

BEFORE THE NATIONAL BUSINESS CONDUCT COMMITTEE

NASD REGULATION, INC.

In the Matter of

District Business Conduct Committee
For District No. 9

Complainant,

vs.

Brian L. Shegon
Mohnton, Pennsylvania

and

Mohnton, Pennsylvania,

Respondent.

DECISION

Complaint No. C9A960030

District No. 9

Dated: November 20, 1997

Brian L. Shegon ("Shegon") has appealed the February 10, 1997 decision of the District Business Conduct Committee for District No. 9 ("DBCC") pursuant to Procedural Rule 9310. After a review of the entire record in this matter, we hold that, as alleged in the complaint, Shegon misused customer funds in violation of Conduct Rule 2110 and failed to provide requested information in violation of Conduct Rule 2110 and Procedural Rule 8210. We order that Shegon be censured, barred from association in any capacity with any member of the NASD, and fined \$100,000.

Background. Shegon entered the securities industry in 1985 and became a registered representative in 1986. He was associated with New England Securities ("NES") as a general securities representative from August 1994 to December 1995. Shegon has not been employed by a member firm since December 1995.

Fact. The record showed that JI, a client of Shegon's, complained to NES that he had given Shegon \$5,000 in the Summer of 1995 to invest in a mutual fund, but had not received any statements from the fund. JI stated that he had made the check payable to "Lifetime" at Shegon's request. Via affidavit, JI and his wife MI stated that Shegon had advised them that he would invest these funds into "Lifetime" on their behalf, and would provide them with the paperwork. JI/MI stated

that they did not receive any documentation regarding that investment. The record showed that JI's check was endorsed "For Deposit Only," and deposited into a local bank. JI/MI stated that they did not give Shegon permission to use the proceeds for his own benefit.

EA, another of Shegon's clients, advised NES that she had invested \$10,000 in an annuity in April 1995. In July 1995, EA received a letter from Lincoln Benefit Life Insurance Company ("Lincoln") advising her that her contract had been canceled and that a check for \$10,000 had been sent to Shegon. The check was endorsed with EA's signature with the instructions: "Pay to the Order of Lifetime." EA advised Lincoln and NES that she did not authorize the cancellation of her annuity, did not endorse the check, and did not receive the proceeds. Via affidavit, EA stated that she did not give Shegon permission to use the funds for his own benefit.

At a meeting with NES' auditor on March 13, 1995, Shegon admitted that he had deposited these checks into his own account. On April 30, 1996, NES advised the Delaware County District Attorney's office of these facts.

In inquiries dated May 17, June 3, and June 14, 1996, NASD staff requested pursuant to Procedural Rule 8210 (then Article IV, Section 5 of the NASD Rules of Fair Practice) that Shegon provide information and documents regarding his business with JI and EA. Shegon did not respond to these requests.

The DBCC issued the complaint in this matter on September 20, 1996, and served the complaint on Shegon via certified mail, return receipt requested. Shegon signed for the complaint on September 21, 1996. He did not file an answer. Shegon was served with a Second Notice of Complaint on October 21, 1996. The record shows that Shegon received the complaint on November 1, 1996. Shegon did not file an answer. The DBCC made findings consistent with the complaint in a default decision dated February 10, 1997.

Discussion. We find that, as alleged in causes one and two of the complaint, Shegon converted customer funds. We further find that, as alleged in cause three of the complaint, Shegon failed to respond to NASD requests for information. We deny Shegon's request for remand of this matter to the DBCC. We find that Shegon has not presented any information on appeal that would merit a hearing before the DBCC.

Cause one alleges that Shegon accepted a \$5,000 check from public customers for the purchase of an annuity, and that he deposited the check into his own account instead. Cause two alleges that Shegon forged a customer's signature to a check that had been issued to her by an insurance company, and deposited the check into his own account. We find credible the customers' statements and affidavits, which Shegon has not contested on appeal. In fact, Shegon has admitted on appeal that he pled guilty in a state criminal matter to depositing two clients' checks into his business checking account. He also has admitted that it was "wrong" to do so. Based on the evidence, we find that Shegon converted \$15,000 of customer funds.¹

¹ We have considered that certain portions of Shegon's statement on appeal constitute new evidence. Specifically, Shegon comments on the actions of the District Attorney's office in

As the Securities and Exchange Commission ("SEC") stated in Wheaton D. Blanchard, 46 S.E.C. 365, 366 (1975), the misappropriation and misuse of customer funds is "patently antithetical to the 'high standards of commercial honor and just and equitable principles of trade' that the NASD seeks to promote." In the instant matter, it is undisputed that Shegon endorsed one customer's check and deposited the funds into his account and canceled another customer's insurance policy and deposited her \$10,000 investment into his own account.

We do not credit Shegon's contention on appeal that the NASD does not have jurisdiction over the conduct alleged in causes one and two, on the basis that the conduct was insurance-related and not securities-related. It is well settled that the NASD's disciplinary authority is broad enough to encompass business-related activities that contravene the standards of Conduct Rule 2110, even if the activity at issue does not involve a security. In re Daniel C. Adams, 47 S.E.C. 919 (1983). See also In re Thomas E. Jackson, 45 S.E.C. 771, 772 (1975) (forging signatures on insurance applications to obtain commissions violated just and equitable principles of trade: "Although [respondent's] wrongdoing in this instance did not involve securities, the NASD could justifiably conclude that on another occasion it might.").

We also find that, as to cause three, the evidence is uncontroverted that Shegon failed to respond to Association requests for information. We have considered Shegon's contention that he was instructed by counsel not to respond to NASD requests for information based on his rights under the Fifth Amendment of the U.S. Constitution. Shegon has, however, presented no proof of reliance on counsel. Even if Shegon had been advised by counsel not to respond, "[r]eliance on counsel is immaterial to an associated person's obligation to supply requested information to the NASD." In re Michael Markowski, 51 S.E.C. 553, 557 (1993), aff'd, 34 F.3d 99 (2d Cir. 1994), quoted in In re Brian L. Gibbons, Exchange Act Rel. No. 37170 at 5 n.10 (May 8, 1996).

Also, Shegon did not communicate to NASD staff that he was asserting his Fifth Amendment rights in response to the NASD's requests for information. The record shows that he did not respond at all. Further, we find that even if Shegon had asserted his Fifth Amendment rights, that would not have abrogated his obligation as a registered person to provide the requested information. The SEC has repeatedly rejected such arguments. See, e.g., In re Edward C. Farni II, 51 S.E.C. 1118 (1994); In re Frank W. Leonesio, 48 S.E.C. 544 (1986); Daniel C. Adams, supra (each case holding that a refusal to provide information is a violation without regard to invocation of the right against self-incrimination).

Sanctions. We affirm the censure, bar in all capacities, and \$100,000 fine imposed by the DBCC. We allocate \$30,000 of the fine to cause one, \$50,000 of the fine to cause two, and \$20,000

connection with the criminal charges arising from the facts in this matter. He also comments that the insurance policies in question were not variable products and, therefore, not securities. We have not considered Shegon's comments regarding the District Attorney's office in reaching our findings. We also cannot determine from the record whether the policies at issue were securities. We have nevertheless addressed the issue of jurisdiction in reaching our findings.

of the fine to cause three. We believe that Shegon's conversion of customer funds and his failure to respond both warrant his being barred from the securities industry. We find that Shegon's conduct with respect to customers JI/MI and EA was egregious. Shegon accepted checks on behalf of these customers and placed them into his own bank account. He also forged EA's endorsement to her check. In view of this misconduct, as well as Shegon's failure to respond, we find the censure, bar in all capacities, and \$100,000 fine to be fully warranted and appropriately remedial.

Accordingly, Shegon is censured, barred in all capacities, and fined \$100,000. The bar shall be effective as of the date of the issuance of this decision.²

On Behalf of the National Business Conduct Committee,

Joan C. Conley, Corporate Secretary

² 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.