

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

PHILIP D. ROSSI
(CRD No. 2001232),

Respondent.

Disciplinary Proceeding
No. 2007010767201

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

January 29, 2009

Respondent is barred from associating with any member firm in any capacity for failing to respond to requests for information issued by FINRA staff, in violation of Procedural Rule 8210 and Conduct Rule 2110; and for engaging in outside business activities without providing his firm written notice of his activities, in violation of Conduct Rules 3030 and 2110. In addition, Respondent violated Conduct Rule 2110 by failing to report a tax lien on his Form U4. However, in light of the bars imposed for the other violations, no additional sanctions were imposed for this violation.

Appearances

Kevin G. Kulling, Senior Regional Counsel, Chicago, IL, for the Department of Enforcement.

No appearance by or on behalf of Philip D. Rossi.

DECISION

I. Introduction

On October 7, 2008, the Department of Enforcement ("Enforcement") filed the attached Complaint against Philip D. Rossi ("Rossi"). The Complaint charges that Rossi: (1) engaged in outside business activities without first providing his firm with written notice of his activities, in violation of NASD Conduct Rules 3030 and 2110; (2) failed to disclose a federal tax lien on his

Uniform Application for Securities Industry Regulation ("Form U4"), in violation of Conduct Rule 2110; and (3) failed to respond to three requests for information issued by FINRA staff, in violation of Procedural Rule 8210 and NASD Conduct Rule 2110.

Enforcement served Rossi with notice of the Complaint on October 6, 2008, and on November 3, 2008, by first-class certified mail sent to him at his most current residential address recorded in the Central Registration Depository (the "CRD Address"). Rossi did not respond to either notice, and to date he has not filed an Answer with the Office of Hearing Officers.¹

On December 26, 2008, Enforcement filed a Motion for Entry of Default Decision with the Office of Hearing Officers. The motion is supported by the Declaration of Kevin Kulling and five exhibits. Rossi did not file a response to the motion.

Rossi defaulted by failing to answer the Complaint.² Accordingly, pursuant to Procedural 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.³

II. Findings of Fact and Conclusions of Law

A. Jurisdiction

Rossi entered the securities industry in 1989, at which time he registered as a General Securities Representative.⁴ On May 25, 1994, Rossi became registered as a General Securities Representative with H.D. Vest Investment Services, a FINRA member. On April 10, 2007, H.D. Vest Investment Services filed a Uniform Termination Notice for Securities Industry

¹ Kulling Decl. ¶¶ 7-9.

² *Department of Enforcement v. Reynolds Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at *5 (N.A.C. 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)).

³ The factual determinations in this Default Decision are based on the allegations in the attached Complaint and the materials filed by Enforcement with its motion.

⁴ Ex. 2.

Registration ("Form U5") on Rossi's behalf that indicated that H.D. Vest Investment Services had discharged him for failing to follow the firm's procedures regarding the handling of customer orders and referring customers to an unregistered broker.⁵ Rossi has not been registered or associated with a FINRA member firm since April 10, 2007.

FINRA has jurisdiction to bring this action against Rossi pursuant to Article V, Section 4 of FINRA's Bylaws. Enforcement filed the Complaint within two years following the termination of his last registration with FINRA and the Complaint charges him with misconduct that commenced while he was associated with H.D. Vest Investment Services as well as failing to provide information requested by FINRA within the two-year period following his registration termination.⁶

B. Unreported Outside Business Activities

The First Cause of Complaint alleges that Rossi engaged in outside business activity between March 1, 1994, and April 2007. During that period, he was employed by Patterson-Ross Financial Resources, Inc. ("Patterson-Ross"). Rossi falsely told customers that Patterson-Ross was a broker-dealer. Patterson-Ross's office was at the same location as Rossi's insurance and accounting business. Rossi did not provide H.D. Vest Investment Services with written notice of his outside business activity.⁷

In connection with his employment with Patterson-Ross, Rossi accepted approximately \$500,000 from approximately six customers and provided those customers with account statements that reflected Rossi as their "investment broker."⁸

⁵ Ex. 2.

⁶ See Article V, Sec. 4(a), FINRA By-Laws, available at www.finra.org/Rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: Bylaws").

⁷ Kulling Decl. ¶ 11.

⁸ *Id.* ¶ 12.

NASD Conduct 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 Conduct 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.⁹ Conduct Rule 3030 requires disclosure of all outside business activity, not just securities-related activity.¹⁰

The Hearing Officer finds that the allegations in the First Cause of Complaint are sufficient to establish that Rossi violated Conduct Rules 3030 and 2110 by failing to provide H.D. Vest Investment Services with written notice of his outside business activities.¹¹

C. Failure to Disclose Federal Tax Liens

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 any felony, or convicted of a misdemeanor involving wrongful taking of property. FINRA uses the Form U4 “to monitor and determine the fitness of securities professionals.”¹² A Form U4 that is inaccurate or incomplete

⁹ *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).

¹⁰ *District Bus. Conduct Comm. v. Cruz*, No. C8A930048, 1997 NASD Discip. LEXIS 62, at *96 (N.B.C.C. Oct. 31, 1997).

¹¹ *Department of Enforcement v. Schneider*, No. C10030088, 2005 NASD Discip. LEXIS 6, at *13-14 (N.A.C. Dec. 7, 2005).

¹² *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)).

so as to be misleading may be deemed conduct inconsistent with just and equitable principles of trade.¹³

Further, Article V, Section 2(c) of FINRA's By-Laws requires associated persons to keep their Form U4 filed with FINRA current at all times by supplementary amendments filed not later than 30 days after learning of the facts or circumstances giving rise to the amendment. Failing to file prompt amendments to a Form U4 is a violation of Rule 2110.¹⁴

The Second Cause of Complaint alleges that Rossi failed to report a federal tax lien in the amount of \$9,117 that was filed against him in Ohio on August 28, 2001.¹⁵ Rossi was aware of the tax lien, but he failed to update his Form U4 to disclose it.

The Hearing Officer finds that the allegations in the Second Cause of Complaint are sufficient to establish that Rossi violated Conduct Rule 2110 and IM-1000-1.

D. Failure to Respond to Requests for Information

The Third Cause of Complaint alleges that Rossi failed to respond to three requests for information issued by FINRA staff in connection with the staff's investigation of his outside business activity and failure to update his Form U4. The requests were issued pursuant to Rule 8210 and sent to Rossi at his CRD Address. Enforcement sent the request by first-class mail to Rossi at his CRD Address. The first request was dated April 26, 2007; the second request was dated May 25, 2007; and the third request was dated June 11, 2007. Rossi failed to respond to any of the requests in any manner.

¹³ See IM-1000-1; *Thomas R. Alton*, 52 S.E.C. 380, 382 (1995).

¹⁴ *Dep't of Enforcement v. Toth*, No. E9A2004001901, 2007 NASD Discip. LEXIS 25, at *23 (N.A.C. July 27, 2007) (appeal docketed, No. 3-12739 (SEC Aug. 27, 2007)) (quoting *Rosario R. Ruggiero*, 52 SEC 725, 728 (1996)). In addition, FINRA's Membership, Registration and Qualification Requirements, IM-1000-1 provides that an incomplete or inaccurate filing of information with FINRA by a registered representative "may be deemed to be conduct inconsistent with just and equitable principles of trade."

¹⁵ The lien was released on August 6, 2002.

The Hearing Officer finds that the allegations in the Third Cause of Complaint are sufficient to establish that Rossi violated Procedural Rule 8210 and Conduct Rule 2110.

III. 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.¹⁶ 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 that Rossi’s violation of Conduct Rule 3030 was egregious. Rossi held himself out as an investment broker with Patterson-Ross and misled no fewer than six of H.D. Vest Investment Services’ customers by telling them that Patterson-Ross was a broker-dealer. In addition, there was a substantial risk of significant injury to those customers who gave Rossi approximately \$500,000 to invest on their behalf. On the other hand, the record reflects no mitigating factors. Based on these circumstances, the Hearing Officer determined that Rossi should be barred from the securities industry for this violation. His conduct evidences his willingness to disregard important restrictions designed to protect both the investing public and his firm. Absent any mitigating factors, the Hearing Officer concluded that Rossi presents too great a risk to the investing public to allow him to remain in the securities industry.

¹⁶ FINRA Sanction Guidelines 14 (2007), available at <http://www.finra.org/RegulatoryEnforcement/index.htm> (then follow “FINRA Sanction Guidelines” hyperlink).

B. 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 information issued pursuant to Procedural Rule 8210.¹⁷ 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. "A complete failure to respond to a request for information ... renders the violator presumptively unfit for employment in the securities industry because the self-regulatory system of securities regulation cannot function without compliance with Rule 8210 requests."¹⁸ Here the record reflects no mitigating factors that would warrant a lesser sanction. Accordingly, the Hearing Officer will bar Rossi from associating with any FINRA member in any capacity for violating Procedural Rule 8210 and Conduct Rule 2110.

C. Failure to Disclose Tax Lien on Form U4

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.¹⁹ Enforcement recommended a sanction of one year and a \$5,000 fine in light of the nature of the information and Rossi willful failure to update his Form U4.

The Hearing Officer determined that there was insufficient evidence in the record to justify a sanction greater than the minimum recommended by the Guidelines. Rossi's failure to disclose the tax lien did not cause injury to his firm, customers, or other parties. Nor did the lien disqualify him from associating with a FINRA member. Moreover, the Complaint does not

¹⁷ Sanction Guidelines at 35

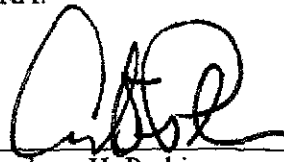
¹⁸ *Geoffrey Ortiz*, Exchange Act Release No. 58,416, 2008 SEC LEXIS 2401, at *31 (Aug. 22, 2008).

¹⁹ Sanction Guidelines at 73.

charge Rossi with willful misconduct. Accordingly, if Rossi were not barred for his other violations, the appropriate sanction in this case would be at the low end of those recommended in the Guidelines. However, in light of the bars imposed for the other two violations, the Hearing Officer will not enter a further sanction for this violation.

IV. Order

Philip D. Rossi is barred from associating with any member firm in any capacity for engaging in outside business activity, in violation of Conduct Rules 3030 and 2110, and for failing to respond in any manner to FINRA's request for information, in violation of Procedural Rule 8210 and Conduct Rule 2110. The bars shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.

A handwritten signature in black ink, appearing to read 'Andrew H. Perkins', written over a horizontal line.

Andrew H. Perkins
Hearing Officer

Copies to:

Philip D. Rossi (FedEx, next day delivery, and first-class mail)
Kevin G. Kulling, Esq. (electronic and first-class mail)
Mark P. Dauer, Esq. (electronic mail)
David R. Sonnenberg, Esq. (electronic mail)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Philip D. Rossi
(CRD No. 2001232),

Respondent

DISCIPLINARY PROCEEDING
No. 2007010767201

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Philip D. Rossi engaged in outside business activities without providing his employing member firm with prompt written notice of his activities and he completely failed to respond to FINRA Staff requests for information.

RESPONDENT AND JURISDICTION

2. Philip D. Rossi entered the securities industry in 1989 as a General Securities Representative of a member of FINRA. Between September 1993 and April 2007, he was associated with H.D. Vest, a FINRA member. Rossi is not currently associated with a FINRA member and he has no relevant prior disciplinary history.

FIRST CAUSE OF ACTION

Outside business activities NASD Conduct Rules 3030 and 2110

3. The Department realleges and incorporates by reference paragraphs 1 and 2 above.
4. Beginning in or about March 1, 1994 until about April 2007, Rossi engaged in outside business activity in that he was employed by an entity known as Patterson-Ross Financial Resources, Inc., which Rossi represented to customers was a broker-dealer.
5. Patterson-Ross was housed in the same office as Rossi's insurance and accounting business.
6. In connection therewith, Rossi accepted funds amounting to approximately \$500,000 for purported investments from at least 6 customers, serviced the accounts of these customers, and provided Patterson-Ross account statements that noted Rossi was the "investment broker" on the account.
7. Rossi failed and neglected to give prompt written notice of his outside business activities to the Member.
8. The acts, practices and conduct described above constitute separate and distinct violations of FINRA Conduct Rules 3030 and 2110.

SECOND CAUSE OF ACTION

Failure to amend U4 to disclose tax lien By-Laws Art. 5 Sec.2 and Conduct Rule 2110

9. The Department realleges and incorporates by reference paragraphs 1 through 8 above.

10. On or about August 28, 2001, a tax lien for approximately \$9,117 was filed against Philip Rossi in the State of Ohio. The lien was released on or about August 6, 2002.

11. Although Respondent was continuously registered with the Member between 1993 and 2007, and was aware of the tax lien filing, Respondent failed to amend his Uniform Application for Securities Industry Registration or Transfer (Form U4) to disclose the tax lien.

12. The acts, practices and conduct described above constitute separate and distinct violations of NASD Conduct Rule 2110 and IM-1000-1 by Respondent.

THIRD 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 paragraph 1 through 12 above.

14. On or about April 26, 2007, FINRA staff, pursuant to NASD Procedural Rule 8210, sent Rossi a letter inquiring about the alleged activities, as outlined above. This letter was sent by regular and certified mail to [REDACTED] Rossi's address of record as contained in the CRD records ("CRD Address"). The regular and certified mailings were returned to FINRA staff, marked "Not Deliverable As Addressed, Unable To Forward."

15. On May 25, 2007, FINRA staff sent Rossi a second request pursuant to NASD Procedural Rule 8210. This request was sent by regular and certified mail to Rossi's CRD Address. The regular and certified mailings sent to the CRD Address were returned to FINRA staff, marked "unclaimed/unable to forward."

16. On June 11, 2007, FINRA staff sent a third 8210 request to Rossi at his CRD Address. This letter was also sent by regular and certified mail. The mailings sent to Rossi's CRD address were returned to staff, marked "undeliverable as addressed/unable to forward."

17. To date, Rossi has failed to respond to each and all of the requests for information as described in the paragraphs above, and the time and the dates for responding to the requests have passed.

18. The acts, practices, and conduct described above constitute a violation of NASD Conduct Rule 2110 and Procedural Rule 8210 by Rossi.

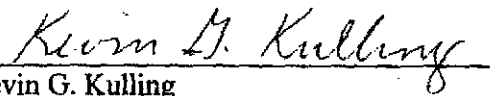
RELIEF REQUESTED

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.

FINRA DEPARTMENT OF ENFORCEMENT

Date: October 6, 2008


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