

FINANCIAL INDUSTRY REGULATORY AUTHORITY¹
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

GARY L. WIGAND
(CRD No. 4284982),

Respondent.

Disciplinary Proceeding
No. 2006005268101

DEFAULT DECISION

Hearing Officer – SNB

October 9, 2007

For Respondent's failure to provide requested information, in violation of Rules 8210 and 2110, Respondent is barred from associating with any FINRA member in any capacity. In light of the bar, no further sanctions are imposed for Respondent's forgery and falsification of a customer document, in violation of Rule 2110.

Appearances

Kevin G. Kulling, Esq., and Mark A Koerner, Esq., Chicago, IL (Rory C. Flynn, Esq., and Mark P. Dauer, Esq., of Counsel), for the Department of Enforcement.

No appearance by Respondent.

DECISION

I. Background

On May 25, 2007, the Department of Enforcement ("Enforcement") filed a two-cause Complaint in this proceeding, attached to this Decision as Exhibit A. The first cause of the Complaint alleges that Gary L. Wigand ("Respondent") violated Rule 2110 by forging and falsifying the notarization on a power of attorney. The second cause

¹ Effective July 30, 2007, the corporate successor to NASD is the Financial Industry Regulatory Authority (FINRA).

alleges that Respondent violated Rules 8210 and 2110 by failing to respond to FINRA Staff requests for information.

Respondent did not file an Answer to the Complaint. Accordingly, on August 17, 2007, Enforcement filed a motion for entry of default decision, supported by the Declaration of Kevin G. Kulling, Esq., and seven exhibits. Respondent did not file a response to the motion.

For the reasons set forth below, Enforcement's motion is granted.²

II. Respondent's Default

On May 24, 2007, Enforcement served the Complaint and Notice of Complaint on Respondent by first-class and certified mail, sent to Respondent's current residential address as reflected in the Central Registration Depository (the "CRD" address) as well as an alternative address ("Alternative" address). Respondent did not file an Answer. In the same manner, on June 26, 2007, Enforcement served the Complaint and Second Notice of Complaint on Respondent at the CRD and Alternative addresses. Respondent again did not file an Answer.

Enforcement complied with Rule 9134(b)(1) by mailing the Complaint and Notices of Complaint to Respondent's CRD and Alternative addresses, thereby giving Respondent constructive notice of this proceeding. By failing to file an Answer, Respondent defaulted. Accordingly, pursuant to Rules 9215(f) and 9269(a)(2), the allegations in the Complaint are deemed admitted.

² 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.

III. Jurisdiction

Between January 2001 and May 2006, Respondent was registered as a General Securities Representative with Charles Schwab & Co., (the "Member"). Respondent is not currently associated with a member firm.

Although Respondent is not currently associated with a member firm, FINRA has jurisdiction to bring this proceeding, pursuant to Art. V, § 4 of FINRA's By-Laws, because (1) the Complaint charges Respondent with misconduct while he was registered and with failing to comply with requests for information made during the two-year period following termination of his last registration, and (2) the Complaint was filed within that two-year period.

IV. Violations

A. Forgery and Falsification of Documents

The first cause of the Complaint alleges that in April 2006, Respondent forged the signature of a notary public on a power of attorney that had been signed by a customer of the Member, and affixed a notary stamp to the power of attorney without the knowledge and consent of the notary and without the notary's witnessing the signing of the document by the customer.

It is well established that forgery is not consistent with high standards of commercial honor and just and equitable principles of trade as required by Rule 2110.³ These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent forged a notary's signature and affixed a notary seal on power of attorney, without the knowledge or consent of the notary, in violation of Rule 2110.

³ See, e.g., Donald M. Bickerstaff, Exchange Act Release No. 35607 (Apr. 17, 1995).

B. Failure to Respond

The Complaint also alleges that, on June 29, 2006, FINRA Staff sent Respondent a request for information pursuant to Rule 8210. That request was sent by first-class and certified mail to Respondent's CRD address. In the same manner, on August 9, 2006, FINRA Staff sent a second request for information to Respondent. 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 FINRA 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 FINRA's oversight function and allows FINRA to carry out its regulatory functions without subpoena power.⁴ Here, although Respondent received valid constructive notice of the Staff's requests,⁵ he failed to respond to them. Respondent thereby violated Rules 8210 and 2110.

V. Sanctions

A bar is standard for failure to provide requested information. FINRA Sanction Guidelines at p. 35 (2007 ed.). There is no evidence of any mitigating circumstances that would justify a lesser sanction. Therefore, Respondent is barred from associating with any FINRA member in any capacity.

⁴ 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, Exchange Act Release 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).

⁵ See David I. Cassuto, Exchange Act Release No. 48,087, 2003 SEC LEXIS 1496, at *9 (June 25, 2003).

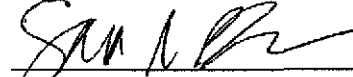
For forgery and falsification of documents, the Guidelines recommend a suspension for up to two years, or, in egregious cases, a bar. Guidelines at p. 39. Enforcement asserts that Respondent's misconduct was egregious and warrants a bar. The Hearing Officer finds that Respondent's misconduct warrants a significant sanction, at the higher end of the range in the Guidelines. However, given that Respondent's actions were to accommodate his 99 year-old client, and there is no allegation that the customer did not wish to grant the power of attorney, the Hearing Officer is not willing to find that the conduct was egregious and warrants a bar. Therefore, in light of the bar for the 8210 violation, no further sanctions are imposed for Respondent's forgery and falsification of a customer document.

VI. Conclusion

For Respondent's failure to provide requested information, in violation of Rules 8210 and 2110, Respondent is barred from associating with any FINRA member in any capacity. In light of the bar, no further sanctions are imposed for Respondent's forgery and falsification of a customer document, in violation of Rule 2110.

The bar shall become effective immediately if this Decision becomes the final disciplinary action of FINRA.

SO ORDERED.



Sara Nelson Bloom
Hearing Officer

Copies to: Gary L. Wigand (via overnight and first-class mail)
Kevin G. Kulling, Esq. (via electronic mail)
Rory C. Flynn, Esq. (via electronic mail)
Mark P. Dauer, Esq. (via electronic mail)

**NASD
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

**GARY WIGAND
CRD No. 4284982**

RESPONDENT.

**DISCIPLINARY PROCEEDING
No. 2006005268101**

COMPLAINT

The Department of Enforcement alleges:

1. Gary Wigand (Respondent) was registered as a General Securities Representative with Charles Schwab & Co. (Member), a NASD member, between December 2000 and April 28, 2006. Respondent therefore is subject to the jurisdiction of NASD, pursuant to Article V, Section 4 of NASD's By-Laws.

FIRST CAUSE OF ACTION

(Forgery/Falsification NASD Conduct Rule 2110)

2. The Department realleges and incorporates by reference paragraph 1 above.
3. On or about April 13, 2006, Wigand forged the signature of a notary public on a power of attorney that had been signed by a customer of the Member.

4. In addition to forging the signature of the notary, who is also a registered representative of the Member, Wigand affixed the notary stamp to the power of attorney without the knowledge and consent of the notary and without witnessing the customer sign the document.

5. The above acts practices and conduct constitutes a violation of NASD Conduct Rule 2110.

SECOND CAUSE OF ACTION

(Failure to Respond NASD Procedural Rule 8210 and Conduct Rule 2110)

6. The Department realleges and incorporates by reference paragraphs 1-5 above.

7. On or about June 29, 2006, NASD 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 mail and certified mail to Respondent's address of record as maintained in the records of the Central Registration Depository ("CRD address"). The certified mailing receipt was returned to staff marked, "Unclaimed." The first class mailing was not returned to staff.

8. On or about August 9, 2006, NASD Staff sent to Respondent a second request that he provide the information originally requested on June 29, 2006, pursuant to and in accordance with Procedural Rule 8210. That request for information was sent by first class mail and certified mail to Respondent's CRD address as well as to an additional address that NASD Staff obtained. The first class mailings were not returned to staff. The certified mailings were returned to staff marked, "Unclaimed."

9. Respondent has failed to respond to the requests for information described in Paragraphs 7 and 8 above, and the dates for responding to the requests have passed.

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

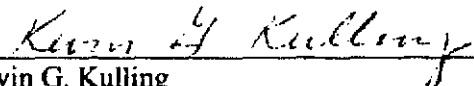
PRAYER

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.
- 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: May 24, 2007


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