

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JAE YOUNG OH
(CRD No. 4576773),

Respondent.

Disciplinary Proceeding
No. 20050009134-01

DEFAULT DECISION

Hearing Officer – SNB

September 22, 2006

Respondent falsified a customer document, in violation of Rule 2110, and failed to provide requested information, in violation of Rules 8210 and 2110. For the failure to provide requested information, Respondent is barred from associating with any NASD member in any capacity. In light of the bar, no sanctions are imposed for Respondent's falsification of a document.

Appearances

John S. Han, Esq., Los Angeles, CA, (Rory C. Flynn, Esq., of Counsel,
Washington, DC), for the Department of Enforcement.

No appearance by Respondent.

DECISION

I. Background

On May 18, 2006, the Department of Enforcement ("Enforcement") filed a two-cause Complaint in this proceeding, attached to this Decision as Exhibit A. The first cause of the Complaint alleges that Jae Young Oh ("Respondent") violated Rule 2110 by falsifying a customer account statement. The second cause alleges that Respondent violated Rules 8210 and 2110 by failing to respond to NASD Staff requests for information.

Respondent did not file an Answer to the Complaint. Accordingly, on August 8, 2006, Enforcement filed a motion for entry of default decision, supported by the Declaration of John S. Han and 6 exhibits. Respondent did not file a response to the motion.

For the reasons set forth below, Enforcement's motion is granted.¹

II. Respondent's Default

On May 17, 2006, Enforcement served the Complaint and Notice of Complaint on Respondent by first class and certified mail, to Respondent's current residential address as reflected in the Central Registration Depository (the CRD address). Respondent did not file an Answer. In the same manner, on June 16, 2006, Enforcement served the Complaint and Second Notice of Complaint. Respondent again did not file an Answer.

Enforcement complied with Rule 9134(b)(1) by mailing the Complaint and Notices of Complaint to Respondent's CRD address, thereby giving Respondent constructive notice of this proceeding. By failing to file an Answer, Respondent defaulted. Accordingly, pursuant to Rules 9215(f) and 9269(a)(2), the allegations in the Complaint are deemed admitted.

III. Jurisdiction

Respondent was first registered with the NASD in August 2002. From July 2004 to February 2005, he was registered as a General Securities Representative with NASD member firm WM Financial Services, Inc. ("WMFS"). Respondent is not currently associated with a member firm.

Although Respondent is not currently associated with a member firm, NASD has jurisdiction to bring this proceeding, pursuant to Art. V, § 4 of NASD's By-Laws,

¹ The factual determinations in this Decision are based on the allegations of the attached Complaint, which are deemed admitted, and the declaration and exhibits filed by Enforcement with its motion.

because (1) the Complaint charges Respondent with misconduct while he was registered and with failing to comply with requests for information made during the two-year period following termination of his last registration, and (2) the Complaint was filed within that two-year period.

IV. Violations

A. Falsification of a Document

The first cause of the Complaint alleges that, in January 2005, in response to a customer request for a current account statement, Respondent altered an October 2004 statement to reflect that it was a January 1 – January 18, 2005, account statement.

It is well established that falsification of documents is not consistent with high standards of commercial honor and just and equitable principles of trade as required by Rule 2110.² These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent falsified a customer's account statement, in violation of Rule 2110.

B. Failure to Respond

The Complaint also alleges that, on March 23, 2005, NASD Staff sent Respondent a request for information pursuant to Rule 8210, concerning the conduct referenced above.³ On April 7, 2005, NASD Staff sent Respondent a second request for information, by first class and certified mail to Respondent's CRD address. In the same manner, the Staff sent a third request for information on April 26, 2005. The Staff served the requests in accordance with Rule 8210(d), and therefore Respondent is deemed to have received them. Respondent did not respond.

² See, e.g., Donald M. Bickerstaff, Exch. Act Rel. No. 35,607, 1995 SEC LEXIS 982 (Apr. 17, 1995).

³ The Complaint does not specify how this first request was sent to Respondent.

Rule 8210 authorizes NASD to require any person subject to its jurisdiction to provide information 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.⁴ Here, although Respondent received valid constructive notice of the Staff's requests,⁵ he failed to respond to them. Respondent thereby violated Rules 8210 and 2110.

V. Sanctions

A bar is standard for failure to provide requested information.⁶ There is no evidence of any mitigating circumstances that would justify a lesser sanction for these violations. Therefore, Respondent is barred from associating with any NASD member in any capacity.

Enforcement did not request a bar for Respondent's falsification of a customer account statement. Enforcement reasoned that the violation was not egregious, because the false statement was not prepared for the purpose of concealing wrongdoing, and it did not result in any financial injury to the customer or financial benefit to Respondent. Therefore, in light of the bar for failing to respond, no further sanctions are imposed for Respondent's falsification of a document.

⁴ See, e.g., Dep't of Enforcement v. Valentino, No. FPI010004, 2003 NASD Discip. LEXIS 15, at *12 (NAC May 21, 2003), aff'd, 2004 SEC LEXIS 330 (Feb. 13, 2004) ("It is well established that because NASD lacks subpoena power over its members, a failure to provide information fully and promptly undermines NASD's ability to carry out its regulatory mandate.") (citation omitted); Joseph G. Chiulli, Exch. Act Rel. No. 42,359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for the NASD effectively to conduct its investigations, and emphasizing that NASD members and associated persons must fully cooperate with requests for information).

⁵ See David I. Cassuto, Exch. Act Rel. No. 48,087, 2003 SEC LEXIS 1496, at *9 (June 25, 2003).

⁶ NASD Sanction Guidelines ("Guidelines") at 35 (2006 ed.).

VI. Conclusion

For failure to provide requested information, in violation of Rules 8210 and 2110, Respondent is barred from associating with any NASD member in any capacity. In light of this bar, no further sanctions are imposed for Respondent's falsification of a document. The bar shall become effective immediately if this Decision becomes the final disciplinary action of NASD.

SO ORDERED.



Sara Nelson Bloom
Hearing Officer

Copies to:

Jae Young Oh (*via overnight and first-class mail*)
John S. Han, Esq. (*via electronic and first-class mail*)
Rory C. Flynn, Esq. (*via electronic and first-class mail*)
Mark P. Dauer, Esq. (*via electronic and first-class mail*)

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COMPLAINT

Upon information and belief, the Department of Enforcement ("Complainant") alleges as follows:

JURISDICTION

1. From in or about August 2002 to June 2004, Respondent Jae Young Oh ("Oh") was registered with an NASD member firm as a General Securities Representative.
2. From in or about July 2004 to February 2005, Oh was registered with NASD member firm WM Financial Services, Inc. ("WMFS") as a General Securities Representative.
3. On February 22, 2005, WMFS terminated Oh for "failing to follow company policies."
4. Pursuant to Article V, Section 4 of NASD's By-Laws, Oh remains subject to the jurisdiction of NASD for purposes of this Complaint.

FIRST CAUSE OF COMPLAINT

**NASD Conduct Rule 2110
(Falsification of Documents)**

5. Paragraphs 1-4, above, are re-alleged and incorporated herein by reference.
6. While associated with WMFS, Oh was the WMFS account representative for public customer L.P.

7. In or about January 2005, customer L.P. contacted Oh and requested a current account statement. In response, Oh prepared a falsified account statement for customer L.P., by altering the date of one of customer L.P.'s past account statements. Specifically, Oh altered the date of customer L.P.'s October 2004 account statement such that it purported to pertain to the period from January 1, 2005 to January 18, 2005. This alteration was done on each of the four pages of the account statement. All other data in the document remained unchanged.

8. Furthermore, on or about January 18, 2005, Oh sent the falsified account statement to customer L.P. and misrepresented that it was the actual account statement covering the period from January 1, 2005 to January 18, 2005.

9. Such acts, practices and conduct constitute a violation of NASD Conduct Rule 2110 by Oh.

SECOND CAUSE OF COMPLAINT

NASD Procedural Rule 8210 and NASD Conduct Rule 2110 (Failure to Respond to Requests for Information)

10. Paragraphs 1-9, above, are re-alleged and incorporated herein by reference.

11. On or about March 23, 2005, pursuant to and in accordance with NASD Procedural Rule 8210, NASD sent a letter to Oh requesting information in connection with NASD's investigation of Oh's conduct alleged above ("First 8210 Letter"). The First 8210 Letter required a response from Oh on or before April 6, 2005.

12. The First 8210 Letter was sent to Oh's last known residential address, as reflected in NASD's Central Registration Depository ("CRD Address").

13. Oh failed to respond to the First 8210 Letter.

14. On or about April 7, 2005, staff telephoned Oh to verify his address. Oh confirmed that he still resided at the CRD address. That same day, pursuant to and in accordance with NASD Procedural Rule 8210, NASD sent a second letter to Oh pursuant to NASD Procedural Rule 8210 ("Second 8210 Letter"), reiterating the requests made in the First 8210 Letter.

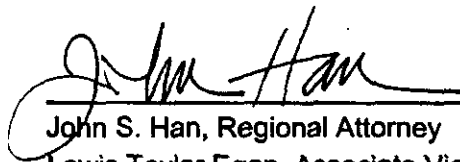
15. The Second 8210 Letter was sent via certified and regular mail to Oh's CRD Address and required a response from Oh by April 14, 2005.
16. Oh failed to respond to the Second 8210 Letter.
17. On or about April 26, 2005, pursuant to and in accordance with NASD Procedural Rule 8210, NASD sent a third letter to Oh ("Third 8210 Letter"), reiterating the requests made in the First and Second 8210 Letters.
18. The Third 8210 Letter was sent via certified and regular mail to Oh's CRD Address and required a response from Oh by May 3, 2005.
19. Oh failed to respond to the Third 8210 Letter.
20. Such acts, practices and conduct constitute separate and distinct violations of NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by Oh.

PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Oh committed the violations alleged within this Complaint;
- B. An order imposing sanctions upon Oh 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.

Date: May 17, 2006



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