

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant

v.

DANIEL CARDOSO
(CRD No. 4942763),

Respondent.

Disciplinary Proceeding
No. 2005002564701

DEFAULT DECISION

Hearing Officer – SW

Dated: November 10, 2006

Respondent was barred for: (i) violating NASD Conduct Rule 2110 and IM-1000-1 by willfully failing to disclose his criminal history on a Form U-4 application;¹ and (ii) violating NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by failing to respond to requests for information issued by the NASD staff.

Appearances

Sean W. Firley, Esq., Senior Regional Attorney, Boca Raton, FL, and Rory C.

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

No appearance by or for Respondent Daniel Cardoso.

DECISION

I. Introduction

On July 18, 2006, the NASD Department of Enforcement (“Enforcement”) filed the attached two-count Complaint against Respondent Daniel Cardoso (“Respondent”), alleging that: (i) Respondent willfully failed to disclose his criminal history on a Uniform Application for Securities Industry Registration or Transfer (“Form U-4”), in violation of

¹ Based on the Hearing Officer’s finding that Respondent willfully filed a false application for registration by failing to disclose his 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.

NASD Conduct Rule 2110 and IM-1000-1; and (ii) Respondent 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 October 2, 2006, Enforcement filed a Motion for Entry of Default Decision (“Motion”), supported by the Declaration of Sean W. Firley, Esq., Senior Regional Attorney in NASD’s Boca Raton, FL office, and three exhibits.² For the reasons set forth below, the Hearing Officer grants Enforcement’s Motion.

II. Respondent’s Default

On July 11, 2006, Enforcement served the Complaint and Notice of Complaint on Respondent, via first-class and certified mail, at his address of record in NASD’s Central Registration Depository (“CRD address”).³ (CX-1, p. 1; DECL at ¶ 7). The certified CRD mailing was delivered on July 18, 2006, as evidenced by a receipt signed by “Carlos Cardoso.” (CX-2; DECL at ¶¶ 9-10).

On August 8, 2006, Enforcement served the Second Notice of Complaint and Complaint on Respondent, via first-class and certified mail, at his CRD address. (DECL at ¶ 12; CX-3). To date, Respondent has not filed an answer 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.⁴ Accordingly,

² Hereinafter, the statements in the Motion for Entry of Default Decision will be designated as “Motion, p.,” the statements in the Firley 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-1, p. 1).

⁴ 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 the complaint was mailed to respondent’s CRD address).

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 24, 2005, Respondent executed a Form U-4 for registration as a general securities representative of Northwestern Mutual Investment Services, LLC (“Northwestern”). (Complaint at ¶ 1; CX-1, p. 2; DECL at ¶ 4). On August 26, 2005, Northwestern filed the Form U-4 with NASD on behalf of Respondent.⁶ (CX-1, p. 2). On August 31, 2005, Northwestern terminated Respondent’s association without registration when it discharged Respondent for failing to disclose his criminal history on his Form U-4. (CX-1, p. 2; DECL at ¶ 5). Respondent is not currently associated with any NASD member firm. (Id.).

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 his association with Northwestern was terminated, and (2) the Complaint charges him with misconduct while he was associated with an NASD member, and with failures to provide information requested pursuant to Rule 8210 during the period of retained jurisdiction.

⁵ The following Findings of Fact and Conclusions of Law incorporate the allegations in the attached Complaint, pursuant to NASD Rules 9215(f) and 9269, 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.”

B. Respondent Failed to Disclose on his Form U-4 that he had Pled Nolo Contendere to Two Felony Burglary Charges and One Felony Larceny Charge

Count one of the Complaint alleges that, in September 2004, Respondent was charged with two felony counts of burglary and one felony count of larceny in Orange County, Florida, to which he subsequently pled nolo contendere. (Complaint at ¶ 4; DECL at ¶ 16). Specifically, Respondent pled nolo contendere to the two felony burglary charges and the one felony larceny charge on March 16, 2005. (CX-1, p. 2). The Complaint also alleges that Respondent completed and signed on August 24, 2005, a Form U-4 that was submitted to NASD on August 26, 2005, on which Respondent failed to disclose that he had been charged with three felonies and that he had pled nolo contendere to the three felony charges. (Complaint at ¶ 4). Question 14A(1) of the Form U-4 specifically indicates that nolo contendere pleas to felony charges are reportable.⁷ (Complaint at ¶ 5).

An associated person is required to disclose any felony on an application for registration.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

⁷ Respondent also completed a Northwestern "U-4 Disclosures Information Guide" that provided him instructions and guidance for completing a Form U-4. (Complaint at ¶ 3). Among other things, the guide alerted Respondent that criminal charges involving burglary and larceny were reportable on the Form U-4. (*Id.*).

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. SEC, 40 F.3d 1240 (3rd Cir. 1994).

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 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 Enforcement are sufficient to establish that Respondent provided false responses on his Form U-4, in violation of NASD Conduct Rule 2110 and IM-1000-1.

Further, the Hearing Officer finds that the questions on the Form U-4 were clear and that Respondent knew or should have known that truthful responses to the questions required disclosure of the felony charges and the nolo contendere pleas. Accordingly, the Hearing Officer finds that Respondent’s conduct in failing to disclose his criminal history on his 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 two letters from the NASD staff requesting information regarding the allegations in cause one of the Complaint. (Complaint at ¶¶ 8-12). On January 10, 2006, the NASD staff sent a first request for information to Respondent at his CRD address, pursuant to NASD Procedural Rule 8210, via first class and certified mail. (Complaint at ¶ 8; DECL at ¶ 18 n.1). The U.S. Postal Service returned to the NASD staff a receipt reflecting delivery of

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).

the mailing. (Complaint at ¶ 9). On January 25, 2006, the NASD staff sent a second request for information to Respondent at his CRD address, pursuant to NASD Procedural Rule 8210, via first-class and certified mail. (Complaint at ¶ 10; DECL at ¶ 18 n.1). Respondent failed to provide any information in response to the two requests for information. (Complaint at ¶ 12). Respondent is deemed to have received the requests for information sent to his CRD address pursuant to NASD Procedural Rule 8210(d).

Failure to comply with Rule 8210 requests for information is a serious violation because it subverts 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 NASD Conduct Rule 2110 by failing to respond to the NASD staff's requests for information.¹²

IV. Sanctions

A. Respondent Willfully Failed to Disclose his Criminal History on his Form U-4

For filing a false, misleading, or inaccurate Form U-4, the NASD Sanction Guidelines recommend a fine ranging from \$2,500 to \$50,000, as well as the consideration of a five to 30 business-day suspension in all capacities.¹³ In egregious

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. 73 (2006).

cases, such as those involving habitual misconduct, the Guidelines suggest a longer suspension of up to two years, or a bar.¹⁴

The Guidelines suggest three principal considerations bearing on sanctions for the submission of a false Form U-4: (1) the nature and significance of information at issue; (2) whether the omission resulted in a statutorily disqualified person becoming or remaining associated with a firm; and (3) whether the misconduct harmed a registered person, a member firm, or anyone else.

Enforcement considered this an egregious case and recommended a bar because the Northwestern guide provided to Respondent to assist him in completing the Form U-4 specifically stated that burglary and larceny charges were reportable. The Hearing Officer agrees that Respondent's conduct was egregious not only because it was intentional but because the omitted disclosures involved significant information. Accordingly, the Hearing Officer agrees with Enforcement's recommendation that Respondent be barred for intentionally filing a false Form U-4.

B. Respondent Failed to Respond to Requests for Information

For failing to respond to two requests for information issued by the NASD staff pursuant to NASD Rule 8210, 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 8210.¹⁵ The record does not indicate the existence of any mitigating factors that would warrant a lesser sanction. Accordingly, the Hearing Officer accepts Enforcement's

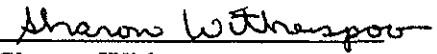
¹⁴ Id. at p. 74 (2006).

¹⁵ Id. at p. 35 (2006).

recommendation and bars Respondent for failing to respond to the two requests for information.

V. Order

Respondent Daniel Cardoso is barred from associating with any NASD member firm in any capacity for: (i) violating NASD Conduct Rule 2110 and IM-1000-1 by willfully failing to disclose his criminal history on a Form U-4 application; and (ii) violating NASD Conduct Rule 2110 and NASD Procedural Rule 8210 by failing to respond to two Rule 8210 requests for information. The bars will become effective immediately upon this Default Decision becoming the final disciplinary action of NASD.


Sharon Witherspoon
Hearing Officer

Dated: Washington, DC
November 10, 2006

Copies to:
Daniel Cardoso (via FedEx and first-class mail)
Sean W. Firley, 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)

NASD OFFICE OF HEARING OFFICERS

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Daniel Cardoso
CRD No. 4942763

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COMPLAINT

Upon information and belief, Complainant alleges as follows:

1. Respondent Daniel Cardoso first entered the securities industry on August 24, 2005 when he completed a Uniform Application for Securities Industry Registration or Transfer ("Form U-4") to apply for registration, and become associated with, NASD member Northwestern Mutual Investment Services, Inc. Cardoso's association with Northwestern Mutual Investment Services terminated on August 31, 2005, but Cardoso 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 August 24, 2005, Respondent Cardoso completed Northwestern Mutual's "U-4 Disclosures Information Guide" that provided him instructions and guidance for completing a Form U-4. Among other things, the guide alerted Cardoso that criminal charges involving burglary and larceny were reportable on the Form U-4.
4. On or about August 24, 2005, Respondent Cardoso completed a Form U-4 for Northwestern Mutual Investment Services. He willfully failed to disclose material information that he had

been charged with two felony counts of burglary and one felony count of larceny in Orange County, Florida in or about September 2004, and that he had subsequently pled “nolo contendere” to the charges.

5. Question 14A(1) of the Form U-4 specifically addresses nolo contendere pleas to felony charges as reportable disclosures.
6. Such acts, practices and conduct by Respondent Cardoso violate NASD Conduct Rule 2110 and IM-1000-1.

**FOR A SECOND CAUSE OF COMPLAINT
Failure to Respond to NASD Staff Information Request
NASD Procedural Rule 8210 and Conduct Rule 2110**

7. Paragraphs one through six are realleged and incorporated herein by reference.
8. By letter dated January 10, 2005, an NASD examiner requested that Respondent Cardoso provide a written response to specific questions concerning the completion of his Form U-4, pursuant to NASD Procedural Rule 8210, by January 24, 2005. This letter was sent to Cardoso at his CRD address of record of [REDACTED] via First Class U.S. Mail and certified mail.
9. The certified letter was delivered as evidenced by the signed receipt returned by the U.S. Postal Service; however, the first class mailing was not returned to NASD.
10. The examiner did not receive a response to the information request, and on January 25, 2005, he sent a second letter to Respondent Cardoso. This letter was again sent by both First Class U.S. Mail and certified mail to Cardoso at his CRD address described above, and requested that Cardoso provide a written response to specific questions, pursuant to Rule 8210, by February 13, 2005.
11. The second certified letter was returned to NASD as “unclaimed” and the First Class mailing was not returned .

12. As of this date, Cardoso has not provided a written response to either of the two letters.
13. Such acts, practices and conduct violate NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

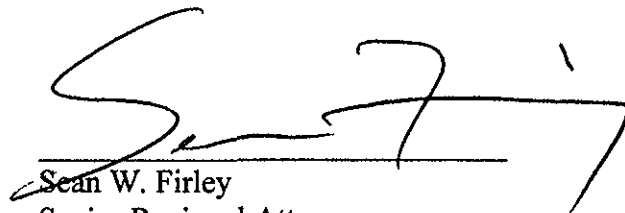
PRAYER FOR RELIEF

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 failure to disclose his criminal history on the Form U-4 was willful; the omitted information was material; and the omission to state material facts occurred 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.

Dated: July 11, 2006

Respectfully submitted,



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