

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

CHERYL S. EATON
(CRD No. 2028154),

Respondent.

Disciplinary Proceeding
No. 2007009838001

Hearing Officer – Sara Nelson Bloom

DEFAULT DECISION

April 21, 2008

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 required disclosures on her Form U4, in violation of Rule 2110 and IM-1000-1.

Appearances

Thomas M. Huber, Esq., Philadelphia, PA, for the Department of Enforcement.

No appearance by Respondent.

DECISION

I. Background

On December 14, 2007, 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 Cheryl S. Eaton ("Respondent") violated Rule 2110 and IM-1000-1 by willfully failing to disclose four felony charges 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 respond to FINRA Staff requests for information. Respondent did not file an Answer to the Complaint. On February 27, 2008,

Enforcement filed a Motion for Entry of Default Decision, supported by the declaration of Thomas M. Huber, and three exhibits. Respondent did not reply to the Motion. For the reasons set forth below, the Motion is granted.¹

II. Respondent's Default

On December 10, 2007, Enforcement sent the Complaint and Notice of Complaint to Respondent, by certified mail, to her last known residential address listed in the Central Registration Depository (the "CRD address") and an alternative address (the "Alternative Address") provided by Respondent's former employer. In the same manner, on January 9, 2008, Enforcement sent the Complaint and Second Notice of Complaint to Respondent. 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 A.G. Edwards & Sons, Inc. (the "Member"), from June 28, 2007 to July 19, 2007. 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 with

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.

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 in June 2007, Respondent signed a Form U4 to become registered with FINRA. In that Form U4, Respondent answered "No" to Question 14A(1)(b) asking whether Respondent had ever been charged with a felony. However, Respondent's answer was false. In fact, Respondent had been charged with a felony offense on four occasions. In November 1998 Respondent was charged with one felony count of embezzlement; this charge was dropped in February 1999. In September 2001, Respondent was charged with one felony count of conspiracy to commit robbery; she was acquitted of this charge in January 2002. In December 2001 Respondent was charged with one felony count of failure to appear; this charge was later amended to a misdemeanor, and she was found guilty in January 2002. In November 2002, Respondent was charged with one felony count of perjury; this charge was dropped in March 2003.

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."

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, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent violated Rule 2110 and IM-1000-1.

Enforcement also requests a finding that Respondent’s non-disclosures were willful. Willfulness is not required to establish a violation of Rule 2110, but Article III, Section 4(f) of NASD’s By-Laws provides that 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, is subject to a “disqualification.” 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 his conduct was improper.”³ 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.⁴

The Hearing Officer finds that the questions on the Form U4 were clear, and that Respondent knew or should have known that she was providing incorrect answers. Accordingly,

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).

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 April 27, 2004); Dep’t. of Enforcement v. Sarris, No. C9A020017, 2003 NASD Discip. LEXIS 12, at *11 (OHO Mar. 17, 2003); Laporte, 1997 SEC LEXIS 2058, at *8; Arthur Lipper Corp. v. SEC, 547 F.2d 171, 180 (2d Cir. 1976), cert. denied, 434 U.S. 1009 (1978).

absent any evidence to the contrary, the Hearing Officer finds that Respondent's failure to make required disclosures in her Form U4 was willful within the meaning of Article III, Section 4(f) of the FINRA By-Laws.⁵

B. Failure to Respond

The Complaint also alleges that on July 31, 2007, FINRA Staff ("Staff") sent Respondent a request for information concerning the conduct charged in Cause One of the Complaint. Staff sent the request by first-class and certified mail to Respondent's CRD address. On September 5, 2007, Staff again sent this request by first-class and certified mail to Respondent's CRD address, as well as the Alternative Address. Staff served the requests in accordance with Rule 8210(d), and therefore Respondent is deemed to have received them. Respondent did not respond.

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. Respondent thereby violated Rules 8210 and 2110.

⁵ Christopher LaPorte, 1997 SEC LEXIS at *8 (finding willfulness when respondent knew or should have known under the particular facts and circumstances that his conduct was improper).

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 NASD lacks subpoena power over its members, a failure to provide information fully and promptly undermines NASD's ability to carry out its regulatory mandate.") (citation omitted); Joseph G. Chiulli, Exch. Act Rel. No. 42,359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for the NASD effectively to conduct its investigations, and emphasizing that NASD members and associated persons must fully cooperate with requests for information).

⁷ See David I. Cassuto, Exch. Act Rel. No. 48,087, 2003 SEC LEXIS 1496, at *9 (June 25, 2003).

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, a failure to disclose matters which would create a statutory disqualification, a failure to disclose a customer complaint, or where the failure to disclose delayed regulatory investigation or a termination for cause, the Guidelines recommend a longer suspension or a bar. Guidelines at p. 73-74. Enforcement requests a six month suspension and a \$5,000 fine. Given that the omitted disclosures did not give rise to a statutory disqualification, delay an investigation, or involve a customer complaint, and all felony charges were either dismissed or, in one case, reduced to a misdemeanor, Enforcement’s recommendation seems reasonable. However, in light of the bar for the 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 failure to make required disclosures on her Form U4. The bar shall become effective immediately if this Decision

becomes the final disciplinary action of FINRA.

SO ORDERED.


Sara Nelson Bloom
Hearing Officer

Copies to: Cheryl S. Eaton (*via overnight and first-class mail*)
Thomas M. Huber, Esq. (*via electronic and first-class mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)
Mark P. Dauer, Esq. (*via electronic mail*)

FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA)

OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

**CHERYL S. EATON
(CRD No. 2028154),**

RESPONDENT.

**DISCIPLINARY PROCEEDING
No. 2007009838001**

COMPLAINT

The Department of Enforcement alleges:

1. Respondent Cheryl S. Eaton has never been registered with FINRA (f/k/a National Association of Securities Dealers or NASD). On about June 26, 2007, Eaton completed and signed a Uniform Application for Securities Industry Registration or Transfer (Form U4) by which she sought to become registered with FINRA through A.G. Edwards & Sons, Inc. (AGE) as a General Securities Representative. AGE submitted Eaton's Form U4 to FINRA on about June 28, 2007. On about July 19, 2007, before Eaton's registration became effective, AGE filed a Form U5 with FINRA terminating Eaton's association with the firm. Eaton has not been associated with any FINRA member since about July 19, 2007.
2. FINRA retains jurisdiction over Eaton for purposes of this Complaint pursuant to Article V, Section 4 of FINRA's By-Laws, in that: the misconduct alleged in the First Cause of Action occurred on and in connection with a Form U4 that Eaton

signed and submitted, or caused to be submitted, to FINRA seeking to become registered with AGE; and, this Complaint was filed within, and the violations of NASD Procedural Rule 8210 (Rule 8210) alleged in the Second Cause of Action occurred within, two years after AGE filed a Form U5 for Eaton terminating her association with the firm.

OVERVIEW

3. Eaton failed to disclose on a Form U4 she completed, which AGE submitted to FINRA on her behalf, that she had previously been charged with four felonies. In addition, Eaton failed to respond to three letters FINRA staff sent her requesting information and documents pursuant to Rule 8210.

FIRST CAUSE OF ACTION

Willful Failure to Disclose Material Facts on a Form U4 (NASD Conduct Rule 2110 and IM-1000-1)

4. The Department realleges and incorporates by reference paragraphs 1 through 3 above.
5. On about November 2, 1998, an Indictment filed in the Circuit Court for the City of Martinsville, Virginia charged Eaton with one felony count of embezzlement under Section 18.2-111 of the Code of Virginia. Eaton pleaded not guilty and on about February 16, 1999, an "Order to Nolle Prose" was entered in the matter.
6. On about September 7, 2001, an Indictment filed in the Circuit Court for the City of Martinsville, Virginia charged Eaton with one felony count of conspiracy to commit robbery under Section 18.2-22 of the Code of Virginia. Eaton pleaded not guilty and she was acquitted of the charge by a jury on about January 23, 2002.

7. On about December 7, 2001, Eaton was charged in the Circuit Court for the City of Martinsville, Virginia with one felony count of failure to appear. On about January 23, 2002, the charge was amended to a misdemeanor and Eaton was found guilty of the reduced charge.
8. On about November 4, 2002, an Indictment filed in the Circuit Court for the City of Martinsville, Virginia charged Eaton with one felony count of perjury under Section 19.2-161 of the Code of Virginia. Eaton pleaded not guilty and on about March 31, 2003, an "Order" was entered in the case, at the prosecutor's request, under which the case was "nolle prossed."
9. In completing the Form U4 by which she applied for registration with FINRA, Eaton falsely answered "No" to question 14(A)(1)(b) which asked if she had ever been charged with any felony. In fact, as set forth above, Eaton had been charged with a felony offense on four occasions.
10. In addition to answering "No" to Question 14A(1)(b) on the U4, Eaton did not complete and submit a Criminal Disclosure Reporting Page with her Form U4 disclosing any facts concerning her criminal history
11. By failing to disclose facts pertaining to her criminal history on her Form U4, Eaton submitted or caused to be submitted a Form U4 to FINRA that was materially false or inaccurate. Specifically, Eaton willfully failed to disclose material facts concerning her criminal history, namely the four felony charges described in paragraphs 5-8 above, on her Form U4.
12. Based on the foregoing, Eaton violated NASD Conduct Rule 2110 and IM-1000-1.

SECOND CAUSE OF ACTION

Failure to Respond to Requests for Information
(NASD Procedural Rule 8210 and Conduct Rule 2110)

13. The Department realleges and incorporates by reference paragraphs 1 through 12 above.
14. By a letter dated July 31, 2007, FINRA staff requested, pursuant to Rule 8210, information and documents from Eaton concerning her criminal history. The letter requested a response by August 14, 2007 and it warned Eaton that failure to comply with the request could subject her to possible disciplinary action. The letter was sent by first class and certified mail to the residential address shown for Eaton in Web CRD. The envelope sent by first class mail was not returned to the District Office. The envelope sent by certified mail was returned to the District Office with a Postal Service label attached that read, "Return to Sender Attempted Not Known Unable to Forward." Eaton did not respond to the letter by August 14 or thereafter.
15. By a letter dated September 5, 2007, FINRA staff again requested, pursuant to Rule 8210, information and documents from Eaton concerning her criminal history. The letter requested a response by September 19, 2007 and it warned Eaton that failure to comply with the request could subject her to possible disciplinary action. The letter was sent by first class and certified mail to the residential address shown for Eaton in Web CRD and to a second possible residential address that FINRA staff obtained from AGE after the first request letter was sent. Neither envelope sent by first class mail was returned to the District Office. Both envelopes sent by certified mail were returned to the District Office with a Postal Service label attached that

read, "Return to Sender Not Deliverable as Addressed Unable to Forward." Eaton did not respond to the letter by September 19 or thereafter.

16. By a letter dated October 18, 2007, FINRA staff again requested, pursuant to Rule 8210, information and documents from Eaton concerning her criminal history. The letter requested a response by November 1, 2007 and it warned Eaton that failure to comply with the request could subject her to possible disciplinary action. The letter was sent by first class and certified mail to the residential address shown for Eaton in Web CRD and to the second possible residential address obtained from AGE. Both envelopes sent to Eaton's Web CRD address were returned to the District Office with a Postal Service label attached that read, "Return to Sender Not Deliverable as Addressed Unable to Forward." The envelope sent by first class mail to the second address was not returned. The envelope sent by certified mail to the second address was returned to the District Office with a label attached that read, "Return to Sender Unclaimed Unable to Forward." Eaton did not respond to the letter by November 1.
17. FINRA staff has no knowledge of a residential address for Eaton 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 Eaton.
18. To the date of this Complaint, Eaton has not provided FINRA staff any of the information or documents it requested pursuant to Rule 8210.
19. Based on the foregoing, Eaton violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

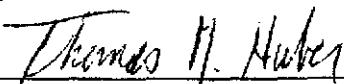
RELIEF REQUESTED

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 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: December 10, 2007


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