

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD REGULATION, INC.

In the Matter of

District Business Conduct Committee
for District No. 7,

Complainant,

vs.

Richard Timothy Greene
Pittsboro, North Carolina,

Respondent.

DECISION

Complaint No. C07970051

District No. 7 (ATL)

Dated: July 1, 1998

This matter was called for review pursuant to NASD Procedural Rule 9312.¹ After a review of the entire record in this matter, we affirm the findings of the District Business Conduct Committee for District No. 7 ("DBCC") that Richard Timothy Greene ("Greene") forged a customer's signature in violation of Conduct Rule 2110. We increase the sanctions imposed on Greene by changing his three-year suspension to a bar. We affirm the DBCC's sanctions of a censure and a \$10,000 fine, and, in light of the bar, we eliminate the requirement that Greene requalify by examination.

¹ The National Business Conduct Committee ("NBCC") of NASD Regulation, Inc. ("NASD Regulation") called this case for review to determine whether the sanctions imposed by the District Business Conduct Committee for District No. 7 ("DBCC") were adequate given the DBCC's finding that Greene forged a customer's signature. This matter was decided by the National Adjudicatory Council, which, as approved by the Securities and Exchange Commission, became the successor to the NBCC on January 16, 1998.

Background

Greene entered the securities industry in January 1994 by becoming associated with a firm, which registered him as a general securities representative two months later. In January 1995, Greene became registered with First Union Brokerage Services ("First Union" or "the Firm"). Greene resigned from First Union in November 1996.² He is not currently associated with any member of this Association.

Facts

On October 15, 1996, GW, a 74-year-old semi-retired dairy farmer, visited the Charlotte, North Carolina office of First Union and met with Dorothy Harmon ("Harmon"), a registered representative. GW told her that he had received in the mail a confirmation reflecting his purchase of a \$75,000 Western National annuity; he stated, however, that he had not authorized this purchase. GW explained that he had met with Greene, but had not authorized Greene to make that investment and had not signed any documents.

Harmon retrieved and showed to GW a copy of the Western National Insurance Company fixed annuity application purportedly signed by GW. GW denied that the signature on the form was his. Later in the day, Harmon showed the annuity application to Greene. Greene admitted that he had prepared the application, but denied that he had signed GW's name to it.

Within a few days, a First Union supervisor, L. Bruce Williamson ("Williamson"), questioned Greene about GW's signature on the annuity application. Greene admitted to Williamson that he had signed GW's name. Williamson then suspended Greene and contacted First Union's internal audit team to investigate the situation further.

On October 21, 1996, Williamson asked Greene to resign. Greene refused. Several days later, during a meeting with Greene, Williamson, members of the internal audit team, and others, Greene maintained that he had not signed GW's name. The internal audit team then sent four documents purportedly signed by GW - - the Western National Insurance Company annuity application, a First Union Annuity Disclosure Statement, a Confidential Investor Profile, and a First Union special account deposit ticket -- to a handwriting expert. Before the expert submitted

² The complaint in this matter was prompted by First Union's filing of a Uniform Termination Notice for Securities Industry Registration, a Form U-5, which disclosed that Greene had resigned during an investigation of whether he had forged a customer's signature.

his report, however, Greene resigned. On November 18, 1996, the handwriting expert provided his report to First Union. The expert concluded that Greene had written GW's signature.

NASD Regulation Compliance Specialist Donald Fravel ("Fravel") investigated this matter in early 1997. Fravel asked GW if he had signed the four annuity-related documents and if he had authorized Greene to sign any of the documents. GW responded:

None of the four documents have my signature. I did not intend for the documents to be signed or money transferred until I had a chance to see the documents and better understand what I was doing.

Fravel also contacted Greene. Greene replied to Fravel's inquiry with a letter in which he stated that the annuity agreement "was prepared and processed in order to facilitate a customer accom[m]odation." Greene emphasized that he had "protected" GW's interest rate by submitting the fixed-rate annuity application when he did. In a second letter, Greene admitted that he signed GW's name to all four of the annuity-related documents. Nevertheless, Greene contended that he did so at GW's request.

In his answer to the complaint, Greene waived his right to a hearing. The NASD Regulation regional attorney for District No. 7 advised Greene that the DBCC would rule on the merits of the complaint based solely on the written submissions of the parties. Although Greene was given the opportunity to submit written materials, he chose to submit nothing. In response to the call for review in this case, Greene submitted no brief and did not attend the oral argument.

Discussion

After reviewing the evidence, the DBCC found that GW did not authorize Greene to sign his name to the annuity-related documents. Therefore, the DBCC found that Greene forged GW's name four times. For the following reasons, we agree.

First, GW's statements were consistent. GW complained to Harmon that he had not authorized the transaction in question as soon as he received the confirmation. Several months later, after First Union had satisfactorily resolved his complaint, his statement to Fravel was no different.

Second, Greene's version of events changed several times. In response to Harmon's initial question, Greene claimed that he had not signed GW's name. When confronted by a supervisor, however, he admitted that he had signed GW's name.

Nevertheless, when asked to resign, he reverted to his original position and denied that he had signed GW's name. When asked again the following year by Fravel, however, he again admitted that he had signed GW's name. In light of Greene's repeated misrepresentations about whether he signed GW's name, we do not believe Greene's subsequent claim that GW authorized him to sign GW's name. To the contrary, we view Greene's claim as a further misrepresentation, which demonstrates his continuing refusal to accept responsibility for his misconduct.

Third, Greene had a motive for lying about whether he forged the signature. Greene would lose his commission for the annuity sale and could also have sanctions imposed on him if he admitted that he forged GW's signature. In conclusion, we find that Greene forged GW's signature on the annuity-related documents in violation of Conduct Rule 2110.

Sanctions

Greene's conduct in this case was egregious. He disregarded the interests of his customer by forging the customer's signature, in an attempt to collect the commission on a \$75,000 annuity.

As this case illustrates, forgery is serious misconduct. See In re Donald M. Bickerstaff, Exchange Act Rel. No. 35607 (Apr. 17, 1995). We affirm the \$10,000 fine imposed by the DBCC. Although the DBCC imposed a three-year suspension, we have decided to bar Greene because we find that he would pose a threat to the investing public if he were again allowed to serve as a registered representative in this industry.³

Moreover, we find that forgery warrants a bar, in the absence of mitigation, and we find no mitigating circumstances in this case. Specifically, we do not consider Greene's lack of prior disciplinary history as mitigating. We also do not find the facts that this forgery occurred on one day and involved only one transaction to be mitigating. Furthermore, we have rejected Greene's claim that GW authorized Greene's action, and therefore, we do not find that Greene had a mistaken belief about GW's authorization. Here too, we find no mitigation.⁴

³ These sanctions are consistent with the applicable guideline. See NASD Sanction Guidelines ("Guidelines") (1996 ed.) at 26 (Forgery). In view of our decision to bar Greene, we eliminate the DBCC's order that he requalify by examination.

⁴ 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.

Accordingly, we order that Greene be censured, fined \$10,000, and barred from associating with any member firm in any capacity. The bar is effective immediately upon the service of this decision.

On Behalf of the National Adjudicatory Council,

Joan C. Conley, Corporate Secretary

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.

July 1, 1998

VIA CERTIFIED MAIL: RETURN RECEIPT REQUESTED

Richard Timothy Greene
Pittsboro, North Carolina

Re: Complaint No. C07970051: Richard Timothy Greene

Dear Mr. Greene:

Enclosed herewith is the Decision of the National Adjudicatory Council in connection with the above-referenced matter. Any fine and costs assessed should be made payable and remitted to the National Association of Securities Dealers, Inc., Department #0651, Washington, D.C. 20073-0651.

You may appeal this decision to the U.S. Securities and Exchange Commission ("SEC"). To do so, you must file an application with the Commission within thirty days of your receipt of this decision. A copy of this application must be sent to the NASD Regulation, Inc. ("NASD Regulation") Office of General Counsel as must copies of all documents filed with the SEC. Any documents provided to the SEC via fax or overnight mail should also be provided to NASD Regulation by similar means.

Your application must identify the NASD Regulation case number, and set forth in summary form a brief statement of alleged errors in the determination and supporting reasons therefor. You must include an address where you may be served and phone number where you may be reached during business hours. If your address or phone number changes, you must advise the SEC and NASD Regulation. If you are represented by an attorney, he or she must file a notice of appearance.

The address of the SEC is:
Office of the Secretary
U.S. Securities and Exchange
Commission
450 Fifth Street, NW, Stop 6-9
Washington, DC 20549

The address of NASD Regulation is:
Office of General Counsel
NASD Regulation, Inc.
1735 K Street, NW
Washington, DC 20006

Questions regarding the appeal process may be directed to the Office of the Secretary at the SEC. The phone number of that office is 202-942-7070.

Very truly yours,

Joan C. Conley

Enclosure

cc: Alan M. Wolper, Esq.