

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

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REGISTRATION & DISCLOSURE

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ROBERT J. SOPER
(CRD No. 5341447),

Respondent.

Disciplinary Proceeding
No. 2007009246101

Hearing Officer – LBB

DEFAULT DECISION

October 1, 2008

Respondent is barred from association with any FINRA member in any capacity for failure to provide requested information, in violation of Procedural Rule 8210 and Conduct Rule 2110. In light of the bar, no additional sanction is imposed for Respondent's willful failure to make required disclosures on his Form U4, in violation of Conduct Rule 2110 and IM-1000-1.

Appearances

William Brice La Hue, Senior Regional Counsel, FINRA, Atlanta, Georgia, for the
Department of Enforcement.

No appearance by or for Respondent.

DECISION

The Department of Enforcement ("Enforcement") filed the Complaint in this proceeding on April 21, 2008, asserting two causes of action against Respondent Robert J. Soper ("Respondent"). The first cause of action alleges that Respondent willfully failed to disclose on his Uniform Application for Securities Industry Registration ("Form U4") that he had been charged with a felony, thereby violating NASD Conduct Rule 2110 and IM-1000-1. The second

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cause of action alleges that Respondent failed to respond to Rule 8210 requests for information, thereby violating NASD 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 July 18, 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

On April 21, 2008, Enforcement served the Complaint and Notice of Complaint on Respondent by first-class regular and certified mail at his most current residential address as listed in the Central Registration Depository ("CRD") and to a possible alternative address. The Notices and Complaint sent by regular first-class mail have never been returned to the FINRA District Office. The Notices sent by certified mail were returned to the FINRA District Office, marked "Unclaimed."

Enforcement served the Complaint and Second Notice of Complaint on Respondent by first-class regular and certified mail at his CRD address and the possible alternative address on May 21, 2008. The Second Notices sent by certified mail were returned marked "Unclaimed." The Second Notices sent by regular first-class mail were not returned.

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

¹ The factual determinations in this decision are based on the allegations of the attached Complaint and the materials Enforcement filed with its motion, including a supplemental filing.

II. Jurisdiction

Respondent was associated with FINRA member firm Garden State Securities, Inc. ("Garden State") in May and June 2007. Respondent submitted a Form U4 to Garden State in May 2007, but was never registered by Garden State or any other member firm. By signing and submitting a Form U4, Respondent became an associated person of Garden State pursuant to Article 1, Section (rr)(1) of FINRA's By-Laws, and thereby subjected himself to FINRA's jurisdiction.

Although Respondent has not been associated with any FINRA member since June 2007, 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

Garden State filed a Uniform Termination Notice for Securities Industry Registration (Form U5) on June 5, 2007. Upon receipt of the Form U5, FINRA initiated an investigation into the allegations disclosed by the filing.

IV. Violations

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

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. 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). 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).

On or about May 16, 2007, Respondent completed and signed a Form U4 and submitted it to Garden State. Respondent marked the form “No” in response to Question 14A(1)(b), which asks if the applicant has ever been charged with a felony. The response was inaccurate because in February 2007, Respondent had been charged with a felony for preventing or dissuading a victim from reporting a crime or causing an arrest. By supplying inaccurate information, Respondent violated Conduct Rule 2110 and IM-1001-1.

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 The Complaint alleges that Respondent’s failure to disclose the felony charge was willful, and the facts support the allegation. Form U4 clearly required the information, and his failure to disclose that he had been charged with a felony only three months earlier establishes that he willfully failed to disclose the information.⁴

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, at *10 (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* at *8; *Arthur Lipper Corp. v. SEC*, 547 F.2d 171, 180 (2d Cir. 1976), *cert. denied*, 434 U.S. 1009 (1978).

⁴ Article III, Section 4 of FINRA’s By-Laws 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 [Securities Exchange] Act [of 1934].” 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.

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 willfully failing to disclose material facts on his Form U4.

B. Respondent Violated Procedural Rule 8210 by Failing 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 July 11 and July 26, 2007, pursuant to Rule 8210, FINRA staff sent Respondent letters by first-class certified and regular mail to his CRD address, requesting information and documents concerning the allegations disclosed on the Form U5. The letters sent by regular mail were not returned, and the letters sent by certified mail were returned marked "Unclaimed." Respondent did not respond to the requests. Because the requests were sent to his CRD address, Respondent is deemed to have received them.

FINRA then obtained another possible address for Respondent. On February 5 and February 19, 2008, FINRA sent letters pursuant to Rule 8210 to Respondent's CRD address and to the other address, by first-class regular and certified mail. Neither letter sent by regular mail was returned by the Postal Service. Both certified letters were returned marked "Unclaimed." Respondent did not respond to either request.

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 Conduct 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 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 requested is an aggravating factor. *See Sanction Guidelines* at 35. Information concerning the felony charge would be important in a determination of the accuracy of his Form U4 disclosures and in evaluating whether the failure to disclose was willful, and whether Respondent was statutorily disqualified as a result of any subsequent developments in the criminal matter. A bar is the appropriate sanction for Respondent's failure to respond to requests for information, in violation of Rules 8210 and 2110.

For filing a false, misleading, or inaccurate Form U4, the FINRA Sanction Guidelines recommend a fine of \$2,500 to \$50,000 and a suspension of five to 30 business days, or in egregious cases, a longer suspension or a bar. *FINRA Sanction Guidelines* at 73. Enforcement recommends a sanction of a six-month suspension. The information sought by the Rule 8210 request might have been important in determining the appropriate sanction. Given the nature of the information that was omitted and the willfulness of Respondent's violation of Conduct Rule 2110 and IM-1000-1, a suspension of six months might well be an appropriate sanction, but in light of the bar imposed for Respondent's failure to respond to Rule 8210 requests for information and the lack of complete information resulting from that failure, no additional sanction is imposed for filing an inaccurate Form U4.

VI. Conclusion

Respondent is barred from association with any FINRA member in any capacity for failure to provide requested information, in violation of Procedural Rule 8210 and Conduct Rule

2110. No additional sanction is imposed for Respondent's failure to make required disclosures on Form U4, in violation of Conduct Rule 2110 and IM-1000-1.

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

SO ORDERED.


Lawrence B. Bernard
Hearing Officer

Copies to: Robert J. Soper (*via overnight courier and first-class mail*)
William Brice La Hue, Esq. (*via email and first-class mail*)
David R. Sonnenberg, Esq. (*via email and first-class mail*)
Mark P. Dauer, Esq. (*via email and first-class mail*)

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ROBERT J. SOPER,
(CRD No. 5341447)

Respondent.

Disciplinary Proceeding
No. 2007009246101

COMPLAINT

The Department of Enforcement alleges:

RESPONDENT

1. Robert J. Soper, ("Soper") entered the securities industry in May 2007, when he was associated with Garden State Securities, Inc. ("Garden State"). Soper was associated with Garden State until June 2007. Soper is not currently employed by a FINRA member, but remains subject to FINRA's jurisdiction pursuant to Article V, Section 4 of the FINRA By-Laws.

SUMMARY

2. In May 2007, Soper submitted a Uniform Application for Securities Industry Registration ("Form U4") application for registration with a FINRA member. Soper failed to disclose on the Form U4 that in February 2007, he had been charged with a felony for trying to prevent or dissuade a victim from reporting a crime or causing arrest. In addition, Soper failed to respond to requests, which were issued pursuant to NASD Procedural Rule 8210, to provide information to FINRA staff in connection with its investigation of his inaccurate Form U4.

FIRST CAUSE OF ACTION

NASD Conduct Rule 2110 and IM-1000-1

(Failure to Disclose a Reportable Event on Form U4)

3. The Department realleges and incorporates by reference paragraphs 1 and 2 above.
4. In February 2007, Soper was charged with a felony in Reno Township, Nevada for preventing or dissuading a victim from reporting a crime or causing an arrest.
5. On or about May 16, 2007, Soper completed and signed a Form U4 application for registration, and submitted the Form U4 to Garden State.
6. The May 16, 2007, Form U4 indicates that Soper answered "No" to question 14A(1)(b).
7. Question 14A(1)(b) on the Form U4, asks if the applicant has ever "been charged with any felony?"
8. Soper willfully failed to disclose to Garden State the material fact that he had been charged with a felony, when he answered "No" to question 14A(1)(b) on his Form U4.
9. Such acts, practices and conduct alleged above constitute separate and distinct violations of NASD Conduct Rule 2110 and IM-1000-1 by Respondent Soper.

SECOND CAUSE OF ACTION

NASD Conduct Rule 2110 and Procedural Rule 8210

(Failure to Respond to FINRA Requests for Information)

10. The Department realleges and incorporates by reference paragraphs 1 through 9, above.
11. On or about June 5, 2007, FINRA initiated an investigation into the allegations on a Uniform Termination Notice for Securities Industry Registration ("Form U5") filed by Garden State regarding Soper. The Form U5 indicates that Soper had failed to accurately complete a Form U4.
12. By letter dated July 11, 2007, sent via first class and certified mail to Soper at his CRD residential address in Raleigh, North Carolina, and pursuant to NASD Procedural Rule 8210, Soper was requested to provide a written statement, and any applicable court documents

regarding the allegations disclosed on his Form U5. The July 11, 2007, letter set a deadline of July 25, 2007, for the submission of the requested written statement.

13. The July 11, 2007, letter sent by first class mail was not returned. The copy of the July 11, 2007, letter sent by certified mail was returned indicating that it was "unclaimed." Soper did not respond by the July 25, 2007 deadline.
14. By letter dated July 26, 2007, sent via first class and certified mail to Soper at his CRD address, Soper was again requested, pursuant to NASD Procedural Rule 8210, to provide a written statement, and any applicable court documents regarding the allegations disclosed on his Form U5. The July 26, 2007, letter set a deadline of August 9, 2007, for the response.
15. The July 26, 2007, letter sent by first class mail was not returned. The copy of the July 26, 2007, letter sent by certified mail was returned indicating that it was "unclaimed." Soper did not respond by the August 9, 2007 deadline.
16. Subsequently, FINRA obtained another possible address for Soper. Therefore, by letter dated February 5, 2008, sent via first class and certified mail to Soper at his CRD residential address in Raleigh, North Carolina, and to another possible address (a variation of the spelling of the street in his CRD residential address), Soper was requested, pursuant to NASD Procedural Rule 8210, to provide a written statement and any applicable court documents regarding the allegations disclosed on his Form U5. The February 5, 2008, letter set a deadline of February 19, 2008, for the submission of the requested written statement.
17. The February 5, 2008 letters sent by first class mail have not been returned. The February 5, 2008 letters sent by certified mail were returned indicating that they were "Unclaimed." Soper did not respond by the February 19, 2008 deadline.
18. Therefore, on February 19, 2008, another set of letters were sent via first class and certified mail to Soper at his CRD residential address in Raleigh, North Carolina, and to the other possible address, each pursuant to NASD Procedural Rule 8210. Soper was again requested to provide a written statement and any applicable court documents regarding the allegations

disclosed on his Form U5. The February 19, 2008 letters set a deadline of March 4, 2008, for the submission of the requested written statement.

19. The February 19, 2008 letters sent by first class mail have not been returned. The February 19, 2008 letters sent by certified mail were returned stating that they were "Unclaimed." Soper did not respond by the March 4, 2008 deadline, and has not responded as of the date hereon.
20. Such acts, practices and conduct alleged above constitute separate and distinct violations of NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by Respondent Soper.

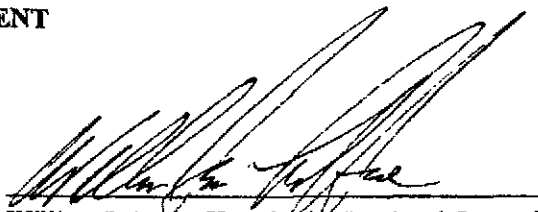
RELIEF REQUESTED

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 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.

FINRA DEPARTMENT OF ENFORCEMENT

Date: 4/21/08


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