

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

CORY HOLT MCNABB
(CRD No. 5318870),

Respondent.

Disciplinary Proceeding
No. 2007009139501

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

August 4, 2009

The Respondent violated Conduct Rule 2110 and IM-1000-1 by failing to disclose his criminal record on his Form U4. The Respondent also violated Conduct Rule 2110 and Procedural Rule 8210 by failing to respond to requests for information about the criminal charges. For these violations, the Respondent was barred from associating with any member firm in any capacity.

Appearances

Marshall Gandy, Senior Regional Counsel, Dallas, TX, for the Department of Enforcement.

No appearance by or for Cory Holt McNabb.

DECISION

I. Introduction

The Department of Enforcement ("Enforcement") for the Financial Industry Regulatory Authority ("FINRA") filed a Complaint (attached to this Decision as Exhibit A) on April 14, 2009. The First Cause of Action alleges that Respondent Cory Holt McNabb ("McNabb") violated Conduct Rule 2110 and Membership and Registration Rule Interpretive Material ("IM") 1000-1 by willfully failing to disclose on his Uniform Application for

Securities Industry Registration or Transfer ("Form U4") that he had been indicted for a felony and had been charged with a reportable misdemeanor. In addition, the Complaint alleges that McNabb willfully failed to disclose that he entered a plea of "no contest" to the misdemeanor charge. The Second Cause of Action alleges that McNabb violated Procedural Rule 8210 and Conduct Rule 2110 by failing to respond to FINRA requests for information regarding his criminal history.¹

McNabb did not answer or otherwise respond to the Complaint. Consequently, on July 8, 2009, Enforcement filed a Motion for Entry of Default Decision, supported by the Declaration of Marshall Gandy ("Gandy Decl.") and three exhibits. McNabb did not reply to the motion.

II. Findings of Fact and Conclusions of Law

A. Respondent's Default

The Hearing Officer finds that Enforcement properly served McNabb with the Complaint by mailing the Complaint and the First and Second Notices of Complaint to him at his most current residential address shown in the Central Registration Depository (the "CRD Address") in accordance with FINRA Procedural Rule 9134(b)(1). Enforcement mailed the Complaint and First Notice of Complaint to McNabb by first-class and certified mail on April 13, 2009.² The United States Postal Service returned the mailings with

¹ As of July 30, 2007, NASD consolidated with the member regulation and enforcement functions of NYSE Regulation and began operating under a new corporate name, the Financial Industry Regulatory Authority (FINRA). References in this decision to FINRA include, where appropriate, NASD. Following consolidation, FINRA began developing a new FINRA Consolidated Rulebook. The first phase of the new consolidated rules became effective on December 15, 2008, including certain conduct rules and procedural rules. See Regulatory Notice 08-57 (Oct. 2008). This decision refers to and relies on the NASD Conduct Rules that were in effect at the time of Respondent's alleged misconduct. The applicable rules are available at www.finra.org/rules.

² Gandy Decl. ¶ 24.

notations indicating that they could not be delivered as addressed.³ Enforcement mailed the Complaint and Second Notice of Complaint to McNabb's CRD Address by first-class and certified mail on May 19, 2009. Once again the United States Postal Service returned the mailings because they could not be delivered as addressed.⁴ To date, McNabb has not filed an Answer with the Office of Hearing Officers or otherwise responded to the Complaint.

McNabb received valid constructive notice of this proceeding and therefore defaulted by failing to answer the Complaint.⁵ Accordingly, pursuant to Procedural Rules 9215(f) and 9269(a)(2), the Hearing Officer deems the allegations in the attached Complaint admitted and grants Enforcement's motion for entry of a default decision.⁶

B. Jurisdiction

On April 11, 2007, McNabb completed and signed a Form U4 to become registered with FINRA as a General Securities Representative through A.G. Edwards & Sons, Inc. A.G. Edwards submitted McNabb's Form U4 to FINRA on April 12, 2007. On April 20, 2007, A.G. Edwards terminated McNabb's association with the firm, and on May 29, 2007, before McNabb's registration became effective, A.G. Edwards filed a Uniform Termination Notice for Securities Industry Registration (Form U5) with FINRA. McNabb was associated with A.G. Edwards from April 5, 2007, to April 20, 2007. He has never worked for another broker-dealer.⁷

³ Gandy Decl. ¶ 24.

⁴ Gandy Decl. ¶ 26.

⁵ *Dep't of Enforcement v. Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at *5 (N.A.C. Dec. 9, 2003) (NASD Procedural Rule 9134(b)(1) allows for constructive notice by mailing a complaint to the respondent's most recent CRD address) (quoting *Lubeck v. SEC*, 1998 U.S. App. LEXIS 18849, at *20 (9th Cir. Aug. 12, 1998)).

⁶ The factual determinations in this decision are based on the allegations of the attached Complaint, as well as additional materials Enforcement filed with its motion for entry of a default decision.

⁷ CX-1.

By applying for registration with FINRA, McNabb became an associated person of A.G. Edwards subject to FINRA's jurisdiction.⁸ Further, FINRA has jurisdiction to bring this proceeding under Article V, Section 4 of FINRA By-Laws because (1) the Complaint was filed within two years after the date he ceased to be associated with A.G. Edwards, and (2) the Complaint charges him with misconduct committed while he was associated with A.G. Edwards and with failing to respond to FINRA's requests for information made during the two-year period following the termination of his association with the firm.⁹

C. False Form U4

On April 11, 2008, McNabb applied for registration as a General Securities Representative by completing a Form U4. Question 14A.(1)(b) of the Form U4 required him to disclose if he had ever been charged with any felony. McNabb answered "No"; but, in fact, he had been indicted on April 6, 2004, in the 14th Judicial Circuit Court for Bay County, Florida, for grand theft, a felony under Florida law. On July 19, 2004, the State of Florida filed a deferred prosecution agreement that allowed McNabb to enter a Pre-Trial Intervention Program. The indictment was later dismissed.¹⁰

McNabb also answered "No" to Questions 14B.(1)(a) and 14B.(1)(b) of the Form U4 that required him to disclose if he had ever been charged with, or entered a plea of no contest to, a misdemeanor involving the wrongful taking of property. In fact, on or about June 1, 2004, McNabb had been charged in Bay County, Florida, with passing worthless checks, a misdemeanor under Florida law. Moreover, on July 7, 2004, McNabb entered a plea of no

⁸ FINRA By-Law Article I(r)(1) defines "associated person of a member" as "a natural person who is registered or has applied for registration under [FINRA's Rules]." NASD Notice to Members 99-95 states that "any person who signs and submits a Form U4 is an associated person." NASD Notice to Members 99-95 (Dec. 1, 1999).

⁹ Article V, Sec. 4, FINRA By-Laws, available at www.finra.org/rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: Bylaws").

¹⁰ Gandy Decl. ¶¶ 3, 10.

contest to this charge and was placed on probation for 60 days and ordered to pay restitution, a fine, and court costs.¹¹

Applicants for registration with FINRA must fully and accurately disclose all material information in response to questions on a Form U4. A Form U4 that is inaccurate or incomplete so as to be misleading may be deemed to be conduct inconsistent with just and equitable principles of trade in violation of Conduct Rule 2110.¹² Because the Form U4 is used by FINRA and other self-regulatory organizations, state regulators, and broker-dealers to determine and monitor the fitness of securities professionals, “the candor and forthrightness of applicants is critical to the effectiveness of the screening process.”¹³

Based on the allegations in the Complaint, the Hearing Officer finds that McNabb violated Conduct Rule 2110 and IM-1000-1 by not disclosing on his Form U4 that he had been charged with a felony and that he had entered a plea of no contest to a misdemeanor that involved the wrongful taking of property.

The Hearing Officer further finds that McNabb is subject to statutory disqualification because his failure to disclose his criminal history was willful. Section 3(a)(39)(F) of the Securities Exchange Act of 1934 (“Exchange Act”) states that a person who files an application for association with a member of a self-regulatory organization and who “willfully” fails to disclose “any material fact ... which is required to be stated” in such application is “statutorily disqualified” from participating in the securities industry.¹⁴ The allegations in the Complaint and the evidence submitted by Enforcement in support of the

¹¹ Gandy Decl. ¶¶ 9, 11.

¹² See IM-1000-1: *Thomas R. Alton*, 52 S.E.C. 380, 382 (1995), *petition for rev. denied*, 105 F.3d 664 (9th Cir. 1996).

¹³ *Guang Lu*, Exchange Act Rel. No. 51047, 2005 SEC LEXIS 117, at *19-20 (Jan. 14, 2005), *aff’d*, 179 Fed. Appx. 702 (D.C. Cir. 2006).

¹⁴ See also Article III, Sec. 4 of the FINRA By-Laws.

Motion for Entry of Default Decision are sufficient to establish that McNabb acted “willfully” in failing to disclose “material” information on his Form U4.

Both the seriousness and timing of the criminal charges supports the conclusion that McNabb intended to elect not to report the criminal charges on his Form U4. This is sufficient to support the determination that he acted “willfully.” A finding of “willful” does not require that McNabb intended to violate Conduct Rule 2110.¹⁵

In addition, the evidence supports the finding that the omitted information was material for purposes of disclosure on McNabb’s Form U4. “Because of the importance that the industry places on full and accurate disclosure of information required by the Form U4, we presume that essentially all the information that is reportable on the Form U4 is material.”¹⁶ In this case, the Hearing Officer concludes that a reasonable employer or regulator would have viewed the criminal charges against McNabb as extremely relevant.¹⁷ McNabb is therefore statutorily disqualified from participating in the securities industry.

D. Failure to Respond to Information Requests

The Second Cause of Action alleges that McNabb failed to respond to two written requests that he provide information regarding his failure to disclose his criminal charges on his Form U4. The requests were dated December 1, 2008, and January 12, 2009. FINRA staff sent each request to McNabb at his CRD Address by regular and certified first-class mail pursuant to Procedural Rule 8210, as well as an alternative address the staff believed might

¹⁵ *Dep’t of Enforcement v. Mathis*, No. C10040052, 2008 FINRA Discip. LEXIS 49, at *18 (N.A.C. Dec. 12, 2008).

¹⁶ *Dep’t of Enforcement v. Knight*, No. C10020060, 2004 NASD Discip. LEXIS 5, at *13 (N.A.C. Apr. 27, 2004) (citing *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965)).

¹⁷ See, e.g., *Dep’t of Enforcement v. Toth*, No. E9A2004001901, 2007 NASD Discip. LEXIS 25, at *34-35 (N.A.C. July 27, 2007), *aff’d*, *Douglas J. Toth*, Exchange Act Rel. No. 58074, 2008 SEC LEXIS 1520 (July 1, 2008), *petition for review denied*, *Toth v. SEC*, 2009 U.S. App. LEXIS 7226 (3d Cir. Apr. 6, 2009).

be more current. The United States Postal Service later informed the staff that the alternate address was not a valid address for McNabb.¹⁸ McNabb did not respond to either request.¹⁹

The Hearing Officer finds that the allegations in the Second Cause of Action are sufficient to establish, for purposes of this default decision, that McNabb violated Procedural Rule 8210 and Conduct Rule 2110.

III. Sanctions

A. False Form U4

For filing a false, misleading or inaccurate Form U4 or failing to file necessary amendments to a Form U4, the FINRA Sanction Guidelines (“Guidelines”) recommend that an individual be fined from \$2,500 to \$50,000 and suspended in all capacities for five to 30 business days. In egregious cases, the Guidelines call for consideration of a suspension in any or all capacities of up to two years, or a bar.²⁰ One of the principal considerations for determining sanctions for such a violation is the nature and significance of the information at issue.²¹

This is an egregious case for which McNabb should be barred. The criminal charges involved serious allegations of dishonesty. Undoubtedly, this was material information to investors and regulators, which McNabb clearly knew or should have known. On the other hand, the record contains no mitigating factors. Accordingly, the Hearing Officer will bar McNabb from associating with any member firm in any capacity for his failure to report his criminal history on his Form U4.

¹⁸ Gandy Decl. ¶ 18 & n.1.

¹⁹ Gandy Decl. ¶¶ 11-14.

²⁰ FINRA Sanction Guidelines 73-74 (2007), available at www.finra.org/sanctionguidelines.

²¹ *Id.*

B. Failure to Respond to Requests for Information

The Guidelines recommend a bar where a respondent fails to respond in any manner to a request for information issued pursuant to Procedural Rule 8210.²² Here, McNabb failed to respond in any manner to two written requests that he provide information in connection with the Staff's investigation into the circumstances surrounding his failure to report his criminal history on his Form U4. There are no mitigating factors that would justify a less severe sanction. Accordingly, the Hearing Officer will bar McNabb from associating with any FINRA member in any capacity for violating Procedural Rule 8210 and Conduct Rule 2110.

IV. Order

McNabb is barred from association with any member firm in any capacity for his failure to disclose that he had been charged with a felony and a misdemeanor involving the theft of property, in violation of Conduct Rule 2110 and IM-1000-1. McNabb also is barred for his failure to respond to requests for information, in violation of Conduct Rule 2110 and Procedural Rule 8210. The bars will become effective immediately if this Default Decision becomes FINRA's final disciplinary action in this proceeding.



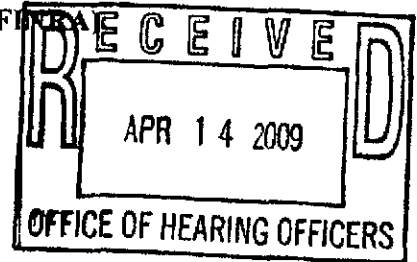
Andrew H. Perkins
Hearing Officer

Copies to:

Cory Holt McNabb (by FedEx, next-day delivery, and first-class mail)
Marshall Gandy, Esq. (by first-class and electronic mail)
David Sonnenberg, Esq. (by electronic mail)
Mark P. Dauer, Esq. (by electronic mail)

²² Guidelines at 35.

FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA)
OFFICE OF HEARING OFFICERS



DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

CORY HOLT McNABB
CRD No. 5318870

RESPONDENT

DISCIPLINARY PROCEEDING
No. 2007009139501

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

This case involves a registered representative who failed to disclose a felony charge, a misdemeanor charge and plea of no contest to a misdemeanor on his Form U4. The representative also failed to respond to FINRA requests for information.

JURISDICTION

1. Respondent Cory Holt McNabb has never been registered with FINRA. On April 11, 2007, however, McNabb completed and signed a Uniform Application for Securities Industry Registration or Transfer (Form U4) by which he sought to become registered with FINRA through A.G. Edwards & Sons, Inc. as a General Securities Representative. A.G. Edwards submitted McNabb's Form U4 to FINRA on April 12, 2007. On April 20, 2007, A.G. Edwards terminated McNabb's association with the firm, and on May 29, 2007, before McNabb's registration became effective, A.G. Edwards filed a Form U5 with FINRA. McNabb was only employed by A.G. Edwards from April 5, 2007 to April 20,

2007, never sat for any securities license testing, and has never worked for any other securities firm.

2. FINRA retains jurisdiction to file this Complaint against McNabb pursuant to Article V, Section 4 of the FINRA By-Laws, which provides that FINRA shall retain jurisdiction over a formerly associated person for two years after the effective date of termination of registration. Based on his termination date from A.G. Edwards & Sons, Inc., FINRA retains jurisdiction over McNabb until May 28, 2009.

FIRST CAUSE OF ACTION
WILLFUL FAILURE TO DISCLOSE ON FORM U4
VIOLATION OF NASD Conduct Rule 2110, ARTICLE V, SECTION 2 OF THE FINRA BY-
LAWS, AND OF NASD MEMBERSHIP AND REGISTRATION RULE IM-1000-1

3. The Department realleges and incorporates by reference paragraphs 1-2 above.
4. On April 6, 2004, McNabb was arrested for felony grand theft by check in Bay County, Florida.
5. On April 6, 2004, an indictment filed in the 14th Judicial Circuit Court for Bay County, Florida charged McNabb with one felony count of grand theft under Chapter 812.014(2C) Florida Statutes. On July 19, 2004, the State of Florida filed a deferred prosecution agreement; McNabb completed the terms of a Pre-Trial Intervention Program; the case was *nolle prossed*; and the indictment was dismissed.
6. On or about June 1, 2004, a complaint was sworn out against McNabb in Bay County, Florida under Chapter 832.05 Florida Statutes for the misdemeanor charge of passing worthless checks. On July 7, 2004, McNabb entered a plea of

no contest, was placed on probation for a period of sixty days, and was ordered to pay restitution, fine and court costs.

7. On April 11, 2008, in completing the Form U4 by which McNabb applied for registration with FINRA, he falsely answered "No" to question 14A.(1)(b), which asked if he had ever been charged with any felony. In fact, as set forth above, McNabb had been charged with a felony offense.
8. In addition, on April 11, 2008, in completing the Form U4 by which McNabb applied for registration with FINRA, he also falsely answered "No" to question 14B.(1)(a), which asked if he had ever been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign or military court to a misdemeanor involving: investments or an investment-related business or any fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses.
9. In fact, as set forth above, on July 7, 2004, McNabb had entered a plea of no contest to the misdemeanor offense of passing worthless checks.
10. On April 11, 2008, in completing the Form U4 by which McNabb applied for registration with FINRA, he falsely answered "No" to question 14B.(1)(b), which asked if he had ever been charged with a misdemeanor involving: investments or an investment-related business or any fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses. In fact, as set forth above, McNabb had been charged with the misdemeanor offense of passing worthless checks.

11. In addition to answering "No" to Questions 14A.(1)(b), 14B.(1)(a), and 14B.(1)(b) on the U4, McNabb did not complete and submit a Criminal Disclosure Reporting Page with his Form U4 disclosing any facts concerning his criminal history.
12. By failing to disclose facts pertaining to his criminal history on his Form U4, McNabb submitted or caused to be submitted a Form U4 to FINRA that was materially false or inaccurate. Specifically, McNabb willfully failed to disclose material facts concerning his criminal history, as described in paragraphs 4-6 above, on his Form U4.
13. Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rule 2110, Article V, Section 2 of the FINRA By-Laws, and NASD Membership and Registration Rule IM-1000-1 by Cory H. McNabb.

**SECOND CAUSE OF ACTION
FAILURE TO RESPOND**

**VIOLATION OF NASD CONDUCT RULE 2110, NASD PROCEDURAL RULE 8210, FINRA
CONDUCT RULE 2010 AND FINRA PROCEDURAL RULE 8210**

14. The Department realleges and incorporates by reference paragraphs 1-13 above.
15. By letters dated December 1, 2008, FINRA staff requested, pursuant to NASD Procedural Rule 8210, that McNabb provide written information to FINRA regarding his failure to disclose a felony and a misdemeanor charge on a Form U4. The December 1, 2008 letters were sent, via certified and regular mail, to McNabb at his CRD address of record: [REDACTED]
[REDACTED] and to an alternate address: [REDACTED]
[REDACTED]. All letters were returned marked as undeliverable and unable to forward. Pursuant to the request for information,

McNabb was required to respond on or before December 15, 2008. McNabb did not respond to the staff's December 15, 2008 request to provide information.

16. After McNabb failed to respond to the staff's first request, by letters dated January 12, 2009, FINRA staff made a second request, this time pursuant to FINRA Procedural Rule 8210, that McNabb provide information to FINRA regarding his failure to disclose a felony and a misdemeanor charge on a Form U4. The January 12, 2009 letters was sent, via certified and regular mail, to McNabb at his CRD address of record: [REDACTED] and to an alternate address: [REDACTED]. All letters were returned marked as undeliverable and unable to forward. Pursuant to the request for information, McNabb was required to respond on or before January 26, 2009. McNabb did not respond to the staff's January 12, 2009 request to provide information.
17. FINRA staff has no knowledge of a residential address for McNabb that is more current than the addresses to which the letters set forth above were sent and has no knowledge of a current business address for McNabb.
18. To the date of this Complaint, McNabb has not provided FINRA staff any of the information or documents it requested pursuant to NASD Procedural Rule 8210 and FINRA Procedural Rule 8210.
19. Such acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rule 2110, NASD Procedural Rule 8210, FINRA Conduct Rule 2010 and FINRA Procedural Rule 8210 by Cory Holt McNabb.

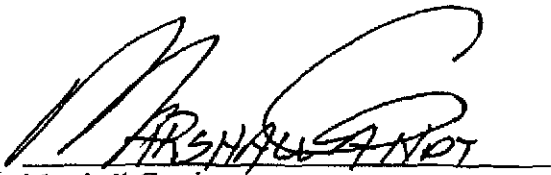
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed.
- B. order that the Respondent bear such costs of the proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA 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.

FINRA DEPARTMENT OF ENFORCEMENT

Date: April 13, 2009

A handwritten signature in black ink, appearing to read "MARSHALL GANDY", is written over a horizontal line.

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