motion will be granted, and the allegations in the Complaint, which is attached to this Decision, will be treated as admitted.

Findings of Fact¹

The Respondent

Johnson entered the securities industry in January 1987, and, from January 31, 2002, until March 14, 2003, was registered through Packerland Brokerage Services, Inc. ("Packerland") as a General Securities Principal and a General Securities Representative. He was similarly registered through Capital Securities of America, Inc. ("Capital Securities") from February 5, 2003, until October 29, 2004, when Capital Securities terminated his registration. Johnson is not currently associated with any NASD member firm.

Private Securities Transactions

From April 8, 2002, until December 9, 2002, Johnson participated in the sale to Packerland customers of high-interest, unregistered bonds issued by DBSI Guaranteed Capital Corporation ("DBSI"). Johnson sold those bonds in the total amount of \$335,000 to 12 customers. Johnson, who received a financial benefit from the sale of the bonds, did not give written notice to Packerland of his participation in those sales, nor did he receive written approval from Packerland to participate in their sale. In correspondence with customers who purchased the bonds, Johnson used stationary stating that the bonds were offered through Packerland, although they were not.

¹ All findings of fact are based on the admitted allegations in the Complaint, the Declaration of David Utevsky in Support of Motion for Entry of Default Decision, and the exhibits attached thereto.

Untimely Response to Requests for Information

In March 2004, NASD initiated an investigation into the sales of DBSI bonds, including the sales of those bonds by Johnson. As part of the investigation, the NASD Staff sent two requests for information to Johnson. The first was sent on October 15, 2004, by first class mail to Johnson's residential address as reflected in the Central Registration Depository ("CRD"). The mailing was not returned, and Johnson failed to respond to the request for information. On November 1, 2004, by first class and certified mail, the Staff sent Johnson a second request for information. The mailings were sent to his CRD address. The mailing by first class mail was not returned; the certified mailing envelope was returned, marked "unclaimed." The Staff did not receive a response to its second request by the due date of November 19, 2004, nor to a telephone message left for Johnson on November 19, 2004.

On June 7, 2005, the Staff left another telephone message for Johnson regarding his failure to respond to its requests for information. Johnson returned the message later the same day, claiming that, in October 2004, he had responded by fax to the Staff's October 15, 2004, request for information. On June 9, 2005, Johnson faxed to the Staff letters dated June 8, 2005, and October 22, 2004, in which he responded to the information request dated October 15, 2004. However, Johnson did not provide the Staff with any fax confirmation or other evidence to demonstrate that he had, in fact, responded to the October 15, 2004, request for information as he claimed. Instead, he provided a fax machine log showing only that he had sent an eight-page fax transmission to Capital Securities on January 13, 2005.

Failure to Appear for an On-The-Record Interview

After the Staff reviewed Johnson's responses to written requests for information, it determined that his appearance at an on-the-record interview would be necessary to clarify his version of the facts and to prepare for a possible hearing. Accordingly, pursuant to Procedural Rule 8210, the Staff sent the following four separate requests for his appearance at an OTR:

1. On August 31, 2005, the Staff requested Johnson's appearance at an OTR on September 21, 2005, in Seattle, Washington. Johnson responded in writing, stating that he did not believe he was required to travel from North Carolina to Seattle for an OTR, but he would appear for one in Atlanta, Georgia.

2. On October 5, 2005, the Staff wrote to Johnson, requesting his appearance on November 2, 2005, for an OTR at the NASD District Office in Atlanta. By letter dated October 21, 2005, Johnson informed the Staff that he was unable to appear for the OTR on the scheduled date, and, that the next week, he expected to retain an attorney who would contact the Staff.

3. Not having heard from Johnson or an attorney representing him, on November 11, 2005, the Staff wrote to Johnson, requesting that he identify his attorney and propose dates on which an OTR could be conducted in Atlanta. By letter dated November 25, 2005, Johnson replied that his local attorney was a "Mr. Davis" who had forwarded the Staff's correspondence to an "NASD specialist" in Atlanta. Johnson said he thought that Davis and the "NASD specialist" had been in touch with the Staff. Finally, Johnson stated that he would meet with Davis and then contact the Staff.

4. Not having heard from Johnson or his attorney, on December 15, 2005, the Staff sent Johnson a letter, identified in bold type as a "final notice." The letter requested his appearance at an OTR on January 10, 2006, at the NASD District Office in Atlanta. The Staff also proposed

four alternate dates in January for the OTR. The letter required a response no later than December 28, 2005. The Staff did not hear from Johnson or his attorney during the period from December 15, 2005, to January 29, 2006. Johnson did not appear for the OTR scheduled for January 10, 2006.

On January 30, 2006, the Staff received a letter from Johnson, enclosing the envelopes the Staff sent him when it requested his appearance at the January OTR. He stated that he would accept no further correspondence from NASD, claiming that the NASD District Office in Seattle, which had sent the letters requesting the OTRs, lacked jurisdiction over the subject matter of the NASD investigation because Packerland is based in Wisconsin.

Discussion and Conclusions

Jurisdiction

Article V, Section 4 of the NASD By-Laws provides for a two-year period of retained jurisdiction over a registered person after the effective date of the individual's termination of registration. During this period of retained jurisdiction, NASD may file a complaint based upon conduct that occurred while the individual was registered with a member firm, or based upon such person's failure to provide information requested pursuant to NASD Procedural Rule 8210, if the request was made, and the complaint is filed, during the foregoing period of retained jurisdiction.

Johnson was registered with Packerland from January 2002 to March 2003, and with Capital Securities from February 2003, to October 2004, when Capital Securities filed the Form U-5 terminating his registration. Enforcement filed the Complaint on May 17, 2006, within two years of Johnson's termination of registration. The Complaint is based upon Johnson's conduct while he was registered through Packerland, and his untimely response to requests for

information and his failure to appear for an OTR that occurred during the two-year period following termination of his registration. Therefore, NASD has jurisdiction over this proceeding.

Respondent's Default

Enforcement properly served the Complaint and the Second Notice of Complaint on Johnson at his CRD address and the Post Office Box address he provided the Staff in June 2005. The first class mailings to those addresses were not returned by the United States Postal Service. The return receipt for the envelope containing the first Notice of Complaint and Complaint was returned with what appeared to be Johnson's signature. The other return receipts were returned, marked "unclaimed." On July 10, 2006, following service of the Second Notice of Complaint, the Staff received a letter from Johnson, stating: "I will not participate in any further NASD proceedings nor will I hire council [sic]." Johnson did not file an Answer to the Complaint or Second Notice of Complaint.

Pursuant to NASD Procedural Rule 9134, those mailings establish that Johnson had valid constructive notice of the Complaint. Because he failed to respond to the Complaint, Procedural Rules 9215(f) and 9269 authorize the entry of a default decision against him. Accordingly, the allegations in the Complaint are deemed admitted.

Failure to Respond Timely and Failure to Appear for an On-the-Record Interview

Procedural Rule 8210 authorizes NASD to require any person under its jurisdiction to provide information and testimony related to any matter under investigation. The information can be provided either orally, in writing, or electronically. The Rule serves as a key element in NASD's oversight function and allows NASD to carry out its regulatory functions without

subpoena power.² When an individual fails to respond to information requests, NASD's ability to perform its regulatory responsibilities is subverted.³ Moreover, an associated person who is requested to provide testimony, documents, or other information pursuant to Rule 8210 has an unqualified obligation to respond fully and promptly to the request.⁴

Eight months after the Staff sent Johnson its first request for information, he acknowledged receipt of that request and furnished the information requested. His claim that he responded to the request eight months earlier is uncorroborated and not credible. By unreasonably delaying his response to the Staff's requests for information, Johnson violated Procedural Rule 8210 and Conduct Rule 2110.

Johnson delayed his scheduled OTR for five months, and then failed to appear for it. He had actual notice of the requests for his appearance, and he knowingly and intentionally failed to appear for his testimony. By that conduct, he violated Procedural Rule 8210 and Conduct Rule 2110.

Private Securities Transactions

NASD Conduct Rule 3040 requires an associated person who participates in private securities transactions to provide prior written notice to the member firm with which he is associated, and, if the person is to receive selling compensation, to receive from the firm written approval for such participation. The purpose of the Rule is to ensure that a member firm adequately supervises the suitability and due diligence responsibilities of its associated persons.⁵

The Rule also serves to "protect employers against investor claims arising from an associated

² See *Joseph G. Chiulli*, Exchange Act Release No. 42,359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for NASD effectively to conduct its investigations, and emphasizing that NASD members and associated persons must fully cooperate with requests for information); *Dep't of Enforcement v. Benz*, No. C01020014, 2003 NASD Discip. LEXIS 11, at *18 (OHO Mar. 4, 2003) ("Because NASD has no subpoena power, timely and full compliance with information requests is essential to NASD's self-regulatory function.").

³ *Joseph P. Hannan*, Exchange Act Release No. 40,438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998).

⁴ *Dep't of Enforcement v. Cromwell Investments*, 2003 NASD Discip. LEXIS 53, at *42 (Nov. 19, 2003).

⁵ See *Dep't of Enforcement v. Carcaterra*, 2001 NASD Discip. LEXIS 39, at *8 (NAC Dec. 13, 2001).

person's private transactions and to prevent customers from being misled as to the employing firms' sponsorship of the transactions."⁶ A violation of Rule 3040 is also a violation of Conduct Rule 2110.⁷

Johnson participated in the sale of \$335,000 in unregistered bonds to 12 customers, and earned commissions on those sales, without providing written notice to, and obtaining written approval from, his employer firm. The bonds were not securities that the firm sold to its customers, and selling the bond was outside the scope of Johnson's employment. Accordingly, by participating in those sales, Johnson violated NASD Conduct Rules 3040 and 2110.

Sanctions

Failure to Appear for an On-the-Record Interview

When a respondent fails to respond in any manner to a request made pursuant to Procedural Rule 8210, the NASD Sanction Guidelines recommend a bar as the standard sanction.⁸ Johnson both failed and refused to appear or to provide any testimony in response to the Staff's requests, notwithstanding the several opportunities he was given to schedule an interview at a time and place that would not be inconvenient for him. There are no mitigating circumstances that would warrant a sanction less than a bar.

Failure to Respond Timely to Requests for Information

When a respondent fails to respond in a timely manner to a request made pursuant to Procedural Rule 8210, the NASD Sanction Guidelines recommend a fine of \$2,500 to \$25,000 and a suspension in any or all capacities for up to two years.⁹ Standing alone, Johnson's failure to respond for eight months would warrant a fine of \$10,000 and a suspension in all capacities

⁶ *Id.* at *8-9.

⁷ See *Steven J. Gluckman*, Exchange Act Release No. 41,628, 1999 SEC LEXIS 1395, at *22 (July 20, 1999).

⁸ NASD SANCTION GUIDELINES, at 35 (2006 ed.).

⁹ *Id.*

for two years. However, in light of the bar for his failure to appear for an OTR, no further sanction will be imposed for his untimely response to the requests for information.

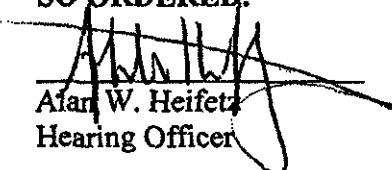
Private Securities Transactions

For engaging in private securities transactions valued at \$100,000 to \$500,000, the Sanction Guidelines recommend a fine of \$5,000 to \$50,000 and consideration of a suspension for three to six months.¹⁰ Here, Johnson's misrepresentation that the bonds were offered through Packerland is an aggravating circumstance. Standing alone, an appropriate sanction for this violation would be a fine of \$30,000 and a suspension in all capacities for six months. However, in light of the bar for his failure to appear for an OTR, no further sanction will be imposed for this violation.

Conclusion

Edward H. Johnson is barred from association with any member firm in any capacity for failure to appear for an OTR, in violation of NASD Procedural Rule 8210 and Conduct Rule 2110. In light of the bar, no further sanctions are imposed for his failure to respond timely to requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2110, or his participation in private securities transactions, in violation of Conduct Rules 3040 and 2110.

SO ORDERED.


Alan W. Heifetz
Hearing Officer

Copies to: Edward H. Johnson (*via overnight and first class mail*)
David Utevsky, Esq. (*via electronic and first class mail*)
Mark P. Dauer, Esq. (*via electronic and first class mail*)
Rory C. Flynn, Esq. (*via electronic and first class mail*)

¹⁰ *Id.* at 15.

ORIGINAL

NASD
OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Edward Hinton Johnson,
CRD No. 1446749

Respondent.

Disciplinary Proceeding
No. E3B20040206-01

Hearing Officer: ____

COMPLAINT

Upon information and belief, Complainant alleges as follows:

1. Respondent Edward Hinton Johnson ("Johnson") was initially associated with a member of NASD in December 1985. He became registered as a General Securities Representative in March 1986 and as a General Securities Principal in July 1991. From on or about January 31, 2002, until on or about March 14, 2003, he was registered through Packerland Brokerage Services, Inc. ("Packerland") as a General Securities Principal and General Securities Representative. From on or about February 5, 2003, until on or about October 29, 2004, he was registered through Capital Securities of America, Inc. ("Capital Securities") as a General Securities Principal and General Securities Representative.
2. On or about October 29, 2004, a Uniform Termination Notice For Securities Industry Registration ("Form U-5") was filed by Capital Securities on behalf of Respondent Johnson. The Form U-5 disclosed that Respondent Johnson's registration was terminated on October

29, 2004, due to his failure to pay an outstanding debt to Capital Securities and his failure to comply with Capital Securities' continuing education requirements.

3. Respondent Johnson is not currently registered or associated with any member firm; however, pursuant to Article V, Section 4 of the NASD By-Laws, NASD retains jurisdiction over him for purposes of this Complaint.

FIRST CAUSE OF COMPLAINT

[NASD Conduct Rules 3040 and 2110, Private Securities Transactions]

4. Paragraphs number 1 through 3, above, are realleged and incorporated herein by reference.
5. During the period from on or about April 8, 2002, until on or about December 9, 2002, Respondent Johnson engaged in private securities transactions without prior written notice to and approval by his employer firm, Packerland, in that he participated in the sale to Packerland customers of bonds ("DBSI Bonds") issued by DBSI Guaranteed Capital Corporation ("DBSI"). Those sales are listed in Schedule A, attached hereto and incorporated herein by this reference. The DBSI Bonds were securities products.
6. The DBSI Bonds promised high rates of interest of 9 to 10 percent.
7. The DBSI Bonds were not registered under the Securities Act of 1933 or under any state securities laws.
8. As a result of his participation in the sales of DBSI Bonds described in Paragraph 5 above, Respondent Johnson received a financial benefit.
9. In correspondence with customers who purchased DBSI Bonds, Respondent Johnson used stationery stating that securities were offered through Packerland. Respondent Johnson thereby attempted to create the impression that his employer firm, Packerland, sanctioned the sale of DBSI Bonds.

10. Such acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rule 3040. Such conduct is inconsistent with high standards of commercial honor and just and equitable principles of trade and a violation of Conduct Rule 2110 by Respondent Johnson.

SECOND CAUSE OF COMPLAINT

[NASD Procedural Rule 8210 and Conduct Rule 2110, Failure To Respond to Requests for Information in a Timely Manner]

11. Paragraphs number 1 through 3 and 5 through 10, above, are realleged and incorporated herein by this reference.
12. In or about March 2004, NASD initiated an investigation concerning sales of DBSI Bonds, including the sales of DBSI Bonds by Respondent Johnson while registered with Packerland. The investigation focused, among other things, on whether Respondent Johnson had participated in private securities transactions without first providing to Packerland written notice describing in detail the proposed transactions and his proposed role therein and stating whether he had received or might receive selling compensation in connection with those transactions. In connection with that investigation, NASD staff requested information from Respondent Johnson.
13. Respondent Johnson's residential address as reflected in NASD's Central Registration Depository ("CRD") is [REDACTED] ("the CRD Address").

First Request for Information

14. On October 15, 2004, NASD staff sent a request for information pursuant to NASD Procedural Rule 8210 relating to the subject matter of the NASD investigation, via U.S.

Postal Service first class mail, to the CRD Address. The first request letter required a response no later than October 29, 2004.

15. The envelope sent to the CRD Address via first class mail on October 15, 2004, was not returned by the U.S. Postal Service.

16. No response to the staff's first request letter was received from Respondent Johnson.

Second Request for Information

17. On November 1, 2004, the staff sent a second request for information pursuant to NASD Procedural Rule 8210 relating to the subject matter of the NASD investigation, via U.S. Postal Service first class mail and certified mail, return receipt requested, to the CRD Address. The second request letter required a response no later than November 15, 2004.

18. The envelope sent to the CRD Address via first class mail on November 1, 2004, was not returned by the U.S. Postal Service. The envelope sent to the CRD Address via certified mail was returned by the U.S. Postal Service, marked "unclaimed."

19. As of November 19, 2004, no response to the staff's second request letter was received from Respondent Johnson.

20. On November 19, 2004, and June 7, 2005, the staff left telephone messages for Respondent Johnson regarding his failure to respond to the staff's requests for information. Respondent Johnson returned the second message on June 7, 2005, and spoke to the staff.

21. On June 9, 2005, the staff received a facsimile transmission from Respondent Johnson. It included a letter dated June 8, 2005, and a second letter dated October 22, 2004, in which Respondent Johnson responded to the staff's request for information dated October 15, 2004. The facsimile transmission also included copies of documents.

22. Respondent Johnson failed to respond to the staff's first and second requests for information, sent on October 15 and November 1, 2004, in a timely manner.
23. The foregoing acts, practices and conduct constitute separate and distinct violations of NASD Procedural Rule 8210. Such conduct is inconsistent with high standards of commercial honor and just and equitable principles of trade and a violation of Conduct Rule 2110 by Respondent Johnson.

THIRD CAUSE OF COMPLAINT

[NASD Procedural Rule 8210 and Conduct Rule 2110, Failure To Appear and Provide Testimony]

24. Paragraphs number 1 through 3, 5 through 10, and 12 through 23, above, are realleged and incorporated herein by this reference.
25. Respondent Johnson failed to appear for an on-the-record interview in response to repeated requests issued by the staff pursuant to Procedural Rule 8210, as more particularly set out below:
26. In Respondent Johnson's facsimile transmission, received by the staff on June 9, 2005, he confirmed that the CRD Address was his home address. He also wrote that his mailing address was [REDACTED] ("the P.O. Box Address"). The staff thus became aware of another possible mailing address for Respondent Johnson.
27. The staff issued additional requests for information to Respondent Johnson pursuant to Procedural Rule 8210 on June 20 and July 7, 2005. Respondent Johnson's response to those requests was received by the staff on July 25, 2005. The staff issued another request to Respondent Johnson pursuant to Procedural Rule 8210 on July 28, 2005. Respondent Johnson's response to that request was received by the staff on August 15, 2005.

28. On August 31, 2005, the staff sent a letter to Respondent Johnson pursuant to Procedural Rule 8210, requesting that he appear for an on-the-record interview on September 21, 2005, at the NASD District Office in Seattle, Washington. The letter was sent to the CRD Address and to the P.O. Box Address, via U.S. Postal Service first class mail and certified mail, return receipt requested.
29. The envelope sent to the CRD Address via first class mail on August 31, 2005, was not returned by the U.S. Postal Service. The envelope sent to the CRD Address via certified mail was returned by the U.S. Postal Service, marked "unclaimed." The envelope sent to the P.O. Box Address via first class mail was not returned by the U.S. Postal Service. The envelope sent to the P.O. Box Address via certified mail was returned by the U.S. Postal Service, marked "unclaimed."
30. In a letter received by the staff on September 12, 2005, Respondent Johnson responded to the staff's letter of August 31, 2005. In that letter, Respondent Johnson stated that he did not believe he was required to travel to Seattle, Washington, to appear for an on-the-record interview. He stated that he would be "happy to appear anytime except Mondays" for an interview at the NASD District Office in Atlanta, Georgia.
31. On September 27 and October 5, 2005, the staff left telephone messages for Respondent Johnson. He did not respond to those messages.
32. On October 5, 2005, the staff sent a letter to Respondent Johnson pursuant to Procedural Rule 8210, requesting that he appear for an on-the-record interview on November 2, 2005, at the NASD District Office in Atlanta, Georgia. The letter was sent to the CRD Address and to the P.O. Box Address via U.S. Postal Service first class mail and certified mail, return receipt requested.

33. The envelope sent to the CRD Address via first class mail on October 5, 2005, was not returned by the U.S. Postal Service. For the envelope sent to the CRD Address via certified mail, the staff received a Domestic Return Receipt, bearing what appeared to be the signature of Respondent Johnson. The envelope sent to the P.O. Box Address via first class mail was not returned by the U.S. Postal Service. The envelope sent to the P.O. Box Address via certified mail was returned by the U.S. Postal Service, marked "unclaimed."
34. In a letter dated October 21, 2005, received by the staff via facsimile on that date, Respondent Johnson responded to the staff's letter of October 5, 2005. In that letter, Respondent Johnson stated that he was unable to appear for an on-the-record interview on November 2, 2005. He stated that he was seeking to retain an attorney "with NASD experience" and that he expected to retain such an attorney by "Monday or Tuesday of next week," i.e., by October 24 or 25, 2005. When he and his "local attorney" had retained the attorney with NASD experience, he stated, he and his attorney would contact the staff.
35. During the period from October 21 to November 11, 2005, neither Respondent Johnson nor his attorney contacted the NASD staff.
36. On November 11, 2005, the staff sent a letter to Respondent Johnson, requesting that he identify his attorney and propose dates when an on-the-record interview could be conducted at the NASD District Office in Atlanta, Georgia. The letter was sent to the CRD Address and to the P.O. Box Address via U.S. Postal Service first class mail and certified mail, return receipt requested. The letter required a response no later than November 25, 2005.
37. The envelope sent to the CRD Address via first class mail on November 11, 2005, was not returned by the U.S. Postal Service. For the envelope sent to the CRD Address via certified mail, the staff received a Domestic Return Receipt, bearing what appeared to be the signature

of Respondent Johnson. The envelope sent to the P.O. Box Address via first class mail was not returned by the U.S. Postal Service. For the envelope sent to the P.O. Box Address via certified mail, the staff received a Domestic Return Receipt, bearing what appeared to be the signature of "Ed Johnson."

38. In a letter dated November 25, 2005, received by the staff via facsimile on that date,

Respondent Johnson responded to the staff's letter of November 11, 2005. In that letter, Respondent Johnson stated that his local attorney, "Mr. Davis," had told Respondent Johnson that he had forwarded the staff's correspondence to an "NASD specialist" in Atlanta and that the specialist would contact the staff. He stated that he had heard nothing further from "Mr. Davis" or the "NASD specialist" and had thought they were in contact with the staff. He stated that he would contact "Mr. Davis" on November 29, 2005, and that he and "Mr. Davis" would contact the staff as soon as they had met.

39. During the period from November 25 to December 15, 2005, neither Respondent Johnson nor his attorney contacted the staff.

40. On December 15, 2005, the staff sent a letter to Respondent Johnson pursuant to Procedural Rule 8210, requesting that he appear for an on-the-record interview on January 10, 2006, at the NASD District Office in Atlanta, Georgia. The letter was identified in bold type as a "final notice." In that letter, the staff also proposed four alternate dates for the on-the-record interview. The letter was sent to the CRD Address and to the P.O. Box Address via U.S. Postal Service first class mail and certified mail, return receipt requested. The letter required a response no later than December 28, 2005.

41. The envelope sent to the CRD Address via first class mail on December 15, 2005, was not returned by the U.S. Postal Service. For the envelope sent to the CRD Address via certified

mail, the staff received a Domestic Return Receipt, bearing an illegible signature. The envelope sent to the P.O. Box Address via first class mail was not returned by the U.S. Postal Service. The envelope sent to the P.O. Box Address via certified mail was returned by the U.S. Postal Service, marked "unclaimed."

42. During the period from December 15, 2005, until January 30, 2006, neither Respondent Johnson nor his attorney contacted the staff or responded in any fashion to the staff's letter dated December 15, 2005.
43. Respondent Johnson did not appear in the NASD District Office in Atlanta, Georgia, on January 10, 2006, as requested by the staff in its letter of December 15, 2005.
44. In a letter received by the staff on January 30, 2006, Respondent Johnson stated, "Enclosed I have returned the last bit of correspondence that you have sent me. I did not open it and will not accept any other correspondence." The letter stated Respondent Johnson's position that the NASD District Office in Seattle, which had sent the letters requesting an on-the-record interview, lacked jurisdiction over the subject matter of the NASD investigation because Packerland is based in Wisconsin. Accompanying the letter received on January 30, 2006, were three unopened envelopes, each of which had been addressed by the staff to Respondent Johnson and was postmarked December 15, 2005. They were the envelopes earlier sent by the staff to the CRD Address via first class mail and via certified mail, and the envelope sent to the P.O. Box Address via first class mail. (See Paragraph 40, above.)
45. Respondent Johnson failed to appear for an on-the-record interview in response to repeated requests issued by the staff pursuant to Procedural Rule 8210.
46. The foregoing acts, practices and conduct constitute separate and distinct violations of NASD Procedural Rule 8210. Such conduct is inconsistent with high standards of commercial

honor and just and equitable principles of trade and a violation of Conduct Rule 2110 by Respondent Johnson.

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 requiring Respondent to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest;
- D. An order imposing such costs of any proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330; and
- E. An order imposing any other fitting sanction.

**NASD DEPARTMENT OF
ENFORCEMENT**

Date: MAY 17, 2006

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SCHEDULE A

Department of Enforcement v. Edward Hinton Johnson

Complaint No. E3B20040206-01

Sales of DBSI Bonds

Customer	DBSI Bond	Date	Amount
FMS	Guaranteed Cap. 10%	4-8-02	\$ 50,000
ATPSP	Guaranteed Cap. 10%	5-1-02	\$ 20,000
FMS	Guaranteed Cap. 10%	5-6-02	\$ 50,000
GP/PWC	Guaranteed Cap. 10%	5-21-02	\$ 50,000
JPSP	Guaranteed Cap. 10%	6-3-02	\$ 10,000
RD/EES	Guaranteed Cap. 10%	6-20-02	\$ 10,000
HEE	1999A Funding Corp. 10%	6-13-02	\$ 5,000
H/MG	Guaranteed Cap. 10%	7-25-02	\$ 10,000
HLT	Guaranteed Cap. 10%	8-3-02	\$ 10,000
BSG	Guaranteed Cap. 10%	8-6-02	\$ 10,000
AWJ	1999A Funding Corp. 10%	8-14-02	\$ 25,000
DHB	Guaranteed Cap. 10%	8-30-02	\$ 10,000
JMP	Guaranteed Cap. 10%	8-30-02	\$ 10,000
ATPSP	Guaranteed Cap. 10%	9-11-02	\$ 20,000
FMS	Guaranteed Cap. 9%	10-28-02	\$ 25,000
BHLT	Guaranteed Cap. 9%	12-9-02	\$ 20,000
		TOTAL	\$ 335,000