

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JACK LEE RHOADES
(CRD No. 2327718),

Respondent.

Disciplinary Proceeding
No. E8A2004076501

Hearing Officer – DMF

DEFAULT DECISION

March 16, 2006

Respondent is barred from associating with any NASD member in any capacity for failure to respond to requests for information, in violation of Rules 8210 and 2110. In light of the bar, no additional sanctions imposed on Respondent for engaging in a check kiting scheme, in violation of Rule 2110.

Appearances

Pamela Shu, Esq., Chicago, IL (Rory C. Flynn, Esq., Washington, DC, and Roger D. Hogoboom, Esq., Denver, CO, 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 November 4, 2005, alleging that Respondent Jack Lee Rhoades engaged in a check kiting scheme, in violation of Rule 2110, and failed to respond to requests for information, in violation of Rules 8210 and 2110. Respondent did not file an Answer to the Complaint. On February 9, 2006, Enforcement filed a motion for a default decision,

supported by the declaration of Pamela Shu and 16 exhibits. Respondent did not reply to the motion.¹

II. Respondent's Default

Enforcement sent the Complaint and Notice of Complaint to Respondent on November 3, 2005, by certified and regular first class mail to Respondent's most current residential address listed in the Central Registration Depository (the "CRD address"). Enforcement sent the Complaint and Second Notice of Complaint to Respondent by certified and regular first class mail to the CRD address on December 15, 2005. Respondent did not file an Answer to the Complaint.

Enforcement served the Complaint and the Notices of Complaint on Respondent in accordance with Rule 9134, giving him constructive notice of this proceeding. Furthermore, Enforcement received a signed receipt for the certified mailing of the Complaint and Notice of Complaint, establishing that Respondent had actual notice as well. By failing to respond, he defaulted. Pursuant to Rule 9215(f), the Hearing Officer will deem the allegations in the Complaint admitted.

III. Jurisdiction

Respondent was registered through NASD member McDonald Investments Incorporated as a General Securities Representative from May 2001 until July 2004. Respondent is not currently registered or associated with any NASD member. Because the Complaint charges Respondent with misconduct while he was registered and with failing to appear and provide testimony as requested by NASD staff during the two-year

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

period following termination of his last registration, Respondent remains subject to NASD jurisdiction for purposes of this proceeding, pursuant to Art. V, § 4 of NASD's By-Laws.

IV. Violations

The first cause of the Complaint alleges that from approximately May 3, 2004, through June 21, 2004, Respondent wrote checks totaling \$40,100 on a bank account that exceeded the funds available in that account. He deposited the checks in his securities investment account at McDonald, which created inflated balances of uncollected funds in that account. He then wrote checks on another account that he held with a bank affiliate of McDonald. The bank, in reliance on the inflated balance in his securities account (which was linked to the bank account) paid the checks. Ultimately, Respondent deposited sufficient funds in his accounts to cover the various checks. These allegations, which are deemed admitted, describe a check kiting scheme by Respondent, by which Respondent violated Rule 2110's requirement that members and associated persons observe high standards of commercial honor and just and equitable principles of trade.

When McDonald discovered that Respondent had been kiting checks, it terminated his association with the firm and filed a Form U-5 with NASD describing the reasons for the termination, and NASD began an investigation. The second cause of the Complaint alleges that on or about August 26, 2004 and on or about September 29, 2004, NASD staff, in the course of its investigation, sent Respondent requests, pursuant to Rule 8210, for certain information with respect to the subject matter of the investigation. NASD staff sent the requests to Respondent by certified and regular first class mail to his CRD address. Because NASD staff sent the requests to Respondent at his CRD address,

pursuant to Rule 8210(d) he is deemed to have received them. Furthermore, NASD staff received signed receipts showing that both certified mailings were delivered. By failing to respond to the requests, Respondent violated Rules 8210 and 2110.

V. Sanctions

Under the Sanction Guidelines a bar is standard for failure to respond to requests for information. NASD Sanction Guidelines at 35 (2005 ed.). There is no evidence of any mitigating circumstances that would justify a lesser sanction in this case. There are no Guidelines for check kiting, but as described in the Complaint, Respondent's misconduct continued over a lengthy period, was intentional and was for the purpose of monetary gain in the sense that Respondent was able to spend funds that he did not yet have in his account. On the other hand, it appears that he ultimately covered all of his checks. Therefore, Respondent's misconduct would warrant significant sanctions, but not necessarily a bar, and in light of the bar for Respondent's failure to respond violation, the Hearing Officer concludes that additional sanctions for the check kiting violation would be redundant and would serve no remedial purpose.

VI. Conclusion

Respondent Jack Lee Rhoades is barred from associating with any NASD member firm in any capacity for failing to respond to requests for information, in violation of Rules 8210 and 2110. In light of the bar, no additional sanctions are imposed on Respondent for engaging in a check kiting scheme, in violation of Rule 2110. The bar

will become effective immediately if this decision becomes NASD's final disciplinary action.

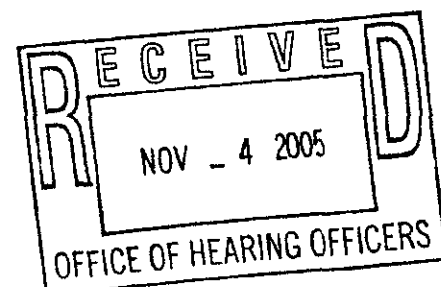
SO ORDERED.



David M. FitzGerald
Hearing Officer

Copies to: Jack Lee Rhoades (*via overnight courier and first class mail*)
 Pamela Shu, 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*)

**NASD
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Department of Enforcement,

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v.

JACK LEE RHOADES
General Securities Representative
CRD # 2327718 ,

Respondent.

Disciplinary Proceeding
No. E8A2004076501

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COMPLAINT

Upon information and belief, Complainant alleges as follows:

1. Jack Lee Rhoades ("Respondent Rhoades") was associated with McDonald Investment, Incorporated ("Member"), a member of NASD, from about May 2001 until June 25, 2004. During that time, Respondent Rhoades was associated with the Member as a sales representative and was registered with NASD as a General Securities Representative.

FIRST CAUSE OF COMPLAINT

**Failure to Observe High Standards of Just and Equitable Principles of Trade
Violation of NASD Conduct Rule 2110**

2. Paragraph number 1, above, is realleged and incorporated herein by reference.
3. From approximately May 3, 2004 through June 21, 2004, Respondent Rhoades wrote checks totaling \$40,100 on a bank account that exceeded the funds available in that account. Respondent Rhoades deposited those checks into his securities investment

account that he held with the Member, which deposits created an inflated balance of uncollected funds. Immediately after Respondent Rhoades made the deposits into his investment account with the Member, he wrote checks upon another bank account that he held with an affiliate of the Member. This account was linked to his investment account at the Member. The affiliated bank relied upon the inflated balance of uncollected funds that Respondent Rhoades created in his investment account, and paid the checks that Respondent Rhoades wrote.

4. The practice described above enabled Rhoades to take advantage of the time required by the financial institutions to process the checks that he wrote on both accounts. By timing his check writing and deposits in a certain way, Rhoades wrongfully gained the use of funds that his accounts could not cover, in violation of NASD Conduct Rule 2110.

SECOND CAUSE OF COMPLAINT
Failure to Respond
NASD Conduct Rule 2110 and NASD Procedural Rule 8210

5. Paragraphs 1 through 4 of the Complaint are realleged and incorporated herein by reference for purposes of this cause of action.
6. On or about August 26, 2004, NASD staff sent to Respondent Rhoades a request that he provide certain documents and information by September 29, 2004, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210. That request for information was sent by first class mail and certified mail, return requested, to Respondent Rhoades' address of record as contained in the records of the Central Registration Depository ("CRD address"). The first class mailing was not returned and the return receipt for the certified mailing was returned to NASD with the

signature of Ellen Rhoades. Respondent Rhoades failed to respond to NASD's request for information.

7. On or about September 29, 2004, NASD staff sent to Respondent Rhoades a request that he provide certain documents and information by October 14, 2004, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210. That request for information was sent by first class mail and certified mail, return requested, to Respondent Rhoades' address of record as contained in the records of the Central Registration Depository ("CRD address"). The first class mailing was not returned and the return receipt for the certified mailing was returned to NASD with the signature of Respondent Rhoades. Respondent Rhoades failed to respond to NASD's request for information.
8. Respondent Rhoades failed to respond to each and all of the requests for documents and information described in Paragraphs 6 and 7 and the time for him to respond has expired.
9. Such acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 and NASD Procedural Rule 8210.

PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

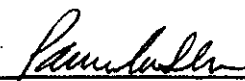
- A. Findings of fact and conclusions of law that Respondent Rhoades committed the violations charged and alleged herein;
- B. An order imposing sanctions upon Respondent Rhoades in accordance with NASD Procedural Rule 8310;

- C. An order imposing such costs of any proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Procedural Rule 8330;
- D. An order imposing any other fitting sanction.

NASD DEPARTMENT OF ENFORCEMENT

November 3, 2005

Date


Pamela Shu, Regional Counsel
Mark A. Koerner, Regional Chief Counsel
NASD Department of Enforcement
55 West Monroe Street, 27th Floor
Chicago, IL 60603-5052
(312) 899-4353; Fax No. (312) 899-4600

NASD District Director

Carlotta A. Romano
Senior Vice President and
Regional Director
NASD, District 8
55 W. Monroe Street 27th Floor
Chicago, IL 60603-5052
(312) 899-4400

Of Counsel

Rory C. Flynn, Of Counsel
NASD Department of Enforcement
1801 K Street, N.W., Suite 800
Washington, D.C. 20006
(202) 974-2974; Fax No. (202) 721-8318

Roger D. Hogoboom, Of Counsel
NASD Department of Enforcement
370 17th Street, Suite 2900
Denver, CO. 80202
(303) 446-3114; Fax No. (303) 620-9540