

FINANCIAL INDUSTRY REGULATORY AUTHORITY¹
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

KIMBERLY ANN HARPER
(CRD No. 5191291),

Respondent.

Disciplinary Proceeding
No. 20060060576-01

Hearing Officer – AWH

Default Decision

November 30, 2007

Formerly associated person failed to disclose criminal history on a Form U4, in violation of Conduct Rule 2110, and failed to respond to FINRA Staff requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2110. Respondent barred from association with any member firm in any capacity.

Appearances

James M. Stephens, Esq., for Department of Enforcement.

No appearance by or for Kimberly Ann Harper.

DECISION

Introduction

On July 13, 2007, the Department of Enforcement (“Enforcement”) issued the Complaint in this proceeding, alleging that Kimberly Ann Harper (“Respondent” or “Harper”) failed to disclose a felony charge on her Uniform Application for Securities Industry Registration or Transfer (“Form U4”), in violation of NASD Conduct Rule 2110, and that she failed to respond to FINRA requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2110. Respondent failed to file an Answer to

¹ As of July 30, 2007, NASD consolidated with the member firm regulation functions of NYSE and began operating under the new corporate name, the Financial Industry Regulatory Authority (FINRA). References in this decision to FINRA include, where appropriate, NASD.

the Complaint, or to a Second Notice of Complaint. As a result, Enforcement filed a Motion for Entry of Default Decision on October 11, 2007, to which Harper did not respond. Accordingly, pursuant to Procedural Rules 9215(f) and 9269, the Motion will be granted, and the allegations in the Complaint, which is attached to this decision, will be treated as admitted.

Findings of Fact²

The Respondent

Harper became associated with FINRA member firm Ameriprise Financial Services, Inc. on July 25, 2006, when she signed and submitted to Ameriprise a Form U4. On August 4, 2006, Ameriprise terminated her association by filing a Uniform Termination for Securities Industry Registration (Form U5). Harper is not currently associated with a FINRA member firm.

Failure to Disclose Criminal History on Form U4

On January 2, 1990, Harper was charged in the State of Minnesota with third degree burglary, a felony under Minnesota law. On July 25, 2006, Harper signed and submitted to Ameriprise a Form U4. Question 14A(1)(b) on the Form U4 asked whether she had ever been "charged with a felony." Harper answered "no" to that question.

Failure to Respond to Requests for Information

Pursuant to NASD Procedural Rule 8210, on August 15, 2006, FINRA staff sent Harper a request that she provide information pertaining to her termination from Ameriprise. The request was sent to Harper by first class and certified mail to her residential address of record as contained in the Central Registration Depository ("CRD

² All findings of fact are based on the admitted allegations in the Complaint, the Declaration Supporting a Motion for Entry of Default Decision ("Declaration"), and the exhibits attached thereto.

address"). The first class mailing was not returned. The certified mailing was returned, marked "Return to Sender, Unclaimed, Unable to Forward." Harper did not respond to the August 15, 2006, request.

On September 13, 2006, FINRA sent Harper a second request for information pertaining to her termination from Ameriprise. The first class mailing sent to her CRD address was not returned. The receipt for the certified mailing sent to her CRD address was returned, bearing the signature of "Kimberly Harper." Harper did not respond to the second request for information.

Service of the Complaint

On July 13, 2007, Enforcement served the Complaint on Harper by first class and certified mail sent to her last known CRD address. The first class mailing was not returned. The certified mail receipt was returned bearing the signature of "LaShaya Turner," and a new street address for Harper ("the Cottage Grove address").

On August 14, 2007, Enforcement served the Second Notice of Complaint on Harper by first class and certified mail sent to her CRD address and the Cottage Grove address. The first class mailings were not returned. The receipt for the certified mailing to her CRD address was returned unclaimed, but listed a post office box address for Harper in Cottage Grove, Minnesota. The receipt for the certified mailing to the street address in Cottage Grove was returned marked "unclaimed."

Discussion and Conclusions

Jurisdiction

Article V, Section 4 of the FINRA By-Laws provides for a two-year period of retained jurisdiction over an associated person³ after the effective date of the individual's termination of association. During this period of retained jurisdiction, FINRA may file a complaint based upon conduct that occurred while the individual was associated with a member firm, or based upon such person's failure to provide information requested pursuant to NASD Procedural Rule 8210, if the request was made, and the complaint is filed, during the foregoing period of retained jurisdiction.

Harper was associated with Ameriprise from July 25, 2006, through August 4, 2006, when Ameriprise filed the Form U5 terminating her association with the member firm. Enforcement issued its Complaint on July 13, 2007, within two years of Harper's termination from Ameriprise. The Complaint is based upon Harper's conduct while she was associated with Ameriprise, and her failures to respond to information requests occurred during the two-year period following termination of her association with the member firm. Therefore, FINRA has jurisdiction over this proceeding.

Respondent's Default

Enforcement properly served the Complaint and the Notice of Complaint on Harper at her CRD address and, after learning of the Cottage Grove address, served the Second Notice of Complaint on Harper at her CRD address and the Cottage Grove address. Each mailing was sent by first class and certified mail. Pursuant to Procedural

³ FINRA defines an associated person of a member as... "a natural person who is registered or has applied for registration under the Rules of the Association." See Article I(dd) of FINRA By-Laws.

Rule 9134, those mailings establish that Harper had valid constructive notice of the Complaint. Because she failed to respond to the Complaint, Procedural Rules 9215(f) and 9269 authorize the entry of a default decision against her.⁴ Accordingly, the allegations in the Complaint are deemed admitted.

Failure to Disclose Criminal History on Form U4

FINRA, state regulators, and broker-dealers utilize the Form U4 to determine and monitor the fitness of securities professionals.⁵ The Form U4 also “serves as a vital screening device for hiring firms and [FINRA] against individuals with ‘suspect history.’”⁶ Therefore, applicants for FINRA registration must fully and accurately disclose all information required by that form, including any criminal history. An applicant’s failure to do so violates Conduct Rule 2110.⁷

Here, Harper failed to disclose the felony charge of third degree burglary. That information would be significant to firms evaluating an applicant’s suitability to become an associate of securities professionals or to become a registered securities professional herself, and is therefore material information. Her failure to disclose that information constitutes submission of misleading or inaccurate documents to the firm and FINRA, and contravenes the just and equitable principles of trade required by NASD Conduct Rule 2110.

⁴ As previously noted, Harper failed to respond to the Motion for Entry of a Default Decision. That Motion was sent to Harper at her CRD address, the street address in Cottage Grove, and the post-office box address in Cottage Grove.

⁵ See *Rosario R. Ruggiero*, Exchange Act Release No. 37,070, 1996 SEC LEXIS 990, at **8-9 (Apr. 5, 1996).

⁶ *Dist. Bus. Conduct Comm. v. Bernadette Jones*, 1998 NASD Discip. LEXIS 60, at *9 (NAC Aug. 7, 1998).

⁷ See *Dist. Bus. Conduct Comm. v. Prewitt*, No. C07970022, 1998 NASD Discip. LEXIS 37, at **5, 7 (NAC Aug. 17, 1998) (finding that an associated person violated Rule 2110 by providing false information on his Form U4). See also *Thomas R. Alton*, Exchange Act Release No. 36,058, 1995 SEC LEXIS 1975, at *4 (Aug. 4, 1995) (stating that a material misrepresentation on a Form U4 is a serious offense that is inconsistent with the just and equitable principles of trade which FINRA members must uphold).

Failure to Respond to Requests for Information

Procedural Rule 8210 authorizes FINRA to require any person subject to its jurisdiction to provide information and testimony 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.⁸ When an individual fails to respond to information requests, FINRA's ability to perform its regulatory responsibilities is subverted.⁹ Further, a violation of Procedural Rule 8210 is also a violation of Conduct Rule 2110, contravening "high standards of commercial honor."¹⁰

FINRA staff sent two requests for information to Harper's CRD address, requesting information regarding an investigation into her termination from Ameriprise. Pursuant to Procedural Rule 8210(d), the mailings sent to her CRD address provide her with constructive notice of the staff's requests for information. Her signature on the return receipt for the second request for information demonstrates that she had actual knowledge of the requests for information. Therefore, Harper's failures to respond to FINRA requests for information violate Procedural Rule 8210 and Conduct Rule 2110.

⁸ See *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 NASD effectively to conduct its investigations, and emphasizing that NASD members and associated persons must fully cooperate with requests for information); *Dep't of Enforcement v. Benz*, No. C01020014, 2003 NASD Discip. LEXIS 11, at *18 (OHO Mar. 4, 2003) ("Because NASD has no subpoena power, timely and full compliance with information requests is essential to NASD's self-regulatory function.").

⁹ *Joseph P. Hannan*, Exchange Act Release No. 40,438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998).

¹⁰ *Dep't of Enforcement v. Baxter*, No. C07990016, 2000 NASD Discip. LEXIS 3, at *25 (NAC, Apr. 19, 2000).

Sanctions

Failure to Respond to NASD Requests for Information

When a respondent fails to respond in any manner to a request made pursuant to Procedural Rule 8210, the FINRA Sanction Guidelines recommend a bar as the standard sanction.¹¹ Here, the information requested was essential to FINRA's investigation because, among other things, it would have assisted in assessing whether Harper's non-disclosure was willful, thereby subjecting her to statutory disqualification.¹² There are no mitigating factors that would justify a lesser sanction. Accordingly, Harper will be barred from association with any FINRA member firm in any capacity for failing to respond to staff information requests, in violation of Procedural Rule 8210 and Conduct Rule 2110.

Failure to Disclose Criminal History on Form U4

For this offense, the FINRA Sanction Guidelines recommend a fine of \$2,500 to \$25,000, and a suspension of five to thirty business days.¹³ In egregious cases, the Guidelines recommend consideration of a longer suspension or a bar.¹⁴ In this case, Enforcement notes that the violation has not been charged as willful, and the charge did not result in a conviction. Accordingly, it seeks a sanction in the middle of the applicable Sanction Guideline. The Hearing Officer agrees with Enforcement that a fine of \$5,000 and a suspension of 20 business days would be appropriate in this case. However, in

¹¹ FINRA SANCTION GUIDELINES, p. 35 (2007 ed.).

¹² See Article III, Section 4(f) of the FINRA By-Laws.

¹³ SANCTION GUIDELINES, p. 73.

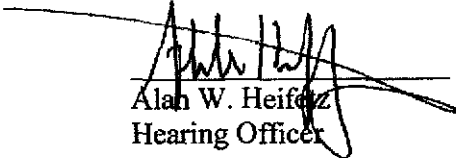
¹⁴ *Id.*

light of the bar for failing to respond to requests for information, the additional sanctions will not be imposed.¹⁵

Conclusion

Kimberly Ann Harper is barred from association with any member firm in any capacity for failing to respond to staff information requests, in violation of Procedural Rule 8210 and Conduct Rule 2110. In light of the bar no additional sanctions are imposed for failure to disclose her criminal history on a Form U4, in violation of Conduct Rule 2110. The bar shall become effective immediately if this Decision becomes the final disciplinary action of FINRA.

SO ORDERED.



Alan W. Heifetz
Hearing Officer

Copies to:

Kimberly Ann Harper *(via first class mail & overnight courier)*
James M. Stephens, Esq. *(via first class & electronic mail)*
Mark P. Dauer, Esq. *(via first class & electronic mail)*
David R. Sonnenberg, Esq. *(via first class & electronic mail)*

¹⁵ See *Dep't of Enforcement v. Asensio*, No. CAF030067, 2006 NASD Discip. LEXIS 20, at *55 (NAC July 28, 2006) (in light of bar for 8210 violation, imposition of a suspension found to be redundant and fine to serve no remedial purpose).

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

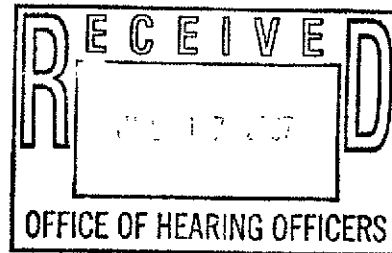
v.

KIMBERLY ANN HARPER
Associated Person
(CRD No. 5191291)

Respondent.

Disciplinary Proceeding No. 20060060576-01

Hearing Officer - ____



COMPLAINT

The Department of Enforcement alleges:

JURISDICTION

1. Respondent Kimberly Ann Harper became associated with NASD member Ameriprise Financial Services, Inc. on or about July 25, 2006 when she signed and submitted to Ameriprise a Uniform Application for Securities Industry Registration or Transfer (Form U-4).
2. On or about August 4, 2006, Ameriprise terminated Harper's employment. This Complaint is being filed within two years of Harper's termination from association with NASD member Ameriprise. Accordingly, NASD retains jurisdiction over Harper pursuant to Article V, Section 4 of NASD By-Laws.

FIRST CAUSE OF COMPLAINT
Failure to Disclose Felony on Form U-4
NASD Bylaws Article V, Section 2; NASD Conduct Rule 2110 and IM-1000-1

3. On January 2, 1990, Harper was charged with third degree burglary in the District Court of Hennepin County, Minnesota.
4. Third degree burglary in the state of Minnesota is a felony.
5. Harper was not associated with any NASD members at that time.
6. On July 25, 2006, Harper filed or caused to be filed a Form U-4 with Ameriprise.
7. Question 14A(1)(b) of the Form U-4 asked "Have you ever . . . been charged with any felony?"
8. Harper answered "no" to Question 14A(1)(b) on the Form U-4.
9. By answering "no" to Question 14A(1)(b) on the Form U-4, Harper failed to disclose the January 2, 1990 felony charge against her.
10. Through this conduct, Harper violated Article V, Section 2 of the NASD By-Laws, NASD Conduct Rule 2110 and IM-1000-1.

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

11. On August 15, 2006, pursuant to and in accordance with NASD Procedural Rule 8210, NASD staff sent a written request for information to Harper requesting information relating to her termination from Ameriprise. This request cited NASD Procedural Rule 8210. This first request for information was sent certified mail, return receipt requested, and first class mail, to Harper at her last known residential address as listed in the Central Registration Depository (CRD). The certified mailing was returned, marked "Return to Sender, Unclaimed, Unable to Forward." The first class mailing was not returned.

12. Service of the first request for information was effected pursuant to and in accordance with NASD Procedural Rule 8210. Harper's response was due by no later than August 30, 2006. Harper did not respond to the first request for information.

13. On September 13, 2006, pursuant to and in accordance with NASD Procedural Rule 8210, NASD staff sent a second written request for information to Harper requesting information relating to her termination from Ameriprise. This request cited NASD Procedural Rule 8210. *The second request for information was sent certified mail, return receipt requested, and first class mail, to Harper at her last known residential address as listed in CRD. The receipt for the certified mailing was returned, bearing the signature of "Kimberly Harper." The first class mailing was not returned.*

14. Service of the second request for information was effected pursuant to and in accordance with NASD Procedural Rule 8210. Harper's response was due by no later than September 22, 2006. Harper did not respond to the second request for information.

15. Through this conduct, Harper violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

PRAYER

WHEREFORE, Enforcement respectfully requests that the Panel:

A. order that one or more of the sanctions provided under NASD Procedural Rule 8310(a), including monetary sanctions, be imposed against Harper, and

B. order that Harper bear such costs of proceeding as are deemed fair and appropriate under the circumstances, in accordance with NASD Procedural Rule 8330.

NASD Department of Enforcement

Date: July 13, 2007



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