BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD REGULATION, INC.

In the Matter of Department of Enforcement, Complainant, vs. Bradford Lee Brinton St. Joseph, MO, Kansas City, MO, and Liberty, MO, Respondent.	DECISION Complaint No. C04990005 Dated: December 14, 1999

Respondent was found, based on his default and on review of the record, to have forged or caused to be forged the endorsement of a customer's dividend check and to have negotiated and converted the proceeds to his own use and benefit. Held, findings affirmed and sanctions modified.

Bradford Lee Brinton ("Brinton") has appealed a January 21, 1999, default decision ("decision") pursuant to Rule 9311 of the NASD Code of Procedure. After a review of the entire record in this matter, we hold that Brinton violated Conduct Rules 2110 and 2330 by forging or causing to be forged the endorsement of a customer's dividend check, and then negotiating and converting the proceeds to his own use and benefit. We order that Brinton be barred from associating with any member of the NASD in any capacity.

Background

Brinton entered the securities industry in 1995. From January 17, 1995 through April 1997, he was associated with Pruco Securities Corporation ("Pruco") as a sales representative and was registered with the NASD as an investment company/variable products representative (Series 6). Brinton is not currently associated with a member firm.

Procedural History

On March 9, 1999, the NASD Regulation, Inc. ("NASD Regulation") Department of Enforcement ("Enforcement") filed the complaint in this matter following a District staff investigation of an amended Uniform Termination Notice for Securities Industry Registration ("Form U-5") filed by Pruco on May 20, 1997. The complaint alleged that on or about March 19, 1997, Brinton violated Conduct Rule 2110 by forging or causing to be forged the endorsement of a customer, PB, on the customer's $1,695.23 dividend check (cause one) and thereafter, in violation of Conduct Rules 2110 and 2330, without the customer's knowledge or consent, Brinton deposited the check into a bank account he controlled and converted the proceeds to his own use and benefit (cause two).

As found by the Hearing Officer and as supported by the record, although duly served with the complaint pursuant to the Code of Procedure ("Code"), Brinton did not file an answer. Enforcement thereafter filed, on June 3, 1999, a Motion for Entry of Default Decision, which was also duly served on the respondent pursuant to the Code. Hearing no opposition, the Hearing Officer issued a default decision dated June 21, 1999, in which he concluded: 1) that the exercise of jurisdiction over Brinton was proper; and 2) that by virtue of the fact that the allegations of the complaint were deemed admitted as a consequence of his default, as well as upon the record produced by the staff, Brinton committed the violations as alleged.

On July 12, 1999, Brinton appealed the Hearing Officer's decision. By letter dated July 20, 1999, the Office of General Counsel for NASD Regulation acknowledged receipt of the appeal. The parties were thereafter sent a scheduling order dated July 21, 1999, pursuant to which Brinton was required to file his appeal brief on or before August 16, 1999. Brinton failed to file an appeal brief. On August 24, 1999, staff filed a motion with the NAC Review Subcommittee to dismiss the action on the basis that Brinton had abandoned his appeal by failing to file an opening brief as required by the scheduling order. By letter dated September 5, 1999, Brinton stated that he had not received the scheduling order and reiterated the grounds for his appeal. We have treated this letter, along with his virtually identical earlier correspondence on appeal, as Brinton's brief in this matter. The staff filed a detailed brief in opposition dated September 20, 1999. Brinton filed no reply.

Brinton requested oral argument in connection with his appeal. By virtue of his default, Brinton is not entitled to oral argument as a matter of right, but must make a showing of good cause for his failure to participate in the proceedings below in order to obtain a hearing on appeal. See Procedural Rule 9344(a). We find that Brinton failed to show good cause for not having participated in the proceedings below, and we thus deny his request for oral argument.

Discussion

Brinton claims that he resigned from Pruco in April 1997. Brinton apparently objects to the Hearing Officer's finding that Brinton's departure from Pruco was brought about by its discovery of the alleged misconduct. Although the complaint alleged no connection between

Brinton's termination and Pruco's filing of an amended Form U-5, the Hearing Officer's decision juxtaposed those events.[1] Given the absence of the complete series of filings related to Brinton's departure, we cannot conclude that its immediate cause was Pruco's discovery of the alleged misconduct. This circumstance, however, is of no advantage to Brinton; even allowing that he resigned from Pruco for reasons unrelated to the alleged misconduct, the reason for his departure is irrelevant to the allegations of the complaint.

In his appeal correspondence, Brinton appears to argue that he cooperated with the staff's investigation; that he was not involved in the alleged actions; and that "there is absolutely no evidence supporting that a signature was forged at all, especially by me." Cooperation with the staff does not negate any element of the alleged violations, and in any event, the record does not indicate any exceptional cooperation on Brinton's part. On the other hand, the record does establish Brinton's involvement, as well as his forgery and conversion.

It is uncontested that the customer's check was deposited into Brinton's bank account, and that Brinton thereafter made use of funds from that account. Brinton does not contest the fact that this occurred without the consent of the customer. Further, Brinton does not expressly contest the finding that the customer, PB, did not endorse and deposit the check. An affidavit from PB's daughter, acting under a power of attorney, attests to the fact that PB never received the check before it was deposited, and that the signature endorsing the check was not that of PB.

Brinton speculates that someone at Pruco took a deposit slip from his desk and deposited the customer's check into his personal bank account. We find that the evidence supports the conclusion that that someone was Brinton. Based on our review and comparison of numerous deposit slips and checks executed by Brinton and his wife for their joint account in March and April 1997, the dates and numbers reflected in the deposit slips actually signed by the respondent match in style and format the date and numbers on the deposit slip that effected the deposit of PB's check into the Brintons' joint account on March 19, 1997. The latter deposit slip contained examples of all the individual Arabic numerals except 0, 4, and 8. Comparing the latter deposit slip with other slips written contemporaneously by Brinton, all of the numbers appear to be precise and consistent, and certain numerals (notably, the "angular" 3 and 7; and the "cursive" 2 and 5) are both distinctive and consistent. The use of a dash to separate month and year was consistent among reviewed deposit slips signed by Brinton, as was the placement of the period between dollars and cents at the foot of columns of figures prepared by Brinton. Furthermore, we find an absence of fundamental differences between the handwriting on the March 19, 1997 deposit slip and the handwriting on checks and deposit slips that were prepared by Brinton in

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[1] On this point, the decision below, at page 3, reads as follows:

> Upon detecting Respondent's conduct, Pruco reimbursed PB for the full amount of the dividend check (CX-6). The Pruco firm terminated Respondent Brinton, reporting misappropriation of customer funds on the relevant Form U-5 (CX-2).

March and April 1997. For these reasons, we reject as implausible Brinton's theory that someone else made the deposit in question, and we conclude that Brinton himself made the deposit.

In light of the foregoing, we find that Brinton has failed to rebut the presumption established by his default that the allegations of the complaint should be deemed admitted. See Procedural Rules 9215(f) and 9269(a). Further, Brinton has failed to show good cause to set aside the default. See Procedural Rule 9269(d). In addition, we conclude that the preponderance of the evidence supports the allegations of the complaint. We thus conclude that as alleged in the complaint, Brinton, without the customer's knowledge and consent, caused to be affixed the signature of customer PB on a dividend check, prepared a deposit slip for the check and deposited it into a bank account he controlled, and converted the funds to his own use and benefit, in violation of NASD Conduct Rules 2110 and 2330.

Sanctions

The Hearing Officer determined that Brinton should be fined $63,476.15 ($55,000 plus five times the amount converted) and barred from association with any member of the NASD in any capacity.[2] The Hearing Officer noted that Brinton had no prior disciplinary history, but determined that a fine and bar were necessary because of the serious nature of the violations.

We agree that Brinton engaged in egregious misconduct. While a customer was hospitalized, Brinton forged or caused to be forged the signature of the customer on a dividend check, deposited the check into his own personal account, and thereafter made use of funds from the account. The NASD Sanction Guidelines ("Guidelines") authorize the imposition of a bar in all capacities to address egregious misconduct of this type.[3]

In light of our duty to protect the investing public and to ensure the integrity of the market, we would be remiss in not acting decisively in cases, like the present matter, in which the evidence calls into question the honesty and the veracity of a person associated with a member firm. As the Securities and Exchange Commission has noted, the securities industry "presents a great many opportunities for abuse and overreaching, and depends very heavily on the integrity of its participants." In re Bernard D. Gorniak, 52 S.E.C. 761 (1996). See also In re Mayer A. Amsel, 52 S.E.C. 371 (1995) (noting that the securities industry is "rife with opportunities for abuse."). Because we find that Brinton's continued participation in the securities industry presents a risk to the public, we hold that his exclusion from association with any member firm is necessary.

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[2] The Hearing Officer did not impose a censure. See Notice to Members ("NTM") 99-59 (July 1999) (censures will not be imposed where a respondent is barred).

[3] See Guidelines (1998 ed.) at 34 (Conversion) ("consider a bar") and 35 (Forgery) ("in egregious cases, consider a bar").

Under a recent policy change adopted by the National Adjudicatory Council which applies to all settlements executed by respondents and litigated actions decided and issued on or after November 1, 1999, NASD Regulation will generally not impose a fine in cases in which an individual is barred.[4] This is one of those cases.[5]

Accordingly, we set aside the fine imposed by the Hearing Officer in this matter.

Thus, we order that Brinton be barred from association with any NASD member firm in any capacity. The bar is effective immediately upon service of this decision.

On Behalf of the National Adjudicatory Council,

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Joan C. Conley
Senior Vice President and Corporate Secretary

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[4] NASD Notice to Members 99-86 (Oct. 1999) (Imposition and Collection of Monetary Sanctions). This Notice reflects the policy determination that in certain categories of cases, if a individual is barred in all capacities, NASD Regulation generally will not impose a fine, owing to the fact that in many cases a bar, without more, satisfies the remedial objectives of deterrence and investor protection.

[5] Pursuant to NTM 99-86, in forgery or conversion cases, where a respondent is barred, NASD Regulation generally will order restitution or disgorgement of ill-gotten gains where appropriate. Pruco settled with the customer, providing reimbursement in the amount of $1,695.23. The record is silent as to whether Brinton returned PB's funds or contributed to the settlement. Under these circumstances, because the customer has been made whole and a bar in all capacities has been imposed, the imposition of a restitution order is not deemed necessary in order to effect the remedial purposes of this disciplinary action.

We have 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.