

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

AKIM FREDERIC CZMUS
(CRD No. 5266395),

Respondent.

Disciplinary Proceeding
No. 2007010438801

Hearing Officer – LBB

DEFAULT DECISION

June 1, 2009

For Respondent's willful failure to make required disclosures concerning his disbarment on his Form U4, in violation of NASD Conduct Rule 2110 and IM-1000-1, Respondent is barred in all capacities. Respondent is also barred for failure to appear and testify at two on-the-record interviews, in violation of NASD Procedural Rule 8210 and Conduct Rule 2110.

Appearances

Lynn M. Kaseta, Senior Regional Counsel, FINRA, Woodbridge, New Jersey, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

The Department of Enforcement ("Enforcement") filed the Complaint in this proceeding on January 7, 2009, asserting two causes of action against Respondent Akim Frederic Czmus ("Respondent"): first, that he willfully submitted false information in his Uniform Application for Securities Industry Registration (Form U4), in violation of NASD Conduct Rule 2110 and IM-1000-1; and second, that he failed to respond to FINRA staff's requests for information by

failing to appear at on-the-record interviews (“OTRs”), in violation of 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 March 31, 2009, Enforcement filed a Motion for Entry of Default Decision, to which Respondent did not respond. Accordingly, pursuant to 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 January 7, 2009, Enforcement served the Complaint and Notice of Complaint on Respondent by first-class regular and certified mail, return receipt requested, at his most current residential address as listed in the Central Registration Depository (“CRD”). The certified mailing was returned to the FINRA District Office marked, “Return to Sender / No Mail Receptacle / Unable to Forward.” The first-class mailing was not returned.

Enforcement served the Complaint and Second Notice of Complaint on Respondent by first-class regular and certified mail, return receipt requested, at his CRD address on February 6, 2009. The certified mailing was returned to FINRA by the United States Postal Service because it was unclaimed. The first-class mailing was not returned.

Enforcement served the Complaint and the Notices of Complaint on Respondent in accordance with 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.

II. Jurisdiction

Respondent was registered with FINRA member firm NYLife Securities LLC ("NYLife") from February 13, 2007, until August 15, 2007, when his employment was terminated. Although Respondent has not been associated with any FINRA member since August 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 registration with a member firm, and it charges him with misconduct while he was registered with a member firm and failure to respond to requests for information during the two-year period following his last registration with a member firm.

III. Origin of the Investigation

NYLIFE reported the termination of Respondent's employment to FINRA on a Uniform Termination Notice for Securities Industry Registration (Form U5) filed August 29, 2007, for "violating company policy after a determination that he provided inaccurate and incomplete responses on his application for employment, his state insurance license applications and his Form U4." FINRA began this investigation after receiving the notice of the termination of Respondent's employment.

IV. Violations

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

Respondent once was a medical doctor, but he surrendered his medical license after he was charged with misconduct for practicing as an ophthalmologist without being licensed as one. After surrendering his medical license, he went to law school, but failed to disclose on both his law school application and later on his New Jersey bar application that he had surrendered his medical license while under investigation for misconduct. On December 4, 2001, the New

Jersey Office of Attorney Ethics disbarred Respondent in New Jersey, finding that he had “engaged in a pattern of deceit and misrepresentation.” On December 30, 2005, Respondent was disbarred from practicing law in Pennsylvania by the Supreme Court of Pennsylvania, Western District, for his “misconduct and continuous pattern of deceit and dishonesty” involving the same issues.

Respondent became employed by NYLife in December 2006. On or about January 22, 2007, Respondent completed and signed a Form U4 and submitted it to NYLife. Respondent falsely marked “No” in response to question 14F, which asks “Have you ever had an authorization to act as an attorney, accountant or federal contractor that was revoked or cancelled?”

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, which FINRA uses “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). Submitting 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; *Dep’t of Enforcement v. Mathis*, No. C10040052, 2008 FINRA Discip. LEXIS 49, at *13 – *14 (N.A.C. Dec. 12, 2008).

By submitting the false information on his Form U4, Respondent violated Rule 2110 and IM-1000-1. Furthermore, the Complaint alleges that Respondent’s failure to disclose his disbarment was willful, and the facts support the allegation. 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 Form U4 clearly required the information, the disbarments were relatively recent, and two disbarments could not slip one’s mind.⁴ Furthermore, Respondent’s pattern of misrepresentations in previous situations supports a finding that his actions were willful. These facts are sufficient to establish that Respondent’s failure to disclose his disbarments was willful.

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent violated NASD Conduct Rule 2110 and IM-1000-1 by willfully failing to disclose material facts on his Form U4.

B. Respondent Violated Procedural Rule 8210 and Conduct Rule 2110 by Failing to Respond to Requests for Information

On February 13, 2008, pursuant to Rule 8210, FINRA staff sent a letter to Respondent at his CRD address, by first-class and certified mail, requiring him to appear for an OTR at FINRA’s Woodbridge, New Jersey District Office on February 27, 2008. The letter sent by certified mail was returned to the FINRA District Office marked “UNCLAIMED RETURNED TO SENDER.” The letter sent by first-class mail was not returned.⁵ Respondent did not appear for the OTR on February 27.

² *Christopher LaPorte*, Exchange 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.

⁵ FINRA staff is not aware of a more current business or residential address.

FINRA staff sent a second Rule 8210 request to Respondent on May 14, 2008, by first-class and certified mail, requiring his attendance to testify at an OTR on May 28. The certified mailing was returned to the District Office marked "RETURN TO SENDER UNCLAIMED UNABLE TO FORWARD." The first-class mailing was not returned. Respondent did not appear for the OTR on May 28.

By twice failing to appear for an OTR in response to requests issued pursuant to Rule 8210, Respondent violated NASD Procedural Rule 8210 and Conduct Rule 2110.⁶

V. Sanctions

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. One principal consideration is the nature and significance of the information at issue, which is an aggravating factor here. Two disbarments would raise serious questions about Respondent's integrity for potential employers, regulators, and investors. Respondent's disciplinary history is also an aggravating factor. He has been disciplined for misrepresentations by medical and legal authorities. Enforcement argues that this is an egregious case, and recommends a bar. In light of the aggravating factors, Enforcement's recommendation is reasonable, and Respondent is barred for willful failure to make required disclosures on his Form U4, in violation of Rule 2110 and IM-1000-1.

For failing to respond in any manner to requests for information, the Sanction Guidelines recommend a bar. *FINRA Sanction Guidelines* at 35. Where mitigation exists, or the person did not respond in a timely manner, the Guidelines recommend a suspension for up to two years.

⁶ A violation of Rule 8210 is also a violation of Rule 2110. *Dep't of Enforcement v. Hoeper*, No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (N.A.C. Nov. 2, 2001).

The Guidelines recommend a fine of \$2,500 to \$25,000 for failure to respond in a timely manner, and \$10,000 to \$25,000 for failure to respond completely.

Enforcement recommends a bar. There are no mitigating factors here, but the nature of the information sought in the OTR and Respondent's disciplinary history are both aggravating factors. Enforcement's recommendation is reasonable, and Respondent is barred for violations of Rules 8210 and 2110 by failing to appear at two OTRs.

VI. Conclusion

Respondent Akim Frederic Czmus is barred in all capacities for failure to appear and testify at two on-the-record interviews, in violation of NASD Procedural Rule 8210 and Conduct Rule 2110. For Respondent's willful failure to make required disclosures concerning his disbarment on his Form U4, in violation of NASD Conduct Rule 2110 and IM-1000-1, Respondent is also barred in all capacities.

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

SO ORDERED.


Lawrence B. Bernard
Hearing Officer

Copies to: Akim Frederic Czmus (*via overnight courier and first-class mail*)
Lynn M. Kaseta, Esq. (*via email and first-class mail*)
Mark P. Dauer, Esq. (*via email*)
David R. Sonnenberg, Esq. (*via email*)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

V.

Akim Frederic Czmus
(CRD No. 5266395),

Respondent.

DISCIPLINARY PROCEEDING
No. 20070104388

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Akim Frederic Czmus willfully failed to disclose on his Form U4 that his license to practice law had been revoked in two states. Czmus also failed to appear for on-the-record interviews requested by FINRA staff. This conduct violated NASD Conduct Rule 2110 and IM-1000-1 and NASD Procedural Rule 8210.

RESPONDENT AND JURISDICTION

2. From February 13, 2007 to August 15, 2007, Czmus was registered with FINRA (f/k/a National Association of Securities Dealers or NASD) through member firm NYLife Securities LLC as an Investment Company and Variable Contracts Products Representative.

3. Czmus is not currently associated with a member firm.
4. Czmus remains subject to FINRA's jurisdiction pursuant to Article V, Section 4, of the FINRA By-Laws in that: the misconduct alleged in the First Cause of Action occurred while Czmus was associated with a member firm; and this Complaint was filed within, and the violations of NASD Procedural Rule 8210 alleged in the Second Cause of Action occurred within, two years of his last association with a member firm.

FIRST CAUSE OF ACTION

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

5. The Department realleges and incorporates by reference paragraphs 1-4 above.
6. On December 4, 2001, Czmus' license to practice law in New Jersey was revoked by the New Jersey Office of Attorney Ethics.
7. On December 30, 2005, Czmus was disbarred from practicing law in Pennsylvania by the Supreme Court of Pennsylvania, Western District.
8. On January 22, 2007, Czmus submitted or caused to be submitted an initial Form U4 through which he applied for registration with FINRA through a member firm as Investment Company and Variable Contracts Products Representative.
9. The Form U4 included Question 14F, which asked: "Have you ever had an authorization to act as an attorney, accountant or federal contractor that was revoked or cancelled?"
10. Czmus answered "No" to Question 14F, which was a false answer.

11. Specifically, Czmus willfully failed to disclose the material fact that his license to practice law had been revoked in two states.
12. Thereafter, Czmus willfully failed to amend his Form U4 to disclose those actions.
13. By failing to disclose material facts on his Form U4, Czmus violated NASD Conduct Rule 2110 and IM-1000-1.

SECOND CAUSE OF ACTION

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

14. The Department realleges and incorporates by reference paragraphs 1-13 above.
15. On February 13, 2008 and pursuant to NASD Procedural Rule 8210, FINRA staff sent a letter to Czmus at his last known residential address as reflected in the records of FINRA's Central Registration Depository: [REDACTED]
[REDACTED] (CRD Address). The letter requested, pursuant to NASD Procedural Rule 8210, that Czmus appear for an on-the-record interview (OTR) on February 27, 2008 at the New Jersey District Office. The letter was sent by first-class and certified mail. The Addendum attached to this letter warned Czmus that if did not appear for the OTR he could be subject to disciplinary action and that possible sanctions included a bar.
16. The certified mail envelope was returned by the Postal Service to the New Jersey District Office marked "UNCLAIMED RETURNED TO SENDER"
17. The first-class envelope was not returned to the staff.

18. Czmus did not respond to the letter and did not appear for the OTR on February 27, 2008.
19. On May 14, 2008 and pursuant to NASD Procedural Rule 8210, FINRA staff sent a second letter to Czmus at his CRD Address requiring him to appear for an OTR on May 28, 2008 at the Woodbridge District Office. The letter was sent to by first-class and certified mail. The Addendum attached to this letter warned Czmus that if he did not appear for the OTR he could be subject to disciplinary action and that the possible sanctions included a bar.
20. The certified mail envelope was returned by the Postal Service to the New Jersey District Office marked "RETURN TO SENDER UNCLAIMED UNABLE TO FORWARD."
21. The first-class envelope was not returned.
22. Czmus did not respond to the letter and did not appear for the OTR on May 28, 2008.
23. The staff is not aware of any more current residential or business addresses for Czmus.
24. By failing to appear for an OTR, Czmus violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

RELIEF REQUESTED

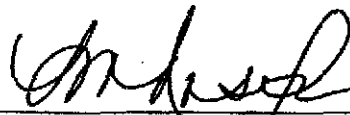
WHEREFORE, the Department respectfully requests that the Panel:

- 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 proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330; and
- 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 Form U4 applications.

FINRA DEPARTMENT OF ENFORCEMENT

Dated: January 7, 2009



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