

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant

v.

LONZO ARCHER
(CRD No. 1979672),

Respondent.

Disciplinary Proceeding
No. 2005002133002

DEFAULT DECISION

Hearing Officer – SW

Date: June 13, 2007

Respondent is barred for violating NASD Procedural Rule 8210 and NASD Conduct Rule 2110 for failing to appear for two on-the-record interviews.

Appearances

Robert W. Turk, Esq., Counsel, Washington, DC, and Rory C. Flynn, Esq., Of Counsel, Washington, DC, for the Department of Enforcement.

No appearance by or for Lonzo Archer.

DECISION

I. Introduction

On February 27, 2007, the Department of Enforcement (“Enforcement”) filed the attached Complaint in this proceeding, alleging that Lonzo Archer (“Respondent”) failed to appear for two scheduled on-the-record interviews, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

On May 22, 2007, Enforcement filed a Motion for Entry of Default Decision (“Motion”), supported by the Declaration of Robert W. Turk, Esq., Counsel in NASD’s

Washington, DC office, and three exhibits.¹ For the reasons set forth below, the Hearing Officer grants Enforcement's Motion.

II. Respondent's Default

On February 27, 2007, Enforcement served the Complaint and Notice of Complaint on Respondent, via certified mail, at his last known residential address shown in NASD's Central Registration Depository ("CRD address") and at an alternate address that Respondent had provided to the NASD staff (the "Brooklyn address").² (CX-1, p. 1; Motion p. 4; DECL at ¶ 13). Respondent did not file an Answer. (DECL at ¶ 14).

On March 28, 2007, Enforcement served the Complaint and Second Notice of Complaint, via certified mail, on Respondent at his CRD address and the Brooklyn address. (*Id.*). Again, Respondent failed to file an Answer or otherwise respond to the Complaint. (DECL at ¶ 15).

The Hearing Officer finds that Enforcement complied with NASD Procedural Rule 9134(b)(1) by sending the mailings to Respondent's CRD address and the Brooklyn address.³ Accordingly, the Hearing Officer finds that Respondent received effective constructive notice of this proceeding and defaulted by failing to answer the Complaint.⁴

¹ Hereinafter, the statements in the Motion will be designated as "Motion, p."; statements in the Turk Declaration will be designated as "DECL at ¶"; and Enforcement's exhibits will be designated as "CX-" with the appropriate page or paragraph number.

² Respondent's CRD address is [REDACTED] (CX-1, p. 1). On July 12, 2006, Respondent contacted the NASD staff, via telephone, and advised the staff that his current mailing address was [REDACTED] (DECL at ¶ 7).

³ See *Department of Enforcement v. Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at * 5 n.1 (NAC Dec. 9, 2003) (finding that respondent received constructive notice when complaint was mailed to respondent's CRD address).

⁴ The following Findings of Fact and Conclusions of Law incorporate the allegations in the attached Complaint, pursuant to Rule 9215(f) and NASD Notice to Members 99-77.

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

Respondent first entered the securities industry in 1989. (CX-1, pp. 7, 20). Respondent was registered as a general securities representative of GunnAllen Financial, Inc. ("GunnAllen") from January 19, 2005 until his termination on March 22, 2005. (CX-1, p. 8). Since that time, Respondent has not been associated with any member firm. (CX-1, p. 7). However, 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 Complaint was filed within two years after Respondent's association with GunnAllen was terminated, and (2) the Complaint charges Respondent with failures to appear for two on-the-record interviews requested pursuant to Rule 8210 during the two-year period of retained jurisdiction.

B. Respondent Failed to Appear for Two Scheduled On-the-Record Interviews

On June 27, 2006, the NASD staff sent Respondent a request to appear for an on-the-record interview on July 13, 2006, concerning the trading activity in certain customer accounts assigned to Respondent. (DECL at ¶¶ 4, 7). On July 12, 2006, Respondent contacted the NASD staff and indicated that his father was ill and he would not be able to attend the on-the-record interview. (DECL at ¶ 7). Subsequently, during an August 21, 2006 telephone conversation with the NASD staff, Respondent and the NASD staff agreed to schedule the interview on September 7, 2006. (DECL at ¶ 8).

On August 21, 2006, pursuant to Procedural Rule 8210, the NASD staff sent Respondent a request to appear for an on-the-record interview on September 7, 2006 at NASD's offices in Washington, DC. (DECL at ¶ 9). The request was sent, via first-class

and certified mail, to Respondent's CRD address and the Brooklyn address that Respondent had provided during the July 12, 2006 telephone conversation with the NASD staff. (*Id.*). Respondent did not appear on September 7, 2006 for his scheduled on-the-record interview. (DECL at ¶ 10).

On October 2, 2006, pursuant to Procedural Rule 8210, the NASD staff sent Respondent a similar request that he appear to testify on October 16, 2006. (DECL at ¶ 11). The request was sent, via first-class and certified mail, to Respondent's CRD address and the Brooklyn address. (*Id.*). Respondent did not appear on October 16, 2006, as requested.

Respondent received constructive notice of the two requests sent to his CRD address and his Brooklyn address, pursuant to Rule 8210(d).

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.⁵ When an individual fails to respond to information requests, NASD's ability to perform its regulatory responsibilities is subverted.⁶ A violation of Procedural Rule 8210 is also a violation of Conduct Rule 2110.⁷

⁵ 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.").

⁶ Joseph P. Hannan, Exchange Act Release No. 40,438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998).

⁷ See Dep't of Enforcement v. Baxter, No. C07990016, 2000 NASD Discip. LEXIS 3, at **21, 25 (NAC Apr. 19, 2000).

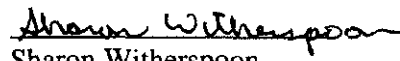
The allegations in the sole cause of the Complaint and the evidence submitted by Enforcement are sufficient to establish that Respondent violated NASD Procedural Rule 8210 and thereby violated NASD Conduct Rule 2110 by failing to appear for two scheduled on-the-record interviews.

IV. SANCTION

The NASD Sanction Guidelines recommend the imposition of a bar unless *mitigating circumstances exist warranting a lesser sanction when a respondent fails to appear for an on-the-record interview as requested by the NASD staff pursuant to NASD Procedural Rule 8210.*⁸ Here, the record discloses no mitigating factors. Accordingly, a bar is appropriate for the violation set forth in the sole count of the Complaint.

V. ORDER

For violating NASD Conduct Rule 2110 and NASD Procedural Rule 8210 by failing to appear for two on-the-record interviews requested by the NASD staff, Respondent Lonzo Archer is barred from associating with any member firm in any capacity. The bar shall become effective immediately if this Default Decision becomes NASD's final disciplinary action.


Sharon Witherspoon
Hearing Officer

Date: Washington DC
June 13, 2006

Copies to:
Lonzo Archer (via FedEx and first-class mail)
Robert W. Turk, Esq. (via electronic and first-class mail)
Rory C. Flynn, Esq. (via electronic and first-class mail)

⁸ NASD Sanction Guidelines, p. 35 (2006).

**NASD
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,	)	
	)	
COMPLAINANT,	)	
	)	
v.	)	DISCIPLINARY PROCEEDING
	)	No. 2005002133002
	)	
	)	
LONZO ARCHER	)	HEARING OFFICER:
CRD NO. 1979672,	)	
	)	COMPLAINT
RESPONDENT.	)	

The Department of Enforcement alleges:

RESPONDENT

1. Respondent Lonzo Archer was first registered as a general securities representative in August 1993, while associated with an NASD member firm. He subsequently was registered as a general securities representative with eleven NASD member firms. He was employed by one member firm from August 2002 to January 2005, after which he was employed with another member firm before leaving the industry on March 22, 2005. Although Archer is not currently registered with an NASD member, he remains subject to NASD jurisdiction 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, NASD retains jurisdiction over Archer until March 21, 2007.

CAUSE OF ACTION

**FAILURE TO APPEAR FOR ON-THE-RECORD TESTIMONY
Violations of NASD Procedural Rule 8210 and Conduct Rule 2110**

2. The Department repeats and re-alleges paragraph 1 above.
3. In connection with an investigation of a member firm, NASD staff sought to take testimony of Archer on-the-record.
4. By letters dated June 27, 2006, staff of NASD's Enforcement Department ("the staff" or "NASD staff") requested, pursuant to Rule 8210, that Archer appear at the offices of NASD's Enforcement Department in Washington, D.C. and provide on-the-record testimony on July 13, 2006. The requests were sent via first-class regular mail and certified mail to his CRD residential address of record ("CRD address"), as well as two other addresses that the staff had reason to believe were more current addresses. The letters sent via regular mail were not returned.
5. On or about July 12, 2006, the day before he was to appear for testimony, Archer contacted NASD staff and informed them that he did not intend to appear for testimony on July 13, 2006 because he was in Florida with his ill father. NASD staff agreed to reschedule his testimony. The staff asked Archer for a telephone number where he could be contacted. He provided the staff with his mother's telephone number and his current mailing address in Brooklyn, New York ("Brooklyn address"), which was different from his CRD address.
6. After NASD staff twice attempted to contact Archer via telephone, he telephoned the staff on or about August 21, 2006. At that time, the staff and Archer agreed upon a new testimony date – September 7, 2006 – and Archer agreed to appear for testimony on that date.

7. Accordingly, by letter dated August 21, 2006, NASD staff requested, pursuant to Rule 8210, that Archer appear at the offices of NASD's Enforcement Department in Washington, D.C. and provide on-the-record testimony on September 7, 2006. The request was sent via first-class regular mail and certified mail to his CRD address and Brooklyn address. The letter informed Archer that failure to appear for testimony could expose him to NASD sanctions, including a permanent bar from the securities industry. The August 21, 2006 letter sent by certified mail to the Brooklyn address was returned to NASD marked "return to sender." The receipt to the August 21, 2006 letter sent by certified mail to his CRD residential address was returned to NASD unsigned. Both letters sent via regular mail were not returned.

8. On September 7, 2006, Archer failed to appear and testify, as requested. The staff had not received any prior notice that he was not going to appear. Later the same day, NASD staff attempted to telephone him. A woman who identified herself as Archer's mother answered the telephone, and stated that she did not know his whereabouts because he did not stay with her.

9. By letter dated October 2, 2006, the staff again requested, pursuant to Rule 8210, that Archer appear at the offices of NASD's Enforcement Department in Washington, D.C. and provide on-the-record testimony on October 16, 2006. The request was sent via first-class regular mail and certified mail to his CRD address and Brooklyn address. The letter informed Archer that failure to appear for testimony could expose him to NASD sanctions, including a permanent bar from the securities industry. The October 2, 2006 letter sent by certified mail to his CRD residential address was returned to NASD marked "unclaimed." Neither the October 2, 2006 letter sent by certified mail to his

Brooklyn address nor the accompanying receipt was returned. Neither letter sent via regular mail was returned.

10. On October 16, 2006, Archer for the second time failed to appear and testify, as requested. He again failed to notify the staff that he would not appear.

11. On or about January 10, 2007, NASD advised Archer in a letter that the NASD staff had made a preliminary determination to recommend disciplinary action against him for allegedly twice failing to appear for testimony, in violation of NASD Conduct Rule 2110 and NASD Procedural Rule 8210. The letter was sent via first-class regular mail and certified mail to his CRD address and Brooklyn address. On or about January 10 and 11, 2007, the staff attempted unsuccessfully to contact Archer via telephone to notify him that the staff had made a preliminary determination to recommend disciplinary action against him, and advise him of the nature of the charges. Archer did not respond to the staff's inquiries and did not seek to make arrangements to appear to testify. To date, the staff has not heard from Archer since on or about August 21, 2006.

12. Such failures to testify as requested by the August 21 and October 2, 2006 letters constitute separate and distinct violations of NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by Respondent Archer.

PRAYER

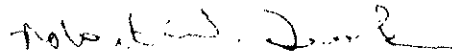
WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under NASD Rule 8310(a), including monetary sanctions, be imposed; and
- B. order that the Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330.

NASD DEPARTMENT OF ENFORCEMENT

DATED: February 27, 2007

Respectfully submitted,



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