

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,	:	
	:	
Complainant,	:	Disciplinary Proceeding
	:	No. 2005002166501
v.	:	
	:	Hearing Officer – DRP
JEREMY MICHAEL CHAPMAN	:	
(CRD No. 4984194),	:	DEFAULT DECISION
	:	
Respondent.	:	September 26, 2006
	:	

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 willfully failing to disclose material information on a Form U-4, in violation of NASD Conduct Rule 2110 and IM-1000-1.

Appearances

Joel R. Beck, Regional Counsel, Atlanta, GA (Mark P. Dauer, New Orleans, LA and Rory C. Flynn, Washington, DC, Of Counsel) for Complainant.

No appearance by or for Jeremy Michael Chapman.

DECISION

I. Procedural History

On February 6, 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 Jeremy Michael Chapman (Respondent or Chapman) willfully failed to disclose material information on a Uniform Application for Securities Industry Registration (Form U-4), in violation of NASD Conduct Rule 2110 and IM-1000-1, and failed to respond to NASD staff

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 April 26, 2006, Enforcement filed a motion for entry of default decision, supported by the declaration of counsel and four exhibits.¹ Chapman did not file a response to the motion. For the reasons set forth below, Enforcement's motion is granted.²

II. Respondent's Default

On February 3, 2006, Enforcement served the Complaint and Notice of Complaint on Respondent by first-class and certified mail sent to Respondent's last known residential address, as reflected in the Central Registration Depository (CRD address).³ Respondent did not file an Answer.⁴

On March 6, 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.⁵

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. By failing to file an Answer or otherwise respond to the Complaint, Respondent

¹ In accordance with the Hearing Officer's Order dated September 13, 2006, Enforcement filed a supplemental declaration and two supplemental exhibits to support its motion to amend the Complaint in order to correct a typographical error. Chapman did not file a response to the motion. Pursuant to NASD Procedural Rule 9212(b), the Hearing Officer hereby grants Enforcement's motion to amend the Complaint to conform the pleadings to the evidence, so that ¶ 4, which alleges that Respondent "failed to disclose material information that he had been charged with 2nd degree retail theft," is amended to "2nd degree retail fraud."

² The factual determinations in this Decision are based on the allegations of the attached Complaint, which are deemed admitted, and the declarations of counsel and six exhibits filed by Enforcement.

³ Respondent's CRD address is [REDACTED]

⁴ The first-class mailing was not returned. The certified mail receipt was returned, bearing the signature of "Joyce Ferguson."

⁵ Once again, the first-class mailing was not returned. The certified mailing was returned, marked "Not Deliverable as Addressed/Unable to Forward."

defaulted. Pursuant to Rules 9215(f) and 9269(a)(2), the allegations in the Complaint are deemed admitted.

III. Jurisdiction

In June 2005, Ameriprise Financial Services, Inc. (Ameriprise) submitted a Form U-4 to register Respondent as a general securities representative. Respondent's employment with Ameriprise was terminated in July 2005, however, for failure to disclose a reportable event. Since that time, Respondent has not been associated or registered with any NASD member.

Although he was never registered, Respondent was associated with Ameriprise, because a "person associated with a member" includes "a natural person who . . . has applied for registration"⁶ Respondent is thus 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 association with Ameriprise, alleges misconduct that occurred while he was an associated person, and a failure to comply with requests for information made during the two-year period following the termination.

IV. Findings of Fact and Conclusions of Law

A. Failure to Disclose Material Information on Form U-4

The first cause of the Complaint alleges that Respondent willfully failed to disclose material facts about his criminal history on a Form U-4 that he prepared on or about June 21, 2005. In completing the Form U-4, Respondent was required to disclose whether he had ever pled guilty to, or been convicted of, a misdemeanor involving wrongful taking of property. He responded "no." Respondent was also obligated to divulge whether he had been charged with a

⁶ NASD By-Laws, Art. I (dd).

misdemeanor involving wrongful taking of property. Again, he answered “no.”⁷ In fact, Respondent had been charged with, pled guilty to, and been convicted of, retail fraud in or about October 1994.⁸

In response to Ameriprise’s inquiry about his failure to disclose his criminal history on the Form U-4, Respondent admitted he had entered a guilty plea to second degree retail fraud in 1994. He explained that he did not believe the charges were a part of his permanent record, because the charges did not show up or hinder his four-year career in the Army.

In applying for registration, an applicant has “an affirmative obligation to disclose fully all material facts, including an individual’s criminal history, in response to the questions of the Form U-4.”⁹ A failure to do so, as occurred here, violates NASD Conduct Rule 2110 and IM-1000-1, which provides that the filing of registration information that is “incomplete or inaccurate so as to be misleading . . . may be deemed” a violation of Rule 2110.¹⁰

Enforcement further alleges that Respondent’s conduct with respect to his failure to disclose the theft charge and conviction 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

⁷ The applicant is required to report whether he has ever been “convicted of or pled guilty or nolo contendere (“no contest”) . . . to a misdemeanor involving . . . wrongful taking of property” at question 14B(1)(a), and whether he has ever been “charged with a misdemeanor specified [above]” at question 14B(1)(b).

⁸ Respondent was convicted of second degree retail fraud, a misdemeanor, in Saginaw, Michigan. The underlying conduct involved theft from a retail store.

⁹ *Dep’t of Enforcement v. Day*, No. C8A010094, 2003 NASD Discip. LEXIS 9, at *3 (OHO Feb. 10, 2003), citing *Rosario R. Ruggiero*, Exchange Act Release No. 37,070, 1996 SEC LEXIS 990, at *8-9 (Apr. 5, 1996).

¹⁰ See also *Dep’t of Enforcement v. Knight*, No. C10020060, 2004 NASD Discip. LEXIS 5, at *7-8 (NAC Apr. 27, 2004).

material fact that is required to be disclosed in such an application, is subject to “disqualification.”

For this purpose, it is sufficient to establish willfulness if Respondent “knew or reasonably should have known under the particular facts and circumstances that his conduct was improper.”¹¹ A finding of willfulness does not require intent to violate the law or specific rule, but simply *intent to commit the act that constitutes the violation.*¹²

Here, Respondent had the benefit of the firm’s “U-4 Disclosures Information Guide,” which provided instructions and guidance for completing the Form U-4. The Guide advised that criminal charges involving theft or fraud were reportable. Nevertheless, Respondent chose not to disclose his relevant criminal history on the Form U-4. The Hearing Officer finds that Respondent’s failure to disclose the retail fraud charge and conviction was willful and further finds that the omissions were material, as an individual’s criminal history is a fact that must be disclosed on a Form U-4.¹³

Accordingly, the allegations in the first cause of the Complaint, which are deemed admitted, are sufficient to establish for purposes of this default decision that Respondent willfully failed to disclose material facts on a Form U-4, in violation of NASD Conduct Rule 2110 and IM-1000-1.

¹¹ *Christopher LaPorte*, Exchange Act Release No. 39,171, 1997 SEC LEXIS 2058, at *8 n. 2 (Sept. 30, 1997).

¹² *LaPorte*, 1997 SEC LEXIS at *8; *Lipper Corp. v. SEC*, 547 F.2d 171, 180 (2d Cir. 1976), *cert. denied*, 434 U.S. 1009 (1978); *Knight*, 2004 NASD Discip. LEXIS 5; *Dep’t of Enforcement v. Sarris*, No. C9A020017, 2003 NASD Discip. LEXIS 12, at *11 (OHO Mar. 17, 2003).

¹³ See *Knight*, 2004 NASD Discip. LEXIS 5, at *13-14.

B. Failure to Respond to NASD Staff Information Requests

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. The Complaint alleges that the staff opened an examination regarding Respondent's failure to disclose his criminal history on his Form U-4. The Complaint further alleges that on or about August 22, 2005, the staff sent Respondent a request for information pursuant to Rule 8210 to Respondent's CRD address. After he received the request, Respondent telephoned the staff examiner to advise that he would respond to the letter. He did not respond, however.

The Complaint further alleges that on or about September 14, 2005, the staff sent Respondent a second Rule 8210 request for information by first-class and certified mail to his CRD address. He did not respond in any manner to the staff's request.¹⁴

Procedural Rule 8210 imposes an obligation on members and associated persons to cooperate with NASD investigations. By mailing the requests for information 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. Furthermore, as evidenced by his telephone call to the staff, Respondent had actual notice of the staff's request for information, but did not provide a response.

The allegations in the second cause of the Complaint, which are deemed admitted, are thus 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.

¹⁴ The first-class mailing was not returned. The receipt shows that Chapman received the certified mailing on September 19, 2005.

V. Sanctions

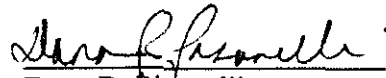
Under NASD Sanction Guidelines, a bar is standard for failure to respond to requests for information.¹⁵ There is no evidence of any mitigating circumstances here that would warrant a lesser sanction. Accordingly, Respondent will be barred in all capacities for this violation.

Enforcement recommends a suspension and fine for Respondent's willful failure to disclose material information on a Form U-4, only in the event Respondent does not receive a bar for his 8210 violation. The Hearing Officer concurs that, in light of the bar imposed, additional sanctions would be redundant.¹⁶ Accordingly, no separate sanctions will be imposed for the Form U-4 violation.

VI. Conclusion

Respondent Jeremy Michael Chapman is barred from association with any member firm in any capacity for failure 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 willfully failing to disclose material information on a Form U-4, in violation of NASD Conduct Rule 2110 and IM-1000-1. The bar shall become effective immediately if this Decision becomes the final disciplinary action of NASD.

SO ORDERED.


Dana R. Pisanelli
Hearing Officer

Dated: September 26, 2006
Washington, DC

¹⁵ *NASD Sanction Guidelines* at 35 (2006 ed.).

¹⁶ See *Dep't of Enforcement v. Hodde*, No. C10010005, 2002 NASD Discip. LEXIS 4, at *17 (NAC Mar. 27, 2002).

Copies to: Jeremy Michael Chapman (*via overnight and first-class mail*)
 Joel R. Beck, 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*)

NASD OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Jeremy Michael Chapman
Former Associated Person
CRD No. 4984194

Respondent.

Disciplinary Proceeding
No. 2005002166501

Hearing Officer -

COMPLAINT

Upon information and belief, Complainant alleges as follows:

1. Respondent Jeremy Michael Chapman first entered the securities industry in June 2005 when he completed a Form U-4 to apply for registration, and become associated with, NASD member Ameriprise Financial Services, Inc. (f/k/a American Express Financial Advisors, Inc.). Chapman's association with Ameriprise terminated in July 2005, but Chapman remains subject to NASD's jurisdiction for this proceeding pursuant to Article V, § 4 of the NASD Bylaws.

**FOR A FIRST CAUSE OF COMPLAINT
Failure to Disclose Material Information on Form U-4
NASD Rules IM-1000-1 and 2110**

2. Paragraph one is realleged and incorporated herein by reference.
3. On or about June 21, 2005, Respondent Chapman completed Ameriprise's "U-4 Disclosures Information Guide" that provided him instructions and guidance for completing a Form U-4. Among other things, the guide alerted Chapman that criminal charges involving theft and fraud were reportable on the Form U-4.
4. On or about June 21, 2005, Chapman completed a Form U-4. He willfully failed to disclose material information that he had been charged with 2nd degree retail theft in Saginaw,

Michigan in or about October 1994, and that he subsequently pled guilty to the charge, and was convicted.

5. Such acts, practices and conduct violate NASD Rules IM-1000-1 and 2110.

**FOR A SECOND CAUSE OF COMPLAINT
Failure to Respond to NASD Staff Information Request
NASD Procedural Rule 8210 and Conduct Rule 8210**

6. Paragraphs one through five are realleged and incorporated herein by reference.
7. As a result of the receipt of a termination notice filed by Ameriprise, NASD commenced an examination into the facts and circumstances surrounding the completion of Chapman's Form U-4.
8. By letter dated August 22, 2005, an NASD examiner requested that Chapman provide a written response to specific questions concerning the completion of his Form U-4, pursuant to NASD Procedural Rule 8210, by September 12, 2005. This letter was sent to Chapman at his CRD address of record of [REDACTED]
9. Chapman received the letter and telephoned the examiner on August 29, 2005. During that telephone conversation, Chapman advised the examiner that he would respond to the letter.
10. The examiner did not receive a response, and on September 14, 2005, he sent a second letter to Chapman. This letter was sent by both first class and certified mail to Chapman at his CRD address described above, and requested that Chapman provide a written response to specific questions, pursuant to Rule 8210, by September 28, 2005.
11. Chapman received the certified mailing on September 19, 2005, as evidenced by the receipt returned by the US Postal Service; the first class mailing was not returned.
12. As of the date herein, Chapman has not provided a written response as requested by the two letters.
13. Such acts, practices and conduct violate NASD Rules 8210 and 2110.

PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that the Respondent committed the violations charged and alleged herein including specific findings that: Respondent's conduct regarding failing to disclose his criminal history on the Form U-4 was willful; the omitted information was material; and the omission to state material facts was on a Form U-4 application.
- 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.

February 3, 2006.

NASD Department of Enforcement



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