

## NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DONALD S. HUFFMAN  
(CRD No. 4449502),

Respondent.

Disciplinary Proceeding  
No. E8A2004067501

Hearing Officer—Andrew H. Perkins

### DEFAULT DECISION

January 3, 2007

**Respondent misused customers' funds and issued a false proof of insurance document, in violation of NASD Conduct Rule 2110. The Respondent is barred from association with any member firm in any capacity for each violation.**

### Appearances

Richard S. Schultz, Regional Counsel, Chicago, IL (Rory C. Flynn, Chief Litigation Counsel, Washington, D.C., and Mark P. Dauer, New Orleans, LA, Of Counsel) for the Department of Enforcement.

The Respondent appeared *pro se*.

### DECISION

#### I. Introduction

On February 8, 2006, the Department of Enforcement ("Enforcement") filed the Complaint against Donald S. Huffman ("Huffman" or the "Respondent"). The Complaint contains two causes of action. The First Cause of Complaint charges that the Respondent misused customers' funds, in violation of NASD Conduct Rule 2110. The Second Cause of Complaint charges that the Respondent issued a fictitious proof of insurance form to

one of his customers that falsely stated that the customer's home was insured, in violation of NASD Conduct Rule 2110.

On May 30, 2006, Huffman filed an Answer, denied the charges, and requested a hearing. The Hearing Officer held an Initial Pre-Hearing Conference on June 16, 2006, at which time he granted the Respondent's motion to set the case for hearing in Cleveland, OH. With the agreement of the parties, the Hearing Officer set the hearing for October 19, 2006.

On September 27, 2006, the Office of Hearing Officers served the Respondent with notice that the Hearing Officer would conduct a Final Pre-Hearing Conference on October 4, 2006. On October 2, 2006, the Respondent filed a motion requesting that the case be postponed because he had been indicted for theft in the Mahoning County, Ohio Court of Common Pleas based on the facts underlying this disciplinary proceeding. The Respondent argued that if this case were not continued he would be deprived of his constitutional right against self-incrimination under the Fifth Amendment to the United States Constitution.

The Respondent did not appear at the Final Pre-Hearing Conference on October 4, 2006. Accordingly, the Hearing Officer issued an order denying his request for a continuance and an Order to Show Cause why he should not be held in default for his failure to appear at the Final Pre-Hearing Conference.

The Respondent did not respond to the Order to Show Cause. Hence, the Hearing Officer entered an order on October 16, 2006, holding the Respondent in default. The Hearing Officer also ordered Enforcement to submit its motion for entry of a default decision no later than November 20, 2006.

Enforcement filed a Motion for Entry of Default Decision ("Motion") on November 20, 2006. The Motion is supported by the Declaration of Richard S. Schultz ("Schultz Decl.") and 12 exhibits. Huffman did not respond to the Motion. Thus, the

Hearing Officer grants Enforcement's Motion. Due to the Respondent's default, the Hearing Officer deems the allegations of the attached Complaint admitted.

## **II. Findings of Fact and Conclusions of Law**

### **A. Jurisdiction**

NASD has jurisdiction of this proceeding. Article V, Section 4 of NASD's By-Laws provides that NASD may bring a disciplinary proceeding against a formerly registered person for two years after his registration terminated. Huffman was last registered with Farmers Financial Solutions, LLC ("Farmers Financial"), an NASD member firm, from August 29, 2001, to June 4, 2004.<sup>1</sup> Enforcement timely filed the Complaint, which alleges misconduct that occurred while Huffman was registered with Farmers Financial.

### **B. Misuse of Customer Funds**

The First Cause of Complaint charges that, on or about May 18, 2004, Huffman accepted six checks totaling \$5,500 from customer MM with instructions to use the funds to purchase casualty and medical insurance. The checks were made payable to Huffman. Huffman did not apply the funds as MM directed. Instead, he deposited the checks and used them for his own benefit. The checks reflect that Huffman negotiated them, and the remittance portions of the checks reflect that they were tendered to purchase insurance.<sup>2</sup>

The First Cause of Complaint further charges that Huffman misused \$100 that customers WH and EH gave him by check on or about December 11, 2003. The

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<sup>1</sup> C-1, at 3. The Respondent is not currently registered or associated with an NASD member firm.

<sup>2</sup> C-3.

customers had given Huffman the check to purchase insurance on their behalf. However, Huffman deposited the check and used the funds for his own benefit.<sup>3</sup>

The allegations in the First Cause of Complaint are sufficient to establish that Huffman misused customers' funds. Accordingly, the Hearing Officer finds that Huffman violated NASD Conduct Rule 2110.<sup>4</sup>

### **C. Fictitious Proof of Insurance**

The Second Cause of Complaint charges that Huffman issued a fictitious proof of insurance to customer MW, which represented that her unoccupied house was insured.<sup>5</sup> In fact, there was no insurance on the house. Farmers Financial discovered the false document after customer MW complained that neither she nor her mortgage company had received the insurance policy.<sup>6</sup>

The allegations in the Second Cause of Complaint are sufficient to establish that Huffman violated NASD Conduct Rule 2110 by issuing a false business document to his customer.

### **III. Sanctions**

For misuse of customer funds, the NASD Sanction Guidelines recommend a bar in egregious cases such as this.<sup>7</sup> Here, there is no evidence that Huffman's misuse of his customers' funds resulted from a misunderstanding, and there is no evidence of any other mitigating factors. Accordingly, a bar is the appropriate sanction for this violation.

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<sup>3</sup> C-7; C-8; Schultz Decl. ¶ 10.

<sup>4</sup> *District Bus. Conduct Comm. v. Buenrostro*, No. C8A930058, 1995 NASD Discip. LEXIS 3, at \*18 (N.B.C.C. Mar. 7, 1995) (misuse of funds intended for the purchase of insurance is a violation of NASD Conduct Rule 2110).

<sup>5</sup> C-9.

<sup>6</sup> C-10.

<sup>7</sup> NASD Sanction Guidelines 38 (2006 ed.).

A bar is likewise appropriate for Huffman's issuance of the false insurance certificate. Huffman knew that his customer and her mortgage lender would rely on the certificate he issued as evidence that the home was properly insured. This is an egregious violation. The guideline for falsification of documents recommends the imposition of a bar in egregious cases.<sup>8</sup> Here, the record discloses no mitigating factors.

#### **IV. Order**

Donald S. Huffman is barred from association with any member firm in any capacity for: (1) misuse of customer funds, in violation of NASD Conduct Rule 2110; and (2) issuing a false business document, in violation of NASD Conduct Rule 2110. The bars will become effective immediately if this Default Decision becomes NASD's final disciplinary action in this proceeding.



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Andrew H. Perkins  
Hearing Officer

Copies to:

Donald S. Huffman (by FedEx, next-day delivery, and first-class mail)  
Richard S. Schultz, Esq. (by first-class and electronic mail)  
Rory C. Flynn, Esq. (by first-class and electronic mail)  
Mark P. Dauer, Esq. (by first-class and electronic mail)

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<sup>8</sup> *Id.* at 40.

**NASD REGULATION, INC.  
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant

vs.

DONALD S. HUFFMAN  
Limited Registered Representative  
(CRD No. 4449502)

Respondent

**Disciplinary Proceeding  
No. E8A2004067501**

Hearing Officer

**COMPLAINT**

Upon information and belief, Complainant alleges as follows:

1. From on or about September 17, 2001 to on or about June 4, 2004, Donald S. Huffman ("Respondent Huffman") was registered as an Investment Company and Variable Contracts Products Representative with Farmers' Financial Solutions, LLC ("Member"), a member of NASD. From on or about September 9, 2004 to on or about January 21, 2005, Respondent Huffman was registered in the same capacity with Charter One Securities, Inc. ("Charter One"), another member of the NASD. Respondent Huffman is not currently registered with any member of NASD. Since this Complaint is filed within two years of the termination of Respondent Huffman's registration with the Member and Charter One, Respondent Huffman is subject to the jurisdiction of NASD, pursuant to Article V, Section 4 of the NASD's By-Laws.

**FIRST CAUSE FOR COMPLAINT  
Conduct Rule 2110 by Respondent Huffman - Misuse of Customers' Funds by Respondent Huffman.**

2. Paragraph number 1 above is re-alleged and incorporated herein by reference as paragraph 2.

**COMPLAINT IN DISCIPLINARY  
PROCEEDING No. E8A2004067501**

3. From on or about December 1, 2003 to on or about May 18, 2004, MM, a member of the public, gave Respondent Huffman six checks in the amounts of \$1,500, \$250, \$1,700, \$500, \$1,000 and \$550 with instructions to use the funds for the purchase of insurance through the Member on four automobiles, a warehouse for MM's business, trucks for MM's business and short term medical coverage. Huffman failed to follow these instructions and used MM's funds for some purpose other than the benefit of MM.

4. On or about December 11, 2003, WH&EH, members of the public, gave Respondent Huffman a check for \$100 with instructions to use the funds for the purchase of insurance through the Member, but Respondent Huffman failed to follow these instructions and used WH&EH's funds for some purpose other than the benefit of WH&EH.

5. The acts, practices and conduct set forth above constitute separate and distinct violations of NASD Conduct Rule 2110 by Respondent Huffman.

**SECOND CAUSE FOR COMPLAINT  
Conduct Rule 2110 by Respondent Huffman - Issuing a Fictitious Proof of Insurance  
Statement by Respondent Huffman.**

6. Paragraph numbers 1 through 5 above are re-alleged and incorporated herein by reference as paragraph 6.

7. In December 2003, Huffman created and gave MW, a member of the public, an Evidence of Insurance Form, which represented that MW's unoccupied house was insured, when in fact there was no insurance on the house.

8. The aforementioned acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 by Respondent Huffman.

**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,

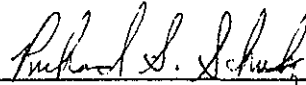
**COMPLAINT IN DISCIPLINARY  
PROCEEDING No. E8A2004067501**

D. An order imposing any other fitting sanction.

**NASD DEPARTMENT OF ENFORCEMENT**

February 6, 2006

Date



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