

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JOSEPH E. ZEGLOWITSCH III
(CRD No. 4921581),

Respondent.

Disciplinary Proceeding
No. 2005001533901

DEFAULT DECISION

Hearing Officer – SW

Dated: April 28, 2006

Respondent was barred for violating NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by failing to respond to requests for information issued by the NASD staff. In light of the bar, the Hearing Officer did not impose an additional sanction for Respondent's violation of NASD Conduct Rule 2110 and IM-1000-1 by willfully failing to disclose his criminal history on a Form U-4 application.¹

Appearances

Thomas K. Kilkenney, Esq., Regional Counsel, Philadelphia, PA, and Rory C.

Flynn, Esq., Of Counsel, Washington, DC, for the Department of Enforcement.

No appearance by or for Joseph E. Zeglowitsch III.

DECISION

I. Introduction

On December 5, 2005, the NASD Department of Enforcement ("Enforcement") filed the attached two-count Complaint against Respondent Joseph E. Zeglowitsch III ("Respondent"), alleging that: (i) he willfully failed to disclose his criminal history on a Uniform Application for Securities Industry Registration or Transfer ("Form U-4"), in

¹ Based on the Hearing Officer's finding that Respondent willfully filed a false application for registration by failing 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.

violation of NASD Conduct Rule 2110 and IM-1000-1; and (ii) he failed to 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. Accordingly, on February 15, 2006, Enforcement filed a Motion for Entry of Default Decision ("Motion"), supported by the Declaration of Thomas K. Kilkenny, Esq., Regional Counsel in NASD's Philadelphia office, and by eight exhibits.² Enforcement supplemented its Motion on March 7, 2006.³ For the reasons set forth below, Enforcement's Motion as supplemented is granted.

II. Respondent's Default

On December 1, 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").⁴ (CX-3; CX-4; CX-5; DECL at ¶ 9). Although Enforcement received a copy of a certified receipt signed by "Gail Zeglowitsch" indicating that delivery of the mailing occurred on December 3, 2005, Respondent did not file an answer to the Complaint. (CX-6; DECL at ¶¶ 10, 13).

On January 6, 2006, Enforcement served the Second Notice of Complaint and Complaint on Respondent, via first class and certified mail, at his CRD address. (CX-7;

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

³ The statements in the March 7, 2006 Supplemental Declaration will be designated as "SUPP DECL at ¶."

⁴ Respondent's CRD address is [REDACTED] (CX-3).

CX-8; DECL at ¶ 11). To date, Respondent has not filed an answer to the Complaint. (DECL at ¶ 13).

The Hearing Officer finds that Enforcement complied with 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 further finds that Respondent defaulted by failing to answer the Complaint.

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

On February 22, 2005, Respondent became employed at NASD member firms Ameriprise Financial Services, Inc. and IDS Life Insurance Company (collectively "Ameriprise").⁵ (CX-1, p. 1; DECL at ¶ 4). On March 14, 2005, Ameriprise submitted to NASD a Form U-4 for Respondent to become a registered general securities representative, executed by Respondent.⁶ (CX-1; CX-2; DECL at ¶ 4). Thereafter, Respondent was associated with Ameriprise until May 5, 2005, when Ameriprise discharged him, terminating his association without registration.⁷ (*Id.*). Respondent is not currently associated with any NASD member firm. (CX-1, p. 1; DECL at ¶ 5).

Nevertheless, Respondent remains subject to NASD jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of the NASD By-Laws, because (1) the

⁵ When Ameriprise Financial Services, Inc. hired Respondent, it was known as American Express Financial Advisors Inc. (CX-1, p. 1).

⁶ Pursuant to Article I, Section (dd) of the NASD By-Laws, a person who applies for registration is an "associated person of a member."

⁷ On May 9, 2005, Ameriprise filed a Form U-5 disclosing that it discharged Respondent for "failure to get documentation." (CX-1, p. 2; CX-2; DECL at ¶ 4).

Complaint was filed within two years after his association with Ameriprise was terminated, and (2) the Complaint charges him with misconduct while he was associated with an NASD member, and failures to provide information requested pursuant to Rule 8210 during the period of retained jurisdiction.

B. Respondent Failed to Disclose a Felony Charge on his Form U-4

Count one of the Complaint alleges that on August 19, 2004, Respondent was charged with theft, in violation of I.C. 35-43-4-2(a), a Class D felony, in Superior Court, Floyd County, Indiana. (Complaint at ¶ 3). The Complaint also alleges that, despite having been charged in 2004, seven months later Respondent completed and signed a February 22, 2005 Form U-4, which was submitted to NASD on March 14, 2005, on which he falsely answered “no” to the question, “Have you ever . . . been charged with any felony?” (Complaint at ¶¶ 4-6).

Enforcement provided the additional information that the supporting affidavit underlying the felony charge disclosed that Respondent, a store employee at the time, removed merchandise, a lawn mower, from a Home Depot store without paying for it. (SUPP DECL at ¶ 11). In addition, when listing his former employment for Ameriprise, Respondent failed to list Home Depot as a former employer on his application for registration. (SUPP DECL at ¶ 12). Certified court records obtained by NASD reflect that the felony charge remains open, and that a warrant for Respondent’s arrest remains outstanding. (SUPP DECL at ¶ 14).

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.

An associated person is required to disclose any felony charges or misdemeanor convictions involving fraud, false statements or omissions, or wrongful taking of property on his or her Form U-4.⁸ The Securities and Exchange Commission has held that misrepresentations on an application for registration violate the standards of just and equitable principles of trade of NASD Conduct Rule 2110 to which every person associated with any NASD member is held.⁹ 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 provided a false response on his Form U-4, in violation of NASD Conduct Rule 2110 and IM-1000-1.

Further, the Hearing Officer finds that Respondent intentionally attempted to further conceal his criminal history by failing to disclose his employment at Home Depot on his Form U-4. Accordingly, the Hearing Officer finds that Respondent’s conduct in failing to disclose his criminal history on his Form U-4 was willful within the meaning of Article III, Section 4(f) of the NASD By-Laws.¹⁰

⁸ Article V, Section 2(a)(2) of the NASD By-Laws provides that any application for registration with NASD shall be properly signed by the applicant and shall contain such reasonable information with respect to the applicant as NASD may require.

⁹ Robert E. Kauffman, Exchange Act Rel. No. 33,219 (Nov. 18, 1993), aff’d, Robert E. Kauffman v. S.E.C., 40 F.3d 1240 (3rd Cir. 1994).

¹⁰ Christopher LaPorte, Exchange Act Release 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).

C. Respondent Failed to Respond to Requests for Information

The second cause of the Complaint alleges that Respondent failed to respond to two letters from the NASD staff requesting information regarding the allegations in cause one of the Complaint. (Complaint at ¶¶ 9-13). The NASD staff sent a request for information to Respondent at his CRD address on May 31, 2005, pursuant to NASD Procedural Rule 8210, via first class and certified mail. (Complaint at ¶ 9).

As a result of the May 31, 2005 mailing, Respondent called the NASD staff in the Philadelphia District office on June 3, 2005, and was reminded by an NASD staff member of the importance of responding to the request.¹¹ (Complaint at ¶ 10). Respondent failed to provide any information in response to the request for information. (Complaint at ¶ 13).

On June 15, 2005, the NASD staff sent a second request for information to Respondent at his CRD address, via first class and certified mail, pursuant to NASD Procedural Rule 8210. (Complaint at ¶ 11). Respondent failed to provide any information in response to the June 15, 2005 request for information. (Complaint at ¶ 13).

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

¹¹ NASD also received a certified mail receipt signed by "Joseph Zeglowitsch, Jr." for the May 31, 2005 mailing, indicating that delivery of the mailing occurred on June 3, 2005. (Complaint at ¶ 9).

regulatory functions. It is a “key element in NASD’s efforts to police its members.”¹² 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.¹³ A violation of Rule 8210 is also a violation of NASD Conduct Rule 2110.¹⁴

In this case, based on Respondent’s June 3, 2005 telephone call to the NASD staff, the Hearing Officer finds that Respondent received actual notice of the request for information and failed to respond. In any event, Respondent is deemed to have received the requests for information sent to his CRD address pursuant to Rule 8210(d).

Accordingly, 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 respond to the two requests for information sent to his CRD address.

IV. Sanctions

A. Respondent Failed to Respond to Requests for Information

For failing to respond to two 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 8210.¹⁵ The record does not indicate the existence of any mitigating factors that would warrant a lesser sanction. Accordingly, the Hearing Officer

¹² See Richard J. Rouse, Exchange Act Release No. 32,658, 1993 SEC LEXIS 1831, at *7 (1993); Joseph G. Chiulli, Exchange Act Release No. 42,359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000).

¹³ Id.

¹⁴ See Dep’t of Enforcement v. Baxter, No. C07990016, 2000 NASD Discip. LEXIS 3, at **21, 25 (NAC Apr. 19, 2000).

¹⁵ NASD Sanction Guidelines, p. 35 (2006).

accepts Enforcement's recommendation and bars Respondent for failing to respond to the two requests for information.

B. The Hearing Officer Imposes No Separate Sanction for Respondent's Willful Failure to Disclose his Criminal History on his Form U-4

Because the Hearing Officer barred Respondent for his Rule 8210 violation, the Hearing Officer will impose no separate sanction on Respondent for violating NASD Conduct Rule 2110 and IM-1000-1 by willfully failing to disclose his criminal history on his Form U-4.

V. Order

Respondent Joseph E. Zeglowitsch III is barred from associating with any NASD member firm in any capacity for violating NASD Conduct Rule 2110 and Procedural Rule 8210 by failing to respond to two Rule 8210 requests for information. The bar will become effective immediately upon this Default Decision becoming the final disciplinary action of NASD.


Sharon Witherspoon
Hearing Officer

Dated: Washington, DC
April 28, 2006

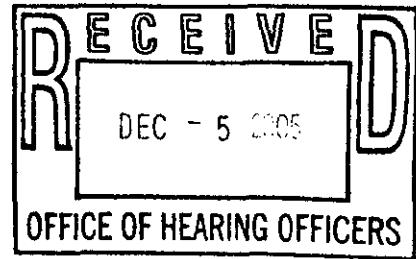
Copies to:

Joseph E. Zeglowitsch III (via FedEx and first class mail)
Thomas K. Kilkenny, 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)

EXHIBIT A

ORIGINAL

**NASD
OFFICE OF HEARING OFFICERS**



DEPARTMENT OF ENFORCEMENT

Complainant

v.

Joseph E. Zeglowitsch III
CRD No. 4921581

Respondent

Disciplinary Proceeding
No. 2005001533901

Hearing Officer—

COMPLAINT

Complainant, upon information and belief, alleges that:

1. Joseph E. Zeglowitsch III entered the securities industry upon filing an Application for Registration (Form U4) as a Representative of American Express Financial Advisors Inc. (now Ameriprise Financial Services, Inc.) and IDS Life Insurance Company on March 14, 2005 and remained associated with those firms until the filing of a Notice of Termination (Form U5) on May 9, 2005. His registration did not become effective before the termination of his association. Since then, he has not been associated with any member of NASD or registered in any capacity.
2. Joseph E. Zeglowitsch III remains subject to the jurisdiction of NASD pursuant to Article V, Section 4(a)(iii) of its By-Laws.

FIRST CAUSE OF COMPLAINT

NASD Conduct Rule 2110 and IM-1000-1
Willful Misstatement of Material Fact
On Application for Registration

3. On or about August 19, 2004, an Information charging Joseph E. Zeglowitsch III with Theft, a Class D felony, in violation of I.C. 35-43-4-2(a) was filed in Superior Court, Floyd County, Indiana.
4. On or about February 22, 2005, Joseph E. Zeglowitsch III completed a Uniform Application for Securities Industry Registration or Transfer (Form U4) for registration as a Representative of American Express Financial Advisors Inc. and IDS Life Insurance Company, which was electronically filed with NASD on or about March 14, 2005.
5. Question 14A(1)(b) of Form U4 asked "Have you ever been charged with any felony?"
6. Joseph E. Zeglowitsch III made a willful misrepresentation of material fact in that he falsely answered "No" to Question 14A(1)(b) on Form U4.
7. The aforesaid conduct constitutes violations by Joseph E. Zeglowitsch III of NASD Conduct Rule 2110 and IM-1000-1.

SECOND CAUSE OF COMPLAINT

NASD Conduct Rule 2110 and Procedural Rule 8210
Failure to Provide Information

8. Paragraphs number 1 and 2, above, are realleged and incorporated herein by reference.
9. On or about May 31, 2005, the staff of NASD sent to Joseph E. Zeglowitsch III written notice pursuant to NASD Procedural Rule 8210 requiring him by June 14, 2005 to provide information and documents concerning the aforesaid charge of Theft. The notice stated that the request was made pursuant to Rule 8210 and warned

that failure to comply could result in disciplinary action. The notice was sent by certified mail and by first class mail to [REDACTED] the residential address maintained for him by the Central Registration Depository ("CRD") (the "CRD address"). A certified mail delivery receipt dated June 3, 2005 and signed by "Joseph E. Zeglowitsch Jr." was returned to the District Office. The first class mailing was not returned to the District Office.

10. On or about June 3, 2005, Joseph E. Zeglowitsch III called the staff of NASD's Philadelphia District Office and spoke with the examiner who had sent him the information request of May 31, 2005. He was reminded of the importance of responding to NASD's request for information.
11. On or about June 15, 2005, the staff of NASD sent to Joseph E. Zeglowitsch III written notice pursuant to NASD Procedural Rule 8210 requiring him by June 29, 2005 to provide information and documents concerning the aforesaid charge of Theft. The notice stated that the request was made pursuant to Rule 8210 and warned that failure to comply could result in disciplinary action. The notice was sent by certified mail and by first class mail to the CRD address. The certified mailing was returned to the District Office marked "unclaimed." The first class mailing was not returned to the District Office.
12. The staff of NASD is not aware of a more current residential address or a business address for Joseph E. Zeglowitsch III.
13. Joseph E. Zeglowitsch III failed to provide the information and documents requested from him pursuant to NASD Procedural Rule 8210.
14. The aforesaid conduct constitutes violations by Joseph E. Zeglowitsch III of NASD Conduct Rule 2110 and Procedural Rule 8210.

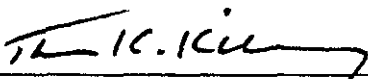
PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Respondent committed the violations alleged within this Complaint and, specifically, that the misrepresentation cited in the First Cause of Complaint was made on a Form U4 application for registration, that it was material, and that it was willfully made;
- 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

Dated: December 1, 2005



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