

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT

Complainant,

v.

DAVE LIANG
(CRD No. 4115196),

Respondent.

Disciplinary Proceeding
No. 20060055309-01

Hearing Officer – Sara Nelson Bloom

DEFAULT DECISION

July 2, 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

Joel T. Kornfeld, Esq. Regional Counsel, Lewis Taylor Egan, Esq., Associate Vice President and Regional Chief Counsel, NASD, Los Angeles, CA, (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 February 14, 2007, the Department of Enforcement ("Enforcement") filed a two-cause Complaint in this proceeding, attached to this Decision as Exhibit A. Cause One of the Complaint alleges that Respondent Dave Liang ("Respondent") violated Rule 2110 and IM-1000-1 by willfully failing to disclose two bankruptcy filings and an unsatisfied lien on his Uniform Application for Securities Registration or Transfer ("Form U4"). Cause Two of 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 April 30, 2007, Enforcement filed a Motion for Entry of Default Decision, supported by the declaration of Joel T. Kornfeld, Esq., and seven exhibits. Respondent did not reply to the Motion. For the reasons set forth below, the Motion is granted.¹

II. Respondent's Default

On February 12, 2007, 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") and an alternative address (the "Alternative Address"). In the same manner, on March 15, 2007, Enforcement sent the Complaint and Second Notice of Complaint to Respondent. 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

Respondent was registered with NASD member firm U.S. Brokerage, Inc., from November 2001 until June 7, 2006. 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) the Complaint charges Respondent with misconduct while he was an associated person and with

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.

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 in October 2001, Respondent signed a Form U4 to become registered with NASD. In that Form U4, Respondent answered “No” to Question 23K(1) asking whether Respondent had, within the past 10 years, filed a bankruptcy petition. Respondent also answered “No” to Question 23M, asking whether Respondent had any unsatisfied judgments or liens. However, Respondent’s answers were false. He filed a Chapter 7 Bankruptcy Petition in June 1993, and, in June 2000, he filed a second Chapter 7 Bankruptcy Petition. In addition, in February 1999, the Internal Revenue Service recorded a \$146,066 federal tax lien against him; a lien that was released in May 2002.

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.”

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

Enforcement also requests a finding that Respondent's non-disclosures were willful. Willfulness is not required to establish a violation of Rule 2110, but Article III, Section 4(f) of NASD's By-Laws provides that a person who has willfully made any false or misleading statement as to any material fact in any application to become registered with an NASD member, or who has omitted to disclose any material fact which is required to be disclosed in such an application, is subject to a "disqualification." For this purpose, it is sufficient to establish willfulness if the respondent "knew or reasonably should have known under the particular facts and circumstances that his conduct was improper."³ A finding of willfulness does not require intent to violate the law or a specific rule, but simply intent to commit the act that constitutes the violation.⁴

The Hearing Officer finds that the questions on the Form U4 were clear, and that Respondent knew or should have known that he was providing incorrect answers. Accordingly, absent any evidence to the contrary, the Hearing Officer finds that Respondent's failure to make

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."). Dep't. of Enforcement v. Lu, 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).

³ Christopher LaPorte, Exch. Act Rel. No. 39171, 1997 SEC LEXIS 2058, at *8 n.2 (Sept. 30, 1997).

⁴ Dep't. of Enforcement v. Knight, No. C10020060, 2004 NASD Discip. LEXIS 5 (NAC April 27, 2004); Dep't. of Enforcement v. Sarris, No. C9A020017, 2003 NASD Discip. LEXIS 12, at *11 (O.H.O. Mar. 17, 2003); Laporte, 1997 SEC LEXIS 2058, at *8; Arthur Lipper Corp. v. SEC, 547 F.2d 171, 180 (2d Cir. 1976), cert. denied, 434 U.S. 1009 (1978).

required disclosures in his Form U4 was willful within the meaning of Article III, Section 4(f) of the NASD By-Laws.⁵

B. Failure to Respond

The Complaint also alleges that on August 28, 2006, NASD Staff sent Respondent a request for information concerning the conduct charged in Cause One of the Complaint, as well as whether Respondent had engaged in outside business activities. NASD Staff sent the request by first-class and certified mail to Respondent's CRD address, as well as the Alternative Address. In the same manner, the NASD Staff again sent this request on September 5, 2006. The NASD Staff also sent the request to Respondent's email address. 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.⁶ Here, although Respondent received valid constructive notice of the NASD Staff's request,⁷ he failed to respond. Respondent thereby violated Rules 8210 and 2110.

⁵ Christopher LaPorte, Exch. Act Rel. No. 39,171, 1997 SEC LEXIS 2058, at *8 (Sept. 30, 1997) (finding willfulness when respondent knew or should have known under the particular facts and circumstances that his conduct was improper).

⁶ 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).

⁷ See David I. Cassuto, Exch. Act Rel. No. 48,087, 2003 SEC LEXIS 1496, at *9 (June 25, 2003).

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.

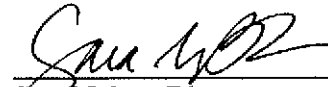
For filing a false, inaccurate, misleading or late Form U4, the Guidelines recommend a suspension for five to 30 business days. In egregious cases, such as those involving repeated inaccurate filings, a failure to disclose matters which would create a statutory disqualification, a failure to disclose a customer complaint, or where the failure to disclose delayed regulatory investigation or a termination for cause, the Guidelines recommend a longer suspension or a bar. Guidelines at p. 73-74. Enforcement requests a bar for this violation. However, given that the omitted disclosure did not give rise to a statutory disqualification, delay an investigation, or involve a customer complaint, 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 make required disclosures on 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 make required disclosures on his Form U4. The bar shall become effective immediately if this Decision

becomes the final disciplinary action of NASD.

SO ORDERED.

A handwritten signature in dark ink, appearing to read "Sara Nelson Bloom", is written over a horizontal line.

Sara Nelson Bloom
Hearing Officer

Dated: July 2, 2007

Copies to: Dave Liang (via overnight and first-class mail)
Joel T. Kornfeld, Esq. (via electronic and first-class 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.

DAVE LIANG
(CRD No. 4115196),

RESPONDENT.

DISCIPLINARY PROCEEDING
No. 20060055309-01

COMPLAINT

The Department of Enforcement alleges:

1. From November 28, 2001 through June 7, 2006, Respondent Dave Liang was associated with NASD member U.S. Brokerage, Inc. as a General Securities Representative. Liang is not presently associated with an NASD member firm. Pursuant to Article V, Section of NASD's By-Laws, Liang remains subject to NASD's jurisdiction for purposes of this complaint.

FIRST CAUSE OF ACTION

NASD Conduct Rule 2110 and IM-1000-1
(Willful Failure to Disclose in a Form U-4)

2. On October 23, 2001, Liang signed a Form U-4 to become registered with NASD through U.S. Brokerage, Inc. The firm submitted that Form U-4 to NASD.

3. In response to Question 23K(1) that asked whether, within the past 10 years, Liang had ever filed a bankruptcy petition, Liang responded "No."

4. In response to Question 23M that asked whether Liang had any unsatisfied judgments or liens, Liang responded "No."

5. Liang's responses were false. He had filed a Chapter 7 Bankruptcy Petition in the United States Bankruptcy Court for the Southern District of California on June 2, 1993. Slightly more than seven years later, on June 16, 2000, Liang had filed a second Bankruptcy Petition in the United States Bankruptcy Court for the Southern District of California.

6. On February 4, 1999 the Internal Revenue Service had recorded a \$146,066 federal tax lien against Liang in San Diego County, California. Liang had identified that lien in his June 2000 Bankruptcy Petition. The lien was not released until May 6, 2002.

7. Liang's false answers on his Form U-4 constituted a willful failure to disclose material facts.

8. By reason of the foregoing, Liang violated NASD Conduct Rules 2110 and IM-1000-1.

SECOND CAUSE OF ACTION
NASD Conduct Rules 8210 and 2110
(Failure to Provide Information)

9. Paragraph numbers 1 through 8 are re-alleged and incorporated by reference.

10. On June 7, 2006, U.S. Brokerage, Inc. terminated Liang and stated that the reason for the termination was his failure to notify the firm of his outside business activities.

First Request

11. On August 28, 2006, the staff sent Liang a request pursuant to Procedural Rule 8210, to appear at NASD's Los Angeles District Office on September 13, 2006, and provide information through on-the-record interview testimony. This staff scheduled this testimony in connection with its investigation relating to Liang's bankruptcies, liens, and unsatisfied judgments as well as the disclosures, if any, that he made to his firm. It was also intended to elicit information about Liang's outside business activities and the disclosures, if any, that he

made to his firm. The request was sent by regular first class mail and certified mail to Liang's CRD address, [REDACTED]

12. The staff determined that there may have been a typographical error in Liang's CRD address and obtained a National Comprehensive Report through the Autotrack system. The address identified by the Autotrack system was [REDACTED] ("Autotrack Address"). Accordingly, on August 28, 2006, a copy of the request was also sent to Liang at his Autotrack Address by regular first class mail and by certified mail.

13. The requests sent by regular first class mail to the CRD Address and the Autotrack Address were not returned.

14. The requests sent by certified mail to the CRD Address and the Autotrack Address were returned and marked "Unclaimed."

15. On September 5, 2006, the staff sent Liang an e-mail at [REDACTED] asking whether he would appear for his September 13, 2006 on-the-record testimony. On September 8, 2006, Liang e-mailed the staff with a single sentence response that stated, "I am sorry to inform you that I would [sic] not be able to attend this meeting because I am not in the country."

Second Request

16. On September 13, 2006, the staff sent Liang a request pursuant to Procedural Rule 8210, to appear at NASD's Los Angeles District Office on September 29, 2006 and provide on-the-record interview testimony ("Second Request"). The Second Request was sent to Liang's CRD Address and Autotrack Address by regular first class mail and by certified mail.

17. The staff also electronically scanned a copy of the Second Request and, on September 13, 2006, e-mailed a copy of it to Liang at [REDACTED] his e-mail address.
18. The copies of the Second Request sent by regular first class mail to the CRD Address and to the Autotrack Address were not returned.
19. The copies of the Second Request sent by certified mail to the CRD Address and the Autotrack Address were returned and marked "unclaimed."
20. Liang did not appear for the scheduled September 29, 2006 on-the-record testimony.
21. Liang has not communicated with the staff since it sent the September 8, 2006 e-mail.
22. Liang's failure to appear for on-the-record testimony is a violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

PRAYER

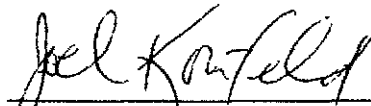
WHEREFORE, the Department respectfully requests that the Panel order that:

- 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: February 12, 2007



Joel T. Kornfeld, Regional Counsel
Lewis Taylor Egan, Associate Vice President
and Regional Chief Counsel
NASD Department of Enforcement
300 S. Grand Avenue, Suite 1600
Los Angeles, CA 90071
(213) 613-2643; Fax: (213) 617-1570

NASD District Director

Joseph M. McCarthy
Vice President and Regional
Director
NASD, District 2
300 South Grand Ave., Suite 1600
Los Angeles, CA 90071

Of Counsel

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

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