

BEFORE THE NATIONAL BUSINESS CONDUCT COMMITTEENASD REGULATION, INC.

<p>In the Matter of</p> <p>District Business Conduct Committee For District No. 7</p> <p style="text-align: center;">Complainant,</p> <p style="text-align: center;">vs.</p> <p>Christopher K. Cutchens Pace, Florida,</p> <p style="text-align: center;">Respondent.</p>	<p><u>DECISION</u></p> <p>Complaint No. C07960065</p> <p>District No. 7</p> <p>Dated: November 20, 1997</p>
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Christopher K. Cutchens ("Cutchens") has appealed the January 22, 1997 decision of the District Business Conduct Committee for District No. 7 ("DBCC") pursuant to Procedural Rule 9310. After a review of the entire record in this matter, we hold that, as alleged in the complaint, Cutchens failed to respond to an NASD request for information as required by Conduct Rule 2110 and Procedural Rule 8210. We order that Cutchens be censured, fined \$20,000, and barred from associating with any NASD member firm in any capacity.

Background. Cutchens was associated with Pruco Securities Corporation ("Pruco") as an investment company and variable contracts products representative from April 1987 to October 1994.

Facts. On July 13, 1995, the Atlanta District office of the NASD received a copy of a Uniform Notice of Termination of Registration ("Form U-5") filed by Pruco on behalf of Cutchens, which disclosed that Pruco had discharged Cutchens based on his alleged selling of an investment in a dry cleaning business to clients of The Prudential Insurance Company of America ("Prudential") without Pruco's prior authorization or approval. The Form U-5 also stated that Cutchens had funded these purchases with client-endorsed checks from Prudential, and had deposited them in his personal account. The Form U-5 stated that Cutchens had admitted that he was considering employment in the same dry cleaning business for which he was soliciting client funds.

Prudential provided District staff with four Prudential annuity liquidation checks dated October 12, 1994, made payable to Prudential customers: \$14,247.16 made payable to JHS; \$30,000 made payable to CHL; \$12,985.82 made payable to RB; and \$32,541.86 made payable to JB. These checks were endorsed by both the customers and Cutchens and deposited in Cutchens' personal

account at the Monsanto Credit Union. Prudential investigators advised the District No. 7 Field Supervisor that JB would not discuss his check; that CHL admitted that he had intended to invest his check in Cutchens' friend's dry cleaning business; and that JHS stated that he had decided, at Cutchens' suggestion, to invest in Cutchen's friend's dry cleaning business and had given the check to Cutchens for that purpose.

None of the customers responded to District staff's November 8, 1995 request for information regarding their business dealings with Cutchens.<sup>1</sup> In a telephone conversation on January 2, 1996, Cutchens admitted to District staff that he had endorsed the checks and had deposited them into his personal account. He also contended that he had not invested the funds in his friend's dry cleaning business and had promptly repaid the money to the customers. The District No. 7 Field Supervisor indicated in the record that Cutchens had represented to her that he had promptly repaid all four customers and had also agreed to send her copies of each of the checks, along with copies of his personal bank statements for the period involved.

When District No. 7 staff did not receive this information, staff requested the information pursuant to Procedural Rule 8210 (then Article IV, Section 5 of the Code of Procedure) in a letter dated January 19, 1996. The letter was sent to Cutchens at his address of record, as indicated in the Central Registration Depository ("CRD"), via first class and certified mail, return receipt requested. The return receipt was signed by "Bill James" on January 24, 1996.

On August 27, 1996, this complaint was issued and served on Cutchens at the same CRD address. Regional counsel stated on appeal that after having been served with the complaint, Cutchens called him and claimed that he had sent the requested documents. Regional counsel stated that he advised Cutchens that District staff had not received the documents.<sup>2</sup> In correspondence dated September 4, 1996, District No. 7 regional counsel advised Cutchens that the District's records indicated that the requested documents had not been received. Regional counsel sent another copy of the request and asked Cutchens to submit the documents as soon as possible. The record does not indicate that District No. 7 staff received the documents in question, and Cutchens did not file an answer to the complaint.

District No. 7 staff served Cutchens with a Second Notice of Complaint on September 24, 1996, at his CRD address. The record indicates that the complaint was received by "Jeanette James" on September 26, 1996.

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<sup>1</sup>Staff learned that CHL had died.

<sup>2</sup>These representations constitute new evidence. Although the parties have not specifically addressed these representations as a request to adduce additional evidence, we have considered these comments in light of the September 4, 1996 letter from regional counsel to Cutchens, in which regional counsel stated that District staff had not received the documents and that he was sending Cutchens another copy of the request for information.

Cutchens did not file an answer. The DBCC considered this matter on the basis of the written record, and made findings consistent with the complaint in a decision dated January 22, 1997. Cutchens appealed on January 25, 1997.

Discussion. After careful consideration of the record, we affirm the DBCC's findings and sanctions. On appeal, Cutchens contended that he had responded to the Field Examiner's questions and had responded to the request for copies of the checks at issue. He stated that he had "copies of letters and other materials dated to show that [he] did what was asked of [him]." Cutchens represented:

The checks took some time but I got them an (sic) sent them in. I found out later she never got them so I went back to the bank to get yet another copy of these checks. It took a few weeks to get these this time. In the time being I would call Mr. Laue's (sic) office on several occasions (sic) to see what is happening with this case and ask if there was anything else I needed to do.

On February 28, 1997, approximately one month after the DBCC issued its decision, Cutchens faxed to regional counsel copies of the requested checks together with a letter dated January 23, 1996, which stated:

I have enclosed a copy of the checks in questions (sic). All funds were returned ASAP. When I realized that I did something wrong I corrected it fast . . . .

We do not find credible Cutchens' contention that he responded to the request for information on January 23, 1996. The record indicates that the complaint was not served until January 24, 1996, making it highly unlikely that Cutchens sent this letter in response to the complaint. Further, the record contains a letter from regional counsel dated September 4, 1996, that specifically states: "Our records indicate that we did not receive the requested documents. Please submit these documents as soon as possible." Cutchens has provided no evidence that he submitted the requested documents prior to February 28, 1997.

Sanctions. We affirm the imposition of a censure, bar in all capacities, and \$20,000 fine. We believe that these sanctions are appropriately remedial in light of Cutchens' failure to respond. Cutchens was properly served with the request for information in January 1996. He was again served with notice that he had failed to respond when he was served with the complaint in August 1996. He was given notice again of his failure to provide the requested documents on September 4, 1996, nine months after the initial request. NASD Regulation did not receive the requested documents, however, until February 1997, after the DBCC had issued its decision.

We do not believe that the sanctions should be lessened based on Cutchens' belated submission of the requested documents. As the Securities and Exchange Commission has often stated, "[i]n order for the NASD to carry out its regulatory functions, it must have the full and prompt cooperation of persons subject to its jurisdiction when requests for information are made." In

re Mark Allen Elliott, 51 S.E.C. 1148 (1994). The fact that Cutchens has finally submitted the requested information is no defense to a finding of violation. Id. at 4, n.8. See also In re Charles R. Stedman, 51 S.E.C. 1228 (1994) (NASD should not have to bring a disciplinary proceeding and entertain an appeal in order to obtain compliance with its rules relating to investigations).

Based on the foregoing, we affirm the sanctions imposed by the DBCC. Thus, Cutchens is censured, barred in all capacities, and fined \$20,000. The bar shall be effective as of the date of this decision.<sup>3</sup>

On Behalf of the National Business Conduct Committee,

Joan C. Conley, Corporate Secretary

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<sup>3</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.