NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. DANIEL W. BUKOVCIK (CRD No. 1684170), Respondent.	Disciplinary Proceeding No. C8A050055 **HEARING PANEL DECISION** Hearing Officer – SW Date: July 12, 2006

Respondent violated NASD Conduct Rule 2110 by affixing the signatures of 48 different customers, without their prior written authorization, to 166 different account documents. For this violation, Respondent is suspended for 18 months in all capacities and fined $50,000.

Appearances

Richard A. March, Esq., Senior Regional Attorney, and Dale A. Glanzman, Esq., Regional Counsel, Chicago, IL, for the Department of Enforcement.

Brian J. Masternak, Esq., Grand Rapids, MI, for Respondent Daniel W. Bukovcik.

DECISION

I. Procedural Background

On June 16, 2005, the Department of Enforcement ("Enforcement") filed a one-count Complaint against Respondent Daniel W. Bukovcik ("Respondent") alleging that, while registered as an investment company and variable contracts products representative with Woodbury Financial Services, Inc. ("Woodbury" or the "Firm"), Respondent affixed the signatures of 48 different customers, without their prior written authorization, to 166 different account documents relating to the customers' purchases of mutual funds, variable products, annuities, and 529 plans.

The Complaint alleges that Respondent's actions violated NASD Conduct Rule 2110 and conflicted with the Firm's express policy prohibiting representatives from signing documents on behalf of their customers even with the customers' consent.

Respondent argued that he was unaware of the explicit Firm prohibition, and that he signed the 166 documents on behalf of the 48 customers with their prior oral approval. The 48 customers signed acknowledgements confirming that they had orally authorized Respondent to execute the documents on their behalf.

II. Findings of Fact and Conclusions of Law

A. Background

Respondent was born and raised in Ovid, Michigan, a town of about 1,500 people with one main street and one stop light. (Tr. p. 181). After graduating from college in 1987, Respondent formed B&B Tax and Financial Services in 1988 to provide tax preparation services, accounting services, and limited investment services.[1] (Tr. pp. 182-183).

In June 1991, Respondent joined Fortis Investors, Inc. ("Fortis") as an investment company and variable contracts products representative. (Tr. p. 184; CX-42, p. 2). In 1999, Fortis amended its procedures manual to explicitly prohibit the signing of a client's name to a check, application, suitability form, policy receipt, or any other document for the sake of convenience or any other reason, even with the client's consent. (Tr. pp. 26, 51; CX-3, p. 4). Respondent's supervisor testified that he viewed the amendment as a codification of an existing oral policy. (Tr. p. 174).

On April 1, 2001, Hartford Financial Services, Inc. acquired Fortis and renamed the Firm, Woodbury. (Tr. p. 26). Woodbury adopted Fortis's procedures manual as

[1] Respondent passed the series 6 exam in 1987. (CX-42, p. 5).

Woodbury's procedures manual. (Tr. pp. 26, 28; CX-3, p. 4). Accordingly, Woodbury's manuals contained a prohibition on representatives signing a client's name similar to the 1999 Fortis prohibition. (Id.).

In 2001 and 2002, Respondent executed acknowledgements stating that he received the Firm's procedures manuals, read the materials, and understood the contents. (CX-3, pp. 1, 5). Nevertheless, Respondent testified that he only skimmed the manuals, knowing that he was not going to do anything to harm his customers, and that, therefore, he was not aware of the explicit prohibition until it was brought to his attention in 2003. (Tr. pp. 195-196, 203-204).

On May 16, 2003, Woodbury received customer complaints from Mr. and Mrs. RW alleging that Respondent had forged their signatures on some paperwork to effect a transfer of their assets from a Prudential IRA to a Hartford IRA. (Tr. p. 30; CX-4, p. 1).

As a result of the customer complaints, Woodbury began an investigation. (Tr. p. 73). A Woodbury compliance specialist pulled approximately 20 of Respondent's client files to review the signatures for discrepancies. (Tr. pp. 75, 107). In connection with his review, on June 6, 2003, the Woodbury compliance specialist contacted three customers whose signatures looked suspicious. (Tr. pp. 76-77, 80-81). The three customers stated that Respondent had their permission to sign documents on their behalf. (Id.).

On June 10, 2006, Respondent admitted that he had signed documents for some customers, but he maintained that he had not signed documents for customers Mr. and Mrs. RW. (Tr. p. 39).

As a result of the investigation and Respondent's admission, Woodbury undertook disciplinary action against Respondent, which included a 30-day suspension from

discussing or transacting securities business, a $2,500 fine, and heightened supervision for a one-year period pursuant to which he verified customer signatures on account documents and was subject to quarterly office inspections. (Tr. pp. 42-43, 57-58; CX-8; CX-9). The supervision agreement also required that Respondent provide Woodbury with a list of all customers for which he had signed documents in the last year. (Id.).

Respondent prepared a list indicating that he had signed documents for 48 customers with their oral permission from July 2002 to July 2003. (CX-1). The documents that Respondent signed on behalf of his customers included: (1) applications for mutual funds, variable annuities, and 529 accounts; (2) client replacement disclosure letters; and (3) IRA rollover forms. (CX-15). The documents were not notated in any manner to indicate that they had been signed on behalf of the customers rather than by the customers. (Id.). Respondent's supervisor was not aware that Respondent was signing documents on behalf of his customers. (Tr. p. 160).

Respondent had grown up with most of his investment customers and had known them all his life. (Tr. pp. 194-195). All 48 investment customers were either referrals from other customers or prior tax clients of Respondent. (Tr. p. 185). Respondent testified that he misguidedly viewed executing documents on his customers' behalf as an extra service that he provided. (Tr. p. 195). Even Mrs. RW reported to the NASD investigator that Respondent was a well-respected member of the community and she believed the whole matter was based on miscommunication.[2] (CX-14, p. 1).

Respondent testified that he had approximately 3,300 clients, 650 to 700 of whom were securities clients. (Tr. p. 185). Approximately 75% of his business involved

[2] Woodbury canceled the transactions and made Mr. and Mrs. RW whole. (Tr. p. 94).

providing tax preparation and accounting services and 25% involved providing investment services, primarily investments in mutual funds and variable annuities. (Tr. pp. 182-183). Respondent earned approximately $195,000 in 2002, and $200,000 in 2003, for his tax services, whereas Respondent earned securities commissions of approximately $110,000 in 2002, and $120,000 in 2003. (Tr. p. 240). Through November 30, 2005, Respondent earned $104,501.08 on the specific transactions that he signed on behalf of his customers. (CX-16, p. 2; Tr. p. 142).

Woodbury imposed the suspension and heightened supervision effective July 7, 2003.[3] (CX-9). During Respondent's one year of heightened supervision, Woodbury did not observe any irregularities regarding any signatures on Respondent's customer documents. (Tr. p. 59).

None of Respondent's customers switched accounts to another broker. (Tr. p. 200). In addition, 24 of the 48 customers wrote letters in 2005, after the issuance of the Complaint, indicating that they wanted Respondent to continue as their broker. (RX-51 -- RX-74). To date, Respondent continues to be registered with Woodbury. (CX-42, p. 2).

The Hearing Panel finds that, consistent with the allegations of the Complaint, Respondent signed the names of his customers to securities documents without their prior written authorization. The Hearing Panel also finds that, even without the express Woodbury prohibition against such action, Respondent should have known that it was wrong to sign 48 clients' names to 166 documents.

The record is clear that Respondent: (1) did not have written authorization to sign his customers' names on the documents; (2) placed no notation on the customer

[3] Despite the termination of his heightened supervision, Respondent continues the practice of verifying signatures by obtaining a photo or state ID from his customers. (Tr. p. 199).

documents to indicate that he had signed the documents on his customers' behalf; and (3) did not advise or indicate to Woodbury in any manner that he was signing the customer documents. Respondent permitted Woodbury to falsely believe that the customers had personally signed the documents, and therefore permitted Woodbury to falsely believe that it had documentary evidence that the customers had reviewed the documents, had read the description of the securities product, and had confirmed in writing that the product described was the product that he or she wanted to buy. Respondent also permitted Woodbury to falsely believe that it had documentary evidence that the customers had read and confirmed the accuracy of the description of the customers' financial condition and investment objectives, and that the Woodbury supervisor could rely on such information in performing his supervisory review.

The Hearing Panel finds that Respondent's actions were improper and unethical, and, therefore, finds that Respondent's actions violated NASD Conduct Rule 2110.[4]

III. Sanctions

There are no NASD Sanction Guidelines directly applicable to signing customer documents with prior oral approval but not prior written approval of a customer.

Enforcement argued that the most appropriate guideline was the guideline for forgery and/or falsification of records. The NASD Sanction Guidelines for forgery and/or falsification of records recommend fines ranging from $5,000 to $100,000.[5] In cases where mitigating factors exist, the adjudicator is to consider suspending a

[4] See Dist. Bus. Conduct Comm. v. Bradley, Complaint No. C07920042, 1994 NASD Discip. LEXIS 187, at *8 (NBCC Oct. 31, 1994) (stating that signing customer names under any circumstances without proper written authority cannot be condoned in the securities industry); Dept. of Enforcement v. Bendetsen, Complaint No. C01010025 (NAC Aug. 9, 2004).

[5] NASD Sanction Guidelines, p. 39 (2006).

respondent in any or all capacities for up to two years, or, in egregious cases, consider a bar.[6] The specific considerations for this violation are (i) the nature of the document(s) forged or falsified, and (ii) whether respondent had a good-faith, but mistaken, belief of express or implied authority.[7] The general considerations in the Guidelines also apply.

Enforcement argued that there were a number of aggravating factors in this case that warranted substantial sanctions. The aggravating factors included: (i) the number of documents; (ii) the period of time over which the misconduct took place; (iii) the number of customers; and (iv) the nature of the documents. Specifically, (i) in 166 separate instances, (ii) over a period of 11 months, (iii) for 48 different customers, and (iv) involving significant account documents, Respondent signed documents on behalf of his customers without prior written approval, in violation of his Firm's express prohibition. Enforcement recommended a two year suspension with a credit for the thirty days that Respondent was suspended by his Firm in 2003.

Although this is not a forgery case, it does involve falsification of records because there was no notation on any of the documents signed by Respondent that the documents had not been personally executed by the customer. In any event, for guidance the Hearing Panel looks to Bendetsen, the most recent NAC decision in this area, and the considerations in the Sanction Guidelines, including (i) the number of documents, (ii) the period of time over which the misconduct took place, (iii) the number of customers, and (iv) the nature of the documents.

In Bendetsen, the NAC explained that signing one customer's name to one document would justify a small to moderate fine. As discussed above, this case involves

[6] Id.

[7] Id.

significant aggravating factors: (i) 166 different documents; (ii) 48 different customers; (iii) a period of 11 months; and (iv) the significance of the customer documentation signed by Respondent.[8] Although there was no evidence that Respondent signed his customers' names for any reason other than convenience, either his client's or his own, Respondent exhibited a level of informality that conflicted with the critical responsibilities of a registered representative. The sheer number of documents and the sheer number of customers impacted by Respondent's unprofessional actions warrant significant sanctions. The Hearing Panel also notes that Woodbury did not require, and Respondent did not volunteer, to send the customer documents to the customers to be re-signed, nor did the Firm or Respondent make sure that the customers had copies of the documents signed on their behalf by Respondent. (Tr. pp. 93, 179, 235). The Hearing Panel viewed Respondent's indifference as to whether his customers ever had an opportunity to see the documents that he signed on their behalf as aggravating.

After weighing the aggravating factors listed above, and the importance of deterring other representatives from engaging in similar misconduct against the clear evidence that the clients wanted Respondent to sign the documents and the 30-day suspension already imposed by his Firm, the Hearing Panel finds that an appropriate remedial sanction for Respondent is an 18-month suspension in all capacities and a $50,000 fine.

IV. Conclusion

Respondent Daniel W. Bukovcik violated NASD Conduct Rule 2110 by affixing the signatures of 48 different customers, without their prior written authorization, to 166

[8] The documents that Respondent signed included new account forms, mutual fund account applications, client disclosure forms, automatic income enrollment forms, transfer forms, and net premium allocation forms. (CX-15).

different account documents. For violating NASD Conduct Rule 2110, Respondent is suspended for 18 months in all capacities and fined $50,000. The Hearing Panel also orders Respondent to pay the $2,937.99 costs of Hearing, which include an administrative fee of $750 and Hearing transcript costs of $2,187.99. The costs and fines shall be due and payable when, and if, Respondent seeks to return to the securities industry.

The sanctions shall become effective on a date determined by NASD, but not sooner than thirty days from the date this Decision become the final disciplinary action of NASD, except that, if this Decision becomes the final disciplinary action of NASD, Respondent's suspension in all capacities shall commence at the opening of business on Monday, September 4, 2006, and conclude at the close of business on Monday, March 3, 2008.[9]

HEARING PANEL.

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By: Sharon Witherspoon
Hearing Officer

Dated: Washington, DC
July 12, 2006

Copies to:
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[9] The Hearing Panel has considered all of the arguments of the Parties. They are rejected or sustained to the extent that they are inconsistent or in accord with the views expressed herein.