NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,	:	
Complainant,	:	Disciplinary Proceeding No. C04020006
v.	:	
	:	Hearing Officer – JN
CURTIS W. TRIGGS, JR. (CRD #3184470)	:	**HEARING PANEL DECISION**
St. Louis, MO,	:	December 13, 2002
Respondent.	:	

Registered representative misused customer funds, in violation of Rules 2330(a) and 2110, and failed to respond timely to NASD staff information requests and requests for an interview, in violation of Rules 8210 and 2110. Respondent is barred from association with any NASD member firm in any capacity for misusing customer funds. In light of this bar, no separate sanction was imposed for failing to respond timely. Respondent was also assessed $4,327.39 in hearing costs.

Appearances

For the Complainant: Jeffrey A. Ziesman, Esq.

For the Respondent: Curtis W. Triggs, Jr., *pro se*.

DECISION

I. Introduction

On February 13, 2002, the Department of Enforcement filed a Complaint against Respondent Curtis W. Triggs, Jr., alleging that he misused customer funds, in violation of Conduct Rules 2110 and 2330(a) and that he failed to respond to requests for information, in violation of Rules 8210 and 2110. Respondent denied misusing the

customer's funds, arguing that she had loaned the money to him. As to the failures to respond, Mr. Triggs advanced various reasons, discussed later in this Decision. A Hearing Panel, composed of an NASD Hearing Officer and two members of NASD District Committee No. 4, conducted a hearing on September 25 and 26, 2002, in St. Louis, Missouri. The hearing record consists of Enforcement's exhibits, cited with the prefix "CX"; Respondent's exhibits, cited with the prefix "RX"; a joint exhibit, cited with the prefix "JX"; and the transcript of the hearing, cited with the prefix "Tr."

II. Background

On April 13, 1999, Triggs became registered as a general securities representative with Stifel, Nicolaus & Company, where one of his customers was Ms. JH (JX-1, ¶¶ 1, 2, 5; CX-1, p. 6). On December 12, 2000, Triggs submitted to Stifel a "Customer Account Check Request," reflecting JH's purported request for a $68,252.09 check to be drawn from her account (JX-1, ¶ 18; CX-4). On that same day, Triggs sold positions from JH's account in order to fund the Check Request (JX-1, ¶ 19). On the next day, December 13, 2000, Triggs obtained a cashier's check from Stifel, in the amount of $68,249.09 (the requested amount minus a $3 transaction fee), drawn against JH's account (JX-1 ¶ 20; CX-18; CX-20).

The check was made payable to Chase Manhattan, the mortgage lender on Triggs' home, and it was to be applied to his mortgage (JX-1, ¶¶ 21-22). Upon receiving the trade confirmations and a letter referring to a $68,249.09 check (which had supposedly been hand-delivered to her), the customer contacted Stifel and her lawyer and denied having authorized any of these transactions (Tr. 592-594; CX-18). Ultimately, Chase Manhattan returned the check uncashed to Stifel, which credited JH's account with

$68,252.09 (JX-1, ¶¶ 23, 24). Thereafter, on January 5, 2001, Stifel terminated Respondent's association (Id. ¶ 3; CX-1, p. 7).

III. Discussion

A. Misuse of Customer Funds

The Complaint alleges that Triggs misused customer funds, in violation of Rules 2330(a) and 2110, by taking approximately $68,000 from JH's account, without her authorization, and attempting to use those funds to pay his mortgage indebtedness. The parties stipulated that on December 12 and 13, 2000, Triggs, who was JH's broker, submitted the above Check Request; sold positions from her account to fund the requested check; and obtained a cashier's check from the firm for $68,249.09, reflecting funds drawn against JH's account (JX-1, ¶¶ 18-20). This check was sent to an agent for Chase Manhattan, which held a mortgage on Respondent's home, and the check was to be applied to his mortgage indebtedness (Id., at ¶¶ 18-22).[1]

Uncontradicted evidence further showed that Respondent faced financial difficulty and possible foreclosure during the time in question (Tr. 189, 191-192, 205, 258-262, 265-267). In October of 2000, Chase Manhattan filed an action against Mr. Triggs alleging that he was continuing to occupy the home despite a mortgage default and a trustee's order of sale (CX-27, pp. 22-24). On November 3, 2000, he executed an affidavit promising to pay the mortgage debt in full by December 18, 2000 (Id., at p. 26; Tr. 197).

Respondent urged that JH had loaned him the money to pay his mortgage debt and that he thus did not misuse her funds. According to him, conversations with her about the prospect of a mortgage foreclosure led JH to agree to loan him the money

[1] The firm issued the check without a prior signed letter of authority.

(Tr. 296-298, 300-301, 390-391). Respondent said that to raise money for the loan, he sold securities from her account, sometimes at a loss (Tr. 216-218). He acknowledged that the supposed loan had no terms – no provisions for interest or for re-payment – and that there was no written loan contract between him and the customer (Tr. 282, 283). When pressed to describe anything of value which JH might have received in return for making the loan, Mr. Triggs answered: "there was the good will that she was helping someone out" (Tr. 292-293).

The customer denied the existence of any such loan (Tr. 569-570). The Panel credits her version and rejects Triggs' "loan" defense.

JH was a successful business operator, who provided home health care services to senior citizens under a contract with the State of Missouri (Tr. 583). Her Stifel account had a net portfolio value of over $76,000 before the events in issue (CX-40, p. 2). She was interested in "[d]ividend producing stocks like Southwestern Bell, AT&T," and wanted to "buy and keep" the investments so that money would be available for taxes (Tr. 580).

Though somewhat unsophisticated, she was nevertheless an investor who paid close attention to her money. She said that "I had been on [Respondent] a long time about money and stuff that some was missing. I thought I was making money and I should have more than what I had and [Respondent] would go over with me over the telephone" (Tr. 594-595). Mr. Triggs himself acknowledged that she called him "almost every day" – sometimes as many as three or four times in one day – to discuss her account, and he described JH as "my most talked-to client" (Tr. 221). He agreed that she

had warned him "don't F with my money" and that she was "a very active client who watches her money very closely" (Tr. 418-419, 596, 733-734).

In the Panel's view, this customer was not a person who would sell her stocks at a loss (some of which she owned only a few days) in order to make a $68,000 "good will" loan to her broker – with no terms as to interest or re-payment and no collateral. Indeed, such action would have been wholly inconsistent with the person the Panel saw and heard.

The customer's denial of the loan was also consistent with other circumstances of record. Her first steps, upon learning that "my money was gone," were to contact Stifel and an attorney, who then followed up with the firm (Tr. 81-82, 593-594). Such action is consistent with the discovery of wrongdoing and inconsistent with the notion that she had loaned the money to Triggs. Second, when Respondent's supervisor asked him about activity reflected in JH's account, Triggs said that a client needed to sell stock to raise money and made no mention of any loan (Tr. 74-75). After receiving a call from the customer's attorney, the supervisor had further conversations with Respondent, who again was silent about the supposed loan (Tr. 97). That Triggs said nothing about the asserted loan in situations where he would have been expected to do so shows that it was but an afterthought.

Finally, Respondent's repeated testimony that JH signed the check authorization (Tr. 227, 253, 274), which she denied (Tr. 572-575), further weakened the "loan" defense. A comparison of the signature in question (CX-4) with examples of her known signature (CX-19; CX-46; CX-50) establishes the likelihood that the signature on the

form was not hers.[2] This circumstance additionally undercuts the "loan" theory and corroborates the customer's version of events.

Rule 2330(a) prohibits registered representatives from making "improper use of a customer's securities or funds." Use of customer funds for personal expenses or for any purpose not directed by the customer violates that Rule. Prime Investors, Inc., Exchange Act Rel. No. 38487, 1997 SEC LEXIS 761 at *25-26 (April 8, 1997); Dist. Bus. Conduct Comm. v. Bernadette Jones, No. C02970023, 1998 NASD Discip. LEXIS 60, at *7 (NAC Aug. 7, 1998). In the present case, the Panel finds that Respondent Triggs misused customer JH's funds by attempting to use them for payment of his mortgage indebtedness and that there was no loan of these funds from the customer to him. Violations of Rule 2330(a) also constitute violations of Rule 2110's mandate for high standards of commercial honor. Jones, supra, at *8. The Panel concludes that Triggs' actions violated Rules 2330(a) and 2110.[3]

B. Failure to Respond to Requests for Information

The parties stipulated that Respondent failed to respond to two requests for documents, which were issued by the staff pursuant to Rule 8210 and sent to his CRD address (JX-1, ¶¶ 7, 8). They further stipulated that Respondent twice failed to appear for on-the-record interviews, also requested by the staff pursuant to that Rule, via letters sent to his CRD address, one of which he personally signed for (Id., at ¶¶ 9, 10, 11).

[2] See Daniel Manoff, Exchange Act Rel. No. 46708, 2002 SEC LEXIS 2684 at *16-17 (October 23, 2002): "The NASD Hearing Panel properly could compare Fisher's actual signature with her purported signature and conclude that she did not sign the form."

[3] Because Triggs in fact misused the customer's funds (removing them from her account without authorization for an improper purpose), there is no need to address the Complaint's alternative "attempt" allegation.

Respondent submitted to the requested interview on April 30, 2002, well after the instant Complaint had been issued (Id., at ¶ 27).

Triggs testified that between November 27, 2001 and early January of 2002, a period covering some of the Rule 8210 requests, he was living away from his home due to family problems (Tr. 512-513). But, as admitted, Respondent took no steps to alert the NASD staff to a different address or a better way to communicate with him during that time (Tr. 514-517). "We have previously stated that registered persons have 'a continuing duty to notify the Association ... of [their] current address, and to receive and read mail sent to [them] at that address.'" Warren B. Minton, Jr., Exchange Act Rel. No. 46709, 2002 SEC LEXIS 2712 at * 13 (October 23, 2002) (citation omitted). Respondent's failure to do so here did not relieve him of his duty to respond to NASD's requests for information.

Triggs wrote to the staff on January 8, 2002, stating that he would not appear for the January 10, 2002 interview because he had no lawyer, lacked time, and was involved in the "emotional" strain of family problems; he would, instead, "respond to the investigation once [the domestic issues] have calm[ed] down" (CX-44; see also Tr. 527). A Respondent cannot unilaterally refuse to appear for an interview and thereby postpone his obligations until such time as he may choose. "Members [and associated persons] cannot be permitted to impose conditions under which they will provide information to the NASD, including determining the appropriate time for responding to such requests." Richard J. Rouse, Exchange Act Rel. No. 32658, 1993 SEC LEXIS 1831 at *11 (July 19, 1993).

As there explained, "[a]ny problems or concerns … in responding to an information request in a timely or complete manner should be raised, discussed and resolved with the NASD in the cooperative spirit and prompt manner contemplated by the Rules" (Id., at *8). Respondent's January 8, 2002 letter failed to meet that standard.

On December 28, 2001, the NASD Kansas City staff requested a January 10, 2002 interview in St. Louis, where Respondent lives (CX-7). On January 8, 2002, he mailed the letter to the Kansas City staff, invoking the above reasons for refusing to appear (CX-44). This letter, mailed in St. Louis, reached the NASD office on September 10, the day scheduled for the interview, by which time the staff was already in St. Louis to interview him and the customer (Id.; CX-9; CX-13). The letter contained no specifics as to the possible retention of counsel, any lessening or adjusting of the workload, the likely settlement of the domestic dispute, or the possible re-scheduling of the interview. Though Triggs' letter promised correspondence from prior counsel and an accountant, it did not even suggest when such items might be submitted. Nor did Respondent even attempt to "discuss" and "resolve" his difficulties with the staff. In the Panel's view, his January 8, 2002 letter of refusal fell far short of the "cooperative spirit and prompt manner contemplated by the Rules."

On this record, the Hearing Panel finds that Triggs failed to provide documents in a timely manner and failed to appear for a scheduled on-the record interview. His conduct violated Rule 8210, and such failures also constitute violations of Rule 2110. See Stephen J. Gluckman, Exchange Act Release No. 41628, 1999 SEC LEXIS 1395, at *22 (July 20, 1999).

IV. Sanctions

A. Misuse of Customer Funds

The improper use of customer funds threatens the fundamental relationship between a broker and a customer, and undermines the integrity of the securities industry. See Dist. Bus. Conduct Comm. v. Julie S. Westberry, No. C07940021, 1995 NASD Discip. LEXIS 225 (NBCC Aug. 11, 1995) ("[B]rokers who are entrusted with the safekeeping of customer funds must take extra care to ensure that those funds are used only as authorized by the customer and only in the customer's best interest.") Conduct in violation of Rule 2330(a) is also inconsistent with the high standards of commercial honor and just and equitable principles of trade, thus violating Rule 2110's ethical mandate. See Jones, 1998 NASD Discip. LEXIS 60, at *8; Shailesh B. Patel, No. C0299052 (NAC May 23, 2001) ("The misuse of customer funds also violates Conduct Rule 2110 because such conduct is 'patently antithetical to the high standards of commercial honor and just and equitable principles of trade that the NASD seeks to promote.'") (citations omitted).

For misuse of customer funds, the NASD Sanction Guidelines recommend a bar, except in cases where the misuse resulted from respondent's misunderstanding the customer's intended use, or where there are other mitigating circumstances (NASD Sanction Guidelines, p. 42 (2001 ed.)). There is no evidence here of any "misunderstanding" between Respondent and customer JH, and there are no mitigating factors that would warrant a lesser sanction. Respondent's misconduct was egregious. He took a large sum of money (over $68,000) from a customer without her permission and attempted to use it to meet his personal expenses. These actions

constitute a grave breach of the broker's fiduciary obligations to a customer. Enforcement seeks a bar and the Hearing Panel agrees. For his misuse of customer funds, Respondent shall be barred from association with any member firm in any capacity.[4]

B. Failure to Respond to Requests for Information

Rule 8210, a "key element" in NASD's oversight responsibilities, facilitates self-regulation in the absence of subpoena power by authorizing NASD to require persons subject to its jurisdiction to provide information related to matters under investigation. See Rouse, supra. Failures to respond to information requests subvert NASD's ability to perform its regulatory functions. See Joseph P. Hannan, Exchange Act Release No. 40438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998).

It is true that Respondent ultimately sat for the requested interview, albeit after the instant Complaint issued. Although he thus effectively reduced his misconduct to a failure to respond timely, Triggs still warrants serious sanctions.[5] The NASD should not have to issue a Complaint in order to obtain compliance with Rule 8210 requests. See, e.g., Sundra Escott-Russell, Exchange Act Rel. No. 433653, 2000 SEC LEXIS 2053 at *9 (September 27, 2000). "Delay and neglect [in responding to requests for information] undermine the ability of the NASD to conduct investigations and thereby protect the public interest." Id., at *16. That is especially so here, where the underlying investigation involved the suspected misuse of some $68,000 in customer funds to meet the broker's personal expenses.

[4] A monetary sanction is generally unnecessary where, as here, a Respondent has been barred for improper use of funds (Guidelines, supra, p. 13).

[5] See Dep't of Enforcement v. Paul John Hoeper, 2001 NASD Discip. LEXIS 37 (NAC November 2, 2001), sustaining a bar, although there was a post-Complaint response.

For failure to respond in a timely manner, the Guidelines suggest suspension for up to two years (Guidelines, supra, p. 39). Because the Panel has already imposed a bar for Respondent's misuse of customer funds, a separate suspension for his untimely response would be redundant and would serve no useful purpose. But, if the Panel had imposed a separate sanction for the untimely response, it would have suspended Triggs in all capacities for two years.

V. Order

For misusing customer funds, in violation of Rules 2330(a) and 2110, Respondent Curtis W. Triggs, Jr. is barred from association with any NASD member firm in any capacity. As noted, in light of the bar, no separate sanction is imposed for the untimely response. Respondent is also responsible for $4,327.39 in costs, reflecting $3,577.39 for hearing transcripts plus the standard $750.00 administrative fee.

The bar shall become effective on the date this Decision becomes the final disciplinary action of the Association.[6]

FOR THE HEARING PANEL.

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Jerome Nelson
Hearing Officer

Dated: Washington, DC
December 13, 2002

Copies to: Curtis W. Triggs (via overnight delivery and first class mail)
Jeffrey A. Ziesman, Esq. (via electronic and first class mail)
Rory C. Flynn, Esq. (via electronic and first class mail)

[6] The Hearing Panel 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.