

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DANIEL DIAZ
(CRD No. 4169098),

Respondent.

Disciplinary Proceeding
No. 2005002377201

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

September 15, 2006

Respondent is barred from association with any member firm in any capacity for submitting fictitious account applications to his member firm, in violation of Conduct Rule 2110, and for failing to provide information requested by NASD staff pursuant to NASD Procedural Rule 8210, in violation of Conduct Rule 2110 and Procedural Rule 8210.

Appearances

Heather Hawker, Senior Regional Attorney, Denver, CO (Rory C. Flynn, Chief Litigation Counsel, Washington, D.C., and Mark P. Dauer, Senior Counsel, New Orleans, LA, Of Counsel) for the Department of Enforcement.

No appearance by or for the Respondent.

DECISION

I. Introduction

On May 18, 2006, the Department of Enforcement ("Enforcement") filed the Complaint against the Respondent Daniel Diaz ("Diaz" or the "Respondent"). The Complaint contains two causes of action. The first cause of action alleges that Diaz submitted fraudulent Section 403(b) plan applications to CitiStreet Equities, Inc.

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("CitiStreet"), in violation of NASD Conduct Rule 2110.¹ In addition, the Complaint alleges that CitiStreet paid Diaz more than \$1,700 in commissions based on the false applications. The second cause of action alleges that Diaz failed to respond to three written requests that he provide information to NASD concerning the five false account applications, in violation of NASD Conduct Rule 2110 and Procedural Rule 8210.

Diaz did not answer or otherwise respond to the Complaint. Consequently, on August 11, 2006, Enforcement filed a Motion for Entry of Default Decision ("Motion"). Enforcement's Motion is supported by the Declaration of Heather Hawker ("Decl.") and five exhibits. Diaz did not respond to the Motion. Thus, pursuant to NASD Procedural Rules 9215 and 9269, the Hearing Officer grants Enforcement's Motion.

II. Respondent's Default

Enforcement served Diaz in accordance with NASD Procedural Rules 9134(a)(2) and 9134(b)(1). On May 16, 2006, Enforcement mailed copies of the Complaint and Notice of Complaint to Diaz by Express Mail at his last known residential address shown in the Central Registration Depository (the "CRD address").² The U.S. Postal Service returned the mailing with the notation, "Unclaimed."³ Diaz did not file a response.

On June 14, 2006, Enforcement served Diaz with the Second Notice of Complaint. The staff mailed the Second Notice of Complaint to Diaz by Express Mail at his CRD address.⁴ The U.S. Postal Service returned this mailing as well with the notation that the addressee had not claimed the mailing. Diaz did not file a response.⁵

¹ Section 403(b) of the Internal Revenue Code provides for tax-sheltered annuities for employees of 501(c)(3) tax-exempt organizations and public educational organizations. In this case, CitiStreet marketed Section 403(b) plans to school employees.

² Decl. ¶ 10.

³ Ex. 4.

⁴ Decl. ¶ 11.

⁵ Ex. 5.

The Hearing Officer finds that Diaz received constructive notice of this proceeding and that he failed to file an Answer within the time required by Procedural Rule 9215. Accordingly, the Hearing Officer finds Diaz in default and deems the allegations of the attached Complaint admitted.⁶

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

Diaz was last registered with Chase Investment Services Corp. as a General Securities Representative from July 14, 2005, until July 26, 2005.⁷ Before that, he was registered with CitiStreet from August 7, 2002, until July 20, 2005.⁸ The Respondent is not currently registered or associated with any NASD member firm.⁹

Article V, Section 4(a) of the NASD By-Laws provides for a two-year period of retained jurisdiction over formerly registered persons who are no longer associated with any member firm. During this period of retained jurisdiction, the NASD may file a complaint against such persons based upon conduct that occurred before their registrations terminated or for failure to respond to requests for information issued by NASD staff during the period of retained jurisdiction. The two-year period of retained jurisdiction runs from the effective date of termination of registration. Here, the alleged misconduct occurred while Diaz was registered with CitiStreet, and Enforcement filed the Complaint on May 18, 2006, within two years of the date his last registration terminated. In addition, NASD staff issued the written requests for information that underlie the second cause of action within the period of retained jurisdiction. Accordingly, the Hearing Officer finds that NASD has jurisdiction of this proceeding.

⁶ The following Findings of Fact incorporate the allegations in the attached Complaint.

⁷ Ex. I, at 1.

⁸ *Id.* at 2.

⁹ *Id.* at 1.

B. Fictitious Account Applications

The first cause of the Complaint alleges that, between June 20 and July 1, 2005, Diaz submitted five fictitious account applications to CitiStreet, and that it paid Diaz \$1,700 in commissions based on those fraudulent applications. Diaz submitted the applications under fictitious names. The applications purportedly were to enroll five school employees in Section 403(b) tax-sheltered annuities.

These allegations are sufficient to establish for purposes of this default decision that Diaz violated NASD Conduct Rule 2110, which requires associated persons to "observe high standards of commercial honor and just and equitable principles of trade."¹⁰

C. Failure to Provide Information

The second cause of the Complaint alleges that in the course of its investigation of the circumstances described in the first cause, NASD staff sent Diaz requests for information, pursuant to Procedural Rule 8210, on October 27, November 18, and December 5, 2005. NASD staff served the requests on Diaz by regular and certified first-class mail to his most current CRD address.¹¹ Diaz received valid notice of the requests. He signed a receipt for the first request, and, pursuant to Procedural Rule 8210(d), he is deemed to have received notice of the second two requests. Nevertheless, Diaz did not respond in any manner to any of the requests.

These allegations are sufficient to establish for purposes of this default decision that Diaz failed to respond to requests for information, in violation of Conduct Rule 2110 and Procedural Rule 8210.

¹⁰ *Department of Enforcement, v. Greer*, No. C05990035, 2001 NASD Discip. LEXIS 34, *4-5 (N.A.C. Aug. 6, 2001) (holding that opening account under a fictitious name violates Conduct Rule 2110). NASD Rule 0115 extends the obligations of Conduct Rule 2110 to associated persons, as well as members.

¹¹ Diaz updated his CRD address in early November 2005. Accordingly, the staff used his new CRD address for the second two requests for information. Compl. ¶ 11.

IV. Sanctions

For forgery and falsification of records, the NASD Sanction Guidelines ("Sanction Guidelines") recommend a fine of \$5,000 to \$100,000 and a suspension of up to two years. In egregious cases, the Sanction Guidelines recommend that a bar be considered.¹² This is an egregious case, and there is no evidence of any mitigating factors. Diaz intentionally defrauded CitiStreet by submitting the fictitious applications. Such dishonesty is antithetical to "high standards of commercial honor and just and equitable principles of trade."¹³ Accordingly, the Hearing Officer concludes that the Respondent should be barred from the securities industry for this violation.

The Hearing Officer likewise finds that the Respondent should be barred for his failure to provide information requested by NASD staff. The Sanction Guidelines recommend imposition of a bar for failing to respond to requests for information where there are no mitigating circumstances.¹⁴ Again, there is no evidence of any mitigating facts that would warrant a lesser sanction.

V. Order

Daniel Diaz is barred from association with any member firm in any capacity for submitting fictitious account applications, in violation of NASD Conduct Rule 2110, and for failing to respond to requests for information, in violation of NASD Conduct Rule 2110 and Procedural Rule 8210. The bars will be effective immediately if this decision becomes NASD's final disciplinary action.



Andrew H. Perkins
Hearing Officer

¹² NASD Sanction Guidelines 39 (2005 ed.).

¹³ NASD Conduct Rule 2110.

¹⁴ NASD Sanction Guidelines 35.

**NASD
OFFICE OF HEARING OFFICERS**

Department of Enforcement,	)	Disciplinary Proceeding
	)	No. 20050023772
Complainant,	)	
	)	Hearing Officer
v.	)	
	)	COMPLAINT
DANIEL DIAZ	)	
CRD No. 4169098	)	
	)	
Respondent.	)	

Upon information and belief, the Complainant alleges as follows:

1. Respondent Daniel Diaz ("Diaz") was associated with NASD member, CitiStreet Equities LLC ("CitiStreet" or the "Firm"), from August 6, 2002 through July 6, 2005. From June 28, 2005 through July 21, 2005, Diaz was associated with Chase Investment Services Corp. Since leaving Chase Investment Services Corp., Diaz has not associated with another NASD member. The conduct that is the subject of this proceeding occurred from late June 2005 through early July 2005.

2. Diaz is subject to NASD jurisdiction pursuant to Article V, § 4 of NASD's By-Laws.

**FIRST CAUSE OF COMPLAINT
Unethical Misconduct - NASD Conduct Rule 2110**

3. Paragraphs nos. 1-2 are re-alleged and incorporated herein by reference.
4. For approximately three years, Diaz was employed by CitiStreet, a firm that markets IRS Section 403(b) payroll reduction retirement investments to school employees.

5. Between June 20, 2005 through July 1, 2005, Diaz submitted five 403(b) payroll reduction retirement investment applications to CitiStreet and CitiStreet paid Diaz over \$1,700.00 in commissions on these five new accounts. Following the submission of these five applications, Diaz voluntarily terminated his employment with CitiStreet.

6. In August 2005, CitiStreet discovered that the five applications submitted by Diaz were for fictitious customers. By creating accounts for non-existent school employees, Diaz effectively deceived CitiStreet into paying him compensation that had not been earned and to which he was not entitled.

7. The submittal of applications for fictitious customers and the receipt of unearned commissions constitute conduct inconsistent with the high standards of commercial honor and just and equitable principles of trade and the foregoing conduct constitutes separate and distinct violations of NASD Conduct Rule 2110 by Diaz.

SECOND CAUSE FOR COMPLAINT
Respondent's Failure to Provide Information Requested Pursuant to 8210 -
NASD Conduct Rule 2110 and NASD Procedural Rule 8210

8. Paragraph nos. 1-7 are re-alleged and incorporated herein by reference.

October 8210 Request Letter.

9. On October 27, 2005, pursuant to Rule 8210, NASD staff sent a written request to Diaz for information related to its investigation into the conduct set forth in Complaint paragraphs 4-7. This request was sent by both certified and first-class mail to Diaz's CRD residential address. The requested information was to be provided to NASD by November 10, 2005.

10. The green card for the certified mailing was returned to NASD with a signature of "Diaz;" the first-class letter was not returned to NASD. NASD never received a response to the October 2005 Rule 8210 request.

November 8210 Request Letter.

11. In November 2005, Diaz changed his residential CRD address. Consequently, on November 18, 2005, NASD sent a written Rule 8210 request by both certified and first-class mail to this address. This letter was identical to the October 2005 letter, except that the response date was extended through December 1, 2005. The certified letter was returned "unclaimed" and the first-class letter was not returned to NASD. Diaz did not respond to the November Rule 8210 request.

December 8210 Request Letter.

12. A second Rule 8210 request was sent to the new residential CRD address on December 5, 2005 by certified and first-class mail. The requested information was to be given to NASD by December 19, 2005. The certified letter was returned "unclaimed" and the first-class letter was not returned to NASD. Diaz did not respond to the December 2005 Rule 8210 request.

13. The requests for information were sent within two years of Diaz's most recent association with an NASD member and, therefore, he was required by Procedural Rule 8210 to provide the requested information.

14. Each failure to provide information constitutes a separate and distinct violation of NASD Conduct Rule 2110 and NASD Procedural Rule 8210 by Diaz.

PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Diaz committed the violations alleged within the Complaint;
- B. An Order imposing sanctions upon Diaz 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 8310; and
- D. An Order imposing any other fitting sanction.

Dated: May 16, 2006

**NASD DEPARTMENT OF
ENFORCEMENT**


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