

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ELLIOTT NADEL
(CRD No. 812711),

Respondent.

Disciplinary Proceeding
No. ELI2004039602

Hearing Officer – SNB

DEFAULT DECISION

March 2, 2006

For conversion of customer funds, in violation of Rules 2330(a) and 2110, and for failure to provide requested information, in violation of Rules 8210 and 2110, Respondent is barred from associating with any NASD member in any capacity. Respondent is also ordered to make restitution to a customer in the total amount of \$46,760.08, plus interest.

Appearances

Vaishali S. Shetty, Esq., Regional Counsel, Jericho, NY, and Rory C. Flynn, Esq., Washington, DC, of Counsel, for the Department of Enforcement.

No appearance by Respondent.

DECISION

I. Background

On September 27, 2005, the Department of Enforcement ("Enforcement") filed a two-cause Complaint in this proceeding, attached to this Decision as Exhibit A. The Complaint alleges that Respondent Elliott Nadel ("Respondent") violated Conduct Rules 2330(a) and 2110 by converting customer funds. The Complaint also alleges that Respondent violated NASD Rules 8210 and 2110 by failing to respond to NASD Staff requests for information. Respondent

did not file an Answer to the Complaint. Accordingly, on January 4, 2006, Enforcement filed a Motion for Entry of Default Decision and Imposition of Sanctions, supported by the declaration of Vaishali Shetty and 13 exhibits. Respondent did not reply to the Motion. For the reasons set forth below, the Motion is granted.¹

II. Respondent's Default

Enforcement first attempted to send the Complaint and Notice of Complaint to Respondent on September 26, 2005, by first class and certified mail to his two last known residential addresses listed in the Central Registration Depository (the "CRD addresses"). However, Enforcement made a typographical error when addressing one of the mailings, which was sent to "5th St." rather than "58th St." as indicated in the CRD records. On October 25, 2005, Enforcement sent the Complaint and Second Notice of Complaint to Respondent in the same manner, this time using the correct addresses. Once Enforcement discovered the error in the first mailing, on December 13, 2005, Enforcement again sent the Complaint and a Third Notice of Complaint to Respondent in the same manner to the correct CRD addresses. Respondent did not file an Answer to the Complaint.

Enforcement complied with Rule 9134(b) (1) by mailing the Complaint and Notices of Complaint to Respondent's CRD addresses, thereby giving Respondent constructive notice of this proceeding. By failing to file an Answer, Respondent defaulted. Pursuant to Rules 9215(f) and 9269(a) (2), the allegations in the Complaint are deemed admitted.

¹ The factual determinations in this decision are based on the allegations of the attached Complaint, which are deemed admitted, and Enforcement's Motion for Entry of Default Decision and Imposition of Sanctions and supporting materials.

III. Jurisdiction

Respondent was registered as a General Securities Representative with member firm Chicago Investment Group, LLC from December 2000 until his termination on December 19, 2003. He is not currently registered with an NASD member firm.

Although Respondent is not currently associated with a member firm, NASD has jurisdiction to bring this proceeding, pursuant to Art. V, § 4 of NASD's By-Laws, because (1) the Complaint charges Respondent with misconduct while he was registered and with failing to comply with requests for information made during the two-year period following termination of his last registration, and (2) the Complaint was filed within that two-year period.

IV. Violations

A. Conversion

The Complaint alleges that in December 2002, approximately \$80,000 was transferred from the account of customer RK (the "First Account") to a second account (the "Second Account"), without the customer's authorization or consent. Thereafter, in January 2003, \$46,760.08 was transferred from the Second Account to a third account (the "Third Account") managed and controlled by Respondent. In March 2003, a check for \$59,000 payable to Respondent was drawn from the Third Account.

Enforcement provided additional detail about these transactions in its Motion for Default. In particular, Enforcement indicated that Respondent was the broker of record on the First Account from which the \$80,000 was transferred. Unfortunately, in part due to Respondent's failure to respond to Enforcement's request, there is a lack of information as to who made the transfers to and from the Second Account. However, because Respondent was the broker of record for the First Account, and received funds from the Third Account that can be traced back

to the First Account, the Hearing Officer is willing to infer, for purposes of this default decision, that Respondent converted customer RK's funds in violation of Rules 2110 and 2330(a).

B. Failure to Respond

The Complaint also alleges that, on January 3 and 19, 2005, NASD Staff sent Respondent requests for information concerning his alleged conversion activities. The Staff sent these requests to Respondent at his CRD addresses by first class and certified mail. The Staff served the requests in accordance with Rule 8210(d), and therefore Respondent is deemed to have received them. Respondent did not respond to any of the requests for information.

Rule 8210 authorizes NASD to require any person subject to its jurisdiction to provide information related to any matter under investigation. The Rule serves as a key element in NASD's oversight function and allows NASD to carry out its regulatory functions without subpoena power.² Here, although Respondent received valid constructive notice of the Staff's requests,³ he failed to respond to them. Respondent thereby violated Rules 8210 and 2110.

VI. Sanctions

For conversion, the Sanction Guidelines recommend a bar, regardless of the amount converted. A bar is also standard for failure to provide requested information. NASD Sanction Guidelines at 35, 38 (2005 ed.). There is no evidence of any mitigating circumstances that would justify a lesser sanction in this case for either violation, so Respondent is barred from associating with any NASD member in any capacity.

² See, e.g., Dep't of Enforcement v. Valentino, No. FPI010004, 2003 NASD Discip. LEXIS 15, at *12 (NAC May 21, 2003), aff'd, 2004 SEC LEXIS 330 (Feb. 13, 2004) ("It is well established that because NASD lacks subpoena power over its members, a failure to provide information fully and promptly undermines NASD's ability to carry out its regulatory mandate.") (citation omitted); 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 the NASD effectively to conduct its investigations, and emphasizing that NASD members and associated persons must fully cooperate with requests for information).

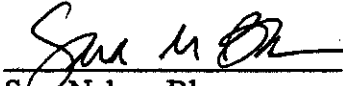
³ See David I. Cassuto, Exchange Act Release No. 48,087, 2003 SEC LEXIS 1496, at *9 (June 25, 2003).

In addition to the bar, Enforcement seeks restitution of \$46,760.08, the amount Respondent transferred from the Second Account into the account managed and controlled by Respondent. Customer RK has unjustly suffered a quantifiable loss as a result of Respondent's misconduct for which he remains uncompensated. Accordingly, Respondent is ordered to make restitution to customer RK in the amount of \$46,760.08.

V. Conclusion

For conversion of customer funds, in violation of Rules 2330(a) and 2110, and for failure to provide requested information, in violation of Rules 8210 and 2110, Respondent is barred from associating with any NASD member in any capacity. These bars shall become effective immediately if this Decision becomes the final disciplinary action of NASD. Additionally, the Respondent shall make restitution to customer RK in the amount of \$46,760.08, plus interest calculated pursuant to 26 U.S.C. § 6621(2)(2) from January 17, 2003, to the date of payment.⁴

SO ORDERED.


Sara Nelson Bloom
Hearing Officer

Dated: March 2, 2006

Copies to:

Elliott Nadel (*via first class mail*)
Vaishali S. Shetty, Esq. (*via first class mail*)
Rory C. Flynn, Esq. (*via first class mail*)

⁴ The funds were transferred to an account managed and controlled by Respondent on January 17, 2003, and so this is the appropriate date to use in calculating restitution.

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Hearing Officer -

Upon information and belief, the Department of Enforcement alleges that:

JURISDICTION

1. Respondent Elliot Nadel ("Respondent") first became registered with NASD, as a General Securities Representative ("GSR"), on approximately September 20, 1975.
2. From on or about December 21, 2000 through on or about December 19, 2003, Respondent was last registered with NASD as a GSR through an NASD member firm. On December 19, 2003, the member firm filed a Uniform Termination Notice for Securities Industry Registration ("Form U-5").
3. Respondent is not currently associated with an NASD member firm. However, NASD retains jurisdiction pursuant to Article V, Section 4 of the NASD's By-Laws.

FIRST CAUSE OF COMPLAINT

**Misuse and/or Conversion of Customer Funds
(Violation of NASD Conduct Rules 2330(a) and 2110)**

4. Paragraphs 1 through 3 are re-alleged and incorporated herein by reference.
5. On or about December 3, 2002, customer RK's balance of approximately \$80,071.31 was transferred from his existing account to Account [REDACTED] at

member firm Delta Asset Management Company, LLC (BD No. 39923)
("Delta").

6. On or about January 17, 2003, a transfer of \$46,760.08 was made from Account [REDACTED] to Account [REDACTED] at Delta, without RK's knowledge, authorization or consent.
 7. Respondent managed and controlled Account [REDACTED]. The general partner of Account [REDACTED] was Respondent and the address on the account statements was Respondent's Central Registration Depository ("CRD") address.
 8. On or about March 20, 2003, a check for \$59,500.00 was drawn on Account [REDACTED]. The check was made payable to Respondent, without RK's knowledge, authorization or consent. At the time, the balance in the account was approximately \$70,000.00, of which \$46,760.08 was RK's funds.
- By reason of the foregoing, Respondent violated NASD Conduct Rules 2330(a) and 2110.

SECOND CAUSE OF COMPLAINT

Failure to Respond

(Violations of NASD Procedural Rule 8210 and NASD Conduct Rule 2110)

9. Paragraphs 1 through 8 are re-alleged and incorporated herein by reference.

The First Request

10. On or about January 3, 2005, NASD staff in District 10 (the "Staff") forwarded to Respondent, a request pursuant to NASD Procedural Rule 8210, that Respondent provide documents and information to the Staff with respect to matters relating to RK's complaint (the "First Request").

11. The request was sent by certified and regular first class mail to [REDACTED] [REDACTED] which is Respondent's current residential address as reflected on the Central Registration Depository ("CRD") (the "Bayside Address"). The return receipt for the certified mailing was returned to the Staff with an illegible signature. The first class mailing was not returned to the Staff.
12. A second address was listed for Respondent on CRD at [REDACTED] [REDACTED] (the "Whitestone Address"). The Staff sent the First Request via certified and regular first class mail to the Whitestone Address. The certified mailing was returned to the Staff marked "Return to Sender." The first class mailing was not returned to the Staff.
13. The Staff found, through an Equifax search, a third address for Respondent at [REDACTED] (the "Equifax Address"). The Staff sent the First Request via certified and regular first class mail to the Equifax Address. The return receipt for the certified mailing was returned to the Staff with an illegible signature, similar to the signature on the return receipt for the Bayside Address. The first class mailing was not returned to the Staff.
14. While a response to the First Request was due on or before January 12, 2005. Respondent failed to respond.

The Second Request

15. On or about January 19, 2005, the Staff forwarded, pursuant to NASD Procedural Rule 8210, a second request that Respondent provide documents and information (the "Second Request").
16. The Staff sent the Second Request by certified and regular first class mail to the Bayside Address. The first class mailing was not returned to the Staff. The return receipt was returned to the Staff with an illegible signature.
17. The Staff sent the Second Request by certified and regular first class mail to the Whitestone Address. The first class mailing was returned to the Staff, marked "Return to Sender, Not Deliverable as Addressed, Unable to Forward." The certified mailing was returned to the Staff, marked "Return to Sender, Unclaimed, Unable to Forward."
18. The Staff sent the Second Request by certified and regular first class mail to the Equifax Address. The first class mailing was not returned to the Staff. The return receipt was returned to the Staff with an illegible signature.
19. While a response to the Second Request was due on or before January 31, 2005. Respondent failed to respond.

By reason of the foregoing, Respondent violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

PRAYER FOR RELIEF

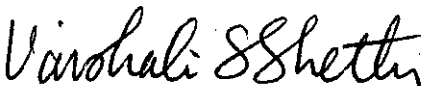
WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Respondent committed the violations alleged within this Complaint;

- 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
- D. An order imposing any other fitting sanction.

NASD DEPARTMENT OF ENFORCEMENT

Dated: September 26, 2005


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