

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

WILLIAM R. CLEMONS
(CRD No. 4985168),

Respondent.

Disciplinary Proceeding
No. 2005002743601

DEFAULT DECISION

Hearing Officer – SW

Dated: November 14, 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; 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

Heather Hawker, Esq., Senior Regional Attorney, Denver, CO, and Rory C. Flynn, Esq., Of Counsel, Washington, DC, for the Department of Enforcement.

No appearance by or for Respondent William R. Clemons.

DECISION

I. Introduction

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

violation of NASD Conduct Rule 2110 and IM-1000-1; and (ii) he 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 16, 2006, Enforcement filed a Motion for Entry of Default Decision ("Motion"), supported by the Declaration of Heather Hawker, Esq., Senior Regional Attorney in NASD's Denver, CO office, and seven exhibits.¹ For the reasons set forth below, the Hearing Officer grants Enforcement's Motion.

II. Respondent's Default

On July 28, 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") and at an alternate address at the Salt Lake County Correctional Facility ("Correctional Facility").² (CX-3; CX-6; DECL at ¶¶ 9-11). The Correctional Facility certified mailing was delivered on August 2, 2006, as evidenced by a receipt signed by "J. Baird." (CX-6, p. 4).

On August 28, 2006, Enforcement served the Second Notice of Complaint and Complaint on Respondent, via first-class and certified mail, at his CRD address and the Correctional Facility address. (CX-7; DECL at ¶ 12). The Correctional Facility certified mailing was delivered on August 30, 2006, as evidenced by a receipt signed by

¹ Hereinafter, the statements in the Motion for Entry of Default Decision will be designated as "Motion, p.;" the statements in the Hawker Declaration will be designated as "DECL at ¶;" and Enforcement's exhibits will be designated as "CX-" with the appropriate page or paragraph number.

² Respondent's CRD address is [REDACTED] (CX-3; CX-4). The NASD staff obtained the Correctional Facility address from an anonymous letter dated January 8, 2006. (CX-5; DECL at ¶10).

“B. Anderson.” (CX-7, p. 3). To date, Respondent has not filed an answer to the Complaint. (DECL at ¶ 12).

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 Correctional Facility address.³ 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.⁴

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

On June 29, 2005, Respondent executed a Form U-4 for registration as a general securities representative of Fidelity Brokerage Services LLC (“Fidelity”). (CX-2, pp. 3, 13). On July 7, 2005, Fidelity filed the Form U-4 with NASD on behalf of Respondent.⁵ (Complaint at ¶ 4; CX-1, p. 7). On October 7, 2005, Fidelity terminated Respondent’s association without registration when Fidelity discharged Respondent for providing false information on his Form U-4. (CX-1, p. 4). Respondent is not currently associated with any NASD member firm. (CX-1, p. 4; 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 his association with Fidelity was terminated,

³ 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).

⁴ The following Findings of Fact and Conclusions of Law incorporate the allegations in the attached Complaint, pursuant to Rules 9215(f) and 9269, and NASD Notice to Members 99-77.

⁵ Pursuant to Article I, Section (dd) of the NASD By-Laws, a person who applies for registration is an “associated person of a member.”

and (2) the Complaint charges him with misconduct while he was associated 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 on his Form U-4 that He had been Charged with and Pled Guilty to Various Felonies

Count one of the Complaint alleges that, on November 10, 2004, Respondent was charged with nine felonies in Third District Court, Salt Lake County, Utah. (Complaint at ¶ 10). Respondent was charged with (i) two counts of Unlawful Acquisition/ Possessions/ Transfer of a Financial Transaction Card, (ii) two counts of Forgery, and (iii) five counts of Theft by Deception. (*Id.*). The felony charges arose from Respondent convincing an 80-year old woman to lend him \$5,587.76 through cash advances from her Visa credit card, which advances Respondent never repaid. (Complaint at ¶ 11). Respondent also opened multiple credit card accounts in the 80-year old woman's name and charged at least \$4,951 on the cards, without her knowledge or consent. (Complaint at ¶ 12).

On June 9, 2005, twenty days prior to executing his Form U-4, Respondent executed a plea agreement, pursuant to which he pled guilty to the two felony charges of Acquisition/ Possessions/ Transfer of a Financial Transaction Card. (Complaint at ¶ 13; CX-1, p. 8). The other forgery and theft charges were dismissed. (Complaint at ¶ 13). Respondent was subsequently sentenced to one year in jail and ordered to pay restitution in the amount of \$13,463.99.⁶ (*Id.*).

⁶ Respondent also executed a Stipulation and Consent Order with the Division of Securities for the State of Utah on June 16, 2006, in which he admitted that he falsified his license application with the Utah Division of Securities by failing to disclose his criminal charges and guilty plea at the time of the application. (DECL at ¶ 18).

Nevertheless, on June 29, 2005, Respondent completed and signed a Form U-4, which was submitted to NASD on July 7, 2005, on which he falsely answered “no” to the questions, “[h]ave you ever been convicted of or pled guilty... to any felony?” and “[h]ave you ever been charged with any felony?” (Complaint at ¶¶ 4, 6, 8).

An associated person is required to disclose any felony on an application for registration.⁷ 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.⁸

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 a false response on his Form U-4, in violation of NASD Conduct Rule 2110 and IM-1000-1.

Further, the Hearing Officer finds that the question on the Form U-4 was clear and that Respondent intentionally provided false answers to the questions regarding his felony charges and guilty pleas. Accordingly, the Hearing Officer finds that Respondent’s

⁷ 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.

⁸ 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).

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.⁹

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 ¶¶ 17-24). On December 27, 2005, 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 ¶¶ 17-18). On January 12, 2006, the NASD staff received an anonymous letter, which stated that Respondent no longer resided at his CRD address and provided the Correctional Facility address as an alternate address. (Complaint at ¶ 19; CX-5).

The NASD staff sent a second and third Rule 8210 request, on January 17, 2006 and February 17, 2006, respectively, to Respondent, via first-class and certified mail, at the CRD address and the Correctional Facility address. (Complaint at ¶¶ 20-21).

On March 6, 2006, the NASD staff received a letter from Respondent dated February 20, 2006, in which Respondent stated that he had received the NASD staff's most recent request and that he had previously sent a response to the January 17, 2006 request for information. (Complaint at ¶ 22).

On March 7, 2006, NASD sent a fourth letter, pursuant to Rule 8210, stating that NASD had not received the requested material and requesting that Respondent resend the material that he had purportedly sent to the NASD office. (Complaint at ¶ 23). The U.S.

⁹ 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).

Postal Service returned to the NASD staff receipts reflecting delivery of the three certified letters to the Correctional Facility address. (Complaint at ¶¶ 20, 21, 23). Respondent failed to provide any information in response to any of the requests for information. (Complaint at ¶ 24).

Based on Respondent's February 20, 2006 letter, the Hearing Officer finds that Respondent received actual notice of NASD's requests for information. In any event, the Hearing Officer finds that Respondent is deemed to have received the requests for information sent to his CRD address and the Correctional Facility address pursuant to 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.¹⁰

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.¹¹

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

¹⁰ 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).

¹¹ See Dep't of Enforcement v. Baxter, No. C07990016, 2000 NASD Discip. LEXIS 3, at **21, 25 (NAC Apr. 19, 2000).

consideration of a five to 30 business-day suspension in all capacities.¹² In egregious cases, such as those involving habitual misconduct, the Guidelines suggest a longer suspension of up to two years, or a bar.¹³

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 associated with a firm; and (3) whether the misconduct harmed a registered person, a member firm, or anyone else.¹⁴

Enforcement considered this an egregious case and recommended that Respondent be barred. The Hearing Officer agrees that Respondent's conduct was egregious because the omitted disclosures: (i) constituted intentional misconduct; (ii) involved significant information; and (iii) resulted in a statutorily disqualified person becoming associated with a member firm.¹⁵ Accordingly, Respondent is barred for intentionally filing a false Form U-4.

B. Respondent Failed to Respond to Requests for Information

For failing to respond to four requests for information issued by the NASD staff pursuant to Rule 8210, Enforcement recommended that Respondent be barred. The NASD Sanction Guidelines provide that a bar should be standard when an individual

¹² NASD Sanction Guidelines, p. 73 (2006).

¹³ Id. at p. 74 (2006).

¹⁴ Id. at p. 73 (2006).

¹⁵ Respondent meets the definition of a statutorily disqualified person under: (i) Article III, Section 4(f) of the NASD By-Laws for having willfully filed false applications for membership; (ii) Article III, Section 4(g) of the NASD By-Laws for having been convicted within ten years of a felony; and (iii) Article III Section 4(a) of the NASD By-Laws for having been barred from associating with an NASD member.

respondent does not respond in any manner to a request issued pursuant to Rule 8210.¹⁶

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.

V. Order

Respondent William R. Clemons 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 four 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 14, 2006

Copies to:

William R. Clemons (via certified and first-class mail)¹⁷
Heather Hawker, 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)

¹⁶ NASD Sanction Guidelines, p. 35 (2006).

¹⁷ The Salt Lake County Correctional Facility will not accept packages from FedEx.

**NASD
OFFICE OF HEARING OFFICERS**

Department of Enforcement,	)	Disciplinary Proceeding
	)	No. 2005002743601
Complainant,	)	
	)	Hearing Officer
v.	)	
	)	COMPLAINT
WILLIAM R. CLEMONS	)	
CRD No. 4985168	)	
	)	
Respondent.	)	
_____	)	

Upon information and belief, Complainant alleges as follows:

1. Respondent William R. Clemons ("Clemons") was associated with Fidelity Brokerage Services LLC ("Fidelity") (CRD No. 7784), a member of NASD, from on or about May 2, 2005 through October 3, 2005, when he was terminated. Since his termination, Clemons has not associated with another member firm.
2. Clemons is subject to NASD jurisdiction pursuant to Article V, § 4 of NASD's By-Laws.

**FIRST CAUSE OF COMPLAINT
Willfully Misrepresenting Material Facts Regarding Criminal Record on Form U-4
NASD Conduct Rules 2110 and IM 1000-1**

3. Complaint paragraph numbers 1-2 are re-alleged and incorporated herein by reference.
4. On or about July 7, 2005, an initial Form U-4 (Uniform Application for Securities Industry Registration or Transfer) was filed with NASD on behalf of Clemons. Clemons signed the Form U-4 on June 29, 2005.

5. By signing the Form U-4, Clemons attested that he read and understood the Form U-4 instructions and questions, and, that to the best of his knowledge, his answers contained therein were true and complete.

6. Form U-4 questions 14(A)(1)(a) and (b) read as follows:

Have you ever:

(a) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign or military court to any felony?

(b) been charged with any felony?

7. The information requested in Form U-4 questions 14(A)(1)(a) and (b) is material.

8. Clemons responded "no" to both Form U-4 questions 14(A)(1)(a) and (b).

9. Clemons' responses to Form U-4 questions 14(A)(1)(a) and (b) were false. As discussed in greater detail below, Clemons had previously been charged with and pled guilty to various felonies.

10. On or about November 10, 2004, Clemons was criminally charged with nine felonies in Third District Court, Salt Lake County, Utah (Case No. 041907280). He was charged with two counts of Unlawful Acquisition/ Possession/ Transfer of a Financial Transaction Card, two counts of Forgery, and five counts of Theft by Deception.

11. The criminal charges stem from conduct that occurred in 2003 and 2004. During that time period Clemons convinced an 80 year old woman (the "Victim") to write him cash advance checks totaling \$5,587.76 from her Bank One Visa Card account. Clemons represented to the Victim that the money would be used to pay his wife's hospital bills and he promised to repay the money once his medical insurer reimbursed him. Clemons never repaid the money to the Victim.

12. The criminal charges further allege that between January 2003 and July 2004, Clemons opened multiple credit card accounts in the Victim's name and charged at least \$4,951 to the cards, without the Victim's knowledge or consent.

13. On or about June 9, 2005, twenty days prior to executing his Form U-4, Clemons pled guilty to two felony counts of Unlawful Acquisition/ Possession/ Transfer of a Financial Transaction Card. The other charges were dismissed. He was subsequently sentenced to one year in jail and ordered to pay restitution in the amount of \$13,463.99.

14. Clemons' failure to disclose the felony charges and subsequent plea agreement was willful. Clemons knew that he had been charged with multiple felonies and subsequently pled guilty to two felonies. Further, Clemons knew or reasonably should have known that the felonies needed to be disclosed on his Form U-4. Despite the above, Clemons made the decision not to disclose this material information on his Form U-4.

15. As set forth in Complaint paragraphs 3-14, Clemons' failure to disclose felony charges and subsequent convictions on his Form U-4 application is a violation of NASD Conduct Rules 2110 and IM 1000-1.

SECOND CAUSE FOR COMPLAINT
Failure to Respond to Rule 8210 Requests for Information
NASD Conduct Rule 2110 and NASD Procedural Rule 8210

16. Complaint paragraph numbers 1-15 are re-alleged and incorporated herein by reference.

17. On December 27, 2005, pursuant to Rule 8210, NASD staff sent a written request to Clemons for information related to his failure to disclose his criminal record when completing the Form U-4.

18. The request was sent by certified mail, return receipt requested, and by first class mail to Clemons' address as listed in CRD ("CRD Address"). The certified letter sent to the CRD Address was returned to the NASD with the notation "Unclaimed." The letter sent via first class mail to the CRD Address was not returned.

19. On or about January 12, 2006, NASD staff received an anonymous letter dated January 8, 2006, stating that Clemons no longer resided at the CRD Address and provided a new address for Clemons at the Salt Lake Correctional Facility ("Correctional Facility Address").

20. A second Rule 8210 request was sent to Clemons on January 17, 2006. This request was sent by certified mail, return receipt requested, and by first class mail to Clemons' CRD Address and to the Correctional Facility Address. The certified letter sent to the CRD Address was returned to the NASD with the notation "Unclaimed." The NASD staff received a signed receipt for the letter sent via certified mail to the Correctional Facility Address. The first class letters sent to the CRD Address and to the Correctional Facility Address were not returned.

21. A third Rule 8210 request was sent to Clemons on February 17, 2006. This request was sent by certified mail, return receipt requested, and by first class mail to Clemons' CRD Address and to the Correctional Facility Address. The certified letter sent to the CRD Address was returned to the NASD with the notation "Unclaimed." The NASD staff received a signed receipt for the letter sent via certified mail to the Correctional Facility Address. The first class letters sent to the CRD Address and to the Correctional Facility Address were not returned.

22. On or about March 6, 2006, NASD staff received a letter from Clemons dated February 20, 2006, stating that he received the staff's most recent request and was inquiring whether the staff had received his response to the letter dated January 17, 2006. Clemons requested that the staff notify him if they had not received his response so he may resend it.

23. On or about March 7, 2006, NASD staff sent a response to Clemons' letter. The response stated that the staff had not received the requested materials to date and asked, pursuant to Rule 8210, that Clemons resend the materials to the NASD office. This request was sent by certified mail, return receipt requested, and by first class mail to Clemons' CRD Address and to the Correctional Facility Address. The certified letter sent to the CRD Address was returned to the NASD with the notation "Unclaimed." The NASD staff received a signed receipt for the letter sent via certified mail to the Correctional Facility Address. The first class letters sent to the CRD Address and to the Correctional Facility Address were not returned.

24. To date, Clemons has not provided the information requested pursuant to Procedural Rule 8210, as described in paragraphs 17-23 above.

25. The above conduct set forth in Complaint paragraphs 16-24 constitutes separate and distinct violations of NASD Conduct Rule 2110 and NASD Procedural Rule 8210 by Clemons.

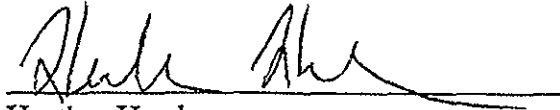
PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Clemons committed the violations charged and alleged herein;
- B. Specific findings that Clemons' conduct was willful, the omitted information was material, and the omission to state material facts was on a Form U-4 application.
- C. An order imposing sanctions upon Clemons in accordance with NASD Rule 8310.
- D. An order imposing such costs of any proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330; and
- E. An order imposing any other fitting sanction.

NASD DEPARTMENT OF ENFORCEMENT

Dated: July 28, 2006



Heather Hawker,
Senior Regional Attorney
NASD Department of Enforcement
370 17th Street, Suite 2900
Denver, Colorado 80202
(303) 446-3110
Fax No. (303) 620-9450
Heather.Hawker@nasd.com

Lewis Taylor Egan
Regional Chief Counsel/Assoc. V.P.
525 Market Street, Suite 300
San Francisco, California 94105
(415) 882-1233
Fax No. (202) 771-6506

NASD District Director/Assoc. V.P.

Joseph M. McCarthy
NASD, District 3
370 17th Street, Suite 2900
Denver, Colorado 80202
(303) 446-3110
Fax No. (303) 620-9450

Of Counsel

Rory C. Flynn, Of Counsel
NASD Department of Enforcement
1801 K Street, N.W., Suite 800
Washington, D.C. 20006
(202) 974-2974
Fax No. (202) 721-8318

Mark P. Dauer, Of Counsel
NASD Department of Enforcement
1100 Poydras St.
Energy Centre, Ste. 850
New Orleans, LA 70163
(504) 412-2405
Fax No. (504) 522-4077