

**NASD
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

TIMOTHY M. MARTIN
Investment Company Variable
Contracts Representative

Respondent.

Disciplinary Proceeding
No. E8A2004045401

Hearing Officer Sharon Witherspoon

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: January 31, 2006

INTRODUCTION

Disciplinary Proceeding No. E8A20040454-01 was filed on November 23, 2005 by the Department of Enforcement of NASD ("Complainant"). Respondent Timothy M. Martin ("Respondent Martin") submitted an Offer of Settlement ("Offer") to Complainant on January 24, 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 Martin has consented, without admitting or denying the allegations of the Complaint, and solely for the purposes of this proceeding and any other

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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 understand that this Order will become part of Respondent Martin's permanent disciplinary record and may be considered in any future actions brought by NASD.

BACKGROUND

Respondent Martin entered the securities industry in July 1992 as a Variable Contracts (Series 6) Representative and became registered in that capacity with Linsco/Private Ledger Corp., a member of NASD from About August 2000 until April 9, 2004 when he was terminated. Respondent Martin terminated his registration with another NASD Member on December 1, 2005 and he is currently not registered with an NASD Member.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as to Respondent Martin and the findings are as follows:

- I. On or about August 26, 2002, Respondent Martin, knowing that the Member firm with which he was then registered prohibited its representatives from borrowing or accepting funds from customers, obtained \$50,000 for his own use and benefit from customer MS in that:
 - a) Respondent Martin liquidated customer MS's variable annuity for which a contingent deferred sales charge was assessed in the amount of \$1,236 and Respondent Martin deposited the proceeds of \$50,000 into customer MS's checking account on or about August 20, 2002;

- b) On or about August 26, 2002, Martin visited customer MS and prepared a check drawn on customer MS's checking account in the amount of \$50,000 payable to himself, for customer MS to sign. Respondent Martin subsequently voided the check and prepared a second check drawn on customer MS's checking account payable to Respondent Martin's wife, Amy Martin, which personal check customer MS signed; and
- c) Customer MS's check was deposited into a bank account that was opened in the name of Amy Martin at or around the time that the check was issued and Respondent Martin used the funds that were withdrawn from Amy Martin's account for his benefit and not for the benefit of customer MS.
2. Respondent Martin made a written entry in the check register of customer MS's checking account to record the \$50,000 check that was payable to Amy Martin, which he falsely identified as being payable to Transamerica, instead of to Amy Martin.
3. On or about August 26, 2002, Respondent Martin prepared and provided customer MS with a promissory note, executed by Amy Martin. The promissory note provided for repayment of the \$50,000 loan as a "balloon payment" at the end of 48 months with only interest payments at an annual rate of 7% payable monthly.
4. Upon discovery of the loan by customer MS's grandson, Respondent Martin re-negotiated the loan with repayment of the principal within 16 months of August 26, 2002.
5. Respondent Martin did not have the means to repay the funds that he arranged to borrow from customer MS. To date, Respondent Martin has repaid only \$10,000 of the \$50,000 that he obtained from customer MS and he has failed to adhere to the terms of the re-negotiated

promissory note. Respondent Martin's conduct constitutes a misuse of customer funds in violation of NASD Conduct Rules 2110 and 2330.

SANCTIONS

It is ordered that Respondent Martin be barred from association with any NASD Member in any capacity.

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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