

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DENNIS P. COOPER
(CRD No. 2250395),

Respondent.

Disciplinary Proceeding
No. C04050014

HEARING PANEL DECISION

Hearing Officer – SW

Date: February 10, 2006

Respondent is barred in all capacities for forging the signature of his manager on customer documents, in violation of NASD Conduct Rule 2110.

Appearances

James M. Stephens, Esq., Regional Counsel, and Jeffrey A. Ziesman, Regional Counsel, Kansas City, MO, for the Department of Enforcement.

Firmin A. Puricelli, Esq., St. Louis, MO, for Respondent Dennis P. Cooper.

DECISION

I. PROCEDURAL BACKGROUND

On April 25, 2005, the Department of Enforcement (“Enforcement”) filed a Complaint alleging that Respondent Dennis P. Cooper (“Respondent”) violated NASD Conduct Rule 2110 when, between October 5, 2002 and May 18, 2004, he forged the signature of his manager, Mr. Myers, on customer account documents.

Respondent admitted that he signed Mr. Myers’ name to the documents, but he argued that he had Mr. Myers’ permission to sign the documents. Accordingly, Respondent denied that his actions constituted forgery.

The Hearing Panel, consisting of two current members of the District 3 Committee and a Hearing Officer, conducted a Hearing in Chesterfield, MO, on October 6, 2005.¹

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Background

There is no dispute that while working at Brokerage Unlimited, Inc. (“Brokerage Unlimited” or the “Firm”), an OSJ office of member firm Locust Street Securities, Inc. (“Locust Street”), Respondent signed Mr. Myers’ name on 67 documents.² There is also no dispute that 40 of the 67 documents were change of dealer forms, which were submitted to the particular customer’s mutual fund vendor to alert the mutual fund that the dealer on the customer account had changed to Locust Street, including a change of dealer form for customer VS. (CX-2 through CX-68; Tr. pp. 14-15, 192). Twenty-five of the 67 documents were Locust Street new customer account application forms, including a 2004 new application form for customer WW, and the remaining two documents were (i) an IRA mutual fund application for a customer, and (ii) a registered representative authorization form completed in connection with the hiring of a new representative. (CX-2 through CX-70). The IRA mutual fund application, the change of dealer forms, and the new account application forms, except for customer WW’s 2004 new account application form, listed Respondent as the registered representative. (Id.)

Respondent testified that Mr. Myers gave him permission to sign his name on the documents. Mr. Myers testified that he did not give Respondent permission to sign his name.

¹ Hereinafter, “Tr.” refers to the transcript of the Hearing held on October 6, 2005; “CX” refers to Complainant’s exhibits; “RX” refers to Respondent’s exhibits; and “Stip.” refers to the Stipulations filed by the Parties.

² The Complaint alleged there were 69 forged documents. At the Hearing, however, the Parties stipulated that although Respondent executed 69 documents, only 67 were signed with Mr. Myers’ name; one document was signed with the letter “J” and the other document was signed with Respondent’s name. (CX-10; CX-41; Tr. pp. 11, 97-98; Stip. at ¶ 7).

The Hearing Panel finds that Enforcement has demonstrated by a preponderance of the evidence that Mr. Myers did not give Respondent permission to sign his name.

1. Brokerage Unlimited

In 1997, Brokerage Unlimited was affiliated with LifeMark Securities Corp. (“LifeMark”) as an OSJ branch office.³ (Tr. p. 137). Shortly after Respondent joined Brokerage Unlimited in 1997, the Firm’s OSJ principal left, and Mr. Myers became the Firm’s OSJ principal after earning his Series 24 license. (Tr. p. 173). Mr. Myers and Michael Tessler are partners in Brokerage Unlimited. (Tr. p. 33).

At some point during 1997-1998, Respondent was asked to obtain his Series 26 license so that he could assume the position of branch manager and take some supervisory responsibility at the Firm. (Tr. p. 174). On July 28, 2000, Respondent became registered with LifeMark as an investment company and variable contracts products principal and was designated as the Firm’s branch manager.⁴ (CX-1, p. 4; Tr. pp. 31-32). As branch manager of Brokerage Unlimited,

³ Pursuant to NASD Conduct Rule 3010(g), any branch office of an NASD member in which the following activities occur is defined as an office of supervisory jurisdiction (“OSJ”):

- (A) order execution and/or market making;
- (B) structuring of public offerings or private placements;
- (C) maintaining custody of customers’ funds and/or securities;
- (D) final acceptance (approval) of new accounts on behalf of the member;
- (E) review and endorsement of customer orders, pursuant to paragraph (d) above;
- (F) final approval of advertising or sales literature for use by persons associated with the member, pursuant to Rule 2210(b)(1); or
- (G) responsibility for supervising the activities of persons associated with the member at one or more other branch offices of the member.

Pursuant to NASD Conduct Rule 3010(a), each NASD member must establish a supervisory system whereby each location that meets the definition contained in paragraph (g) of the Rule is designated as an OSJ. An office that is designated an OSJ must have a registered principal on-site designated as the OSJ principal and must be inspected on an annual basis.

⁴ According to NASD Membership and Registration Rule 1022, an investment company and variable contracts products principal is not qualified to function in a principal capacity with responsibility over any area of business activity except the solicitation, purchase and/or sale of: (i) redeemable securities of companies registered pursuant to the Investment Company Act of 1940; (ii) securities of closed-end companies registered pursuant to the Investment Company Act of 1940 during the period of original distribution only; and, (iii) variable contracts and insurance premium funding programs and other contracts issued by an insurance company except contracts which are exempt securities pursuant to Section 3(a)(8) of the Securities Act of 1933.

Respondent reviewed all of the documents that required approval by a principal and determined which ones he could approve and which required Mr. Myers' approval. (Tr. pp. 35-36).

2. Transfer to Locust Street

On October 4, 2002, Brokerage Unlimited switched from being an OSJ of LifeMark to being an OSJ of Locust Street. (CX-1, pp. 3-4; Tr. p. 52). Because LifeMark did not approve the bulk transfer of the Firm's customer accounts, each Brokerage Unlimited representative had his customers (i) execute change of dealer forms, and (ii) complete new Locust Street account application forms. (Tr. p. 53). Each change of dealer form and each new account application form then had to be approved by Mr. Myers as the Series 24 principal, or Respondent as the Series 26 principal depending on the transaction.⁵ (Tr. p. 114).

After the change of dealer forms and new application forms were approved and signed by Mr. Myers or Respondent, Ms. Miller, the office coordinator, forwarded the new account application forms to the Locust Street home office and forwarded the change of dealer forms with a copy of the new account form to the appropriate mutual fund vendor. (Tr. pp. 37, 70). If a new application form was not submitted to Locust Street's home office, the representative was not paid his commissions on that account. (Tr. p. 192). The switch from LifeMark to Locust Street involved the transfer of approximately 2,300 accounts. (CX-105, p. 1). Mr. Myers confirmed that it took until the end of the year before things slowed down. (Tr. p. 112).

Prior to the transfer from LifeMark to Locust Street, Mr. Myers could approve the securities transactions for Respondent's customers, including approving new account

⁵ Ninety-nine percent of Brokerage Unlimited's securities business was Series 6 business, *i.e.*, mutual funds and investment contracts, and Respondent, as a Series 26, was authorized to supervise and sign the documents for that business, including the change of dealer forms and the new account forms. (Tr. pp. 111, 211).

applications and change of dealer forms.⁶ As part of the transfer procedures in October 2002, Locust Street dictated that Respondent and Mr. Myers could no longer approve each other's transactions as principals because they were located in the same office. (Tr. pp. 80, 189).

Nevertheless, between October 2002 and May 2004, Respondent signed Mr. Myers' name on sixty-four documents (change of dealer forms and new account application forms) involving transactions for which Respondent was the registered representative. (Tr. p. 189; CX-3 through CX-68). Respondent also signed Mr. Myers' name to an undated IRA mutual fund application for which Respondent was the registered representative. (CX-70). In 2004, Respondent signed Mr. Myers' name to a 2004 new application form for customer WW involving a municipal transaction for which Respondent was not the registered representative,⁷ and a new registered representative authorization form.⁸ (CX-2; CX-69).

3. Discovery of the Documents

On May 19, 2004, when reviewing VS's client file, Mr. Myers noted that the 2003 change of dealer form in the file had his name, but obviously had not been signed by him.⁹ (Tr. p. 56; RX-17, pp. 1-2; CX-14). When asked about the change of dealer form, Respondent admitted to Mr. Myers that he had signed Mr. Myers' name and claimed Mr. Myers had authorized him to do so. (Tr. p. 61). Mr. Myers then contacted Mr. Tessler, the president and

⁶ In addition to being a full-time supervisor, Respondent was permitted to service his personal clients on his personal time. (Tr. p. 33).

⁷ Neither Respondent nor Mr. Myers was eligible to review or approve customer WW's new account form that involved an initial municipal 529 transaction because neither was registered as a municipal securities principal.

⁸ The registered representative authorization is a document to be sent to the home office of the broker-dealer along with the Form U-4 paperwork to notify the home office of the payout rate for the particular representative that is being registered. (Tr. pp. 78-79). Respondent testified that Mr. Myers specifically told him over the telephone to sign this document because Mr. Myers was out of the office when the document was received. (Tr. p. 184).

⁹ VS was an orphan account that Respondent had assigned to himself. (Tr. p. 96). When a representative left Brokerage Unlimited and did not make arrangements to transfer his customers to the new firm, his customer accounts became orphan accounts, which accounts Respondent had the responsibility to transfer to another representative in the firm. (Tr. pp. 42, 180).

managing partner of the Firm, advising him that Respondent had signed his name to the VS document without his knowledge. (Tr. p. 60).

Mr. Myers and Mr. Tessler then asked Ms. Miller whether she was aware of any other instances in which Respondent had signed Mr. Myers' name. (Tr. p. 62). Ms. Miller said yes, and brought a new account application form for a 529 plan for client WW, which had been executed coincidentally the day before. (Id.). When Mr. Tessler asked her whether Mr. Myers had given Respondent permission to sign his name, Ms. Miller told Mr. Tessler that Mr. Myers "would never do that." (Tr. pp. 62-63; RX-17, p. 2).

Subsequently, that day and later that evening, Mr. Myers reviewed all of Respondent's client files.¹⁰ (Tr. p. 65). Mr. Myers testified that he discovered the documents that bore his putative signature with dates ranging from October 2002 to May 2004. (Tr. pp. 65-66).

The following morning, Mr. Tessler permitted Respondent to resign. (Tr. pp. 65, 150; RX-17, p. 3). On May 25, 2004, Respondent wrote an email to Mr. Myers to explain his signing of Mr. Myers' name on the VS and the WW documents. (CX-108). In that email, Respondent made no reference to his having signed Mr. Myers' name to other documents. (Id.).

On May 26, 2004, ING Financial, the successor of Locust Street, filed a Form U-5 indicating that Respondent had forged the signature of Mr. Myers, his OSJ principal. (CX-1, p. 3). Respondent testified that the State of Missouri sanctioned him with a fine, a suspension, and required that he be subject to heightened supervision for signing Mr. Myers' name.¹¹ (Tr. pp. 23, 203).

¹⁰ All of Respondent's client files were maintained as part of the Firm's office files. (Tr. p. 156).

¹¹ A copy of the Missouri settlement was not provided to the Hearing Panel.

On September 15, 2004, Respondent became registered with Financial Planning Consultants, Inc., which registration remains currently in effect.¹² (CX-1, p. 2).

B. Respondent Forged Mr. Myers' Name

The Complaint alleges that Respondent forged the signature of his OSJ manager on customer documents.

Respondent admits that he signed the documents but he claims that he was authorized or thought he was authorized to sign Mr. Myers' signature to the forms. Respondent testified that when Brokerage Unlimited switched to Locust Street, a system was developed so that if either Respondent or Mr. Myers had transactions, once the forms were signed by the client, the forms would be faxed to the Des Moines, Iowa, home office of Locust Street, to be reviewed by the registered trade supervisor in the home office. (Tr. pp. 189-190). If the home office did not get back to Brokerage Unlimited within 24 hours in a normal workweek, Respondent could then expedite the transaction simply by signing the forms and giving them to the mutual fund vendor. (Tr. p. 190).

Respondent testified that Mr. Myers indicated to him that as long as the home office authorized the transaction, Mr. Myers did not have a problem with Respondent affixing Mr. Myers' name in order to expedite the transaction, including for the IRA application. (Tr. p. 192). With respect to the new account application for customer WW's 529 plan, Respondent stated it was a simple mistake; and, that with respect to the registered representative form, Mr. Myers gave him specific permission. (Tr. p. 210).

The Hearing Panel did not find Respondent's explanation plausible. It is not credible that the home office would authorize a documentation system that indicated that Mr. Myers, rather

¹² Respondent is registered as a general securities representative, an investment company and variable contracts products principal, and an investment company and variable contracts products representative. (CX-1, p. 2).

than the home office, had approved Respondent's transactions when the home office had decided that Respondent and Mr. Myers should not approve each other's transactions.

Respondent offered no documentary evidence or testimony from other persons to corroborate his claim that Mr. Myers authorized him to sign any of these documents or that the home office had established such a system. (Tr. p. 199).

Mr. Myers confirmed Respondent's testimony that the home office decided that Respondent and Mr. Myers should not approve each other's transactions, and that the regional home office was to approve their transactions. (Tr. p. 80). Mr. Myers did not mention any type of 24-hour system, and he vigorously denied that he had ever authorized Respondent to sign his name on any documents under any circumstances.¹³ (Tr. p. 61).

Two other witnesses -- Mr. Tessler, who is co-owner (with Mr. Myers), president and managing partner of Brokerage Unlimited, and Ms. Miller -- testified credibly that neither Respondent nor Mr. Myers had ever indicated that Mr. Myers had given Respondent authority to sign his name on any forms. Mr. Myers and Mr. Tessler testified that Respondent was well thought of at the Firm,¹⁴ and that there was no other issue that would have warranted Respondent's termination. (Tr. pp. 81, 151). The witnesses spoke clearly, consistently, and had no malice against Respondent and no reason to lie.

The circumstances under which Respondent's actions came to light also undermine the credibility of Respondent's claims. After Mr. Myers realized that a customer's file contained a change of dealer form that bore his name, but which he had not signed, Mr. Myers questioned Respondent, who admitted that he had signed Mr. Myers' name to the form; Mr. Myers then

¹³ Respondent testified about Locust Street's 24-hour system after Mr. Myers and Ms. Miller had concluded their testimony and left the Hearing. When questioning Mr. Myers and Ms. Miller at the Hearing, Respondent did not ask either about this supposed approval system.

¹⁴ Prior to the discovery of the documents, Respondent consistently received positive reviews from Brokerage Unlimited through May 4, 2004. (RX-2; RX-3; RX-4; RX-5).

contacted Mr. Tessler and advised him that Respondent had signed his name to the form without authorization; and, with Mr. Tessler, asked Ms. Miller whether she was aware of any other instance in which Respondent had signed Mr. Myers' name.¹⁵ (RX-17). Mr. Myers then promptly reviewed all of Respondent's client files and discovered other documents bearing his name that he had not signed. Based on this information, Mr. Tessler terminated Respondent the following morning. (Id.). This series of events is fundamentally inconsistent with Respondent's claim that Mr. Myers expressly authorized him to sign his name; if Mr. Myers had done so, he would not have reacted in this manner.

Moreover, Respondent had an apparent motive for forging Mr. Myers' name to at least some of the documents. Most of the documents were change of dealer forms and new account application forms for Respondent's long-term customers.¹⁶ (CX-18 through CX-68). However, some forms were for orphans accounts that had been transferred to Respondent without the knowledge of Mr. Myers. (Tr. p. 199). Included in the documents were change of dealer forms with respect to six orphan accounts, executed in November 2002, December 2002, and February 2003. (CX-3; CX-5; CX-6; CX-7; CX-8; CX-9). Those documents had the effect of assigning Respondent those orphan accounts. There were also change of dealer forms for five other orphan accounts, executed on January 2003 and April 2003, which had been transferred to Respondent prior to the Locust Street move. (CX-11; CX-13; CX-14, CX-15, CX-16; CX-17). By signing

¹⁵ Ms. Miller testified that she was so concerned when she realized that Respondent had signed Mr. Myers' name on the new account application form for customer WW that she placed customer WW's file on Mr. Myers' desk. (Tr. pp. 127, 132).

¹⁶ Many of the change of dealer forms were executed in October 2002. (CX-21; CX-23; CX-25; CX-26; CX-27; CX-28; CX-31; CX-32; CX-34; CX-36; CX-37; CX-41; CX-46; CX-65; CX-66). Others were signed in November 2002, December 2002, January 2003, and February 2003. (CX-38; CX-43; CX-48; CX-49; CX-51; CX-53; CX-55; CX-56; CX-57; CX-59; CX-60; CX-61; CX-67).

Mr. Myers' name, Respondent avoided highlighting the transactions for Mr. Myers, who would likely have noted the transfer of the accounts to Respondent.¹⁷

For the reasons set forth above, the Hearing Panel finds that Respondent's testimony that Mr. Myers had authorized him to sign his name not credible.

NASD Conduct Rule 2110 requires that all NASD members and associated persons "observe high standards of commercial honor and just and equitable principles of trade." It is well established that forgery is a violation of this standard.¹⁸ Forgery involves signing another person's name without authorization. The violation is equally problematic whether the forgery is submitted to the NASD or to a member firm.¹⁹

Finding that Respondent signed Mr. Myers' name without authorization, the Hearing Panel finds that Respondent violated NASD Conduct Rule 2110, as charged.

III. SANCTION

For violations of NASD Conduct Rule 2110 involving forgery, the NASD Sanction Guidelines recommend a fine of \$5,000 to \$100,000, and a bar in egregious cases, or a suspension of up to two years where mitigating factors exist.²⁰ The Guidelines list as Principal Considerations in determining the appropriate sanction for forgery (1) the nature of the document(s) forged, and (2) whether Respondent had a good faith, but mistaken, belief of express or implied authority. The Guidelines also include a number of general considerations in setting sanctions for any type of violation, several of which are applicable here.²¹

¹⁷ Respondent did not advise Mr. Myers that he was assigning the orphan accounts to himself. (Tr. p. 199).

¹⁸ In re Donald M. Bickerstaff, Exchange Act. Rel. No. 35607 (Apr. 17, 1995).

¹⁹ See In re Charles E. Kautz, Exchange Act Rel. No. 37072 (Apr. 5, 1996).

²⁰ NASD Sanction Guideline, p. 39 (2005).

²¹ Id. at pp. 6-7.

In this case, the documents in question were important customer account documents, and there were numerous forgeries over a period of years. As explained above, the Hearing Panel found that Respondent's testimony that he had authority to sign Mr. Myers' name was not credible. The Hearing Panel rejects as mitigating Respondent's testimony that he thought it was permissible to sign Mr. Myers' name to the forms in order to expedite Brokerage Unlimited's transition from LifeMark to Locust Street, because the forgeries continued beyond 2002, when the transition occurred, into 2003 and 2004. Neither convenience nor expediency excuses Respondent's intentional decision to repeatedly forge the name of Mr. Myers. The Hearing Panel also does not find that the settlement agreement with the State of Missouri, which imposed enhanced supervision measures, is sufficient to address the seriousness of Respondent's misconduct. Respondent's egregious conduct warrants a bar to deter not only him but also others from engaging in similar misconduct.²²

IV. ORDER

Respondent Dennis P. Cooper is barred from associating with any NASD member firm in any capacity for violating NASD Conduct Rule 2110 by forging the signature of his manager, Mr. Myers, on customer account documents, as alleged in the sole count of the Complaint.²³ The

²² In its General Principles Applicable to All Sanction Determinations, the NASD Sanction Guidelines state that, in seeking to "remediate misconduct by preventing the recurrence of misconduct, improving overall standards in the industry and protecting the investing public," adjudicators should "design sanctions that are significant enough to prevent and discourage future misconduct by a respondent, to deter other from engaging in similar misconduct, and to modify and improve business practices." (Id. at 2).

²³ The Hearing Panel considered all of the arguments of the Parties. They are rejected or sustained to the extent they are inconsistent or in accord with the views expressed herein.

bar will become effective immediately upon this Decision becoming the final disciplinary action of NASD.

HEARING PANEL

by: _____
Sharon Witherspoon
Hearing Officer

Dated: Washington, DC
 February 10, 2006

Copies to:
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