

**NASD REGULATION, INC.
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,	:	
	:	
Complainant,	:	Disciplinary Proceeding
	:	No. C05990034
v.	:	
	:	
CHARLES DOUGLAS GULLEY, JR.	:	HEARING PANEL
(CRD #1320916),	:	DECISION
	:	
Ocean Springs, MS	:	
	:	Hearing Officer - DMF
and	:	
	:	
Little Rock, AR	:	June 5, 2000
	:	
Respondent.	:	

Digest

The Department of Enforcement filed a Complaint alleging that respondent Charles Douglas Gulley, Jr. (1) violated NASD Rules 2330(a) and 2110 by converting to his own use funds received from customers for investment; (2) violated Rule 2110 by converting to his own use funds received from a customer for payment of life insurance premiums; and (3) violated Rule 8210 by failing to respond in a complete and timely manner to requests for information issued by NASD Regulation, Inc. staff in the course of its investigation. Gulley filed an Answer to the Complaint in which he disputed the conversion charges, but did not address the failure to respond charge. In his Answer, Gulley expressly waived his right to a hearing.

The Hearing Panel considered the charges based on the Complaint, Gulley's Answer and Enforcement's written submission. Although Gulley had an opportunity to file a written submission, he

did not do so. Enforcement's submission included a substantial volume of evidence supporting the allegations of the Complaint. Based on this evidence, the Hearing Panel found that Gulley converted funds in violation of Rule 2110 and failed to respond in a complete and timely manner to requests for information in violation of Rules 8210 and 2110, as alleged in the Complaint. The Hearing Panel ordered that Gulley be barred from associating with any member firm in any capacity for conversion and that he be suspended for a period of two years in all capacities and fined \$25,000, due and payable when Gulley seeks to reenter the securities industry, for failing to respond to requests for information in a complete and timely manner.

Appearances

Mark P. Dauer, Senior Regional Attorney, New Orleans, LA (Rory C. Flynn, Washington, DC, Of Counsel), for the Department of Enforcement.

Charles Douglas Gulley, Jr., pro se.

DECISION

Introduction

The Department of Enforcement filed its Complaint on July 26, 1999, alleging that respondent Charles Douglas Gulley, Jr. (1) violated NASD Rules 2330(a) and 2110 by converting to his own use a total of \$1,465,138.62 received from 25 customers for investment; (2) violated Rule 2110 by converting to his own use \$5,000 received from a customer for payment of a life insurance premium; and (3) violated Rule 8210 by failing to respond in a complete and timely manner to requests for information issued by NASD Regulation, Inc. staff in the course of its investigation. Gulley filed an Answer to the Complaint on August 16, 1999, in which he disputed both the conversion charges, but

did not address the failure to respond charge. In his Answer, Gulley expressly waived his right to a hearing.

On August 20, 1999, the Hearing Officer issued an Order Directing Written Submissions in Place of Hearing. The Order directed Enforcement to file and serve a narrative statement of its case, as well as all evidence that Enforcement wished the Hearing Panel to consider, both as to liability and sanctions, by September 24, 1999. The Order further provided that Gulley might file and serve any opposition or other response to Enforcement's submission by October 8, 1999. In accordance with the Order, Enforcement filed its Written Submission in Lieu of Hearing, including 18 exhibits (CX 1-18), on September 23, 1999. Gulley did not file any response to Enforcement's submission. Accordingly, the Hearing Panel¹ considered this matter on the basis of the Complaint, Gulley's Answer, and Enforcement's submission.

Discussion

1. Conversion

Gulley was registered with NASD member firm Ascend Financial Services, Inc., an affiliate of Minnesota Mutual Life Insurance Company, as an Investment Company and Variable Contracts Products Representative from May 1985 until March 1998.² During the same period, he was also a general insurance agent for Minnesota Mutual. (CX 3.)

In 1991, Gulley opened an account under the name "C. Douglas Gulley or Elizabeth A. Gulley, Joint Tenants with the Right of Survivorship, d/b/a Gulley Associates" (Gulley account). He then had

¹ The Hearing Panel included a Hearing Officer and two current members of the District Committee for District 5.

² Because the misconduct occurred while Gulley was registered with Ascend and the Complaint was filed within two years after the effective date of the termination of his registration, the NASD has jurisdiction over this proceeding, pursuant to Article V, Section 4 of the NASD's By-Laws.

checks and deposit slips printed for the account bearing the name “Minnesota Mutual Life, Gulley and Associates, Premium Account.” Minnesota Mutual was unaware of the account. (CX 6, pp. 1-2, 14-20.)

From 1991 until 1998, Gulley deposited funds in the Gulley account that he received from customers for investment or, in at least one case, for the payment of life insurance premiums. To accomplish this, he had the customers write their checks to Minnesota Mutual; used a stamp to endorse the checks “For deposit only Minn. Mutual Life Premium Account,” with the Gulley account number; and deposited the checks in the Gulley account. Gulley did not invest the funds as the customers intended or pay the insurance premiums, and he did not remit the funds to Minnesota Mutual or Ascend. Instead, he converted the money to his own use.³ (CX 7, pp. 1-2, 5-57.)

During the 1991-1998 period, Gulley converted more than \$1.4 million in customer funds in this manner. In some cases, he concealed the conversions by sending fictitious account statements showing that the funds had been invested in a “pooled trust account.” He also concealed the conversions by using funds obtained from other customers to pay customers who wanted to withdraw some of their funds from the “accounts” he claimed to have established on their behalf. Gulley was caught in March 1998 when auditors from the Mississippi Secretary of State’s office conducted an unannounced examination of his office. (*Id.*) He was subsequently arrested, charged with 35 counts of embezzlement and conversion, and tried and convicted on seven counts. (CX 14.) According to Enforcement’s most recent submission, he is appealing his conviction.

³ See *Department of Enforcement v. Robert J. Kendziarski*, Complaint No. C9A980021 (NAC Nov. 12, 1999) (“‘Improper use’ [of customer funds] rises to the level of conversion where a registered representative deposits a customer’s check into his own account instead of into his customer’s account, without authorization, and fails to repay the customer.”). There is some evidence that Gulley purchased a new home, airplanes and expensive cars,

All of these facts are supported by abundant evidence contained in Enforcement's written submission. The evidence includes statements from the customers to Minnesota Mutual (CX 5) and investigators for the Mississippi Secretary of State (CX 7), as well as more detailed information and supporting documents several of the customers provided to NASDR. (CX 8, 10-13.) The customers uniformly state that they provided funds to Gulley, in specified amounts, in the form of checks payable to Minnesota Mutual for investment or, in the case of one customer, to pay a life insurance premium. The evidence also includes an affidavit from Minnesota Mutual attesting that neither Minnesota Mutual nor Ascend received any of these funds, and that Minnesota Mutual has reimbursed the customers for their losses, including interest. (CX 5, p. 1.) Enforcement has also submitted materials describing and documenting the investigations conducted by the Mississippi Secretary of State and Minnesota Mutual/Ascend, and Gulley's conviction. (CX 6-15.)

There is no contrary evidence in the record. The only thing submitted by Gulley was his Answer, which stated:

Complaint:

2. Deny, funds were placed where directed. Documentation not available.
4. Deny, funds were placed where directed. Not insurance premium. Documentation not available.

Relief: No ill-gotten gain. Minnesota Life has accounts and assets referenced.

These cursory denials, together with Gulley's acknowledgment that he has no documentation to support them, are insufficient to contravene the substantial evidence offered by Enforcement to support the conversion charge. Therefore, the Hearing Panel finds that Gulley converted approximately

including a Rolls Royce (CX 12, p. 4), but what Gulley did with the funds he converted is not material to the Hearing

\$1,465,134.62 that he received from customers for investment in violation of Rule 2110,⁴ and an additional \$5,000 that he received from a customer for payment of insurance premiums, also in violation of Rule 2110.

2. Failure to Respond

The Complaint also charges that Gulley failed to respond in a complete and timely manner to NASD Regulation requests for information pursuant to Rule 8210. Gulley's Answer did not address those allegations.

Enforcement's evidentiary submission shows that, NASDR staff opened an investigation after Ascend filed a Form U-5 on March 30, 1998, regarding its termination of Gulley, which indicated that Gulley was under investigation by the Mississippi Secretary of State's office. On June 4, 1998, NASDR staff sent Gulley a request, pursuant to Rule 8210, by certified and first class mail to Gulley at his residential address as listed in the Central Registration Depository (CRD), requiring Gulley to provide relevant information. The NASDR staff asked Gulley whether he had converted customer funds to his own use while he was employed by Ascend; to indicate specifically, with regard to an attached list of 26 customers, whether he had received funds from the customers as listed on the

Panel's decision.

⁴ The Complaint also charges that Gulley's conversions of investment funds violated Rule 2330(a), which applies to "improper use of a customer's securities or funds." The application of that Rule is unclear, however, in these circumstances. The Rule applies to misuse of funds of customers of an NASD member firm. It does not appear that Gulley's victims had pre-existing relationships with Ascend, and it is not clear that they intended to become customers of that firm; instead, they intended to invest their funds through Minnesota Mutual, and generally had no clear understanding of the nature of the investment. Most appear to have believed simply that they were investing in a "pooled trust account" of some sort; others mention "secured government bonds" (CX 7, p. 8), "an interest bearing account" (CX 7, p. 10), "annuities" (CX 7, pp. 14, 20, 53) or a "Variable Annuity" (CX 7, p. 19), "an investment account," (CX 7, p. 28), "a tax free fund" (CX 7, p. 45), or "a pooled trust similar to a mutual fund" (CX 7, p. 53). While it seems fair to infer that at least some investors thought they were investing in securities products that could only have been sold through Ascend, the evidence in that regard is so limited that the Hearing Panel finds it preferable to rest the decision in this case on Rule 2110, which applies regardless whether Gulley's victims are treated as customers of Ascend or of Minnesota Mutual, or whether their intended investments could be classified as

attachment, and, if so, what he had done with those funds; if he admitted he converted customer funds, how he was able to do so; and what were his daytime and evening telephone numbers. NASDR staff received a receipt for the certified mailing bearing a signature that appears to be “Billie Roberts” and the first class mailing was not returned. (CX 16.)

When Gulley did not respond to the June 4 letter, the NASDR staff sent a follow-up letter on June 26, 1998, by certified and first class mail addressed to Gulley at his CRD address, repeating the requests for information. The Postal Service did not return either mailing, but also failed to return any signed receipt for the certified mailing. (Id.) On July 7, 1998, however, NASDR staff received a letter from an attorney purporting to represent Gulley stating that because of a “potential criminal investigation ... my client will not be able to [respond] to your letter and/or answer any of your questions.” (CX 18.)

On September 10, 1998, NASDR staff sent Gulley another letter, pursuant to Rule 8210, noting that the staff had received the July 7 letter from Gulley’s attorney, reiterating the requests for information, and advising Gulley that if he continued to refuse to respond to the requests he might be subject to disciplinary proceedings. This letter was also sent by certified and first class mail addressed to Gulley at his CRD address. Once again, NASDR staff received a receipt for the certified mailing that appears to be signed “Billie Roberts,” and the first class mailing was not returned. (CX 16.) On September 23, 1998, NASDR staff received a letter from Gulley responding to the requests for information as follows:

1A - No conversion of Ascend Customer funds

2B [sic] - Do not have access to the listed files to be able to confirm any activity with Ascend

securities products. See, e.g., District Bus. Cond. Comm. for Dist. No. 9 v. Brian L. Shegon, Complaint No. C9A960030 (NBCC Nov. 20, 1997).

2 - Answered No to 1 A

3 - Day and night phone [number]
New address: [P.O box]

(CX 17.)

Gulley violated Rules 8210 and 2110 by failing to respond to the requests in a complete and timely manner. Pursuant to Rule 8210(d), Gulley is deemed to have received all three letters, because they were sent to his CRD address. Furthermore, the responses from Gulley's attorney and Gulley himself to the June 26 and September 10 letters establish that he actually received at least those letters. Based on the return receipt for the June 4 certified mailing, which was signed by the same person who signed for the September 10 letter, the Hearing Panel finds that Gulley also received the June 4 letter.

Gulley was required to respond to the June 4 letter by June 18, 1998, but he did not respond to that letter at all. He was required to respond to the June 26 letter by July 10, but, through his attorney, he refused to do so. Even if Gulley was under investigation by criminal authorities, as his attorney claimed, that did not excuse him furnishing timely responses to the requests.⁵ Gulley did not respond to the requests until September 23, after being sent a third letter reiterating the requests contained in the June 4 letter. Under these circumstances, the Hearing Panel finds that Gulley failed to respond to the requests in a timely manner, in violation of Rules 8210 and 2110.

Gulley also failed to respond fully to request 1.B., which stated:

Attached to this letter is a list of clients and the funds that the firm claims was [sic] deposited with you, and that you may have converted to your own use. For the twenty-six investors listed, please state whether you received the

⁵ See, e.g., District Bus. Cond. Comm. for Dist. No. 9 v. Brian L. Shegon, Complaint No. C9A960030 (NBCC Nov. 20, 1997).

amounts listed, the customer's intended purpose for these funds, and the actual disposition of the funds.

The attachment listed the names of 26 individuals or couples under the heading "Gulley Clients" and "Pooled Trust Accounts," and listed a "Deposit" amount for each "Client," except JT and MT, for whom the attachment stated "loan on policy" without any amount. (CX 16.)

As noted above, Gulley's entire response to this request in his September 23 letter was: "Do not have access to the listed files to be able to confirm any activity with Ascend." This response was plainly incomplete and evasive. By this time, Gulley had been the subject of investigations by the Mississippi Secretary of State and Ascend/Minnesota Mutual and, on July 7, 1998, he had been indicted for embezzling funds from nearly all of the 26 "Gulley Clients" listed in the attachment to the request. Even without access to the records of Ascend and Minnesota Mutual, Gulley could have addressed the request in a forthright manner, stating whether he received funds from those customers and what he did with those funds, even if he could not verify specific amounts without access to records. Instead, he offered his lack of access to the customers' files as an excuse for failing to respond to the substance of the request. The response was plainly evasive. The Hearing Panel therefore finds that Gulley failed to provide a complete response to request 1.B. as required by Rule 8210 and that his evasiveness and lack of candor in responding was inconsistent with the "high standards of commercial honor and just and equitable principles of trade" required by Rule 2110.

Sanctions

The Department of Enforcement requests that Gulley be barred for his conversions of customer funds, but does not request monetary sanctions. The applicable provisions of the NASD Sanction Guidelines provide that for conversion an adjudicator should "[b]ar respondent regardless of the amount

converted.” NASD Sanction Guidelines, p. 34 (1998 ed.). There are no facts in the record that would support any less stringent sanction in this case. Therefore, Gulley will be barred from associating with any member firm in any capacity for the conversion violations. Notice to Members 99-86 provides that when a respondent is barred for conversion, ordinarily a fine should not be imposed, but restitution to customers may be ordered. In this case, however, the record reflects that Minnesota Mutual paid the injured customers for their losses. Therefore, the Hearing Panel will not impose a fine or order restitution in this case.

Enforcement requests that Gulley be suspended for two years and fined \$25,000 for failing to respond. The applicable provisions of the Sanction Guidelines recommend a suspension of up to two years and a fine of up to \$25,000 for failure to respond completely or in a timely manner. NASD Sanction Guidelines, p. 31. The facts of this case support sanctions at the upper end of these recommendations. Gulley initially failed to respond to the requests for information, then, through his attorney, refused to respond, and finally responded in an incomplete and evasive manner. There are no mitigating facts in the record. Therefore, the Hearing Panel agrees that Gulley should be suspended for two years and fined \$25,000, as Enforcement requests. In light of the bar imposed on Gulley for the conversion violations, the fine will be due and payable when and if Gulley seeks to reenter the securities industry.

Conclusion

Accordingly, respondent Charles Douglas Gulley, Jr. is (1) barred from associating with any member firm in any capacity for converting customer funds in violation of NASD Rule 2110; and (2) suspended from associating with any member firm in any capacity for a period of two years and fined \$25,000 for failing to respond to requests for information in a complete and timely manner, in violation

of Rules 8210 and 2110, but the fine shall be due and payable when and if Gulley seeks to reenter the securities industry. Gulley shall not be eligible for association with a member firm in any capacity until the fine is paid in full. These sanctions shall become effective on a date set by the Association, but not earlier than 30 days after this decision becomes the final disciplinary action of the Association, except that the bar shall become effective immediately upon this decision becoming the final disciplinary action of the Association.⁶

HEARING PANEL

By: David M. FitzGerald
Deputy Chief Hearing Officer

Copies to:

Charles Douglas Gulley, Jr. (via overnight delivery and first class mail)
Mark P. Dauer, Esq. (electronically and via first class mail)
Rory C. Flynn, Esq. (electronically and via first class mail)

⁶ 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.