

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant

v.

RUSSELL O. HODDER, JR.
(CRD No. 2179109),

Respondent.

Disciplinary Proceeding
No. E8A2003076301

Hearing Officer – RSH

DEFAULT DECISION

January 24, 2006

Respondent made unauthorized transactions, in violation of NASD Conduct Rule 2110, misused customer funds, in violation of Conduct Rules 2330 and 2110, and failed to respond to NASD requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2110. For each of these violations, Respondent is barred from associating with any NASD member in any capacity.

Appearances

Richard S. Schultz, Esq., Chicago, IL (Rory C. Flynn, Esq., Washington, DC, Of Counsel, Mark A. Koerner, Esq., Chicago, IL, Of Counsel) for Complainant.

No appearance by or for Respondent.

DECISION

I. Introduction

The Department of Enforcement filed a Complaint (attached to this decision as Exhibit A) on August 18, 2005, alleging that Respondent Russell O. Hodder, Jr. violated Procedural Rule 8210 and Conduct Rule 2110 by failing to respond to NASD staff requests for information, violated Conduct Rule 2110 by making unauthorized transactions, and violated Conduct Rules 2110 and 2330 by misusing customer funds.

Respondent did not file an Answer to the Complaint. On November 8, 2005, Enforcement filed a Motion for Entry of Default Decision, which was supported by the Affidavit of Richard S. Schultz and ten exhibits. Respondent did not file a response to the motion. Accordingly, for the reasons set forth below, Enforcement's motion is granted.¹

II. Respondent's Default

Enforcement sent the Complaint and Notice of Complaint to Respondent on August 17, 2005, by both certified and first class mail to his residential address listed in the Central Registration Depository ("CRD address") and to a post office box address in Grand Rapids, Michigan, provided by Respondent.² The certified mailing to the CRD address was returned marked "Return to Sender – Unclaimed." The certified mailing to the Grand Rapids address was delivered on August 19, 2005. The first class mailings were not returned by the Postal Service.³

Respondent did not file an Answer by the September 14, 2005 due date. On September 15, 2005, Enforcement sent the Complaint and Second Notice of Complaint by certified and first class mail to Respondent's CRD address and to the Grand Rapids address. The certified mailing and first class mailing addressed to Respondent's CRD address were returned by the Post Office marked "Return to Sender, Undeliverable As Addressed." The first class mailing and certified mailing sent to the Grand Rapids address were not returned.⁴

Again, Respondent failed to answer or otherwise respond to the Complaint. On November 4, 2005, Enforcement sent the Motion for Entry of Default Decision by first class mail to Respondent's CRD address as well as the Grand Rapids address.

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

² Schultz Declaration ¶7.

³ Id.; Complainant's Exhibit ("CX")-3, CX-4.

⁴ Schultz Declaration ¶9; CX-5—CX-7.

Enforcement served the Complaint and Notices of Complaint on Respondent in accordance with Rule 9134, thereby giving him constructive notice of this proceeding. By failing to file an Answer or otherwise respond to the Complaint, Respondent defaulted. Pursuant to Procedural Rule 9269(a)(2), the Hearing Officer will deem the allegations in the Complaint admitted.

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

The Complaint alleges, and the Respondent's CRD record shows, that Respondent was registered as a General Securities Representative with NASD member Oppenheimer & Co., Inc. ("Oppenheimer") from January 1999 to September 2003.⁵ He was discharged by Oppenheimer on September 5, 2003 because of multiple customer complaints. Respondent is not currently registered with an NASD member firm;⁶ however, he remains subject to NASD jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of NASD's Bylaws, because (1) the Complaint was filed within two years following the termination of Respondent's employment and registration with Oppenheimer and (2) the Complaint charges him with misconduct committed while he was associated with Oppenheimer and with failing to respond to NASD requests for information made during the two-year period following his termination.

B. Unauthorized Transactions

The First, Third, Fifth, Ninth, and Tenth Causes of the Complaint allege that Respondent violated Conduct Rule 2110 by effecting or causing to be effected transactions in customers' accounts without the customers' prior knowledge or authorization.

⁵ CX-1.

⁶ Id.

The First Cause alleges that on or about April 2, 2003 and August 12, 2003, Respondent sold or caused to be sold securities for the accounts of EB, without EB's knowledge or consent and in the absence of written or oral authorization for Respondent to exercise discretion in EB's accounts.⁷

The Third Cause alleges that on or about May 19, 2003, Respondent sold or caused to be sold securities for the account of E&KH without E&KH's knowledge or consent and in the absence of written or oral authorization for Respondent to exercise discretion in E&KH's account.⁸

The Fifth Cause alleges that on or about July 2, 2003, Respondent sold or caused to be sold securities for the IRA of RL without RL's knowledge or consent and in the absence of written or oral authorization for Respondent to exercise discretion in RL's accounts.⁹

The Ninth Cause alleges that on or about December 30, 2002, Respondent purchased or caused the purchase of securities for the accounts of PAP-C without PAP-C's knowledge or consent and in the absence of written or oral authorization for Respondent to exercise discretion in PAP-C's account.¹⁰

Finally, the Tenth Cause alleges that on or about May 30, 2003, June 5, 2003, and June 11, 2003, Respondent purchased or caused the purchase of securities and sold or caused the sale of securities for the account of M&AG, without M&AG's knowledge or consent and in the absence of written or oral authorization for Respondent to exercise discretion in M&AG's account.¹¹

⁷ Schultz Declaration, p.5.

⁸ Id.

⁹ Id., p.6.

¹⁰ Id., p.8;

¹¹ Id., p.8; Schedule A.

Enforcement staff has the following documentation supporting its charges: customer account statements; order tickets and confirmation for the trades; customer complaint letters; affidavits from the customers stating that trades were not authorized; and customer responses to staff questionnaires.¹² Enforcement's allegations, which are deemed admitted, are sufficient to establish that Respondent made ten unauthorized trades in five customers' accounts.¹³ Conduct Rule 2110 provides that a member "shall observe high standards of commercial honor and just and equitable principles of trade." NASD IM-2310-2 (b)(4)(iii) specifically lists unauthorized trading among practices that violate a member's responsibility for fair dealing with customers. The Securities and Exchange Commission and NASD have consistently held that unauthorized trading in a customer's account violates Conduct Rule 2110.¹⁴ Accordingly, the Hearing Officer finds that Respondent violated NASD Conduct Rule 2110 by effecting unauthorized purchases in customers' accounts.

C. Misuse of Customer Funds

The Second, Fourth, Sixth, Seventh, and Eighth Causes of Complaint allege that Respondent violated Conduct Rules 2330 and 2110 by misusing customer funds. Enforcement alleges that Respondent had some sort of relationship with iNetShelves LLC and that after Respondent was terminated from Oppenheimer, he became the President of iNetShelves LLC and relocated the company to his CRD Address.¹⁵

The second cause alleges that on or about April 7, 2003, Respondent signed EB's name or caused EB's name to be signed on two withdrawal statement forms, for \$5,500 and \$5,300, and requested that the checks be delivered to him; he then deposited the checks or caused them

¹² Schultz Declaration, p.8-9.

¹³ Motion for Default Decision, p.1.

¹⁴ *Dep't of Enforcement v. Jeffrey B. Hodde*, No. C10010005, 2002 NASD Discip. LEXIS 4, at *13 (NAC Mar. 27, 2002).

¹⁵ Motion for Entry of Default Decision ¶7, ¶9.

to be deposited into a checking account in the name of iNetShelves LLC, all without the knowledge or consent of EB and without written or oral authorization to do so. The second cause also alleges that on or about August 18, 2003, Respondent signed EB's name or caused EB's name to be signed on a withdrawal statement form, for \$5,000, and requested that the check be delivered to him; signed EB's name or caused EB's name to be signed on the check; cashed the check; and used the funds to invest in iNetShelves LLC, all without the knowledge or consent of EB and without written or oral authorization to do so.¹⁶

The fourth cause alleges that on or about April 22, 2003, Respondent obtained a \$15,000 check made payable to E&KH; deposited the check or caused the check to be deposited into a checking account in the name of iNetShelves LLC; and used the funds to invest in iNetShelves LLC, all without the knowledge or consent of EK&H and without written or oral authorization to do so.¹⁷

The sixth cause alleges that on or about July 8, 2003, Respondent signed RL's name or caused RL's name to be signed on a withdrawal statement for \$10,000 from RL's IRA account, and requested that the \$10,000 check be delivered to him; deposited the check or caused it to be deposited into a checking account in the name of iNetShelves LLC, and used the funds to invest in iNetShelves LLC, all without the knowledge or consent of RL and without written or oral authorization to do so.¹⁸

The seventh cause alleges that on or about June 26, 2003, Respondent caused \$10,000 to be withdrawn from UG's account; deposited the check or caused it to be deposited into a checking account in the name of iNetShelves LLC; and used the funds to invest in iNetShelves

¹⁶ Complaint ¶7-8.

¹⁷ Id. ¶14.

¹⁸ Id. ¶ 20.

LLC, all without the knowledge or consent of UG and without written or oral authorization to do so.¹⁹

The eighth cause alleges that on or about September 3, 2003, Respondent signed CY's name or caused CY's name to be signed on a withdrawal statement form, which caused a \$5,700 withdrawal from CY's IRA account; requested a check for this amount be delivered to him; deposited the check or caused it to be deposited into a checking account in the name of iNetShelves LLC; and used the funds to invest in iNetShelves LLC, all without the knowledge or consent of CY and without written or oral authorization to do so.²⁰

Enforcement staff has the following documentation to support its charges: customer account statements; customer complaint letters; copies of seven cancelled checks showing that the checks were deposited in an account in the name of iNetShelves LLC; affidavits of fraud from customers stating that signatures on requests to withdraw checks and the endorsement on checks are not their signatures and that they did not know that their funds were invested with iNetShelves LLC; and customer responses to staff questionnaires.²¹

These allegations, which are deemed admitted, are sufficient to establish for purposes of this proceeding that Respondent signed customers' names on withdrawal statement forms and checks and without their knowledge, consent, or authorization used the customers' funds to invest in iNetShelves LLC. The Hearing Officer finds that Respondent misused customers' funds and thereby violated Conduct Rules 2310 and 2110.

D. Failure to Respond to NASD Requests for Information

The Eleventh Cause of the Complaint alleges that Respondent failed to respond to two

¹⁹ Id. ¶ 23.

²⁰ Id. ¶ 26.

²¹ Schultz Declaration, p. 8-9; Motion for Default Decision ¶ 9.

NASD requests for a written statement regarding the complaints of customers EB, E&KH, RL, UG, CY, and M&AG. The Complaint alleges that, pursuant to Procedural Rule 8210, Enforcement sent Respondent requests for information on August 4, 2004 and August 24, 2004. Both requests were sent to Respondent's CRD residential address and his Grand Rapids address by first class and certified mail. The August 4 first class mailings to both addresses were not returned. The August 4 certified mailing to the Grand Rapids address was signed and returned to NASD staff. The August 24 first class mailing and both certified mailings sent to Respondent's CRD Address were returned marked "FOE," Forwarding Order Expired. The August 24 first class and certified mailing to the Grand Rapids address were not returned to NASD staff. It appears that Respondent thus had actual as well as constructive notice of NASD's requests. Respondent did not respond to either of Enforcement's requests.²²

These allegations, which are deemed admitted, are sufficient to establish for purposes of this proceeding that Respondent failed to respond to Enforcement's requests for information. Procedural Rule 8210 authorizes NASD to require any person subject to its jurisdiction to provide information and testimony related to any matter under investigation. The Rule serves as a key element in NASD's oversight function and allows NASD to carry out its regulatory functions without subpoena power.²³ The Hearing Officer finds that Respondent failed to respond in any manner to Enforcement's requests for information and so violated NASD Procedural Rule 8210. A violation of Procedural Rule 8210 is also a violation of Conduct Rule 2110.²⁴

²² Complaint ¶ 40-42.

²³ See *Joseph G. Chiulli*, Exchange Act Release No. 42,359, 2000 SEC LEXIS 112, at *16, 19; *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.").

²⁴ *Dep't of Enforcement v. Baxter*, No. C07990016, 2000 NASD Discip. LEXIS 3, at *25 (N.A.C. Apr. 19, 2000); *Joseph P. Hannan*, Exchange Act Release No. 40,438, 1998 SEC LEXIS 1955, at *9 (September 14, 1998).

IV. Sanctions

For failing to respond in any manner to NASD staff requests for information issued pursuant to NASD Procedural Rule 8210, the NASD Sanction Guidelines (“Sanction Guidelines”) recommend the imposition of a bar unless mitigating circumstances exist to warrant a lesser sanction.²⁵ Here, there is no evidence of mitigating circumstances that would warrant a lesser sanction. Accordingly, Respondent will be barred from associating with any member firm in any capacity.

For the unauthorized transactions, Enforcement has requested a bar. In egregious cases, the Sanction Guidelines suggest that a suspension of up to two years or a bar should be considered. The National Adjudicatory Council (“NAC”) has determined that unauthorized trading may be egregious because of the quantity of trades or because it is accompanied by aggravating factors such as, *inter alia*, efforts to conceal the unauthorized trading and customer losses.²⁶

Enforcement argues that Respondent’s violation was egregious because there were 10 unauthorized trades over a seven-month time frame, which Respondent attempted to conceal. The affected customers lost funds and stated that they did not authorize the trades.²⁷ The Hearing Officer agrees that Respondent’s conduct was egregious and that there is no evidence of mitigating circumstances that would warrant a lesser sanction. The Respondent is therefore barred from associating with any member firm in any capacity.

Enforcement has also requested a bar against Respondent for misuse of customer funds. For the improper use of funds, in the absence of mitigating factors, the Sanction Guidelines

²⁵ Sanction Guidelines at 35. (2005 ed.).

²⁶ *Id.* at 103.

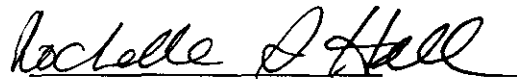
²⁷ Motion for Default Decision ¶ 15.

suggest that a bar should be considered.²⁸ Here, Respondent forged documents and misused his customers' funds to invest in a company apparently affiliated with Respondent.²⁹ There do not appear to be any mitigating circumstances; therefore, Respondent is barred from associating with any member firm in any capacity.

V. Conclusion

Respondent Russell O. Hodder, Jr. (1) violated Conduct Rule 2110 by making unauthorized sales and purchases of securities in multiple customer accounts, (2) violated Conduct Rule 2110 and 2330 by misusing customer funds and (3) violated Conduct Rule 2110 and Procedural Rule 8210 by failing to respond to NASD staff requests for information. For each of these violations, he is barred from associating with any NASD member in any capacity. The bars will become effective immediately if this decision becomes NASD's final disciplinary action in this proceeding.

SO ORDERED.



Rochelle S. Hall
Hearing Officer

Copies to: Russell O. Hodder, Jr. (*via overnight courier and first class mail*)
 Richard S. Schultz, Esq. (*electronically and via first class mail*)
 Mark A. Koerner, Esq. (*electronically and via first class mail*)
 Rory C. Flynn, Esq. (*electronically and via first class mail*)

²⁸ Sanction Guidelines at 38. (2005 ed.).

²⁹ Motion for Default Decision ¶16.