

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,	:	Disciplinary Proceeding
	:	No. 20050009671-01
Complainant,	:	
	:	DEFAULT DECISION
v.	:	
	:	Hearing Officer – SW
DAVID L. ROBINSON	:	
(CRD No. 2878944),	:	Dated: May 1, 2006
	:	
Respondent.	:	

Respondent is suspended for one year from associating with any NASD member in all capacities and fined \$5,000 for violating Article V, Section 2(c) of the NASD By-Laws, NASD Conduct Rule 2110, and IM-1000-1 by willfully failing to amend his Form U-4.¹ Respondent is also suspended an additional one year in all capacities and fined an additional \$5,000 for violating NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by failing to timely respond to requests for information issued by the NASD staff. Collection of the fines is suspended until Respondent re-enters the securities industry.

Appearances

Marcletta R. Kerr, Esq., Regional Attorney, Chicago, IL, and Rory C. Flynn, Esq., Of Counsel, Washington, DC, for the Department of Enforcement.

No appearance by or for David L. Robinson.

DECISION

I. Introduction

On December 13, 2005, the NASD Department of Enforcement (“Enforcement”) filed the attached two-count Complaint against Respondent David L. Robinson

¹ Based on the Hearing Officer's finding that Respondent willfully failed to amend his application for registration to disclose his criminal history on a Form U-4, Respondent is a statutorily disqualified person pursuant to Article III, Section 4(f) of the NASD By-Laws.

("Respondent"), alleging that: (i) he willfully failed to amend his Form U-4 to disclose his criminal history, in violation of Article V, Section 2(c) of the NASD By-Laws, NASD Conduct Rule 2110, and IM-1000-1; and (ii) he failed to timely respond to requests for information issued pursuant to Rule 8210, in violation of NASD Conduct Rule 2110 and Procedural Rule 8210.

Pursuant to NASD Rules 9215(a) and 9138(c), Respondent was required to file an answer to the Complaint, which he failed to do. On March 6, 2006, Enforcement filed a Motion for Entry of Default Decision ("Motion"), supported by the Declaration of Marcletta R. Kerr, Esq., Regional Attorney in NASD's Chicago office, and by seven exhibits.² For the reasons set forth below, Enforcement's Motion is granted.

II. Respondent's Default

On December 12, 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").³ (CX-1, p. 1; CX-2; DECL at ¶ 6). Respondent did not file an answer to the Complaint. (DECL at ¶ 8). On January 13, 2006, Enforcement served the Second Notice of Complaint and Complaint on Respondent, via first class and certified mail, at his CRD address. (CX-4; DECL at ¶ 7). To date, Respondent has not filed an answer to the Complaint. (DECL at ¶ 8).

The Hearing Officer finds that Enforcement complied with Procedural Rule 9134(b)(1) by sending the mailings to Respondent's CRD address. Accordingly, the

² Hereinafter, the statements in the Motion for Entry of Default Decision will be designated as "Motion, p.;" the statements in the Kerr Declaration will be designated as "DECL at ¶;" and Enforcement's exhibits will be designated as "CX-" with the appropriate page or paragraph number.

³ Respondent's CRD address is [REDACTED] (CX-1, p. 1).

Hearing Officer finds that Respondent received effective constructive notice of this proceeding and further finds that Respondent defaulted by failing to answer the Complaint.

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

Respondent first became employed by an NASD member on March 17, 1997. (CX-1, p. 2). From August 12, 1997 to April 1, 2005, Respondent was registered with PFS Investments Inc. ("PFS Investments") as an investment company and variable contracts products representative. (CX-1, p. 3). Respondent is not currently registered with any NASD member firm. (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 and with failures to timely provide information requested pursuant to Rule 8210 while he was subject to NASD's retained jurisdiction.

B. Respondent Failed to Update his Form U-4 to Disclose Criminal Charges

Count one of the Complaint alleges that on October 5, 2002, the State of Ohio filed a criminal complaint in Hamilton County, Ohio, charging Respondent with a felony of passing bad checks, and on November 25, 2003, a grand jury indicted Respondent for one misdemeanor of passing bad checks and one misdemeanor of theft by deception. (Complaint at ¶¶ 2-6). Specifically, it was alleged that in February 2002, (i) Respondent wrote a check in the amount of \$750 to his wife knowing it would be dishonored, (ii)

Respondent wrote another \$750 check to his wife one week later, and (iii) both checks were returned for non-sufficient funds. (Complaint at ¶¶ 2-4). Enforcement provided the additional information that on March 22, 2004, pursuant to a plea agreement, the misdemeanor of theft by deception was dismissed and the misdemeanor of passing bad checks was lessened to the misdemeanor of disorderly conduct, of which Respondent was convicted and sentenced to six months probation. (DECL at ¶¶ 9e-9f). On February 14, 2005, Respondent wrote a letter to his OSJ manager disclosing the fact that he had received a sentence for disorderly conduct. (DECL at ¶ 9g). However, Respondent failed to amend his Form U-4 to disclose the criminal charges. (Complaint at ¶ 7).

In addition, Enforcement provided the information that, despite being required to disclose his criminal charges on two annual compliance forms for PFS Investments, one dated September 13, 2003 and one dated November 20, 2004, Respondent failed to do so. (DECL at ¶ 10). In a letter to the NASD staff dated September 9, 2005, when explaining his delay in disclosing the criminal charges to his employer, Respondent stated that he was afraid and embarrassed and wanted to report the events once a clear, definitive resolution was reached. (Id.).

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

Pursuant to Article V, Section 2(c) of NASD's By-Laws, a registered person must keep his or her Form U-4 current, and must file an amendment to his or her Form U-4 within 30 days after learning of the facts or circumstances giving rise to the amendment. All registered persons are responsible for updating their Form U-4 and a failure to do so

violates NASD Conduct Rule 2110.⁴ IM-1000-1 provides that “[t]he filing with [NASD] of information with respect to membership or registration as a Registered Representative which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or the failure to correct such filing after notice thereof, may be deemed to be conduct inconsistent with just and equitable principles of trade. . .”

Based on the allegations deemed admitted, the Hearing Officer finds that Respondent failed to update his Form U-4, in violation of Article V, Section 2(c) of the NASD By-Laws, NASD Conduct Rule 2110, and IM 1000-1.

Further, the Hearing Officer finds that Respondent intentionally failed to amend his Form U-4 because he intentionally concealed his criminal history by submitting two annual compliance forms that failed to disclose his criminal charges. Accordingly, the Hearing Officer finds that Respondent’s conduct in failing to amend his Form U-4 to disclose his criminal history was willful within the meaning of Article III, Section 4(f) of the NASD By-Laws.⁵

C. Respondent Failed to Timely Respond to Requests for Information

The second cause of the Complaint alleges that Respondent failed to timely respond to letters from the NASD staff requesting information regarding the allegations

⁴ Dep’t of Enforcement v. Howard, Complaint No. C11970032, 2000 NASD Discip. LEXIS 16, at *31 (NAC Nov. 16, 2000), aff’d, Daniel Richard Howard, Exchange Act Rel. No. 46,269, 2002 SEC LEXIS 1909 (July 26, 2002).

⁵ Christopher LaPorte, Exchange Act Rel. No. 39,171, 1997 SEC LEXIS 2058, at *8 (Sept. 30, 1997) (finding willfulness when respondent knew or should have known under the particular facts and circumstances that his conduct was improper).

in cause one of the Complaint. (Complaint at ¶¶ 9-15). The NASD staff sent requests for information to Respondent at his CRD address on April 13, 2005 and May 9, 2005, pursuant to NASD Procedural Rule 8210, via first class and certified mail. (Complaint at ¶¶ 9-11). On August 18, 2005, after receiving a Wells notice from NASD, Respondent telephoned the NASD staff and indicated he would respond to the Rule 8210 requests for information. (Complaint at ¶ 13). On August 22, 2005, NASD sent a copy of the earlier 8210 requests for information to Respondent. (Complaint at ¶ 14). On September 9, 2005, Respondent responded to the Rule 8210 requests for information. (Complaint at ¶ 15).

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

Under NASD Procedural Rule 8210, NASD may require any person subject to its jurisdiction to provide information regarding any matter under investigation. Because NASD lacks subpoena power, Rule 8210 is the means by which NASD carries out its regulatory functions. It is a “key element in NASD’s efforts to police its members.”⁶ Failure to comply with Rule 8210 requests for information is a serious violation because it subverts the NASD’s ability to perform its regulatory responsibilities.⁷ A violation of Rule 8210 is also a violation of NASD Conduct Rule 2110.⁸

⁶ See Richard J. Rouse, Exchange Act Rel. No. 32,658, 1993 SEC LEXIS 1831, at *7 (1993); Joseph G. Chiulli, Exchange Act Rel. No. 42,359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000).

⁷ Id.

⁸ See Dep’t of Enforcement v. Baxter, No. C07990016, 2000 NASD Discip. LEXIS 3, at **21, 25 (NAC Apr. 19, 2000).

Based on the allegations deemed admitted, the Hearing Officer finds that Respondent violated NASD Conduct Rule 2110 and NASD Procedural Rule 8210 by failing to timely respond to the requests for information sent to his CRD address.

IV. Sanctions

A. Respondent Willfully Failed to Amend his Form U-4 to Disclose his Criminal History

For an individual's failure to file a Form U-4 or an amendment thereto, the NASD Sanction Guidelines recommend a fine ranging from \$2,500 to \$50,000, as well as the consideration of a five to 30 business-day suspension in any or all capacities.⁹ In egregious cases, such as those involving habitual misconduct, the Guidelines suggest a longer suspension of up to two years, or a bar.¹⁰

The Guidelines suggest three principal considerations bearing on sanctions for the submission of a false Form U-4: (1) the nature and significance of information at issue; (2) whether the omission resulted in a statutorily disqualified person becoming or remaining associated with a firm; and (3) whether the misconduct harmed a registered person, a member firm, or anyone else.¹¹

The information that Respondent failed to disclose involved criminal charges and was therefore significant information warranting a suspension in excess of 30 business days. On the other hand, the omission did not result in a statutorily disqualified person becoming or remaining associated with an NASD member firm, and the misconduct did not harm the firm or any investor.

⁹ NASD Sanction Guidelines, p. 73 (2006).

¹⁰ Id., at p. 74.

¹¹ Id., at p. 73.

Arguing that Respondent's failure to disclose his criminal charges lasted 18 months, and that during the period Respondent had the opportunity but failed to disclose his criminal charges on two annual compliance disclosure forms, Enforcement recommended that Respondent be suspended for one year and fined \$5,000.¹² The Hearing Officer agrees that Respondent's misconduct warrants a serious sanction and adopts Enforcement's recommendation. Accordingly, the Hearing Officer fines Respondent \$5,000 and suspends him for one year from associating with any NASD member in all capacities.

B. Respondent Failed to Timely Respond to Requests for Information

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 8210.¹³ For an individual's failure to respond in a timely manner, the Guidelines recommend a fine ranging from \$2,500 to \$25,000, as well as a suspension in any or all capacities for up to two years.¹⁴ The Guidelines suggest two principal considerations bearing on sanctions for the failure to timely respond: (1) the nature of the information requested; and (2) if the information has been provided, the number of requests made, the time respondent took to respond, and the degree of regulatory pressure required to obtain a response.¹⁵

¹² See DOE v. Emanuel L. Sarris, 2003 NASD Discip. LEXIS 12, *17 (OHO Mar. 17, 2003) (OHO suspended the respondent for one year, fined him \$10,000, and ordered him to requalify by examination for failing to update his Form U-4 over a five year period).

¹³ Guidelines at p. 35.

¹⁴ Id.

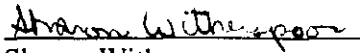
¹⁵ Id.

In this case, Respondent did not respond until September 9, 2005, four months after the May 9, 2005 second request, and then only after receipt of a Wells Notice. Enforcement recommended that Respondent be suspended for an additional one year and fined an additional \$5,000. The Hearing Officer accepts Enforcement's recommendation, and fines Respondent an additional \$5,000 and suspends Respondent an additional one year from associating with any NASD member in all capacities.

V. Order

Respondent David L. Robinson is suspended from associating with any NASD member firm in any capacity for two years and fined \$10,000 for willfully failing to update his Form U-4 to disclose his criminal charges, in violation of Article V, Section 2(c) of the NASD By-Laws and NASD Conduct Rule 2110, and for violating NASD Conduct Rule 2110 and Procedural Rule 8210 by failing to respond timely to two Rule 8210 requests for information.

These sanctions shall become effective on a date set by NASD, but not earlier than 30 days after the date of service of the Decision constituting final disciplinary action of NASD; except that, if this Decision becomes the final disciplinary action of NASD, Respondent's suspension shall become effective with the opening of business on June 5, 2006, and end at the close of business on June 4, 2008. Collection of the fines is suspended until Respondent re-enters the securities industry.


Sharon Witherspoon
Hearing Officer

Dated: Washington, DC
May 1, 2006

Copies to:

David L. Robinson (via FedEx and first class mail)

Marcletta R. Kerr, Esq. (via electronic and first class mail)

Rory C. Flynn, Esq. (via electronic and first class mail)

Roger D. Hogoboom, Esq. (via electronic and first class mail)

**NASD
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

DAVID L. ROBINSON
CRD No. 2878944

Respondent.

Disciplinary Proceeding
No. E8A20050009671

Hearing Officer

COMPLAINT

Upon information and belief, Complainant alleges as follows:

1. Respondent David L. Robinson ("Robinson") entered the securities industry in 1997 as an Investment Company and Variable Contracts Products Representative of PFS Investments Inc., ("Member") a member of NASD, where he remained until March 2005. Robinson is not currently registered with any member of NASD. Since this Complaint is filed within two years of the termination of Robinson's registration with the Member, Robinson is subject to the jurisdiction of NASD, pursuant to Article V, Section 4 of the NASD's By-Laws.

**FIRST CAUSE OF COMPLAINT
NASD By-Laws Art. V, Sec. 2
NASD Conduct Rules 2110 and IM 1000-1
Failure to Amend Form U-4**

2. On or about October 5, 2002, the State of Ohio filed a criminal complaint in Hamilton County, Ohio charging Robinson with the felony of Passing Bad Checks, contrary to Ohio Statute 2913.11(A).

3. It was alleged in the complaint that, in February 2002, Robinson wrote a check in the amount of \$750 to his wife knowing it would be dishonored.
4. It was further alleged that about a week later, Robinson issued another check to his wife in the amount of \$750. Both checks were returned for non-sufficient funds.
5. Robinson appeared in court on August 18, 2003 and was charged with the felony of Passing Bad Checks.
6. On or about November 25, 2003, Robinson learned that the grand jury indicted him with one misdemeanor count of Passing Bad Checks, contrary to Ohio Statute 2913.11(A) and one misdemeanor count of Theft By Deception, contrary to Ohio Statute 2913.02(A)(3).
7. Although required to do so pursuant to NASD By-Laws Article V, Sec. 2, Respondent Robinson did not amend or cause to be amended his Form U-4 to reflect he had been charged with these crimes.
8. Respondent Robinson's failure to amend his Form U-4 to reflect the charges specified above is a violation of NASD By-Laws Article V, Sec. 2 and NASD Conduct Rules 2110 and IM 1000-1.

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

9. On or about April 13, 2005, NASD staff sent Respondent a 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 mail

and by certified mail, return receipt requested, to Respondent'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 envelope for the certified mailing was returned to NASD staff, marked "unclaimed, unable to forward."

10. NASD did not receive a response to the April 13, 2005 request described in Paragraph 9 above by April 27, 2005, the date by which NASD staff requested a response from Respondent.
11. Accordingly, on or about May 9, 2005, NASD staff sent to Respondent a 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 mail and by certified mail, return receipt requested, to Respondent's CRD address. The first class mailing was not returned to NASD staff. Neither the envelope nor the receipt for the certified mailing was returned to NASD staff; however, NASD staff tracked the certified mailing on the United States Postal Service website. According to the website, the "item was returned to the sender on May 28, 2005 because it was not claimed by the addressee."
12. NASD did not receive a response to the May 9, 2005 request described in Paragraph 11 above by May 23, 2005, the date by which NASD staff requested a response from Respondent.
13. On or about August 18, 2005, after he received a Wells notice, Respondent telephoned NASD staff. During the telephone conversation, NASD staff asked whether Respondent intended to respond to the NASD's requests for information, described in Paragraphs 9 and 11 above, to which Respondent replied he did want to respond. NASD staff also

asked Respondent why he had not responded to the earlier requests for information and Respondent replied that he had no good reason.

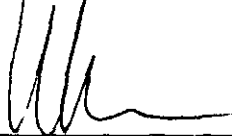
14. On August 22, 2005, NASD staff sent Respondent a copy of the earlier 8210 requests for information related to his failure to disclose his prior criminal history.
15. On or about September 9, 2005, NASD staff finally received Respondent's response to the 8210 requests for information.
16. The acts, practices and conduct described above constitute a violation of NASD Conduct Rule 2110 and Procedural Rule 8210 by Respondent.

PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

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



Dated: December 12, 2005

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Mark A. Koerner, Regional Chief Counsel
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