

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JOPHLIN DEVON JOHNSON
(CRD No. 4486919),

Respondent.

Disciplinary Proceeding
No. 2006005692701

Hearing Officer – LBB

DEFAULT DECISION

August 14, 2008

For Respondent's failure to make required disclosures on his Form U4, in violation of Conduct Rule 2110 and IM-1000-1, Respondent is barred from associating with any FINRA member in any capacity. Respondent is also barred for failure to provide requested information, in violation of Procedural Rule 8210 and Conduct Rule 2110.

Appearances

George C. McGuigan, Jr., Senior Regional Counsel, FINRA, Dallas, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

The Department of Enforcement ("Enforcement") filed the Complaint in this proceeding on March 14, 2008, asserting two causes of action against Respondent Jophlin Devon Johnson ("Respondent"). The first cause of action alleges that Respondent willfully failed to disclose felony charges and a felony conviction on multiple Forms U4 (Uniform Application for Securities Industry Registration) in violation of NASD Conduct Rule 2110 and IM-1000-1. The

second cause of action alleges that Respondent failed to respond to an NASD Procedural Rule 8210 request for information, thereby violating Procedural Rule 8210 and Conduct Rule 2110.

Despite being properly served with the Complaint, Notice of Complaint, and Second Notice of Complaint, Respondent has not filed an answer to the Complaint. On June 12, 2008, Enforcement filed a Motion for Entry of Default Decision, to which Respondent did not respond. Accordingly, pursuant to NASD Procedural Rules 9215(f) and 9269, the allegations in the Complaint will be deemed admitted and Enforcement's motion will be granted.¹

I. Respondent's Default

Enforcement served the Complaint and Notice of Complaint on Respondent at his most current residential address as listed in the Central Registration Depository ("CRD") by first-class regular and certified mail on March 13, 2008. The Notice and Complaint sent by regular mail have never been returned to the FINRA District Office. The return receipt card for the certified mailing was returned to the District Office, bearing the signature of Esterleon Johnson and a forwarding address in Dallas, Texas, for Respondent.

Enforcement served the Complaint and Second Notice of Complaint on Respondent by first-class regular and certified mail at his CRD address and the Dallas address on April 15, 2008. The mailings sent by regular mail to Respondent's CRD address have never been returned to the District Office. The certified mailing that was sent to the CRD address was returned to the District Office marked "Unclaimed." The District Office received a return receipt card for the certified mailing to the Dallas address, again signed by Esterleon Johnson.

¹ The factual determinations in this decision are based on the allegations of the attached Complaint and the materials filed by Enforcement with its motion.

Enforcement served the Complaint and the Notices of Complaint on Respondent in accordance with NASD Procedural Rule 9134, giving him constructive notice, and apparently actual notice, of this proceeding. By failing to respond, he defaulted.

II. Jurisdiction

Respondent has been briefly associated with FINRA member firms and submitted Forms U4 at various times since December 2001, but has never registered with any of the member firms. He was most recently associated with member firm American Landmark Securities, Inc., from approximately June 9, 2006, until June 22, 2006, when the firm terminated his employment. The firm filed a Form U5 on Respondent's behalf on June 22, 2006. Although Respondent has not been associated with any FINRA member since then, he remains subject to FINRA jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because the Complaint was filed within two years after the termination of his last association with a member firm, and it charges him with misconduct while he was associated with a member firm and failure to respond to requests for information during the two-year period.

III. Origin of the Investigation

The Department of Enforcement initiated this investigation following the receipt of a Form U5 filed by American Landmark Securities, stating that Respondent's employment had been terminated for failure to fully disclose his criminal background.

IV. Violations

A. Respondent Violated Conduct Rule 2110 and IM-1000-1 by Failing to Disclose Material Facts on Form U4

Respondent willfully failed to disclose felony charges and convictions on multiple Forms U4.

Respondent was charged with felonies involving forgery and conspiracy to commit forgery in March and May 2000. On December 13, 2001, Respondent completed, signed, and submitted a Form U4 to member firm H&R Block Financial Advisors, Inc., failing to disclose that he had been charged with the felonies. On March 20, 2002, Respondent completed, signed, and submitted a Form U4 to FINRA member firms American Express Financial Advisors and IDS Life Insurance Company. He again failed to disclose that he had been charged with felonies involving forgery and conspiracy to commit forgery. On July 15, 2002, Respondent completed, signed, and submitted a Form U4 to FINRA member firm Diesel Energy International, and again failed to disclose the felony charges.

On June 9, 2006, Respondent completed, signed, and submitted a Form U4 to FINRA member firm American Landmark Securities, Inc. Respondent disclosed one felony involving forgery and conspiracy to commit forgery, but failed to disclose his second felony offense, also involving forgery and conspiracy to commit forgery. He also failed to disclose that in March 2003, he had pled guilty to both forgery and conspiracy to commit forgery felony charges, and that in August 2005, he had been charged with another felony involving delivery of a controlled substance.

The Complaint alleges that Respondent's failure to disclose his criminal history was willful, and the facts alleged demonstrate that Respondent's failures to disclose his criminal history could not have been inadvertent. Form U4 clearly required the information, and his repeated failures establish that he willfully failed to disclose the information. Although the pattern of Respondent's conduct supports a specific intention not to disclose his criminal history, 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.”² 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.³

Article V, Section 2 of FINRA’s By-Laws requires that persons who apply for registration with FINRA must provide “such ... reasonable information with respect to the applicant as [FINRA] may require.” Applicants must complete a Form U4 disclosing, among other things, whether they have ever been charged with or convicted of any felony, or of a misdemeanor involving false statements or omissions. FINRA uses the Form U4 “to monitor and determine the fitness of securities professionals.” *Dep’t of Enforcement v. Kaweske*, No. C07040042, 2007 NASD Discip. LEXIS 5, at *34 (N.A.C. Feb. 12, 2007), citing *Rosario R. Ruggiero*, 52 S.E.C. 725, 728 (1996). Filing a Form U4 that is inaccurate or incomplete so as to be misleading may be deemed conduct inconsistent with just and equitable principles of trade. *See* IM-1000-1; *Thomas R. Alton*, 52 S.E.C. 380, 382 (1995). The responsibility for maintaining the accuracy of a Form U4 lies with each registered representative. *Kaweske* at *34.

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent violated Conduct Rule 2110 and IM-1000-1 by failing to disclose material facts on his Form U4.

B. Failure to Respond to Requests for Information

NASD Procedural Rule 8210 authorizes FINRA to require any person subject to its jurisdiction to provide information related to any matter under its investigation. The second cause of the Complaint alleges that on April 12, 2007, FINRA staff advised Respondent in a

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

³ *Dep’t of Enforcement v. Knight*, No. C10020060, 2004 NASD Discip. LEXIS 5 (N.A.C. Apr. 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).

telephone conversation that he would receive a request for information. Respondent informed FINRA staff that his CRD address was valid. On May 3, 2007, pursuant to Rule 8210, FINRA staff sent Respondent by first-class regular and certified mail a request for information concerning his criminal history, and whether he had verbally disclosed his criminal history to any of the firms for which he had submitted a Form U4. Respondent failed to respond. By letter dated May 24, 2007, sent by first-class regular and certified mail, FINRA staff requested the same information, and Respondent again failed to respond. Because the requests were sent to his CRD address, Respondent is deemed to have received them.

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent failed to respond to requests for information, in violation of Procedural Rule 8210. A violation of Rule 8210 is also a violation of Rule 2110. *Dep't of Enforcement v. Hoeper*, No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (N.A.C. Nov. 2, 2001).

V. Sanctions

For filing a false, misleading, or inaccurate Form U4, the FINRA Sanction Guidelines recommend a fine of \$2,500 to \$50,000 and suspension for 5 to 30 business days, or in egregious cases, a longer suspension or a bar. *FINRA Sanction Guidelines* at 73. Principal considerations in determining the appropriate sanctions include the nature and significance of information at issue and whether a respondent's failure resulted in a statutorily disqualified individual becoming or remaining associated with a firm.

Article III, Section 3(b) of FINRA's By-Laws provides that a person is ineligible to become associated with a member "if such person is or becomes subject to a disqualification under Section 4." At the time of the filing of Respondent's Forms U4, Section 4(g)(1)(i)

provided that a person was subject to disqualification if that person had been convicted within the preceding 10 years of a felony or misdemeanor that involved the taking of a false oath.⁴ Omission of information that would result in statutory disqualification is plainly important to FINRA and to employers. Aside from the resulting statutory disqualification, information involving serious crimes, especially crimes of dishonesty, would be very important to an employer.

Additionally, Respondent failed to disclose information concerning his criminal history several times, and his failure was willful. *See Sanction Guidelines* at 6-7 (Principal Considerations Nos. 8 and 13). When Respondent filed his various Forms U4, Article III, Section 4(f) of the By-Laws provided that a person who willfully made any false or misleading statement as to any material fact in any application to become registered with a FINRA member, or who omitted to disclose any material fact which is required to be disclosed in such an application, was subject to a "disqualification."⁵ Given the nature of the information, the pattern of misconduct, and the willfulness of Respondent's violations, a bar is the appropriate sanction.

For failing to respond to requests for information, the Guidelines recommend a bar. *Sanction Guidelines* at 35. There is no evidence of any mitigating facts that would support a lesser sanction. The importance of the information is an aggravating factor. *See Sanction Guidelines* at 35. Information concerning Respondent's criminal history and any disclosure of that history to his employers would be important in a determination of the accuracy of his Form

⁴ Section 4 of Article III was amended by SR-NASD-2007-023 effective July 30, 2007. As amended, Section 4 now provides that "[a] person is subject to a 'disqualification' ... if such person is subject to any 'statutory disqualification' as such term is defined in Section 3(a)(39) of the Act." Under Section 3(a)(39)(F) of the Securities Exchange Act of 1934, an applicant for registration is statutorily disqualified if he or she has been convicted within 10 years prior to the filing of an application for registration of a felony, or of a felony or misdemeanor involving forgery. If the amended Section 4 of Article III were applicable to this matter, the result would be the same.

⁵ Under Section 3(a)(39)(F) of the Securities Exchange Act of 1934, an applicant is subject to statutory disqualification if the applicant has willfully made a false statement on an application to become associated with a member firm, such as a Form U4. The result in this matter would be the same under the current version of the By-Laws.

U4 disclosures, whether the disclosures were willful or negligent, and whether Respondent was statutorily disqualified from FINRA registration.

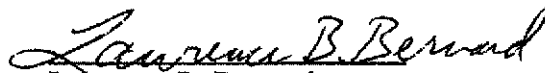
A bar is the appropriate sanction for Respondent's failure to respond to requests for information, in violation of Rules 8210 and 2110.

VI. Conclusion

For Respondent's failure to make required disclosures on multiple Forms U4, in violation of Conduct Rule 2110 and IM-1000-1, Respondent is barred from associating with any FINRA member in any capacity. Respondent is also barred for failure to provide requested information, in violation of Procedural Rule 8210 and Conduct Rule 2110.

The bar will be effective immediately if this decision becomes FINRA's final disciplinary action.

SO ORDERED.


Lawrence B. Bernard
Hearing Officer

Copies to: Jophlin Devon Johnson (*via overnight courier and first-class mail*)
George C. McGuigan, Jr., Esq. (*via electronic and first-class mail*)
Mark P. Dauer, Esq. (*via electronic and first-class mail*)
David R. Sonnenberg, Esq. (*via electronic and first-class mail*)

**FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA)
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT

v.

**Jophlin Devon Johnson
CRD No. 4486919**

RESPONDENT

**DISCIPLINARY PROCEEDING
No. 2006005692701**

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Respondent Jophlin Devon Johnson willfully failed to disclose felony charges and a guilty plea to felony charges. Johnson also failed to respond to FINRA requests for information.

JURISDICTION

2. In December 2001, Respondent Jophlin Devon Johnson signed and submitted a Form U4 for FINRA member firm H & R Block Financial Advisors, Inc. Johnson never registered in any capacity with H & R Block. During the period from about March 20, 2002 to about August 7, 2002, he signed and submitted Forms U4 for three other FINRA member firms but never registered in any capacity at any of the three member firms.

3. On or about June 9, 2006, Johnson signed and submitted another Form U4 for FINRA member firm American Landmark Securities Inc.; however, he never registered with this firm and on June 22, 2006, American Landmark terminated Johnson's employment. Since that time, Johnson has not been associated with any FINRA member firm.
4. FINRA has jurisdiction to file this complaint against Johnson pursuant to Article V, Section 4 of FINRA's By-Laws.

FIRST CAUSE OF ACTION

(Respondent Willfully Failed to Disclose Felony Charges on Forms U4

(Rule 2110 and IM-1000-1))

5. The above-referenced paragraphs 1 – 4 are incorporated herein by reference.
6. On or about December 13, 2001, Respondent Jophlin Devon Johnson completed, signed, and submitted a Form U4 to FINRA member firm H & R Block Financial Advisors, Inc; however, Johnson willfully failed to disclose that in March 2000, and in May 2000, he had been charged with separate felonies, both of which involved forgery and conspiracy to commit forgery.
7. On or about March 20, 2002, Johnson completed, signed, and submitted a Form U4 to FINRA member firms American Express Financial Advisors and IDS Life Insurance Co.; however, Johnson willfully failed to disclose the felony offenses referenced above. Several months later, on or about July 15, 2002, Johnson completed, signed, and submitted another Form U4 to FINRA member firm Diesel Energy International, and again, he willfully failed to disclose his prior felony charges.

8. On or about June 9, 2006, Johnson completed, signed, and submitted a Form U4 to FINRA member firm American Landmark Securities, Inc. While Johnson disclosed one prior felony involving forgery and conspiracy to commit forgery, he failed to disclose his second felony offense which also involved forgery and conspiracy to commit forgery. He also willfully failed to disclose that in March 2003, he had pled guilty to both forgery and conspiracy to commit forgery charges. Moreover, he also willfully failed to disclose that in August 2005, he had been charged with another felony involving delivery of a controlled substance.
9. Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 and IM-1000-1 by Respondent Jophlin Devon Johnson.

SECOND CAUSE OF ACTION

(Respondent Failed to Provide Requested Information (Rules 2110 and 8210))

10. The Department realleges and incorporates by reference paragraphs 1-8 above.
11. On or about April 12, 2007, FINRA staff had a telephone conversation with Respondent Jophlin Devon Johnson during which time the staff advised Johnson that he would receive a letter from the staff requesting information. During this telephone conversation, Johnson informed the staff that his CRD home address was a valid address.
12. By letter dated May 3, 2007, FINRA staff requested, pursuant to NASD Procedural Rule 8210, that Johnson provide information to FINRA regarding his

criminal history, and whether he had verbally discussed his criminal history with any of the firms where he had submitted a Form U4.

13. FINRA staff's May 3rd letter was mailed, via certified mail and regular mail, to Johnson at his CRD home address, and it contained a due date for the requested information of May 17, 2007. The certified mailing was returned to the District office marked "Return to Sender and Unclaimed." To date, the regular mailing of the May 3rd letter has never been returned. Johnson never provided any response to the staff's May 3rd letter.
14. By letter dated May 24, 2007, FINRA staff requested, pursuant to NASD Procedural Rule 8210, that Johnson provide the previously requested information. As with the May 3rd letter, the staff's May 24th letter was sent to Johnson, via certified mail and regular mail, at his CRD home address and requested that Johnson provide the previously requested information by June 7, 2007. Johnson never provided the requested information.
15. On or about June 28, 2007, FINRA staff obtained information through LexisNexis which indicated that Johnson's CRD home address was still a valid address.
16. To date, Johnson has not provided the requested information.
17. Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 and NASD Procedural Rule 8210 by Respondent Jophlin Devon Johnson.

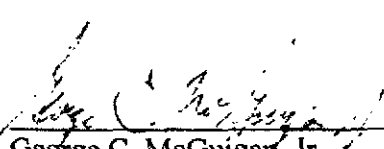
RELIEF REQUESTED

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 Respondents 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 Complaint was willful; the omitted information was material; and the omission to state material facts was on a Form U4 application.

FINRA DEPARTMENT OF ENFORCEMENT

Date: March 13, 2008


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