

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

BRYAN L. CLAGGETT
(CRD No. 820866),

Respondent.

Disciplinary Proceeding
No. 2005000631501

**Hearing Panel Decision
Granting Enforcement's
Motion for Summary Disposition**

Hearing Officer – SNB

September 12, 2006

For forgery and falsification of documents, in violation of Rule 2110, Respondent is barred in all capacities. In light of the bar, no further sanctions are imposed for Respondent's failure to disclose to his employer his authority over an account at another NASD member firm, in violation of Rules 3050 and 2110.

Appearances

Joel R. Beck, Esq., Atlanta GA, Andrew Favret, Esq., New Orleans, LA, Rory F. Flynn, Esq., Washington, DC, of Counsel, for Complainant.

Mark Petite, Esq., for Respondent.

DECISION

I. Procedural History

On January 6, 2006, the Department of Enforcement filed a two-count Complaint. The first count of the Complaint alleges that Respondent Bryan Lee Claggett ("Respondent") forged a customer's signature on two account transfer documents and falsified a 1099 Tax Form in order to mislead a customer. The second count alleges that Respondent exercised authority over a customer account at another firm without disclosing it to his employer, in violation of Rules 3050 and 2110. On February 2, 2006, Respondent filed an answer denying the charges and requesting a hearing.

On April 20, 2006, the Department of Enforcement (“Enforcement”) filed a Motion for Summary Disposition against Respondent. The Motion was supported by a memorandum of points and authorities, a statement of undisputed facts, and an affidavit with seven supporting exhibits.¹ On May 2, 2006, Respondent filed a response to Enforcement’s Motion, which offered no substantive challenge to the Motion, but simply reiterated Respondent’s request for a hearing. On June 12, 2006, a Hearing Panel comprised of a Hearing officer and two members of the District 5 Committee heard oral argument on Enforcement’s Motion.

II. The Standard for Summary Disposition

Rule 9264(e) provides that a motion for summary disposition may be granted when “there is no genuine issue with regard to any material fact and the Party that files the motion is entitled to summary disposition as a matter of law.” This is identical to the standard that is applied under Rule 56 of the Federal Rules of Civil Procedure.

Under the Federal Rules, summary judgment procedure “is properly regarded not as a disfavored procedural shortcut but rather as an integral part of the Federal Rules as a whole, which are designed ‘to secure the just, speedy and inexpensive determination of every action.’”² “Once the moving party has demonstrated that there is no genuine issue of material fact, the burden shifts to the non-moving party to prove that there is a genuine issue of material fact.”³ The non-moving party may not depend solely on denials, but must submit specific facts that create a triable issue. Mere conclusory rebuttal by the

¹ Enforcement’s exhibits attached to the Motion for Summary Disposition are cited as “CX” 1-7. References to the transcript of the oral argument are cited as “Tr. p.”

² Celotex Corp. v. Catrett, 477 U.S. 317, 327 (1986).

³ Matsushita Elec. Indus. Corp., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 585-87 (1986).

non-moving party should not defeat the motion.⁴

The Panel reviewed the pleadings, including the motion for summary disposition and the supporting declarations and exhibits. The Panel also considered the oral argument of the parties. Finding no genuine issue as to the material facts, the Panel grants Enforcement's motion, for the reasons set forth below.

III. Facts

A. Respondent

Respondent entered the securities industry in 1972, and was first registered as a general securities representative in May 1976. Respondent was registered with various NASD members during the time alleged in the Complaint. He was registered with Robert Thomas Securities Inc. from June 1987 to June 1992; with Birchtree Financial Services, Inc. from July 1992 to January 1999; with American Investment Services, Inc. from December 1998 to July 2002; with SAL Financial Services, Inc. from May 2002 to February 2003; and with First Midwest Securities, Inc. from May 2003 to March 2005. He is currently registered with Ridgeway & Conger, Inc., and has been so registered since April 2005. NASD has jurisdiction over this proceeding, pursuant to Article V, Section 4 of the NASD By-Laws.

B. The WWC Partnership Account

NASD initiated its investigation in this matter in January 2005, based upon a lawsuit filed against Respondent by his aunt, HC, regarding a brokerage account in the name of the WWC Partnership (the "Partnership Account"). The Partnership Account was created by Respondent's father, WWC, in the 1980's, to hold assets inherited by

⁴ Topalian v. Ehrman, 954 F.2d 1125, 1131 (5th Cir.), cert. denied, 506 U.S. 825 (1992).

WWC and his sister, HC, who was also a partner in the partnership. CX-4 p. 30-33.

Respondent served as the broker for the account.

WWC died in 1987. In 2004, HC filed a lawsuit against Respondent alleging, among other things, that he converted funds from the Partnership Account. Respondent testified in a deposition, under oath, in this lawsuit (the “Deposition”). CX-4, CX-6.

C. Respondent Forged Signatures in Order to Transfer the Partnership Account to his new Employers, and Falsified a Document to Mislead a Customer (Rule 2110)

When WWC died in 1987, the Partnership Account was held at Robert Thomas Securities, and Respondent served as its broker. In August 1992, Respondent left Robert Thomas Securities to join Birchtree Financial Services. In the Deposition, Respondent admitted that, to continue as broker on the account, he signed the name of his deceased father on an account transfer form. CX-1, CX-4 p. 74, 75. Similarly, Respondent admitted that he again signed his deceased father’s name to another account transfer form in April 1999, when he changed firms and joined American Investment Services. CX-2, CX-4, p. 76, 77.

Respondent asserted that he had authority over the Partnership Account, which permitted him to sign his father’s signature to these account transfer forms. Tr. 25. However, when Respondent signed these forms, his father had been deceased for five and 12 years, respectively. CX-4 p. 33, 75, 76. Therefore, it was impossible for his father to have given Respondent express authority to sign the transfer forms, and Respondent neither claimed nor offered any evidence that his father, while alive, had given him any

general, written authority to act on behalf of the partnership.⁵ Moreover, Respondent signed his father's name, not his own, on the forms, and by so doing, he falsely represented to his employer that his father was alive and acting on behalf of the partnership.

During the Deposition, Respondent also admitted that he exercised authority over the Partnership account, and at some point "borrowed funds" from it. CX-4, p. 45, 54, 57, 61-67. Respondent also admitted that, in connection with these "borrowings," in December 2002, he created and provided a false 1099 Tax Form to his aunt, HC. CX-3; CX-4, p. 80, 81. This falsified form showed that the Partnership Account held \$22,149.23 in the Heritage Tax-Free Municipal Money Market, and had received interest payments during 2000 totaling \$678.35. Id. However, in fact, the account had no funds in the Money Market. CX-4, p. 67, 81, 83, 84.

Respondent admitted that he falsified this 1099 Tax Form. Id. He attempted to justify this conduct on the ground that the form was intended to reflect the amount of funds that *he owed* the partnership account, based on prior withdrawals. CX-4, p. 82-84. The Panel rejects this contention based on the face of the document, which plainly represents, falsely, that the funds were held in the Money Market, and makes no mention of any indebtedness from Respondent.

⁵ During oral argument, Respondent's counsel indicated that, at the hearing, he would present evidence that Respondent reasonably believed he had authority over the Partnership Account. The Panel gave no weight to this, as Respondent failed to submit credible evidence in support of this assertion in his opposition to the Motion for Summary Disposition. Respondent also stated to the Panel that he thought he had authority over the account because, at his father's funeral, his aunt told him to continue to handle the Partnership Account. Tr. p. 32. This unsupported assertion, not under oath, is insufficient to establish a triable issue of fact. Nor is it sufficient to refute Enforcement's allegation that Respondent forged account transfer documents – an allegation to which Respondent freely admitted in sworn testimony. CX-4 p. 74-76.

D. Respondent Failed to Disclose His Exercise of Authority over the Partnership Account

When Respondent left American Investment Services in 2002, the Partnership Account was not transferred to his new employer. It remained at American Investment Services, but Respondent does not contest that he continued to exercise control over the account without making the required disclosure of this to First Midwest Securities, his employer from May 2003 to March 2005.⁶

IV. Violations

A. Forgery and Falsification of Customer Documents (Rule 2110)

Count One of the Complaint alleges that Respondent forged his deceased father's signature on two forms in order to transfer the account to his new employer, and created a false 1099 Tax Form in order to deceive a customer as to the positions and balances in her account. As reflected above, the uncontested facts establish these violations.

It is well established that forgery is not consistent with high standards of commercial honor and just and equitable principles of trade as required by Rule 2110.⁷ Although Respondent claimed that he had authority over the account, his father died long before Respondent signed the account transfer documents, and Respondent did not claim or offer evidence of any general, written authority from his father to sign these documents, or to otherwise act on behalf of the partnership. Therefore, the Panel finds that Respondent forged his father's signature on the account transfer forms. Moreover, the undisputed facts that Respondent signed his father's name on the account transfer documents, rather than his own, and submitted them to NASD member firms without

⁶ While Respondent argues that his exercise of authority was proper, this is irrelevant to the issue of whether he failed to disclose it to his employer.

⁷ See, e.g., Donald M. Bickerstaff, Exch. Act Rel. No. 35,607, 1995 SEC LEXIS 982 (Apr. 17, 1995).

indicating in any way that he, rather than his father, had signed them, is sufficient to establish that Respondent violated Rule 2110. See, DOE v. Bendetsen, No. C01020025, 2004 NASD Discip. LEXIS 13, (NAC Aug. 16, 2004).

It is also well established that registered representatives have an obligation not to transmit false and misleading documents to their customers. Doing so is a plain violation of Rule 2110's command to "observe high standards of commercial honor..." See, Bendetsen, supra. In this case, Respondent admitted that he created a federal tax form that contained false information regarding the Partnership Account's holdings and transmitted it to his aunt, which plainly violated Rule 2110.

B. Failure to Disclose Authority over Partnership Account (Rules 3050 and 2110)

Count two of the Complaint alleges that Respondent exercised authority over the Partnership Account at American Investment Services without disclosing it to First Midwest Securities, his employer.

Rule 3050(d) provides that a registered representative who has discretionary authority over a securities account at another firm must "notify his or her employer member in writing, prior to the execution of any initial transactions, of the intention to open the account or place [an] order [for the purchase or sale of securities]." Respondent testified extensively in the Deposition that he exercised discretionary authority over the Partnership Account at American Investment Services by purchasing and selling securities and withdrawing funds. However, First Midwest Securities maintains that Respondent failed to notify it of the Partnership Account, and Respondent offered no evidence to the contrary. CX-6. Therefore, the Panel finds that Respondent violated this provision. A violation of another NASD rule is also a violation of Rule 2110. See, Chris

Dinh Hartley, Exch. Act Rel. No. 50031, 2004 SEC LEXIS 1507, at *9 (July 16, 2004).

V. Sanctions

For forgery and falsification of records, the NASD Sanction Guidelines (“Guidelines”) recommend a fine of \$5,000 to \$100,000, and a suspension of up to two years, or, in egregious cases, a bar.⁸ Enforcement seeks a bar in this case. In determining the appropriate sanctions under the Guidelines, an Adjudicator is to consider the nature of the documents falsified, and whether respondent had a good-faith, but mistaken, belief of express or implied authority. Here, Respondent signed his deceased father’s signature on two account transfer documents and falsified a 1009 Tax Form, indisputably important documents. Respondent had no reasonable basis for believing that he had authority to sign his long deceased father’s name to the transfer forms, or to enter false information on the tax form. The Panel also considered that Respondent expressed no remorse for his actions, and that all three documents served Respondent’s personal benefit. The Panel concludes that Respondent’s conduct was egregious, and the forgeries and the falsification of the tax form each independently warrant a bar. Accordingly, Respondent will be barred for forgery and falsification of records, in violation of NASD Conduct Rule 2110.

In light of the bar, no further sanctions are imposed for Respondent’s failure to disclose to his employer his authority over an account at another firm, in violation of Rules 3050 and 2110.

⁸ NASD Sanction Guidelines (2006 ed.) at 39.

VI. Conclusion

For forgery and falsification of documents, in violation of Rule 2110, Respondent is barred from associating with any NASD member firm in any capacity. In light of the bar, no further sanctions are imposed for Respondent's failure to disclose to his employer his authority over an account at another firm, in violation of Rules 3050 and 2110. The bar shall become effective immediately if this decision becomes NASD's final disciplinary action in this proceeding.

HEARING PANEL

By: Sara Nelson Bloom
Hearing Officer

Dated: September 12, 2006

Copies to: Mark Petite, Esq. (*via overnight and first-class mail*)
Joel R. Beck, Esq. (*via electronic and first-class mail*)
Andrew Favret, Esq. (*via electronic and first-class mail*)
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