

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant

v.

JOHN HELM
(CRD No. 5057124),

Respondent.

Disciplinary Proceeding
No. 2006004264801

DEFAULT DECISION

Hearing Officer – SW

Dated: January 18, 2007

Respondent was barred for violating NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by failing to respond to requests for information issued by the NASD staff. No separate sanction was imposed for Respondent's violation of NASD Conduct Rule 2110 and IM-1000-1, when he failed to amend his Form U-4 to disclose that he had been charged with felony theft by deception, which charge was ultimately dismissed.

Appearances

Richard A. March, Esq., Senior Regional Attorney, Chicago, IL, and Rory C.

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

No appearance by or for Respondent John Helm.

DECISION

I. Introduction

On October 3, 2006, the NASD Department of Enforcement ("Enforcement") filed the attached two-count Complaint against Respondent John Helm ("Respondent"), alleging that: (i) Respondent failed to amend his Uniform Application for Securities Industry Registration or Transfer ("Form U-4") to disclose that he was charged with felony theft by deception, in violation of 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 December 21, 2006, Enforcement filed a Motion for Entry of Default Decision ("Motion"), supported by the Declaration of Richard A. March, Esq., Senior Regional Attorney in NASD's Chicago, IL office, and eight exhibits.¹ For the reasons set forth below, the Hearing Officer grants Enforcement's Motion.

II. Respondent's Default

On September 29, 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").² (CX-1, p. 1; CX-2, p. 9; DECL at ¶ 6). The U.S. Postal Service returned both the first-class and certified mailings to the NASD staff, displaying an alternate address for Respondent.³ (CX-3; CX-4; DECL at ¶ 6).

On October 27, 2006, Enforcement served the Second Notice of Complaint and Complaint on Respondent, via first-class and certified mail, at his CRD address and the alternate address. (DECL at ¶ 7; CX-5, p. 2). The certified mailing sent to the alternate address was delivered on October 30, 2006, as evidenced by a receipt with an illegible signature. (CX-7). To date, Respondent has not filed an answer to the Complaint. (DECL at ¶ 8).

¹ Hereinafter, the statements in the Motion for Entry of Default Decision will be designated as "Motion, p.;" the statements in the March 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-1, p. 1).

³ The alternate address shown on the mailings was [REDACTED] (CX-3; CX-4; DECL at ¶ 6).

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 alternate address.⁴ 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.⁵

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

On December 15, 2005, Respondent became registered as an investment company and variable contracts products representative with Chase Investment Services Corp. ("Chase Investment"). (Complaint at ¶ 1; CX-1, p. 2). On March 23, 2006, Respondent's registration was terminated by Chase Investment. (*Id.*). 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 Chase Investment 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.

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).

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.

B. Respondent Failed to Amend his Form U-4

Count one of the Complaint alleges that, on December 6, 2005, Respondent was charged with felony theft by deception in Owensboro, Kentucky. (Complaint at ¶ 2; DECL at ¶ 9.a). The Complaint also alleges that Respondent failed to amend his Form U-4 to disclose the felony charge within 30 days of the charge.⁶ (Complaint at ¶ 3; DECL at ¶ 9.b).

Enforcement provided the additional information that on August 18, 2005, Respondent wrote a \$379 check to the City of Owensboro. (DECL at ¶ 10). After the check failed to clear, a ten-day dishonor notification was sent to Respondent. (Id.). On December 6, 2005, following Respondent's continued failure to honor the check, the City of Owensboro issued a criminal complaint and Respondent was arrested.⁷ (Id.). According to court records, the funds were paid in full and the case was dismissed in February 2006. (Id.).

Respondent completed his Form U-4 on November 4, 2005. (DECL at ¶ 10). During the application process, Respondent signed a form acknowledging that he was obligated to immediately inform Chase Investment of any pending criminal cases. (Id.). Additionally, Chase Investment's compliance manual provided that representatives are obligated to notify their supervisors if they are arrested. (Id.). Chase Investment has no

⁶ The Complaint does not allege that Respondent's failure to amend his Form U-4 was willful within the meaning of Article III, Section 4(f) of the NASD By-Laws.

⁷ The Kentucky statute with regard to the charge of theft by deception provides that deception is presumed to exist as to the maker of a check when the maker fails to honor the check after being provided a ten-day dishonor notification. (DECL at ¶ 10). The Kentucky statute also provides that if the value of the check is \$300 or more, the charge shall be treated as a felony. (Id.).

record of Respondent amending his Form U-4 to reflect the December 6, 2005 felony charge. (Id.).

An associated person is required to disclose any felony on an application for registration.⁸ Article V, Section 2(c) of the NASD By-Laws provides that every application for registration filed with NASD shall be kept current at all times by supplementary amendments, via electronic process or such other process as NASD may prescribe to the original application. Such amendment to the application shall be filed with NASD not later than 30 days after learning of the facts or circumstances giving rise to the amendment. Accordingly, the Form U-4 explicitly provides that applicants are under a continuing obligation to amend and update information required by the Form U-4 as changes occur.

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 failed to file an amendment to his Form U-4 to disclose that he had been charged with a felony, in violation of NASD Conduct Rule 2110 and IM-1000-1.

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 other reasonable information with respect to the applicant as NASD may require.

C. Respondent Failed to Respond to Requests for Information

The second cause of the Complaint alleges that Respondent failed to respond to three letters from the NASD staff requesting information regarding the allegations in cause one of the Complaint. (Complaint at ¶¶ 6-8).

Specifically, the Complaint alleges that, on May 11, 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 ¶ 6; DECL at ¶ 11.a). On June 2, 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 ¶ 7; DECL at ¶ 11.b). On June 19, 2006, the NASD staff sent a third request for information to Respondent at his CRD address and at a second address, pursuant to NASD Procedural Rule 8210, via first-class and certified mail.⁹ (Complaint at ¶ 8; DECL at ¶ 11.c). Respondent failed to provide any information in response to the three requests for information. (Complaint at ¶¶ 6, 7, 8; DECL at ¶ 11).

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.¹⁰

⁹ The NASD staff discovered the second address in [REDACTED] while conducting a credit report search for Respondent. (Motion, p. 5). The first-class mailing sent to the second address was returned with a notation stating that Respondent had moved and left no forwarding address. (DECL at ¶ 11.c).

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).

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 Failed to Respond to Requests for Information

For failing to respond to three requests for information issued by the NASD staff pursuant to NASD Procedural 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 8210.¹² 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 three requests for information.

B. The Hearing Officer Imposes No Separate Sanction for Respondent's Failure to Amend his Form U-4

Because the Hearing Officer barred Respondent for his Rule 8210 violation, the Hearing Officer will impose no separate sanction for Respondent's violation of NASD Conduct Rule 2110 and IM-1000-1 by failing to amend his Form U-4 to disclose that he had been charged with a felony.¹³

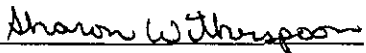
¹¹ See Dep't of Enforcement v. Baxter, No. C07990016, 2000 NASD Discip. LEXIS 3, at **26 (NAC Apr. 19, 2000).

¹² NASD Sanction Guidelines, p. 35 (2006).

¹³ For failing to amend his Form U-4 to disclose a felony charge in violation of NASD Conduct Rule 2110 and IM-1000-1, Enforcement recommended that Respondent be sanctioned with a 30-day suspension in all capacities and a \$2,500 fine. (Motion, p. 4).

V. Order

Respondent John Helm is barred from associating with any NASD member firm in any capacity for violating NASD Conduct Rule 2110 and NASD Procedural Rule 8210 for failing to respond to three requests for information issued by the NASD staff pursuant to Rule 8210. The bar will become effective immediately upon this Default Decision becoming the final disciplinary action of NASD.


Sharon Witherspoon
Hearing Officer

Dated: Washington, DC
January 18, 2007

Copies to:
John Helm (via FedEx and first-class mail)
Richard A. March, Esq. (via electronic and first-class mail)
Mark A. Koerner, Esq. (via electronic and first-class mail)
Mark P. 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

vs.

JOHN HELM
Limited Registered Representative
(CRD No.5057124)

Respondent

**Disciplinary Proceeding
No. 2006004264801**

Hearing Officer

COMPLAINT

Upon information and belief, Complainant alleges as follows:

1. Between December 2005 and March 2006, John Helm ("Respondent") was registered with Chase Investment Services Corporation ("Member"). Respondent is not currently registered with any NASD member. NASD has jurisdiction over Respondent pursuant to Article V, Section 4 of the NASD's By-Laws, which provides for a two-year period of retained jurisdiction over formerly associated persons.

**FIRST CLAIM
NASD Conduct Rule 2110 and IM 1000-1
Failure to Amend a Form U-4**

2. On or about December 6, 2005, Respondent was charged in the City of Owensboro, County of Davies and Commonwealth of Kentucky, Case Number 05-F-01062, with the felony of Theft by Deception.

3. Following this charge, Respondent failed to amend his Uniform Application for Securities Industry Registration or Transfer ("Form U-4") within thirty days to reflect that he had been charged with a felony even though he was aware of the above mentioned criminal case.

4. The acts, practices and conduct described above constitute separate and distinct violations of NASD Conduct Rule 2110 and Membership and Registration Rule IM 1000-1 by Respondent.

SECOND CLAIM
NASD Conduct Rule 2110 and NASD Procedural Rule 8210
Failure to Respond to Requests for Information

5. Paragraphs 1 through 4 are re-alleged and incorporated herein by reference.

6. On or about May 11, 2006, the Staff sent to Respondent a request that he provide certain information, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210. That request for information was sent by first class and certified mail to Respondent's CRD address. A response to the request was due by May 25, 2006. The first class mail was never returned, while the certified mail was returned unclaimed. The Respondent never responded to this request.

7. On or about June 2, 2006, the Staff sent a second request to Respondent asking that he provide certain information, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210. That second request for information was sent by first class and certified mail to Respondent's CRD address. A response to the request was due by June 16, 2006. The first class mail was never returned, while the certified mail was returned unclaimed. The Respondent never responded to this request.

8. On or about June 19, 2006, the Staff sent a third request to Respondent asking that he provide certain information, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210. That third request for information was sent by first class mail and certified mail to Respondent's CRD address. Additionally, the letter was sent via regular mail and certified mail to another address where the Staff determined that Respondent might be located. A response to the request was due by July 3, 2006. The first class letter and certified letter sent to Respondent's CRD address were returned with notations stating that Helm had moved and left no forwarding address. The letter sent via regular mail to the other location was returned with a notation stating that Helm had moved and left no forwarding address. The letter sent to the other address via certified mail was never returned. The Respondent never responded to this request.

9. The acts, practices and conduct described above constitute separate and distinct violations of NASD Conduct Rule 2110 and Procedural Rule 8210 by Respondent.

PRAYER FOR RELIEF

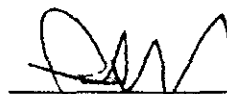
WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;
- B. An order imposing sanctions upon Respondent in accordance with NASD Procedural 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.

**NASD DEPARTMENT OF
ENFORCEMENT**

Date: September 29, 2006



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