

**NASD OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

MARK S. RITCHEY  
(CRD No. 3011276),

Respondent.

Disciplinary Proceeding  
No. 2006004493301

Hearing Officer – SNB

**HEARING PANEL DECISION**

April 9, 2007

**For affixing a customer signature on a distribution request form without the customer's knowledge or consent, in violation of Rule 2110, Respondent is fined \$10,000, suspended in all capacities for two months, and required to requalify in all capacities.**

**Appearances**

Dale A. Glanzman, Esq., and UnBo Chung, Esq., Chicago, IL, (Rory C. Flynn, Esq., and Mark Dauer, Esq., Of Counsel) for the Department of Enforcement.

David McGlade, Esq., Zanesville, OH, for Respondent.

**DECISION**

**I. Procedural History**

On August 23, 2006, the Department of Enforcement (“Enforcement”) filed a one-count Complaint against Mark S. Ritchey (“Respondent”). The Complaint alleged that Respondent violated Rule 2110 by affixing a customer signature on a distribution request form without the customer's knowledge or consent. On September 18, 2006, Respondent filed an answer denying the allegations, and requesting a hearing. The hearing was held on December 19, 2006, in Columbus, Ohio, before a Hearing Panel composed of the Hearing Officer and two members of NASD's District 8 Committee.<sup>1</sup>

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<sup>1</sup> Enforcement offered Complainant's Exhibits (“CX”) 1-5, which were admitted without objection. The hearing transcript is referred to as “Tr.” Stipulation paragraphs are referred to as “Stip. para.”

## **II. Findings of Fact**

### **A. Respondent**

Respondent began in the securities industry in 1998. Tr. 95. After several years, he joined Century National Bank (“Century”) as a financial advisor, and became registered with NASD member Essex. Tr. 97. As Century changed its broker affiliations, Respondent’s registrations changed. In 2003, Respondent became registered as a General Securities Representative with Raymond James Financial Services, Inc. In February 2006, he was terminated based upon the conduct alleged in the Complaint. Tr. 126.

### **B. Respondent Affixed a Customer Signature on a Distribution Request Form without the Customer’s Knowledge or Consent**

In early January 2006, Respondent’s customer, TG, had his wife telephone Respondent to request a \$3,000 withdrawal from TG’s annuity. CX-5 p. 5; Stip. para. 3. A week later, when TG did not receive the funds, TG’s wife made a second telephone call to Respondent, who reconfirmed that he would arrange for the withdrawal, as requested. Stip. para. 4.

About ten days later, on approximately February 1, 2006, TG’s wife made a third telephone call to ask about the funds that TG had not yet received. Respondent returned the call and said he would handle it immediately. Respondent admitted that he was at fault for not acting upon TG’s earlier requests. Tr. 101, 103. Due to Respondent’s error, the request became urgent - TG needed the money immediately, in order to pay off his son’s car loan without incurring additional interest charges. Tr. 81, 104. Respondent considered that TG lived 35 miles from the nearest Century branch office, and Respondent did not believe that TG would be able to make it there in time to process the request. Tr. 104. Moreover, Respondent felt badly about the delay, and did not want to bother TG again. Id. Therefore, in a misguided effort to fulfill the customer’s request that Respondent

acknowledged was wrong, Respondent affixed a photocopy of TG's signature to a Distribution Request Form directing a \$2,000 withdrawal from TG's account. CX-3. The form directed that the funds be sent to TG by overnight mail, for a \$15 additional charge. Id.

On February 3, 2006, TG received the \$2,000 from his annuity account, less a \$15 overnight delivery charge. TG's wife called Respondent to complain, and when Respondent was unavailable, she spoke with Respondent's supervisor, Chad Tom ("Tom"). TG's wife explained that she requested the withdrawal over three weeks earlier, and had requested \$3,000, not \$2,000. Tr. 80-81. When Tom looked at the Distribution Request Form and told TG's wife that TG had only signed it on February 1, 2006, TG's wife responded that he had not signed the form.<sup>2</sup> Stip. para. 10.

Upon closer inspection of the form, Tom saw that TG's original signature was not on the Distribution Request Form. Stip. para. 11. Tom brought the matter to the attention of Respondent's non-securities supervisor at Century. When this supervisor confronted Respondent, he acknowledged what he had done.

### **III. Violation**

The Complaint alleges that Respondent violated Rule 2110 by affixing a customer's signature on a distribution request form, without the customer's knowledge or consent. Respondent does not dispute the charge.

NASD Rule 2110 provides that, "A member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade."<sup>3</sup> It

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<sup>2</sup> Stipulations, filed December 4, 2006. While these stipulations indicated that TG made some of the calls to Respondent, at the hearing the parties modified this to stipulate that TG's wife made all the calls, due to the fact that TG was hard of hearing. Tr. 76.

<sup>3</sup> Rule 2110 is applicable to associated persons pursuant to Rule 0115(a), which provides, "These Rules shall apply to all members and persons associated with a member. Persons associated with a member shall have the same duties and obligations as a member under these Rules."

is well established that falsification of documents is not consistent with the high standards of commercial honor and just and equitable principles of trade required by Rule 2110.<sup>4</sup>

Accordingly, the Panel finds that Respondent, by his actions, violated Rule 2110.

#### **IV. Sanctions**

The NASD Sanction Guidelines (“Guidelines”) recommend a fine of \$5,000 to \$100,000 for falsification of records, and a suspension for up to two years where mitigating factors exist, or a bar in egregious cases. Enforcement urged that the Panel impose no less than a two month suspension, and a \$5,000 fine. Tr. 142.

In determining appropriate sanctions under the Guidelines, the Adjudicator is to consider the nature of the forged or falsified document and whether the respondent had a good-faith, but mistaken, belief of express or implied authority.<sup>5</sup> Here, the falsified document was significant, because it facilitated a withdrawal of funds from a customer account. Moreover, although Respondent believed he had authority to process the withdrawal, he could not have believed in good faith that he had authority to affix TG’s signature to the document. However, the Panel also considered that Respondent’s motive was to fulfill a customer’s request to withdraw funds, and Respondent acknowledged and regretted his actions. In addition, the Panel considered that Respondent’s misconduct involved a single action under pressure to obtain the funds the customer needed, and that he did not cause or threaten any injury to the customer. In fact, the customer felt that Respondent was a good person who would never harm him, and he expressed the hope that Respondent would not be severely sanctioned.

After weighing the evidence, the Panel finds that it is appropriate to suspend Respondent in all capacities for two months, and a require him to requalify in all capacities.

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<sup>4</sup> See, e.g., Donald M. Bickerstaff, Exch. Act Rel. No. 35,607, 1995 SEC LEXIS 982 (Apr. 17, 1995).

<sup>5</sup> NASD Sanction Guidelines at 39 (2006 ed.).

In addition, given Respondent's limited resources, the Panel finds that a fine of \$10,000, payable upon re-entry into the industry, is appropriately remedial.

**V. Conclusion**

Respondent violated NASD Conduct Rule 2110 by affixing the signature of a customer on a distribution request form without the customer's knowledge or consent. For this violation, Respondent is fined \$10,000, suspended in all capacities for two months, and required to requalify in all capacities before returning to the industry. In addition, he is ordered to pay costs in the amount of \$1,604.45, which includes an administrative fee of \$750 and the cost of the hearing transcript. If this Decision becomes the final disciplinary action of NASD, the suspension shall become effective with the opening of business on June 4, 2007, and end with the close of business on July 31, 2007. The fine and costs shall become due and payable when Respondent returns to the industry.

**HEARING PANEL**

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By: Sara Nelson Bloom  
Hearing Officer

Copies to: Mark S. Ritchey (*via overnight and first-class mail*)  
R. David McGlade, Esq. (*via overnight and first-class mail*)  
Dale A. Glanzman, Esq. (*via electronic and first-class mail*)  
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