

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DAVID CHRISTIAN HAAS
(CRD No. 2513907),

Respondent.

Disciplinary Proceeding
No. 2007009422501

Hearing Officer – SNB

DEFAULT DECISION

March 31, 2009

Respondent is barred from associating with any member firm in any capacity for participating in outside business activities without providing his firm written notice of those activities, in violation of Rules 3030 and 2110, for falsifying correspondence to cover up these activities, in violation of Rule 2110, and for failing to appear for on the record testimony, in violation of Rules 8210 and 2110.

Appearances

Josefina Martinez, Esq. New York, NY, for the Department of Enforcement.

No appearance by or on behalf of David Christian Haas.

DECISION

I. Background

On October 2, 2008, the Department of Enforcement ("Enforcement") filed the attached Complaint against David Christian Haas ("Respondent"). The Complaint charges Respondent with: (1) engaging in outside business activities without first providing his firm with written notice of his activities, in violation of Rules 3030 and 2110; (2) falsifying documents to hide his outside business activities, in violation of Rule 2110; and (3) failing to respond to FINRA Staff's requests for information concerning the foregoing charges, in violation of Rules 8210 and 2110.¹

¹ The FINRA Rules are at www.finra.org/Rules.

The Respondent did not answer or otherwise respond to the Complaint. Consequently, on January 7, 2009, Enforcement filed a Motion for Entry of Default Decision, supported by the Declaration of Josefina Martinez ("Martinez Decl.") and 41 exhibits. Respondent did not respond to the motion. Accordingly, for the reasons set forth below, the Hearing Officer grants Enforcement's motion.

II. Respondent's Default

The Hearing Officer finds that Enforcement properly served the Respondent with the Complaint by mailing the Complaint and the First and Second Notices of Complaint to his most current residential address shown in the Central Registration Depository (the "CRD Address") and Respondent's last known business address. Enforcement mailed the First Notice of Complaint by first-class certified mail and regular first-class mail on September 30, 2008. Respondent did not answer the Complaint. On November 12, 2008, Enforcement served the Second Notice of Complaint and Complaint on Respondent in the same manner. To date, Respondent has not filed an Answer with the Office of Hearing Officers or otherwise responded to the Complaint.

Respondent defaulted by failing to answer the Complaint.² Accordingly, pursuant to 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.

² Dep't of Enforcement v. Reynolds Verdiner, No. CAF020004, 2003 NASD Discip. LEXIS 42, at *5 (NAC 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)).

III. Jurisdiction

Respondent became registered with a FINRA member as a General Securities Representative in September 1994. Between February 25, 2005 and November 17, 2006, Respondent was registered through BMO Capital Markets Corp. ("BMO" or the "Firm").

Respondent's registration with FINRA terminated effective November 17, 2006. Respondent has not since been associated with a FINRA member firm or registered with FINRA. Nonetheless, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's Bylaws, because (1) the Complaint was filed within two years following the termination of his registration with FINRA and (2) the Complaint charges him with misconduct committed while he was associated with a FINRA member firm and with failing to respond to FINRA's requests for information made during the two-year period following his registration termination.³

IV. Violations

A. Unreported Outside Business Activities

The first cause of the Complaint alleges that Respondent failed to notify his firm of his outside employment with two companies. Specifically, the Complaint alleges that Respondent was employed as a consultant for Publix Supermarkets, Inc. ("Publix") between March 2002 and December 2007, and he was also employed by a restaurant, Crispers LLC ("Crispers"), between November 2005 and December 2007. The length of Respondent's employment at Publix was considerable, spanning over five years. During two of those years, Respondent also held an additional position at Crispers. Respondent did not disclose these outside activities to his Firm

³ See Article V, Section 4(a), FINRA By-Laws, *available at* www.finra.org/Rules (then follow "NASD Manual" hyperlink to "Corporate Organization: Bylaws").

as he was required to do pursuant to Rule 3030. The Firm was unaware of Respondent's outside employment and had not authorized it.

Rule 3030 provides that no person registered with a member "shall be employed by, or accept compensation from, any other person as a result of any business activity...outside the scope of his relationship with his employer firm, unless he has provided prompt written notice to the member...in the form required by the member." The purpose of Rule 3030 is to provide member firms with an opportunity to raise any objections to such activities at a meaningful time and to exercise appropriate supervision as necessary under applicable law.⁴ Rule 3030 requires disclosure of all outside business activity, not just securities-related activity.⁵

The Hearing Officer finds that the allegations in the Complaint are sufficient to establish that Respondent violated Rules 3030 and 2110 by engaging in such outside business activities without first providing his firm with written notice.

B. Falsification of Records

The second cause of the Complaint alleges that Respondent falsified documents to hide his outside employment from his Firm. Specifically, the Complaint alleges that Respondent's Firm initiated an investigation following Respondent's frequent absences from work. In connection with this, Respondent's emails and correspondence revealed evidence of Respondent's involvement in outside business activities, including a business card indicating that Respondent was the Chairman and Chief Operating Officer of Crispers, and a confidential memorandum entitled "Crispers, Inc. Buyout Discussion" discussing methods to increase

⁴ Proposed Rule Change by NASD Relating to Outside Business Activities of Associated Persons, Exchange Act Release No. 26,063, 1988 SEC LEXIS 1841 (Sept. 6, 1988), adopted at Exchange Act Release No. 26,178, 1988 SEC LEXIS 2032 (Oct. 13, 1988).

⁵ District Bus. Conduct Comm. v. Cruz, No. C8A930048, 1997 NASD Discip. LEXIS 62, at *96 (NBCC Oct. 31, 1997).

Crispers's value to Publix. When his Firm asked for confirmation that Respondent was not engaged in outside business activities, Respondent prepared and signed a letter on Publix letterhead from a fictitious person, "Kevin Finn, Associate Counsel for Investigations," falsely confirming that Respondent was not an employee or consultant for Publix or Crispers.

Falsifying records is a plain violation of Rule 2110's command to "observe high standards of commercial honor...."⁶ The Hearing Officer finds that the allegations in the Complaint are sufficient to establish that Respondent violated Rule 2110 by falsifying a letter to his firm to conceal his outside business activities.

C. Failure to Respond to Requests for Testimony

The third cause of the Complaint alleges that Respondent failed to respond to FINRA Staff requests, pursuant to Rule 8210, to appear for an on the record interview regarding Staff's investigation of Respondent's outside business activities. The staff properly served Respondent with each request pursuant to Rule 8210.

On February 29, 2008, Staff sent a request to Respondent at his last known business address by certified and first-class mail, requesting Respondent's appearance for testimony on April 3, 2008.

On March 19, 2008 Staff sent a request to Respondent at his CRD Address and his last known business address by FedEx and first-class mail, requesting Respondent's appearance for testimony on April 3, 2008.

In the same manner, on March 28, 2008, Staff sent Respondent another request, pursuant to Rule 8210, to appear for testimony, to two additional addresses obtained through a Nexus

⁶ Dep't of Enforcement v. Schneider, No. C10030088, 2005 NASD Discip. LEXIS 6, at **13-14 (NAC Dec. 7, 2005).

search. Respondent did not appear to give testimony on April 3, 2008; he made no response whatsoever.

The Hearing Officer finds that the allegations in the Complaint are sufficient to establish that Respondent violated Rules 8210 and 2110 by failing to appear for an on-the-record interview in connection with FINRA's investigation into his outside business activities.

V. Sanctions

A. Outside Business Activities

The FINRA Sanction Guidelines ("Guidelines") governing outside business activities recommend a fine of \$2,500 to \$50,000 and a suspension of up to 30 business days where there are no aggravating circumstances.⁷ Where the outside business activities involve aggravating circumstances, the Guidelines recommend consideration of a suspension of up to one year. In egregious cases involving substantial activity or significant injury, the Guidelines recommend consideration of a longer suspension or a bar.

The Hearing Officer finds Respondent's violation of Rule 3030 was egregious; no mitigating factors were present. Respondent engaged in undisclosed outside activities for over five years, spanning the entire time he was employed with his Firm. His outside activities were significant; he purportedly served as an officer of Crispers, and was involved in significant events such as a potential buyout. Moreover, he falsified correspondence to conceal his wrongful conduct. Respondent also falsely certified to his firm that he was not engaged in outside business activities in two annual certifications. Under these circumstances, the Hearing Officer has determined that Respondent should be barred from the securities industry for this violation. Respondent's willful violation of his firm's policies and Rule 3030 for nearly two

⁷ Guidelines at 14 (2007 ed.), available at <http://www.finra.org/RegulatoryEnforcement/index.htm> (then follow "FINRA Sanction Guidelines" hyperlink).

years evidences his willingness to disregard important restrictions designed to protect both the investing public and his firm.

B. Falsification of Documents

For the falsification of documents, the Guidelines recommend a fine of \$5,000 to \$100,000, and, where mitigating factors exist, a suspension for up to two years. In egregious cases, the Guidelines recommend a bar. Guidelines at 39.

Applying the Principal Considerations for this violation, while Respondent's activity did not involve customers, the duration of the activity charged spanned Respondent's entire employment with BMO – almost two years, and involved extensive outside work including Respondent's service as Chairman and Chief Operating Officer of Crispers. Moreover, Respondent falsified a document to hide his activity. For these reasons, the Hearing Officer concludes that Respondent's conduct is egregious and warrants a bar. There are no mitigating factors that would justify imposition of a lesser sanction.

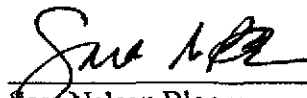
C. Failure to Respond to Requests for Information

The Guidelines recommend a bar where a respondent fails to respond in any manner to a request for on-the-record testimony issued pursuant to Rule 8210. Id. at 35. Where mitigation exists, the Guidelines recommend consideration of a suspension in all capacities of up to two years.

The Hearing Officer finds that a bar is the appropriate sanction under the facts and circumstances of this case. There are no mitigating factors that would justify imposition of a lesser sanction.

VI. Conclusion

Respondent is barred from associating with any member firm in any capacity for participating in outside business activities without providing his firm written notice of those activities, in violation of Rules 3030 and 2110, for falsifying correspondence to cover up these activities, in violation of Rule 2110, and for failing to appear for on- the-record testimony, in violation of Rules 8210 and Rule 2110. The bars shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.⁸


Sara Nelson Bloom
Hearing Officer

Copies to:

David Christian Haas (via overnight and first-class mail)
Josefina Martinez, Esq. (via electronic and first-class mail)
David R. Sonnenberg, Esq. (via electronic mail)

⁸ In light of the bars, the Hearing Officer did not impose monetary sanctions.

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

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

DAVID CHRISTIAN HAAS,
(CRD 2513907)

RESPONDENT.

DISCIPLINARY PROCEEDING
No. 20070094225

COMPLAINT

The Department of Enforcement alleges:

1. David Christian Haas ("Haas") entered the securities industry in May 1994 as a General Securities Representative with a FINRA member. Between February 2005 and October 2006, Haas was registered in that capacity with BMO Capital Markets Corp. ("BMO" or the "FIRM"), a FINRA member. Haas is not currently registered with a FINRA member but remains subject to FINRA's jurisdiction pursuant to Article V, Section 4 of the NASD By-laws.

SUMMARY

2. From at least on or about February 2005 through October 2006, Respondent engaged in an unapproved outside business activity by contemporaneously maintaining employment with Publix Super Markets, Inc. ("Publix") and, a restaurant, Crispers, LLC ("Crispers").

3. In response to Firm inquiries regarding his outside business activities, Haas knowingly presented to the Firm a forged letter purportedly signed by counsel for Publix disclaiming any association with Haas.

4. In addition, on April 3, 2008, Haas failed to appear for testimony as requested by the staff pursuant to NASD Rule 8210.

5. On or about November 17, 2006, the Firm filed a Form U-5 reporting that Haas' employment was terminated on October 20, 2006 following an internal review of whether Haas was engaged in outside business activities (not involving the sale of securities or other investments).

6. Based on the foregoing conduct, Respondent violated NASD Rules 3030, 8210 and 2110.

FIRST CAUSE OF ACTION
Outside Business Activities
Violations of NASD Rules 3030 and 2110

7. The allegations in paragraphs 1 through 6 above are realleged and incorporated by reference.

8. From on or about March 26, 2002 through December 18, 2007, Haas was employed as a consultant for Publix Supermarkets, Inc. ("Publix").

9. From on or about November 1, 2005 through December 18, 2007, Haas was also employed by Crispers, LLC. ("Crispers").

10. An internal investigation by the Firm, prompted in part by Haas' frequent absences from the Firm, included a review of Haas' archived e-mail sent to and from his office computer as well as other correspondence.

11. The Firm's review disclosed communications, in the form of e-mails and other correspondence, evidencing Haas' involvement in outside business activities, which had not been disclosed to the Firm.

12. For example, the Firm discovered a facsimile transmission dated April 6, 2006 of an enlarged Crispers business card identified on the documents as a "Proof From Innovative Ink." The enlarged business card bears Haas name and lists his title as "Chairman and Chief Operating Officer"(emphasis in original).

13. In another example, the Firm's review disclosed a seven-page facsimile transmission dated January 11, 2006 entitled "David Haas Discussion 8-11-05," and bearing a notation that the document is "confidential." The second page of the transmission bears the heading "Crispers, Inc. Buyout Discussion." The document also discusses, "How We Can Increase The Crispers Value To Publix."

14. BMO's policies, which Haas received, required all outside business activities to be "promptly disclosed to Management prior to commencing the proposed activity" and defined outside business activity to include "directorships or officer positions for an outside entity" and "consulting positions."

15. From February 2005 through October 2006, Haas failed to give prompt written notice of his employment with Publix to BMO. From at least November 2005 through October 2006, Haas failed to give prompt written notice of his employment with Crispers to BMO.

16. The acts practices and conduct described above constitute separate and distinct violations of NASD Rules 3030 and 2110.

SECOND CAUSE OF ACTION
Submitting False Documents to Member Firm Employer
Violation of NASD Rule 2110

17. The allegations in paragraphs one through 16 above are realleged and incorporated herein by reference.

18. In the course of the Firm's investigation, BMO's Chief Legal Officer directed Haas to provide confirmation that he was not engaged in outside business activities.

19. In response to this request, Haas arranged for the delivery to the Firm's Chief Legal Officer of a letter dated October 11, 2006, typed on Publix letterhead and purportedly signed by Kevin Finn, Associate Counsel of Investigations for Publix, and addressed to the Chief Legal Officer, who received it via facsimile transmission at the Firm (the "Publix Letter").

20. The Publix Letter reported, among other things, that since January 1, 2005, Haas held no equity interest in Crispers, was not a member of its Board of Directors and received no compensation or consulting fees from Crispers or Publix.

21. In or about March 2008, the Firm was contacted by Publix in connection with its investigation of Haas' theft of approximately \$400,000 from Crispers. Publix advised the Firm that Haas had been employed as a consultant for Publix from March 26, 2002 through December 18, 2007 and employed as a direct employee of Crispers from November 1, 2005 through December 18, 2007.

22. Publix advised the Firm that the company did not presently or formerly employ a person named Kevin Finn, did not have an organizational title of Associate Counsel of Investigations and that the Publix Letter was a forgery.

23. The acts, practices and conduct described above constitute a violation of NASD Rule 2110.

THIRD CAUSE OF ACTION
Failure to Respond
Violations of NASD Rules 8210 and 2110

24. The allegations in paragraphs one through 24 are realleged and incorporated herein by reference.

25. During the course of the investigation, Enforcement staff sent a letter requesting a written statement to Haas at his last know residential address on CRD, [REDACTED]

26. Shortly thereafter, Enforcement staff received a telephone voicemail message from Haas advising that he had moved and requesting that correspondence be forwarded to [REDACTED] Haas submitted a written statement to Enforcement.

27. Enforcement subsequently addressed NASD Rule 8210 requests for documents and information to the Timberhill Avenue address. Haas responded to such requests on October 24, 2007 and November 8, 2007. Correspondence received from Haas listed the Timberhill Avenue address as his business address.

28. On February 29, 2008, Enforcement sent a Rule 8210 request letter to Haas by certified mail, return receipt requested, and by first class mail to [REDACTED] [REDACTED] directing Haas to appear for testimony under oath at the Department of Enforcement's 14 Wall Street, New York office on April 3, 2008 (the "February 29, 2008 Letter"). The signed receipt was received by Enforcement on or about March 6, 2008. The signature on the receipt was illegible. The copy of the letter sent by first class mail has not been returned to Enforcement.

29. On March 19, 2008 On March 19, 2008, Enforcement sent a Rule 8210 request letter to Haas by FedEx and first class mail to his last known CRD address [REDACTED] directing Haas to appear for testimony under oath at the Department of Enforcement's 14 Wall Street, New York office on April 3, 2008 ("the March 19, 2008 Letter"). According to FedEx records, the copy of the March 19, 2008 Letter sent by FedEx was delivered to the stated location on March 20, 2008 at 9:57 a.m. The unopened FedEx envelope was returned to Enforcement on April 1, 2008. A handwritten notation on the outside of the envelope reads, "Does not live here anymore." The copy of the March 19, 2008 Letter sent by first class mail was returned to Enforcement on or about April 1, 2008 with a notation stating "Return to Sender. Not Deliverable as Addressed."

30. A copy of the March 19, 2008 Letter was also sent by FedEx and first class mail to Haas at [REDACTED] According to FedEx records, the copy of the March 19, 2008 Letter sent by FedEx to the Timberhill Drive East Hanover, NJ address was delivered to the stated location on March 21, 2008 at 9:11 a.m. FedEx records also note that a signature is not available¹. The copy of the March 19, 2008 Letter sent by first class mail was not returned to Enforcement.

31. According to Nexus records, Haas is also associated two other addresses [REDACTED] created in December 2007 and [REDACTED] created in August 2006.

32. On March 28, 2008, Enforcement sent an NASD Rule 8210 request letter to Haas by FedEx and first class mail to the [REDACTED] address directing Haas to appear for testimony under oath at the Department of

¹ Enforcement requested a direct signature when the package was submitted.

Enforcement's 14 Wall Street, New York office on April 3, 2008 (the "Massachusetts Ave. Letter"). According to FedEx records the copy of the Massachusetts Ave. Letter sent by FedEx to the [REDACTED] address was delivered to the stated location on March 29, 2008 at 12:22 p.m. FedEx was unable to locate signature proof for this letter. The copy of the Massachusetts Ave. Letter sent by first class mail was returned to Enforcement on or about May 23, 2008 with the notation, "Return to Sender. Haas' David Moved Left No Address Unable to Forward."

33. On March 28, 2008, Enforcement sent another NASD Rule 8210 request letter to Haas by FedEx and first class mail to the [REDACTED] address directing Haas to appear for testimony under oath at the Department of Enforcement's 14 Wall Street, New York office on April 3, 2008 (the "Oxford Drive Letter"). According to FedEx records, the copy of the Oxford Drive Letter sent by FedEx to the [REDACTED] address was delivered to the stated location on March 29, 2008 at 12:32 p.m. FedEx records also note that a signature is not available. The copy of the Oxford Drive Letter sent by first class mail was returned to Enforcement on or about April 3, 2008 with the notation, "Return to Sender. Not Deliverable as Addressed. Unable to Forward."

34. Haas did not appear and give testimony on April 3, 2008.

35. The acts practices and conduct described above constitute separate and distinct violations of NASD Rules 8210 and 2110.

A. Findings of fact and conclusions of law that the Respondent committed the violations charged herein;

C. An order imposing such costs of any proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330; and

**FINRA DEPARTMENT OF
ENFORCEMENT**

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& Chief Counsel
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