

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

PATRICIA L. STRANDBERG
(CRD No. 2010553),

Respondent.

Disciplinary Proceeding
No. 2005001735001

Hearing Officer – AWH

DEFAULT DECISION

September 15, 2006

Formerly registered person failed to respond to Staff information requests, in violation of Procedural Rule 8210 and Conduct Rule 2110. Respondent barred from association with any member firm in any capacity. Charge that Respondent violated member firm's policies and procedures and willfully failed to update her Form U-4, in violation of Article V, Section 2 of NASD By-Laws, IM 1000-1, and NASD Conduct Rule 2110, dismissed.

Appearances:

Karen E. Whitaker, Esq., for the Department of Enforcement.

No appearance by or for Patricia L. Strandberg.

DECISION

Introduction

On April 26, 2006, the Department of Enforcement ("Enforcement") issued the two-cause Complaint in this proceeding, alleging that Patricia L. Strandberg ("Respondent" or "Strandberg"): (1) violated a member firm's policies and procedures by acting as a trustee without written authority from the firm and accepting gifts and loans from a customer, and willfully failed to update her Form U-4, in violation of Article V, Section 2 of NASD By-Laws, IM-1000-1, and NASD Conduct Rule 2110; and (2) failed to respond to NASD requests for

information, in violation of Procedural Rule 8210 and Conduct Rule 2110. Respondent failed to file an Answer to the Complaint, or to a Second Notice of Complaint. As a result, Enforcement filed a Motion for Entry of Default Decision on July 19, 2006, to which Strandberg did not respond. Accordingly, pursuant to Procedural Rule 9215(f) and 9269, the Motion will be granted, and the allegations in the Complaint, which is attached to this Decision, will be treated as admitted.

Findings of Fact¹

The Respondent

Strandberg was registered through NASD member firm H.D. Vest Investment Services, Inc. ("HD Vest"), from November 1989 through June 3, 2005, when HD Vest terminated her registration by filing a Uniform Termination Notice for Securities Industry Registration ("Form U-5"). Strandberg is not currently associated with any NASD member firm.

Violation of Member Firm's Policies and Procedures and Failures to Update Form U-4

In July 1998, HD Vest customer FS established a trust and appointed Strandberg, her broker and investment advisor, as co-trustee, granting Strandberg power of attorney over her assets, including her brokerage account at HD Vest. Contrary to HD Vest's policies and procedures, Strandberg never requested or received approval from HD Vest to serve as a trustee. Shortly after Strandberg's appointment, FS became incapacitated, leaving Strandberg in total control of the trust and its assets. Between March 2001 and at least June 2003, Strandberg wrote checks payable to herself on the trust's bank accounts. Those checks totaled over \$360,000, some of them marked as "gifts" or "loans." HD Vest's policies and procedures prohibited registered representatives from taking gifts or loans from customers.

¹ All findings of fact are based on the admitted allegations in the Complaint, the Declaration Supporting Motion for Entry of Default Decision by Karen E. Whitaker ("Declaration"), and the exhibits attached thereto.

Following FS's death in March 2003, Strandberg's activities were discovered during the administration of FS's estate. In September 2003, the beneficiaries of the trust demanded Strandberg's resignation as trustee and the return of the funds withdrawn from the trust's bank accounts. In October 2003, Strandberg resigned her position as trustee but did not return the funds. As a result, in September 2004, the beneficiaries of the trust filed a civil lawsuit against Strandberg in connection with the missing trust assets. On March 23, 2005, Strandberg was served with a Citation and Petition in connection with the lawsuit.

Strandberg failed to inform HD Vest of her appointment as a trustee, of her receipt of money from the trust's bank accounts, or of the lawsuit by the beneficiaries of the trust which alleged misappropriation of funds. Strandberg also failed to update her Form U-4 to disclose either the civil lawsuit or her appointment as a trustee.

Failure to Respond to Requests for Information

On August 25, 2005, NASD staff sent Strandberg a request, pursuant to NASD Procedural Rule 8210, to provide information pertaining to her service as a trustee and her failure to update her Form U-4 regarding the pending lawsuit. When Strandberg did not respond to the first request for information, NASD staff sent her a second request on October 14, 2005. The requests were sent to Strandberg by first class regular and certified mail to her residential address of record as contained in the Central Registration Depository ("CRD address"). The first class regular mailings were not returned to NASD staff. The first certified mailing was returned marked "unclaimed." However, the certified receipt card for the second mailing was returned to the staff signed "Patricia Strandberg." Strandberg failed to respond to either request for information.

Discussion and Conclusions

Jurisdiction

Article V, Section 4 of the NASD By-Laws provides for a two-year period of retained jurisdiction over a registered person after the effective date of the individual's *termination of* registration. During this period of retained jurisdiction, NASD may file a complaint based upon conduct that occurred while the individual was registered with a member firm, or based upon such person's *failure to provide information requested pursuant to NASD Procedural Rule 8210*, if the request was made, and the complaint is filed, during the foregoing period of retained jurisdiction.

Strandberg was registered with HD Vest from November 1989 through June 3, 2005, when HD Vest filed the Form U-5 terminating her registration. Enforcement issued its Complaint on April 26, 2006, within two years of her termination of registration. The Complaint is based upon Strandberg's conduct while she was registered through HD Vest, and her failures to respond to information requests occurred during the two-year period following termination of her registration. Therefore, NASD has jurisdiction over this proceeding.

Respondent's Default

Enforcement properly served the Complaint and the Second Notice of Complaint on Strandberg at her CRD address. Each mailing was sent by first class regular and certified mail. Neither first class regular mailing was returned to Enforcement. The certified mailing receipt for the April 26, 2006, Notice of Complaint and Complaint was returned marked "unclaimed" and "returned to sender." The certified mailing receipt for the May 25, 2006, Second Notice of Complaint and Complaint was returned and signed "Patricia Strandberg." Pursuant to Procedural Rule 9134, the mailings establish that Strandberg had valid constructive notice of the

Complaint. Her signature on the receipt for the Second Notice of Complaint and Complaint indicates that she had actual notice of the Complaint as well. Because she failed to respond to the Complaint, Procedural Rules 9215(f) and 9269 authorize the entry of a default decision against her. Accordingly, the allegations in the Complaint are deemed admitted.

Failures to Update Form U-4 and Violation of Member Firm's Policies and Procedures

Article V, Section 2(c), of NASD's By-Laws obligates registered representatives to keep their application for registration current by filing supplementary amendments within 30 days after learning of the facts or circumstances giving rise to the amendment. Form U-4 mandates that registered persons update the form "whenever changes occur to answers previously reported."² NASD Membership and Registration Requirements provide that the filing of information that is incomplete or inaccurate so as to be misleading, or the failure to correct such filing after notice thereof, may be deemed to be conduct inconsistent with just and equitable principles of trade, and, when discovered, may be sufficient cause for disciplinary action.³ The responsibility for maintaining the accuracy of the Form U-4 by updating the information as necessary lies with the registered representative.⁴

Section 15(b)(4)(A) of the Securities Exchange Act of 1934 states that a person who files an application for association with a member of a self-regulatory organization and who "willfully" fails to disclose "any material fact which is required to be stated" in that application is statutorily disqualified from participating in the securities industry. Similarly, Article III, Section 4 of NASD By-Laws states that a person is disqualified from association with a member firm if he or she has "willfully" omitted "any material fact" required by an application for

² See NTM 98-27 (March 1998).

³ NASD Rule IM-1000-1.

⁴ *Frank R. Rubba*, Exchange Act Release No. 40,238, 1998 SEC LEXIS 1499, at *8 (July 21, 1998); *Dep't of Enforcement v. Howard*, 2000 NASD Discip. LEXIS 16, at **31-32 (NAC Nov. 16, 2000) *aff'd*, 2002 SEC LEXIS 1909 (July 26, 2002).

registration. Willfulness is defined as the intent to commit the act that constitutes the violation.⁵ The respondent need not intend to violate a specific rule or law; rather the relevant inquiry is “whether the respondent knew or reasonably should have known under the particular facts and circumstances that his conduct was improper.”⁶

Strandberg never updated her Form U-4 to disclose her appointment as a trustee or to reflect her status as a defendant in a civil lawsuit alleging misappropriation of funds. However, Question 13 of Form U-4, entitled “Other Business,” requires only the disclosure of *business* activities as a trustee, including the name and nature of that business and a description of the reporting individual’s duties relating to that other business. Here, there is no allegation or evidence that Strandberg was engaged in a business when acting as a trustee, or that she was paid for so acting. Her activities as a trustee may have violated the firm’s policies and procedures, but, in the absence of allegations or evidence that her actions were unethical, those activities do not violate Conduct Rule 2110; there is no statute, rule, or regulation that prohibits a registered representative from acting as a trustee.⁷ Question 14 (I) requires the disclosure of an *investment-related, consumer-initiated* lawsuit that alleges forgery, theft, misappropriation or conversion of funds or securities. Here, the Complaint alleges that the lawsuit was initiated by the beneficiaries of the trust, not by Strandberg’s customer, and that the lawsuit charged only that the missing funds were from bank accounts, not that they came from any securities accounts at the

⁵ See *Dep’t of Enforcement v. Nelson C. Onyejiaka*, No C10990121, 2000 NASD Discip. LEXIS 22, at *11 (OHO Oct. 20, 2000).

⁶ See *Christopher LaPorte*, Exchange Act Release No. 39,171, 1997 SEC LEXIS 2085, at *8 n.3 (Sept. 30, 1997).

⁷ The Complaint does not allege that Strandberg engaged in any specific misconduct as a trustee. Although the allegations may be read to suggest that she may have been acting unethically, the implications of possible impropriety do not rise to the express allegations or evidence that she did so, as required to establish a violation of Rule 2110. The Complaint also alleges that Strandberg violated HD Vest’s policies and procedures by accepting gifts and loans from a customer. However, at the time of the alleged violations, there were no statutes, rules, or regulations that prohibited a registered representative from accepting loans or gifts from a customer. Conduct Rule 2370, effective November 10, 2003, now prohibits loans that do not meet the requirements of that Rule, but it did not become effective until after the period at issue in this case. Accordingly, those allegations in the Complaint, without more, cannot support a finding of a violation of NASD By-Laws or Conduct Rule 2110. See, e.g., *Dep’t of Enforcement v. Davenport*, No. C05010017, 2003 NASD Discip. LEXIS 4 (NAC May 7, 2003).

firm or otherwise were investment-related. Accordingly, neither the allegations of the Complaint nor the other materials filed by Enforcement in support of its default motion is sufficient to establish that Strandberg violated Article V, Section 2 of the NASD By-Laws, IM 1000-1, and NASD Conduct Rule 2110 by violating her firm's policies and procedures, or by failing to update her Form U-4.

Failure to Respond to Requests for Information

Procedural Rule 8210 authorizes NASD to require any person subject to its jurisdiction to provide information and testimony related to any matter under investigation. The Rule serves as a key element in NASD's oversight function and allows NASD to carry out its regulatory functions without subpoena power.⁸ When an individual fails to respond to information requests, NASD's ability to perform its regulatory responsibilities is subverted.⁹ Further, a violation of Procedural Rule 8210 is also a violation of Conduct Rule 2110, contravening "high standards of commercial honor."¹⁰

Enforcement sent two requests for information to Strandberg at her CRD address, seeking information in connection with an investigation into her conduct at HD Vest and her failure to update her Form U-4. Pursuant to Procedural Rule 8210(d) the mailings sent to her CRD address provided her with constructive notice of the requests for information. The receipt card for the second certified mailing that was signed "Patricia Strandberg" indicates that she received actual notice of the Staff's efforts to obtain information. Therefore Strandberg's failures to respond to NASD requests for information violate Procedural Rule 8210 and Conduct Rule 2110.

⁸ See *Joseph G. Chiulli*, Exchange Act Release No. 42,359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for NASD effectively to conduct its investigations, and emphasizing that NASD members and associated persons must fully cooperate with requests for information); *Dep't of Enforcement v. Benz*, No. C01020014, 2003 NASD Discip. LEXIS 11, at *18 (OHO Mar. 4, 2003) ("Because NASD has no subpoena power, timely and full compliance with information requests is essential to NASD's self-regulatory function.").

⁹ *Joseph P. Hannan*, Exchange Act Release No. 40,438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998).

¹⁰ *Dep't of Enforcement v. Baxter*, No. C07990016, 2000 NASD Discip. LEXIS 3, at *25 (NAC Apr. 19, 2000).

Sanctions

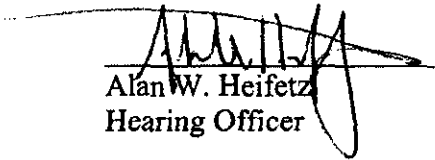
Failure to Respond to Requests for Information

When a respondent fails to respond in any manner to a request made pursuant to Procedural Rule 8210, the NASD Sanction Guidelines recommend a bar as the standard sanction.¹¹ There are no mitigating factors that would justify a lesser sanction. Accordingly, Strandberg will be barred from association with any NASD member firm in any capacity for failing to respond to Staff information requests, in violation of Procedural Rule 8210 and Conduct Rule 2110.

Conclusion

Patricia L. Strandberg is barred from association with any member firm in any capacity for failing to respond to Staff information requests, in violation of Procedural Rule 8210 and Conduct Rule 2110. The Complaint is dismissed to the extent that it alleges that Strandberg willfully failed to update her Form U-4, in violation of Article V, Section 2 of NASD By-Laws, IM 1000-1, and NASD Conduct Rule 2110. The bar shall become effective immediately if this Decision becomes the final disciplinary action of NASD.

SO ORDERED.



Alan W. Heifetz
Hearing Officer

¹¹ NASD SANCTION GUIDELINES, p. 35.

Copies to:

Via First Class Mail & Overnight Courier
Patricia L. Strandberg

Via First Class Mail & Electronic Mail
Karen E. Whitaker, Esq.
Rory C. Flynn, Esq.
Mark P. Dauer, Esq.

**NASD
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Patricia Louise Strandberg
CRD No. 2010553

Respondent.

Disciplinary Proceeding
No. 2005001735001

Hearing Officer:

COMPLAINT

Upon information and belief, Complainant alleges as follows:

1. Respondent Patricia Louise Strandberg ("Strandberg" or "Respondent") entered the securities industry in November 1989, when she associated with NASD member firm H.D. Vest Investment Services, Inc. ("HD Vest" or the "firm") (f/k/a H.D. Vest Securities, Inc.). She subsequently dually registered with a related entity, H.D. Vest Advisory Services, Inc., as an Advisory Agent. She remained with both firms until her termination on June 3, 2005. Since then, she has not associated with another NASD member firm. During her career in the securities industry, Strandberg obtained Series 6, 7 and 63 securities licenses.
2. Although Strandberg is not currently registered with an NASD member, she remains subject to the jurisdiction of NASD pursuant to Article V, Section 4 of the Association's By-Laws, which provides for a two-year period of retained jurisdiction over formerly associated persons. Accordingly, based on her termination date, NASD retains jurisdiction over Strandberg until June 2, 2007.

FIRST CAUSE OF COMPLAINT

Respondent Violated Her Member Firm's Policies And Procedures By Serving As Co-Trustee Of A Customer's Trust And Accepting Gifts And Loans From A Customer. Respondent Also Failed To Update Her Form U-4 To Disclose That She Had Been Named As A Defendant In A Civil Lawsuit That Alleged Misappropriation Of Funds

(Violation of Article V, Section 2 of the NASD By-Laws, IM 1000-1 and NASD Conduct Rule 2110)

3. Paragraph numbers 1 and 2, above, are realleged and incorporated herein by reference.
4. In July 1998, HD Vest customer FS established a Trust and appointed Strandberg, her HD Vest broker and investment advisor, as a co-trustee. FS also granted Strandberg power of attorney to manage her assets, which included FS's brokerage account at HD Vest.
5. Shortly after the Trust was established, FS's health began to deteriorate and she moved into an assisted living facility. During FS's incapacitation, Strandberg had complete control of FS's financial affairs through the power of attorney and her position as co-trustee.
6. During the period from March 2001 to at least June 2003, Strandberg wrote a series of checks made payable to herself on the trust bank accounts. Several of the checks, which totaled over \$360,000, contained the notation "loan" or "gift."
7. Strandberg's activities were discovered during the administration of FS's estate after she died in March 2003. The beneficiaries of the Trust retained an attorney, who sent a letter to Strandberg in September 2003, demanding that she account for the funds withdrawn from the Trust bank account, relinquish any authority that she had over assets owned by the Trust, and resign her position as co-trustee. Strandberg resigned her position in October 2003.

8. The Trust beneficiaries filed a lawsuit against Strandberg in September 2004, in connection with the missing Trust assets. On March 23, 2005, Strandberg was served with a Citation and Petition in connection with the lawsuit.
9. HD Vest's policies and procedures prohibited registered representatives from serving as a trustee without prior approval from the firm. The firm's procedures also prohibited the taking of gifts or loans from customers.
10. Accordingly, Strandberg violated HD Vest's policies and procedures by serving as a co-trustee without prior approval from the firm and by taking gifts and loans from the Trust.
11. Strandberg willfully failed to update her Form U-4 to disclose that in connection with her role as trustee, she had been named as a defendant in a civil lawsuit that alleged misappropriation of funds.
12. The aforementioned acts, practices and conduct constitute separate and distinct violations of Article V, Section 2 of NASD By-Laws, IM-1000-1 and NASD Conduct Rule 2110 by Patricia Louise Strandberg.

SECOND CAUSE OF COMPLAINT

Respondent Failed to Respond to NASD Requests for Information

(Violation of NASD Conduct Rule 2110 and Procedural Rule 8210)

13. Paragraph numbers 1 through 10, above, are realleged and incorporated herein by reference.
14. By letter dated August 25, 2005, NASD staff requested, pursuant to Rule 8210, that *Strandberg provide information in connection activities described in the First Cause of Complaint*. The letter was sent to Strandberg, via first class regular and certified mail, at

her CRD address of record: [REDACTED]

("CRD address").

15. The August 25th letter sent to Strandberg via certified mail was returned to the district office marked "Unclaimed." The letter sent via regular mail was not returned to the district office.
16. By letter dated October 14, 2005, NASD staff again requested, pursuant to Rule 8210, that Strandberg provide the previously requested information. The letter was sent to Strandberg, via first class regular and certified mail, to her CRD address.
17. The certified receipt card from the October 14th letter was returned to the district office signed by "Patricia Strandberg." The letter sent via regular mail was not returned to the district office.
18. Strandberg never responded to the staff's requests for information.
19. The aforementioned acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 and NASD Procedural Rule 8210 by Patricia Louise Strandberg.

PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

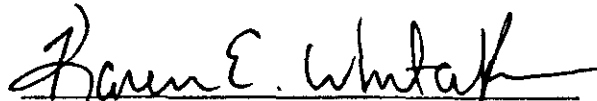
- A. Findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;
- B. Specific findings that Strandberg's failure to disclose the civil lawsuit against her was willful; that the omitted information was material; that the omission to state material facts was on a Form U-4 application, and that under Section 15(b)(4)(A) of the Securities Exchange Act of 1934 and Article III, Section 4(f) of the NASD By-Laws, the nondisclosure subjects

Strandberg to a statutory disqualification with respect to association with an NASD member firm.

- C. An order imposing sanctions upon the Respondent 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 8330; and
- E. An order imposing any other fitting sanction.

NASD DEPARTMENT OF ENFORCEMENT

Date: April 26, 2006



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