

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

GARRETT RICHARD FISCHER
(CRD No. 5083708),

Respondent.

Disciplinary Proceeding
No. 20060043797-01

Hearing Officer – AWH

Default Decision

April 17, 2007

Formerly associated person failed to disclose criminal history on a Form U-4, in violation of Conduct Rule 2110, and failed to respond to NASD Staff requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2110. Respondent barred from association with any member firm in any capacity.

Appearances

Jeffrey A. Ziesman, Esq., for Department of Enforcement.

No appearance by or for Garrett Richard Fischer.

DECISION

Introduction

On November 13, 2006, the Department of Enforcement (“Enforcement”) issued the Complaint in this proceeding, alleging that Garrett Richard Fischer (“Respondent” or “Fischer”) failed to disclose two misdemeanor charges and one felony charge on his Uniform Application for Securities Industry Registration or Transfer (“Form U-4”), in violation of NASD Conduct Rule 2110, and that he failed to respond to NASD requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2110. Respondent failed to 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

February 12, 2007, to which Fischer did not respond. Accordingly, pursuant to Procedural Rules 9215(f) and 9269, the Motion will be granted, and the allegations in the Complaint, which is attached to this decision, will be treated as admitted.

Findings of Fact¹

The Respondent

Fischer was associated with NASD member firm Edward Jones from January 9, 2006, through February 9, 2006, when Edward Jones terminated his association by filing a Uniform Termination for Securities Industry Registration ("Form U-5"). Fischer is not currently associated with an NASD member firm.

Failure to Disclose Criminal History on Form U-4

In June 1994, Fischer was charged in the State of Iowa with theft in the fourth degree, a serious misdemeanor under Iowa law, and forgery, an aggravated misdemeanor under Iowa law. In October 1992 Fischer was charged in the State of South Dakota with unlawful attempt to cause serious bodily injury to another, a felony under South Dakota law. On January 17, 2006, Fischer signed and submitted to Edward Jones a Form U-4. Question 14B(1)(b) on the Form U-4 asked whether he had ever been "charged with a misdemeanor," including wrongful taking of property or forgery. Question 14A(1)(b) asked whether he had ever been charged with any felony. Fischer answered "no" to each of those questions.

¹ All findings of fact are based on the admitted allegations in the Complaint, the Declaration Supporting a Motion for Entry of Default Decision by Jeffrey A. Ziesman ("Declaration"), and the exhibits attached thereto.

Failure to Respond to Requests for Information

Pursuant to NASD Procedural Rule 8210, on March 10, 2006, NASD staff sent Fischer a request that he provide information pertaining to his termination from Edward Jones. The request was sent to Fischer by first class and certified mail to his residential address of record as contained in the Central Registration Depository ("CRD address"). The first class mailing was not returned to NASD staff. The certified mailing receipt was returned, bearing the signature of "G. E. Nielsen." On March 13, 2006, the date reflected on the receipt for the certified mailing, Fischer telephoned the staff and stated that NASD had no right to the requested information and he would not provide any information or documents. Fischer did not provide any information in response to the March 10, 2006, request.

On March 27, 2006, NASD sent Fischer a second request for information pertaining to his termination from Edward Jones. The first class mailing to his CRD address was not returned. The receipt for the certified mailing sent to his CRD address was returned, bearing the signature of "Glen Nielsen." Fischer did not respond to the second request for information.

Discussion and Conclusions

Jurisdiction

Article V, Section 4 of the NASD By-Laws provides for a two-year period of retained jurisdiction over an associated person² after the effective date of the individual's termination of association. During this period of retained jurisdiction, NASD may file a

² NASD defines an associated person of a member as... "a natural person who is registered or has applied for registration under the Rules of the Association." See Article I(dd) of NASD By-Laws.

complaint based upon conduct that occurred while the individual was associated with 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.

Fischer was associated with Edward Jones from January 9, 2006, through February 9, 2006, when Edward Jones filed the Form U-5 terminating his association with the member firm. Enforcement issued its Complaint on November 13, 2006, within two years of Fischer's termination from Edward Jones. The Complaint is based upon Fischer's conduct while he was associated with Edward Jones, and his failures to respond to information requests occurred during the two-year period following termination of his association with the member firm. Therefore, NASD has jurisdiction over this proceeding.

Respondent's Default

Enforcement properly served the Complaint and the Second Notice of Complaint on Fischer at his CRD address. Each mailing was sent by first class and certified mail. Pursuant to Procedural Rule 9134, those mailings establish that Fischer had valid constructive notice of the Complaint. Because he failed to respond to the Complaint, Procedural Rules 9215(f) and 9269 authorize the entry of a default decision against him. Accordingly, the allegations in the Complaint are deemed admitted.

Failure to Disclose Criminal History on Form U-4

NASD, state regulators, and broker-dealers utilize the Form U-4 to determine and monitor the fitness of securities professionals.³ The Form U-4 also "serves as a vital

³ See *Rosario R. Ruggiero*, Exchange Act Release No. 37,070, 1996 SEC LEXIS 990, at **8-9 (Apr. 5, 1996).

screening device for hiring firms and the NASD against individuals with 'suspect history.'"⁴ Therefore, applicants for NASD registration must fully and accurately disclose all information required by that form, including any criminal history. An applicant's failure to do so violates Conduct Rule 2110.⁵

Here, Fischer failed to disclose two misdemeanor charges and one felony charge. That information would be significant to firms evaluating an applicant's suitability to become an associate of securities professionals or to become a registered securities professional himself, and is therefore material information. His failure to disclose that information constitutes submission of misleading or inaccurate documents to the firm and NASD, and contravenes the just and equitable principles of trade required by NASD Conduct Rule 2110.

Failure to Respond to Requests for Information

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.⁶ When an individual fails to respond to information requests, NASD's ability to perform its

⁴ *Dist. Bus. Conduct Comm. v. Bernadette Jones*, 1998 NASD Discip. LEXIS 60, at *9 (NAC Aug. 7, 1998).

⁵ *See Dist. Bus. Conduct Comm. v. Prewitt*, No. C07970022, 1998 NASD Discip. LEXIS 37, at **5, 7 (NAC Aug. 17, 1998) (finding that an associated person violated Rule 2110 by providing false information on his Form U-4). *See also Thomas R. Alton*, Exchange Act Release. No. 36,058, 1995 SEC LEXIS 1975, at *4 (Aug. 4, 1995) (stating that a material misrepresentation on a Form U-4 is a serious offense that is inconsistent with the just and equitable principles of trade which NASD members must uphold).

⁶ *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.⁷ Further, a violation of Procedural Rule 8210 is also a violation of Conduct Rule 2110, contravening “high standards of commercial honor.”⁸

NASD staff sent two requests for information to Fischer’s CRD address, requesting information regarding an investigation into his termination from Edward Jones. Pursuant to Procedural Rule 8210(d), the mailings sent to his CRD address provide him with constructive notice of the staff’s requests for information. His March 13, 2006, telephone call to the staff demonstrates that he had actual knowledge of the requests for information. Therefore, Fischer’s failures to respond to NASD requests for information violate Procedural Rule 8210 and Conduct Rule 2110.

Sanctions

Failure to Respond to NASD Requests for Information

When a respondent fails to respond in any manner to a request made pursuant to Procedural Rule 8210, the NASD Sanction Guidelines recommend a bar as the standard sanction.⁹ Here, there are no mitigating factors that would justify a lesser sanction. Accordingly, Fischer will be barred from association with any NASD member firm in any capacity for failing to respond to staff information requests, in violation of Procedural Rule 8210 and Conduct Rule 2110.

⁷ *Joseph P. Hannan*, Exchange Act Release No. 40,438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998).

⁸ *Dep’t of Enforcement v. Baxter*, No. C07990016, 2000 NASD Discip. LEXIS 3, at *25 (NAC, Apr. 19, 2000).

⁹ NASD SANCTION GUIDELINES, p. 35 (2006 ed.).

Failure to Disclose Criminal History on Form U-4

For this offense, the NASD Sanction Guidelines recommend a fine of \$2,500 to \$25,000, and a suspension of five to thirty business days.¹⁰ In egregious cases, the Guidelines recommend consideration of a longer suspension or a bar.¹¹ In this case, Enforcement notes that the violations have been charged as non-willful offenses, and, accordingly, it seeks a sanction in the middle of the applicable Sanction Guideline. The Hearing Officer notes that the charges are almost 13 and 15 years old and apparently did not result in convictions. Accordingly, he agrees with Enforcement that a fine of \$5,000 and a suspension of 20 business days would be appropriate in this case. However, in light of the bar for failing to respond to requests for information, the additional sanctions will not be imposed.¹²

Conclusion

Garrett Richard Fischer is barred from association with any member firm in any capacity for failing to respond to staff information requests, in violation of Procedural Rule 8210 and Conduct Rule 2110. In light of the bar no additional sanctions imposed

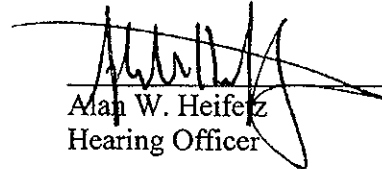
¹⁰ SANCTION GUIDELINES, p. 73.

¹¹ *Id.*

¹² See *Dep't of Enforcement v. Asensio*, No. CAF030067, 2006 NASD Discip. LEXIS 20, at *55 (NAC July 28, 2006) (in light of bar for 8210 violation, imposition of a suspension found to be redundant and fine to serve no remedial purpose).

for failure to disclose his criminal history on a Form U-4, in violation of Conduct Rule 2110. The bar shall become effective immediately if this Decision becomes the final disciplinary action of NASD.

SO ORDERED.



Alan W. Heifez
Hearing Officer

Copies to:
Via First Class Mail & Overnight Courier
Garrett Richard Fischer

Via First Class & Electronic Mail
Jeffrey A. Ziesman, Esq.
Mark P. Dauer, Esq.
Rory C. Flynn, Esq.

NASD OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

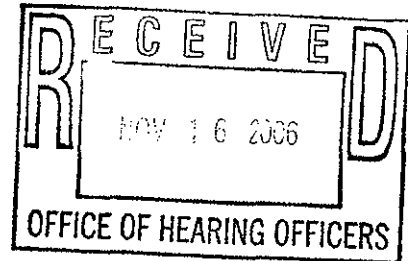
**Garrett Richard Fischer,
Associated Person
(CRD No. 5083708)**

Respondent.

Disciplinary Proceeding No. 20060043797-01

Hearing Officer - _____

COMPLAINT



The Department of Enforcement alleges as follows:

1. Respondent Garrett Richard Fischer (Fischer) became associated with NASD member firm Edward Jones on or about January 9, 2006. On or about January 17, 2006, Fischer signed and submitted to Edward Jones a Uniform Application for Securities Industry Registration or Transfer (Form U-4).

2. On or about February 8, 2006, Edward Jones terminated Fischer's employment. This Complaint is being filed within two years of Fischer's termination from association with a member firm. Accordingly, NASD retains jurisdiction over this disciplinary proceeding pursuant to Article V, Section 4 of NASD By-Laws.

**FIRST CAUSE OF COMPLAINT
Failure to Disclose on Form U-4
NASD Conduct Rule 2110 and IM-1000-1**

3. Complainant incorporates and realleges by reference paragraph Nos. 1 through 2 above.

4. On or about June 5, 1994, Fischer was charged in a Trial Information in Dickinson County, Iowa, with crimes under Iowa law.

5. Count II of that Trial Information charged Fischer with Theft in the Fourth Degree, a serious misdemeanor under Iowa law.

6. Count III of that Trial Information charged Fischer with Forgery, an aggravated misdemeanor under Iowa law.

7. On or about January 17, 2006, Fischer signed and submitted to Edward Jones a Form U-4. Question 14B.(1)(a) asked: "Have you ever: (a) been convicted of or pled guilty ... in a domestic ... court to a misdemeanor involving: ... wrongful taking of property ... forgery ...?" Fischer answered "no."

8. Question 14B.(1)(b) asked: "Have you ever: ... (b) been charged with a misdemeanor specified in 14B(1)(a)?" Fischer answered "no."

9. Fischer was required to disclose in the Form U-4 the charges set forth in Counts II and III of the Trial Information filed in Dickinson County, Iowa, on or about June 5, 1994.

10. Such acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 and IM 1000-1 by Fischer.

SECOND CAUSE OF COMPLAINT
Failure to Disclose on Form U-4
NASD Conduct Rule 2110 and IM-1000-1

11. Complainant incorporates and realleges by reference paragraph Nos. 1 through 10 above.

12. On or about October 30, 1992, Fischer was charged in a Criminal Complaint in Clay County, South Dakota, with unlawful attempt to cause serious bodily injury to another, a felony under South Dakota law.

13. On or about January 17, 2006, Fischer signed and submitted to Edward Jones a Form U-4. Question 14A.(1)(a) asked: "Have you ever: (a) been convicted of or pled guilty ... in a domestic ... court to any felony?" Fischer answered "no."

14. Question 14A.(1)(b) asked: "Have you ever: ... (b) been charged with any felony?" Fischer answered "no."

15. Fischer was required to disclose in the Form U-4 the charges set forth in the Criminal Complaint filed in Clay County, South Dakota, on or about October 30, 1992.

16. Such acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 and IM 1000-1 by Fischer.

THIRD CAUSE OF COMPLAINT
Failure to Respond to Requests for Information
NASD Conduct Rule 2110 and NASD Procedural Rule 8210

17. Complainant incorporates and realleges by reference paragraph Nos. 1 through 16 above.

18. On or about February 9, 2006, Edward Jones filed a Form U-5, disclosing that Fischer had been terminated for "failure to disclose pertinent information during the hiring process." The NASD District 4 staff (the staff) thereafter initiated an investigation that led to this proceeding.

19. On March 10, 2006, pursuant to and in accordance with NASD Procedural Rule 8210, the staff sent a written request for information to Fischer requesting information relating to his termination from Edward Jones. This first request for information was sent certified mail, return receipt requested, and first class mail, to Fischer at his last known residential address as listed in NASD's Central Registration Depository (CRD). The receipt for the certified mailing was returned bearing the signature of "G.E. Nielsen." The receipt for the certified mailing is dated March 13, 2006. The first class mailing was not returned.

20. Service of the first request for information was effected pursuant to and in accordance with NASD Procedural Rule 8210. Fischer's response was due by no later than March 24, 2006. Fischer did not respond to the first request for information.

21. On or about March 13, 2006 (the date reflected on the receipt for the certified mailing), Fischer contacted the staff by telephone. During this conversation, Fischer stated that NASD had no right to the information requested in the March 10, 2006, NASD Procedural Rule 8210 request. Fischer further stated that he would not provide information or documents in

response to this request. Consequently, Fischer had actual notice of the March 10, 2006, NASD Procedural Rule 8210 request.

22. On March 27, 2006, pursuant to and in accordance with NASD Procedural Rule 8210, the staff sent a second written request for information to Fischer regarding information relating to his termination from Edward Jones. The second request for information was sent certified mail, return receipt requested, and first class mail, to Fischer at his last known residential address as listed in CRD. The receipt for the certified mailing was returned bearing the signature of "Glen Nielsen." The receipt for the certified mailing is dated March 29, 2006. The first class mailing was not returned.

23. Service of the second request for information was effected pursuant to and in accordance with NASD Procedural Rule 8210. Fischer's response was due by no later than April 10, 2006. Fischer did not respond to the second request for information.

24. Such acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 and NASD Procedural Rule 8210 by Fischer.

PRAYER

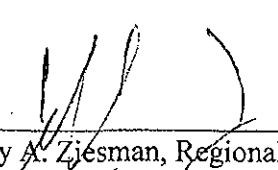
WHEREFORE, the Department of Enforcement respectfully requests that the Panel:

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

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

NASD DEPARTMENT OF ENFORCEMENT

Date: November 13, 2006



Jeffrey A. Ziesman, Regional Counsel
Mark A. Koerner, Regional Chief Counsel
120 West 12th Street, Suite 800
Kansas City, MO 64105
Telephone: (816) 802-4711
Facsimile: (816) 421-4519

NASD District Director

Thomas D. Clough
NASD, District 4
120 West 12th Street, Suite 800
Kansas City, MO 64105

Of Counsel

Rory C. Flynn, Of Counsel
NASD Department of Enforcement
1801 K Street, N.W., Suite 800
Washington, DC 20006
Telephone: (202) 974-2974
Facsimile: (202) 721-8318

Mark P. Dauer, Of Counsel
NASD Department of Enforcement
1100 Poydras Street
Energy Centre, Suite 850
New Orleans, LA 70163
Telephone: (504) 522-6527
Facsimile: (504) 522-4077