

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

NESIL CALISKANALP
(CRD No. 4923941),

Respondent.

Disciplinary Proceeding
No. 20050015978

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

June 14, 2006

The Respondent willfully failed to disclose his criminal record on a Form U-4, in violation of NASD Conduct Rule 2110 and IM-1000-1. The Respondent also failed to respond to requests for information, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110. The Respondent is barred from associating with any NASD member in any capacity for each violation.

Appearances

For the Department of Enforcement: Heather Hawker, Senior Regional Attorney, Denver, CO (Rory C. Flynn, Chief Litigation Counsel, Washington, D.C., and Roger D. Hogoboom, Deputy Chief Litigation Counsel, Denver, CO, Of Counsel).

For the Respondent: No appearance.

DECISION

I. Introduction

The Department of Enforcement ("Enforcement") filed a Complaint on February 3, 2006, alleging that Nesil Caliskanalp ("Caliskanalp" or the "Respondent") willfully failed to disclose on a Uniform Application for Securities Industry Registration or Transfer ("Form U-4") that he had been charged with, and pled guilty to, making a false statement to a police officer, a

misdeemeanor under Arizona law. The Complaint further alleges that Caliskanalp thereby violated NASD Conduct Rule 2110 and IM-1000-1. In addition, the Complaint charges that Caliskanalp failed to respond to two requests for information about his criminal conviction, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110.¹ The Respondent did not file an Answer to the Complaint. Consequently, on April 19, 2006, Enforcement filed a motion for entry of default decision, which is supported by the *Declaration of Heather Hawker* and five exhibits. The Respondent did not reply to the motion.

II. Respondent's Default

Enforcement served the Respondent with copies of the Complaint and Notice of Complaint on February 1, 2006, by certified and first class mail sent to his current residential address, as reflected in the Central Registration Depository (the CRD address)² The Respondent did not file an Answer.

On March 3, 2006, Enforcement served the Respondent with copies of the Complaint and Second Notice of Complaint by certified and first class mail sent to the CRD address.³ Again, the Respondent failed to file an Answer or otherwise respond to the Complaint.

Enforcement complied with Procedural Rule 9134(b)(1) by mailing the Complaint, Notice, and Second Notice of Complaint to the Respondent's CRD address, thereby providing the Respondent with constructive notice of this proceeding. By failing to file an Answer or otherwise respond to the Complaint, the Respondent defaulted. Consequently, pursuant to

¹ A copy of the Complaint is attached to this Decision as Exhibit A.

² Decl. ¶¶ 9-10.

³ *Id.* ¶ 11.

Procedural Rules 9215(f) and 9269(a)(2), the Hearing Officer deems the allegations in the attached Complaint admitted.

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

On or about March 7, 2005, Caliskanalp submitted a Form U-4 to Banc One Securities Corp. ("Banc One"), which Banc One filed with NASD on his behalf.⁴ By so doing, Caliskanalp voluntarily submitted to NASD's jurisdiction.⁵ Caliskanalp was associated with Banc One from February 22, 2005, until May 10, 2005, at which time Banc One discharged him for his failure to disclose his criminal record on the Form U-4.⁶

Pursuant to NASD By-Laws, Article V, Section 4(c), NASD retained jurisdiction until May 2007 to file a disciplinary complaint against Caliskanalp based upon conduct that commenced before his association with Banc One ended and to request Caliskanalp to provide information to NASD pursuant to NASD Procedural Rule 8210. Enforcement filed the Complaint initiating this disciplinary proceeding and issued the requests for information that are the subject of the second cause of action within the period of retained jurisdiction. Accordingly,

⁴ *Id.* ¶ 5; Ex. 2.

⁵ See NASD By-Laws, Article I, Section (dd) (defining "person associated with a member"). Cf. *Market Reg. Comm. v. Vladislav Steven Zubkis*, No. CMS950129, 1997 NASD Discip. LEXIS 47 (N.B.C.C. Aug. 12, 1997); *District Bus. Conduct Comm. v. Ashvin R. Shah*, No. C8A920044, 1993 NASD Discip. LEXIS 254, at *16-17 (N.B.C.C. Aug. 30, 1993).

⁶ Decl. ¶ 15; Ex. 1. Banc One received a report from the Federal Bureau of Investigation showing that the Respondent pled guilty to making a false report to law enforcement in 2002.

the Hearing Officer finds that NASD has jurisdiction of this proceeding under NASD By-Laws Article V, Section 4(c).

B. Failure to Disclose Misdemeanor

The first cause of the Complaint alleges that on or about March 7, 2005, Caliskanalp submitted a Form U-4 to Banc One, which required Caliskanalp to disclose if he had ever been charged with, or pled guilty to, a misdemeanor involving "false statements." Caliskanalp stated that he had not. This representation was false. In fact, on June 13, 2002, Caliskanalp had pled guilty to making a false statement to a Scottsdale, AZ, police officer following a traffic stop for speeding. According to the plea agreement, Caliskanalp provided the police with a false identification.⁷

In applying for registration, "applicants have an affirmative obligation to disclose fully all material facts, including an individual's criminal history, in response to the questions on the Form U-4."⁸ The criminal history of an applicant for NASD registration is material because it relates directly to the applicant's fitness for employment in the securities industry. And filing incomplete or inaccurate information that could in any way mislead NASD is inconsistent with

⁷ Decl. ¶ 16.

⁸ *Department of Enforcement v. Day*, No. C8A010094, 2003 NASD Discip. LEXIS 9 at *3 (O.H.O. Feb. 10, 2003), citing *Rosario R. Ruggiero*, Exchange Act Release No. 37070, 1996 SEC LEXIS 990, at *8-9 (Apr. 5, 1996).

just and equitable principles of trade and a violation of NASD Conduct Rule 2110 and IM-1000-1.⁹

In this case, there is no question that the Respondent's guilty plea was material. Under NASD By-Laws Article III, Section 4(g), a person convicted of making a false report is disqualified from associating with a member firm. Thus, the Hearing Officer finds that Caliskanalp violated NASD Conduct Rule 2110 and IM-1000-1 when he failed to disclose his conviction.

Enforcement further alleges that the Respondent's conduct 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 which is required to be disclosed in such an application, is subject to a "disqualification." For this purpose, it is sufficient to establish willfulness if the respondent "knew or reasonably should have known under the particular facts and circumstances that his

⁹ *Department of Enforcement v. Knight*, No. C10020060, 2004 NASD Discip. LEXIS 5, at *7-8 (N.A.C. Apr. 27, 2004). IM-1000-1 provides:

The 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 the failure to correct such filing after notice thereof, may be deemed conduct inconsistent with just and equitable principles of trade and when discovered may be sufficient cause for appropriate disciplinary action.

conduct was improper.”¹⁰ A finding of willfulness does not require intent to violate the law or a specific rule, but simply intent to commit the act that constitutes the violation.¹¹

The Hearing Officer concludes that the Respondent’s criminal record was material information and that his failure to disclose this information was willful. The nature of the charge should have left no doubt that he was obligated to disclose this information. The charge falls squarely within the language of the applicable question on Form U-4.

In conclusion, the Hearing Officer finds that Caliskanalp willfully filed false and misleading information on his Form U-4, in violation of NASD Conduct Rule 2110 and IM-1000-1.

C. Failure to Respond to Requests for Information

The second cause of the Complaint alleges that on June 13, 2005, and June 28, 2005, NASD staff sent letters to the Respondent, pursuant to NASD Procedural Rule 8210, requesting that he provide information related to his failure to disclose his criminal record on the Form U-4 he submitted to Banc One. The staff sent the requests to the Respondent at the CRD address by certified and first-class mail. The Respondent did not respond to either request.

These allegations, which are also deemed admitted, are sufficient to establish for purposes of this Default Decision that the Respondent failed to respond to the requests for information, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

¹⁰ *Christopher LaPorte*, Exchange Act Release No. 39171, 1997 SEC LEXIS 2058, at *8 n.2 (Sept. 30, 1997).

¹¹ *Knight*, 2004 NASD Discip. LEXIS 5; *Department of Enforcement v. Sarris*, No. C9A020017, 2003 NASD Discip. LEXIS 12, at *11 (O.H.O. Mar. 17, 2003); *Laporte*, 1997 SEC LEXIS 2058, at *8; *Arthur Lipper Corp. v. SEC*, 547 F.2d 171, 180 (2d Cir. 1976), *cert. denied*, 434 U.S. 1009 (1978).

IV. Sanctions

Under the NASD Sanction Guidelines, a bar is standard for failing to respond to requests for information.¹² Here, there is no evidence of any mitigating circumstances that would justify a lesser sanction.

For submitting a false, misleading, or inaccurate Form U-4, the Guidelines recommend a fine of \$2,500 to \$50,000 and a suspension of 5 to 30 business days. In egregious cases, including one involving the failure to disclose a "statutory disqualification event," the Guidelines recommend considering a longer suspension or a bar.¹³ Consistent with Enforcement's recommendation, the Hearing Officer finds that a bar is appropriate for this violation as well.

V. Order

Nesil Caliskanalp 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 Conduct Rule 2110, and for submitting a false and misleading Form U-4, in violation of NASD Conduct Rule 2110 and IM-1000-1. The bars will become effective immediately if this Default Decision becomes the final disciplinary action of NASD.



Andrew H. Perkins
Hearing Officer

¹² NASD Sanction Guidelines at 35 (2006 ed.).

¹³ Guidelines at 73-74.

Copies to:

Nesil Caliskanalp (by overnight courier and first-class mail)

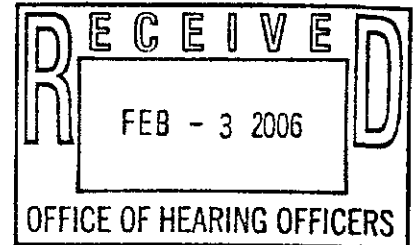
Heather Hawker, Esq. (by first-class and electronic mail)

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

Mark P. Dauer, Esq. (by first-class and electronic mail)

**NASD
OFFICE OF HEARING OFFICERS**

Department of Enforcement,	)	Disciplinary Proceeding
	)	No. 20050015978
Complainant,	)	Hearing Officer
	)	COMPLAINT
NESIL CALISKANALP	)	
CRD No. 4923941	)	
	)	
Respondent.	)	
_____	)	



Upon information and belief, the Complainant alleges as follows:

1. Respondent Nesil Caliskanalp ("Caliskanalp") was associated with NASD member, Banc One Securities Corp. (CRD No. 16999) from February 22, 2005 through May 10, 2005, when he was terminated. Since his termination, Caliskanalp has not associated with another member firm.
2. Caliskanalp is subject to NASD jurisdiction pursuant to Article V, § 4 of NASD's By-Laws.

**FIRST CAUSE OF COMPLAINT
Willfully Misrepresenting Material Facts Regarding Criminal Record on Form U-4
NASD Conduct Rules 2100 and IM 1000-1**

3. Complaint paragraph nos. 1-2 are re-alleged and incorporated herein by reference.
4. On or about March 7, 2005, an initial Form U-4 was filed on behalf of Caliskanalp. Caliskanalp signed the Form U-4 on March 3, 2005.
5. By signing the Form U-4, Caliskanalp attested that he read and understood the Form U-4 instructions and questions, and, that to the best of his knowledge, his answers contained therein were true and complete.
6. Form U-4 questions 14(B)(1)(a) and (b) read as follows:

Have you ever:

(a) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign or military court to a misdemeanor involving: investments or an investment-related business or any fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses?

(b) been charged with a misdemeanor specified in 14(B)(1)(a)?

7. The information requested in Form U-4 questions 14(B)(1)(a) and (b) is material.
8. Caliskanalp responded "no" to both Form U-4 questions 14(B)(1)(a) and (b).
9. Caliskanalp's responses to Form U-4 questions 14(B)(1)(a) and (b) were false.

As discussed in greater detail below, in 2002, Caliskanalp had been charged with and pled guilty to a misdemeanor charge of making a false statement.
10. On January 31, 2002, Caliskanalp was stopped by the Scottsdale, Arizona police for speeding. The police records provide that Caliskanalp identified himself as Nevzat Caliskanalp (his brother) and presented his brother's drivers license to the police.
11. In May 2002, Caliskanalp notified the city prosecutor that he, not his brother, was the driver of the car on January 31, 2002. Caliskanalp was then charged with the following misdemeanors: excessive speed; displaying the drivers license of another; providing false information to police; and driving with a suspended drivers license.
12. On or about June 13, 2002, Caliskanalp pled guilty to the excessive speed and providing false information charges. The other two charges were dismissed.

13. Caliskanalp's failure to disclose the false information charge and conviction was willful. Caliskanalp knew that he had been charged with and pled guilty to providing false information, a misdemeanor offense. Further, Caliskanalp knew or reasonably should have known that the false information charge and conviction involved false statements or omissions and, therefore, needed to be disclosed on his Form U-4. Despite the above, Caliskanalp made the decision not to disclose this material information on his Form U-4.
14. As set forth in Complaint paragraphs 3-13, Caliskanalp's failure to include the false information charge and conviction in his Form U-4 application is a violation of NASD Conduct Rules 2110 and IM 1000-1.

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

15. Complaint paragraph nos. 1 - 14 are re-alleged and incorporated herein by reference.
16. On June 13, 2005, pursuant to Rule 8210, NASD staff sent a written request to Caliskanalp for information related to his failure to disclose his criminal record when completing the Form U-4.
17. The request was sent by first class mail to Caliskanalp's address as listed in CRD ("CRD Address"). This letter was returned to NASD with the notation "return to sender not deliverable as addressed."
18. A second Rule 8210 request was sent to Caliskanalp on June 28, 2005. This request was sent certified mail, return receipt requested, and first class mail to Caliskanalp's CRD Address. In an effort to ensure that Calsikanalp received the

Rule 8210 request, NASD staff also sent the letter to his prior home address as listed in CRD. This request was also sent on June 28th via both certified and first class mail. The June 28, 2005 letters were returned to NASD as undeliverable.

19. To date, Caliskanalp has not provided the information requested pursuant to Procedural Rule 8210, as described in paragraphs 16-18 above.

20. The above conduct set forth in Complaint paragraphs 15-19 constitutes separate and distinct violations of NASD Conduct Rule 2110 and NASD Procedural Rule 8210 by Caliskanalp.

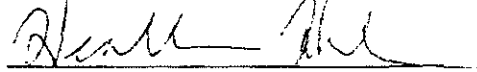
PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Caliskanalp committed the violations alleged within the Complaint;
- B. Specific findings that Caliskanalp's conduct was willful, the omitted information was material, and the omission to state material facts was on a Form U-4 application;
- C. An Order imposing sanctions upon Caliskanalp in accordance with NASD Rule 8310;
- D. An Order imposing such costs of any proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8310;
and
- E. An Order imposing any other fitting sanction.

Dated: February 1, 2006

NASD DEPARTMENT OF
ENFORCEMENT



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