

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

KENNETH D. SCHACHT
(CRD No. 3142740),

Respondent.

Disciplinary Proceeding
No. 2005003490801

Hearing Officer – SNB

HEARING PANEL DECISION

September 19, 2006

For falsifying firm records and forgery, in violation of Rule 2110, Respondent is fined \$5,000, suspended in all capacities for 18 months, and required to requalify in all capacities.

Appearances

Dale Glanzman, Esq., and UnBo Chung, Esq., Chicago, IL, (Rory C. Flynn, Washington, DC, Of Counsel) for the Department of Enforcement.

Kenneth D. Schacht, pro se.

DECISION

I. Procedural History

On February 10, 2006, the Department of Enforcement (“Enforcement”) filed a Complaint against Kenneth D. Schacht (“Respondent”). The Complaint charged that Respondent violated Rule 2110 by falsifying a letter of indemnity and forging the signature of the member’s Chief Operations Officer (“COO”) on the letter of indemnity. On March 27, 2006, Respondent filed an answer admitting the allegations of the Complaint, but contending that his signature of the COO’s name should not be characterized as a forgery, because he did not attempt to reproduce the COO’s signature. Respondent requested a hearing. The hearing was held on June 1, 2006, in Chicago, IL, before a Hearing Panel

composed of the Hearing Officer and two former members of NASD's District 8 Committee.¹

II. Findings of Fact

A. The Respondent

Respondent was originally hired in 1998 as an unregistered sales assistant for David Zupke ("Zupke"), a registered representative associated with SII Investments, Inc. ("SII"). JX-1; Tr. 65. In June 2002, Respondent became a registered representative with SII. Id. When Zupke moved from SII to ING Financial Partners, Inc. ("ING"), Respondent followed him there, and between June 2003 and December 2005 was registered with ING as an Investment Company/Variable Contracts Products Representative.² JX-1 Tr. 56. Respondent is not currently registered with an NASD member firm. NASD has jurisdiction over Respondent pursuant to Article V, Section 4 of the NASD by-laws.

B. Respondent's Initial Attempts to Resolve an Error in a Customer Account

The facts are largely undisputed. On October 21, 2005, Respondent received a message from JS, who was Zupke's customer.³ JS requested an exchange of \$2,400 from his Massachusetts Investor Growth Fund ("Growth Fund") shares into his MFS Cash Reserve Fund. JS requested this exchange each year, to fund monthly \$200 systematic withdrawals from the Cash Reserve Fund. Tr. 11, 81, 82. The systematic withdrawals went to JS's elderly mother, who depended on these funds to supplement her social security

¹ The parties jointly submitted exhibits, which are referred to as "JX 1-5. The hearing transcript is referred to as "Tr."

² ING's predecessor was Washington Square Securities, Inc. ("WSS"), and Respondent's CRD reflects registration with WSS. Tr. 40.

³ While Respondent was not the registered representative responsible for the account, in the past he had served as the assistant to the assigned registered representative, and so JS knew he could contact Respondent for help.

income. Id. When Respondent received the message, as a favor to Zuppek who was the registered representative assigned to the account, and, in order to provide good service to JS, Respondent called in JS's request to MFS. Tr. 58, 82. In response, MFS redeemed \$2,400 from the mutual fund and issued a check payable to JS instead of transferring the funds to the MFS Cash Reserve Fund as JS wished. When JS received the check, he called Respondent and asked him to correct the error. Tr. 82.

Respondent promptly called MFS, to correct the error as JS requested. An MFS representative informed Respondent that the \$2400 would be deposited in JS's MFS Cash Reserve Fund as intended. The MFS representative stated that MFS would stop payment on the check, and requested that JS destroy it. Tr. 83. Later, when the funds had not been deposited, Respondent again contacted MFS. This time, the MFS representative said that MFS needed a request signed by the customer. As instructed, Respondent obtained JS's signature on a form, and sent it to MFS. JX-4, p. 1, 2; Tr. 8-9.

On November 28, 2005, because the funds still had not been transferred as instructed, Respondent for the third time contacted MFS. This time the MFS representative requested a letter of indemnity from ING. Respondent became extremely frustrated, and asked the MFS representative to put in writing everything required to correct the error. Id., JX-2, p. 12, 13.

C. Respondent Prepares a False Letter of Indemnity and Forges a Signature

On November 28, 2005, after the close of business, MFS faxed to Respondent its request for a letter of indemnity, including specific language that it required. By this point, there was only one full business day to process the request so that JS's mother to could access the funds by Christmas. Tr. 62. However, generally it took ING approximately one

week to process such requests. Tr. 46, 47. Respondent, in what he characterized as a desperate and rash act, falsified the requested letter of indemnity, using the language that MFS specified. Respondent also signed “Kenneth Laraia” (“Laraia”) the name of ING’s COO, without any authorization or consent. JX-2 p. 14; Tr. 16, 17.

ING discovered the falsified document several days later, when MFS contacted Laraia, the purported signer of the letter of indemnity. Laraia told MFS that his signature was forged, and referred the matter to Jacqueline Conley (“Conley”), the ING Compliance Officer. Tr. 17. Conley telephoned Respondent, but when Conley asked Respondent about the letter of indemnity, he lied and said he knew nothing about it. Tr. 21, 22. Conley became suspicious when Respondent offered no explanation of the situation, and asked to speak with Zupsek. Respondent again lied and told her that Zupsek was busy and would not be available until the following day. Conley persisted in telephoning the office, and the following day Respondent finally admitted that he falsified the letter of indemnity. Tr. 28. Respondent was immediately terminated. Tr. 15.

III. Violations

The Complaint alleges that Respondent violated Rule 2110 by falsifying a letter of indemnity and forging the signature of the member’s COO on the letter. Respondent does not dispute the charges.

NASD Conduct Rule 2110 provides that, “A member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade.”⁴ It is well established that forgery and falsification of documents is

⁴ Rule 2110 is applicable to associated persons pursuant to Rule 0115(a), which provides, “These Rules shall apply to all members and persons associated with a member. Persons associated with a member shall have the same duties and obligations as a member under these Rules.”

not consistent with the high standards of commercial honor and just and equitable principles of trade required by Rule 2110.⁵ Accordingly, the Panel finds that Respondent, by his actions, violated Rule 2110.

IV. Sanctions

The NASD Sanction Guidelines (“Guidelines”) recommend a fine of \$5,000 to \$100,000 for forgery or falsification of records, and a suspension for up to two years where mitigating factors exist, or a bar in egregious cases. Enforcement asserted that a bar would be justified, and urged that the Panel impose no less than a six month suspension. Tr. 96.

In determining appropriate sanctions under the Guidelines, 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.⁶ Here, Respondent falsified a document that exposed Respondent’s firm to liability. Moreover, Respondent could not have believed that he had authority to sign the document, as evidenced by the fact that he forged a signature on it. The Panel was most disturbed by Respondent’s initial, albeit short lived, denial of culpability to ING’s Compliance Officer. However, the Panel also considered that Respondent’s motive was to help a customer to ensure that his mother, on a fixed income, would receive her \$200 monthly payment before Christmas, and that his actions were a last, desperate, resort, that Respondent deeply regrets.

After weighing the evidence, the Panel finds that a suspension in all capacities for 18 months and a requirement that Respondent requalify in all capacities is justified. Given Respondent’s limited resources, the Panel finds that a fine of \$5,000, payable upon re-entry into the industry, is appropriately remedial.

⁵ See, e.g., Donald M. Bickerstaff, Exch. Act Rel. No. 35,607, 1995 SEC LEXIS 982 (Apr. 17, 1995).

⁶ NASD Sanction Guidelines at 39 (2006 ed.).

V. Conclusion

Respondent violated NASD Conduct Rule 2110 by falsifying a letter of indemnity to correct a mutual fund transaction. For this violation, Respondent is fined \$5,000, suspended in all capacities for 18 months, and required to requalify in all capacities. In addition, he is ordered to pay costs in the amount of \$1,439.12, which includes an administrative fee of \$750 and the cost of the hearing transcript. The fine shall become due and payable when Respondent returns to the industry after the end of his suspension. 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 November 20, 2006, and end with the close of business on May 19, 2008.

HEARING PANEL

By: Sara Nelson Bloom
Hearing Officer

Copies to: Kenneth D. Schacht (*via overnight and first-class mail*)
Dale A. Glanzman, Esq. (*via electronic and first-class mail*)
UnBo Chung, Esq. (*via electronic and first-class mail*)
Rory C. Flynn, Esq. (*via electronic and first-class mail*)
Mark Dauer, Esq. (*via electronic and first-class mail*)