

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

GREGORY BOSTON
(CRD No. 2064738),

Respondent.

Disciplinary Proceeding
No. E8A2004107701

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

March 2, 2006

Respondent improperly used funds belonging to his employer and customer, in violation of NASD Conduct Rule 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 association with any member firm in any capacity for each violation.

Appearances

Richard A. March, Senior Regional Attorney, Chicago, IL (Rory C. Flynn, Chief Litigation Counsel, Washington, D.C., Of Counsel) for the Department of Enforcement.

No appearance for the Respondent.

DECISION

I. Introduction

On April 6, 2005, the Department of Enforcement ("Enforcement") filed the Complaint against the Respondent Gregory Boston ("Boston" or the "Respondent"). The Complaint contains two causes of action. In the first cause of action, the Complaint alleges that the Respondent violated NASD Conduct Rule 2110 by improperly using funds belonging to his employer, FBC. In the second cause of action, the Complaint

alleges that the Respondent violated NASD Conduct Rule 2110 and NASD Procedural Rule 8210 by failing to respond to two written requests that he provide information regarding his misuse of FBC's funds. NASD staff issued the requests pursuant to Procedural Rule 8210.

Boston did not answer or otherwise respond to the Complaint. Consequently, on January 30, 2006, Enforcement filed a Motion for Entry of Default Decision ("Motion"). Enforcement's Motion is supported by the Declaration of Richard A. March ("March Decl.") and six exhibits. Boston did not respond to the Motion. Thus, pursuant to NASD Procedural Rules 9215 and 9269, the Hearing Officer grants Enforcement's Motion.

II. Respondent's Default

Enforcement served Boston by certified mail in accordance with NASD Procedural Rules 9134(a)(2) and 9134(b)(1). Enforcement mailed copies of the Complaint, Notice of Complaint, and Second Notice of Complaint to Boston at his last known residential address shown in the Central Registration Depository (the "CRD address").¹ "Amy Boston" signed the receipt for the mailing containing the Complaint and Notice of Complaint on October 21, 2005, and "Greg Boston" signed the receipt for the mailing containing the Complaint and Second Notice of Complaint on November 25, 2005.²

Based on the foregoing, the Hearing Officer finds that Boston received valid notice of this proceeding.³ Accordingly, the Hearing Officer finds Boston in default and deems the allegations of the Complaint admitted.⁴

¹ March Decl. ¶ 6.

² Ex. 3; Ex. 5.

³ See NASD Procedural Rule 9134(b)(1), (2) (allowing for service at address listed in CRD). See also *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).

⁴ The following Findings of Fact incorporate the allegations in the attached Complaint.

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

Article V, Section 4 of the NASD By-Laws allows NASD to retain jurisdiction over a formerly registered person for two years following the effective date his or her registration terminated. Moreover, Article V, Section 4 of the NASD By-Laws grants NASD the power to request information from formerly registered persons during this period of retained jurisdiction. According to Boston's record in the Central Registration Depository ("CRD"), he was associated with H&R Block Financial Advisors, Inc. ("H&R Block"), an NASD member firm, from April 2003 until January 2005, during which time he was registered as a General Securities Representative.⁵ His registration with NASD terminated effective February 7, 2005, and he has not been registered with NASD or associated with a member firm since that date. NASD staff mailed the information requests that are the subject of the Second Cause of Complaint, and Enforcement filed the Complaint, within two years after Boston's registration terminated. Accordingly, the Hearing Officer finds that NASD has jurisdiction of this proceeding.

B. Improper Use of Customer Funds

The First Cause of Complaint alleges that, between December 2002 and June 2004, Boston served both as customer FBC's treasurer and as its financial representative at Stifel, Nicolaus & Company, an NASD member firm, and then at H&R Block.⁶ The Complaint further alleges that during this period Boston wrote 47 checks on FBC's

⁵ Ex. 1 at 2.

⁶ Ex. 1 at 3; March Decl. ¶ 5.

account payable to his wife and himself, which FBC had not authorized. The checks totaled \$23,000.⁷

On or about December 13, 2004, Boston was indicted for felony theft in Fayette County, Ohio. The indictment alleged that the Respondent knowingly exerted control over \$25,875.78 belonging to FBC with the purpose of depriving FBC of its use of the funds.⁸ Boston pled guilty to the indictment on June 6, 2005.⁹

These allegations in the Complaint and the evidence submitted by Enforcement are sufficient to establish that Boston misused not less than \$23,000 belonging to his employer. Accordingly, the Hearing Officer finds that Boston thereby violated NASD Conduct Rule 2110. Conduct Rule 2110 provides that a member "shall observe high standards of commercial honor and just and equitable principles of trade." Here, the evidence shows that Boston's misuse of FBC's funds amounted to conversion, which is patently antithetical to NASD standards and principles.

C. Failure to Provide Information

The Second Cause of Complaint alleges that NASD staff served Boston with two written requests for information pursuant to NASD Procedural Rule 8210, the first on February 15, 2005, and the second on March 23, 2005. Each request was sent to the Respondent at his CRD address by certified and first-class mail.¹⁰ "Gregory Boston" signed the receipt for the first mailing, and "Bethany Boston" signed the receipt for the

⁷ Compl. ¶¶ 1-2.

⁸ March Decl. ¶ 10.

⁹ *Id.*

¹⁰ Compl. ¶¶ 5-6.

second.¹¹ Nonetheless, Boston did not respond in any manner to either request.¹² Boston thereby violated Procedural Rule 8210 and Conduct Rule 2110.

IV. Sanctions

Enforcement seeks a bar both for Boston's conversion of customer funds and for his failures to respond to the staff's requests for information. Enforcement does not seek a fine or restitution, which was ordered by the court in the Ohio criminal proceedings.

For conversion of customer funds, the NASD Sanction Guidelines ("Guidelines") recommend a bar unless there are mitigating factors, such as evidence of a misunderstanding regarding the customer's intention regarding the use of his or her funds.¹³ Here, there is no evidence of any mitigating factors that would reduce the level of sanctions. Accordingly, a bar is the appropriate sanction for this violation.

With respect to the Second Cause of Complaint, failing to respond in any manner to the requests for information NASD Staff issued pursuant to NASD Procedural Rule 8210, the Guidelines recommend the imposition of a bar unless mitigating circumstances exist warranting a lesser sanction.¹⁴ Here, the record discloses no mitigating factors. Accordingly, a bar also is appropriate for this violation.

V. Order

Gregory Boston is barred from association with any member firm in any capacity for the improper use of his employer's funds, in violation of NASD Conduct Rule 2110,

¹¹ March Decl. ¶¶ 13, 15.

¹² Compl. ¶ 7.

¹³ NASD Sanction Guidelines 38 (2005 ed.).

¹⁴ *Id.* at 35.

and for failing to respond to requests for information, in violation of NASD Conduct Rule 2110 and NASD Procedural Rule 8210.

The foregoing sanctions shall become effective once this Default Decision becomes the final disciplinary action of NASD.

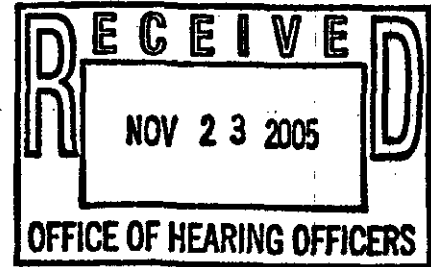
A handwritten signature in black ink, appearing to read 'Andrew H. Perkins', written over a horizontal line.

Andrew H. Perkins
Hearing Officer

Copies to:

Gregory Boston (by overnight courier and first-class mail)
Richard A. March, Esq. (by first-class and electronic mail)
Rory C. Flynn, Esq. (by first-class and electronic mail)
Roger D. Hogoboom, Esq. (by first-class and electronic mail)

NASD
OFFICE OF HEARING OFFICERS



DEPARTMENT OF ENFORCEMENT,

Complainant

vs.

GREGORY BOSTON
Registered Representative
(CRD No. 2064738)

Respondent

Disciplinary Proceeding
No. E8A2004107701

Hearing Officer:

COMPLAINT

Upon information and belief, Complainant alleges as follows:

1. Between on or about December 17, 2002 and on or about April 25, 2003, Gregory Boston ("Boston") was associated with Stifel, Nicolaus & Company Incorporated ("Stifel"), a member of NASD. Between on or about April 25, 2003 and on or about June 22, 2004, Boston was associated with H & R Block Financial Advisors, Inc. ("H & R"). In or about January 2005, H & R filed a Uniform Termination Notice for Securities Industry Registration (Form U-5), which terminated Boston's association with H & R. Given that this complaint was filed within two years of the effective date of the termination of association of Boston with H & R, Boston is subject to the jurisdiction of NASD, pursuant to Article V, Section 4 of NASD's By-Laws.

FIRST CAUSE FOR COMPLAINT
NASD Conduct Rule 2110
Improper Use

1. Between on or about December 17, 2002 and on or about April 25, 2003, Boston,

while serving as treasurer for public customer FBC, improperly used their funds totaling approximately \$10,000 by writing 11 checks to himself and his wife, without the knowledge and approval of public customer FBC.

2. Between on or about April 25, 2003 and on or about June 22, 2004, Boston, while serving as treasurer for public customer FBC, improperly used their funds totaling approximately \$13,000 by writing 36 checks to himself and his wife, without the knowledge and approval of public customer FBC.

3. Such acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 on the part of Boston.

**SECOND CAUSE FOR COMPLAINT
NASD Conduct Rule 2110 and NASD Procedural Rule 8210
Failure to Respond to a Written Request**

4 Paragraphs 1 through 3 above are realleged and incorporated herein by reference.

5. On or about February 15, 2005, NASD staff sent Boston a letter requesting that he provide information with regard to his handling of funds involving public customer FBC by March 4, 2005. The request, which was made pursuant to and in accordance with the provisions of NASD Procedural Rule 8210, was sent via first class mail and certified mail, return receipt requested, to Boston's address of record as contained in the records of the Central Registration Depository ("CRD address"). The first class mail was never returned and the return receipt was sent back with the signature of Gregory Boston and the date of delivery of February 18, 2005.

6. On or about March 23, 2005, NASD staff sent Boston a second letter along with the letter dated February 15, 2005. In that letter, NASD staff asked Boston to provide information with regard to his handling of funds involving public customer FBC by April 8, 2005. The

second letter was sent via first class mail and certified mail, return receipt requested, to Boston's CRD address. The first class mail was never returned and the return receipt was sent back with the signature of Bethany Boston and the date of delivery of March 25, 2005.

7. Boston has never contacted the NASD staff with regard to the letters sent on February 15, 2005 and March 23, 2005.

8. The acts, practices and conduct described above constitute separate and distinct violations of NASD Conduct Rule 2110 and Procedural Rule 8210 by Boston.

PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Boston committed the violations charged and alleged herein;
- B. An order imposing sanctions upon Boston 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 Rule 8330; and
- D. An order imposing any other fitting sanction.

NASD DEPARTMENT OF ENFORCEMENT

Date: October 19, 2005


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