

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

CALVIN W. MCCLINTOCK
(CRD No. 3040464),

Respondent.

Disciplinary Proceeding
No. E8A2004085901

DEFAULT DECISION

Hearing Officer – SW

Dated: January 23, 2006

Respondent is barred from associating with any NASD member in any capacity for failing to respond to requests for information in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110. In light of this bar, no further sanctions are imposed on Respondent for (i) executing two unauthorized securities transactions in a joint customer account without the customers' prior knowledge or authorization, in violation of NASD Conduct Rule 2110 and IM-2310-2, or (ii) executing one unauthorized municipal security transaction in a customer's account without her prior knowledge or authorization, in violation of MSRB Rule G-17.

Appearances

Dale A. Glanzman, Esq., Regional Counsel, Chicago, IL, and Rory C. Flynn, Esq., Of Counsel, Washington, DC, for the Department of Enforcement.

No appearance by or for Respondent Calvin W. McClintock.

DECISION

I. Background

On August 19, 2005, the Department of Enforcement ("Enforcement") filed the attached amended three-cause Complaint ("Complaint") in this proceeding, which was originally filed on

August 12, 2005.¹ The first cause of action alleges that Respondent Calvin W. McClintock ("Respondent") violated Conduct Rule 2110 and IM-2310-2 by purchasing and selling securities in the joint account of three customers, without their prior knowledge or authorization. The second cause of action alleges that Respondent violated General Rule G-17 of the Municipal Securities Rulemaking Board ("MSRB")² by purchasing a municipal bond for the account of a customer without the customer's prior knowledge or authorization. The third cause of action alleges that Respondent violated Procedural Rule 8210 and Conduct Rule 2110 by failing to respond to two NASD staff requests for information.

Pursuant to NASD Rules 9215(a) and 9138(c), Respondent was required to file an Answer to the Complaint, which he failed to do. Accordingly, on November 8, 2005, Enforcement filed a Motion for Entry of Default Decision ("Motion"), supported by the declaration of Dale A. Glanzman, Esq., Regional Counsel in the Chicago District Office, and nine exhibits. Respondent did not respond to Enforcement's Motion. For the reasons set forth below, Enforcement's Motion is granted.³

II. Respondent's Default

Enforcement served Respondent with copies of the original Complaint and Notice of Complaint on August 11, 2005, via certified and first class mail, at his current residential address as reflected in the Central Registration Depository (the "CRD address").⁴ (CX-2; DECL at ¶ 6).

¹ The Complaint was amended to correct the disciplinary number; there were no changes in the underlying allegations.

² Pursuant to Section 15B of the Securities Exchange Act of 1934, the MSRB, with the approval of the SEC, is authorized to propose and adopt rules with respect to transactions in municipal securities by brokers, dealers, and municipal securities dealers.

³ Hereinafter, the statements in the Motion for Entry of Default Decision will be designated as "Motion, p."; the 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.

⁴ Respondent's CRD address is [REDACTED]. (CX-1, p. 1; DECL at ¶ 6).

On August 18, 2005, Enforcement served the Complaint and Notice of Complaint on Respondent at his CRD address. (CX-4; DECL at ¶ 7). Although NASD received a mail receipt signed by Respondent on August 22, 2005 for the August 18, 2005 certified mailing, Respondent did not file an Answer. (CX-5; DECL at ¶ 7). On September 15, 2005, Enforcement mailed the Second Notice of Complaint and Complaint to Respondent at his CRD address. (CX-6; DECL at ¶ 8). Again, Respondent did not file an Answer to the Complaint, although NASD received a mail receipt signed by Respondent on September 19, 2005 for the September 15, 2005 certified mailing. (CX-7; DECL at ¶ 8).

Based on the certified mail receipts signed by Respondent, the Hearing Officer finds that Respondent received actual notice of the proceeding. In any event, Respondent received constructive notice of this proceeding because Enforcement complied with Rule 9134(b)(1) by mailing the Complaint and Notices of Complaint to Respondent's CRD address. By failing to file an Answer to the Complaint, Respondent defaulted.

III. Jurisdiction

Respondent first became registered with NASD member A.G. Edwards & Sons, Inc. ("A.G. Edwards") in July 1998 as a general securities representative. (CX-1, p. 2; DECL at ¶ 5). After A.G. Edwards terminated Respondent's employment on August 10, 2004, Respondent's registration as a general securities representative was terminated on August 24, 2004. (Id.). Respondent is not currently registered with an NASD member firm. (Id.).

NASD has jurisdiction to bring this proceeding, pursuant to Article V, Section 4 of the NASD By-Laws, because Enforcement filed the Complaint within two years after Respondent's registration terminated, and the Complaint alleges misconduct while he was registered with NASD.

IV. Findings of Fact and Conclusions of Law

A. Respondent engaged in unauthorized securities transactions

The first cause of the Complaint alleges that Respondent violated Conduct Rule 2110 and IM-2310-2 by (i) selling or causing the sale of mutual funds, and (ii) purchasing, or causing to be purchased securities, in the joint account of three customers without the customers' prior knowledge or consent. (Complaint at ¶¶ 2-4). Specifically, count one alleges that on June 25, 2004, Respondent sold or caused to be sold 2,821 mutual fund shares of the Franklin Custodian Fund for \$6,653, without the knowledge or consent of three customers, JF, JF, and TF. (Complaint at ¶ 3). On the same day, in the same account, Respondent purchased \$7,000 of FHLMC notes at a cost of \$7,128, without the knowledge or consent of the three customers. (Complaint at ¶ 4).

Enforcement provided the additional information that customer JF called A.G. Edwards on June 28, 2004 to complain about the unauthorized purchase and sale in the joint account. (DECL at ¶10(A)). When Respondent's branch chief confronted Respondent with the customer complaint, Respondent admitted he had not spoken to anyone on the joint account prior to entering the trades in the account. (*Id.*). The branch chief warned Respondent he would be terminated if he executed any further unauthorized trades. (*Id.*). In a written response to an NASD staff inquiry, customer JF confirmed that the transactions were unauthorized and that no one contacted him or anyone else listed on the account to obtain approval of the transactions. (*Id.*).

NASD Conduct Rule 2110 provides that "[a] member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade." The SEC and NASD have consistently held that "unauthorized trading in a customer's account

violates Conduct Rule 2110.”⁵ Further, executing unauthorized trades violates a registered representative’s responsibility to deal fairly with customers under IM-2310-2 (4)(A)(iii). In NASD Board interpretation IM-2310-2 (4)(A)(iii), fraudulent activity is defined to include unauthorized transactions, i.e., causing the execution of transactions, which are unauthorized by customers, or the sending of confirmations in order to cause customers to accept transactions not actually agreed upon.

Under Rule 9215(f) and NASD Notice to Members 99-77, the allegations of the first cause of the Complaint are deemed admitted, and they are hereby incorporated into this Default Decision as findings of fact.

The Hearing Officer finds that the record is sufficient to establish, for purposes of this Default Decision, that Respondent violated Conduct Rule 2110 and IM-2310-2 by executing unauthorized sale and purchase securities transactions in the joint account of customers, JF, JF, and TF.

B. Respondent engaged in an unauthorized municipal securities transaction

The second cause of the Complaint alleges that Respondent violated MSRB Rule G-17 by purchasing a municipal security,⁶ in the account of customer DM, without the customer’s prior knowledge or consent. (Complaint at ¶¶ 6-7). Specifically, on July 27, 2004, Respondent purchased a \$5,000 Port Tacoma, Washington, municipal bond for \$5,074 for the account of customer DM without her consent or knowledge. (Complaint at ¶ 7).

⁵ Jeffrey B. Hodde, No. C10010005, 2002 NASD Discip. LEXIS 4, at *13-14 (NAC Mar. 27, 2002) (citations omitted); see also Robert Lester Gardner, Exchange Act Release No. 35,899, 1995 SEC LEXIS 1532, at *1 n.1 (1995).

⁶ NASD Rule 0114 provides that the NASD Rules shall not be construed to apply to transactions in municipal securities as defined in Section 3(a)(29) of the Securities Exchange Act of 1934 (“Exchange Act”). Section 3(a)(29) of the Exchange Act defines a municipal security as a security that is a direct obligation of, or obligation guaranteed as to principal or interest by, a state or any political subdivision thereof, or any agency or instrumentality of one or more states, or any security, which is an industrial development bond.

Enforcement provided the additional information that on August 9, 2004, customer DM complained to A.G. Edwards regarding the purchase. (DECL at ¶ 10(B)). Customer DM reported that she had spoken to Respondent about the unauthorized transaction on August 4, 2004, and Respondent told DM that he would take care of the matter. (Id.). When DM contacted A.G. Edwards on August 9, 2004, the transaction had not been rescinded. (Id.). On August 10, 2004, Respondent admitted to his branch manager that he executed the municipal security trade without speaking to DM. (Id.). In a written response to an NASD staff inquiry, customer DM confirmed that the municipal securities purchase was unauthorized and that Respondent did not discuss the transaction before it was entered into her account. (Id.).

MSRB Rule G-17 provides that in the conduct of its municipal securities activities, each broker, dealer, and municipal securities dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice.⁷ MSRB Rule G-17 is described as a fair dealing rule, imposing a duty on dealers not to engage in deceptive, dishonest, or unfair practices.⁸ There is no dispute that executing a municipal security transaction for a customer without the customer's consent or knowledge,⁹ and falsely advising a customer that an unauthorized transaction will be rescinded involves deceptive, dishonest or unfair practices.

Under Rule 9215(f) and NASD Notice to Members 99-77, the allegations of the second cause of the Complaint are deemed admitted, and they are hereby incorporated into this Default

⁷ MSRB Administrative Rule D-11 provides that "unless the context otherwise requires or a rule of the [MSRB] otherwise specifically provides, the terms 'broker,' 'dealer,' 'municipal securities broker,' 'municipal securities dealer,' and 'bank dealer' shall refer to and include their respective associated persons."

⁸ Interpretive Notice Regarding Rule G-17 on Disclosure of Material Facts, (Mar. 20, 2002), available at www.msrb.org, "Rules, Forms & Glossary," "Interpretative Notices," and "G-17 Conduct of municipal securities activities."

⁹ Interpretive Letter Regarding Rule G-17 (Mar. 3, 1981) ("[MSRB] has determined that the practice by a municipal securities dealer of knowingly issuing confirmations of sales to customers who have not placed orders to purchase the bonds is a deceptive, dishonest, and unfair practice under Rule G-17"), available at www.msrb.org, "Rules, Forms & Glossary," "Interpretative Letters," and "G-17 Conduct of municipal securities activities."

Decision as findings of fact. The Hearing Officer finds that the record is sufficient to establish, for purposes of this Default Decision, that Respondent violated MSRB Rule G-17 by executing an unauthorized municipal securities transaction in DM's account.

C. Respondent failed to respond to NASD requests for information

The third cause of the Complaint alleges that Respondent failed to respond to two requests for information concerning the allegations in counts one and two of the Complaint, which requests were sent to Respondent by the NASD staff on October 15, 2004, and November 2, 2004. (Complaint at ¶¶ 9-11; DECL at ¶¶ 12-13). The NASD staff sent the requests to Respondent at his CRD address by first class and certified mail pursuant to Rule 8210. (Complaint at ¶¶ 9-10). NASD received certified mail receipts signed by Respondent for the October 15 and November 2, 2004 mailings. (*Id.*). Respondent failed to provide any information in response to either of the two requests for information issued by the NASD staff. (Complaint at ¶ 11; DECL at ¶ 14).

Under Rule 9215(f) and NASD Notice to Members 99-77, the allegations of the third cause of the Complaint are deemed admitted, and they are hereby incorporated into this Default Decision as findings of fact.

Under NASD Procedural Rule 8210, NASD may require any person subject to its jurisdiction to provide information regarding any matter under investigation. The obligation to respond is unqualified. Because NASD lacks subpoena power, Rule 8210 is the means by which NASD carries out its regulatory functions. It is a "key element in the NASD's efforts to police its members."¹⁰ Failure to comply with Rule 8210 requests for information is a serious violation

¹⁰ See Richard J. Rouse, Exchange Act Release No. 32,658, 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).

because it subverts NASD's ability to perform its regulatory responsibilities.¹¹ A violation of Rule 8210 is also a violation of NASD Conduct Rule 2110.¹²

In this case, based on NASD's receipt of the certified mailing receipts signed by Respondent, the Hearing Officer finds that Respondent received actual knowledge of the requests for information and failed to respond. In any event, even in the absence of the signed receipts, Respondent is deemed to have received the requests for information sent to his CRD address pursuant to Rule 8210(d).

Accordingly, based on the allegations deemed admitted, the Hearing Officer finds that Respondent received notice of the requests for information, and that he violated NASD Conduct Rule 2110 and NASD Procedural Rule 8210 by failing to respond to those requests.

V. Sanctions

A. Respondent received a bar for failing to respond to Rule 8210 requests for information

The NASD Sanction Guideline for failure to respond to Rule 8210 requests for information states that a bar should be standard where the respondent failed to respond in any manner.¹³ Enforcement requested, and the Hearing Officer agrees, that Respondent should be barred. The record is devoid of any mitigating factors that might justify a lesser sanction.

B. Hearing Officer imposed no separate sanction for Respondent's unauthorized securities and unauthorized municipal securities transactions

Because the Hearing Officer barred Respondent for violating NASD Procedural Rule 8210 and NASD Conduct Rule 2110, no separate sanction will be imposed on him for the

¹¹ Id.

¹² See Dep't of Enforcement v. Baxter, No. C07990016, 2000 NASD Discip. LEXIS 3, at **21, 25 (NAC Apr. 19, 2000).

¹³ NASD Sanction Guidelines, p. 35 (2005).

unauthorized trading in securities and municipal securities, in violation of Conduct Rule 2110 and IM-2310-2, and MSRB G-17.¹⁴

VI. Order

Respondent is barred from association with any member firm in any capacity for failing to respond to requests for information in violation of Procedural Rule 8210 and Conduct Rule 2110. The bar shall become effective immediately if this Decision becomes the final disciplinary action of NASD.


Sharon Witherspoon
Hearing Officer

Dated: Washington, DC
January 23, 2006

Copies to:

Calvin W. McClintock (via FedEx and first class mail)
Dale A. Glanzman, Esq. (via electronic and first class mail)
Rory C. Flynn, Esq. (via electronic and first class mail)

¹⁴ See Dep't of Enforcement v. Jeffrey B. Hodde, No. C10010005, 2002 NASD Discip. LEXIS 4, at *17 (NAC Mar. 27, 2002) (explaining that a bar is the standard sanction for a respondent's failure to respond to information requests, and holding that it is therefore redundant to impose an additional sanction, such as a suspension, for a violation of another NASD rule).

EXHIBIT A

**NASD
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,		
	Complainant	Disciplinary Proceeding
vs.		No. E8A2004085901
		Hearing Officer
CALVIN W. MCCLINTOCK		AMENDED
Registered Representative		COMPLAINT
(CRD No. 3040464)		
	Respondent	

Upon information and belief, Complainant alleges as follows:

1. Between approximately July 1998 and August 2004, Calvin W. McClintock ("Respondent") was registered as a General Securities Representative with A.G. Edwards & Sons, Inc. ("Member"), a member of NASD. Respondent therefore is subject to the jurisdiction of the NASD, pursuant to Article V, Section 4 of the NASD's By-Laws.

**FIRST CAUSE FOR COMPLAINT
Unauthorized Trading
Violations of NASD Conduct Rules 2110 and IM 2310-2**

2. During all relevant times, J.F., J.F and T.F. were public customers who maintained a securities account as joint tenants at the Member that was serviced by Respondent.

3. On or about June 25, 2004, Respondent sold or caused the sale of approximately 2,821 shares of a Franklin Custodian Funds mutual fund at a cost of \$6,653.12 from the joint account of public customers J.F., J.F. and T.F., without the knowledge or consent of the public customers and in the absence of written or oral authorization to Respondent to exercise discretion in said account.

4. On or about June 25, 2004, Respondent purchased or caused the purchase of 7,000 FHLMC notes at a cost of \$7,128.08 for the joint account of public customers J.F., J.F. and T.F., without the knowledge or consent of the public customers, and in the absence of written or oral authorization to Respondent to exercise discretion in said account.

5. The acts, practices and conduct above constitute separate and distinct violations of NASD Conduct Rules 2110 and IM 2310-2 by Respondent.

SECOND CAUSE FOR COMPLAINT
Unauthorized Trading
Violation of MSRB Rule G-17

6. During all relevant times, D.M. was a public customer who maintained a securities account at the Member that was serviced by Respondent.

7. On or about July 27, 2004, Respondent purchased or caused the purchase of 5,000 Port Tacoma, Washington bonds at a cost of \$5,073.75 for the joint account of public customer D.M., without the knowledge or consent of D.M., and in the absence of written or oral authorization to Respondent to exercise discretion in said account.

8. The acts, practices and conduct above constitute separate and distinct violations of MSRB Rule G-17.

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

9. On or about October 15, 2004, NASD staff sent to Respondent a request that he provide certain documents and information, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210. That request for information 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 first class mailing was not returned to NASD staff. The receipt for the certified mailing to Respondent was returned, apparently signed by "Calvin McClintock."

10. On or about November 2, 2002, NASD staff sent to Respondent the same request, described in Paragraph 9 above, that he provide certain documents and information, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210. That request for information was sent by first class mail and by certified mail, return receipt requested, to Respondent's CRD address. The first class mailing was not returned to NASD staff. The receipt for the certified mailing to Respondent was returned, apparently signed by "Calvin McClintock."

11. Respondent has failed to respond to each and all of the requests for documents and information described in Paragraphs 9 through 10 above to date, and the dates for responding to the requests have passed.

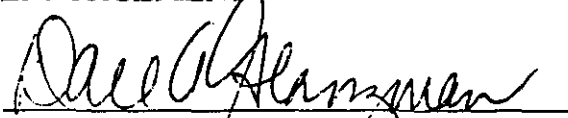
12. The acts, practices and conduct described above constitute a violation of NASD Conduct Rule 2110 and Procedural Rule 8210 by Respondent.

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

NASD DEPARTMENT OF ENFORCEMENT



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Dated: August 18, 2005

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