NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. JAMES RICHARD WAMSLEY (CRD #1149112), Petaluma, CA Respondent.	Disciplinary Proceeding No. C01010017 Hearing Officer - AWH **Hearing Panel Decision** August 13, 2002

Registered representative forged branch manager's name on unapproved correspondence to customer, in violation of Conduct Rule 2110. Respondent fined $5,000, suspended in all capacities for two years, and assessed costs of $2,050.26.

Appearances:

David A. Watson, Esq., for the Department of Enforcement

Paul Delano Wolf, Esq., for James Richard Wamsley[1]

DECISION

Introduction

On December 20, 2001, the Department of Enforcement ("Enforcement") filed the Complaint in this matter, alleging that James Richard Wamsley ("Wamsley" or "Respondent"), contrary to the instructions of his branch manager, forged the name of his branch manager on unapproved correspondence that Wamsley then sent to a customer. On January 22, 2002, Respondent sent Enforcement an Answer denying the allegation in the Complaint. On January 23, 2002, Enforcement submitted a copy of that Answer to

[1] At the hearing, Mr. Wolf appeared on behalf of Respondent. However, on May 17, 2002, three weeks after the hearing, Mr. Wolf withdrew as counsel, upon the specific instruction of Respondent.

the Office of Hearing Officers. Although the Answer was not properly filed by Respondent, the Office of Hearing Officers accepted it for filing. A hearing was held in San Francisco, California, on April 25, 2002, before a hearing panel composed of the Hearing Officer and two current members of District No. 1. As described below, the last pleading was filed on May 22, 2002.

Findings of Fact[2]

I. BACKGROUND

In 1983, James Richard Wamsley entered the securities industry at the age of 41, registering as an Investment Company/Variable Contracts Representative. CX 1. From June 1999 to May 10, 2001, encompassing the time period pertinent to the allegations in the Complaint, he was registered with NASD through Cal Fed Investments as an Investment Company/Variable Contracts Representative. *Id.* Wamsley was discharged for signing a manager's signature on an unapproved letter sent to a customer. *Id.*; CX 2. Currently, he is not employed in the securities industry. CX 1.

During his pertinent employment with Cal Fed Investments, Wamsley worked in the Sonoma office that housed both a branch of Cal Fed Investments and a branch of Cal Fed Bank. Wamsley worked for both entities. As a licensed personal banker, he sold bank products through Cal Fed Bank, and as an Investment Company/Variable Contracts Representative, he sold securities through Cal Fed Investments. In order to accomplish this dual role, he had two separate desks – one at which he would sit while selling bank products, the other at which he would sit when selling securities. Tr. 35-36.

[2] References to Enforcement's exhibits are designated as CX_; Respondent's exhibits, as RX_; and the transcript of the hearing, as Tr._.

Wamsley's immediate supervisor was Karen Wehrle, the branch manager of Cal Fed Bank's Sonoma office. Tr. 142. Wehrle graduated from college in 1990. Tr. 33. She began working in the banking industry as a teller, and, in February 2000, she became the branch manager of Cal Fed Bank's Sonoma office. Tr. 34. Martha Alvarez was the assistant branch manager. Tr. 86. Alvarez began working in the banking industry in 1994 as a teller, and she was promoted to assistant branch manager in January 2001. Tr. 86, 102.

II. WAMSLEY'S ATTEMPT TO RETAIN JD AS A CUSTOMER

JD was an elderly woman who had a $100,000 Certificate of Deposit at the Cal Fed Bank Sonoma branch. CX 4, 6. She approached Wamsley about closing her account because she was dissatisfied with the interest rate on the CD and indicated that she would take her business to another bank. As an alternative to her leaving Cal Fed Bank, Wamsley proposed that JD invest in a fixed annuity that was offered through Cal Fed Bank. *Id.*; Tr. 139. However, he was unable to convince her to make the investment. *Id.*

Wamsley considered it a challenge to win the customer back, and he was well aware of the pressure of Cal Fed Bank's sales goals and the threat of termination for failing to meet those goals. CX 6; Tr. 152-55. JD's investment of $100,000 would help him meet the sales goals for the month. Tr. 155. Wamsley thought he might be able to entice JD to invest in the annuity if he were able to give her several bonuses. Tr. 140. To that end, on April 9, 2001, Wamsley asked Alvarez if he could give JD a $25 bonus if she invested $100,000. Tr. 88. Alvarez told him he could not. *Id.* Nevertheless, that same day in the office lunchroom, Wamsley, Wehrle, and Alvarez engaged in a discussion concerning what Cal Fed Bank could offer JD to entice her to come back to the bank.

Tr. 60-62. Wamsley asked if he could offer JD a $50 bonus. Wehrle replied that she could only authorize $25. Tr. 64. They also discussed the fact that they could offer JD free checks and, at the bank manager's discretion, a checking account free of service charges for one year. Tr. 64-65.

On April 10, 2001, Wamsley entered Wehrle's office, interrupting a meeting between Wehrle and a client. He handed Wehrle a letter that was addressed to JD. Tr. 38-39. The letter stated that the distributor of the annuity has "NEVER paid less than 5% even when interest rates were below 5%." CX 4. The letter also represented that if JD invested in the "GUARANTEED ANNUITY," she would receive a free checking account, free checks and a $50 bonus. Wehrle briefly reviewed the letter and noticed that it contained the words "guarantee" and "never" in capital letters, and that her name appeared at the bottom of the letter. Tr. 39. She handed the letter back to him and told him to "submit [the letter] to Compliance for approval and put his own name at the bottom and send it out." *Id.* Later that day, Wamsley returned to Wehrle's office, interrupting a meeting she was having with Alvarez. Tr. 59-60, 67. He wanted Werhle to reconsider her decision not to sign the letter, because he thought her signature would carry more clout with a customer who had declined to make the investment through him. Werhle continued to insist that she was not comfortable with the letter and would not sign it. Tr. 67.

Notwithstanding her instructions, Wamsley then signed Wehrle's name to the letter, which was dated April 10, 2001, and, without telling her, sent it to JD. Tr. 138. He felt that a letter signed by the bank manager would have more impact than a letter

signed by him. Tr. 139. He thought that Wehrle did not have the proper perspective and that he knew better than she how to handle the matter. Tr. 142.

Wamsley did not seek the approval of the Compliance Department before sending the letter. He "gave it a thought," but concluded that the information in the letter had already been approved. He came to that conclusion because he believed that the information about the annuity was consistent with literature published by the distributor of the annuity. Tr. 140. In fact, the product Wamsley wished to sell JD was not a Cal Fed Bank product. It was a product of Cal Fed Financial and Insurance Services, an agency of Cal Fed Investments that does insurance business in the State of California. Tr. 113. Accordingly, correspondence about the product required the approval of the Cal Fed Investments Compliance Department. *Id*. Had the letter written by Wamsley been reviewed by the Compliance Department, it would not have been approved because (1) it was not on appropriate letterhead, (2) it should not have included a statement that the company never paid interest below 5% even when interest rates were below 5%, (3) the title of the product does not have the word "guaranteed" in it, and (4) Cal Fed Investments never offered bonuses for investment customers to buy investments. Tr. 114-15. Any letter, other than a form letter approved by Cal Fed Investments, was required to be reviewed by the Compliance Department before it could be sent. Tr. 185-91.

In November 2000, five months before sending the letter to JD, Wamsley signed an Annual Certification of Compliance/Acknowledgement Form and an Acceptance of the Cal Fed Investment Compliance Manual. In pertinent part, the Compliance Manual states that "[a]ny communication to solicit must be reviewed and approved by Cal Fed

Investments Compliance and Marketing departments before use." CX 8. By signing the Acknowledgement Form he agreed not to "distribute any written/electronic materials which have not been approved by Cal Fed Investments." One month prior to signing the Acknowledgement Form, Wamsley had been cautioned by the Compliance Department with regard to two letters he had sent to clients without Compliance approval. CX 4.

III. JD RESPONDS TO THE LETTER

On April 18, 2001, Wehrle received a handwritten message from Wamsley that JD had called. Tr. 45. Wehrle did not remember JD and asked Wamsley why she had called. Tr. 45-46. He responded that he did not know the purpose of the call. Tr. 46. Wehrle immediately called JD who said that she had received a letter from Wehrle. JD then asked Wehrle specific questions about the offer in the letter and how much money she would make. *Id*. Wehrle was "completely caught off guard" because she was unaware of the contents of the letter. Wehrle struggled to answer JD's questions and "stumbled" through the rest of the conversation. CX 4, at 4. She eventually realized that Wamsley must have sent JD the letter that she refused to authorize and sign. Tr. 46. While she was on the phone with JD, Wehrle looked over at Wamsley, who looked back at her and smiled. Tr. 48. Wehrle pointed a finger at him and said "I can't believe you did this." Tr. 48.

Because JD became upset after realizing that Wehrle was not well informed about the letter, Wehrle offered to set up an appointment with Wamsley. Tr. 69. Because JD did not want to meet with Wamsley again, Wehrle proposed a meeting with a financial consultant instead. Tr. 49, 69. Wehrle promised JD that, to make JD comfortable, she would stay with her during the entire meeting. As a result, JD agreed to come to the

office. Tr. 46-47, 49. After her conversation with JD, Wehrle asked Wamsley why he sent the letter. He responded, while laughing, that the letter should have come from the branch manager, and that "it was no big deal." Tr. 70-71; CX 4, p. 4.

When JD came to the office on April 19, 2001, she showed Wehrle the letter she had received. Tr. 48. Wehrle saw that her purported signature was on the letter, but knew that she had not signed it. *Id.* She also saw the words "guarantee" and "never" and concluded that the letter was the same one that Wamsley urged her to sign on April 10. *Id.* In order "to make it right" for the customer, Wehrle honored the letter by offering JD the bonuses that were promised in the letter. Tr. 50. JD accepted the offer and made the investment in the annuity.

The day after JD came into the office, the Compliance Office began an investigation into the matter. As a result, Wamsley was suspended, and following the investigation, he was terminated later that month. CX 4.

IV. POST-HEARING EX PARTE COMMUNICATION

On Friday, April 26, 2002, one day after the hearing in this proceeding, Wamsley telephoned a member of the Hearing Panel. The Panelist told Wamsley that it was totally inappropriate for him to be calling a Hearing Panelist. Wamlsey stated that he had only a general question, to wit, whether the Panelist thought anyone in the securities industry would hire a broker with a sanction on his record. The Panelist responded that he knew of working brokers with sanctions, but that he should not be talking to Wamsley. Although Wamsely was represented by counsel at the hearing, counsel was unaware that Wamsley intended to make the call to a Panelist.

Discussion

NASD Conduct Rule 2110 states that members "shall observe high standards of commercial honor and just and equitable principles of trade." Rule 0115 extends this requirement to persons associated with members. The ethical and legal obligations set forth in Conduct Rule 2110 are not limited to the sale of securities. Instead, the Rule encompasses a wide variety of unethical business-related conduct. *See Daniel J. Alderman*, Exchange Act Release No. 35,997, 1995 SEC LEXIS 1823, at *7 (July 20, 1995), *aff'd*, 104 F.3d 285, 289 (9th Cir. 1997). Forgery is a violation of Conduct Rule 2110. *See Dist. Bus. Conduct Comm. v. Peters*, No. C02960024, 1998 NASD Discip. LEXIS 42, at ** 4-5 (NAC Nov. 13, 1998) (citation omitted) ("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 *Peters*, the facts were similar to those in this case. There, the respondent forged the signature of a Wells Fargo Bank branch manager on documents that the respondent submitted to Wells Fargo Securities. *Id*. at *7.

Here, Wamsley does not deny that he forged Werhle's signature on the letter that he sent to customer JD. He also admits that he had no authority to sign her name, and that by signing her name without authority, he violated NASD Conduct Rule 2110. Tr. 203-04.

Sanctions

The NASD Sanction Guidelines for forgery recommend a fine of $5,000 to $100,000, and a suspension of up to two years. In egregious cases, the Guidelines call for consideration of a bar. NASD SANCTION GUIDELINES, at 43. Because Wamsley forged

Werhle's signature after she expressly told him not to put her name on the letter to JD, Enforcement seeks a bar. Moreover, Enforcement bolsters its recommendation of a bar by citing Wamsley's ex parte communication to a Panelist as an aggravating circumstance. On the other hand, counsel for Wamsley argues that this was a single, aberrant act in an otherwise spotless career, that his client acted to retain a customer for the Bank, and that no one was harmed by his conduct. Counsel suggests minimum sanctions, conceding that Wamsley was guilty of hubris – he thought he knew better than his young supervisor because he was older, more experienced, knew the product was right for the customer, and that the deal should close. On his own behalf, Wamsley asserts that "in hindsight, [he] can see why contact with a member of the Hearing Panel would be prohibited." Response to May 16, 2002, Order to Show Cause. He also asserts that he acted on the "spur of the moment," and that he does not "recall being verbally informed or being given any written information regarding Rule 9143," which prohibits ex parte communications with an Adjudicator. *Id*.

Forgery is a serious violation of Conduct Rule 2110 because it can undermine the integrity of the market and the industry, as well as the confidence of those who rely on that integrity. Wamsley's forgery of Werhle's signature placed her in an untenable position with respect to customer JD, exposing her to embarrassment because of her unfamiliarity with what was contained in the letter, and to possible sanction because of its contents. It is of no moment that the customer got the benefit of the bargain. The harm resulted because the employer was forced to honor terms that it otherwise would not have offered to the customer. Wamsley admits that he did not have a good faith belief that he had authority to sign Werhle's name. Although he claims a good faith belief that he had

a conversation with Werhle during which she approved the contents of the letter, he could not recall when such a conversation might have occurred. Werhle denies such a conversation, and the Hearing Panel concludes that no such conversation took place. On the contrary, the Hearing Panel finds that Werhle specifically told him to have the letter approved by Compliance before sending it out under his own name. The customer was retained by the Bank, but the forgery was not a benign act.

In *Peters*, the respondent was fined $5,000, suspended in all capacities for 30 days, and required to requalify by examination. *Id.* at *9. In that case, the National Adjudicatory Council found that Peters lack of familiarity with the form on which he forged the branch manager's signature may have contributed to his decision to submit two forms improperly. *Id*. Here, Wamsley's conduct was a deliberate flouting of his supervisor's direction and the firm's compliance requirements. He knew he was not to put the branch manager's name on the letter, and he knew the letter had to be approved by Compliance before it could be sent out. As a former supervisor of Wamsley testified, if an approved form letter were not to be used, even a handwritten note was required to be reviewed by Compliance before it could be sent to a customer. Tr. 189. Wamsley's conduct was not, as he contends, an aberrational lapse of judgment. He had been previously warned by his employer about the use of unapproved correspondence.

The Hearing Panel finds that Wamsley's post-hearing ex parte communication confirms its conclusion that a lengthy suspension is an appropriate sanction in this case. As noted above, Conduct Rule 9143 prohibits ex parte communications with an Adjudicator. Although Wamsley does not recall being given any information concerning Rule 9143, when he was served with the initial procedural Order in the case, he was

given a copy of the Code of Procedure, an Index to that Code, and a Guide describing the disciplinary process. Even if he had been unaware of the specific proscription of such a communication, his contact with a person who is to judge his conduct displays a serious lapse of judgment, warranting a lengthy period of reflection. Although Wamsley characterized his question to the Panelist as "general," it could readily be construed as a plea for exoneration.

The Hearing Panel has also considered that, at the time of the violation, Wamsley was earning only $3,000 per month, and that the most he could have earned on JD's transaction was $250. Consequently, the Hearing Panel does not believe a large fine is appropriate under the circumstances. Because the Hearing Panel believes that Wamsley was not motivated by personal financial gain, and the product being offered was deemed to be an appropriate investment for JD by an independent Cal Fed financial consultant, the Hearing Panel does not find the forgery of the signature, under these circumstances, to be an egregious act that warrants a bar. Rather, the Hearing Panel finds that the maximum suspension of two years is appropriate to deter such conduct and to make clear that forgery is serious misconduct that cannot be tolerated.

Conclusion

For forgery in violation of Conduct Rule 2110, James Richard Wamsley is fined $5,000, suspended from associating with any member firm in any capacity for a period of two years, and assessed costs of $2,050.26, consisting of a $750 administrative fee and a $1,300.26 transcript fee.

These sanctions shall become effective on a date determined by NASD, but not sooner than 30 days from the date this Decision becomes the final disciplinary action of

NASD, except that, if this Decision becomes the final disciplinary action of NASD, the suspension shall commence on October 7, 2002, and end on October 7, 2004, and the fine shall become due and payable upon his re-entry into the securities business.

SO ORDERED.

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Alan W. Heifetz
Hearing Officer
For the Hearing Panel

Copies to:

Via First Class Mail & Overnight Courier
James Richard Wamsley

Via First Class & Electronic Mail
David A. Watson, Esq.
Rory C. Flynn, Esq.