

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

WILLIAM SHRINER
CRD No. 3212618),

Respondent.

Disciplinary Proceeding
No. E8A2004073701

Hearing Officer – SW

DEFAULT DECISION

May 15, 2006

Respondent converted his customer's funds to his own use and benefit, in violation of NASD Conduct Rules 2330(a) and 2110, and failed to respond to requests for information, in violation of NASD Conduct Rule 2110 and NASD Procedural Rule 8210. The Respondent is barred from associating with any member firm in any capacity for each violation.

Appearances

Dale A. Glanzman, Esq., Regional Counsel, Chicago, IL, Rory C. Flynn, Esq., Of Counsel, Washington, D.C., and Roger D. Hogoboom, Esq., Of Counsel, Denver, CO, for the Department of Enforcement.

No appearance by or for William Shriner.

DECISION

I. Introduction

On October 14, 2005, the NASD Department of Enforcement ("Enforcement") filed the attached three-count Complaint against Respondent William Shriner ("Respondent"). The first and second counts of the Complaint allege that, while associated with NASD member firm PFIC Securities Corp. ("PFIC"), Respondent converted to his own use and benefit funds from the securities account and the bank account of his customer RJ, without RJ's knowledge or consent, in violation of NASD

Conduct Rules 2330(a) and 2110. The third count of the Complaint alleges that Respondent failed to respond to requests for information issued by the NASD staff, in violation of NASD Conduct Rule 2110 and NASD Procedural Rule 8210.

On March 29, 2006, Enforcement filed a Motion for Entry of Default Decision ("Motion"), supported by the Declaration of Dale A. Glanzman, Esq., Regional Counsel in NASD's Chicago, IL office, and 15 exhibits.¹ For the reasons set forth below, the Hearing Officer grants Enforcement's Motion.

II. Respondent's Default

On October 13, 2005, Enforcement served the Complaint and Notice of Complaint on Respondent, via certified and first class mail, at his last known residential address shown in the Central Registration Depository ("CRD address").² (CX-1; CX-2; DECL at ¶ 6). The first class mailing was returned to NASD with the forwarding address of [REDACTED] ("Avon address"). (CX-3). On November 21, 2005, Enforcement served the Complaint and Second Notice of Complaint, via certified and first class mail, on Respondent at his CRD address. (CX-5; DECL at ¶ 7).

On January 19, 2006, Enforcement served the Complaint and Third Notice of Complaint, via certified and first class mail, on Respondent at his CRD address and at the Avon address.³ (CX-8; DECL at ¶ 8). On February 16, 2006, Enforcement served the Complaint and Fourth Notice of Complaint, via certified and first class mail, on

¹ Hereinafter, the statements in the Motion will be designated as "Motion, p."; statements in the Glanzman Declaration will be designated as "DECL at ¶"; and Enforcement's exhibits will be designated as "CX-" with the appropriate page or paragraph number.

² Respondent's CRD address is [REDACTED] (CX-1, p. 1).

³ The U.S. Postal Service returned to the NASD staff a receipt with an illegible signature for the January 9, 2006 certified mailing, showing delivery to the Avon address on January 21, 2006. (CX-11).

Respondent at his CRD address and at the Avon address. (CX-12; DECL at ¶ 9).

Respondent did not file an Answer to the allegations of the Complaint. (DECL at ¶ 10).

The Hearing Officer finds that Enforcement complied with NASD Procedural Rule 9134(b)(1) by sending the mailings to Respondent's CRD address and the Avon address.⁴ Accordingly, the Hearing Officer finds that Respondent received effective constructive notice of this proceeding and defaulted by failing to answer the Complaint.⁵

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

Respondent was registered as a general securities representative with PFIC from November 1, 2002 until July 14, 2004. (CX-1, p. 3; DECL at ¶ 5). Respondent has not been associated with any NASD member since July 14, 2004. (CX-1). However, Respondent remains subject to NASD jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of the NASD By-Laws, because (1) the Complaint was filed within two years after Respondent's association with PFIC was terminated, and (2) the Complaint charges Respondent with misconduct while he was associated with PFIC and with failures to provide information requested pursuant to Rule 8210 during the two-year period of retained jurisdiction.

B. Respondent Converted the Funds of his Customer RJ

The first cause of the Complaint alleges that Respondent serviced the securities account of customer RJ, and that on February 24, 2004, Respondent engaged in conversion, in violation of NASD Conduct Rules 2330(a) and 2110, by withdrawing

⁴ See Department of Enforcement v. Verdiner, No. CAF020004, 2003 NASD Discip. LEXIS 42, at * 5 n.1 (N.A.C. Dec. 9, 2003) (finding that respondent received constructive notice when complaint was mailed to respondent's CRD address).

⁵ The following Findings of Fact and Conclusions of Law incorporate the allegations in the attached Complaint, pursuant to Rule 9215(f) and NASD Notice to Members 99-77.

\$25,614.92 from customer RJ's securities account and depositing the funds into Respondent's personal bank account for his own use and benefit, without the consent or knowledge of customer RJ. (Complaint at ¶¶ 2-3). On June 25, 2004, Respondent withdrew an additional \$14,500 from RJ's brokerage account, without customer RJ's knowledge or consent. (Complaint at ¶ 4). On January 6, 2005, Respondent pled guilty to, and was convicted of, a class D felony of theft in the State of Indiana for his wrongful taking of RJ's funds. (Complaint at ¶ 5).

The second cause of the Complaint alleges that on February 20, 2003, Respondent withdrew \$10,074.27 from customer RJ's maturing bank CD and engaged in conversion by making the check payable to "WM Financial Planning" and using the funds for his own use or benefit, without the knowledge or consent of customer RJ, in violation of NASD Conduct Rule 2110. (Complaint at ¶ 8). On June 18, 2004, Respondent again violated Conduct Rule 2110 by withdrawing an additional \$12,500 from RJ's bank account and depositing the money into his own securities account without the knowledge or consent of customer RJ. (Complaint at ¶ 10).

Conversion generally is an intentional and unauthorized taking of and/or exercise of ownership over property by one who neither owns the property nor is entitled to possess it.⁶

The allegations in the first and second causes of the Complaint and the evidence submitted by Enforcement are sufficient to establish that Respondent converted \$62,689.19 belonging to customer RJ. Accordingly, the Hearing Officer finds that Respondent violated NASD Conduct Rules 2330(a) and 2110 by withdrawing funds from customer RJ's securities account, and violated NASD Conduct Rule 2110 by

⁶ NASD Sanction Guidelines, p. 38 (2006).

withdrawing funds from customer RJ's bank account, as alleged in counts one and two of the Complaint.

C. Respondent Failed to Respond to Rule 8210 Requests for Information

The third cause of the Complaint charges that Respondent failed to respond to written requests for information dated January 11, 2005, and January 26, 2005, which the NASD staff issued to Respondent to obtain certain information and documents. (Complaint at ¶¶ 12-13). Both requests were sent to Respondent at his CRD address via first class mail and certified mail in accordance with NASD Procedural Rule 8210. (Id.). Respondent did not respond in any manner to either request. (Complaint at ¶ 14).

Failure to comply with Rule 8210 requests for information is a serious violation because it subverts NASD's ability to perform its regulatory responsibilities.⁷

The allegations in the third cause of Complaint and the evidence submitted by Enforcement are sufficient to establish that Respondent violated Procedural Rule 8210 and thereby violated Conduct Rule 2110 by failing to respond to the staff's requests for information.⁸

IV. Sanctions

A. Conversion

For conversion of customer funds, the NASD Sanction Guidelines recommend a bar regardless of the amount converted.⁹ Here, there is no evidence of any mitigating

⁷ See, e.g., Richard J. Rouse, Exchange Act Release No. 32,685, 1993 SEC LEXIS 1831, at *7 (1993); 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 to conduct its investigations effectively, and emphasizing that NASD members and associated persons must fully cooperate with requests for information).

⁸ See Dep't of Enforcement v. Baxter, No. C07990016, 2000 NASD Discip. LEXIS 3, at **21, 25 (NAC Apr. 19, 2000).

⁹ Guidelines at 38.

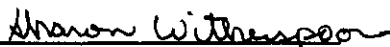
factors. Accordingly, a bar is the appropriate sanction for the violations under both the first and second causes of the Complaint.

B. Failure to Respond to Rule 8210 Requests for Information

For failing to respond in any manner to the requests for information issued by the NASD staff pursuant to NASD Procedural Rule 8210, the Sanction Guidelines recommend the imposition of a bar unless mitigating circumstances exist warranting a lesser sanction.¹⁰ Here, the record discloses no mitigating factors. Accordingly, a bar also is appropriate for the violation set forth in the third cause of the Complaint.

V. Order

Respondent William Shriner is barred from associating with any member firm in any capacity for: (1) converting funds from customer RJ's securities account, in violation of NASD Conduct Rules 2330(a) and 2110; (2) converting funds from customer RJ's bank account, in violation of NASD Conduct Rule 2110; and (3) failing to respond to requests for information issued by the NASD staff, in violation of NASD Conduct Rule 2110 and NASD Procedural Rule 8210. The bars will become effective immediately if this Default Decision becomes NASD's final disciplinary action in this proceeding.


Sharon Witherspoon
Hearing Officer

Dated: Washington, DC
May 15, 2006

Copies to:
William Shriner (via FedEx and first class mail)
Dale A. Glanzman, Esq. (via electronic and first class mail)
Roger D. Hogoboom, Esq. (via electronic and first class mail)
Rory C. Flynn, Esq. (via electronic and first class mail)

¹⁰ Id. at 35.

NASD
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,	
	Complainant
vs.	
William Shriner, Registered Representative (CRD No. 3212618)	
	Respondent

**Disciplinary Proceeding
No. E8A2004073701**

Hearing Officer

COMPLAINT

Upon information and belief, Complainant alleges as follows:

1. Between approximately November 2002 and July 2004, William Shriner ("Respondent") was registered as an Investment Representative with PFIC Securities Corp. ("Member"), a member of NASD. Respondent is therefore subject to the jurisdiction of NASD, pursuant to Article V, Section 4 of NASD's By-Laws.

FIRST CAUSE FOR COMPLAINT
Conversion of Customer's Funds
Violations of NASD Conduct Rules 2110 and 2330(a)

2. During all relevant times, R.J. was a public customer who maintained a securities account at the Member that was serviced by Respondent.
3. On or about February 24, 2004, Respondent converted customer funds by withdrawing \$25,614.92 from R.J.'s securities account and, without the consent or

knowledge of R.J., deposited the funds into his personal bank account for his own use and benefit.

4. On or about June 25, 2004, Respondent committed conversion by withdrawing \$14,500 from R.J.'s brokerage account and depositing \$14,000 of the funds into three of Respondent's personal bank accounts. Respondent apparently kept the remaining \$500 as cash for himself. R.J. was not aware of and did not consent to the Respondent's transaction.

5. On or about July 12, 2004, Respondent made a written confession to the Member of each wrongful transfer of funds from R.J., in which he further admitted that the reason for taking R.J.'s funds was because he had large debts that he could not "pay back via [his] own earnings and wages." Moreover, on or about January 6, 2005, Respondent pled guilty to, and was convicted of, the class D felony of theft in the State of Indiana for his wrongful taking of R.J.'s funds, as alleged above.

6. The acts, practices and conduct above constitute separate and distinct violations of NASD Conduct Rules 2110 and 2330(a) by Respondent.

SECOND CAUSE FOR COMPLAINT
Conversion of Customer's Funds
Violations of NASD Conduct Rule 2110

7. Complainant repeats the allegations contained in Paragraph 2 above and incorporates them by reference.

8. On or about February 20, 2003, Respondent withdrew \$10,074.27 from customer R.J.'s maturing bank CD and committed conversion by making the check payable to "WM Financial Planning" and using the funds for his own use or benefit, without the knowledge or consent of R.J.

9. On or about June 18, 2004, Respondent converted R.J.'s funds by withdrawing \$12,500 from R.J.'s bank account and depositing the money into his own securities account without knowledge or consent by R.J.

10. Complainant repeats the allegations contained in Paragraph 5 above and incorporates them by reference.

11. The acts, practices and conduct above constitute separate and distinct violations of NASD Conduct Rule 2110 by Respondent.

THIRD CAUSE FOR COMPLAINT
NASD Conduct Rule 2110 and NASD Procedural Rule 8210
Refusal to Respond to Requests for Information

12. On or about January 11, 2005, NASD staff sent a request to Respondent asking him to provide certain documents and information, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210. That request was sent by first class mail and by certified mail, return receipt requested, to Respondent's address of record as contained in the records of the Central Registration Depository ("CRD address"). The mailings were not returned to NASD staff. The certified mailing receipt was returned to NASD staff, apparently signed by "Nicole Shriner."

13. On or about January 26, 2005, NASD staff sent a final request to Respondent asking him to provide certain documents and information, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210. That request was sent by first class mail and by certified mail, return receipt requested, to Respondent's address of record as contained in the records of the Central Registration Depository ("CRD address"). The mailings were not returned to NASD staff. The receipt for the certified mailing was returned to NASD staff, but the signature was illegible.

14. Respondent has failed to respond to the request for documents and information described in Paragraph 12 or 13 above to date, and the date for responding to the request has passed.

15. The acts, practices and conduct described constitute a violation of NASD Conduct Rule 2110 and Procedural Rule 8210 by Respondent.

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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 Respondent in accordance with NASD Procedural 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 Procedural Rule 8330; and
- E. An order imposing any other fitting sanction.

October 13, 2005
Dated


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