

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

TOBY A. McKNIGHT
(CRD No. 3065552),

Respondent.

Disciplinary Proceeding
No. 2005002806701

Hearing Officer – DMF

DEFAULT DECISION

November 13, 2006

Summary

Respondent is barred from associating with any NASD member in any capacity for falsifying a document, in violation of Rule 2110, and failing to respond to requests for information, in violation of Rules 8210 and 2110.

Appearances

David F. Newman, Esq., Woodbridge, NJ (Rory C. Flynn, Esq., Washington, DC, and Mark Dauer, Esq., New Orleans, LA, Of Counsel), for Complainant.

No appearance by or for Respondent.

DECISION

I. Introduction

The Department of Enforcement filed the attached Complaint on August 4, 2006, alleging that Respondent Toby A. McKnight falsified a document, in violation of Rule 2110, and failed to respond to requests for information, in violation of Rules 8210 and 2110. Respondent did not file an Answer to the Complaint. On October 19, 2006,

Enforcement filed a motion for a default decision, supported by the declaration of David F. Newman and three exhibits. Respondent did not reply to the motion.¹

II. Respondent's Default

On August 2, 2006, Enforcement sent the Complaint and Notice of Complaint to Respondent by certified first class mail addressed to Respondent's most current residential address listed in the Central Registration Depository (the CRD address). On September 1, 2006, Enforcement sent the Complaint and Second Notice of Complaint to Respondent by certified first class mail addressed to both Respondent's CRD address and an alternative address that the Postal Service had provided. Enforcement received a return receipt for the mailing to the alternative address signed "Toby McKnight." Respondent did not file an Answer or otherwise respond to the Complaint.

Enforcement served the Complaint and the Notices of Complaint on Respondent in accordance with Rule 9134, giving him constructive notice of this proceeding. In addition, he had actual notice of the Second Notice of Complaint, as evidenced by the signature on the return receipt. By failing to respond to the Complaint, he defaulted. Pursuant to Rule 9269, the Hearing Officer will deem the allegations in the Complaint admitted.

III. Jurisdiction

Respondent was registered as an Investment Company and Variable Contracts Products Limited Representative through Nationwide Securities, Inc. (NSI) from September 2002 until September 2005. Although Respondent has not been associated

¹ The factual determinations in this decision are based on the allegations of the attached Complaint, which are deemed admitted, and the additional materials filed by Enforcement with its motion.

with any NASD member since then, he remains subject to NASD jurisdiction for purposes of this proceeding, pursuant to Art. V, § 4 of NASD's By-Laws, because the Complaint was filed within two years after the termination of his registration, and it charges him with misconduct while he was registered and with failing to provide information requested during that two-year period.

IV. Violations

The first cause of the Complaint alleges that while registered with NSI Respondent worked as an "associate agent" in a Nationwide Insurance and Financial Services Agency operated by JG, who was the "primary agent" and a representative of NSI. On or about September 2, 2005, Respondent and JG signed a "Commission Override Form" used by NSI to detail the commission sharing arrangement between a primary agent and an associate agent. The Commission Override Form called for a 90/10 split of future commissions, with Respondent receiving 10% and JG receiving 90%. After signing the Form, however, Respondent altered it to reflect a division under which he would receive 20% of future commissions and JG would receive only 80%. Respondent then faxed the altered form to NSI.

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent falsified the Commission Override Form. It is well established that the falsification of documents is a violation of Rule 2110's requirement that NASD members and associated persons "observe high standards of commercial honor and just and equitable principles of trade."

The second cause of the Complaint alleges that on or about October 18, November 16 and December 27, 2005, and January 13, 2006, NASD staff sent

Respondent letters, pursuant to Rule 8210, requesting information regarding his apparent alteration of the Commission Override Form. NASD staff sent these letters by regular and certified first class mail to Respondent's CRD address, and also sent the latter three letters to a possible alternative address for Respondent, and the staff received signed receipts for various of the mailings signed "Toby McKnight." Respondent did not, however, respond in any manner to any of these requests.

On February 9, 2006, the staff sent Respondent a request, pursuant to Rule 8210, that he appear for an on-the-record interview (OTR) on February 22, 2006. This request was also sent by regular and certified first class mail to the CRD and an alternate address. On February 15, 2006, Respondent called the staff and acknowledged receipt of the letters; the staff told Respondent to provide a written response to the requests for information and agreed to postpone the OTR pending receipt of Respondent's written response, but Respondent subsequently failed to submit any response. On February 27, 2006, the staff sent Respondent another letter, pursuant to Rule 8210, requesting the same information requested in the prior letters, once again sending the letter by regular and certified mail to the CRD address and the alternate address. Again Respondent failed to respond. On March 16, 2006, the staff sent Respondent a request, pursuant to Rule 8210, that he appear for an OTR on March 29, 2006. The staff sent this request by regular and certified first class mail to Respondent's CRD address and the alternate address, but Respondent failed to appear for the OTR.

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent failed to respond to requests for information, in violation of Rules 8210 and 2110.

V. Sanctions

For forgery or falsification of documents, the Sanction Guidelines recommend a suspension of up to two years, as well as a substantial fine, if mitigating factors exist, or a bar in egregious cases. NASD Sanction Guidelines at 39 (2006). There is no evidence of any mitigating facts in this case. Moreover, considering the nature of the document that Respondent falsified—a Commission Override Form that Respondent altered to enrich himself at another’s expense—and the intentional nature of the misconduct, this is clearly an egregious case that warrants a bar.

For failing to respond to requests for information, the Guidelines recommend a bar. NASD Sanction Guidelines at 35. Again, there is no evidence of any mitigating facts that would justify a lesser sanction in this case

VI. Conclusion

Respondent Toby A. McKnight is barred from associating with any NASD member in any capacity for falsifying a document, in violation of Rule 2110, and for failing to respond to requests for information, in violation of Rules 8210 and 2110. The bars will be effective immediately if this decision becomes NASD’s final disciplinary action.

SO ORDERED.



David M. FitzGerald
Hearing Officer

Copies to: Toby A. McKnight (*via overnight courier and first class mail*)
David F. Newman, Esq. (*via electronic and first class mail*)
Mark Dauer, Esq. (*via electronic and first class mail*)
Rory C. Flynn, Esq. (*via electronic and first class mail*)

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

TOBY A. MCKNIGHT
CRD No. 3065552,

Respondent.

Disciplinary Proceeding
No. 20050028067

Hearing Officer -

COMPLAINT

AUG 4 2006

The Department of Enforcement alleges:

1. On or about June 30, 1998, Toby A. McKnight ("McKnight") first became registered with NASD as an Investment Company and Variable Contracts Products Representative.
2. From September 2002 to on or about September 12, 2005, McKnight was registered with Nationwide Securities, Inc. ("NSI"). On or about October 11, 2005, NSI filed a Form U5 terminating McKnight's registration with the firm.
3. McKnight is not currently registered or associated with a member of NASD, but remains subject to the jurisdiction of NASD pursuant to Article V, Section 4, of NASD's By-Laws, in that the conduct that is the subject of the First Cause of Action occurred while he was associated with NSI and his failure to respond violations occurred within two years of his last association with a member firm. Also, this Complaint is being filed within two years from the effective date of McKnight's last association with an NASD member.

FIRST CAUSE OF ACTION
(Falsification of a Document)
NASD Conduct Rule 2110

4. The Department realleges and reincorporates by reference paragraphs 1 through 3 above.
5. While registered with NSI, McKnight worked as an “associate agent” in a Nationwide Insurance and Financial Services Agency operated by J.G., the “primary agent” and a representative of NSI.
6. On or about September 2, 2005, McKnight and J.G. signed a “Commission Override Form,” a form used by NSI to detail the commission sharing arrangement between a primary agent and associate agent for commissions to be received from the sales of mutual funds and variable products. The Commission Override Form called for a 90/10 split of all future commissions, with 90% going to J.G. and 10% to McKnight.
7. On or about September 2, 2005, after signing the Commission Override Form with J.G., McKnight altered the Form to reflect an 80/20 split of future commissions, falsely indicating that 80% would go to J.G. and 20% to McKnight. After altering the Form, McKnight faxed it to NSI.
8. As a result of this conduct, McKnight violated NASD Conduct Rule 2110.

SECOND CAUSE OF ACTION
(Failure to Respond to Requests for Information)
NASD Conduct Rule 2110 and Procedural Rule 8210

9. The Department realleges and reincorporates by reference paragraphs 1 through 8 above.
10. On or about October 18, 2005, pursuant to Procedural Rule 8210, NASD staff in the Philadelphia District Office sent a letter to McKnight requesting that he provide information relating to his apparent alteration of a firm document, described above in the

first cause of the complaint. The letter was sent by certified and first class mail to the most current residential address for McKnight in Central Registry Depository ("CRD"):

████████████████████ (the "CRD address"). The receipt for the certified letter was signed "Toby McKnight" and was returned by the Postal Service to the Philadelphia District Office. The first class letter was returned as undeliverable. The October 18 letter requested a response by November 1, 2005. McKnight did not respond.

11. On or about November 16, 2005, pursuant to Procedural Rule 8210, NASD staff in the Philadelphia District Office sent a second letter to McKnight requesting that he provide the same information sought in the October 18, 2005 letter. The letter was by sent by certified and first class mail to the CRD address. The receipt for the certified letter was signed "Toby McKnight" and returned; the first class letter was not returned. The November 16 letter requested the information by December 1, 2005 and informed McKnight that a failure to provide the information may subject him to disciplinary action. McKnight did not respond.

12. On or about December 27, 2005, pursuant to Procedural Rule 8210, NASD staff in the Philadelphia District Office sent a third letter to McKnight requesting that he provide the same information as sought in the October 18, 2005 letter. This request was sent by certified and first class mail to the CRD address, to an address provided by NSI - ██████████
████████████████████ (the "Johnson Lane address"), and to another address at which NASD staff had reason to believe that McKnight might be living - ██████████
████████████████████ (the "Prospect Street address"). The certified letter sent to the CRD address was returned as unclaimed and the first class letter was not returned. The receipts for the certified letters sent to the Johnson Lane and Prospect Street addresses

were signed "Toby McKnight" and returned. The first class letter sent to the Johnson Lane address was not returned and the first class letter sent to the Prospect Street address was returned and marked, "not deliverable." The December 27 letter requested a response by January 11, 2006, and warned McKnight that a failure to respond may subject him to disciplinary action. McKnight did not respond.

13. On or about January 13, 2006, the staff, pursuant to Rule 8210, sent a fourth letter to McKnight requesting the same information sought in the October 18, 2005 letter. The letter was sent by certified and first class mail to the CRD and Johnson Lane addresses. The receipt for the certified letter sent to the CRD address was returned and was signed "Toby McKnight." No other letters were returned. The January 13, 2006 letter requested a response by January 27, 2006 and instructed McKnight that a failure to provide the requested information may subject him to disciplinary action, but he failed to respond.
14. On February 9, 2006, the staff, pursuant to Rule 8210, sent a fifth letter to McKnight, this time requesting his appearance for an on-the-record interview ("OTR") on February 22, 2006 at 9:00 a.m. The letter was sent by certified and first class mail to the CRD and Johnson Lane addresses. The certified letters were returned as undeliverable and the first class letters were not returned.
15. On February 15, 2006, McKnight called the staff and acknowledged receipt of the letters. The staff told McKnight to provide a written response to the information requests, and agreed to postpone the OTR to allow McKnight time to provide a written response. McKnight failed to provide a written response.
16. On February 27, 2006, the staff, pursuant to Rule 8210, sent a sixth letter to McKnight requesting that he provide the information requested in the October 18, 2005 letter. The

letter was sent by certified and first class mail to the CRD and Johnson Lane addresses.

The receipt for the certified letter sent to the Johnson Lane address was returned and was signed "Toby McKnight" and the certified letter sent to the CRD address was returned as unclaimed. The first class letters were not returned. The February 27, 2006 letter requested a response by March 10, 2006 and warned McKnight that a failure to provide the information may subject him to disciplinary action. McKnight failed to respond.

17. On March 16, 2006, the staff, pursuant to Rule 8210, sent a seventh letter to McKnight requesting his appearance for an OTR on March 29, 2006 at 9:00 a.m. The letter was sent by certified and first class mail to the CRD and Johnson Lane addresses. The certified letter sent to the CRD address was signed "Toby McKnight" and was returned and the certified letter sent to the Johnson Lane address was returned as unclaimed. The first class letters were not returned. McKnight did not appear for the OTR.
18. NASD staff is not aware of a more current residential address or business address for McKnight.
19. As a result of this conduct, McKnight violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

PRAYER

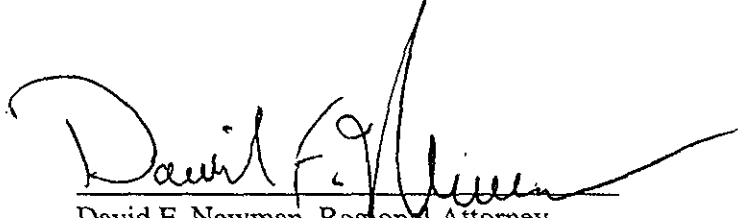
WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under NASD Rule 8310(a), including monetary sanctions, be imposed; and

B. order that the Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330.

NASD DEPARTMENT OF ENFORCEMENT

Date: August 2, 2006



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