

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

BRAD D. WILSON
(CRD No. 1392130),

Respondent.

Disciplinary Proceeding
No. C07040086

Hearing Officer – DRP

PANEL DECISION

July 7, 2005

Respondent is suspended for 60 days and fined \$5,000 for affixing a notary public's signature and seal to a firm form, in violation of NASD Conduct Rule 2110.

Appearances

For the Department of Enforcement: Gene E. Carasick, Regional Counsel, Atlanta, GA (Rory C. Flynn, Esq., Washington, DC, Of Counsel).

For the Respondent: Peter B. King, Esq., Fowler White Boggs Banker P.A., Tampa, FL.

DECISION

I. Procedural History

The Department of Enforcement filed a one-count Complaint on October 22, 2004, charging that Brad D. Wilson (Wilson or Respondent) violated NASD Conduct Rule 2110 by affixing a notary public's signature and seal to a trustee certification form. Wilson filed an Answer on November 16, 2004, in which he admitted the factual allegations in the Complaint and requested a hearing to determine appropriate sanctions. On April 14, 2005, a one-day hearing was held in Tampa, before a hearing panel composed of the Hearing Officer and two current District 7 Committee members.

At the hearing, the parties offered four joint exhibits, which were admitted in evidence, and the Respondent testified on his own behalf.¹

II. Findings of Fact and Conclusions of Law

A. Jurisdiction

Wilson was registered with NASD member Raymond James & Associates, Inc. (Raymond James) as a general securities representative from September 1995, and as a general securities principal from August 1998, until his registration was terminated on April 8, 2004. He is currently registered with another member firm. Wilson is subject to NASD jurisdiction, because he was registered with a member firm at the time of the alleged violation and when Enforcement filed the Complaint. (CX-1.)

B. Affixing a Notary Public's Signature and Seal

The essential facts are undisputed. Respondent entered the securities industry in 1985. During the relevant period, he was branch manager of a Raymond James office located in Venice, Florida. In early February 2004, CF, who had served with Respondent on a search committee for a new pastor for their church, phoned Respondent to say he was interested in transferring some of his securities accounts from another member firm to Raymond James. Respondent arranged to meet CF at a Raymond James office located near CF's residence in Sarasota, Florida. (Tr. 18, 21, 39-40; CX-1.)

On February 9, 2004, Respondent met with CF and his wife in the Sarasota office. During the meeting, Respondent reviewed a copy of the prospective customers' account statement and discussed with them their investment experience and objectives, among other topics. In order to transfer some accounts to Raymond James, CF completed paperwork that

¹ References to the hearing transcript are noted as Tr. The parties' joint exhibits are cited as CX.

included a new account application form, an account transfer form, and a trustee certification form.² The meeting concluded at approximately 5:30 p.m. (Tr. 22.)

After CF and his wife departed, Respondent gathered together their paperwork and realized he had neglected to have the trustee certification form notarized. Due to the hour, there was no administrative staff in the office. Moreover, Respondent was in a hurry to get home, because his wife was ill at the time and he was caring for her and their teenaged children. He thus left the office without giving much thought to the trustee certification form. (Tr. 14, 22-23, 26, 44, 51-52.)

Mary Thompson, a sales associate in the Venice office that Respondent supervised, was a notary public. On or about February 10, 2004, Respondent signed Ms. Thompson's name to CF's trustee certification form and stamped the document with her notary stamp.³ Respondent then submitted CF's paperwork, including the trustee certification form he had "notarized," for data entry. (Tr. 27, 44-45, 51-52; CX-4.)

Approximately two weeks later, Ms. Thompson found a copy of CF's trustee certification form on her desk for filing. She brought the document to the attention of the firm's operations manager, who promptly notified her superiors. A manager in the Sarasota office met with Respondent, showed him the document, and asked whether Respondent had signed Ms. Thompson's name. Respondent admitted that he had. Shortly thereafter, the firm suspended Respondent; approximately one week later, he was allowed to resign. He began working at another member firm about one month later. (Tr. 28-31, 37-38; CX-2.)

² According to the trustee certification form, CF is the sole trustee of the CF Trust. By signing this form, he authorized Raymond James to trade securities in the trust account pursuant to his instructions, excluding "options, margin and short sales . . ." (CX-3.)

³ Ms. Thompson was out of town at the time and did not give Respondent permission to use her stamp or sign her name to the document. (CX-2, CX-4.)

Respondent had not completed a trustee certification form since the firm revised it in September 2003; one of the revisions was a new requirement that the form be notarized. Respondent had, however, reviewed one or two revised forms that were submitted by other representatives. Respondent does not know why the broker-dealer required the trustee certification form to be notarized, particularly when other business units, such as Raymond James Bank and Raymond James Financial Services, did not. Additionally, Respondent's current member firm does not require that trustee certification forms be notarized. (Tr. 24-26, 42-43.)

Respondent acknowledged that his attempt to notarize the document was wrong. Respondent explained that he took matters into his own hands, because he was embarrassed to tell CF that he had made an administrative error. He characterized his conduct as stupid and vowed never again to take a shortcut. Respondent declared that he has learned his lesson and noted that he did not receive a financial benefit from his misconduct, nor cause any harm to the customer. (Tr. 27-28, 35, 48, 51-53.)

B. Discussion

NASD Conduct Rule 2110 states a broad ethical principle that members "shall observe high standards of commercial honor and just and equitable principles of trade." Rule 115 extends this requirement to persons associated with members. The ethical and legal obligations set forth in Rule 2110 are not limited to the sale of securities but encompass a wide variety of

unethical business-related conduct.⁴

Affixing another individual's signature on a document without the person's knowledge and consent is unethical conduct that falls under the purview of Rule 2110.⁵ The violation is equally problematic whether the forgery is submitted to NASD or to a member firm.⁶

Respondent acknowledges that his conduct violated Rule 2110, and the record supports that concession. Respondent is not a notary, and he did not have Ms. Thompson's permission to affix her signature and notary seal on CF's trustee certification form.

The Hearing Panel thus finds, and Respondent concedes, that he violated NASD Conduct Rule 2110, as charged in the Complaint.

III. Sanctions

NASD Sanction Guidelines recommend a fine of \$5,000 to \$100,000 for forgery or falsification of records.⁷ Additionally, the Guidelines recommend a suspension in any or all capacities for up to two years where mitigating factors exist, or a bar in egregious cases. In determining appropriate sanctions under this Guideline, the adjudicator is to consider the nature of the forged or falsified document and whether the respondent had a good-faith, but mistaken belief of express or implied authority.

⁴ See *Vail v. SEC*, 101 F.3d 37, 39 (5th Cir. 1996) (citations omitted); *Daniel J. Alderman*, Exchange Act Release No. 35,997, 1995 SEC LEXIS 1823, at *7 (July 20, 1995), *aff'd*, 104 F.3d 285 (9th Cir. 1997); *Dep't of Enforcement v. Bendetsen*, No. C01020025, 2004 NASD Discip. LEXIS 13, at *16 (NAC Aug. 9, 2004) (“[W]e have determined that disciplinary hearings under Rule 2110 are ‘ethical proceedings, and one may find a violation of the ethical requirements where no legally cognizable wrong occurred [and that] NASD has authority to impose sanctions for violations of ‘moral standards’ even if there was no ‘unlawful’ conduct.’”) (quoting *Dep't of Enforcement v. Shvarts*, No. CAF980029, 2000 NASD Discip. LEXIS 6, at *11 (NAC June 2, 2000)).

⁵ See *Donald M. Bickerstaff*, Exchange Act Release No. 35,607, 1995 SEC LEXIS 982 (Apr. 17, 1995). See also *Dep't of Enforcement v. Brinton*, No. C04990005, 1999 NASD Discip. LEXIS 36, at **1, 8 (NAC Dec. 14, 1999).

⁶ *Dist. Bus. Conduct Comm. v. Peters*, No. C02960024, 1998 NASD Discip. LEXIS 42, at *5 (citation omitted).

⁷ *Guidelines* at 39 (2005 ed.).

Though the parties disagree regarding the appropriate sanctions,⁸ Enforcement and Respondent concur that this is not an egregious case. After reviewing the evidence and the Guidelines, the Panel has reached the same conclusion.⁹

Respondent admittedly affixed a notary's signature and seal to a firm form, which is not a trivial offense. To his credit, Respondent accepted responsibility for his actions. When questioned by his firm, he readily admitted that he had improperly notarized the form. He immediately acknowledged his misconduct, which he continued to do throughout the disciplinary process. He was forthright in his testimony before the Panel, and we find that his testimony was consistent and credible.

We further note that the customer signed the form, and that Respondent's actions did not alter or affect the customer's intention. Furthermore, there is no evidence regarding the significance of the form, or the reason why Raymond James required the form to be notarized, a change that had been recently implemented. Additionally, neither the customer, nor the firm suffered any monetary damage or other harm as a result of Respondent's actions, and Respondent did not benefit financially from his misconduct.

Finally, we note that "certain aggravating factors" do not exist here.¹⁰ Respondent, who has worked in the securities industry for twenty years, has no disciplinary history, was not motivated by avarice, and did not engage in misconduct over an extended period of time.¹¹ The

⁸ Enforcement seeks a suspension of 60 days and a fine of \$5,000. Respondent suggests that a lesser sanction is appropriate.

⁹ In addition to the Guideline for forgery or falsification of records, the Panel also considered the General Principles Applicable to Sanction Determinations, as well as the Principal Considerations in Determining Sanctions. *Id.* at 2-7.

¹⁰ *Cf. DOE v. O'Hare*, No. C9B030045, http://www.nasd.com/web/groups/enforcement/documents/nac_disciplinary_decisions/nasdw_013874.pdf at pp. 9-10 (Apr. 21, 2005).

¹¹ *Id.*

Panel finds that Respondent's actions were a "momentary lapse of judgment" that were of no consequence to the customer.¹²

The Hearing Panel believes that Respondent's wrongdoing warrants a significant sanction, but is mindful of all the attendant circumstances. Accordingly, Respondent is suspended for 60 days from association with any member firm in any capacity and fined \$5,000.

IV. Conclusion

Respondent Brad D. Wilson violated NASD Conduct Rule 2110 by affixing a notary public's signature and seal to a firm form. For this violation, Respondent is suspended for 60 days from association with any member firm in any capacity and fined \$5,000. In addition, Respondent shall pay costs in the amount of \$1166, which includes an administrative fee of \$750 and hearing transcript costs of \$416.

These sanctions shall become effective on a date set by NASD, but not earlier than 30 days after this Decision becomes the final disciplinary action of NASD, except that if this Decision becomes the final disciplinary action of NASD, the suspension shall become effective with the opening of business on Tuesday, September 6, 2005 and end with the close of business on Friday, November 4, 2005.

SO ORDERED.

Dana R. Pisanelli
Hearing Officer
For the Hearing Panel

Dated: July 7, 2005
Washington, DC

¹² Cf. *DOE v. Grafenauer*, No. C8A030068, http://www.nasd.com/web/groups/enforcement/documents/nac_disciplinary_decisions/nasdw_014162.pdf at p. 5 (May 17, 2005) ("... a momentary lapse of judgment ... might establish mitigation.").

Copies to: Brad D. Wilson (*via overnight and first class mail*)
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