

**NASD OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DANIEL TIRADO  
(CRD No. 4987119),

Respondent.

Disciplinary Proceeding  
No. 2005000224601

Hearing Officer – AWH

**Default Decision**

April 20, 2006

**Formerly associated person failed to disclose criminal history on a Form U-4, in violation of Conduct Rule 2110, and failed to respond to NASD Staff requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2110. Respondent barred from association with any member firm in any capacity.**

**Appearances**

Kevin Kulling, Esq., for Department of Enforcement.

No appearance by or for Daniel Tirado.

**DECISION**

**Introduction**

On December 15, 2005, the Department of Enforcement (“Enforcement”) issued the two-cause Complaint in this proceeding, alleging that Daniel Tirado (“Respondent” or “Tirado”) willfully failed to disclose two felony convictions on his Uniform Application for Securities Industry Registration or Transfer (“Form U-4”), in violation of NASD Conduct Rule 2110, and that he failed to respond to NASD requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2110. Respondent failed to file an Answer to the Complaint, or to a Second Notice of Complaint. As a result, Enforcement

filed a Motion for Entry of Default Decision on March 6, 2006, to which Tirado did not respond. Accordingly, pursuant to Procedural Rules 9215(f) and 9269, the Motion will be granted, and the allegations in the Complaint, which is attached to this decision, will be treated as admitted.

### **Findings of Fact<sup>1</sup>**

#### **The Respondent**

Tirado was associated with NASD member firm National Planning Corporation (“NPC”) from November 8, 2004, through January 7, 2005, when NPC terminated his association by filing a Uniform Termination for Securities Industry Registration (“Form U-5”). Tirado is not currently associated with an NASD member firm.

#### **Failure to Disclose Criminal History on Form U-4**

In February 1983, Tirado was charged in the State of Michigan with the felony offenses of embezzlement and uttering and publishing. In June 1983, he was convicted of embezzlement of over \$100, and sentenced to two years on probation. In April 1986, Tirado was again charged in the State of Michigan with the felony offense of uttering and publishing. In September 1986, he pleaded guilty to that offense and, in November of that year, was sentenced to confinement for one year. On November 5, 2004, Tirado filed a Form U-4 to become registered with NASD through member firm NPC. Question 14A(1)(a) on the Form U-4 asked whether he had ever been “convicted of or pled guilty . . . to any felony.” Tirado answered that he had not. Question 14A(1)(b) asked whether he had ever been charged with any felony. Again, he answered that he had not.

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<sup>1</sup> All findings of fact are based on the admitted allegations in the Complaint, the Declaration Supporting a Motion for Entry of Default Decision by Kevin Kulling (“Declaration”), and the exhibits attached thereto.

### **Failure to Respond to Requests for Information**

Pursuant to NASD Procedural Rule 8210, on February 15, 2005, and, again on March 3, 2005, NASD staff sent to Tirado requests that he provide documents and information pertaining to his criminal history. The requests were sent to Tirado by first class and certified mail to his residential address of record as contained in the Central Registration Depository ("CRD address"). The first class mailings were not returned to NASD staff. The certified mailing receipts were returned, the first signed by "L. Tirado," and the second, by "Meghan Tirado." Tirado failed to respond to either request for documents and information.

### **Discussion and Conclusions**

#### **Jurisdiction**

Article V, Section 4 of the NASD By-Laws provides for a two-year period of retained jurisdiction over an associated person<sup>2</sup> after the effective date of the individual's termination of association. During this period of retained jurisdiction, NASD may file a complaint based upon conduct that occurred while the individual was associated with a member firm, or based upon such person's failure to provide information requested pursuant to NASD Procedural Rule 8210, if the request was made, and the complaint is filed, during the foregoing period of retained jurisdiction.

Tirado was associated with NPC from November 8, 2004, through January 7, 2005, when NPC filed the Form U-5, terminating his association with the member firm. Enforcement issued its Complaint on December 15, 2005, within two years of Tirado's

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<sup>2</sup> NASD defines an associated person of a member as... "a natural person who is registered or has applied for registration under the Rules of the Association." See Article I(dd) of NASD By-Laws

termination from NPC. The Complaint is based upon Tirado's conduct while he was associated with NPC, and his failures to respond to information requests occurred during the two-year period following termination of his association with the member firm. Therefore, NASD has jurisdiction over this proceeding.

### **Respondent's Default**

Enforcement properly served the Complaint and the Second Notice of Complaint on Tirado at his CRD address. Each mailing was sent by first class and certified mail. Pursuant to Procedural Rule 9134, those mailings establish that Tirado had valid constructive notice of the Complaint. Because he failed to respond to the Complaint, Procedural Rules 9215(f) and 9269 authorize the entry of a default decision against him. Accordingly, the allegations in the Complaint are deemed admitted.

### **Willful Failure to Disclose Criminal History on Form U-4**

NASD, state regulators, and broker-dealers utilize the Form U-4 to determine and monitor the fitness of securities professionals.<sup>3</sup> Therefore, applicants for NASD registration must fully and accurately disclose all information required by that form, including any criminal history. An applicant's failure to do so violates Conduct Rule 2110.<sup>4</sup>

Enforcement alleges that Tirado's omission of his criminal history was willful. A finding of willfulness has serious collateral consequences. Section 15(b)(4)(A) of the

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<sup>3</sup> See *Rosario R. Ruggiero*, Exchange Act Release No. 37,070, 1996 SEC LEXIS 990, at \*\*8-9 (Apr. 5, 1996).

<sup>4</sup> See *Dist. Bus. Conduct Comm. v. Prewitt*, No. C07970022, 1998 NASD Discip. LEXIS 37, at \*\*5, 7 (NAC Aug. 17, 1998) (finding that an associated person violated Rule 2110 by providing false information on his Form U-4). See also *Thomas R. Alton*, Exchange Act Release No. 36,058, 1995 SEC LEXIS 1975, at \*4 (Aug. 4, 1995) (stating that a material misrepresentation on a Form U-4 is a serious offense that is inconsistent with the just and equitable principles of trade which NASD members must uphold).

Securities Exchange Act of 1934 states that a person who files an application for association with a member of a self-regulatory organization and who “willfully” fails to disclose “any material fact which is required to be stated” in that application is statutorily disqualified from participating in the securities industry. Similarly, Article III, Section 4 of NASD By-Laws states that a person is disqualified from association with a member firm if he or she has “willfully” omitted “any material fact” required by an application for registration.

Willfulness is defined as the intent to commit the act that constitutes the violation.<sup>5</sup> The respondent need not intend to violate a specific rule or law. Rather, the relevant inquiry is “whether the respondent knew or reasonably should have known under the particular facts and circumstances that his conduct was improper.”<sup>6</sup>

Here, Tirado failed to disclose his felony convictions despite the clear and unambiguous language of the query. There is no indication that Tirado misunderstood the disclosure requirement, or that his failure to disclose the convictions was anything less than a willful omission. Although the convictions occurred 19 and 21 years before he completed and signed the Form U-4, he was twice charged with the same offense within three years, and was sentenced to incarceration for the second offense. That is a history not likely to be forgotten by anyone who has such a history. Accordingly, it is reasonable to infer, and the Hearing Officer concludes, that the failure to disclose that history was willful. By willfully failing to disclose his criminal history on a Form U-4, Tirado violated Conduct Rule 2110.

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<sup>5</sup> See *Dep't of Enforcement v. Nelson C. Onyejiaka*, No. C10990121, 2000 NASD Discip. LEXIS 22, at \*11 (OHO, Oct. 20, 2000).

<sup>6</sup> *Christopher LaPorte*, Exchange Act Release No. 39171, 1997 SEC LEXIS 2058, at \*8 n.3 (Sept. 30, 1997).

### **Failure to Respond to Requests for Information**

Procedural Rule 8210 authorizes NASD to require any person subject to its jurisdiction to provide information and testimony related to any matter under investigation. The Rule serves as a key element in NASD's oversight function and allows NASD to carry out its regulatory functions without subpoena power.<sup>7</sup> When an individual fails to respond to information requests, NASD's ability to perform its regulatory responsibilities is subverted.<sup>8</sup> Further, a violation of Procedural Rule 8210 is also a violation of Conduct Rule 2110, contravening "high standards of commercial honor."<sup>9</sup>

Enforcement sent two requests for information to Tirado's CRD address, requesting information regarding an investigation into his Form U-4 disclosure. Pursuant to Procedural Rule 8210(d), the mailings sent to his CRD address provide him with constructive notice of the Staff's requests for information. The certified mail receipts, signed by L. Tirado and Meghan Tirado, indicate that he more probably than not received actual notice of the Staff's efforts to obtain information. Therefore, Tirado's failures to respond to NASD requests for information violate Procedural Rule 8210 and Conduct Rule 2110.

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<sup>7</sup> See *Joseph G. Chiulli*, Exchange Act Release No. 42,359, 2000 SEC LEXIS 112, at \*16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for NASD effectively to conduct its investigations, and emphasizing that NASD members and associated persons must fully cooperate with requests for information); *Dep't of Enforcement v. Benz*, No. C01020014, 2003 NASD Discip. LEXIS 11, at \*18 (OHO Mar. 4, 2003) ("Because NASD has no subpoena power, timely and full compliance with information requests is essential to NASD's self-regulatory function.").

<sup>8</sup> *Joseph P. Hannan*, Exchange Act Release No. 40,438, 1998 SEC LEXIS 1955, at \*9 (Sept. 14, 1998).

<sup>9</sup> *Dep't of Enforcement v. Baxter*, No. C07990016, 2000 NASD Discip. LEXIS 3, at \*25 (NAC, Apr. 19, 2000).

## **Sanctions**

### **Willful Failure to Disclose Criminal History on Form U-4**

For this offense, the NASD Sanction Guidelines recommend a fine of \$2,500 to \$25,000, and a suspension of five to thirty business days.<sup>10</sup> In egregious cases, the Guidelines recommend consideration of a longer suspension or a bar.<sup>11</sup> In this case, Enforcement asserts, and the Hearing Officer agrees, that a bar would be appropriate. The serious nature of the undisclosed convictions, Tirado's recidivism, and his willfulness in failing to disclose the convictions warrant a severe sanction. Accordingly, Tirado will be barred from association with any NASD member firm in any capacity for failing to disclose his criminal history on the Form U-4.

### **Failure to Respond to NASD Requests for Information**

When a respondent fails to respond in any manner to a request made pursuant to Procedural Rule 8210, the NASD Sanction Guidelines recommend a bar as the standard sanction.<sup>12</sup> There are no mitigating factors that would justify a lesser sanction. Accordingly, Tirado will be barred from association with any NASD member firm in any capacity for failing to respond to Staff information requests, in violation of Procedural Rule 8210 and Conduct Rule 2110.

## **Conclusion**

Daniel Tirado is barred from association with any member firm in any capacity for willfully failing to disclose his criminal history on a Form U-4, in violation of

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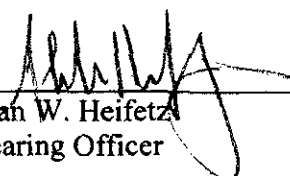
<sup>10</sup> NASD SANCTION GUIDELINES, at pp. 75-76 (2006 ed.).

<sup>11</sup> *Id.*, at p. 76. Egregious violations include failure to disclose "a statutory disqualification event." Under NASD By-Laws, Article III, Section 4(g)2, a felony conviction within 10 years of the date of filing an application for registration constitutes such an event. Here, Tirado's felony convictions were more than 10 years prior to his filing a Form U-4.

<sup>12</sup> *Id.*, at p. 35.

Conduct Rule 2110, and for failing to respond to Staff information requests, in violation of Procedural Rule 8210 and Conduct Rule 2110. The bars shall become effective immediately if this Decision becomes the final disciplinary action of NASD.

**SO ORDERED.**

  
Alan W. Heifetz  
Hearing Officer

Copies to:  
Via First Class Mail & Overnight Courier  
Daniel Tirado

Via First Class & Electronic Mail  
Kevin G. Kulling, Esq.  
Roger D. Hogoboom, Esq.  
Rory C. Flynn, Esq.

**NASD  
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant

vs.

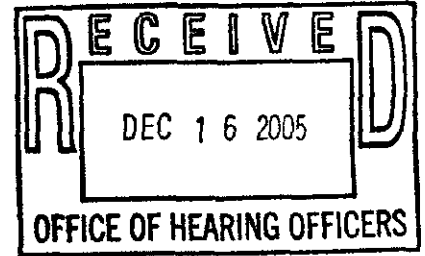
DANIEL TIRADO,  
Associated Person  
(CRD No. 4987119)

Respondent

**Disciplinary Proceeding  
No. 2005000224601**

Hearing Officer

**COMPLAINT**



Upon information and belief, Complainant alleges as follows:

1. Between November 2004 and January 2005, Daniel Tirado ("Respondent Tirado") was an Associated Person with National Planning Corporation ("Member"), a member of NASD. Also, on or about November 5, 2004, Respondent Tirado completed, signed and filed or caused to be filed with NASD, a Uniform Application for Securities Industry Registration or Transfer (Form U-4) to become associated with the Member. The Form U-4 signed by Respondent Tirado provided, among other things, that Respondent Tirado agreed to submit to the authority of the NASD and to comply with all provisions of NASD's By-Laws and Rules. Therefore, Respondent Tirado is, pursuant to Article V, Section 4 of the NASD's By-Laws, subject to the jurisdiction of the NASD.

**FIRST CAUSE FOR COMPLAINT**  
**NASD Conduct Rule 2110 and IM-1000-1**  
**Failure to Disclose Prior Criminal History on Form U-4**

2. On or about February 21, 1983, Respondent Tirado was charged in the State of Michigan with the felony offenses of uttering and publishing and embezzlement over \$100.
3. On or about June 20, 1983, Respondent Tirado was convicted of the felony offense of embezzlement over \$100 and was sentenced to two years probation.
4. On or about April 8, 1986, Respondent Tirado was charged in the State of Michigan with the felony offense of uttering and publishing.
5. On or about September 25, 1986, Respondent Tirado pleaded guilty to the felony offense of uttering and publishing.
6. On or about November 18, 1986, Respondent Tirado was sentenced to *one-year confinement for the felony offense of uttering and publishing.*
7. On or about November 5, 2004, Respondent Tirado completed, signed and filed or caused to be filed with the NASD, a Uniform Application for Securities Industry Registration or Transfer (Form U-4) to become associated with the Member.
8. Although Form U-4 Question 14A(1)(a) asked whether Respondent Tirado had ever been "convicted of or pled guilty or nolo contendere in a domestic, foreign, or military court to any felony," Respondent Tirado answered "No."
9. Although Form U-4 Question 14A(1)(b) asked whether Respondent Tirado had ever "been charged with any felony," Respondent Tirado answered "No."
10. Respondent Tirado thus willfully failed to disclose the material facts that he had been charged with and convicted of the felonies specified above.

11. The acts, practices and conduct described above constitute separate and distinct violations of NASD Conduct Rule 2110 and IM-1000-1 by Respondent Tirado.

**SECOND CAUSE FOR COMPLAINT**  
**NASD Conduct Rule 2110 and NASD Procedural Rule 8210**  
**Failure to Respond to Requests for Information**

12. On or about February 15, 2005, NASD sent to Respondent Tirado a request that he provide certain documents and information, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210. The request for information was sent by first class and certified mail, return receipt requested, to Respondent Tirado's address of record as contained in the records of the Central Registration Depository ("CRD address"). The first class mailing was not returned to NASD staff. The certified mailing receipt was returned to NASD staff signed by "L. Tirado."

13. On or about March 3, 2005, NASD sent to Respondent Tirado a second request that he provide certain documents and information, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210. That request for information was sent by first class and certified mail, return receipt requested, to Respondent Tirado's CRD address. The first class mailings were not returned to NASD staff. The certified mailing receipt was returned to NASD staff signed by "Meghan Tirado."

14. As of this date, Respondent Tirado has failed to respond to NASD staff's request for information, and the deadline for responding has passed.

15. The acts, practices and conduct described above constitute separate and distinct violations of NASD Conduct Rule 2110 and Procedural Rule 8210 by Respondent Tirado.

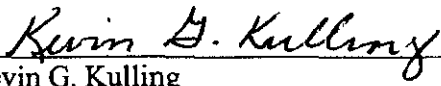
## **PRAYER FOR RELIEF**

WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Respondent Tirado committed the violations alleged herein, that Respondent Tirado's omissions on the form U-4 were willful, the facts omitted were material, and Respondent Tirado failed to respond to NASD staff's requests for information;
- B. An order imposing sanctions upon Respondent Tirado in accordance with NASD Procedural Rule 8310;
- C. An order imposing such costs of any proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Procedural Rule 8330; and
- D. An order imposing any other fitting sanction.

### **NASD DEPARTMENT OF ENFORCEMENT**

Date: December 15, 2005

  
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