

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD REGULATION, INC.

In the Matter of

District Business Conduct Committee  
For District No. 1 (SF)

Complainant,

vs.

Glen McKinley Richards, III

Respondent.

DECISION

Complaint No. C01970017

District No. 1 (SF)

Dated: July 2, 1998

This matter was called for review pursuant to NASD Procedural Rule 9312.<sup>1</sup> After a review of the entire record in this matter, we find that respondent Glen McKinley Richards, III ("Richars") failed to pay an arbitration award in a timely manner, in violation of Conduct Rule 2110. We affirm the sanctions that the District Business Conduct Committee for District No. 1 ("DBCC") imposed on Richars of a censure, a \$1,500 fine, suspension from association with any member of the National Association of Securities Dealers, Inc. ("NASD") in any capacity for five business days, and costs of \$546.

Background

Richars entered the securities industry in 1982, and he was continuously registered as a representative of various member firms until October 1996. Since October 1996, he has not been registered with any member of the Association.

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<sup>1</sup> The National Business Conduct Committee ("NBCC") of NASD Regulation, Inc. ("NASD Regulation"), called this case for review, to determine whether the low sanctions imposed by the District Business Conduct Committee for District No. 1 ("DBCC") were warranted. This matter was decided by the National Adjudicatory Council ("NAC"), which, as approved by the Securities and Exchange Commission ("SEC" or "Commission"), became the successor to the NBCC on January 16, 1998.

## Facts

The facts in this matter are largely undisputed. On April 29 and May 1, 1996,<sup>2</sup> an arbitration panel of the Pacific Stock Exchange issued an award against respondent Richards in PSE Case No. 94-S091. The award directed Richards to pay \$5,500 to the claimants.

On September 25, 1996, NASD Regulation staff in District No. 1 received a letter from claimants' counsel which noted that the award had been rendered and complained that Richards had made no attempt to pay the award and had refused to sign an installment note in satisfaction of the award. The letter stated that the award would be reduced to a judgment.<sup>3</sup>

On October 18 and November 19, 1996, the District staff sent Richards written requests for information about the claimants' complaint letter. Richards eventually responded to the staff by a letter dated December 4, 1996. He stated that he was not currently employed and could not afford any monthly commitment until July 1, 1997, when funds in excess of \$5,500 would be due to him, but that he would "make every effort to get the [claimants] their money" if he obtained funds prior to that date. Richards enclosed with his letter a reconstruction of a letter that he represented was "basically identical" to one he had sent to the claimants stating his intent to pay \$5,500 by July 1, 1997; declining to commit to any set monthly payments; and claiming that he would make every effort to pay as he could.

On February 11, 1997, claimant DW called the District staff, and on February 12, 1997, DW faxed staff another complaint about Richards' failure to satisfy the award. DW represented that he had told Richards that the payment of \$100, \$20 or even \$5 would be a demonstration of good faith, but that Richards had refused to do so and, indeed, had merely sent him a handwritten statement dated October 20, 1996, indicating that he intended to pay the award by July 1, 1997.<sup>4</sup>

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<sup>2</sup> Two arbitrators signed the award on April 29, and one arbitrator signed the award on May 1.

<sup>3</sup> The award was reduced to judgment by the Municipal Court of the State of California, City and County of San Francisco, on October 31, 1996. The judgment, which was duly served on the respondent, affirmed the award of \$5,500 and imposed interest at the statutory rate of 10 percent per year from October 10, 1996.

<sup>4</sup> Richards' October 20, 1996 letter, which was provided to the staff by DW, stated:

This letter is to confirm our understanding of my promise to pay you the \$5,500 by July 1, 1997. I cannot commit to any set monthly payments, but I will make every effort to pay as I can. If this is satisfactory to you, please make a copy of this letter, sign it, and return it to me.

On May 9, 1997, the DBCC issued a complaint that alleged that Richards had failed to honor the arbitration award, in violation of Conduct Rule 2110. On June 4, 1997, Richards filed an answer and requested a hearing. On October 14, 1997, a hearing was held before a subcommittee of the DBCC.

In his answer and at hearing, Richards maintained that upon his receipt of the award, he was unable to pay it; that he had received a letter dated May 8, 1996, from the claimants' attorney seeking payment of the award; that in August 1996 he declined to sign an installment note proffered by the claimants' attorney, fearing "almost certain default;" and that he had told the claimants that he could pay the judgment in July 1997.

Richards established during the DBCC hearing that he paid the claimants in full with interest, as required by the Municipal Court's judgment, on or about July 22, 1997. Richards contended that he had exercised his best efforts to resolve this matter, and he maintained that he should not be sanctioned. Richards testified that by the time he had received the installment note proposed by the claimants' attorney and discussed it with the claimants, he had lost his job. To substantiate his lack of income, Richards produced his Form W-2 for 1996 showing gross wages, tips, and other compensation of \$19,709.75.

Richards explained that in December 1996, he entered into an arrangement whereby he traded for his own account through a broker/dealer by borrowing \$300,000 (which he could not remove from the trading account), keeping any profits from his activities, and paying interest on the \$300,000 to his lenders and commissions on the trades to the firm. He testified that early in 1997, he was permitted to draw advances of \$1,500 per month to sustain him until his trading became profitable. In addition, pursuant to his agreement with the firm, he was aware that he would be allowed to borrow or draw approximately \$5,000 for his personal use in July 1997.

Based on the foregoing, the DBCC found that Richards had failed to pay timely the \$5,500 arbitration award, in violation of Conduct Rule 2110.<sup>5</sup> The DBCC decision noted that IM 10100, an Interpretive Memorandum issued by the Board of Governors concerning arbitration awards, provides that it shall be deemed a violation of Conduct Rule 2110 for a member or a person associated with a member to fail to honor an arbitration award in full and in cash upon receipt.

The DBCC nevertheless determined that the sanctions in this matter should be at the "low end" of the range suggested by the relevant NASD Sanction Guideline ("Guideline"). In apparent mitigation, the DBCC observed that Richards had testified that he had been unable to enter into any agreement requiring any installment payments before July 1997, and that he had eventually paid the award as he

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<sup>5</sup> As Richards has noted, this finding is at variance with the complaint's allegation that he entirely failed to pay the award, since he paid the award after the issuance of the DBCC's complaint but before the DBCC hearing.

had said he would. The DBCC noted, however, that Richards "certainly could have entered into a formal agreement providing for the payment of the principal and interest in July 1997 with a token payment to reassure the claimants that he was acting in good faith."

The matter was thereafter called for review. In a brief dated March 2, 1997, and at the review hearing, Richards cited his honesty and good faith and reiterated his claim that his personal finances had prohibited him from paying the award until July 1997. Richards asked for a reduction or elimination of the sanctions. He cited his 1996 Form W-2 to support the fact that his gross income for that year was \$19,709.75. In response to a question, Richards provided a copy of his wife's 1996 Form W-2, which demonstrated gross income for that year of \$27,940. Richards also submitted a copy of his tax return for 1997, filed after the award had been paid, which showed that he earned no wages in 1997 but that his wife had gross income of \$40,609.14 according to her 1997 Form W-2.<sup>6</sup>

### Discussion

The DBCC properly ruled that Richards violated Conduct Rule 2110 by failing to honor the arbitration award against him in a timely manner. Both the NASD and the SEC have held that failure to honor an arbitration award duly rendered by a securities industry self-regulatory organization in a timely manner is conduct inconsistent with just and equitable principles of trade. IM 10100; In re Bruce M. Zipper, 51 S.E.C. 928, 930 (1993).

The NASD's Code of Arbitration is designed to provide a mechanism for the speedy resolution of disputes "arising out of or in connection with the business of any member." Richards, as a registered representative of an NASD member, was obligated to pay the arbitration award promptly.<sup>7</sup> Here, the arbitration panel rendered its decision on April 29 and May 1, 1996, and on October 31, 1996, a court confirmed the award. Although Richards was obligated to satisfy the award, he made no attempt to make any actual payment until July 1997, after the NASD had twice sent him letters requesting an explanation for his failure to pay the award and had issued a formal disciplinary complaint.

IM 10100 states that arbitration awards shall be paid "upon receipt," in full, and in cash, thus underscoring the Board of Governors' view of the importance of prompt payment of arbitration awards.<sup>8</sup> Richards' apparent disregard of this obligation leads us to conclude that Richards did not act in

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<sup>6</sup> Richards explained that his wife's Form W-2 included a distribution of approximately \$9,000 paid in December 1997 related to severance benefits.

<sup>7</sup> See In re Eric M. Diehm, 51 S.E.C. 938 (1994); In re Peter K. Lloyd, 51 S.E.C. 200 (1992).

<sup>8</sup> IM 10100 states:

It may be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 2110 for a member or a

good faith to pay the award promptly. We further conclude that Richars' failure to pay the arbitration award in a timely manner was conduct inconsistent with just and equitable principles of trade, in violation of Conduct Rule 2110.<sup>9</sup>

The equities in this matter support Richars' unqualified obligation of prompt payment. Richars' attack on the claimants' attempts to encourage his payment is misplaced, since under IM 10100, the claimants were under no duty to compromise or to accept delayed payment. Further, in response to Richars' claim that his financial situation prohibited him from paying the award until July 1997, we conclude, based on his personal and combined family income for 1996,<sup>10</sup> that he was not without means to satisfy the award earlier, whether he supported three<sup>11</sup> or four<sup>12</sup> dependents.

### Sanctions

Based upon our independent review of the entire record in this matter, we affirm the DBCC's sanctions of a censure, a \$1,500 fine, suspension from association with any member of the NASD in any capacity for five business days, and costs of \$546.

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person associated with a member to fail to . . . honor an award . . .  
.obtained in connection with an arbitration submitted for disposition  
pursuant to the procedures specified by the . . . Pacific . . . Stock  
Exchange[] . . . where timely motion has not been made to vacate or  
modify such award pursuant to applicable law. . . .

All awards shall be honored by a cash payment to the prevailing party  
of the exact dollar amount stated in the award . . . . Awards shall be  
honored upon receipt thereof, or within such other time period as may  
be prescribed by the award.

See also In re Peter Thompson Higgins, 51 S.E.C. 865 (1993).

<sup>9</sup> See In re Bruce M. Zipper, *supra*; In re Richard J. Lanigan, Exchange Act Rel. No. 36028 (July 27, 1995). Like the respondents in Zipper and Lanigan, Richars met his obligation only after being pressed by the NASD.

<sup>10</sup> Richars admitted that his gross income for 1996 was \$19,709.75, and that his wife's gross income for that year was \$27,940.

<sup>11</sup> Richars' joint tax returns claim two children as dependents.

<sup>12</sup> Richars' brief on review states that "I have a wife and three children to support."

In arriving at appropriate sanctions, we have considered each of the principal considerations in determining sanctions for failure to pay an arbitration award in a timely manner in the Guidelines.<sup>13</sup> While there is no evidence that Richars attempted to satisfy the award in whole or in part before it was finally paid, he did in fact pay the entire amount due in July 1997, and there is no evidence that Richars previously had engaged in similar misconduct. We note that the fine of \$1,500 is within the fine range recommended by the Guideline, which extends from \$1,000 to \$7,500. In determining Richars' ability to pay the fine, we have considered the information that he supplied regarding his financial circumstances. We also observe that the five-business-day suspension imposed by the DBCC is consistent with the express suggestion of the Guideline. In affirming the sanctions imposed by the DBCC, we do not intend in any way to minimize the seriousness of Richars' misconduct or to lend credence to his arguments for lesser sanctions.

Accordingly, we censure Richars, fine him \$1,500, suspend him from association with any member of the NASD in any capacity for five business days, and impose costs of \$546.<sup>14</sup> Pursuant to Procedural Rule 9360, the Chief Hearing Officer shall set the date on which the suspension shall begin.

On Behalf of the National Adjudicatory Council,

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Joan C. Conley, Corporate Secretary

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<sup>13</sup> The recommended sanctions are within the range suggested by the Guideline. See NASD Sanction Guidelines (1996 ed.) at 7 (Arbitration Award - Failure to Honor or Honor in a Timely Manner).

<sup>14</sup> 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.