

FINANCIAL INDUSTRY REGULATORY AUTHORITY¹
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

THADDEUS E. AKLOYO
(CRD No. 5159766),

Respondent.

Disciplinary Proceeding
No. 2006005849101

DEFAULT DECISION

Hearing Officer – SW

Dated: August 30, 2007

Respondent was barred for violating NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by failing to respond to requests for information issued by the FINRA staff. No separate sanction was imposed for Respondent's violation of NASD Conduct Rule 2110 and IM-1000-1, when he willfully failed to disclose on his Form U-4 that he had been charged with misdemeanor theft of property.²

Appearances

David F. Newman, Esq., Regional Counsel, Philadelphia, PA, and Rory C. Flynn, Esq., Of Counsel, Washington, DC, for the Department of Enforcement.

No appearance by or for Respondent Thaddeus E. Akloyo.

DECISION

I. Introduction

On April 23, 2007, the Department of Enforcement ("Enforcement") filed the attached two-count Complaint against Respondent Thaddeus E. Akloyo ("Respondent"),

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

² Although no separate sanction is imposed for Respondent's failure to disclose his criminal history on the Form U-4, based on the Hearing Officer's finding that Respondent willfully failed to disclose his criminal history, Respondent is deemed a statutorily disqualified person pursuant to Article III, Section 4(f) of the NASD By-Laws.

alleging that: (i) he willfully failed to disclose on his Uniform Application for Securities Industry Registration or Transfer ("Form U-4") that he had been charged with misdemeanor theft of property, in violation of NASD Conduct Rule 2110 and IM-1000-1; and (ii) he failed to respond to requests for information issued pursuant to Rule 8210, in violation of NASD Conduct Rule 2110 and NASD Procedural Rule 8210.

On July 26, 2007, Enforcement filed a Motion for Entry of Default Decision ("Motion"), supported by the Declaration of David F. Newman, Esq., Regional Counsel in FINRA's Philadelphia, PA office, and three exhibits.³ For the reasons set forth below, the Hearing Officer grants Enforcement's Motion.

II. Respondent's Default

On April 18, 2007, Enforcement served the Complaint and Notice of Complaint on Respondent, via first-class and certified mail, at his address of record in FINRA's Central Registration Depository ("CRD address") and at an alternate address listed for Respondent on the Autotrack database ("Autotrack address").⁴ (CX-1, p. 1; CX-2, p. 11; DECL at ¶ 7). On May 18, 2007, Enforcement served the Second Notice of Complaint and Complaint on Respondent, via first-class and certified mail, at his CRD address and the Autotrack address. (CX-3, p. 2; DECL at ¶ 8).

The Hearing Officer finds that Enforcement complied with Procedural Rule 9134(b)(1) by sending the mailings to Respondent's CRD address and the Autotrack

³ Hereinafter, the statements in the Motion for Entry of Default Decision will be designated as "Motion, p.;" the statements in the Newman Declaration will be designated as "DECL at ¶;" and Enforcement's exhibits will be designated as "CX-" with the appropriate page or paragraph number.

⁴ Respondent's CRD address is [REDACTED] (CX-1, p. 1). The FINRA staff also obtained the Autotrack address, [REDACTED] (DECL at ¶ 7).

address.⁵ Accordingly, the Hearing Officer finds that Respondent received effective constructive notice of this proceeding and further finds that Respondent defaulted by failing to answer the Complaint.⁶

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

On June 23, 2006, Ameriprise Financial Services, Inc. (“Ameriprise”) filed the Form U-4 executed by Respondent on June 13, 2006 with FINRA.⁷ (CX-1, p. 3; Complaint at ¶ 5). On July 11, 2006, Ameriprise terminated Respondent’s association without registration when Ameriprise discharged Respondent for “failure to get documentation.” (CX-1, p. 3). Respondent is not currently associated with any FINRA member firm. (CX-1, p. 3; DECL at ¶ 5).

Nevertheless, Respondent remains subject to FINRA jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of the NASD By-Laws, because (1) the Complaint was filed within two years after his association with Ameriprise was terminated, and (2) the Complaint charges him with misconduct while he was associated with a FINRA member, and failures to provide information requested pursuant to Rule 8210 during the period of retained jurisdiction.

⁵ See Department of Enforcement v. Verdiner, No. CAF020004, 2003 NASD Discip. LEXIS 42, at * 5 n.1 (NAC Dec. 9, 2003) (finding that respondent received constructive notice when the complaint was mailed to respondent’s CRD address).

⁶ The following Findings of Fact and Conclusions of Law incorporate the allegations in the attached Complaint, pursuant to Rules 9215(f) and 9269, and Notice to Members 99-77.

⁷ Pursuant to Article I, Section (dd) of the NASD By-Laws, a person who applies for registration is an “associated person of a member.”

B. Respondent Failed to Disclose on His Form U-4 that He had been Charged with Misdemeanor Theft of Property

Count one of the Complaint alleges that, in July 2005, Respondent was charged with misdemeanor theft of property by the District Court of Maryland for Baltimore County. (Complaint at ¶ 4). Subsequently, on June 13, 2006, Respondent completed and signed a Form U-4, which was submitted to FINRA on June 23, 2006, on which he falsely answered “no” to Question 14B(1)(b), which asks, “[h]ave you ever: been charged with a misdemeanor specified in 14B(1)(a)?” (Complaint at ¶ 5). One of the misdemeanors specified in Question 14B(1)(a) is “wrongful taking of property.” (*Id.*).

Enforcement provided the additional information that Respondent was given training on Form U-4 disclosure requirements and was specifically instructed to disclose any misdemeanor charge even if he was unsure of whether it had to be disclosed before he completed his Form U-4. (DECL at ¶ 11). Respondent also provided a written statement to Ameriprise explaining the circumstances leading to the misdemeanor charge and acknowledging that the State Attorney indefinitely postponed prosecution of the charge. (*Id.*).

The Securities and Exchange Commission has held that misrepresentations on an application for registration violate the standards of just and equitable principles of trade of NASD Conduct Rule 2110 to which every person associated with any FINRA member is held.⁸

IM-1000-1 provides that “[t]he filing with [NASD] of information with respect to membership or registration as a Registered Representative which is incomplete or

⁸ Robert E. Kauffman, Exchange Act Rel. No. 33,219 (Nov. 18, 1993), aff’d, Robert E. Kauffman v. SEC, 40 F.3d 1240 (3rd Cir. 1994).

inaccurate so as to be misleading, or which could in any way tend to mislead, or the failure to correct such filing after notice thereof, may be deemed to be conduct inconsistent with just and equitable principles of trade. . .”

The allegations in the first cause of the Complaint and the evidence submitted by Enforcement are sufficient to establish that Respondent provided a false response on his Form U-4, in violation of NASD Conduct Rule 2110 and IM-1000-1.

Further, the Hearing Officer finds that the question on the Form U-4 was clear and that Respondent intentionally provided a false answer to the question regarding his misdemeanor charge. Accordingly, the Hearing Officer finds that Respondent’s conduct in failing to disclose his criminal history on his Form U-4 was willful within the meaning of Article III, Section 4(f) of the NASD By-Laws.⁹

C. Respondent Failed to Respond to Requests for Information

The second cause of the Complaint alleges that Respondent failed to respond to four letters from the FINRA staff requesting information regarding the allegations in cause one of the Complaint. (Complaint at ¶¶ 8-11).

Specifically, on July 19, 2006 and September 6, 2006, the FINRA staff sent first and second requests for information to Respondent at his CRD address, pursuant to NASD Procedural Rule 8210, via first-class and certified mail.¹⁰ (Complaint at ¶¶ 8-9).

⁹ Christopher LaPorte, Exchange 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).

¹⁰ The U.S. Postal Service returned a signed receipt for the July 19, 2006 certified mailing sent to Respondent’s CRD address. (Complaint at ¶ 8). However, the receipt was not signed by Respondent. (Id.).

The FINRA staff sent a third Rule 8210 request on September 27, 2006, to Respondent, via first-class and certified mail, at the CRD address, the Autotrack address, and an old address listed by Respondent on his Form U-4.¹¹ (Complaint at ¶ 10).

On October 13, 2006, the FINRA staff sent a fourth letter to Respondent, pursuant to Rule 8210, via first-class and certified mail, at the CRD address and the Autotrack address. (Complaint at ¶ 11). A receipt, which was signed by Respondent and returned to the FINRA staff by the U.S. Postal Service, indicated that the fourth letter sent by certified mail to the Autotrack address was delivered. (*Id.*). Respondent failed to provide any information in response to any of the requests for information. (Complaint at ¶¶ 8-11).

Based on the receipt signed by Respondent, the Hearing Officer finds that Respondent received actual notice of FINRA's requests for information. In any event, the Hearing Officer finds that Respondent is deemed to have received the requests for information sent to his CRD address and the Autotrack address pursuant to Rule 8210(d).

Failure to comply with Rule 8210 requests for information is a serious violation because it subverts FINRA's ability to perform its regulatory responsibilities.¹²

The allegations in the second cause of Complaint and the evidence submitted by Enforcement are sufficient to establish that Respondent violated NASD Procedural Rule

¹¹ The U.S. Postal Service returned a signed receipt for the September 27, 2006 certified mailing sent to the Autotrack address. (Complaint at ¶ 10). However, the receipt was not signed by Respondent. (*Id.*).

¹² See, e.g., Richard J. Rouse, Exchange Act Rel. No. 32,685, 1993 SEC LEXIS 1831, at *7 (1993); Joseph G. Chiulli, Exchange Act Rel. No. 42,359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for FINRA to conduct its investigations effectively, and emphasizing that FINRA members and associated persons must fully cooperate with requests for information).

8210 and NASD Conduct Rule 2110 by failing to respond to the FINRA staff's requests for information.¹³

IV. Sanctions

A. Respondent Failed to Respond to Requests for Information

For failing to respond to four requests for information issued by the FINRA staff pursuant to NASD Procedural Rule 8210, Enforcement recommended that Respondent be barred. The NASD Sanction Guidelines provide that a bar should be standard when an individual respondent does not respond in any manner to a request issued pursuant to Rule 8210.¹⁴ The record does not indicate the existence of any mitigating factors that would warrant a lesser sanction.

Accordingly, the Hearing Officer accepts Enforcement's recommendation and bars Respondent for failing to respond to the four requests for information.

B. The Hearing Officer Imposes No Separate Sanction for Respondent's Willful Failure to Disclose His Criminal History on His Form U-4

Because the Hearing Officer barred Respondent for his Rule 8210 violation, the Hearing Officer will impose no separate sanction for Respondent's violation of NASD Conduct Rule 2110 and IM-1000-1, by willfully failing to disclose on his Form U-4 that he had been charged with misdemeanor theft of property.¹⁵

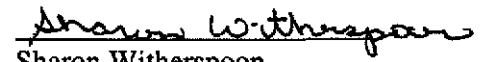
¹³ See Dep't of Enforcement v. Baxter, No. C07990016, 2000 NASD Discip. LEXIS 3, at **21, 25 (NAC Apr. 19, 2000).

¹⁴ FINRA Sanction Guidelines, p. 35 (2007).

¹⁵ Enforcement recommended that Respondent be sanctioned with a three-month suspension in all capacities and a \$5,000 fine for failing to disclose his misdemeanor charge on his Form U-4 in violation of NASD Conduct Rule 2110 and IM-1000-1. (Motion, p. 2).

V. Order

Respondent Thaddeus E. Akloyo is barred from associating with any FINRA member firm in any capacity for violating NASD Conduct Rule 2110 and NASD Procedural Rule 8210 for failing to respond to four requests for information issued by the FINRA staff pursuant to Rule 8210. The bar will become effective immediately upon this Default Decision becoming the final disciplinary action of FINRA.


Sharon Witherspoon
Hearing Officer

Dated: Washington, DC
August 30, 2007

Copies to:

Thaddeus E. Akloyo (via FedEx and first-class mail)
David F. Newman, Esq. (via electronic and first-class mail)
John M. D'Amico, Esq. (via electronic and first-class mail)
Mark P. Dauer, Esq. (via electronic and first-class mail)
Rory C. Flynn, Esq. (via electronic and first-class mail)

**NASD
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

THADDEUS E. AKLOYO
(CRD No. 5159766),

Respondent.

Disciplinary Proceeding
No. 2006005849101

COMPLAINT

The Department of Enforcement alleges:

1. On or about June 13, 2006, Thaddeus E. Akloyo submitted a Form U4 with Ameriprise seeking to become registered with that firm. On or about July 11, 2006, Akloyo was terminated without becoming registered with the firm. He has not been associated with a member firm since that date.
2. Akloyo remains subject to NASD's jurisdiction pursuant to Article V, Section 4, of NASD's By-Laws, in that: the conduct that is the subject of the First Cause of Action occurred while he was associated with Ameriprise; and, this complaint was filed within, and the violations of NASD Procedural Rule 8210 alleged in the Second Cause of Action occurred within, two years of Akloyo's last association with a member firm.

FIRST CAUSE OF ACTION
Willful Failure to Disclose a Material Fact
(NASD Conduct Rule 2110 and IM-1000-1)

3. The Department realleges and incorporates by reference paragraphs 1 and 2 above.
4. In or about July 2005, the District Court of Maryland for Baltimore County charged Akloyo with a misdemeanor involving the theft of property in Maryland.
5. On or about June 13, 2006, Akloyo willfully failed to disclose a material fact on a Form U4. Specifically, Akloyo failed to disclose that he had been charged with misdemeanor theft of property. In the Form U4 he submitted to Ameriprise, Akloyo falsely answered "no" to Question 14B(1)(b), which asks "Have you ever: been charged with a misdemeanor specified in 14B(1)(a)?" One of the misdemeanors specified in Question 14B(1)(a) is "wrongful taking of property."
6. As a result of this conduct, Akloyo violated NASD Conduct Rule 2110 and IM-1000-1.

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

7. The Department realleges and incorporates by reference paragraphs 1 through 6 above.
8. On or about July 19, 2006, pursuant to NASD Procedural Rule 8210, NASD staff in the Philadelphia District Office sent a letter to Akloyo requesting that he provide information relating to his failure to disclose the misdemeanor charge on his Form U4. The letter was sent by certified and first class mail to the most current residential address for Akloyo in Central Registry Depository (CRD address). The letter warned Akloyo that a failure to comply with the request could subject him to disciplinary action and sanctions including a bar. The receipt for the certified letter was signed and returned by the Postal Service to

the Philadelphia District Office. The name and signature on the certified receipt is not Akloyo's. The first class letter was not returned. The July 19 letter requested a response by August 2, 2006, but Akloyo failed to respond.

9. On or about September 6, 2006, pursuant to NASD Procedural Rule 8210, NASD staff in the Philadelphia District Office sent a second letter to Akloyo requesting that he provide the same information sought in the July 19, 2006 letter. The letter was sent by certified and first class mail to Akloyo's CRD address. The letter warned Akloyo that a failure to comply with the request could subject him to disciplinary action and sanctions including a bar. The certified and first class letters were returned and were marked, "return to sender, attempted – not known, unable to forward." The September 6 letter requested a response by September 20, 2006, but Akloyo failed to respond.
10. On or about September 27, 2006, pursuant to NASD Procedural Rule 8210, NASD staff in the Philadelphia District Office sent a third letter to Akloyo requesting that he provide the same information requested in the July 19 letter. The letter was sent by certified and first class mail to Akloyo's CRD address, to an address identified for Akloyo in Autotrack (Autotrack address), and to an old address listed for Akloyo on his Form U4 (Form U4 address). The letter warned Akloyo that a failure to comply with the request could subject him to disciplinary action and sanctions including a bar. The letters sent to the CRD and Form U4 addresses were returned and were marked to indicate that they could not be delivered or forwarded. The certified receipt for the letter sent to the Autotrack address was signed and returned. The name and signature on the certified receipt is not Akloyo's. The first class letter sent to the Autotrack address was returned as undeliverable. The September 27 letter requested a response by October 11, 2006, but

Akloyo failed to respond.

11. On or about October 13, 2006, pursuant to NASD Procedural Rule 8210, NASD staff in the Philadelphia District Office sent a fourth letter to Akloyo requesting that he provide the same information requested in the July 19, 2006 letter. The letter was sent by certified and first class mail to the CRD and Autotrack addresses. The letter warned Akloyo that a failure to comply with the request could subject him to disciplinary action and sanctions including a bar. The certified receipt for the letter sent to the Autotrack address was returned. The name on the certified receipt is "Thaddeus Akloyo" and the signature appears to be Akloyo's. The first class letter sent to the Autotrack address was not returned. The certified and first class letters sent to the CRD address were returned and were marked to indicate that they could not be delivered or forwarded. The October 13 letter requested a response by October 28, 2006, but Akloyo failed to respond.
12. NASD staff is not aware of a more current residential address or of a business address for Akloyo.
13. As a result of this conduct, Akloyo violated NASD Procedural Rule 8210 and Conduct Rule 2110.

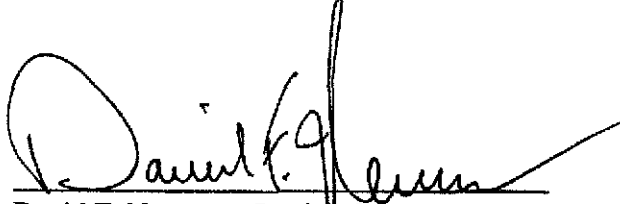
PRAYER

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that on or more of the sanctions provided under NASD Rule 8310(a), including monetary sanctions, be imposed;
- B. order that 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 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



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Date: April 18, 2007

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