

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

MICHAEL HANCHAR
(CRD No. 2051679),
c/o Four Mile Correctional Center Unit C
P.O. Box 200
Cañon City, CO 81215-0200,

Respondent.

Disciplinary Proceeding
No. C3A040009

Hearing Officer—Andrew H. Perkins

PANEL DECISION

September 23, 2004

Respondent converted customer funds, in violation of NASD Conduct Rules 2330 and 2110, and failed to respond to requests for information, in violation of NASD Conduct Rule 2110 and NASD Procedural Rule 8210. The Respondent is barred from association with any member firm in any capacity for each violation.

Appearances

Jacqueline D. Whelan, Regional Counsel, Denver, CO (Rory C. Flynn, Chief Litigation Counsel, Washington, D.C., Of Counsel) for the Department of Enforcement.

Michael Hanchar appeared on his own behalf.

DECISION

I. Introduction

On February 18, 2004, the Department of Enforcement (“Enforcement”) filed the Complaint against the Respondent Michael Hanchar (“Hanchar” or the “Respondent”).

The Complaint contains two causes of action. In the first cause of action, the Complaint

alleges that the Respondent violated NASD Conduct Rules 2330 and 2110 by converting approximately \$772,000 from five customers. In the second cause of action, the Complaint alleges that the Respondent violated NASD Conduct Rule 2110 and NASD Procedural Rule 8210 by failing to respond to two written requests for information issued by NASD staff pursuant to Rule 8210.

On April 13, 2004, the Office of Hearing Officers received a copy of Hanchar's Answer, which he had sent to Enforcement in Denver, CO. In his Answer, the Respondent admits the violations in the Complaint and waives his right to a hearing. Consequently, the Hearing Officer directed Enforcement to file a written summary of the evidence supporting the allegations in the Complaint, and granted the Respondent leave to file any additional materials he would like the Hearing Panel to consider. Enforcement filed a written summary of the evidence and exhibits on May 17, 2004; the Respondent filed nothing further.

Based on the admissions in the Respondent's Answer and the evidence submitted by Enforcement, the Hearing Panel finds the Respondent converted customer funds and failed to respond to NASD staff's written requests for information. Further, as discussed below, the Hearing Panel concludes that the Respondent should be barred from the securities industry.

II. Findings of Fact and Conclusions of Law

A. Background

Hanchar was registered with NASD member Liberty Funds Distributor, Inc. ("Liberty Funds") from January 1, 1998, until his registration was terminated on November 13, 2002. In addition, Hanchar was associated with NASD member Stein Roe & Farnham Incorporated ("Stein Roe"), an affiliate of Liberty Funds, from July 1996

until November 8, 2002.¹ Since November 2002, Hanchar has not been associated or registered with any NASD member.² He is currently incarcerated with the Colorado Department of Corrections in Cañon City, CO.³

Generally, Liberty Funds limited its business to the underwriting of shares of mutual funds managed by Liberty Funds' affiliates. The affiliates, including Stein Roe, are investment advisors registered with the Securities and Exchange Commission. One of the products offered by Stein Roe was "Counselor," an asset allocation program that used certain mutual funds distributed by Liberty Funds as the underlying investments.⁴

Hanchar was an employee of Liberty Funds' transfer agent, Liberty Funds Services, Inc. ("Liberty Services"), and a manager in the Counselor service group, managing representatives who provided information and services to current and prospective shareholders regarding the Counselor product.⁵

On January 13, 2003, Liberty Funds submitted an amended Form U-5 on Hanchar's behalf that reported that after he voluntarily left Liberty Funds it determined that he might have made unauthorized redemptions and wire transfers from customers' accounts.⁶ The amended Form U-5 further stated that Liberty Funds had referred the matter for criminal prosecution. Ultimately, Hanchar pled guilty to "Class Four Felony

¹ Hanchar was registered for various periods as an investment advisor through Stein Roe. (Ex. 1, at 6.)

² Ex. 1, at 4–5. Hanchar is subject to NASD jurisdiction pursuant to Article V, Section 4 of NASD's By-Laws, because the Complaint, which was filed within two years of the termination of his registration with Liberty, charges him with misconduct that commenced while he was registered, and with failing to respond to requests for information that NASD staff issued pursuant to Procedural Rule 8210 during the two-year period following the termination.

³ Ans. at 1.

⁴ Ex. 2, at 1.

⁵ Ex. 2.

⁶ Ex. 1, at 15.

Theft,” and, on September 29, 2003, he was sentenced to six years in prison.⁷ Hanchar’s conviction was based on his conversion of funds from the five mutual fund customers referenced in the First Cause of Complaint.⁸

NASD staff opened the investigation that led to the filing of the Complaint in this disciplinary proceeding based on the amended Form U-5.

B. Conversion

The Hearing Panel finds that Hanchar violated NASD Conduct Rules 2330 and 2110. He converted a total of \$772,170.82 by unlawfully making redemptions from the Counselor mutual fund accounts of five customers, as alleged in the First Cause of Complaint. Hanchar effected the unauthorized redemptions and wired the proceeds to three bank accounts of other, unrelated shareholders, and subsequently transferred the proceeds to bank accounts he controlled.⁹ Once Liberty Funds discovered his unlawful activities it reversed all of the transactions.¹⁰ Accordingly, the mutual fund customers did not sustain a loss.

C. Failure to Provide Information

The Second Cause of Complaint alleges that, in connection with the investigation into Hanchar’s conversion of funds described above, NASD staff served Hanchar with two written requests for information pursuant to NASD Procedural Rule 8210 dated January 28, 2003, and February 21, 2003. The staff sent the requests to Hanchar at his CRD address by first class and certified mail. NASD staff received a signed receipt for

⁷ Ans. at 2.

⁸ *Id.*

⁹ Ex. 2, at 2.

¹⁰ *Id.*

each certified mailing. The first receipt was signed by “Michael Hanchar” on February 21, 2003,¹¹ and the second receipt was signed by “M. Hanchar” on March 1, 2003.¹² In his Answer, Hanchar admits that he received the first request and did not respond.¹³ In addition, Hanchar did not respond to the second request.¹⁴ Accordingly, the Hearing Panel finds that Hanchar violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

III. Sanctions

The Hearing Panel concludes that Hanchar should be barred for each violation, which sanctions are consistent with the NASD Sanction Guidelines.¹⁵ Although he admitted his wrongdoing, this is insufficient mitigation to warrant lesser sanctions under the facts and circumstances of this case.

IV. Order

Michael Hanchar is barred from association with any member firm in any capacity for conversion of customer funds, in violation of NASD Conduct Rules 2330 and 2110, and for failing to respond to two requests for information, in violation of

¹¹ Ex. 8, at 3.

¹² Ex. 9, at 4.

¹³ Ans. at 2.

¹⁴ Ex. 10.

¹⁵ NASD Sanction Guidelines 39, 42 (2001 ed.).

NASD Conduct Rule 2110 and NASD Procedural Rule 8210. Each bar shall become effective once this decision becomes the final disciplinary action of NASD.

Andrew H. Perkins
Hearing Officer
For the Hearing Panel

Copies to:

Michael Hanchar (first-class mail)¹⁶
Jacqueline D. Whelan, Esq. (first-class and electronic mail)
Rory C. Flynn, Esq. (first-class and electronic mail)

¹⁶ According to Hanchar's Answer, he is not permitted to receive mail at the prison by overnight delivery or facsimile. Accordingly, the Decision is sent by first-class mail to the address specified in the Answer.