

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

BILLY JOE SIPES
(CRD No. 2045588),

Respondent.

Disciplinary Proceeding
No. 20050015758

Hearing Officer – DRP

DEFAULT DECISION

March 1, 2007

Respondent is barred from association with any member firm in any capacity for failing to respond to requests for information, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110. In light of the bar, no additional sanctions are imposed for failing to amend his Form U-4, in violation of NASD Conduct Rule 2110 and IM-1000-1.

Appearances

Dale A. Glanzman, Regional Counsel, Chicago, IL (Rory C. Flynn, Washington, DC, Of Counsel) for Complainant.

No appearance by or for Billy Joe Sipes.

DECISION

I. Background

On August 4, 2006, the Department of Enforcement filed a two-count Complaint in this proceeding, attached to this Decision as Exhibit A. The Complaint alleges that Respondent Billy Joe Sipes (Respondent or Sipes) willfully failed to amend his Uniform Application for Securities Industry Registration (Form U-4) to disclose his personal bankruptcy filing, in violation of NASD Conduct Rule 2110 and IM-1000-1, and failed to respond to requests for information, in

violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110. Respondent did not file an Answer to the Complaint.

Accordingly, on February 1, 2007, Enforcement filed a motion for entry of default decision, supported by the declaration of Dale A. Glanzman and 11 exhibits. Sipes 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 or about August 2, 2006, Enforcement served the Complaint and Notice of Complaint on Respondent by first-class and certified mail sent to Respondent's residential address, as reflected in the Central Registration Depository (CRD address).² Respondent did not file an Answer.³

On or about August 30, 2006, Enforcement served the Complaint and Second Notice of Complaint on Respondent by first-class and certified mail sent to Respondent's CRD address. As before, Respondent did not file an Answer.

On or about October 23, 2006, Enforcement served the Complaint, Second Notice of Complaint and Third Notice of Complaint on Respondent by first-class and certified mail sent to Respondent's CRD address, as well as to an address Enforcement staff had obtained during its investigation (Simpsonville address).⁴ Respondent did not file an Answer.

Finally, on or about November 21, 2006, Enforcement served the Complaint and Fourth Notice of Complaint on Respondent by first-class and certified mail sent to Respondent's CRD

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.

² Respondent's CRD address is [REDACTED]

³ The first-class mailing was returned, marked with a handwritten note "moved two years ago." The certified mailing was returned, marked by the U.S. Postal Service as "attempted/not known."

⁴ The alternate address is [REDACTED]

address and to an address that Enforcement staff obtained during a conversation with Respondent on November 10, 2006 (Shelbyville address).⁵ Respondent did not file an Answer.

Enforcement complied with Procedural Rule 9134(b)(1) by mailing the Complaint and Notices of Complaint to Respondent's CRD address, thereby providing constructive notice of this proceeding. Moreover, as evidenced by Respondent's conversation with Enforcement staff, Respondent had actual notice of this proceeding. By failing to file an Answer or otherwise respond to the Complaint, Respondent defaulted. Pursuant to Rules 9215(f) and 9269(a)(2), the allegations in the Complaint are deemed admitted.

III. Jurisdiction

Respondent entered the securities industry in 1990 and was registered with two NASD member firms prior to joining NASD member Morgan Keegan & Company (Morgan Keegan). Respondent was registered with Morgan Keegan as a general securities representative, general securities principal, municipal securities representative and municipal securities principal from October 2003 until his registration was terminated in May 2005. Since then, Respondent has not been associated or registered with any NASD member.

Respondent is subject to NASD jurisdiction pursuant to Art. V, Section 4 of NASD's By-Laws, because the Complaint, which was filed within two years of the termination of Respondent's registration with Morgan Keegan, alleges misconduct that occurred while he was registered, and a failure to comply with requests for information made during the two-year period following the termination.

⁵ During the November 10, 2006 conversation, Respondent complained that he was "tired of receiving" mail from NASD. He nevertheless provided another address: [REDACTED] The receipt from the certified mailing to the Shelbyville address bears a signature that appears to be "BJ Sipes."

IV. Findings of Fact and Conclusions of Law

A. Failure to Amend Form U-4

The first cause of the Complaint alleges that on or about December 3, 2003, Respondent filed for personal bankruptcy in the United States Bankruptcy Court for the Western District of Kentucky. The Complaint further alleges that Respondent, who was registered with Morgan Keegan at the time, willfully failed to amend his Form U-4 to disclose the bankruptcy filing.

Form U-4 requires a registered person to disclose certain financial information, including whether he has filed a petition for bankruptcy.⁶ The burden of updating a Form U-4 rests with the registered representative.⁷ Pursuant to Article V, Section 2(c) of NASD's By-Laws, amendments must be filed not later than 30 days after learning of the facts or circumstances giving rise to the amendment.

A failure to amend a Form U-4, as occurred here, violates NASD Conduct Rule 2110.⁸ It also violates IM-1000-1, which provides that the filing of registration information that "is incomplete or inaccurate so as to be misleading . . . or the failure to correct such filing . . . may be deemed" a violation of Rule 2110.⁹

Respondent was required to amend his Form U-4 in or about January 2004 to reflect his pending bankruptcy petition. He failed to do so. Accordingly, the allegations in the Complaint,

⁶ A registered person is obligated to report whether he has "filed a bankruptcy petition or been the subject of an involuntary bankruptcy petition" at question 14K(1).

⁷ *Dep't of Enforcement v. Howard*, No. C11970037, 2000 NASD Discip. LEXIS 16, at *31 (NAC Nov. 16, 2000), *aff'd*, 2002 SEC LEXIS 1909 (July 26, 2002) *citing* *Frank R. Rubba*, Exchange Act Release No. 40,238 (July 21, 1998).

⁸ *Howard*, 2000 NASD Discip. LEXIS 16.

⁹ *See Dep't of Enforcement v. Knight*, No. C10020060, 2004 NASD Discip. LEXIS 5, at *7-8 (NAC Apr. 27, 2004).

which are deemed admitted, are sufficient to establish for purposes of this default decision that Respondent violated NASD Conduct Rule 2110 and IM-1000-1.¹⁰

B. Failure to Respond to Requests for Information

The second cause of the Complaint charges that Respondent violated Procedural Rule 8210 and Conduct Rule 2110 by failing to respond to the staff's requests for information regarding his termination of registration with Morgan Keegan. The Complaint alleges that the staff sent requests for information by first-class and certified mail to a slight variation on Respondent's CRD address on March 29 and April 12, 2006. Sipes did not respond in any manner to the requests.¹¹

The Complaint further alleges that on or about April 25, 2006, the staff sent Respondent a Rule 8210 request by first-class and certified mail to the variation on Respondent's CRD address and to two additional addresses obtained through investigation.¹² The receipt for the certified mailing sent to the Simpsonville address was returned, bearing what appeared to be Respondent's signature. Sipes did not respond to the requests.

Finally, the Complaint alleges that the staff sent Respondent requests for information by first-class and certified mail to Respondent's actual CRD address and to the Simpsonville

¹⁰ Enforcement has alleged that Respondent's failure to amend his U-4 was willful. Willfulness is not required to establish a violation of Rule 2110, but Article III, Section 4(f) of NASD's By-Laws provides that a person who has willfully made any false or misleading statement as to any material fact in any application to become registered with an NASD member, or who has omitted to disclose any material fact that is required to be disclosed in such an application, is subject to "disqualification." In light of the bar imposed for Respondent's failure to provide information and the limited record, the Hearing Officer does not reach the issue of whether Respondent's failure to amend his U-4 was willful.

¹¹ The staff sent the requests to [REDACTED] Respondent's CRD address is [REDACTED] It appears that the staff's failure to include the final "s" at the end of Bardstown was a typographical error.

¹² In addition to the Simpsonville address, Enforcement staff obtained an address in Louisville, KY.

address on May 18 and June 1, 2006.¹³ To date, Sipes has not provided a response to the staff's requests for information.

Rule 8210 imposes an absolute obligation on members and associated persons to cooperate with NASD investigations and respond fully and promptly to requests for information. By mailing the requests to Respondent at his last known residential address as reflected in CRD, the staff complied with Rule 8210(d), and pursuant to that rule, Respondent is deemed to have received them.

Accordingly, the allegations in the second cause of the Complaint, which are deemed admitted, are sufficient to establish for purposes of this default decision that Respondent failed to respond to the staff's requests for information, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

V. Sanctions

Under NASD Sanction Guidelines, a bar is standard for failure to respond to requests for information.¹⁴ There is no evidence of any mitigating circumstances here that would warrant a lesser sanction. Accordingly, Respondent will be barred in all capacities for this violation.

Enforcement seeks a fine of \$5,000 and a 12-month suspension for Respondent's failure to amend his Form U-4. In light of the bar imposed, additional sanctions would be redundant and serve no additional remedial purpose.¹⁵ Accordingly, no additional sanctions will be imposed for this violation.

¹³ The receipt for the May certified mailing to the Simpsonville address was returned bearing an illegible signature; the receipt for the June mailing to the Simpsonville address was returned bearing what appeared to be the signature of Deanna S. Sipes.

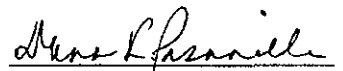
¹⁴ *NASD Sanction Guidelines* at 35 (2006 ed.).

¹⁵ See *Dep't of Enforcement v. Castle Securities Corp.*, No. C3A010036, 2004 NASD Discip. LEXIS 1, at *36-37 (NAC Feb. 19, 2004); *Dep't of Enforcement v. Hodde*, No. C10010005, 2002 NASD Discip. LEXIS 4, at *17 (NAC Mar. 27, 2002).

VI. Conclusion

Respondent Billy Joe Sipes is barred from association with any member firm in any capacity for failing to respond to requests for information, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110. In light of the bar, Respondent will not be further sanctioned for failing to amend a Form U-4, in violation of NASD Conduct Rule 2110 and IM-1000-1. The bar shall become effectively immediately if this Decision becomes the final disciplinary action of NASD.

SO ORDERED.



Dana R. Pisanelli
Hearing Officer

Dated: March 1, 2007
Washington, DC

Copies to: Billy Joe Sipes (*via overnight and first-class mail*)
Dale A. Glanzman, Esq. (*via electronic and first-class mail*)
Mark P. Dauer, Esq. (*via electronic and first-class mail*)
Rory C. Flynn, Esq. (*via electronic and first-class mail*)

EXHIBIT A

**NASD
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

Billy Joe Sipes
Registered Representative
(CRD No. 2045588),

Respondent.

**Disciplinary Proceeding
No. 20050015758**

Hearing Officer

COMPLAINT

Upon information and belief, Complainant alleges as follows:

1. Billy Joe Sipes ("Respondent") was registered as a General Securities Principal and as a Municipal Securities Representative with Morgan Keegan & Company, Inc. ("Member"), a NASD member, between October 2003 and May 2005. Respondent therefore is subject to the jurisdiction of the NASD, pursuant to Article V, Section 4 of NASD's By-Laws.

**FIRST CLAIM
NASD Conduct Rule 2110 and IM-1000-1
Willful Failure to Timely Update Form U-4**

2. On or about December 3, 2003, Respondent filed for personal bankruptcy in the United States Bankruptcy Court for the Western District of Kentucky. Respondent was discharged on or about July 19, 2004, and the case was closed on or about September 30, 2004.

3. Although Respondent was continuously registered with the Member between October 2003 and May 2005, and was aware of the personal bankruptcy filing, Respondent willfully failed to amend his Uniform Application for Securities Industry Registration or Transfer (Form U-4) to disclose the bankruptcy filing.

4. The acts, practices and conduct described above constitute separate and distinct violations of NASD Conduct Rule 2110 and IM-1000-1 by Respondent.

SECOND CLAIM
NASD Conduct Rule 2110 and NASD Procedural Rule 8210
Failure to Respond to Requests for Information

5. On or about March 29, 2006, NASD staff sent Respondent a first request that Respondent provide certain information and documents concerning his termination of registration from the Member, in accordance with NASD Procedural Rule 8210. This first request was sent by first class mail and by certified mail, return receipt requested, to [REDACTED]
[REDACTED] Both letters were returned to staff marked "Not Deliverable As Addressed."

6. On or about April 12, 2006, NASD staff sent Respondent another request to provide certain information regarding his termination of registration from the Member, pursuant to NASD Procedural Rule 8210. This request was sent by first class mail and by certified mail, return receipt requested, to [REDACTED] The first class mailing was returned to NASD staff marked "Attempted – Not Known" and included the following notation: "Not at [REDACTED] The certified mailing was returned to staff marked "Not Deliverable As Addressed."

7. On or about April 25, 2006, NASD staff sent Respondent another request to provide information and documents, pursuant to and in accordance with NASD Procedural Rule 8210. This request was sent by first class mail and by certified mail, return receipt requested, to the following addresses: [REDACTED]
[REDACTED] The latter two addresses, [REDACTED] and [REDACTED] were obtained through a credit report run by NASD staff.

8. The letters sent to [REDACTED] were returned to NASD staff marked "Not Deliverable As Addressed" and "No Forward Order On File."

9. The mailings sent to [REDACTED] were returned to staff marked "Forward Time Exp Rtn To Send."

10. Regarding the letters sent to [REDACTED] the first class mailing was not returned and NASD staff received a domestic return receipt for the certified mailing. NASD staff notes that it appears to be Respondent's signature on the return receipt.

11. On or about May 18, 2006, NASD staff sent Respondent another request for information to Respondent's correct address, in accordance with NASD Procedural Rule 8210. This final request was sent by first class mail and by certified mail, return receipt requested, to [REDACTED] which was Respondent's address of record as contained in the records of the Central Registration Depository ("CRD Address"). The aforementioned request was also sent via first class mail and by certified mail, return receipt requested, to [REDACTED]

12. Both letters that were sent to the CRD Address were returned to staff marked "Not Deliverable As Addressed."

13. Regarding the letters sent to [REDACTED] the first class mailing was not returned and NASD staff received a domestic return receipt for the certified mailing, however, the signature was illegible.

14. On or about June 1, 2006, NASD staff sent Respondent a follow-up final request to provide information about Respondent's termination of registration from the Member, in accordance with NASD Procedural Rule 8210. This follow-up final request was sent by first

class mail and by certified mail, return receipt requested, to the CRD Address and 470 Jurich Court.

15. Both letters that were sent to the CRD Address were returned to staff marked "Not Deliverable As Addressed."

16. With respect to the letters sent to 470 Jurich Court, the first class mailing was not returned and NASD staff received a domestic return receipt for the certified mailing apparently signed by Deanna S. Sipes.

17. To date, Respondent has failed to respond to the requests for documents and information described in Paragraphs 5, 6, 7, 11, and 14 above and the date for responding to these requests has passed.

15. 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 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: August 2, 2006


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