

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JENNIFER L. GLOWACKI
(CRD No. 4703747),

Respondent.

Disciplinary Proceeding
No. 2005002369801

DEFAULT DECISION

Hearing Officer – SW

Dated: June 16, 2006

Respondent was barred for violating NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by failing to respond to requests for information issued by the NASD staff. In light of the bar, the Hearing Officer did not impose an additional sanction for Respondent's violation of NASD Conduct Rule 2110 and IM-1000-1 by willfully failing to disclose her criminal history on a Form U-4 application.¹

Appearances

Thomas K. Kilkenney, Esq., Regional Counsel, Philadelphia, PA, and Rory C.

Flynn, Esq., Of Counsel, Washington, DC, for the Department of Enforcement.

No appearance by or for Jennifer L. Glowacki.

DECISION

I. Introduction

On February 9, 2006, the NASD Department of Enforcement ("Enforcement") filed the attached two-count Complaint against Respondent Jennifer L. Glowacki ("Respondent"), alleging that: (i) she willfully failed to disclose her criminal history on a Uniform Application for Securities Industry Registration or Transfer ("Form U-4"), in

¹ Based on the Hearing Officer's finding that Respondent willfully filed a false application for registration by failing to disclose her criminal history on a Form U-4, Respondent is a statutorily disqualified person pursuant to Article III, Section 4(f) of the NASD By-Laws.

violation of NASD Conduct Rule 2110 and IM-1000-1; and (ii) she failed to respond to requests for information issued pursuant to Rule 8210, in violation of NASD Conduct Rule 2110 and NASD Procedural Rule 8210.

On April 28, 2006, Enforcement filed a Motion for Entry of Default Decision ("Motion"), supported by the Declaration of Thomas K. Kilkenny, Esq., Regional Counsel in NASD's Philadelphia, PA office, and ten exhibits.² For the reasons set forth below, the Hearing Officer grants Enforcement's Motion.

II. Respondent's Default

On February 6, 2006, Enforcement served the Complaint and Notice of Complaint on Respondent, via first class and certified mail, at her address of record in NASD's Central Registration Depository ("CRD address"), and at a second address obtained by NASD during the investigative phase of this matter ("Medford address").³ (CX-3; CX-4; CX-5; CX-6; DECL at ¶ 10). On March 7, 2006, Enforcement served the Second Notice of Complaint and Complaint on Respondent, via first class and certified mail, at her CRD address and the Medford address. (CX-8; CX-9; CX-10; DECL at ¶ 12). To date, Respondent has not filed an answer to the Complaint. (DECL at ¶ 14).

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 Medford

² Hereinafter, the statements in the Motion for Entry of Default Decision will be designated as "Motion, p.;" the statements in the Kilkenny Declaration will be designated as "DECL at ¶;" and Enforcement's exhibits will be designated as "CX-" with the appropriate page or paragraph number.

³ Respondent's CRD address is [REDACTED] (CX-3). During the investigatory phase of this matter, the NASD staff obtained a second address for Respondent, [REDACTED] from the forwarding address shown on returned certified mailings sent to the CRD address. (DECL at ¶ 8).

address.⁴ Accordingly, the Hearing Officer finds that Respondent received effective constructive notice of this proceeding and further finds that Respondent defaulted by failing to answer the Complaint.⁵

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

On August 11, 2003, Respondent became employed at NASD member firm Janney Montgomery Scott LLC ("Janney Montgomery") in a non-registered clerical capacity. (CX-1; DECL at ¶ 4). On July 12, 2005, Janney Montgomery submitted to NASD a Form U-4 for Respondent to become a registered general securities representative, executed by Respondent.⁶ (CX-2; DECL at ¶ 4). Thereafter, Respondent was associated with Janney Montgomery until August 3, 2005, when Janney Montgomery discharged her, terminating her association without registration.⁷ (CX-1; DECL at ¶ 4). Respondent is not currently associated with any NASD member firm. (CX-1; DECL at ¶ 5).

Nevertheless, 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 her association with Janney Montgomery was terminated, and (2) the Complaint charges her with misconduct while she was associated

⁴ See Department of Enforcement v. Verdiner, No. CAF020004, 2003 NASD Discip. LEXIS 42, at * 5 n.1 (N.A.C. Dec. 9, 2003) (finding that respondent received constructive notice when complaint was mailed to respondent's CRD address).

⁵ 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.

⁶ Pursuant to Article I, Section (dd) of the NASD By-Laws, a person who applies for registration is an "associated person of a member."

⁷ On August 10, 2005, Janney Montgomery filed a Form U-5 disclosing that it discharged Respondent for "failure to [disclose] prior employment and arrest on Form U-4." (CX-1; CX-2; DECL at ¶ 4).

with an NASD member, and failures to provide information requested pursuant to Rule 8210 during the period of retained jurisdiction.

B. Respondent Failed to Disclose a Felony Indictment on her Form U-4

Count one of the Complaint alleges that, on August 19, 2003, Respondent was indicted in New Jersey Superior Court, Camden County, for violation of N.J. Stat. §2C:20-4 (Theft by deception--Third Degree), an offense punishable by a term of imprisonment of three to five years, and accordingly, a felony for purposes of a Form U-4. (Complaint at ¶¶ 4-6). The Complaint also alleges that Respondent completed and signed a June 2, 2005 Form U-4, which was submitted to NASD on July 12, 2005, on which she falsely answered “no” to the question, “Have you ever . . . been charged with any felony?” (Complaint at ¶ 7).

Enforcement provided the additional information that, at the time Respondent signed the Form U-4, she was still in the pre-trial intervention program and thus would have been aware of the fact that she had been charged with a felony. (DECL at ¶ 16).

An associated person is required to disclose any felony charges.⁸ The Securities and Exchange Commission has held that misrepresentations on an application for registration violate the standards of just and equitable principles of trade of NASD Conduct Rule 2110 to which every person associated with any NASD member is held.⁹ IM-1000-1 provides that “[t]he filing with [NASD] of information with respect to membership or registration as a Registered Representative which is incomplete or

⁸ Article V, Section 2(a)(2) of the NASD By-Laws provides that any application for registration with NASD shall be properly signed by the applicant and shall contain such reasonable information with respect to the applicant as NASD may require.

⁹ Robert E. Kauffman, Exchange Act Rel. No. 33,219 (Nov. 18, 1993), aff’d, Robert E. Kauffman v. S.E.C., 40 F.3d 1240 (3rd Cir. 1994).

inaccurate so as to be misleading, or which could in any way tend to mislead, or the failure to correct such filing after notice thereof, may be deemed to be conduct inconsistent with just and equitable principles of trade. . .”

The allegations in the first cause of the Complaint and the evidence submitted by Respondent are sufficient to establish that Respondent provided a false response on her Form U-4, in violation of NASD Conduct Rule 2110 and IM-1000-1.

Further, the Hearing Officer finds that, in view of her participation in the pre-trial intervention program at the time that she completed the Form U-4, Respondent intentionally attempted to conceal her criminal history. Accordingly, the Hearing Officer finds that Respondent’s conduct in failing to disclose her criminal history on her Form U-4 was willful within the meaning of Article III, Section 4(f) of the NASD By-Laws.¹⁰

C. Respondent Failed to Respond to Requests for Information

The second cause of the Complaint alleges that Respondent failed to respond to four letters from the NASD staff requesting information regarding the allegations in cause one of the Complaint. (Complaint at ¶¶ 11-15). On August 29, 2005 and September 22, 2005, the NASD staff sent a first and second request for information to Respondent at her CRD address, pursuant to NASD Procedural Rule 8210, via first class and certified mail. (Complaint at ¶¶ 11-12).

On October 17, 2005 and November 17, 2005, the NASD staff sent a third and fourth request for information to Respondent at her CRD address and the Medford address, via first class and certified mail, pursuant to NASD Procedural Rule 8210.

¹⁰ Christopher LaPorte, Exchange Act Rel. No. 39,171, 1997 SEC LEXIS 2058, at *8 (Sept. 30, 1997) (finding willfulness when respondent knew or should have known under the particular facts and circumstances that his conduct was improper).

(Complaint at ¶¶ 13-14). Respondent failed to provide any information in response to any of the four requests for information. (Complaint at ¶ 15).

Failure to comply with Rule 8210 requests for information is a serious violation because it subverts the NASD's ability to perform its regulatory responsibilities.¹¹

The allegations in the second cause of 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 respond to the NASD staff's requests for information.¹²

IV. Sanctions

A. Respondent Failed to Respond to Requests for Information

For failing to respond to four requests for information, Enforcement recommended that Respondent be barred. The NASD Sanction Guidelines provide that a bar should be standard when an individual respondent does not respond in any manner to a request issued pursuant to Rule 8210.¹³ The record does not indicate the existence of any mitigating factors that would warrant a lesser sanction. Accordingly, the Hearing Officer accepts Enforcement's recommendation and bars Respondent for failing to respond to the four requests for information.

¹¹ See, e.g., Richard J. Rouse, Exchange Act Rel. No. 32,685, 1993 SEC LEXIS 1831, at *7 (1993); Joseph G. Chiulli, Exchange Act Rel. No. 42,359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for NASD to conduct its investigations effectively, and emphasizing that NASD members and associated persons must fully cooperate with requests for information).

¹² See Dep't of Enforcement v. Baxter, No. C07990016, 2000 NASD Discip. LEXIS 3, at **21, 25 (NAC Apr. 19, 2000).

¹³ NASD Sanction Guidelines, p. 35 (2006).

B. The Hearing Officer Imposes No Separate Sanction for Respondent's Willful Failure to Disclose her Criminal History on her Form U-4

Because the Hearing Officer barred Respondent for her Rule 8210 violation, the Hearing Officer will impose no separate sanction on Respondent for violating NASD Conduct Rule 2110 and IM-1000-1 by willfully failing to disclose her criminal history on her Form U-4.¹⁴

V. Order

Respondent Jennifer L. Glowacki is barred from associating with any NASD member firm in any capacity for violating NASD Conduct Rule 2110 and NASD Procedural Rule 8210 by failing to respond to four Rule 8210 requests for information. The bar will become effective immediately upon this Default Decision becoming the final disciplinary action of NASD.


Sharon Witherspoon
Hearing Officer

Dated: Washington, DC
June 16, 2006

Copies to:

Jennifer L. Glowacki (via FedEx and first class mail)
Thomas K. Kilkenny, Esq. (via electronic and first class mail)
Rory C. Flynn, Esq. (via electronic and first class mail)
Mark P. Dauer, Esq. (via electronic and first class mail)

¹⁴ Enforcement recommended a six-month suspension in all capacities and fine of \$5,000 for Respondent's filing of a false Form U-4, as alleged in count one of the Complaint. (Motion, p. 2).

**NASD
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT

Complainant

v.

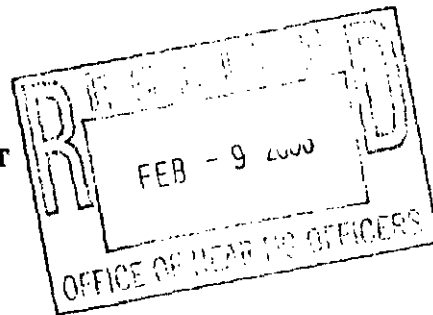
JENNIFER L. GLOWACKI
CRD NO. 4703747

Respondent

Disciplinary Proceeding
No. 2005002369801

Hearing Officer—

COMPLAINT



Complainant, upon information and belief, alleges that:

1. Jennifer L. Glowacki entered the securities industry in 2003 as a non-registered associated person of Janney Montgomery Scott LLC ("JMS"). In July 2005, she applied to NASD for registration, through JMS, as a Representative, which registration did not become effective before the termination of her association upon the filing of a Form U5 on August 10, 2005. Since then, she has not been associated with any other member of NASD or registered in any capacity.
2. NASD retains jurisdiction over Jennifer L. Glowacki until at least August 9, 2007 pursuant to Article V, Section 4 of NASD's By-Laws.

FIRST CAUSE OF COMPLAINT

Willful Misstatement of Material Fact On Application for Registration NASD Conduct Rule 2110 and IM-1000-1

3. Paragraphs number 1 and 2, above, are realleged and incorporated herein by reference.
4. On or about August 19, 2003, Jennifer L. Glowacki (known then as Jennifer L. Griffith) was indicted in New Jersey Superior Court, Camden County, for violation of N.J. Stat. § 2C:20-4 (Theft By Deception—Third Degree).
5. Under N.J. Stat. § 2C:43-6a(3), a crime of the third degree is punishable by a term of imprisonment of three to five years.
6. An offense punishable by a sentence of a least one year imprisonment constitutes a "felony" for the purposes of the Uniform Application for Securities Industry Registration or Transfer ("Form U4").
7. On or about June 2, 2005, Jennifer L. Glowacki completed and signed a Form U4") which was electronically submitted by JMS to the Central Registration Depository ("CRD") on July 12, 2005. Question 14A(1)(b) of Form U4 asked whether she had ever been charged with any felony. That question was answered "no."
8. Jennifer L. Glowacki made a willful misrepresentation of material fact by answering "no" to Question 14A(1)(b) of her Form U4.
9. The aforesaid conduct constitutes violations of NASD Conduct Rule 2110 and IM-1000-1 by Jennifer L. Glowacki.

SECOND CAUSE OF COMPLAINT

Failure to Comply With Requests for Information NASD Conduct Rule 2110 and Procedural Rule 8210

10. Paragraphs 1 and 2, above, are realleged and incorporated herein by reference.
11. On or about August 29, 2005, the staff of NASD sent a written request to Jennifer L. Glowacki for documents and information pertaining to, among other things, her failure to disclose the charge of theft by deception. The request stated that it was made pursuant to Procedural Rule 8210, and warned that failure to comply could result in disciplinary action. The request was sent to the residential address maintained for her by CRD of [REDACTED] (the "CRD address"). It was sent by both certified and first class mail. It required a response by September 12, 2005. The certified mailing was returned to the District Office marked "unclaimed." The first class mailing was not returned.
12. On or about September 22, 2005, the staff of NASD sent a second written request to Jennifer L. Glowacki for documents and information pertaining to, among other things, her failure to disclose the charge of theft by deception. The request stated that it was made pursuant to Procedural Rule 8210, and warned that failure to comply could result in disciplinary action. The request was sent to the CRD address. It was sent by both certified and first class mail. It required a response by October 6, 2005. The certified mailing was returned to the District Office marked "unclaimed," and bore a forwarding address of [REDACTED] (the "Medford address"). The first class mailing was not returned.
13. On or about October 17, 2005, the staff of NASD sent a third written request to Jennifer L. Glowacki for documents and information pertaining to, among other things, her failure to disclose the charge of theft by deception. The request stated that it was made pursuant to Procedural Rule 8210, and warned that failure to comply could result in disciplinary action. The request was sent to both the CRD address and the Medford address. It was sent by both certified and first class mail. It required a response by October 31, 2005. The certified mailing to the Medford address was returned to the District Office marked "unclaimed." The certified

mailing sent to the CRD address was returned to the District Office marked "unclaimed" and bearing a forwarding address of the Medford address. The first class mailings were not returned.

14. On or about November 17, 2005, the staff of NASD sent a fourth written request to Jennifer L. Glowacki for documents and information pertaining to, among other things, her failure to disclose the charge of theft by deception. The request stated that it was made pursuant to Procedural Rule 8210, and warned that failure to comply could result in disciplinary action. The request was sent to both the CRD address and the Medford address. It was sent by both certified and first class mail. It required a response by December 1, 2005. The certified mailing to the Medford address was returned to the District Office marked "unclaimed." The certified mailing sent to the CRD address was returned to the District Office marked "unclaimed" and bearing a forwarding address of the Medford address. The first class mailings were not returned.

15. Jennifer L. Glowacki did not comply with the foregoing requests for information and documents, nor did she respond to them in any manner.

16. The staff of NASD are not aware of any more current residential address, or a current business address, for Jennifer L. Glowacki.

17. The aforesaid conduct constitutes violations of NASD Conduct Rule 2110 and Procedural Rule 8210 by Jennifer L. Glowacki.

PRAYER FOR RELIEF

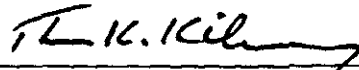
WHEREFORE, Complainant respectfully requests:

A. Findings of fact and conclusions of law that Respondent committed the violations alleged within this Complaint and, specifically, that the misrepresentation cited in the First Cause of Complaint was made on a Form U4 application for registration, that it was material, and that it was willfully made;

- 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

Dated: February 6, 2006



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