

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT

Complainant,

v.

JOANNE ELIZABETH BLAIN
(CRD No. 1703215)

Respondent.

Disciplinary Proceeding
No. 2005002411701

Hearing Officer – AWH

DEFAULT DECISION

May 7, 2007

Formerly registered representative barred for failure to appear for testimony, in violation of Procedural Rule 8210 and Conduct Rule 2110.

Appearances:

George C. McGuigan, Jr., Esq., for the Department of Enforcement.

No appearance by or for Joanne Elizabeth Blain.

DECISION

Background

On November 27, 2006, the Department of Enforcement ("Enforcement") filed the Complaint in this proceeding, alleging that Joanne Elizabeth Blain failed to appear for testimony, in violation of NASD Procedural Rule 8210 and Conduct Rule 2110. Blain did not 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 March 14, 2007, to which Blain did not respond. Accordingly, pursuant to Procedural Rules 9215(f) and 9269, Enforcement's Motion will be granted, and the allegations in the Complaint, which is attached to this Decision, will be deemed admitted.

Findings of Fact¹

Respondent

Blain first entered the securities industry in 1987 and was registered serially with ten firms until May 2004 when she became registered through Barron Moore, Inc., as a General Securities Representative and General Securities Principal. On November 29, 2004, Barron Moore discharged Blain for questionable supervision of an office under review, and, since that time, she has not been associated with any member firm.

While Blain was employed by Barron Moore, she was a branch manager and supervised, among others, Jason Charles Midgley. Midgley was originally named in this Complaint, and the first three causes of the Complaint related to allegations that Midgley engaged in private securities transactions, effected unsuitable transactions, and failed to respond to requests for testimony.² During its investigation of Midgley, the staff received information about Blain's possible role in Midgley's private securities transactions.

Failure to Appear for Testimony

On November 2, 2005, pursuant to Procedural Rule 8210, NASD staff sent Blain a request to provide on-the-record testimony on December 6, 2005, concerning her possible role in Midgley's private securities transactions. The request was sent both by first class and certified mail to Blain's residential address listed in the Central Registration Depository ("CRD" address). The receipt for the certified letter was returned with Blain's signature. The first class letter was not returned. Blain did not appear for testimony as she was requested.

¹ All findings of fact are based upon the admitted allegations in the Complaint, the Declaration Supporting Motion for Entry of Default Decision, and the exhibits attached thereto.

² Midgley settled the Complaint against him, agreeing to be barred in all capacities for the violations alleged in the Complaint.

On March 1, 2006, pursuant to Procedural Rule 8210, NASD staff sent Blain a similar request to testify at the Dallas, Texas, office on March 10, 2006. The request was sent by first class and certified mail to her CRD address. Neither mailing was returned to the staff. Blain did not appear for testimony on March 10, 2006, as requested.

Service of the Complaint

On November 27, 2006, Enforcement served Blain with the Complaint and Notice of Complaint by both first class and certified mail, sent to her CRD address. The receipt for the certified mailing was signed by Kyle Blain and returned to the staff. The first class mailing was not returned. Blain did not file an Answer.

On January 16, 2007, Enforcement served the Complaint and Second Notice of Complaint on Blain by first class and certified mail sent to her CRD address. The return receipt for the certified mailing was signed with an illegible signature and returned to the staff. The first class mailing was not returned. Blain did not file an Answer to the Complaint. The staff has no knowledge that Blain's CRD address is out of date.

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 person'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 through 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.

Enforcement filed the Complaint on November 27, 2006, within two years of the termination of Blain's registration. The Complaint alleges her failures to appear for on-the-record testimony during the period of retained jurisdiction. Therefore, NASD has jurisdiction over this proceeding.

Respondent's Default

Enforcement properly served the Complaint on Blain by sending it via first class and certified mail to her CRD address. Pursuant to NASD Procedural Rule 9134, the mailings provide constructive notice of the instant proceeding. The fact that the receipt for the first certified mailing was returned, bearing the signature of Kyle Blain, indicates a high probability that she had actual notice of the Complaint. Because Blain failed to file an answer to the Complaint, Procedural Rules 9215(f) and 9269 authorize entry of a default decision against her. Accordingly, the allegations in the Complaint are deemed admitted.

Failures to Appear for Testimony

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.³ When an individual fails to respond to information requests, NASD's ability to perform its

³ 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.").

regulatory responsibilities is subverted.⁴ A violation of Procedural Rule 8210 is also a violation of Conduct Rule 2110.⁵

Blain received actual notice of the first request for her testimony, and, at least constructive notice of the second request for that testimony. Her complete failure to appear for testimony violated both Procedural Rule 8210 and Conduct Rule 2110.

Sanctions

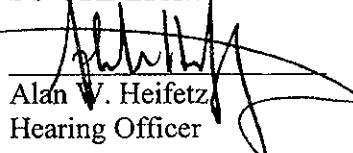
Failure to Appear for Testimony

For failure to respond to requests for information made pursuant to Rule 8210, NASD Sanction Guidelines provide that a bar is standard where, as here, the individual fails completely to respond in any manner.⁶ There are no mitigating circumstances that would warrant a sanction less than a bar for Blain's complete failures to respond to the requests for her testimony. Accordingly, Blain will be barred for failing to respond in any manner to requests for information made pursuant to Procedural Rule 8210.

Conclusion

Joanne Elizabeth Blain is barred from association with any NASD member firm in any capacity for failing to respond to requests for testimony, in violation of Procedural Rule 8210 and Conduct Rule 2110. The bar shall become effective immediately if this Decision becomes the final disciplinary action of NASD.

SO ORDERED.


Alan V. Heifetz
Hearing Officer

⁴ *Joseph P. Hannan*, Exchange Act Release No. 40,438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998).

⁵ *Dep't of Enforcement v. Baxter*, No. C07990016, 2000 NASD Discip. LEXIS 3, at *25 (NAC Apr. 19, 2000).

⁶ NASD SANCTION GUIDELINES p. 35.

Copies to:

Via First Class Mail & Overnight Courier

Joanne Elizabeth Blain

Via First Class Mail & Electronic Mail

George C. McGuigan, Jr., Esq.

Mark P. Dauer, Esq.

Rory C. Flynn, Esq.

**NASD
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant

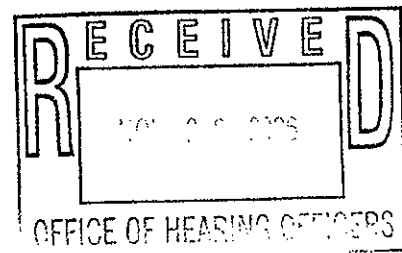
v.

Disciplinary Proceeding
No. 2005002411701

Jason Charles Midgley
General Securities Representative
CRD No. 4623081

Joanne Elizabeth Blain
General Securities Principal
CRD No. 1703215

Respondents



COMPLAINT

The Department of Enforcement alleges:

1. Respondent Jason Charles Midgley entered the securities industry in August 2003 as a General Securities Representative with member firm Continental Broker-Dealer Corp. From August 2003 to May 2004, he registered serially with three different NASD member firms. In May 2004, he registered with NASD member firm Barron Moore as a General Securities Representative. On November 29, 2004, Barron Moore discharged Midgley. Since his discharge from Barron Moore, Midgley has not been associated or registered with any NASD member firm.
2. Although Midgley is not currently registered, he remains subject to the

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jurisdiction of NASD until November 28, 2006, pursuant to Article V, Section 4 of NASD's By-Laws, which provides for a two-year period of retained jurisdiction over formerly registered persons.

3. Respondent Joanne Elizabeth Blain entered the securities industry in August 1987 as a General Securities Representative with member firm First Eagle. From August 1987 to May 2004 she was registered serially with eight different NASD member firms. In May 2004, she registered with NASD member firm Barron Moore as a General Securities Representative and General Securities Principal.
4. On November 29, 2004, Barron Moore discharged Blain. Since her discharge she has not been associated or registered with any NASD member firm.
5. Although Blain is not currently registered, she remains subject to the jurisdiction of NASD until November 28, 2006, pursuant to Article V, Section 4 of NASD's By-Laws, which provides for a two-year period of retained jurisdiction over formerly registered persons.

FIRST CAUSE OF ACTION

(Midgley Participated in Private Securities Transactions (Rules 2110 and 3040))

6. The Department realleges and incorporates by reference paragraphs Paragraphs 1 through 5 above.
7. During the period from July 2004 to October 2004, Jason Charles Midgley participated in nine private securities transactions involving customers G. J., S. P., and W. T. without providing any notice to Barron Moore, the member firm with

which he was registered.

8. Specifically Midgley solicited the three customers to purchase shares of stock in Elaborate Productions, Inc. and CyberZONE, Inc. in the aggregate amount of \$170,000 as follows:

<u>Customer</u>	<u>Security Purchased</u>	<u>Approx. Purchase Date</u>	<u>Amount</u>
G. J.	Elaborate Productions	10/29/04	\$15,000
G. J.	CyberZONE	10/29/04	\$15,000
S. P.	CyberZONE	9/29/04	\$25,000
"	"	"	\$15,000
"	"	11/22/04	\$15,000
S. P.	Elaborate Productions	10/1/04	\$25,000
W. T.	CyberZONE	7/1/2004	\$10,000
"	"	7/28/04	\$30,000
"	"	7/29/04	\$20,000

9. In connection with recommending the above transactions, Midgley also told the customers to mail their checks directly to CyberZONE and Elaborate Productions and he provided each customer with the address for these two companies. The customers followed Midgley's instructions.
10. Midgley failed to provide any notice to Barron Moore describing in detail the transactions referenced above, his proposed role in the transactions, and whether he had received or might receive compensation in connection with the above referenced transactions.

11. Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rules 2110 and 3040 by Respondent Jason Charles Midgley.

SECOND CAUSE OF ACTION

(Midgley Effected Two Unsuitable Transactions (Rules 2110 and 2310))

12. The Department realleges and incorporates by reference Paragraphs 1 through 10 above.
13. As referenced above, based on a recommendation from Jason Charles Midgley, customer G. J. invested \$15,000 in CyberZONE and \$15,000 in Elaborate Productions. At the time of her investments, G. J. had no prior investment experience. Her annual income was \$25,000 and her liquid net worth was \$1,000. In order to fund her purchases, she had to obtain a home equity line of credit, a fact which she disclosed to Midgley before she decided to purchase shares in CyberZONE and Elaborate Productions. She was risk adverse and could not afford to lose her investment in either CyberZONE or Elaborate Productions; however, the prospectuses for CyberZONE and Elaborate Productions describe these securities as high risk and only suitable for those investors who could sustain a complete loss of their investment.
14. Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rules 2110 and 2310 by Respondent Jason Charles Midgley.

THIRD CAUSE OF ACTION

(Midgley Failed to Provide Information and/or Failed to Appear for Testimony (Rules 2110 and 8210))

15. The Department realleges and incorporates by reference Paragraphs 1 through 13 above.
16. By letter dated September 22, 2005, NASD staff requested, pursuant to Procedural Rule 8210, that Jason Charles Midgley provide information to NASD regarding his termination from member firm Barron Moore. The September 22nd letter was sent to Midgley at his CRD home address via certified and regular mail. Midgley was required to provide the requested information no later October 6, 2005.
17. The regular mailing of the September 22nd letter has never been returned to NASD's Dallas, Texas district office. The return receipt card for the certified mailing was signed and returned to the district office.
18. Midgley never responded to the September 22nd letter.
19. By letter dated November 3, 2005, NASD staff requested, again pursuant to Rule 8210, that Midgley appear in NASD's Dallas, Texas district office on December 6, 2005 for the purpose of providing on the record testimony. The November 3rd letter was sent to Midgley at his CRD home address via certified and regular mail.
20. The regular mailing of the November 3rd letter has never been returned to NASD's Dallas, Texas district office. The certified mailing was returned marked "unclaimed."

21. Midgley never appeared in NASD's Dallas, Texas district office as requested.

However, on December 2, 2005, an attorney representing Midgley contacted the NASD Examiner who had sent the November 3rd and stated that Midgley would not appear and provide testimony as requested by NASD.

22. Such acts, practices, and conduct constitute separate and distinct violations of NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by Respondent Jason Charles Midgley.

FOURTH CAUSE OF ACTION

(Blain Failed to Appear for Testimony (Rules 2110 and 8210))

23. The Department realleges and incorporates by reference Paragraphs 1 through 22 above.

24. In connection with its investigation of Jason Charles Midgley, NASD staff sought information from Joanne Elizabeth Blain, the branch manager of the office where Midgley worked. Blain had some contact with customer S. P. concerning his purchase of CyberZONE.

25. Because of information it had obtained about Blain, NASD staff requested that Blain provide on the record testimony to the NASD. In this regard, by letter dated November 2, 2005, NASD staff requested, pursuant to Rule 8210, that Blain appear in NASD's Dallas, Texas district office on December 6, 2005 for the purpose of providing on the record testimony. The November 2nd letter was sent to Blain at her CRD home address via certified and regular mail.

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26. The regular mailing of the November 2nd letter has never been returned to NASD's Dallas, Texas district office. The return receipt card for the certified mailing was signed by Blain and returned to the district office.
27. Blain never appeared in NASD's Dallas, Texas district office as requested.
28. By letter dated March 1, 2006, NASD staff again requested, pursuant to Rule 8210, that Blain appear in NASD's Dallas, Texas district office on March 10, 2006, for the purpose of providing on the record testimony. The March 1st letter was sent to Blain at her CRD home address via certified and regular mail.
29. To date, neither mailing of the March 1st letter has been returned to NASD's Dallas, Texas district office.
30. Blain never appeared in NASD's Dallas, Texas district office as requested.
31. Such acts, practices, and conduct constitute separate and distinct violations of NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by Respondent Joanne Elizabeth Blain.

PRAYER

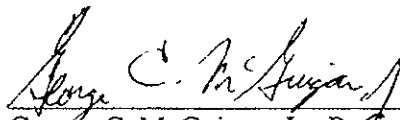
WHEREFORE, the Department respectfully requests that the Panel:

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

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2005002411701/Jason Charles Midgley and Joanne Elizabeth Blain

NASD DEPARTMENT OF ENFORCEMENT

Date: November 27, 2006


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