

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ZENAIDA R. GARCIA
(CRD No. 5429943),

Respondent.

Disciplinary Proceeding
No. 2007010993901

Hearing Officer – AWH

DEFAULT DECISION

November 18, 2008

Respondent is barred from associating with any FINRA member in any capacity for failure to respond to requests for information, in violation of NASD Rules 8210 and 2110. In light of the bar, no additional sanctions imposed for willful failure to disclose material information on Form U4, in violation of NASD Conduct Rule 2110 and IM-1000-1.

Appearances:

Michael A. Gross, Esq., for the Department of Enforcement.

No appearance by or for Zenaida R. Garcia.

DECISION

I. Background

On July 24, 2008, the Department of Enforcement filed the Complaint in this proceeding, alleging that Respondent Zenaida R. Garcia (1) willfully failed to disclose material information on her Form U4, and (2) failed to respond to requests for information sent by FINRA staff pursuant to Rule 8210. Garcia did not file an Answer to the Complaint. On October 15, 2008, Enforcement filed a Motion for Entry of Default Decision. Garcia did not respond to that motion.

II. Respondent's Default

On July 24, 2008, Enforcement sent the Complaint and Notice of Complaint to Respondent by certified and first class mail to her residential address listed in the Central Registration Depository (the "CRD address") and to an address on Florence Street in Worcester, Massachusetts (the "Florence Street address") that the United States Postal Service provided to Enforcement. The first class mailings were not returned. The return receipts for the certified mailings were returned, marked "Return to Sender Unclaimed," and they disclosed another address for Garcia on Caprera Road in Worcester, Massachusetts (the "Caprera Road address"). Respondent did not file an Answer to the Complaint.

On August 22, 2008, Enforcement sent the Complaint and Second Notice of Complaint to Respondent by certified and first class mail to Respondent's CRD address, the Florence Street address, and the Caprera Road address. The first class mailings were not returned. The return receipts for the certified mailings were returned, marked "Return to Sender Unclaimed." Respondent did not file an Answer to the Complaint.

Enforcement served the Complaint and Notices of Complaint on Garcia in accordance with Rule 9134, giving her constructive notice of this proceeding. By failing to respond, she defaulted. Pursuant to NASD Procedural Rules 9215(f) and 9269, Enforcement's motion for a default decision will be granted, and the allegations in the Complaint, which is attached to this decision, will be deemed admitted.¹

¹ The factual determinations in this decision are based on the admitted allegations in the Complaint, the Declaration Supporting Motion for Entry of Default Decision, and the exhibits attached thereto.

III. Jurisdiction

Garcia's only association with a FINRA member began on September 27, 2007, when ADP Broker-Dealer, Inc. ("ADP") filed a Form U4 on her behalf. She remained associated with ADP only until October 23, 2007, when ADP filed a Form U5 on her behalf, noting that she was discharged because her background information was not fully disclosed. She is not currently associated with a FINRA member firm.

Because the Complaint charges her with misconduct while she was associated with a member firm and with failing to respond to FINRA staff requests for information during the two-year period following termination of her association, and the Complaint was filed within two years of the termination of her association, she remains subject to FINRA jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of the FINRA By-Laws.

IV. Violations

Failure to Disclose Information on Form U4

The first cause of the Complaint alleges that Garcia willfully failed to disclose on her Form U4 that she had been charged with and pled *nolo contendere* ("no contest") to the misdemeanor charge of Issuing Bad Checks, a fraudulent practice under New Hampshire law. In March 2005, in the District Court of Milford, New Hampshire, she was charged with that offense, and in September 2005, she pled no contest to the charge. The Form U4 was filed two years after the plea. On that form, she answered "no" to the questions whether she had ever pled no contest to a misdemeanor involving, among other things, fraud, or whether she had been charged with such a misdemeanor. The charge and the plea occurred within two and one-half years of filing the Form U4, a short span of

time. Accordingly, the facts demonstrate that Garcia's misconduct was willful and constitutes a violation of NASD Conduct Rule 2110, and IM-1000-1.²

Failure to Respond to Requests for Information

Procedural Rule 8210 authorizes FINRA to require any person subject to its jurisdiction to provide information and testimony 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.³ When an individual fails to respond to information requests, FINRA's ability to perform its regulatory responsibilities is subverted.⁴ Further, a violation of Procedural Rule 8210 is also a violation of Conduct Rule 2110, contravening "high standards of commercial honor."⁵

The second cause of the Complaint alleges that, in connection with its investigation of the U5 that ADP filed on behalf of Garcia, FINRA staff sent Garcia three requests that she provide documents and information concerning the subject matter of the investigation, pursuant to NASD Procedural Rule 8210. The first request, dated December 20, 2007, was sent by first class and certified mail to Garcia at her CRD address. The second and third requests, dated February 21, 2008 and March 27, 2008, were sent by first class and certified mail to Garcia at her CRD address and the Florence

² IM-1000-1 provides that filing information with respect to membership or registration which is incomplete or inaccurate so as to be misleading may be deemed to be conduct inconsistent with just and equitable principles of trade and sufficient cause for appropriate disciplinary action.

³ See *Joseph G. Chiulli*, Exchange Act Release No. 42,359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for NASD effectively to conduct its investigations, and emphasizing that NASD members and associated persons must fully cooperate with requests for information); *Dep't of Enforcement v. Benz*, No. C01020014, 2003 NASD Discip. LEXIS 11, at *18 (OHO Mar. 4, 2003) ("Because NASD has no subpoena power, timely and full compliance with information requests is essential to NASD's self-regulatory function.").

⁴ *Joseph P. Hannan*, Exchange Act Release No. 40,438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998).

⁵ *Dep't of Enforcement v. Baxter*, No. C07990016, 2000 NASD Discip. LEXIS 3, at *25 (NAC, Apr. 19, 2000).

Street address of which the staff had then become aware. The certified mailings were returned as unclaimed. Garcia failed to respond to the three request letters. By failing completely to respond to those requests for documents and information, Garcia violated NASD Rules 8210 and 2110.

V. Sanctions

For failure to respond in any manner to requests for information, the Sanction Guidelines provide that a bar should be standard.⁶ Garcia failed completely to respond to three requests for documents and information. The information was essential to Enforcement's investigation into the reasons for her failure to disclose the criminal charge and plea. There are no mitigating factors that would warrant a sanction less than a bar.

For filing a false, misleading, or inaccurate Form U4, the Sanction Guidelines recommend a fine ranging from \$2,500 to \$50,000, and consideration of a suspension in all capacities for five to 30 business days.⁷ In egregious cases, the Guidelines recommend consideration of a longer suspension or a bar.⁸ Here, the violation was willful, and Garcia did not contest it. Accordingly, Enforcement's request for a fine of \$5,000 and a suspension in any capacity for six months would be appropriate. However, in light of the bar for failing to respond to requests for information, the additional sanctions will not be imposed.

VI. Conclusion

Zenaida R. Garcia is barred from associating with any FINRA member in any capacity for failing to respond to requests for information, in violation of NASD Rules

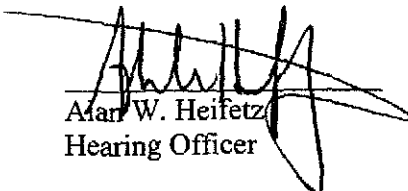
⁶ FINRA SANCTION GUIDELINES, at 35.

⁷ *Id.*, at 73.

⁸ *Id.*, at 74.

8210 and 2110. In light of the bar, no additional sanctions are imposed for willful failure to disclose on a Form U4 that she had been charged with, and pled no contest to, a misdemeanor involving fraud, in violation of NASD Conduct Rules 2110, and IM-1000-1. The bar shall become effective immediately if this Decision becomes the final disciplinary action of FINRA.

SO ORDERED.



Alan W. Heifetz
Hearing Officer

Copies to:

Zenaida R. Garcia (*via first class mail & overnight courier*)
Michael A. Gross, Esq. (*via first class mail & electronic mail*)
Mark P. Dauer, Esq. (*via first class mail & electronic mail*)
David R. Sonnenberg, Esq. (*via first class mail & electronic mail*)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

**Department of Enforcement,
Complainant,**

vs.

**Zenaida R. Garcia (CRD No. 5429943),
Respondent.**

**DISCIPLINARY PROCEEDING
No. : 2007010993901**

HEARING OFFICER –

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Zenaida R. Garcia willfully failed to disclose on her Form U4 that she was charged with and pled *nolo contendere* to the misdemeanor charge of Issuing Bad Checks, in violation of NASD Conduct Rule 2110 and IM-1000-1.

2. Garcia also failed to respond to the FINRA staff's requests for documents and information dated December 20, 2007, February 21, 2008, and March 27, 2008, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

RESPONDENT

3. On September 27, 2007, FINRA member firm ADP Broker-Dealer, Inc. filed a Form U4 on Garcia's behalf commencing her association with the firm as of September 10, 2007.

4. On October 23, 2007, ADP filed a Form U5 on Garcia's behalf terminating her association with the firm as of October 5, 2007.

5. Garcia has never held any securities licenses, and she is not currently associated with a FINRA member firm. However, Garcia is still subject to the jurisdiction of FINRA pursuant to Article V, Section 4 of FINRA's By-Laws. Jurisdiction over Garcia expires on October 4, 2009, two years after she was last associated with a FINRA member firm.

FIRST CAUSE OF ACTION
WILLFUL FAILURE TO DISCLOSE MATERIAL INFORMATION ON FORM U4
VIOLATION OF NASD CONDUCT RULE 2110 AND IM-1000-1

6. The Department realleges and incorporates Paragraphs 1 through 5 by reference.

7. Article V, Section 2 of FINRA's By-Laws requires applicants for registration with FINRA to fully and accurately disclose information required by Form U4. This requirement was in effect during the relevant time period.

8. On September 27, 2007, Garcia submitted or caused to be submitted an initial Form U4 with ADP that included "no" answers to the following questions:

14B.(1) Have you ever:

(a) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign or military court to a *misdemeanor involving*: investments or an *investment-related* business or any fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses?

(b) been *charged* with a *misdemeanor* specified in 14B(1)(a)? (Emphasis in the original.)

9. Despite her "no" answers to the foregoing questions, on approximately March 25, 2005, Garcia had been charged, in the District Court of Milford, New

Hampshire, with the misdemeanor offense of Issuing Bad Checks (RSA § 638:4), which is a fraudulent practice under New Hampshire law.

10. In September 2005, Garcia pled *nolo contendere* to that charge.

11. Garcia willfully failed to disclose the foregoing charge and plea on her Form U4 that was filed on September 27, 2007.

12. By reason of the foregoing, Garcia violated NASD Conduct Rule 2110 and IM-1000-1.

SECOND CAUSE OF ACTION

FAILURE TO RESPOND TO DOCUMENT AND INFORMATION REQUESTS VIOLATION OF NASD PROCEDURAL RULE 8210 AND NASD CONDUCT RULE 2110

13. The Department realleges and incorporates Paragraphs 1 through 12 by reference.

14. On December 20, 2007, FINRA's New Jersey District Office staff ("Staff") sent a written request for documents and information to Garcia requesting that she provide the Staff with various documents and information regarding the aforementioned criminal charge and plea ("December 20th Request").

15. The response date for the December 20th Request was January 10, 2008.

16. The Staff issued the December 20th Request under NASD Procedural Rule 8210 and sent it to Garcia at her CRD residential address of record, [REDACTED] ("CRD Address"), by certified and first class mail. The United States Postal Service ("USPS") returned the certified mail receipt to the New Jersey District Office ("District Office") marked "UNCLAIMED." The certified mail receipt disclosed a new address for Garcia -- [REDACTED]

("New Address"). The USPS has not returned the first class mailing to the District Office.

17. Garcia failed to respond to the December 20th Request.

18. On January 31, 2008, the Staff sent a second written request for documents and information to Garcia ("January 31st Request").

19. The January 31st Request informed Garcia that she had failed to respond to the Staff's previous letter and requested that she provide the Staff with the documents and information previously requested. The January 31st Request further advised Garcia that "[f]ailure to comply with this request may subject [her] to disciplinary action."

20. The response date for the January 31st Request was February 14, 2008.

21. The Staff sent the January 31st Request to Garcia at her CRD Address by certified and first class mail.¹ The USPS returned the certified mail receipt to the District Office marked "UNCLAIMED." The USPS has not returned the first class mailing to the District Office.

22. Garcia failed to respond to the January 31st Request.

23. On February 21, 2008, the Staff sent another written request for documents and information to Garcia pursuant to NASD Procedural Rule 8210 ("February 21st Request").

24. The February 21st Request informed Garcia that she had failed to respond to the Staff's previous letters and requested that she provide the Staff with the documents and information previously requested. The February 21st Request further advised Garcia that "[f]ailure to comply with this request may subject [her] to disciplinary action."

¹ Because the January 31st Request was not sent to Garcia at her New Address, Enforcement is not charging Garcia with any violations for failing to respond to the January 31st Request.

25. The response date for the February 21st Request was March 6, 2008.
26. The Staff sent the February 21st Request to Garcia at her CRD Address and at her New Address by certified and first class mail. The USPS returned both certified mail receipts to the District Office marked "UNCLAIMED." The USPS has not returned the first class mailings to the District Office.
27. On February 25, 2008, Garcia called the Staff and said that she had received the February 21st Request and would respond to it that weekend.
28. Garcia failed to respond to the February 21st Request.
29. On March 27, 2008, the Staff sent a final written request for documents and information to Garcia pursuant to NASD Procedural Rule 8210 ("March 27th Request").
30. The March 27th Request informed Garcia that she had failed to respond to the Staff's previous letters and requested that she provide the Staff with the documents and information previously requested. The March 27th Request further advised Garcia that "[f]ailure to comply with this request may subject [her] to disciplinary action."
31. The response date for the March 27th Request was April 10, 2008.
32. The Staff sent the March 27th Request to Garcia at her CRD Address and at her New Address by certified and first class mail. The USPS returned the certified mail receipts to the District Office marked "UNCLAIMED." The USPS has not returned the first class mailings to the District Office.
33. Garcia failed to respond to the March 27th Request.
34. Garcia has failed to respond to the Staff's repeated requests for documents and information.

35. By failing to provide the documents and information requested in the Staff's December 20th Request, February 21st Request, and March 27th Request, Garcia violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

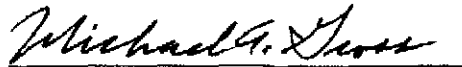
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. Order that one or more of the sanctions provided under NASD Rule 8310(a) be imposed, including monetary sanctions and/or that Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest;
- B. Order that Respondent bear such costs of this proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330; and
- C. Make a specific finding that Respondent's misconduct, as alleged in the First and Second Causes of Action, was willful; the omitted information was material; and the omissions to disclose material facts was on Form U4 applications.

FINRA DEPARTMENT OF ENFORCEMENT

Dated: July 24, 2008


Michael A. Gross
Principal Regional Counsel
FINRA Department of Enforcement
Crystal Corporate Center
2500 N. Military Trail, Suite 302
Boca Raton, FL 33431-6324
561-443-8125; 561-443-7998 (fax)
michael.gross@finra.org