BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD REGULATION, INC.

In the Matter of District Business Conduct Committee For District No. 2 Complainant, vs. James Basil Peters Oxnard, California, Respondent.	DECISION Complaint No. C02960024 District No. 2 Dated: November 13, 1998

James Basil Peters ("Peters") has appealed an October 20, 1997 decision of the District Business Conduct Committee for District No. 2 ("DBCC") pursuant to Procedural Rule 9310 of the NASD's Code of Procedure. For the reasons discussed below, we find that Peters violated Conduct Rule 2110 by twice forging the signature of a Wells Fargo Bank ("WF Bank") branch manager on documents Peters submitted to his employer, Wells Fargo Securities, Inc. ("WF Securities" or "the Firm"). We order that Peters be censured, fined $5,000, suspended in all capacities for 30 days, required to requalify as a general securities representative, and assessed $990 in DBCC costs and $750 in appeal costs.

Factual Background

Peters entered the securities industry in 1984. During the period from November 1992 to June 1994, Peters was employed by WF Securities, a broker/dealer affiliated with WF Bank. Peters was registered as an investment company and variable contracts products representative. Peters was subsequently employed by another NASD member until August 1995. He remains subject to NASD Regulation's jurisdiction for purposes of this action.

In April of 1994, WF Securities began using an Annuity Transaction Summary ("ATS") form to summarize each annuity transaction and to determine whether an annuity was being purchased with "new" customer funds, i.e., funds that were neither on deposit at WF Bank or WF Securities, nor invested in WF Securities' proprietary products. WF Securities salespeople earned higher commissions on these "new money" purchases. The sale of a securities product resulted in a 20 percent commission payout if purchased with old funds, and 35 percent if purchased with new funds. A WF Bank branch manager was required to sign each ATS form to verify that the funds being invested were new funds.[1] If the purchase was made with old funds, the ATS form was to be submitted without the branch manager's signature.

Later in May of 1994, Peters submitted two ATS forms reflecting customer purchases using new funds. The first ATS form, dated May 23, reflected the purchase of a $30,000 annuity by customers EC and CC. The second ATS form, dated May 24, reflected the purchase of a $35,000 annuity by customers MK and LK. Both ATS forms appeared to contain the signature of Martin Daly ("Daly"), a WF Bank branch manager, and both forms reflected a purchase involving new funds. By claiming that the annuities were purchased with new funds, Peters increased his commission payout.

A WF Securities compliance employee detected an irregularity in each of the ATS forms, and she alerted the Firm. On May 27, 1994, Peters met with Jeff Pittman ("Pittman"), a WF Securities manager, and Dan Pearson ("Pearson"), Peters' supervisor, regarding the ATS forms in question. In unsworn, written statements, Pittman and Pearson stated that Peters had admitted signing Daly's name to the ATS forms for the purpose of increasing his commissions. In his own May 31, 1994 statement, Peters admitted that "I have recently done some things that were not appropriate." Peters testified that the inappropriate behavior to which he referred in his statement was the signing of Daly's signature, but he steadfastly denied that he signed Daly's name to increase his commissions.

It is undisputed that Peters signed Daly's signature to both ATS forms and that both pairs of customers purchased their annuities using old money, checks drawn on their WF Bank accounts. WF Securities investigated, determined that Peters had forged Daly's signature, and then fired Peters. WF Securities' Uniform Termination of Securities Industry Registration form for Peters triggered an NASD investigation and, ultimately, the filing of the complaint in this case.

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[1] In addition, to qualify as "new funds," a product had to be purchased within 14 days of the funds' arrival at WF Securities.

Discussion

Peters was charged with violating Conduct Rule 2110, which provides that "[a] member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade." The Securities and Exchange Commission ("Commission") has long recognized that Conduct Rule 2110 states broad ethical principles that implement the requirements of Section 15A(b) of the Securities Exchange Act of 1934 ("the 1934 Act"). In re Brian L. Gibbons, Exchange Act Rel. No. 37170 (May 8, 1996). The 1934 Act empowers self-regulatory organizations, such as NASD Regulation, Inc. or the NASD, to discipline their members and persons associated with their members for unethical behavior. In re William F. Rembert, 51 S.E.C. 825, 826 & n. 3 (1993).

Forgery is conduct that is inconsistent with just and equitable principles of trade and violates the high standards of commercial honor to which the NASD holds registered individuals. In re Donald M. Bickerstaff, Exchange Act. Rel. No. 35607 (Apr. 17, 1995). The violation is equally problematic whether the forgery is submitted to the NASD or to a member firm. See In re Charles E. Kautz, Exchange Act Rel. No. 37072 (Apr. 5, 1996).

Peters claims that he thought he was authorized to sign Daly's signature to the ATS forms. If Peters had oral authority to sign Daly's name, Peters' conduct would not constitute forgery. In re Donald M. Bickerstaff, Exchange Act. Rel. No. 35607 (Apr. 17, 1995). There is, however, no evidence in the record that Daly authorized Peters to sign Daly's name to the ATS forms in question. In fact, Daly denied authorizing Peters to sign the ATS form, and Peters testified that he did not speak to Daly before signing them.

Peters claimed that he had implied authority to sign a WF Bank branch manager's name to the ATS forms. He claimed that WF Securities supervisors had said in staff meetings that registered representatives could sign WF Bank branch managers' names to the ATS forms when the press of business so required.[2] Assuming, arguendo, that Peters' testimony was accurate, it is no defense in this case because Peters never should have submitted the ATS forms with a manager's

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[2] The ATS form required the signature of the WF Bank branch manager at the branch where the investment was made. Peters admitted that the investments were not made at Daly's branch and that Daly would not have been the appropriate bank branch manager to sign the ATS forms, even if the investments in question had been made with new funds.

signature. The sole purpose of the WF Bank branch manager's signature on the ATS form was to verify that an investment was made with new funds. Since the investments at issue here were not made with new funds, Peters should not have submitted the signed forms, regardless of whether he had authority to sign a WF Bank branch manager's signature.

In any event, Peters' claim of implied authority was mistaken. Lisa Parisotto ("Parisotto"), WF Securities' compliance officer, and Pearson both denied that Peters or any other registered representative had such authority. Peters bore the burden of proof of establishing this defense, but he offered no evidence to corroborate his claim. Accordingly, we find that Peters did not have implied authority to sign Daly's signature.

Throughout the NASD's investigation Peters consistently has denied that he signed Daly's signature for the express purpose of increasing his compensation. He now challenges the DBCC's finding to that effect, and also the resulting implication that he acted with scienter in forging Daly's signature. Case law establishes that finding a violation of Conduct Rule 2110 only requires a finding of bad faith or unethical conduct, rather than scienter. See In re Robert J. Kautz, 48 S.E.C. 702, 704 (1987); In re Robert E. Kaufman, 51 S.E.C. 838 (1993), aff'd mem., Kaufman v. SEC, 40 F. 3d 1240 (3d Cir. 1994). Therefore, although we find that Peters acted unethically in signing Daly's signature to the ATS forms, it is not necessary to determine whether Peters acted with scienter to conclude that he violated Conduct Rule 2110.

Accordingly, we find that Peters signed Daly's name to two ATS forms without authorization in violation of Conduct Rule 2110.

Sanctions

Forgery is a serious violation which can undermine the integrity of the securities markets and the confidence of individuals and institutions relying on that integrity. Accordingly, the NASD Sanction Guideline ("Guideline") applicable to this case, entitled "Forgery And/Or Falsification Of Records," calls for a fine of $5,000 to $50,000 and, in egregious cases, non-monetary sanctions up to and including a bar in all capacities.[3]

The principal considerations in determining the proper level of sanctions to impose are: (1) prior or other similar misconduct; (2) number of documents forged or falsified; (3) mistaken belief of express or implied authority; (4) nature and extent of injury (or benefit) to customer(s) or firm; (5) nature of document(s) forged or falsified; (6) period of time over which forgeries/falsifications occurred; (7) attempts to conceal misconduct; (8) whether the misconduct occurred in connection with conversion of securities, money, or other items of value; and (9) other aggravating or mitigating factors.

Several of these factors weigh in Peters' favor. Peters has been employed in the securities industry for almost 15 years without prior or subsequent misconduct. Peters acted in accordance with the rules of the Association for almost 15 years, submitted two false documents on the same day, and has engaged in no wrongdoing since. The forgeries did not occur in connection with the conversion of customer securities or funds, and no customers were exposed to risk due to Peters' misconduct. According to Peters, these were the first ATS forms that he was required to complete; his lack of familiarity with the form may have contributed to his decision to submit the forms improperly.

In light of these factors, we impose a $5,000 fine, the lowest fine recommended by the Guideline, require that Peters be suspended in all capacities for 30 days, and required to requalify by examination as a general securities representative within 90 days of the release of this decision. These sanctions will deter Peters from engaging in future misconduct and encourage the use of care and sound judgment in all aspects of his employment in the securities industry. Additionally, these sanctions serve the public interest by making clear that forgery, of any type and for any reason, will not be tolerated. The sanctions are neither excessive nor oppressive, and they are the result of our having weighed all appropriate considerations.

Accordingly, it is ordered that Peters be censured, fined $5,000, suspended for 30 days from associating with any member firm in any capacity, required to requalify

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[3] Peters contends that this Guideline is inapplicable to this case because, by its own language, the Guideline only addresses conduct that occurred without authorization of any kind and/or cases in which the respondent acted in bad faith. Having found that Peters acted without authority of any kind, however, we find that this Guideline is applicable.

as a general securities representative within 90 days of the release of this decicion, and assessed $990 in DBCC costs and $750 in appeal costs.[4]

On Behalf of the National Adjudicatory Council,

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Joan C. Conley, Corporate Secretary

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[4] The fine imposed is within the range recommended by the applicable Sanctions Guideline. See Guidelines (1993 ed.) at 23 (Forgery/Falsification of Records).

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 be summarily 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 be summarily revoked for non-payment.

Joan C. Conley
Corporate Secretary

November 13, 1998

VIA CERTIFIED MAIL: RETURN RECEIPT REQUESTED

James Basil Peter
Oxnard, California

Re: Complaint No. : C02960024 James Basil Peters

Dear Mr. Peters:

Enclosed herewith is the Decision of the National Business Conduct Committee in connection with the above-referenced matter. Any fine and costs assessed should be made payable and remitted to the National Association of Securities Dealers, Inc., Department #0651, Washington, D.C. 20073-0651.

You may appeal this decision to the U.S. Securities and Exchange Commission. To do so, you must file an application with the Commission within thirty (30) days of your receipt of this decision. A copy of this application must be sent to the NASD Regulation, Inc. Office of General Counsel as must copies of all documents filed with the SEC. Any documents provided to the SEC via fax or overnight mail should also be provided to the NASD Regulation by similar means.

Your application must identify the NASD REGULATION case number, and set forth in summary form a brief statement of alleged errors in the determination and supporting reasons therefor. You must include an address where you may be served and phone number where you may be reached during business hours. If your address or phone number changes, you must advise the SEC and NASD REGULATION. If you are represented by an attorney, he or she must file a notice of appearance.

The address of the SEC is:
Office of the Secretary
U.S. Securities and Exchange Commission
450 Fifth Street, N.W., Stop 6-9
Washington, D.C. 20549

The address of the NASD is:
Office of General Counsel
National Association of Securities Dealers Regulation, Inc.
1735 K Street, N.W.
Washington, D.C. 20006

Questions regarding the appeal process may be directed to the Office of the Secretary at the SEC. The phone number of that office is 202-942-7070.

Very truly yours,

Joan C. Conley

Enclosure

cc: Karol L. Pollock, Esq.