

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

EMMANUEL GALLARDO
(CRD No. 1456616),

Respondent.

Disciplinary Proceeding
No. 2006005194401

DEFAULT DECISION

Hearing Officer – SNB

April 27, 2007

For Respondent's failure to provide requested information, in violation of Rules 8210 and 2110, Respondent is barred from associating with any NASD member in any capacity. In light of the bar, no further sanctions are imposed for Respondent's failure to amend his Form U4 to disclose a civil judgment against him, in violation of Rule 2110 and IM-1000-1.

Appearances

Lynn M. Kaseta, Esq. Regional Counsel, NASD, Woodbridge, NJ (Rory C. Flynn, Esq., and Mark P. Dauer, Esq., of Counsel) for the Department of Enforcement.

No appearance by Respondent.

DECISION

I. Background

On November 29, 2006, the Department of Enforcement ("Enforcement") filed a two-cause Complaint in this proceeding, attached to this Decision as Exhibit A. The Complaint alleges that Respondent Emmanuel Gallardo ("Respondent") violated Rules 8210 and 2110 by failing to respond to NASD Staff requests for information. In addition, the Complaint alleges that Respondent violated Rules 2110 and IM-1000-1 by willfully failing to disclose a civil judgment on the Uniform Application for Securities Registration or Transfer ("Form U4"). Respondent did not file an Answer to the Complaint. On February 26, 2007, Enforcement filed a Motion for Entry of Default Decision and Request for Sanctions, supported by the declaration of

Lynn M. Kaseta, Esq. and four exhibits. Respondent did not reply to the Motion. For the reasons set forth below, the Motion is granted.¹

II. Respondent's Default

On November 24, 2006, Enforcement sent the Complaint and Notice of Complaint to Respondent by first-class and certified mail to his last known residential address listed in the Central Registration Depository (the "CRD address"), as well as to a second address obtained through an Equifax search (the "Equifax address"). Due to a typographical error, this Notice of Complaint was sent to [REDACTED] rather than [REDACTED]. Accordingly, on December 18, 2006, an additional Complaint and Notice of Complaint was sent to the CRD and Equifax addresses. In the same manner, Enforcement sent the Complaint and Second Notice of Complaint to Respondent on January 17, 2007. Respondent did not file an Answer to the Complaint.

Enforcement complied with Procedural Rule 9134(b)(1) by mailing the Complaint and Notices of Complaint to Respondent's CRD address, thereby giving Respondent constructive notice of this proceeding. By failing to file an Answer, Respondent defaulted. Pursuant to Rule 9215(f) the Hearing Officer deems the allegations in the Complaint admitted.

III. Jurisdiction

Respondent first became associated with PFS Investments Inc. ("PFS"), an NASD member firm, in September 1987. Respondent was associated with PFS until his termination in September 2005, for the misconduct alleged in the Complaint. He has not been associated or registered with an NASD member since that time.

Although Respondent is not currently associated with a member firm, NASD has jurisdiction to bring this proceeding, pursuant to Art. V, § 4 of NASD's By-Laws, because (1)

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

the Complaint charges Respondent with misconduct while he was an associated person and with failing to comply with requests for information made during the two-year period following termination of his last association, and (2) the Complaint was filed within that two-year period.

IV. Violations

A. Failure to Disclose Civil Judgment on Form U4

The Complaint alleges that Respondent willfully failed to amend his Form U4 to disclose a December 2003 civil judgment of \$11,581.98. Specifically, Respondent failed to amend his answer to Form U4 question 14M, which requires disclosure of any unsatisfied judgments or liens.²

Article V, Section 2 of NASD's By-Laws requires that persons who apply for registration with NASD must provide "such ... reasonable information with respect to the applicant as the NASD may require." Article V, Section 2 of NASD's By-Laws further requires that "[e]very application for registration filed with the NASD shall be kept current at all times by supplementary amendments [which]...shall be filed with the NASD not later than 30 days after learning of the facts or circumstances giving rise to the amendment."

IM-1000-1 provides: "The 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 the failure to correct such filing after notice thereof, may be deemed to be conduct inconsistent with just and equitable principles of trade and when discovered may be sufficient cause for appropriate disciplinary action." The accuracy of Form U4 disclosures "is

² Although the Complaint does not allege that the civil judgment was unsatisfied, Enforcement's declaration establishes that it was, citing a related garnishment order received by Respondent's employer on August 9, 2005.

critical to the effectiveness” of a self-regulatory organization’s ability to screen and monitor the professionals within the securities industry.³

Therefore, the allegations of the Complaint, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent violated Rule 2110 and IM-1000-1 by failing to disclose the civil judgment on his Form U4.⁴

B. Failure to Respond

The Complaint alleges that on May 31, 2006, NASD Staff sent Respondent a request for information concerning his failure to amend his Form U4 to disclose the civil judgment, by first-class mail to his CRD address. In the same manner, on or about June 19, 2006, NASD Staff sent a second letter requesting this information to the CRD address, and to an additional address obtained from Equifax. Due to a minor typographical error to the spelling of the street name of the Equifax address, on July 17, 2006, NASD Staff again sent the request to the CRD and Equifax addresses, this time by first-class and certified mail. The Staff served the requests in accordance with Rule 8210(d), and therefore Respondent is deemed to have received them. Respondent did not respond.

Rule 8210 authorizes NASD to require any person subject to its jurisdiction to provide information 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

³ Rosario R. Ruggiero, 52 S.E.C. 725, 728 (1996); see also Daniel Richard Howard, Exch. Act Rel. No. 46269, 2002 SEC LEXIS 1909, at *9-10 (July 26, 2002) (“The candor and forthrightness of applicants is critical to the effectiveness of this screening process.”) Department of Enforcement v. Lu, Complaint No. C9A020052, 2004 NASD Discip. LEXIS 8 at * 32 (NAC May 13, 2004), aff’d, Exch. Act. Rel. No. 51047, 2005 SEC LEXIS 117 (Jan. 14, 2005), aff’d without opinion, 179 Fed Appx. 702 2006 U. S. Appx. LEXIS 24875 (D.C. Cir 2006).

⁴ The Complaint further alleges that Respondent’s failure to disclose the civil judgment against him on his Form U4 was willful, which would subject Respondent to “disqualification” under Article III, Section 4(f) of NASD’s By-Laws. However, given Respondent’s bar, the Hearing Officer finds it unnecessary to determine whether Respondent’s U4 violation was willful.

subpoena power.⁵ Here, although Respondent received valid constructive notice of the Staff's request,⁶ he failed to respond. Respondent thereby violated Rules 8210 and 2110.

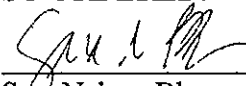
V. Sanctions

A bar is standard for failure to provide requested information. NASD Sanction Guidelines at 35 (2006 ed.). There is no evidence of any mitigating circumstances that would justify a lesser sanction. Therefore Respondent is barred from associating with any NASD member in any capacity. In light of the bar, no further sanctions are imposed for Respondent's failure to amend his Form U4 to disclose the civil judgment against him.

VI. Conclusion

For Respondent's failure to provide requested information, in violation of Rules 8210 and 2110, Respondent is barred from associating with any NASD member in any capacity. In light of the bar, no further sanctions are imposed for Respondent's failure to amend his Form U4 to disclose the civil judgment against him. The bar shall become effective immediately if this Decision becomes the final disciplinary action of NASD.

SO ORDERED.



Sara Nelson Bloom
Hearing Officer

Copies to: Emmanuel Gallardo (*via overnight and first-class mail*)
Lynn M. Kaseta, Esq. (*via electronic mail*)
Rory C. Flynn, Esq. (*via electronic mail*)
Mark P. Dauer, Esq. (*via electronic mail*)

⁵ See, e.g., Dep't of Enforcement v. Valentino, No. FPI010004, 2003 NASD Discip. LEXIS 15, at *12 (NAC May 21, 2003), aff'd, 2004 SEC LEXIS 330 (Feb. 13, 2004) ("It is well established that because NASD lacks subpoena power over its members, a failure to provide information fully and promptly undermines NASD's ability to carry out its regulatory mandate.") (citation omitted); Joseph G. Chiulli, Exch. Act Rel. No. 42,359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for the NASD effectively to conduct its investigations, and emphasizing that NASD members and associated persons must fully cooperate with requests for information).

⁶ See David I. Cassuto, Exch. Act Rel. No. 48087, 2003 SEC LEXIS 1496, at *9 (June 25, 2003).

Exhibit A

**NASD
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

V.

**EMMANUEL GALLARDO,
CRD No. 1456616;**

RESPONDENT.

**DISCIPLINARY PROCEEDING
No. 2006005194401**

COMPLAINT

The Department of Enforcement alleges:

1. On or about September 17, 1987, Respondent Emmanuel Gallardo became registered with NASD through member firm PFS Investments Inc. (PFS)¹ as a Limited Representative - Investment Company and Variable Contracts Products (Series 6). Gallardo was associated with PFS until his employment was terminated on September 8, 2005 for the misconduct charged herein. Gallardo is not presently associated with a member firm but remains subject to NASD's jurisdiction pursuant to Article V, Section 4, of NASD's By-Laws until at least September 7, 2007.

FIRST CAUSE OF ACTION

(Failure to Amend Form U4 - NASD Conduct Rule 2110 and IM-1000-1)

2. The Department realleges and incorporates by reference paragraph 1 above.

¹ At the time, the firm used First American National Securities, Inc. as its primary business name. The firm, since July 1, 1992, has used PFS Investments Inc. as its primary business name.

3. Pursuant to Article V, Section 2 (c), of NASD's By-Laws, the information provided on a Form U4 must be kept current by means of amendments not later than 30 days after the registered representative learns of "the fact and circumstances giving rise to the amendment." This requirement was in effect during the relevant time periods herein.
4. On or about January 15, 1986, Gallardo submitted or caused to be submitted an initial Form U4 with PFS Investments Inc. that included a question as to whether Gallardo had any unsatisfied judgments or liens against him. Gallardo answered "no" to this question, which was true at that time.
5. On or about December 2, 2003, a civil judgment in the amount of \$11,581.98 was entered against Gallardo by the Superior Court of New Jersey, Civil Division, Special Civil Part, Passaic County.
6. Gallardo willfully failed to amend his Form U4 to disclose this material fact.
7. As a result of this conduct, Gallardo violated NASD Conduct Rule 2110 and IM-1000-1.

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

8. The Department realleges and incorporates by reference paragraphs 1 through 7 above.
9. On or about May 31, 2006, NASD's District 9 – New Jersey staff ("staff"), pursuant to NASD Procedural Rule 8210, sent a letter to Gallardo at [REDACTED] his Central Registration Depository address of record ("CRD address"), requesting information concerning his failure to amend his Form U4 to disclose the civil judgment entered against him in the Superior Court of New Jersey, Civil Division, Special Civil Part, Passaic County ("civil judgment"). The letter was sent by first class mail. The first class mail envelope was not returned to the staff.

10. On or about June 19, 2006, the staff, pursuant to NASD Procedural Rule 8210, sent a second letter to Gallardo's CRD address and to [REDACTED] address"), a possible address for Gallardo based on an Equifax report obtained by NASD staff, requesting information concerning his failure to amend his Form U4 to disclose the civil judgment. The two envelopes were sent by first class mail, and they were not returned to the staff.
11. On or about July 17, 2006, the staff, pursuant to NASD Procedural Rule 8210, sent a "second and final request" letter to Gallardo's CRD and Spencer Lane addresses, requesting information concerning his failure to amend his Form U4 to disclose the civil judgment. The letters were sent by first class and certified mail and advised Gallardo that if he failed to respond he may be subject to disciplinary action. The certified mail envelopes were returned to staff as "unclaimed" on August 08, 2006. The first class mail envelopes were not returned to the staff.
12. The staff is not aware of a more current residential or business address for Gallardo.
13. Gallardo failed to respond to the staff's requests for information.
14. As a result of this conduct, Gallardo violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

PRAYER

WHEREFORE, the Department respectfully requests that the Panel:

² The staff subsequently identified a minor typographical error in the spelling of the street address obtained for Gallardo from the Equifax report - the correct spelling is "Spenser," not "Spencer" Lane. Nevertheless, service of these mailings was not affected by the incorrect spelling given that the first class mailings were not returned to the staff and the certified mailings were returned as "unclaimed," not "undeliverable."

- A. order that one or more of the sanctions provided under NASD Rule 8310(a), including monetary sanctions, be imposed;
- 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; and
- C. make specific findings that Respondent's conduct, as alleged in the First Cause of Action, was willful; the omitted information was material; and, the omission to state material facts was on a Form U4 application.

Date: November 24, 2006

NASD DEPARTMENT OF ENFORCEMENT



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