

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

CYNTHIA N. PETE
(CRD No. 5416260),

Respondent.

Disciplinary Proceeding
No. 2007011080601

DEFAULT DECISION

Hearing Officer – SW

Date: December 18, 2008

Respondent is barred from associating with any FINRA member firm in any capacity for violating Conduct Rule 2110 and Procedural Rule 8210 by failing to respond to FINRA's requests for information issued pursuant to Rule 8210. No separate sanction imposed on Respondent for violating Conduct Rule 2110 and IM-1000-1 by willfully failing to disclose her criminal history on her Form U4.

Appearances

David F. Newman, Esq., Senior Regional Counsel, Philadelphia, PA, for the
Department of Enforcement.

No appearance by or for Respondent Cynthia N. Pete.

DECISION

I. Introduction

On September 2, 2008, FINRA's Department of Enforcement ("Enforcement") filed the attached two-count Complaint against Respondent Cynthia N. Pete ("Respondent") alleging that she: (i) willfully failed to disclose her criminal history on her Uniform Applications for Securities Industry Registration or Transfer ("Form U4"), in violation of Conduct Rule 2110 and IM-1000-1; and (ii) failed to respond to requests

for information issued by FINRA staff pursuant to Procedural Rule 8210, in violation of Conduct Rule 2110 and Rule 8210.

On November 21, 2008, Enforcement filed a Motion for Entry of Default Decision ("Motion"), supported by the Declaration of David F. Newman, Esq., Senior Regional Counsel in FINRA's Philadelphia, PA office, and three exhibits. For the reasons set forth below, the Hearing Officer grants Enforcement's Motion.

II. Respondent's Default

On August 28, 2008, Enforcement served the Complaint and Notice of Complaint on Respondent, via certified mail, at her address of record in FINRA's Central Registration Depository ("CRD address"). On September 29, 2008, Enforcement served the Second Notice of Complaint and Complaint on Respondent, via certified mail, at her CRD address. Respondent failed to file an Answer to the allegations of the Complaint.

The Hearing Officer finds that Enforcement complied with Procedural Rule 9134(b)(1) by sending the mailings to Respondent's CRD address. The Hearing Officer also finds that Respondent received constructive notice of this proceeding and further finds that Respondent defaulted by failing to answer the Complaint.¹

¹ The factual determinations in this Decision are based on the Motion for Entry of Default Decision, the Declaration in Support of the Motion, the exhibits attached thereto, and the allegations in the Complaint, deemed admitted pursuant to Rules 9215(f) and 9269, and *Notice to Members* 99-77 (Sept. 1999).

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

On September 14, 2007, Respondent became a “person associated with a member” as that term is defined in Article I, paragraph (rr) of the FINRA By-Laws when she applied to become registered as an investment company and variable contracts products representative by completing a Form U4 and submitting it to Capital Brokerage Corporation (“Capital Brokerage” or the “Firm”) for filing with FINRA. On October 26, 2007, Capital Brokerage filed a Form U5 reflecting that it had terminated Respondent’s association with the Firm. Respondent is not currently associated with any FINRA member firm.

Respondent remains subject to FINRA jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of the FINRA By-Laws, because (1) the Complaint was filed within two years after her association with Capital Brokerage was terminated, and (2) the Complaint charges her with misconduct while she was associated with a FINRA member, and with failing to provide a response to information requested pursuant to Rule 8210 during the period of retained jurisdiction.

B. Respondent Failed to Disclose Her Criminal History on Her Form U4

Count one of the Complaint alleges that, on December 29, 2002, Respondent was charged with contempt of court, a misdemeanor in the Commonwealth of Virginia, based upon making a false statement in a sworn affidavit that she filed with the police department.² On February 10, 2003, the Norfolk, Virginia Juvenile and Domestic

² Respondent executed a sworn affidavit in which she falsely accused her boyfriend of committing assault and battery.

Relations District Court found Respondent guilty of the misdemeanor charge, sentenced her to one day in jail, and imposed a fine. On September 10, 2007, Respondent signed and submitted a Form U4, on which she responded “no” to Questions 14B(1)(a) and (1)(b), which asked whether Respondent had ever been convicted of, or been charged with, a misdemeanor involving making false statements. By unconditionally responding “no” to Questions 14B(1)(a) and (1)(b), Respondent willfully failed to disclose material facts on her Form U4.³

The Securities and Exchange Commission has held that misrepresentations on an application for registration violate the standards of just and equitable principles of trade of Conduct Rule 2110 to which every person associated with any FINRA member is held.⁴

Based on the allegations deemed admitted, the Hearing Officer finds that Respondent violated Conduct Rule 2110 and IM-1000-1 by willfully providing false responses on her Form U4, as alleged in the first cause of the Complaint.⁵

As a result of the finding of willfulness, Respondent is statutorily disqualified.⁶

³ *Christopher LaPorte*, Exch. Act Rel. No. 39,171, 1997 SEC LEXIS 2058, at *8 (Sept. 30, 1997) (finding willfulness when respondent knew or should have known under the particular facts and circumstances that his conduct was improper).

⁴ *Robert E. Kauffman*, Exch. Act Rel. No. 33,219 (Nov. 18, 1993), *aff'd*, *Robert E. Kauffman v. SEC*, 40 F.3d 1240 (3rd Cir. 1994).

⁵ IM-1000-1 provides that “[t]he 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 which could in any way tend to mislead, or the failure to correct such filing after notice thereof, may be deemed to be conduct inconsistent with just and equitable principles of trade . . .”

⁶ Section 15(b)(4)(A) of the Securities Exchange Act of 1934 states that a person who files an application for association with a member of a self-regulatory organization and who “willfully” fails to disclose “any material fact which is required to be stated” in that application is statutorily disqualified from participating in the securities industry.

C. Respondent Failed to Respond to FINRA Requests for Information

After receipt of the Form U5 filed by Capital Brokerage on October 26, 2007, the FINRA staff commenced an investigation of Respondent's non-disclosure of her criminal history.

Count two of the Complaint alleges that Respondent failed to respond to requests for information regarding Respondent's failure to disclose her criminal history. FINRA staff sent requests for information pursuant to Procedural Rule 8210 to Respondent at her CRD address on December 4, 2007, and January 14, 2008, via first-class and certified mail. Respondent did not respond to either request for information.

The Hearing Officer finds that Respondent is deemed to have received the requests for information sent to her CRD address pursuant to Rule 8210(d). Failure to comply with Rule 8210 requests for information is a serious violation because it subverts FINRA's ability to perform its regulatory responsibilities.⁷

Based on the allegations deemed admitted, the Hearing Officer finds that Respondent violated Conduct Rule 2110 and Procedural Rule 8210 by failing to respond to FINRA's Rule 8210 requests for information, as alleged in the second cause of the Complaint.

⁷ See, e.g., *Richard J. Rouse*, Exch. Act Rel. No. 32,685, 1993 SEC LEXIS 1831, at *7 (1993); *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 FINRA to conduct its investigations effectively, and emphasizing that FINRA members and associated persons must fully cooperate with requests for information).

IV. Sanctions

A. Respondent Failed to Respond to Rule 8210 Requests for Information

For failing to respond to the requests for information issued by FINRA staff pursuant to Rule 8210, as alleged in count two of the Complaint, the *FINRA Sanction Guidelines* recommend the imposition of a bar unless mitigating circumstances exist warranting a lesser sanction.⁸ Here, the record discloses no mitigating factors. Accordingly, a bar is the appropriate sanction for the violation as set forth in the second cause of the Complaint.

B. No Separate Sanctions Imposed for Respondent's Failure to Disclose Her Criminal History on Her Form U4

Because the Hearing Officer barred Respondent for her Rule 8210 violation, the Hearing Officer will not impose a separate sanction for Respondent's violation of Conduct Rule 2110 and IM-1000-1 when she willfully failed to disclose material information concerning her misdemeanor charge and conviction on her Form U4.⁹

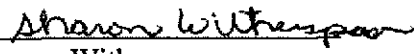
V. Order

Respondent Cynthia N. Pete is barred from associating with any FINRA member firm in any capacity for violating Procedural Rule 8210 and Conduct Rule 2110, by failing to respond to the requests for information issued by the FINRA staff pursuant to Procedural Rule 8210. If this Default Decision becomes the final disciplinary action of

⁸ *FINRA Sanction Guidelines*, p. 35 (2007), available at <http://www.finra.org/web/groups/industry/@ip/@enf/@sg/documents/industry/p011038.pdf>.

⁹ Under Article III, Section 3(b) of FINRA's By-Laws, a "statutorily disqualified" person cannot become or remain associated with an FINRA member unless the disqualified person's member firm applies for relief from the statutory disqualification under Article III, Section 3(d) of the By-Laws.

FINRA, the bar shall become effective immediately.


Sharon Witherspoon
Hearing Officer

Dated: Washington, DC
December 18, 2008

Copies to:

Cynthia N. Pete (via FedEx and first-class mail)
David F. Newman, Esq. (via electronic and first-class mail)
Mark P. Dauer, Esq. (via electronic and first-class mail)
David R. Sonnenberg, Esq. (via electronic and first-class mail)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Cynthia N. Pete
(CRD No. 5416260),

Respondent.

DISCIPLINARY PROCEEDING
No. 2007011080601

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. On or about September 10, 2007, Cynthia N. Pete willfully failed to disclose material facts on her Form U4. Specifically, Pete failed to disclose that she had been charged with and convicted of a misdemeanor involving making a false statement in a sworn affidavit she filed with a police department. By failing to disclose material facts on her Form U4, Pete violated NASD Conduct Rule 2110 and IM-1000-1.
2. On December 4, 2007 and January 14, 2008, FINRA staff sent Pete a letter requesting that she provide information relating to her apparent failure to disclose the misdemeanor charge and conviction on her Form U4. The letters were sent

pursuant to NASD Procedural Rule 8210 and were properly served. Pete failed to provide the requested information. By failing to respond to requests for information, Pete violated NASD Procedural Rule 8210 and Conduct Rule 2110.

RESPONDENT AND JURISDICTION

3. On or about September 10, 2007, Pete signed and submitted a Form U4 seeking to become registered as an Investment Company and Variable Contracts Products Representative through member firm Capital Brokerage Corporation (CBC). On October 26, 2007, Pete was terminated by CBC without becoming registered. Pete is not currently associated with a member firm.
4. Pete remains subject to FINRA's jurisdiction pursuant to Article V, Section 4, of the FINRA By-Laws, in that: the conduct that is the subject of the First Cause of Action occurred while she was associated with CBC; 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 Pete's last association with a member firm.

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

5. The Department realleges and incorporates by reference paragraphs 1 through 4 above.
6. On or about December 29, 2002, Pete was charged by the Commonwealth of Virginia with contempt of court, a misdemeanor. The charge was based on Pete making a false statement in a sworn affidavit she filed with a local police

department in which she falsely accused her boyfriend of committing an assault and battery. On or about February 10, 2003, the Norfolk (Virginia) Juvenile and Domestic Relations District Court found Pete guilty of that misdemeanor.

7. On or about September 10, 2007, Pete signed and submitted a Form U4 seeking to become registered through CBC. On the Form U4, Pete willfully failed to disclose material facts. Specifically, she falsely answered "No" to Question 14B(1)(a), which asked "(1) Have you ever: (a) been "convicted of...a misdemeanor involving...false statements or omissions?" In addition, Pete falsely answered "No" to Question 14B(1)(b), which asked "(1) Have you ever: ... (b) been charged with a misdemeanor specified in 14B(1)(a)?"
8. By failing to disclose material facts on a Form U4, Pete violated NASD Conduct Rule 2110 and IM-1000-1.

**SECOND CAUSE OF ACTION
Failure to Respond
(NASD Procedural Rule 8210 and Conduct 2110)**

9. The Department realleges and incorporates by reference paragraphs 1 through 8 above.
10. On about December 4, 2007 and pursuant to NASD Procedural Rule 8210, FINRA staff sent a letter to Pete requesting information relating to her apparent failure to disclose the misdemeanor charge and conviction. The December 4 letter requested a response by December 18, 2007 and warned Pete that if she failed to provide the requested information she would be subject to disciplinary action. The letter was sent by certified and first class mail to the current residential

address for Pete in the Central Registration Depository: [REDACTED]
[REDACTED] (CRD address). The certified letter was returned by the Postal Service to the Philadelphia District Office and was marked "Unclaimed." The first class letter was not returned. Pete failed to provide the requested information.

11. On or about January 14, 2008 and pursuant to NASD Procedural Rule 8210, FINRA staff sent Pete a second letter requesting the same information as in the December 4, 2007 letter. The January 14 letter requested a response by January 28, 2008 and warned Pete that if she failed to provide the requested information she would be subject to disciplinary action. The January 14 letter was sent by certified and first class mail to the CRD address. The receipt for the certified letter was returned by the Postal Service and was signed "Deandre Gordon." The first class letter was not returned. Pete failed to provide the requested information.
12. FINRA staff is not aware of a more current residential address or of a business address for Pete.
13. By failing to respond to the requests for information, Pete violated NASD Procedural Rule 8210 and Conduct Rule 2110.

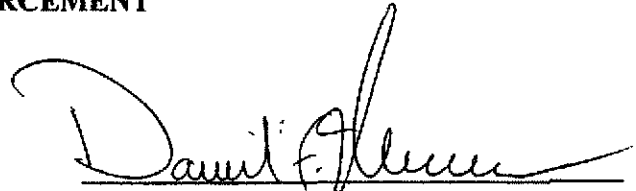
RELIEF REQUESTED

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 a Form U4 application.

FINRA DEPARTMENT OF ENFORCEMENT

Date: August 28, 2008



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