

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD REGULATION, INC.

In the Matter of

District Business Conduct Committee
For District No. 7,

Complainant,

vs.

Michael L. Yancey
Lake Park, Georgia,

Respondent.

DECISION

Complaint No. C07970024

District No. 7

Dated: June 4, 1998

Pursuant to Procedural Rule 9310, Michael L. Yancey ("Yancey") has appealed the \$2,500 fine imposed by the District Business Conduct Committee for District No. 7 ("DBCC")¹ in its decision dated August 7, 1997.² After a review of the entire record in this matter, including Yancey's submissions on appeal, we find that Yancey converted \$100 of customer funds. We hereby impose a censure, \$1,000 fine (subject to payment by installment), and a six-month suspension in all capacities, such suspension to continue until Yancey requalifies by examination as an investment company and variable contracts representative.

Background. Yancey entered the securities industry in January 1995, and he qualified as an investment company and variable contracts representative in February 1995. During the relevant time, Yancey was employed by Pruco Securities Corporation ("Pruco"). This complaint arose out of a special examination conducted upon receipt of a Uniform Notice of Termination of

¹ Yancey has raised only the issue of his inability to pay the \$2,500 fine imposed by the DBCC; therefore, he has waived all other issues on appeal.

² The decision was amended on January 21, 1998 to indicate that the record considered by the DBCC consisted of the complaint, Yancey's answer, and three additional exhibits introduced by the NASD staff.

Registration ("Form U-5") that indicated that Yancey had deposited \$100 of customer funds into his personal checking account. Yancey is not presently employed in the securities industry.

Facts. The facts are undisputed. On June 17, 1996, a public customer gave Yancey \$100 in cash, in part to pay premiums due on insurance policies and in part to apply to an outstanding loan. On June 18, 1996, Yancey deposited \$80 of those funds in his personal checking account. On June 20, 1996, Yancey met with his sales manager, B. Kevin Smith ("Smith"). Yancey advised Smith that he intended to leave Pruco. At this meeting, Yancey also advised Smith that he had deposited customer funds into his checking account.

On June 24, 1996, Yancey advised Smith that he wished to withdraw his resignation. Smith refused to allow Yancey to withdraw his resignation, and Yancey's employment with Pruco was terminated. Correspondence from Smith to Pruco's General Manager indicates that Yancey promised to return the funds by July 1, 1996, but that he had not done so as of June 28, 1996. Yancey subsequently repaid the \$100, but the record does not specify the date. Pruco employee Denise Sexton ("Sexton") represented to NASD Regulation, Inc. staff in correspondence dated August 28, 1996 that the premium and loan payments were applied to the client's account on July 10, 1996.

Discussion

Based on the record before us,³ we find that Yancey converted \$100 of customer funds. It is undisputed that on June 17, 1996, Yancey collected \$100 from a customer and that on June 18, 1996, Yancey intentionally deposited \$80 of those funds into his personal checking account to avoid a shortfall in the account.

Sanctions

We affirm the following sanctions imposed by the DBCC: a censure and six-month suspension in any capacity, and the continuation of the suspension until Yancey requalifies by examination as an investment company and variable contracts products representative. We reduce the \$2,500 fine imposed by the DBCC to \$1,000, to be paid in installments as agreed by Yancey and the Compliance Department of NASD Regulation, Inc.

In arriving at appropriate sanctions, we have considered each of the principal considerations in determining sanctions for conversion in the NASD Sanction Guidelines ("Guidelines").⁴ Yancey converted a small amount of money for a very short period of time. There was no forgery involved. Within two days of depositing his customer's money into his

³ Yancey waived his right to oral argument on appeal.

⁴ The recommended sanctions are below the Guidelines for conversion. See Guidelines (1996 ed.) at 30.

checking account, and prior to any discovery by Pruco, Yancey informed his sales manager of the conversion. Yancey made full restitution shortly thereafter. There is no evidence that the customer was in any way disadvantaged by Yancey's actions, nor is there any evidence that Yancey previously engaged in similar conduct.

In determining to reduce the fine to \$1,000, we do not intend in any way to minimize the seriousness of Yancey's conduct. There is no question that Yancey's conduct was intentional. By converting customer funds for his own benefit, Yancey betrayed his customer's trust and displayed a serious lack of judgment. Yancey, however, showed immediate remorse and a desire to rectify his error, which he did, notwithstanding his termination by Pruco. In determining to reduce the fine, we have also considered information supplied by Yancey regarding his financial circumstances. Yancey reported an annual gross income of approximately \$17,000, \$4,200 in assets and \$18,600 in liabilities, giving him a net worth of \$(14,400). We have concluded that for a person in Yancey's financial situation, an additional \$1,000 obligation, which he must satisfy before re-entering the securities industry, is appropriate.⁵

Accordingly, we censure Yancey, fine him \$1,000 (payable in installments acceptable to the NASD Regulation, Inc. Finance Department), and suspend him for six months in all capacities. Yancey is further suspended until he requalifies by examination as an investment company and variable contracts products representative. Pursuant to Rule 9360, the Chief Hearing Officer shall set the date on which the suspension shall begin.

On Behalf of the National Adjudicatory Council,

Alden S. Adkins, Vice President and General Counsel

⁵ We have considered all of the arguments of the parties. They are rejected or sustained to the extent that they are inconsistent or in accord with the views expressed herein.

Pursuant to NASD Procedural Rule 8320, any member who fails to pay any fine, costs, or other monetary sanction imposed in this decision, after seven days' notice in writing, will summarily be suspended or expelled from membership for non-payment. Similarly, the registration of any person associated with a member who fails to pay any fine, costs, or other monetary sanction, after seven days' notice in writing, will summarily be revoked for non-payment.