

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,	:	
	:	
Complainant,	:	Disciplinary Proceeding
	:	No. 2005000725701
v.	:	
	:	Hearing Officer—Andrew H. Perkins
MARQUSIA S. MELTON	:	
(CRD No. 4891774),	:	DEFAULT DECISION
	:	
Respondent.	:	August 23, 2006

Respondent is barred from associating with any NASD member firm in any capacity for failing to respond to requests for information, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110. In light of the bar, no other sanction will be imposed for Respondent's failure to disclose material information on a Form U-4, in violation of NASD Conduct Rule 2110 and IM-1000-1.

Appearances:

Richard S. Schultz, Regional Counsel, Chicago, IL (Rory C. Flynn, Chief Litigation Counsel, Washington, D.C., Of Counsel) for the Department of Enforcement.

No appearance by or for Marqusia S. Melton.

DECISION

I. INTRODUCTION

On March 31, 2006, the Department of Enforcement ("Enforcement") filed the attached two-count Complaint against the Respondent Marqusia S. Melton ("Melton" or "Respondent"). The Complaint alleges that the Respondent failed to disclose material information on her Uniform Application for Securities Industry Registration or Transfer (Form U-4), in violation of NASD Conduct Rule 2110 and IM-1000-1. The Complaint further alleges that the Respondent

failed to respond to requests for information, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

The Respondent did not answer or otherwise respond to the Complaint. Consequently, on June 28, 2006, Enforcement filed a Motion for Entry of Default Decision ("Motion"), supported by the sworn declaration of Richard S. Schultz and 11 exhibits. The Respondent did not respond to the Motion. For the reasons discussed below, the Hearing Officer grants Enforcement's Motion.¹

II. RESPONDENT'S DEFAULT

On March 29, 2006, Enforcement served the Complaint and Notice of Complaint on the Respondent by certified and first-class mail sent to her current residential address shown in the Central Registration Depository (the "CRD address").² Neither mailing was returned to Enforcement, nor did the Respondent file an Answer.³ Thus, on April 27, 2006, Enforcement *served the Complaint and Second Notice of Complaint on the Respondent by certified and first-class mail sent to the Respondent at her CRD address.*⁴ The first-class mailing was not returned, but a receipt for the certified mailing was returned with an illegible signature.⁵ Again, the Respondent did not file an Answer in response.⁶

Enforcement properly served the Respondent in compliance with Procedural Rule 9134(b)(1) by sending the Complaint by first-class and certified mail to the Respondent's CRD

¹ The factual findings in this Default Decision are based on the attached Complaint, the allegations of which are deemed admitted pursuant to Procedural Rule 9215(f), and on the declaration and exhibits Enforcement filed with the Motion.

² Schultz Decl. ¶ 7.

³ *Id.* ¶¶ 7, 11.

⁴ *Id.* ¶ 9.

⁵ *Id.*

⁶ *Id.* ¶ 11.

address.⁷ Thus, the Respondent received valid constructive notice of this proceeding and defaulted by failing to answer the Complaint. Accordingly, pursuant to Procedural Rules 9215(f) and 9269(a)(2), the Hearing Officer finds the Respondent in default and deems the allegations in the Complaint admitted.

III. JURISDICTION

On December 8, 2004, Melton submitted a Form U-4 to GWFS Equities, Inc. ("GWFS").⁸ By doing so, Melton voluntarily submitted to NASD's jurisdiction. Respondent was associated with GWFS from November 16, 2004, until February 9, 2005.⁹

NASD has jurisdiction of this proceeding pursuant to Article V, Section 4(a) of NASD's By-Laws, which provides that NASD may bring a disciplinary proceeding against, and may request information from, a formerly associated person for two years after her association terminated. In this case, Enforcement filed the Complaint and issued the subject requests for information within the two-year period of extended jurisdiction.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Failure to Disclose Material Information on a Form U-4

The first cause of the Complaint alleges that Melton failed to disclose on her Form U-4 that, in or about October 2000, she filed a petition under Chapter 13 of the Bankruptcy Code.¹⁰ Melton was obligated to disclose her bankruptcy filing.¹¹ Question 14K(1) on Form U-4 asks

⁷ *Department of Enforcement v. Reynolds Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at *5 (N.A.C. Dec. 9, 2003) (NASD Procedural Rule 9134(b)(1) allows for constructive notice by mailing a complaint to the respondent's most recent CRD address.) quoting *Lubeck v. SEC*, 1998 U.S. App. LEXIS 18849, at *20 (9th Cir. Aug. 12, 1998).

⁸ Compl. ¶ 1.

⁹ Ex. 2 at 2-3.

¹⁰ Compl. ¶ 4; Ex. 8.

¹¹ Ex. 8.

whether applicants have filed a bankruptcy petition within the past 10 years. Melton answered “no.”

Filing incomplete or inaccurate information that could in any way mislead NASD is inconsistent with just and equitable principles of trade and violates NASD Conduct Rule 2110 and IM-1000-1. Accordingly, the Hearing Officer finds that Melton violated NASD Conduct Rule 2110 and IM-1000-1.¹²

B. Failure to Respond to Requests for Information

The second cause of the Complaint alleges that NASD Staff sent Melton three written requests for information regarding her personal bankruptcy and Form U-4.¹³ The first two requests were dated March 18, 2005, and April 6, 2005, and sent to the Respondent’s CRD address by first-class and certified mail.¹⁴ The evidence shows that the receipt for the second certified mailing was returned signed by someone with the last name of “Melton.”¹⁵ On May 18, 2005, NASD staff sent a third request for information to Melton at her CRD address and a second address the staff obtained during their investigation.¹⁶ The first-class mailing for the third request was not returned, but the receipt for the certified mailing was returned with an illegible signature.¹⁷

¹² In cause one of the Complaint, Enforcement also alleges that Respondent failed to disclose her arrest for “theft by fraud,” a misdemeanor under Wisconsin law. But Form U-4 does not require such disclosure. Form U-4 requires applicants to disclose if they have been charged in court with certain enumerated misdemeanors. Here, the record reflects that Melton was arrested for “theft by fraud” but ultimately charged in court with “disorderly conduct,” which is not one of the enumerated misdemeanors on Form U-4. (Ex. 7 at 2) Accordingly, the charge that Melton failed to disclose her arrest for theft by fraud is dismissed.

¹³ Compl. ¶ 8.

¹⁴ *Id.* ¶ 8, 9.

¹⁵ *Id.* ¶ 9.

¹⁶ *Id.* ¶ 10.

¹⁷ *Id.*

Melton did not respond to any of the requests, each of which was properly issued pursuant to Procedural Rule 8210.¹⁸

The Hearing Officer finds the foregoing allegations sufficient to establish that the Respondent violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110, as alleged in the second cause of the Complaint.¹⁹

V. SANCTIONS

For filing a false or misleading Form U-4, the NASD Sanction Guidelines recommend a fine of \$2,500 to \$50,000 and a suspension in any or all capacities for 5 to 30 business days.²⁰ Here, Enforcement has not recommended a specific sanction for this violation and the evidence does not disclose any aggravating factors that would justify more than the minimum sanction recommended by the Sanction Guidelines. Therefore, the Hearing Officer determines that the appropriate sanction for this violation is a suspension in all capacities for five business days.

With respect to the second cause of the Complaint, failing to respond in any manner to requests for information that the staff issued pursuant to NASD Procedural Rule 8210, the Sanction Guidelines recommend the imposition of a bar in the absence of mitigating circumstances.²¹ Here, the record discloses no mitigating factors. Accordingly, the Hearing Officer will bar the Respondent from associating with any member firm in any capacity for this violation.

¹⁸ *Id.* ¶ 11.

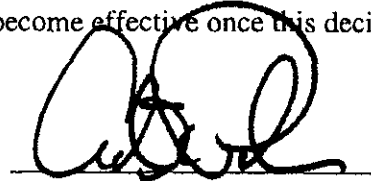
¹⁹ *See, e.g., Department of Enforcement v. Valentino*, No. FPI010004, 2003 NASD Discip. LEXIS 15, at *12 (N.A.C. May 21, 2003), *aff'd*, 2004 SEC LEXIS 330 (Feb. 13, 2004).

²⁰ NASD Sanction Guidelines 71-72 (2006 ed.).

²¹ *Id.* at 35.

IV. ORDER

Marqusia S. Melton is barred from association with any member firm in any capacity for her failure to respond to requests for information, in violation of NASD Conduct Rule 2110 and NASD Procedural Rule 8210. In light of the bar, the Hearing Officer will not impose the five-day suspension for her failure to disclose material information on her Form U-4, in violation of NASD Conduct Rule 2110 and IM-1000-1. The bar shall become effective once this decision becomes the final disciplinary action of NASD.



Andrew H. Perkins
Hearing Officer

Copies to:

Marqusia S. Melton (by FedEx, overnight delivery, and first-class mail)
Richard S. Schultz, Esq. (by first-class and electronic mail)
Rory C. Flynn, Esq. (by first-class and electronic mail)
Mark P. Dauer, Esq. (by first-class and electronic mail)

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

DEPARTMENT OF ENFORCEMENT,	
	Disciplinary Proceeding No. 20050007257401
Complainant	
vs.	Hearing Officer
MARQUISIA S. MELTON	COMPLAINT
Associated Person	
(CRD No. 4891774)	
Respondent	

Upon information and belief, Complainant alleges as follows:

1. From on or about November 16, 2004 to on or about February 9, 2005, Marqusia S. Melton ("Respondent Melton") was associated with GWFS Equities, Inc. ("Member"), a member of NASD. On or about December 8, 2004 Respondent Melton signed a Form U4 Uniform Application for Securities Industry Registration or Transfer ("Form U4"), under which she agreed to abide by the NASD Rules. Respondent Melton is not currently associated with any member of NASD. Since this Complaint is filed within two years of the termination of Respondent Melton's association with the Member, Respondent Melton is subject to the jurisdiction of NASD, pursuant to Article V, Section 4 of the NASD's By-Laws.

FIRST CAUSE FOR COMPLAINT

NASD Conduct Rules IM 1000-1 and 2110 - Failure to Disclose a Misdemeanor Arrest for Theft and A Bankruptcy Filing by Respondent Melton.

2. Paragraph number 1 above is re-alleged and incorporated herein by reference as paragraph 2.

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3. On or about November 7, 2000, Respondent Melton was arrested for theft by fraud at a department store, when she and two other individuals purchased about \$1,492 worth of merchandise by writing checks on a closed checking account. Pursuant to Paragraph 943.20 of the Wisconsin Criminal Statutes, a person who intentionally takes and carries away or retains possession of movable property worth less than \$2,500 without the others' consent and with the intent to deprive the owner permanently of possession of such property, is guilty of a Class A misdemeanor. Wis. Stat. Paragraph 943.20 (2000).¹

4. In or about October 2000, Respondent Melton filed for bankruptcy protection under Chapter 13 of the Bankruptcy Code. The filing was apparently dismissed without resulting in a discharge of Respondent Melton's debt.

5. On December 8, 2004, Respondent Melton completed, signed and submitted to the Member a Form U4 to become registered with the Member. Although the Form U4 requested information as to whether Respondent Melton had ever been charged with a misdemeanor involving, among other things, the wrongful taking of property or a conspiracy to commit a wrongful taking of property, Respondent Melton failed to disclose the material fact that she had been charged with theft by fraud. In addition, although the Form U4 requested information as to whether Respondent Melton had filed a bankruptcy petition within the past ten years, Respondent Melton failed to disclose the material fact that she had filed a personal bankruptcy petition in October 2000.

¹ On or about January 5, 2001, Respondent Melton plead guilty to a single count of Disorderly Conduct in violation of Wis. Stat. Paragraph 63.01 (2000), which resolved the arrest.

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6. The acts, practices and conduct set forth above constitute separate and distinct violations of NASD Conduct Rules IM-1000-1 and 2110 by Respondent Melton.

**SECOND CAUSE FOR COMPLAINT
Conduct Rule 2110 and Procedural Rule 8210 - Failure to Respond to the Staff's Requests
for Information by Respondent Melton.**

7. Paragraph numbers 1 through 6 above are re-alleged and incorporated herein by reference as paragraph 7.

8. On or about March 18, 2005, NASD staff ("Staff") sent to Respondent Melton a request that she provide certain documents and information related to her completing and signing the Form U4, her arrest for theft and her personal bankruptcy, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210. The request for information was sent by first class mail to Respondent Melton's address of record as contained in the records of the Central Registration Depository ("CRD Address"). A response was due by April 4, 2005. The mailing was not returned to the Staff.

9. On or about April 6, 2005, having not received a response from Respondent Melton, the Staff sent her a request marked Final Request that she provide certain documents and information related to her completing and signing the Form U4, her arrest for theft and her personal bankruptcy, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210. The request for information was sent by first class mail and by certified mail, return receipt requested, to Respondent Melton's CRD Address. A response was due by April 22, 2005. The first class mailing to Respondent Melton's CRD Address was not returned to the Staff, and the certified return receipt for the mailing to Respondent Melton's CRD Address was returned signed by someone with the last name "Melton."

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10. On or about May 18, 2005, having not received a response from Respondent Melton, the Staff sent her an additional request marked Final Request that she provide certain documents and information related to her completing and signing the Form U4, her arrest for theft and her personal bankruptcy, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210. The request for information was sent by first class mail and by certified mail, return receipt requested, to Respondent Melton's CRD Addresses and to an address that the Staff learned of during its investigation at [REDACTED] ("LaPlace Address").² A response was due by May 31, 2005. The first class mailing to Respondent Melton's CRD Address was not returned to the Staff. The certified return receipt for the mailing to Respondent Melton's CRD Address was returned and signed, but the signature was undecipherable. The first class mailing sent to the La Place Address was not returned to the Staff. The certified return receipt for the mailing to Respondent Melton's La Place Address was returned and signed, but the signature was undecipherable.

11. Respondent Melton failed to respond to each and all of the requests for documents and information described in paragraphs 8, 9 and 10 above, and the time for Respondent Melton to respond has passed.

12. The aforementioned acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 and NASD Procedural Rule 8210 by Respondent Melton.

2 The Staff learned of Respondent Melton's La Place Address from an Equifax report.

PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;
- B. An order imposing sanctions upon the Respondent in accordance with NASD Rule 8310;
- C. An order imposing such costs of any proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330; and,
- D. An order imposing any other fitting sanction.

NASD DEPARTMENT OF ENFORCEMENT

3/29/06
Date

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