

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DOUGLAS POOLE
(CRD No. 513426),

Respondent.

Disciplinary Proceeding
No. 2006005430901

Hearing Officer – SNB

DEFAULT DECISION

May 7, 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 make required disclosures on his Form U4, in violation of Rule 2110 and IM-1000-1.

Appearances

UnBo Chung, Esq. Regional Counsel, NASD, Chicago, IL, (Rory C. Flynn, Esq., Of Counsel, and Mark P. Dauer, Esq., Of Counsel), for the Department of Enforcement.

No appearance by Respondent.

DECISION

I. Background

On December 26, 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 Douglas Poole ("Respondent") violated Rule 2110 and IM-1000-1 by willfully failing to disclose that he had been charged with two felonies on his Uniform Application for Securities Registration or Transfer ("Form U4"). In addition, the Complaint alleges that Respondent violated Rules 8210 and 2110 by failing to respond to NASD Staff

requests for information. Respondent did not file an Answer to the Complaint. On March 12, 2007, Enforcement filed a Motion for Entry of Default Decision and Request for Sanctions, supported by the declaration of UnBo Chung, 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 December 21, 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"). In the same manner, Enforcement sent the Complaint and Second Notice of Complaint to Respondent on January 23, 2007. Respondent did not file an Answer to the Complaint.

Enforcement complied with 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

On May 12, 2006, Respondent first became associated with Ameriprise Financial Services, Inc. ("Ameriprise"), an NASD member firm. Respondent was associated with Ameriprise until his termination on May 26, 2006, for his failure to make the Form U4 disclosure charged in the Complaint. Respondent 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 Make Form U4 Disclosures

The Complaint alleges that Respondent willfully failed to disclose that in April 2004 he had been charged two felonies - burglary in the third degree and theft of property in the first degree. Prior to Respondent's employment with Ameriprise, these charges were dismissed when the prosecutor filed a nolle pros motion stating that he would not prosecute the case.

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." Specifically, applicants must complete a Form U4, disclosing, among other things, whether they have ever been charged with a felony.

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 critical to the effectiveness" of a self-regulatory organization's ability to screen and monitor the professionals within the securities industry.² Therefore, the allegations of the Complaint, which

² 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).

are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent violated Rule 2110 and IM-1000-1.

B. Failure to Respond

The Complaint also alleges that on June 2, 2006, NASD Staff sent Respondent a request for information by first-class and certified mail to his CRD address concerning the failure to make the Form U4 disclosure charged in the second cause of the Complaint. In the same manner, the NASD Staff sent this request again on June 27, 2006. The NASD 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 subpoena power.³ Here, although Respondent received valid constructive notice of the NASD Staff's request,⁴ 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 p. 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.

³ 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).

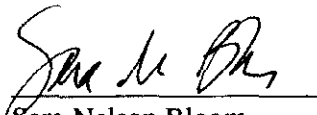
⁴ See David I. Cassuto, Exch. Act Rel. No. 48,087, 2003 SEC LEXIS 1496, at *9 (June 25, 2003).

For filing a false, inaccurate, misleading or late Form U4, the Guidelines recommend a suspension for five to 30 business days, or in egregious cases, such as those involving repeated inaccurate filings or a failure to disclose matters which would create a statutory disqualification, a longer suspension or a bar. Guidelines at p. 73. Enforcement requests a bar, equating this case to a recent case involving a failure to disclose a felony conviction. However, in this case, the charges were dismissed prior to Respondent's Form U4 filing, so the omitted disclosure did not give rise to a statutory disqualification. Therefore, a bar does not appear warranted. In light of the bar for the 8210 violation, no further sanctions are imposed for Respondent's failure to disclose felony charges in his Form U4.

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 disclose felony charges on his Form U4. The bar shall become effective immediately if this Decision becomes the final disciplinary action of NASD.

SO ORDERED.


Sara Nelson Bloom
Hearing Officer

Dated: Washington, DC
May 7, 2007

Copies to: Douglas Poole (*via FedEx and first-class mail*)
UnBo Chung, Esq. (*via electronic and first-class mail*)
Rory C. Flynn, Esq. (*via electronic and first-class mail*)
Mark P. Dauer, Esq. (*via electronic and first-class mail*)

**NASD
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

**DOUGLAS POOLE
(CRD No. 513426),**

RESPONDENT.

**DISCIPLINARY PROCEEDING
NO. 2006005430901**

Hearing Officer

COMPLAINT

The Department of Enforcement alleges:

1. Respondent Douglas Poole ("Poole") was associated with Ameriprise Financial Services, Inc. ("Member"), a member of NASD, from about May 12, 2006 to May 26, 2006. On May 26, 2006, the Member filed a Uniform Termination Notice for Securities Industry Registration (Form U-5) that disclosed that Poole engaged in conduct actionable under NASD rules. Therefore, pursuant to Article V, Section 4 of the NASD's By-Laws, Poole is subject to the jurisdiction of the NASD.

**FIRST CAUSE FOR COMPLAINT
NASD Conduct Rule 2110 and IM 1000-1
Willful Failure to Disclose Criminal Background**

2. Paragraph number 1, above, is re-alleged and incorporated herein by reference.
3. On or about October 30, 2003, in the state of Alabama, Poole was arrested while possessing stolen property.

4. On or about April 9, 2004, a grand jury in Madison County, Alabama charged Poole with 2 felony charges (burglary in the third degree and theft of property in the first degree).

5. On February 14, 2006, Poole paid restitution to the victims and the case was dismissed upon the nolle pros motion of the prosecutor.

6. On or about April 26, 2006, Poole willfully failed to disclose material facts on a Uniform Application for Securities Industry Registration or Transfer (Form U-4) by failing to disclose that he had been charged with the aforementioned felony charges as described in Paragraphs 3 through 5 above, in violation of NASD Conduct Rule 2110 and IM 1000-1.

SECOND CAUSE FOR COMPLAINT
NASD Conduct Rule 2110 and NASD Procedural Rule 8210
Failure to Respond to Requests for Information

7. Paragraph number 1 through 6, above, are re-alleged and incorporated herein by reference.

8. On or about June 2, 2006, NASD Staff sent to Poole 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 Poole's address of record as contained in the records of the Central Registration Depository ("CRD address"). The first class mailing to the CRD address was not returned to NASD staff, but the certified mailing to the CRD address was returned, marked "Unclaimed."

9. On or about June 27, 2004, NASD staff sent to Poole a second request that he provide the information initially requested on June 2, 2006, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210. This request for information was sent by first class and certified mail to Poole's CRD address. The first class and certified mailings were not returned.

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

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

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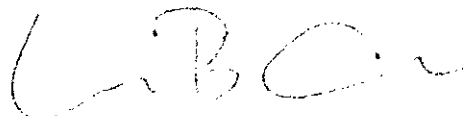
PRAYER

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.
- 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.

NASD DEPARTMENT OF ENFORCEMENT

Date: December 21, 2006



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