

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

MARCUS K. MONETT
(CRD No. 3086654),

Respondent.

Disciplinary Proceeding
No. 20050013871-01

Hearing Officer – DMF

DEFAULT DECISION

April 10, 2006

Summary

Respondent is barred from associating with any NASD member in any capacity for failing to respond in any manner to requests for information, in violation of Rules 8210 and 2110. In light of the bar, no additional sanctions are imposed on Respondent for failing to respond to other requests for information in a timely manner.

Appearances

David Utevsky, Esq., Seattle, WA (Rory C. Flynn, Esq., Washington, DC, and Roger D. Hogoboom, Esq., Denver, CO, Of Counsel), for Complainant.

No appearance by or for Respondent.

DECISION

I. Introduction

The Department of Enforcement filed the attached Complaint on December 14, 2005, alleging that Respondent Marcus K. Monett failed to respond to requests for information in a timely manner, and failed to respond in any manner to another request for information, in violation of Rules 8210 and 2110. Respondent did not file an Answer

to the Complaint. On March 2, 2006, Enforcement filed a motion for a default decision, supported by the declaration of David Utevsky and six exhibits. Respondent did not reply to the motion.¹

II. Respondent's Default

Enforcement sent the Complaint and Notice of Complaint to Respondent on December 13, 2005, by regular and certified first class mail to Respondent's most current residential address listed in the Central Registration Depository (the "CRD address"). Enforcement sent the Complaint and Second Notice of Complaint to Respondent by regular and certified first class mail to the CRD address on January 12, 2006. Respondent did not file an Answer or otherwise respond to the Complaint. Enforcement has no actual knowledge that the CRD address is out of date.

Enforcement served the Complaint and the Notices of Complaint on Respondent in accordance with Rule 9134, giving him constructive notice of this proceeding. By failing to respond, he defaulted. Pursuant to Rule 9215(f), the Hearing Officer will deem the allegations in the Complaint admitted.

III. Jurisdiction

Respondent was registered as a General Securities Representative through National Securities Corporation from August 2001 to April 2003. He was registered in the same capacity through Summit Brokerage Services, Inc. from April 2003 until

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

January 5, 2004.² Although he has not been registered since then, he remains subject to NASD jurisdiction for purposes of this proceeding because the Complaint was filed within two years after the termination of his last registration and it alleges failure to comply with Rule 8210 requests made during that two-year period.

IV. Violations

The first cause of the Complaint alleges that in or about January 2004, NASD staff began an investigation concerning the conduct of Respondent and another individual while they were registered through National and Summit. The investigation focused on, among other things, whether the other individual had converted or misused funds belonging to a customer, and whether Respondent had aided and abetted or otherwise participated in that conversion or misuse.

On February 5, 2004, in the course of the investigation, NASD staff sent Respondent a request for information, pursuant to Rule 8210. NASD staff sent the request to Respondent at his CRD address by regular and certified first class mail, and received a receipt for the certified mailing signed by Respondent. The request called for a response by February 20, 2004, but the staff did not receive any response from Respondent. Therefore, on March 12, 2004, the staff sent a second Rule 8210 request to Respondent at his CRD address, calling for a response by March 26, 2004, but again Respondent did not respond to the request.

² In its motion, Enforcement mistakenly indicates that Respondent's registration through Summit terminated on December 31, 2003. Although the Form U-5 Uniform Termination Notice for Securities Industry Registration that Summit submitted to NASD for Respondent, which Enforcement included in its Exhibits, is dated December 31, 2003, Respondent's CRD record, which Enforcement also submitted, indicates that Respondent's registration was terminated on January 5, 2004, and it is the registration termination date that controls NASD jurisdiction.

On April 1, 2005, the staff sent Respondent, at his CRD address, a letter, pursuant to Rule 9552, notifying him that he would be suspended as of April 27, 2005, because of his failure to respond to the staff's February 5 and March 12, 2004 requests for information. In response to this notification, on or about April 20, 2004, the staff received a letter from Respondent responding to the staff's February 5 and March 12 requests. Pursuant to Rule 9552, this letter forestalled the suspension.

These allegations, which are deemed admitted, are sufficient to establish for purposes of this default decision that Respondent failed to comply with requests for information in a timely manner, in violation of Rules 8210 and 2110.

The second cause of the Complaint alleges that on May 6, 2005, the staff sent a third request for information, pursuant to Rule 8210 and based on Respondent's response to the 9552 notification, to Respondent at his CRD address by regular and certified first class mail, and received a receipt for the certified mailing signed by Respondent. The request called for a response by May 20, 2005, but the staff received no response from Respondent. Therefore, on May 23, 2005, the staff sent Respondent a fourth 8210 request for information to Respondent at his CRD address by regular and certified first class mail. The request required a response by June 6, 2005, but Respondent did not submit any response to the staff. Pursuant to Rule 8210(d), he is deemed to have received both of these requests for information.

These allegations, which are deemed admitted, are sufficient to establish for purposes of this default decision that Respondent failed to respond to a request for information in violation of Rules 8210 and 2110.

V. Sanctions

For failing to respond in any manner to a request for information, the Guidelines provide that a bar is standard. NASD Sanction Guidelines at 35. There is no evidence of any mitigating facts that could justify a lesser sanction for Respondent's failure to respond to the May 6 and May 23, 2005 requests.

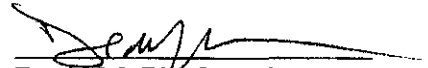
The Guidelines also provide that where the Respondent did not respond in a timely manner, a suspension of up to two years may be appropriate. The relevant considerations in setting sanctions for a delayed response include the number of requests, the time it took Respondent to respond and the degree of regulatory pressure required to obtain a response. Id. In this case, Respondent failed to respond to two requests for information for more than a year, and responded only after being notified that he would be suspended. This violation would justify at least a two year suspension and a substantial fine, if not a bar, but in light of the bar being imposed for Respondent's failure to respond to the May 23, 2005 request, additional sanctions would be redundant and would serve no regulatory purpose.

VI. Conclusion

Respondent Marcus K. Monett is barred from associating with any NASD member in any capacity for failing to respond in any manner to requests for information,

in violation of Rules 8210 and 2110. The bar will be effective immediately if this decision becomes NASD's final disciplinary action.

SO ORDERED.


David M. FitzGerald
Hearing Officer

Copies to: Marcus K. Monett (*via overnight courier and first class mail*)
 David Utevsky, 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*)

**NASD
OFFICE OF HEARING OFFICERS**

Department of Enforcement, Complainant, v. Marcus K. Monett, CRD No. 3086654 Respondent.	Disciplinary Proceeding No. 20050013871-01 Hearing Officer: ____ COMPLAINT
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Upon information and belief, Complainant alleges as follows:

1. Respondent Marcus K. Monett ("Monett") was initially associated with a member of NASD in May 1998. He became registered as a General Securities Representative in October 1998. From on or about August 21, 2001, until on or about April 10, 2003, he was registered through National Securities Corporation ("National") as a General Securities Representative. From on or about April 8, 2003, until on or about December 31, 2003, he was registered through Summit Brokerage Services, Inc. ("Summit") as a General Securities Representative.
2. On or about January 5, 2004, a Uniform Termination Notice for Securities Industry Registration ("Form U-5") was filed by Summit on behalf of Respondent Monett. The Form U-5 disclosed that Respondent Monett's registration was terminated on December 31, 2003, because his branch had been closed.

3. Respondent Monett is not currently registered or associated with any member firm; however, pursuant to Article V, Section 4 of the NASD By-Laws, NASD retains jurisdiction over him for purposes of this Complaint.

FIRST CAUSE OF COMPLAINT

[NASD Procedural Rule 8210 and Conduct Rule 2110, Failure to Respond to Requests For Information in a Timely Manner]

4. Paragraph numbers 1 through 3, above, are realleged and incorporated herein by reference.
5. In or about January 2004, NASD initiated an investigation concerning the conduct of Respondent Monett and Robert T. Stewart, Jr. ("Stewart") while they were registered with National and Summit. The investigation focused, among other things, on whether Stewart had converted or misused funds belonging to a customer, TWG; and on whether Respondent Monett had aided and abetted, or otherwise participated in, Stewart's misconduct, in violation of NASD Conduct Rules 2330(a) and 2110.
6. Respondent Monett's last known residential address, as reflected in the NASD Central Registration Depository, is [REDACTED] ("the CRD Address").

First Request for Information

7. On February 5, 2004, NASD staff sent a request for information pursuant to NASD Procedural Rule 8210 relating to the subject matter of the NASD investigation, via U.S. Postal Service first class mail and certified mail, return receipt requested, to the CRD Address. The first request letter required a response no later than February 20, 2004.

8. The envelope sent to the CRD Address via first class mail on February 5, 2004, was not returned by the U.S. Postal Service. NASD staff received a domestic return receipt for the envelope sent to the CRD Address via certified mail, bearing the signature of Marcus Monett.
9. No response to the staff's first request letter was received from Respondent Monett.

Second Request for Information

10. On March 12, 2004, the staff sent a second request for information pursuant to NASD Procedural Rule 8210 relating to the subject matter of the NASD investigation, via U.S. Postal Service first class mail and certified mail, return receipt requested, to the CRD Address. The second request letter required a response no later than March 26, 2004.
11. The envelope sent to the CRD Address via first class mail on March 12, 2004, was not returned by the U.S. Postal Service. The envelope sent to the CRD Address via certified mail was returned by the U.S. Postal Service, marked "unclaimed."
12. As of April 1, 2005, no response to the staff's second request letter was received from Respondent Monett.
13. On April 1, 2005, in a letter sent to the CRD Address via U.S. Postal Service first class mail and Federal Express, the staff informed Respondent Monett that on April 27, 2005, he would be suspended from associating with any NASD member in any capacity, pursuant to NASD Procedural Rule 9552, based on his failure to respond to the staff's request letters of February 5 and March 12, 2004.
14. On or about April 20, 2005, the staff received a letter from Respondent Monett, responding to the staff's request letters of February 5 and March 12, 2004. Based on the receipt of that response, Respondent Monett was not suspended pursuant to Procedural Rule 9552.

15. Respondent Monett failed to respond to the staff's first and second requests for information, sent on February 5 and March 12, 2004, in a timely manner.
16. The foregoing acts, practices and conduct constitute separate and distinct violations of NASD Procedural Rule 8210. Such conduct is inconsistent with high standards of commercial honor and just and equitable principles of trade and a violation of Conduct Rule 2110 by Respondent Monett.

SECOND CAUSE OF COMPLAINT

[NASD Procedural Rule 8210 and Conduct Rule 2110, Failure to Respond to Requests For Information]

17. Paragraph numbers 1 through 3 and 5 through 16, above, are realleged and incorporated herein by reference.
18. Based on Respondent Monett's response received on or about April 20, 2005, the NASD staff sought further information from him relating to the subject matter of the NASD investigation.

Third Request for Information

19. On May 6, 2005, the staff sent a third request for information pursuant to NASD Procedural Rule 8210 relating to the subject matter of the NASD investigation, via U.S. Postal Service first class mail and certified mail, return receipt requested, to the CRD Address. The third request letter required a response no later than May 20, 2005.
20. The envelope sent to the CRD Address via first class mail on May 6, 2005, was not returned by the U.S. Postal Service. NASD staff received a domestic return receipt for the envelope sent to the CRD Address via certified mail, bearing the signature of Marcus Monett.
21. No response to the staff's third request letter was received from Respondent Monett.

Fourth Request for Information

22. On May 23, 2005, the staff sent a fourth request for information pursuant to NASD Procedural Rule 8210 relating to the subject matter of the NASD investigation, via U.S. Postal Service first class mail and certified mail, return receipt requested, to the CRD Address. The fourth request letter required a response no later than June 6, 2005.
23. The envelope sent to the CRD Address via first class mail on May 23, 2005, was not returned by the U.S. Postal Service. The envelope sent to the CRD Address via certified mail was returned by the U.S. Postal Service, marked "unclaimed."
24. No response to the staff's fourth request letter was received from Respondent Monett.
25. To date, NASD has not received any response to its third and fourth requests for information, sent on May 6 and May 23, 2005.
26. The foregoing acts, practices and conduct constitute separate and distinct violations of NASD Procedural Rule 8210. Such conduct is inconsistent with high standards of commercial honor and just and equitable principles of trade and a violation of Conduct Rule 2110 by Respondent Monett.

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**

Date: December 13, 2005

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