

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

KELLYE ALLEN RAINEY
(CRD No. 5037769),

Respondent.

Disciplinary Proceeding
No. 2007009291201

Hearing Officer – Sara Nelson Bloom

DEFAULT DECISION

March 19, 2009

Respondent is barred from associating with any FINRA member in any capacity for failing to provide requested information, in violation of Rules 8210 and 2110. In light of the bar, no further sanctions are imposed for Respondent's willful failure to make a required disclosure on her Form U4, in violation of Rule 2110 and IM-1000-1.

Appearances

William Brice La Hue, Esq., Atlanta, GA, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

I. Background

On November 15, 2008, the Department of Enforcement ("Enforcement") filed a two-cause Complaint in this proceeding, attached to this Decision as Exhibit A. Cause One of the Complaint alleges that Respondent Kellye Allen Rainey ("Respondent") violated Rule 2110 and IM-1000-1 by willfully failing to disclose a felony charge on her Uniform Application for Securities Registration or Transfer ("Form U4"). Cause Two of the Complaint alleges that Respondent violated Rules 8210 and 2110 by failing to appear for on-the-record testimony. Respondent did not file an Answer to the Complaint. On January 7, 2009, Enforcement filed a

Motion for Entry of Default Decision and Request for Sanctions, supported by the declaration of William Brice La Hue, Esq., and four exhibits. Respondent did not respond to the Motion. For the reasons set forth below, the Motion is granted.¹

II. Respondent's Default

On October 15, 2008, Enforcement served the Complaint and Notice of Complaint on Respondent, by certified and first-class mail, at her last known residential address as listed in the Central Registration Depository ("CRD address"). Respondent did not file an Answer to the Complaint. In the same manner, on November 14, 2008, Enforcement served the Complaint and Second Notice of Complaint on Respondent at the CRD address. Once more, Respondent did not file an Answer to the Complaint.

Enforcement complied with Rule 9134(b)(1) by mailing the Complaint and Notices of Complaint to Respondent's CRD address, thereby giving Respondent constructive notice of this proceeding. By failing to file an Answer, Respondent defaulted. Pursuant to Rule 9215(f), the Hearing Officer deems the allegations in the Complaint admitted.

III. Jurisdiction

Respondent was associated with FINRA member firm UVEST Financial Services Group, Inc. ("UVEST") from September 2005 to November 2006. Respondent became registered as an investment company and variable contracts products representative in November 2006. Respondent has not been associated or registered with a FINRA member since that time.

Although Respondent is not currently associated with a member firm, FINRA has jurisdiction to bring this proceeding, pursuant to Art. V, § 4 of FINRA's By-Laws, because (1) the Complaint charges Respondent with misconduct while she was an associated person and

¹ The factual determinations in this Decision are based on the allegations of the attached Complaint, which are deemed admitted, and the declaration and exhibits filed by Enforcement with its Motion.

with failing to comply with requests for information made during the two-year period following termination of her last association, and (2) the Complaint was filed within that two-year period.

IV. Violations

A. Failure to Make Form U4 Disclosures

The Complaint alleges that on September 25, 2006, in connection with her application for registration with FINRA, Respondent signed a Form U4. In that Form U4, Respondent answered “No” to Question 14A(1)(b) asking whether she had ever been charged with a felony. However, Respondent’s answer was false. In fact, in August 2003, Respondent was charged with embezzlement in excess of \$1,000, a felony.

Art. V, § 2 (a)(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.” IM-1000-1 provides: “The filing with [FINRA] of information with respect to membership or registration as a Registered Representative which is incomplete or inaccurate so as to be misleading ..., or the failure to correct such filing after notice thereof, may be deemed to be conduct inconsistent with just and equitable principles of trade and when discovered may be sufficient cause for appropriate disciplinary action.” The accuracy of Form U4 disclosures “is critical to the effectiveness” of a self-regulatory organization’s ability to screen and monitor the professionals within the securities industry.²

Therefore, the allegations of the Complaint are sufficient to establish, for purposes of this default decision, that Respondent violated Rule 2110 and IM-1000-1.

² Rosario R. Ruggiero, 52 S.E.C. 725, 728 (1996); see also Daniel Richard Howard, Exch. Act Rel. No. 46269, 2002 SEC LEXIS 1909, at **9-10 (July 26, 2002) (“The candor and forthrightness of applicants is critical to the effectiveness of this screening process.”); Dep’t of Enforcement v. Lu, No. C9A020052, 2004 NASD Discip. LEXIS 8, at *32 (NAC May 13, 2004), aff’d, Exch. Act Rel. No. 51047, 2005 SEC LEXIS 117 (Jan. 14, 2005), aff’d without opinion, 179 Fed Appx. 702, 2006 U.S. App. LEXIS 24875 (D.C. Cir. 2006).

Enforcement requests a finding that Respondent's failure to disclose was willful. Willfulness is not required to establish a violation of Rule 2110, but Art. III, § 4 of FINRA's By-Laws provides that a person is subject to "disqualification" with respect to association with a member, if such person is subject to "statutory disqualification." Specifically, Section 3(a)(39) of the Exchange Act disqualifies a person who has willfully made any false or misleading statement as to any material fact in any application to become registered with a FINRA member, or who has omitted to disclose any material fact which is required to be disclosed in such an application. For this purpose, it is sufficient to establish willfulness if the respondent "knew or reasonably should have known under the particular facts and circumstances that [her] conduct was improper."³ A finding of willfulness does not require the intent to violate the law or a specific rule, but simply intent to commit the act that constitutes the violation.⁴

The Hearing Officer finds that the question on the Form U4 was clear. Moreover, given that the charge of felony embezzlement is serious, it is unlikely that Respondent would have forgotten about it in the three years between the charge and her disclosure. Therefore, the Hearing Officer finds that Respondent's failure to make required disclosures in her Form U4 was willful.⁵

B. Failure to Respond

The Complaint also alleges that on August 7, 2008, FINRA Staff ("Staff") sent Respondent a Rule 8210 request letter to appear for on-the-record testimony on August 21, 2008, concerning the conduct charged in Cause One of the Complaint. Staff sent the request by first-

³ Christopher LaPorte, Exch. Act Rel. No. 39171, 1997 SEC LEXIS 2058, at *8 n.2 (Sept. 30, 1997).

⁴ Dep't of Enforcement v. Knight, No. C10020060, 2004 NASD Discip. LEXIS 5 (NAC Apr. 27, 2004); Dep't of Enforcement v. Sarris, No. C9A020017, 2003 NASD Discip. LEXIS 12, at *11 (OHO 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).

⁵ LaPorte at *8 (finding willfulness when respondent knew or should have known under the particular facts and circumstances that his conduct was improper).

class and certified mail to Respondent's CRD address. When Respondent did not appear as requested, on August 27, 2008, Staff sent a second request in the same manner, this time with a September 10, 2008 appearance date. Respondent again did not appear for testimony as requested. Staff served the requests in accordance with Rule 8210(d), and therefore Respondent is deemed to have received them.

Rule 8210 authorizes FINRA to require any person subject to its jurisdiction to provide information 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.⁶ Here, although Respondent received valid constructive notice of the Staff's request,⁷ she failed to respond.

Therefore, the allegations of the Complaint are sufficient to establish, for purposes of this default decision, that Respondent violated Rules 8210 and 2110.

V. Sanctions

A bar is standard for failure to provide requested information. FINRA Sanction Guidelines ("Guidelines") at p. 35 (2007 ed.). There is no evidence of any mitigating circumstances that would justify a lesser sanction. Therefore, Respondent is barred from associating with any FINRA member in any capacity.

For filing a false, inaccurate, misleading or late Form U4, the Guidelines recommend a suspension of five to 30 business days. In egregious cases, such as those involving repeated inaccurate filings, or a failure to disclose matters which would create a statutory disqualification,

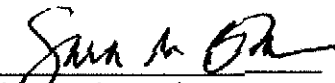
⁶ See, e.g., Dep't of Enforcement v. Valentino, No. FPI010004, 2003 NASD Discip. LEXIS 15, at *12 (NAC May 21, 2003), aff'd, 2004 SEC LEXIS 330 (Feb. 13, 2004) ("It is well established that because [FINRA] lacks subpoena power over its members, a failure to provide information fully and promptly undermines [FINRA's] ability to carry out its regulatory mandate.") (citation omitted); Joseph G. Chiulli, Exch. Act Rel. No. 42359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for NASD to effectively conduct its investigations, and emphasizing that [FINRA] members and associated persons must fully cooperate with requests for information).

⁷ See David I. Cassuto, Exch. Act Rel. No. 48087, 2003 SEC LEXIS 1496, at *9 (June 25, 2003).

among other things, the Guidelines recommend a longer suspension or a bar. Guidelines at pp. 73-74. Enforcement requests a suspension of six months and a \$5,000 fine. Enforcement's recommendation is reasonable; the omitted disclosure involved felony embezzlement, a serious charge. However, in light of the bar for the Rule 8210 violation, no further sanctions are imposed for Respondent's failure to make required disclosures on her Form U4.

VI. Conclusion

For Respondent's failure to provide requested information, in violation of Rules 8210 and 2110, Respondent is barred from associating with any FINRA member in any capacity. In light of the bar, no further sanctions are imposed for Respondent's willful failure to make a required disclosure on her Form U4, in violation of Rule 2110 and IM-1000-1. The bar shall become effective immediately if this Decision becomes the final disciplinary action of FINRA.


Sara Nelson Bloom
Hearing Officer

Copies to: Kellye Allen Rainey (via overnight courier & first-class mail)
William Brice La Hue, Esq. (via electronic & first-class mail)
Mark P. Dauer, Esq. (via electronic & first-class mail)
David R. Sonnenberg, Esq. (via electronic & first-class mail)

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

DEPARTMENT OF ENFORCEMENT,

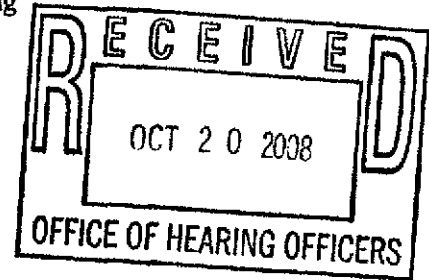
Complainant,

v.

KELLYE ALLEN RAINEY
(CRD No. 5037769)

Respondent.

Disciplinary Proceeding
No. 2007009291201



COMPLAINT

The Department of Enforcement alleges:

RESPONDENT AND JURISDICTION

1. Kellye Allen Rainey ("Rainey") was first registered with FINRA in November 2006, as an investment company and variable contracts products representative. Rainey was employed by FINRA member UVEST Financial Services Group, Inc. ("UVEST") from September 2005 to November 2006. In March 2007, UVEST filed an amended Uniform Termination Notice for Securities Industry Registration ("Form U5") on behalf of Rainey disclosing that Rainey may have engaged in conduct actionable under an applicable NASD rule. Rainey 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. On or about September 25, 2006, Rainey submitted a Uniform Application for Securities Industry Registration ("Form U4") for registration with UVEST. Rainey failed to disclose on the Form U4 that in August 2003, she had been charged with a felony for embezzlement. In addition, Rainey failed to appear and testify as requested by FINRA.

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 August 2003, Rainey was charged with one count of embezzlement in excess of \$1,000, a felony pursuant to Title 18, United States Code, Section 656, by the United States in the U.S. District Court for the District of South Carolina.
5. On or about September 25, 2006, Rainey completed and signed a Form U4 application for registration, and submitted the Form U4 to UVEST.
6. The September 25, 2006 Form U4 indicates that Rainey answered "No" to question 14A(1)(b).
7. Question 14A(1)(b) on Form U4 asks if the applicant has ever "been charged with any felony?"
8. Rainey willfully failed to disclose to UVEST the material fact that she had been charged with a felony, when she answered "No" to question 14A(1)(b) on her 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 Rainey.

SECOND CAUSE OF ACTION

NASD CONDUCT RULE 2110 AND PROCEDURAL RULE 8210

(Failure to Appear for an On-The-Record Interview)

10. The Department realleges and incorporates by reference paragraphs 1 through 9, above.
11. In November 2006, FINRA initiated an investigation into the allegations on a Form U5 filed by UVEST regarding Rainey. The Form U5 indicates that Rainey had failed to accurately complete a Form U4.
12. By letter dated August 7, 2008, sent via first class and certified mail to Rainey at her CRD residential address in Starr, South Carolina, and pursuant to NASD Procedural Rule 8210, Rainey was requested to appear on August 21, 2008 for an on-the-record ("OTR") sworn statement at FINRA's Atlanta District Office.

13. The August 7, 2008 letter sent by first class mail was not returned. A receipt for the August 7, 2008 letter sent by certified mail was returned indicating that it was delivered and apparently signed by Rainey.
14. On August 21, 2008, Rainey failed to appear and testify at FINRA's Atlanta District Office, as requested pursuant to NASD Procedural Rule 8210.
15. Therefore, by letter dated August 27, 2008, sent via first class and certified mail to Rainey at her residential CRD address, Rainey was again requested, pursuant to NASD Procedural Rule 8210, to appear on September 10, 2008 for an OTR sworn statement at FINRA's Atlanta District Office.
16. The August 27, 2008 letter sent by first class mail was not returned. The August 27, 2008 letter sent by certified mail has not been returned. According to the United States Postal Service website, the August 27, 2008 letter sent by certified mail was unclaimed.
17. On September 10, 2008, Rainey failed to appear and testify at FINRA's Atlanta District Office, as requested pursuant to NASD Procedural Rule 8210.
18. Such acts, practices and conduct alleged above constitute separate and distinct violations of NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by Respondent Rainey.

RELIEF REQUESTED

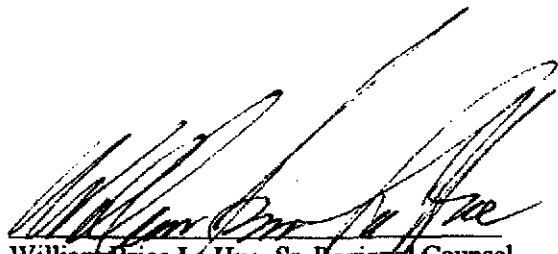
WHEREFORE, the Department respectfully requests that the Panel:

- 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:

10/15/04


William Brice La Hue, Sr. Regional Counsel
FINRA Department of Enforcement
Atlanta District Office
One Securities Centre, Suite 500
3490 Piedmont Road, N.E.
Atlanta, Georgia 30305
Phone: (404) 239-6111; Fax: (404) 264-1586
E-Mail: brice.lahue@finra.org

Andrew A. Favret, Assoc. VP/Reg'l Chief Counsel
FINRA Department of Enforcement
New Orleans District Office
1100 Poydras Street
Energy Centre, Suite 850
New Orleans, Louisiana 70163
Phone: (504) 412-2404; Fax: (202) 721-6527
E-Mail: andrew.favret@finra.org