

**NASD OFFICE OF HEARING OFFICERS**

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DEPARTMENT OF ENFORCEMENT,	:	
	:	
Complainant,	:	Disciplinary Proceeding
	:	No. C8A010048
v.	:	
	:	Hearing Officer - AWH
CHRISTIAN W. BAKER	:	
(CRD #1639374),	:	<b>Hearing Panel Decision</b>
Canton, MI	:	
	:	
	:	
Respondent.	:	August 5, 2002

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**Registered representative found liable for (1) structuring currency transactions and evading currency reporting requirements; (2) causing a member firm to fail to file a currency transaction report; and (3) causing a member firm to fail to maintain accurate books and records; all in violation of NASD Conduct Rule 2110. Respondent found not liable for mishandling customer funds. For violations of NASD Conduct Rule 2110, Respondent barred from association with any NASD member firm in any capacity.**

Appearances:

Kevin G. Kulling, Esq., and Mark A. Koerner, Esq., for the Department of Enforcement

Mark L. Kowalsky, Esq., and Gary Saretsky, Esq., for Christian W. Baker

**DECISION**

On July 10, 2001, the Department of Enforcement (“Enforcement”) filed the Complaint in this matter, alleging that Christian W. Baker (“Baker” or “Respondent”) violated NASD Conduct Rule 2110 by: (1) mishandling customer funds; (2) structuring currency transactions to evade federal reporting requirements; (3) causing an NASD member firm to fail to file a Currency Transaction Report (“CTR”); and (4) causing an NASD member firm to fail to maintain accurate books and records. On August 2, 2001, Respondent filed an Answer to the

Complaint, denying the allegations against her. A hearing was held in Troy, Michigan, on February 26, 2002, before a Hearing Panel composed of the Hearing Officer and two current members of District Committee No. 8. Both parties filed post-hearing briefs.

## **Findings of Fact<sup>1</sup>**

### **I. BACKGROUND**

Christian W. Baker entered the securities industry in 1986 as an Investment Company/Variable Contracts Representative of an NASD member. Tr. 45-46. She has been employed with several broker-dealers since her entry into the industry. In August 1989, she became an Investment Company/Variable Contracts Principal, and in April 1992, she became a General Securities Representative. CX 1, Tr. 45-46. From February 1995 to June 1999, the time period pertinent to the allegations in the Complaint, she was registered with NASD through Comerica Securities (“Comerica”) as a General Securities Representative. CX 1. In June 1999, Baker left Comerica to join Edward Jones & Co., L.P. (“Edward Jones”), where she is currently registered as a General Securities Representative. *Id.*

The Comerica Securities branch in which Baker worked part-time was located in a Comerica Bank building. To reach the Comerica Securities office, a customer would enter the front door of Comerica Bank (“the Bank”) and then, instead of proceeding straight ahead to the Bank, enter a doorway on the right. Comerica Securities had its own lobby area and two offices for registered representatives. It also housed a storage area, bathrooms, and a kitchen, which were common areas for the Bank and the Securities offices. Tr. 47.

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<sup>1</sup> References to Enforcement’s exhibits are designated as CX\_; Respondent’s exhibits, as RX\_; and the transcript of the hearing, as Tr.\_.

## **II. COMERICA'S POLICY ON THE RECEIPT OF CASH AND CURRENCY TRANSACTION REPORTING REQUIREMENTS**

On September 10, 1997, Comerica held a special training seminar on money laundering, accepting cash, and cash transaction reporting. Tr. 113-14; CX 26, 27. A sign-in sheet bearing Baker's signature shows that she attended the session. At hearing, Baker testified that she did not remember attending the session, but conceded that she was "evidently" there for at least "part of the time." Tr. 113-14. She does not believe that she received the written materials from that seminar. *Id.*

On May 20, 1998, Baker received a copy of the Comerica Securities Compliance Manual (the "Manual"). CX 25. The Manual contained a copy of an Internal Revenue Service Currency Transaction Report ("CTR"), and Instructions, stating that, pursuant to 31 C.F.R. § 103.22, a CTR must be filed with the federal government for any currency transaction involving more than \$10,000. *Id.* Comerica Securities included a copy of a CTR in the manual "to ensure compliance with SEC Rule 17a-8," which requires every broker or dealer to comply with federal reporting requirements involving currency transactions. *Id.* Although it included the CTR in its manual, Comerica Securities had a policy that specifically prohibited its employees from accepting cash from customers. *Id.* Baker never read or consulted the Compliance Manual, and she was unaware that it contained a copy of the CTR and its instructions. Tr. 117-18.

## **III. CUSTOMER DS**

DS is a 54 year old public customer who began investing with Baker more than ten years ago. Between 1967 and 1980, he worked for a construction company as a carpenter, foreman, and, ultimately, superintendent. Tr. 207. He frequently worked overtime. He always received his compensation by check. *Id.* After he left the construction company, he continued working

for assorted contractors in the construction industry until about 1992. Tr. 207-08. He has also owned and maintained several rental properties. Tr. 209-10. Since he left the construction industry, he has been a volunteer patient advocate for the elderly. Part of his duties involve assisting in the administration of estates. He has referred several clients to Baker. Tr. 57, 211-12.

DS always liked to have cash on hand, and he did not care for balancing checkbooks. He used the cash for general purposes and, later, specifically to purchase gifts for his wife or himself in a way that his wife would not become aware of their cost. Tr. 216, 218-19. Initially, DS stored cash in a wooden box under his bed. In 1969, he acquired a safe to store his cash. Tr. 216, 237. After his marriage in 1974, he would cash his construction paychecks and put the amount earned from overtime in the safe. Tr. 216-17. He considered the cash to be his “rainy day” fund and kept it secret from his wife. Tr. 216, 231.

DS began investing with Baker in 1990 and continues to do so to the present. He and Baker have a business, not social, relationship. Tr. 58, 214. DS considers himself a knowledgeable investor with extensive experience. Tr. 233, 254. He maintained several individual and joint family accounts at Comerica Securities through Baker, with assets totaling more than \$2 million. Tr. 58-60. DS estimated his individual net worth in early 1999 at more than \$1 million. Tr. 219. On several occasions, DS mentioned to Baker that he kept a large amount of cash locked in a safe. Tr. 60-63. Baker did not know the source or amount of the cash, but she recommended that he invest it. Tr. 62-63, 65.

#### The Transfer of Cash to Comerica Securities

DS agreed to meet with Baker to invest \$50,000 of his cash in a mutual fund and two Internet stocks. Tr. 66-67. On February 19, 1999, DS entered Baker’s office with a Russian-

style hat containing \$50,000 in cash. Tr. 68, 222. After DS closed the door to Baker's office, the two hand-counted the money several times. Tr. 69, 262. DS did not tell Baker about the source of the cash, nor did she ask about the source. She did not inquire whether he had reported the money as income and had paid taxes on it. Tr. 65. She assumed that the money came from his paychecks. *Id.*

In order to avoid probate, Baker advised DS not to open the account in his name alone. Because he did not want his wife to become upset over any volatility in the account, DS instructed Baker to open the new account in the name of his mother, CS, using her social security number and date of birth. Tr. 99, 100-01, 320. DS was listed second on the account. CX 3. As a result of this arrangement, account statements and tax reporting statements were issued in CS's name. Tr. 143. Moreover, DS did not want the account statements sent to his home address or to his mother's address. Tr. 267, 321-23. Therefore, Baker initially indicated on the form that the statements should be sent to her own home address. CX 3; Tr. 322. After hearing her assistant's concerns about that procedure, Baker crossed out her address and inserted the address of the Comerica branch office. CX 3; Tr. 100, 143. The statements were sent to the Comerica branch office, where DS periodically retrieved them. Tr. 236-37, 263. He would then store the statements in his safe with the remaining cash. Tr. 237.

During their meeting, Baker mentioned to DS that she thought there might be some sort of reporting requirement for large cash transactions. Tr. 70-72, 247. From her several years of experience in a bank environment, she thought "there was something about \$10,000." Tr. 71. From what Baker said, DS was under the impression that such reporting had to do with drug dealers. He insisted that he did not want the transaction reported because he did not want to be associated with drug dealers. Tr. 71-72, 251. DS felt so strongly about the suggestion of such an

association that he was prepared to put the cash back in his safe if the transaction had to be reported. Tr. 251.

Baker then told DS that she would find out what the reporting requirement would be. She stepped out of her office into the lobby area where she encountered a passing bank teller. Baker informed the teller that she had a client who was “not comfortable” with any reporting requirements, and that they needed to know what those requirements were. Tr. 72-74. The teller responded that the reporting was “no big deal,” but informed her that cashier’s check transactions involving less than \$3,000 in cash did not need to be reported. Tr. 74, 77-78. In the past, Baker had obtained cashier’s checks from the Bank for customers of Comerica Securities who had brought in less than \$3,000 in cash. Tr. 78-79.

When Baker returned to the office, she informed DS that reporting was not required as long as the cash was deposited over time in increments of less than \$3,000. Tr. 74, 249-50. DS told her that he wanted to proceed with such an arrangement. Tr. 75, 252. He left the office, leaving the cash in Baker’s possession. Tr. 108, 270. DS had the understanding that Baker would keep the cash in a locked drawer and deposit it into the account over time, but he did not know how much, or over what time intervals. Tr. 253-54.

Baker neither recorded the receipt of \$50,000 in cash nor notified Comerica Securities or the Department of the Treasury that she received the cash. Tr. 122, 314-16. Consequently, Comerica Securities did not file a CTR or record the receipt of cash on its books and records. Baker could not recall whether she gave DS a receipt for the cash. Tr. 108, 309.

#### **IV. THE PURCHASE OF CASHIER’S CHECKS – FEBRUARY 19, 1999, TO MAY 26, 1999**

On February 19, 1999, after DS left her office, Baker completed and presented to various tellers separate Comerica Bank check requisition forms requesting, in exchange for cash, four

cashier's checks, each for less than \$3,000. CX 4-6, 17. She completed separate forms for each check even though the teller had told her that she could request up to four cashier's checks on each request form. The form contained four lines for separate check requests. Tr. 74; CX 4-17. Baker kept the balance of the \$50,000 in a locked drawer in her office.<sup>2</sup> Tr. 82-83. She also kept copies of the cashier's checks in DS's file. Tr. 292.

Between February 19, 1999 and May 26, 1999, Baker invested the entire \$50,000, after periodically requesting cashier's checks for less than \$3,000 from eight different tellers. CX 4-17. Baker presented all but two of the requisition forms to bank tellers for the exchange of cash for cashier's checks.<sup>3</sup> *Id.*; Tr. 235-36. Baker did not inform any of the tellers that the cashier's checks were for deposit into a single brokerage account, or that the cash was part of the \$50,000 that she had received at one time, but was exchanging over time. Tr. 86-87.

## **Discussion**

### **I. NASD CONDUCT RULES, SEC RULES, AND FEDERAL REPORTING REQUIREMENTS**

#### **1. NASD Conduct Rule 2110 and SEC Rules 17a-3 and 17a-8**

NASD Conduct Rule 2110 obliges an associated person<sup>4</sup> to "observe high standards of commercial honor and just and equitable principles of trade." *DBCC v. Roach*, No. C02960031, 1998 NASD Discip. LEXIS 11, at \*16 (NBCC Jan. 20, 1998) (citations omitted). Violations of federal securities laws "are viewed as violations of Conduct Rule 2110 without attention to the surrounding circumstances because members of the securities industry are expected and required

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<sup>2</sup> On one occasion, Baker removed the cash from her office and placed it in the trunk of her car, where it remained over the weekend. There is no evidence that Baker left the car in an unsecured area.

<sup>3</sup> DS' name appears as the applicant on the other two requisition forms.

<sup>4</sup> General Provision 0115 extends the obligations of Conduct Rule 2110 to associated persons, as well as members.

to abide by the applicable rules and regulations.” *DOE v. Aleksandr Schwarts*, No. CAF980029, 2000 NASD Discip. LEXIS 6, at \*\*12-13 (June 2, 2000) (citations omitted).

The purposes of the federal securities laws, as set forth in the Exchange Act “are broad and encompass far more than the protection of investors.” *William J. Haberman*, Exchange Act Rel. No. 40673, 1998 SEC LEXIS 2466, at \*12 (Nov. 12, 1998) (citations omitted). Among those purposes are protecting “the Federal taxing power, [and protecting and making] more effective the national banking system and Federal Reserve System.” 15 U.S.C. § 78b (2002). To that end, SEC Rule 17a-8 specifically requires that every broker or dealer registered pursuant to 15 U.S.C. 78o must comply with the currency transaction reporting requirements of 31 C.F.R. Part 103. Separately, SEC Rule 17a-3 requires every broker or dealer registered pursuant to 15 U.S.C. 78o to keep an itemized daily record of all receipts of cash. NASD Conduct Rule 3110 specifically obliges NASD members to comply with SEC Rule 17a-3. All persons associated with an NASD member are also required to comply with SEC Rule 17a-3. NASD General Provision 0115.

## **2. Federal Currency Transaction Reporting Requirements**

### General Requirements

Financial institutions, which are defined to include brokers or dealers registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, are required to report cash transactions of more than \$10,000 to the federal government, pursuant to 31 U.S.C. § 5313 (2002) and the regulations promulgated thereunder. That section of the United States Code provides:

When a domestic financial institution is involved in a transaction for the payment, receipt, or transfer of United States coins or currency [in an amount prescribed by the Secretary of the Treasury], the institution and any other participant in the transaction the Secretary shall prescribe, shall file a report on the transaction at the time and in the way the Secretary prescribes.



To implement that section of the United States Code, the Secretary of the Treasury promulgated regulations (31 C.F.R. Part 103 (2002)), requiring “certain reports or records where they have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.” 31 U.S.C. § 5311 (2002). The reporting regulation, codified at 31 C.F.R. § 103.22(b)(1), provides that domestic financial institutions “shall file a report of each deposit, withdrawal, exchange of currency or other payment or transfer, by, through, or to such financial institution which involves a transaction in currency of more than \$10,000, except as otherwise provided in this section.”

As defined by the regulations, a “domestic financial institution” includes “[e]ach agent, agency, branch, or office within the United States of any person doing business, whether or not on a regular basis or as an organized business concern” as a “broker or dealer in securities, registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934.” 31 C.F.R. § 103.11(n, f). A “transaction in currency” is defined as “a transaction involving the physical transfer of currency from one person to another.” 31 C.F.R. § 103.11(ii)(2).

To comply with the reporting requirements of 31 C.F.R. § 103.22, financial institutions must file a Currency Transaction Report. The CTR instructions mandate that currency transactions over \$10,000 be reported. The instructions also provide that when a currency transaction over \$10,000 is suspicious, the financial institution should file, in addition to a CTR, a separate report that indicates the suspicious nature of the transaction.

### Separate requirements for cashier's checks

31 C.F.R. § 103.29(a) provides that “[n]o financial institution may issue or sell a bank check or draft, cashier’s check, money order or traveler’s check for \$3,000 or more in currency unless it maintains records” of certain specified information that identifies the amount and type of the instrument purchased and verifies the identity of the purchaser. There are no exceptions to this regulation.

### Prohibition of structuring transactions to evade reporting requirements

The anti-structuring statute, 31 U.S.C. § 5324(a)(1)(2002), provides that no person shall “cause or attempt to cause a domestic financial institution to fail to file a report required under section 5313(a) . . . or any regulation prescribed under . . . such section” for the purpose of evading those reporting requirements. Furthermore, under § 5324(a)(2), no person may “structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions” in order to evade the reporting requirements.

## **II. Baker Failed to File a CTR and Caused Comerica Securities to Fail to File a CTR**

As a broker or dealer registered under the Securities Exchange Act of 1934, Comerica Securities is a “domestic financial institution” subject to the reporting requirements of 31 C.F.R. Part 103. As an agent of Comerica Securities, Baker came within the definition of a “domestic financial institution” and was subject to the same reporting requirements.

When DS gave \$50,000 in cash to Baker at the office of Comerica Securities, that act was a “transaction in currency” because it involved the “physical transfer of currency from one person to another.” 31 C.F.R. § 103.11(ii)(2). Because that transaction was over \$10,000, it triggered the reporting requirements of 31 C.F.R. § 103.22(b)(1) which obligated both Comerica Securities and Baker to file a CTR. Baker did not file such a report, and Comerica, because it

was kept unaware of the transaction, also did not file a CTR. Accordingly, both Baker and Comerica Securities failed to comply with 31 C.F.R. § 103.22. Failure to file a CTR is also a violation of SEC Rule 17a-8, which requires compliance with 31 C.F.R. § 103.22. In turn, a violation of federal securities laws, such as SEC Rule 17a-8, is a violation of NASD Conduct Rule 2110. Therefore, by failing to file a CTR, Baker violated Conduct Rule 2110. Moreover, by causing Comerica Securities to fail to comply with the reporting requirements, she acted unethically, in violation of Conduct Rule 2110.

#### Baker's defenses are unavailing

Baker argues that Comerica Securities was not obligated to file a CTR because Comerica Securities was exempt from reporting the transfer of currency between itself and Comerica Bank. However, that argument fails on two grounds. First, the transfer that gave rise to the reporting requirement was the transfer of the cash from DS to Baker as an agent of Comerica Securities. Regardless of the use to which the cash was put, both Comerica Securities and Baker were obliged to report the receipt of the \$50,000, at the time it was received. Second, the transfer of cash from Comerica Securities to Comerica Bank was not exempt from reporting. There are two exemptions to the reporting requirements of 31 C.F.R. § 103.22: (1) a non-bank financial institution does not have to file a report with respect to a currency transaction between the institution and a commercial bank and (2) a bank is not required to file a report with respect to a currency transaction between an exempt person and that bank. 31 C.F.R. § 103.22(d)(1). Exempt persons are described as certain businesses that frequently engage in transactions with a bank in excess of \$10,000. However, there is a limitation to these exemptions set forth in § 103.22(d)(7) – the exemption is not available for a transaction carried out by an exempt person “as an agent for another person who is the beneficial owner of the funds that are the subject of a

transaction in currency...” As a result, a transaction between Comerica Securities and Comerica Bank involving \$50,000 that belongs to DS is not exempt from the reporting requirement.

Baker argues that Enforcement is attempting to expand the Complaint by alleging that she violated Comerica Securities’ internal rule that prohibited the receipt of cash from a customer. However, there is no allegation by Enforcement that Baker’s violation of that internal rule violated any NASD rule. Moreover, Baker relies on Comerica Securities’ prohibition on the receipt of cash to argue that she, and not Comerica Securities, received the \$50,000. Regardless of the internal prohibition of the receipt of cash, it is the actual receipt of the cash that obligated both Baker and Comerica Securities to file a CTR. In short, the prohibition of the receipt of cash does not affect the resolution of any issue in this proceeding.

Baker argues that the CTR instructions provide that the form need only to be completed if a transaction is both over \$10,000 and suspicious. That argument is disingenuous. The instructions distinctly state that a financial institution “must file Form 4789 (CTR) for each . . . transfer, by, through, or to the financial institution which involves a transaction in currency which involves more than \$10,000.” The instructions state that a CTR should not be used “to note that a transaction of more than \$10,000 is suspicious.” In the case of a suspicious transaction over \$10,000, the instructions direct financial institutions to file a CTR as well as another form that specifically indicates the suspicious nature of the transaction: “If a transaction is suspicious *and* in excess of \$10,000 in currency, then *both* a CTR and the appropriate referral form must be used.” (emphasis added).

Finally, Baker asserts that, contrary to the allegation in the Complaint that she failed to inform Comerica Securities of the receipt of \$50,000 in cash from DS, she did put Comerica Securities on notice of the transactions by telling her assistant and another broker at her office of

the cash, and by keeping copies of the cashier's checks in her office files. However, neither her subordinate nor her fellow broker had any obligation to file a CTR or take any other action as a result of information Baker may have relayed to them about her receipt of the currency. Baker failed to tell anyone in the chain of command who had the authority and obligation to file the CTR, action that she, herself, failed to take. Baker does not explain how receipts of checks kept in a file in her office would prompt anyone else at Comerica Securities to file a report that \$50,000 was received before those checks were issued.

### **III. BAKER STRUCTURED TRANSACTIONS FOR THE PURPOSE OF EVADING CURRENCY TRANSACTION REPORTING REQUIREMENTS**

Comerica Bank was a commercial bank and, therefore, a financial institution as defined by 31 C.F.R. § 103.11. Accordingly, it had an obligation to record the sale of cashier's checks of \$3,000 or more. 31 C.F.R. § 103.29. As noted above, the anti-structuring statute prohibits any person from structuring a transaction in a way that causes a financial institution to fail to comply with the reporting regulations. The reports required by those regulations are highly useful in criminal, tax, and regulatory investigations and proceedings. A violation of the anti-structuring statute undermines the purposes of the federal securities laws, as set forth in the Exchange Act, because such a violation is inimical to the federal taxing power and the integrity of the national banking system. Therefore, a violation of that statute is a violation of NASD Conduct Rule 2110.

Instead of purchasing one cashier's check for the \$50,000 she received from DS on February 19, 1999, Baker purchased 24 separate cashier's checks for less than \$3,000 each, over a four-month period. The express purpose of her conduct was to prevent the bank from complying with a reporting requirement promulgated under 31 U.S.C. § 5313(a). Therefore,

Baker structured those 24 transactions, in violation of 31 U.S.C. § 5324. The purpose of the reporting requirements of 31 U.S.C. § 5313(a) is not limited to the apprehension of drug dealers. That statute, among other purposes, protects the taxing power of the United States Government, as well as inhibits the flow of cash to terrorist organizations. Baker's conduct undermined those purposes, as well as those of the federal securities laws. Accordingly, her conduct violated NASD Conduct Rule 2110.

Baker argues that her conduct should be excused because she relied on the advice of a Comerica Bank teller. This argument fails because Baker cannot avoid responsibility for her own actions. "Participants in the securities industry must take responsibility for compliance with regulatory requirements and cannot be excused for lack of knowledge, understanding, or appreciation of these requirements." *Thomas C. Kocherhans*, Exchange Act Rel. No. 36556, 1995 SEC LEXIS 3308, at \*9-10 (Dec. 6, 1995) (citations omitted). Moreover, there is no evidence that the bank teller who happened to pass by Baker's office had any expertise in currency reporting requirements, that she fully understood or was informed of the facts surrounding Baker's receipt of the \$50,000, or that she had any rationale or explanation for how Baker's actions could constitute a legitimate exception to the reporting requirements.

#### **IV. BAKER CAUSED COMERICA SECURITIES TO FAIL TO MAINTAIN ACCURATE BOOKS AND RECORDS**

Comerica Securities is a member of NASD and is registered with the SEC pursuant to 15 U.S.C. 78o. Therefore, pursuant to SEC Rule 17a-3, it had an obligation to keep an itemized daily record of all receipts of cash. As a person associated with an NASD member, Baker had the same obligation. Baker failed to report the receipt of cash from DS to Comerica Securities, and, as a result, Comerica Securities did not enter the receipt of that cash on its books and

records, as required by SEC Rule 17a-3 and NASD Conduct Rule 3110. By causing Comerica Securities to violate both an SEC Rule and an NASD Conduct Rule, Baker violated NASD Conduct Rule 2110.

Baker argues that DS never gave his cash to Comerica Securities, “but instead gave his cash to Ms. Baker to hold, until the currency was exchanged at the bank for cashiers (sic) check for deposit at Comerica Securities.”<sup>5</sup> Respondent’s Post-Hearing Brief, at 16. However, Baker accepted the cash as an agent of Comerica Securities, in the Comerica Securities branch office, and with the intent of opening a Comerica Securities brokerage account and investing the entire amount in securities. Under the circumstances, Baker cannot separate herself from her principal, Comerica Securities. Her receipt of the cash was Comerica Securities’ receipt of the cash. Consequently, Comerica Securities was obligated to report its receipt on its books and records.

#### **V. Baker Did Not Mishandle Customer Funds**

“Improper use of funds occurs when a respondent fails to apply a customer’s funds as directed or uses the funds for a purpose that was not directed by the customer.” *DBCC v. Jones*, No. C02970023, 1998 NASD Discip. LEXIS 60, at \*7 (NAC Aug. 7, 1998). Here, Baker accepted cash from a customer, stored it in her desk drawer (except for once removing it to the trunk of her car), and used it to purchase cashier’s checks in a manner that violated federal law. While her storage of the cash may be criticized as imprudent, and her use of it, illegal, Baker acted in accordance with the express wishes of her customer. DS, who testified in this proceeding, never criticized or complained of any action Baker took with regard to his money. Under the circumstances, Baker’s actions do not amount to mishandling her customer’s funds, in violation of Conduct Rule 2110, as charged in the Complaint. *See Ronald L. Russo*, No.

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<sup>5</sup> Although this argument was made in the context of defending against Count IV of the Complaint – causing a member to fail to maintain accurate books and records – it must also apply to the analysis whether Comerica Securities had a duty to report its receipt of the cash at the time it was given to Baker.

C3A910070, 1992 NASD Discip. LEXIS 66, at \*19 (NBCC June 29, 1992) (holding customer's check for two weeks without turning check over to member firm was not improper use of funds where done with customer's knowledge and approval).

### **Sanctions**

Enforcement requests that Baker be barred for her misconduct, which it argues was egregious. The Hearing Panel agrees that a bar is the appropriate sanction in this case. The Hearing Panel finds that her conduct was intentional and specifically designed to evade the reporting requirements mandated by federal law. She had received training on the requirement to report currency transactions, knew there was "something about \$10,000," yet she contented herself with a response from a passing teller to her incomplete inquiry about reporting requirements. The fact that the teller mentioned a reporting requirement for amounts over \$3,000 did not prompt Baker to consult with her supervisor or the Comerica Securities compliance department to determine what the "something about \$10,000" was all about.

She may have assumed that her customer was not a drug dealer trying to launder cash; but she had no information whether he had paid taxes on the cash or was attempting to launder the cash for someone else. Regardless of what she may have assumed about her customer, any assumption she may have made about him was not a legitimate excuse to evade the reporting requirements. By structuring the transaction over a period of three months, she engaged in a pattern of conduct over a lengthy period of time in order to deceive her member firm and federal regulatory authorities. By so doing, she retained a customer who threatened to remove the \$50,000 he intended to invest with her, if she did not agree to evade the reporting requirements.

The seriousness of Baker's conduct is reflected by the statutory penalty prescribed for a structuring violation – a fine in accordance with Title 18 United States Code, imprisonment for



not more than 5 years, or both. 53 U.S.C. § 5324(c). As Enforcement points out, this is not a criminal proceeding, but the evidence “comes perilously close to establishing a prima facie criminal violation.”

Baker’s arguments for a lesser sanction are not persuasive. First, she argues that because other employees are not named as respondents, she has been the victim of selective enforcement. However, to establish selective enforcement, a respondent must show “that she was singled out for enforcement while others who were similarly situated were not and that her prosecution was motivated by arbitrary or unjust considerations, such as race, religion, or the desire to prevent a constitutionally-protected right.” *Roach*, at \*19 n.13. (citing *George H. Rather*, Exchange Act Rel. No. 36688, 1996 SEC LEXIS 85, at \*6 (Jan. 5, 1996), rejecting a claim of selective enforcement where NASD knew of more serious violations by respondent’s firm and other employees, but chose only to file a complaint against respondent). Here, no other person was in a situation similar to that of Baker. It was she who accepted the cash and decided to structure the transaction to avoid the reporting requirements. Moreover, there is no evidence of any prosecutorial bias against Baker, let alone the type of invidious discrimination that would have to be shown in order to demonstrate selective prosecution.

Second, Baker asserts her clean record in the securities business. However, while the existence of a disciplinary history is an aggravating factor, its absence is not mitigating:

Registered individuals are required as part of the terms of their admission to the securities industry to comply with the NASD's Rules and observe high standards of conduct. We are not compelled to reward a respondent because he has acted in the manner in which he agreed (and was required) to act when entering this industry as a registered person.

*DOE v. Mark S. Balbirer*, No. C07980011, 1999 NASD Discip. LEXIS 29 (NAC Oct. 18, 1999).

Third, Baker argues that her involvement with the cash was limited to a single transaction. However, the evidence demonstrates that although she received the \$50,000 in cash at one time, she engaged in a pattern of misconduct, obtaining 24 cashier's checks over a period of three months.

Fourth, Baker argues that the currency reporting rules are complicated, and that her conduct was neither intentional nor reckless. However, the rules are quite simple: any amount over \$10,000 must be reported. Baker points to information on the NASD website which alerts members to the USA Patriot Act that imposes new anti-money laundering requirements on brokerage firms. However, while the passage of this new legislation heightened the scrutiny of currency transactions, there is no evidence that it had as one of its purposes the clarification of any pre-existing statutes or regulations concerning currency transaction reporting. Moreover, if Baker had any question about proper procedure for reporting currency transactions, her remedy was to consult her training materials, her compliance manual, her immediate supervisor, or Comerica Securities' compliance personnel. In the absence of such consultation, her decision to proceed in the face of rules which she found were subject to varying interpretations was reckless.

Finally, Baker argues that had she been warned by NASD or her employer, and disregarded the warning, "a harsh sanction would be understandable." Respondent's Brief, at 20. That scenario is precisely what happened in this case. NASD Conduct Rules require compliance with SEC rules. SEC rules require compliance with currency transaction reporting rules. The Comerica Securities Compliance Manual required compliance with the currency transaction reporting requirements and included a copy of the CTR to ensure such compliance. Comerica Securities held a training seminar on money laundering, accepting cash, and cash transaction reporting requirements 17 months before DS walked into her office with \$50,000 in cash. Baker

had been duly warned about the acceptance of cash and the reporting requirements. She disregarded those warnings. In any event, she was bound to comply with the currency transaction reporting rules, even in the absence of any particular warning by a broker-dealer or regulator.

### **Conclusion**

Because the violations alleged in the Complaint and proved at the hearing arise out of a single course of action, the Hearing Panel has aggregated those violations for the purpose of determining sanctions. As a result, for (1) structuring currency transactions and evading currency reporting requirements, (2) causing a member to fail to file a currency transaction report, and (3) causing a member to fail to maintain accurate books and records, all in violation of NASD Conduct Rule 2110, Christian W. Baker is barred from associating with any member firm in any capacity. The bar shall become effective immediately if this Decision becomes the final disciplinary action of NASD.

**SO ORDERED.**

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Alan W. Heifetz  
Hearing Officer  
For the Hearing Panel

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