

NASD OFFICE OF HEARING OFFICERS

RECEIVED

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

TAEK H. CHYUNG
(CRD No. 2862236),

Respondent.

Disciplinary Proceeding

No. 2005000924401

DEFAULT DECISION

Hearing Officer - SW

Dated: April 6, 2006

Respondent (1) failed to respond to requests for information, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110, and (2) engaged in a private securities transaction, in violation of NASD Conduct Rules 3040 and 2110. Respondent is barred for violating NASD Procedural Rule 8210 and NASD Conduct Rule 2110. In light of the bar, the Hearing Officer did not impose sanctions for the private securities violation.

Appearances

Paul D. Taberner, Esq., Regional Counsel, Boston, MA, and Rory C. Flynn, Esq.,
Of Counsel, Washington, DC, for the Department of Enforcement.

No appearance by or for Taek H. Chyung.

DECISION

I. Procedural Background

On November 17, 2005, the NASD Department of Enforcement ("Enforcement") filed the attached Complaint in this proceeding. The two-count Complaint alleges that Respondent Taek H. Chyung ("Respondent"): (i) participated in the sale of a security (i.e., the sale of a promissory note) without providing prior written notice to his employer, New England Securities ("New England"), in violation of NASD Conduct Rules 3040

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and 2110; and (ii) failed to respond to requests for information issued pursuant to NASD Procedural Rule 8210, in violation of Rules 8210 and 2110.

Pursuant to NASD Rules 9215(a) and 9138(c), Respondent was required to file an answer to the Complaint, which he failed to do. Accordingly, on February 3, 2006, Enforcement filed a Motion for Entry of Default Decision ("Motion"), supported by the declaration of Paul D. Taberner, Esq., Regional Counsel in NASD's Boston office, and by four exhibits.¹ For the reasons set forth below, Enforcement's Motion is granted.

II. Respondent's Default

On November 15, 2005, Enforcement served the Complaint and Notice of Complaint on Respondent, via first class and certified mail, at his address of record in NASD's Central Registration Depository ("CRD address").² (DECL at ¶ 18). Respondent did not file an answer to the Complaint. (DECL at ¶ 20).

Thereafter, on December 13, 2005, Enforcement sent a Second Notice of Complaint and Complaint, via first class and certified mail, to Respondent at his CRD address. (DECL at ¶ 21). To date, Respondent has not filed an answer to the Complaint. (DECL at ¶ 24).

Enforcement complied with NASD Procedural Rule 9134(b)(1) by sending the mailings to Respondent's CRD address. Accordingly, the Hearing Officer finds that Respondent received effective constructive notice of this proceeding and defaulted by failing to answer the Complaint.

¹ Hereinafter, the statements in the Motion for Entry of Default Decision will be designated as "Motion, p.;" the statements in the Taberner Declaration will be designated as "DECL at ¶;" and Enforcement's exhibits will be designated as "CX-" with the appropriate page or paragraph number.

² Respondent's CRD address is [REDACTED] (CX-1, p. 1).

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

From June 8, 1998 to March 18, 2005, Respondent was registered with NASD member firm New England as an investment company and variable contracts products representative.³ (CX-1, p. 2; DECL at ¶ 5). Respondent is not currently employed in the securities industry. (*Id.*).

NASD has jurisdiction to bring this proceeding, pursuant to Article V, Section 4 of the NASD By-Laws, because Enforcement filed the Complaint within two years after Respondent's registration terminated, and the Complaint alleges misconduct while he was registered.

B. Respondent Participated in the Offer and Sale of a Promissory Note to Customer RD without Providing Prior Written Notice to New England

Count one of the Complaint alleges that in November 2003, while associated with New England, Respondent participated in the sale of a \$12,000 promissory note to customer RD without providing prior written notice of the proposed transaction to New England. (Complaint at ¶¶ 2-6). Specifically, Respondent (i) solicited customer RD to invest in a promissory note, and (ii) executed the promissory note on behalf of Attila Enterprises, a company purportedly located in Ft. Lauderdale, FL. (Complaint at ¶ 4).

Enforcement submitted additional information with its Motion showing that Respondent solicited customer RD when he advised RD that a company in Florida would pay a 20 percent return over six months if RD invested \$12,000. (DECL ¶ 11). On

³ Respondent also filed an application to become registered as a general securities representative with New England, but Respondent was terminated prior to becoming registered as a general securities representative. (CX-1, p. 2).

November 5, 2003, Respondent accepted a check in the amount of \$12,000 from RD payable to “T.C. Chyung” for the investment, advising RD that Respondent would combine RD’s funds with funds that Respondent was personally investing in the Florida company. (DECL ¶ 11).

After six months had elapsed, customer RD called Respondent to check on the status of his investment, and Respondent advised him that the Florida company had extended the deal for a few more months. (DECL ¶ 12). In October 2004, RD telephoned Respondent to “call” the promissory note, but Respondent assured him that everything would work out and that he should wait. (Id.).

On November 13, 2004, customer RD received a letter from Respondent stating that the investment had not worked out and that Respondent intended to make RD “whole”; the letter also included a check to RD from Respondent in the amount of \$1,000 (DECL at ¶ 13). After receipt of the November 13, 2004 letter, customer RD attempted to contact Respondent several times with no response. (Id.).

New England’s written supervisory procedures in effect in 2003-2004 provided that registered representatives may not sell securities that are not offered through or approved by New England. (Complaint at ¶ 3; DECL at ¶15). New England wrote a letter to NASD stating that the firm never approved any private securities transactions by Respondent. (DECL at ¶ 15).

Under Rule 9215(f) and Notice to Members 99-77, the allegations of count one of the Complaint are deemed admitted, and they are hereby incorporated in this Default Decision as findings of fact.

NASD Conduct Rule 3040 requires that an associated person who intends to participate in a private securities transaction, prior to the transaction, must “provide written notice to the member with which he is associated describing in detail the proposed transaction and the person’s proposed role therein and stating whether he has received or may receive selling compensation in connection with the transaction”⁴

The Supreme Court devised the “family resemblance” test in Reves v. Ernst & Young,⁵ for determining whether a particular note is a “security” for purposes of federal securities laws and regulations. Under the family resemblance test, all promissory notes are presumed to be securities, and this presumption is rebutted only by a showing that the investments bear a strong resemblance to a list of financial instruments specifically excluded as securities by the Supreme Court in Reves, or by proving, under a four-factor test, that the note is of a type that should be added to the list of excluded financial instruments.⁶ There was no evidence presented to rebut the presumption that the Attila Enterprises promissory note was a security.⁷

⁴ In addition, Rule 3040 provides that, if the transaction is for compensation, the member firm must approve or disapprove of the proposed transaction in writing. If the member approves a person’s participation in the proposed transaction, the transaction must be recorded on the books and records of the member and the member must supervise the person’s participation in the transaction.

⁵ 494 U.S. 56, 62-63 (1990).

⁶ The four factors considered in Reves for whether a note should be added to the list of statutorily exempt notes are: (1) the motivations that would prompt a reasonable borrower and lender to enter into the transaction; (2) the plan of distributing the notes; (3) the reasonable expectations of the investing public regarding whether the instruments were securities; and (4) the presence of any alternative scheme of regulation or other factor that significantly reduces the risk of the instrument so as to make regulation under the securities laws unnecessary. Reves, 494 U.S. at 66-67.

⁷ A note may still be excluded from the coverage of the federal securities laws and regulations if it is of a certain type and “has a maturity at the time of issuance of not exceeding nine months.” 15 U.S.C. § 77c(a)(3). This exception was meant to apply to “prime quality negotiable commercial paper of a type not ordinarily purchased by the general public, that is, paper used to facilitate well recognized types of current operational business requirements and of a type eligible for discounting by Federal Reserve banks.” Zeller v. Bogue Elec. Mfg. Corp., 476 F.2d 795, 799 (2nd Cir. 1973).

Accordingly, the Hearing Officer finds that, for purposes of this Default Decision, the evidence is sufficient to establish that the Attila Enterprises promissory note was a security.

Respondent's solicitation of customer RD to invest in the Attila Enterprises promissory note was sufficient to trigger the requirement that he notify New England of his participation in writing. A failure to provide prior written notice of an intent to participate in the solicitation of securities constitutes a violation of Conduct Rule 3040.⁸ A violation of Conduct Rule 3040 is also a violation of Conduct Rule 2110's requirement to "observe high standards of commercial honor and just and equitable principles of trade."⁹

Based on the allegations deemed admitted, the Hearing Officer finds that Respondent participated in the sale of a promissory note to customer RD, without providing prior written notice of the transaction to New England and thereby violated NASD Conduct Rules 3040 and 2110.

C. Respondent Failed to Respond to Requests for Information

On March 15, 2005, the Boston District office of NASD received a Form 3070 filing by New England that disclosed that Respondent was terminated for engaging in an unauthorized outside business activity involving the sale of insurance products. (DECL at ¶ 6). In the course of investigating the alleged unauthorized outside business activity, the NASD staff discovered the private securities transaction. (Id.).

Count two of the Complaint alleges that the NASD staff sent Respondent two

⁸ Stephen J. Gluckman, 1999 SEC LEXIS 1395, at **14-15 (July 20, 1999).

⁹ District Bus. Conduct Comm. v. Norman M. Merz, No. C8A960094, 1998 NASD Discip. LEXIS 40 (NAC Nov. 11, 1998).

requests for information, pursuant to NASD Procedural Rule 8210, on August 4, 2005 and August 25, 2005, concerning the allegations of count one of the Complaint and the alleged outside business activity. (Complaint at ¶¶ 9-11). The requests for information were sent to Respondent at his CRD address. (*Id.*). To date, Respondent has not responded to any of the Rule 8210 requests. (Complaint at ¶ 12).

Under Rule 9215(f) and Notice to Members 99-77, the allegations of count two of the Complaint are deemed admitted, and they are hereby incorporated in this Default Decision as findings of fact.

Procedural Rule 8210(a)(1) gives NASD the authority to require persons associated with a member to report “orally, [or] in writing, . . . with respect to any matter involved in the investigation.” The obligation to answer such requests continues for two years from the termination of a representative’s registration. This Rule provides a means for NASD to carry out its regulatory functions in the absence of subpoena power. It is a “key element in the NASD’s efforts to police its members”; failure to respond subverts the NASD’s ability to perform its regulatory responsibilities.¹⁰

The Hearing Officer finds that Respondent had constructive notice of the Rule 8210 requests because they were mailed to his CRD address, and finds further that he violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by failing to respond to the two requests for information.

¹⁰ Richard J. Rouse, 51 SEC 581 (1993); John J. Malach, 51 SEC 618 (1993).

IV. Sanctions

A. Respondent Failed to Respond to NASD Requests for Information

For failing to respond to the NASD staff's requests for information, Enforcement recommended that Respondent be barred. The NASD Sanction Guidelines provide that a bar should be standard when an individual respondent does not respond in any manner to a request issued pursuant to Rule 8210.¹¹ The record does not indicate the existence of any mitigating factors that would warrant a lesser sanction. Accordingly, the Hearing Officer accepts Enforcement's recommendation and bars Respondent from associating with any member firm in any capacity for failing to respond to the two requests for information issued pursuant to NASD Procedural Rule 8210.

B. No Sanction for the Private Securities Transaction Violation

Because the Hearing Officer barred Respondent for his failure to respond to the Rule 8210 requests for information, no separate sanction will be imposed for the private securities transaction in violation of NASD Conduct Rules 3040 and 2110.¹²

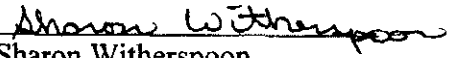
V. Order

Respondent Taek H. Chyung is barred from associating with any NASD member firm in any capacity for failing to respond to NASD requests for information issued pursuant to Rule 8210, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110. The bar shall become effective on the date this Decision becomes the final

¹¹ NASD Sanction Guidelines, p. 35 (2005).

¹² See Dep't of Enforcement v. Jeffrey B. Hodde, No. C10010005, 2002 NASD Discip. LEXIS 4, at *17 (NAC Mar. 27, 2002) (explaining that a bar is the standard sanction for a respondent's failure to respond to information requests and holding that it is therefore redundant to impose an additional sanction, such as a suspension, for a violation of another NASD rule).

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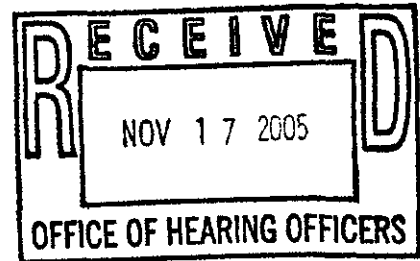

Sharon Witherspoon
Hearing Officer

Date: Washington, DC
April 6, 2006

Copies to:

Taek H. Chyung (via Federal Express and first class mail)
Paul D. Taberner, Esq. (via electronic and first class mail)
Roger D. Hogoboom, Esq. (via electronic and first class mail)
Rory C. Flynn, Esq. (via electronic and first class mail)

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COMPLAINT

Upon information and belief, Complainant alleges the following:

1. Respondent Taek H. Chyung ("Chyung") first became registered with NASD in 1998 as a General Securities Representative. He was registered with New England Securities ("NES") in that capacity from April 8, 1998 to March 2, 2005. He has not been registered with any member since March 2, 2005. NASD retains jurisdiction over Chyung for purposes of this Complaint pursuant to Article V, Section 4 of NASD's By-Laws in that: the misconduct alleged in Cause One occurred while Chyung was associated with NES; and, this Complaint was filed within, and the violations of Procedural Rule 8210 alleged in Cause Two occurred within, two years after NES filed a Form U5 with NASD for Chyung.

CAUSE ONE OF COMPLAINT

PRIVATE SECURITIES TRANSACTION

Violation of NASD Conduct Rules 3040 and 2110

2. The allegations in Paragraph 1 above are re-alleged and incorporated herein by reference.
3. NES' written supervisory procedures provide the following:

NES registered representatives may not sell securities that are not offered through or approved by NES. To do so is called "selling away" and it is prohibited by the National Association of Securities Dealers.
4. In November 2003, while registered at NES, Chyung participated in the sale of \$12,000 in securities to NES customer RD. The security sold to customer RD was in the form of a promissory note, signed by Chyung on behalf of Attila Enterprises, a company purportedly located in Ft. Lauderdale, FL.
5. Chyung's sale of this security to customer RD was outside of the normal scope of his association with NES.
6. Chyung engaged in these private securities transactions without prior written notice to, or approval from, his employer member firm NES.
7. Based on the foregoing, Chyung violated NASD Conduct Rules 3040 and 2110.

CAUSE TWO OF COMPLAINT

FAILURE TO RESPOND

Violation of NASD Procedural Rule 8210 and Conduct Rule 2110

8. The allegations in Paragraphs 1 through 7 above are re-alleged and incorporated herein by reference.

9. By a letter dated August 4, 2005, NASD staff requested, pursuant to Procedural Rule 8210, that Chyung provide, *inter alia*, a detailed explanation of NES allegations that he did not report an outside business activity, a detailed explanation of the alleged promissory note to customer RD, and copies of all personal bank account statements from November 2003 to May 2005. The letter was sent to Chyung's address shown in the Central Registration Depository ("CRD"), [REDACTED] by first class and certified mail. Chyung failed to provide NASD any information or documents as requested by August 18, 2005.

10. On August 25, 2005, NASD staff sent a second letter, pursuant to Procedural Rule 8210, requesting that Chyung respond to the questions and document requests made in NASD's August 4, 2005 letter. The August 25, 2005 letter enclosed a copy of the August 4, 2005 letter and warned Chyung that failure to provide the information requested could result in disciplinary action against him by NASD. The letter again was sent to Chyung's address shown in the CRD [REDACTED] by first class and certified mail. Chyung failed to provide NASD any information or documents as requested by September 6, 2005.

11. The August 4, 2005 and August 25, 2005 certified letters, as well as the August 25 letter sent via regular mail, were returned to NASD marked "not deliverable as addressed – unable to forward." The August 4, 2005 letter sent by regular mail was not returned to NASD. NASD staff requested an Equifax report to verify if Chyung had a more current mailing address. The most current mailing address listed with Equifax was consistent with Chyung's address shown in the CRD. Additionally, NASD staff is not aware of a current business address for Chyung.

12. To date, Chyung has failed to provide NASD any of the information it requested from him.

13. Based on the foregoing, Chyung violated NASD Procedural Rule 8210 and Conduct Rule 2110.

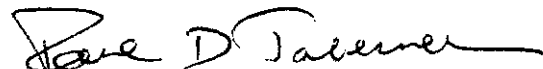
PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Chyung committed the violations charged and alleged herein;
- B. An order imposing sanctions upon Chyung in accordance with NASD Rule 8310;
- C. An order imposing such costs relating to this proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330; and
- D. An order granting all further relief that is warranted under the circumstances.

Dated: November 15, 2005

NASD
DEPARTMENT OF ENFORCEMENT



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