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REGISTRATION & DISCLOSURE

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

PHILIP WADE DENNIS  
(CRD No. 5120867),

Respondent.

Disciplinary Proceeding  
No. 2007011826401

Hearing Officer – LBB

**DEFAULT DECISION**

December 3, 2009

**For Respondent's failure appear at an on-the-record interview, in violation of FINRA Procedural Rule 8210 and Conduct Rule 2010, Respondent is barred from associating with any FINRA member firm in any capacity. In light of the bar, no additional sanction is imposed for Respondent's failure to make required disclosures on his Form U4 concerning a felony charge, in violation of NASD Conduct Rule 2110, IM-1000-1, and Article V, Section 2 of the By-Laws.**

*Appearances*

Pamela Shu, Senior Regional Counsel, FINRA, Chicago, Illinois, for the Department of Enforcement.

No appearance by or for Respondent.

**DECISION**

The Department of Enforcement ("Enforcement") filed the Complaint in this disciplinary proceeding on July 13, 2009, asserting two causes of action against Respondent Philip Wade Dennis ("Respondent"): first, that he submitted false information in his Uniform Application for Securities Industry Registration (Form U4), in violation of NASD Conduct Rule 2110, IM-1000-

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1, and Article V, Section 2 of the By-Laws; and second, that he failed to appear and testify at an on-the-record interview, in violation of FINRA Procedural Rule 8210 and Conduct Rule 2010.<sup>1</sup>

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 October 5, 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.<sup>2</sup>

#### **I. Respondent's Default**

On July 13, 2009, Enforcement served the Complaint and Notice of Complaint on Respondent by first-class regular and certified mail, return receipt requested, at his current residential address, as listed in the Central Registration Depository ("CRD"). Both mailings were returned to the FINRA office by the Postal Service. The first-class mailing was marked, "Return to Sender/Not Deliverable as Addressed/Unable to Forward/Return to Sender." The certified mailing was marked, "Return to Sender/Attempted-Not Known/Unable to Forward/Return to Sender." Shu Decl. ¶ 7; CX-3.

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 August 11, 2009. In addition, Enforcement served the Complaint and Second Notice of Complaint by first-

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<sup>1</sup> As of July 30, 2007, NASD consolidated with the member regulation and enforcement functions of NYSE Regulation and began operating under a new corporate name, the Financial Industry Regulatory Authority (FINRA). References in this decision to FINRA include, where appropriate, NASD. Following consolidation, FINRA began developing a new FINRA Consolidated Rulebook. The first phase of the new consolidated rules became effective on December 15, 2008. See Regulatory Notice 08-57 (Oct. 2008). This decision refers to and relies on the NASD Conduct Rules and By-Laws that were in effect at the time of Respondent's alleged misconduct. The applicable rules are available at [www.finra.org/rules](http://www.finra.org/rules).

<sup>2</sup> The factual determinations in this decision are based on the allegations of the attached Complaint and the materials Enforcement filed with its motion. References to the Declaration Supporting a Motion for Entry of Default Decision, signed by Department of Enforcement attorney Pamela Shu, are cited as "Shu Decl. ¶ \_\_\_\_." The exhibits attached to the Declaration are cited as "CX-\_\_\_\_."

class regular and certified mail, return receipt requested, on Respondent at an alternative address that was obtained by a search of public records. The first-class mailing sent to Respondent's CRD address was returned by the Postal Service, marked, "Return to Sender/Insufficient Address/Unable to Forward/Return to Sender." The certified mailing sent to Respondent's CRD address was returned by the Postal Service, marked, "Return to Sender/Attempted-Not Known/Unable to Forward/Return to Sender." The first-class mailing sent to Respondent's alternative address was not returned. The certified mailing sent to Respondent's alternative address was returned by the Postal Service, marked, "Return to Sender/Unclaimed/Unable to Forward/Return to Sender." Shu Decl. ¶ 8; CX-4 – CX-6.

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.

## **II. Jurisdiction**

Respondent was associated with FINRA member firm Charles Schwab & Co. ("Schwab"), in an unregistered capacity, from March 22, 2006, until December 14, 2007, when his employment was terminated. Shu Decl. ¶ 5; CX-1; Complaint ¶ 1. Respondent signed and submitted a Form U4 to Schwab on July 31, 2007. Complaint ¶ 6. Schwab requested additional information from Respondent on August 21, 2007. In response to Schwab's request, Respondent re-submitted his Form U4 on August 21, 2007. Complaint ¶¶ 9, 10. By signing and submitting a Form U4, Respondent became an associated person pursuant to Article I, Section (rr)(1) of FINRA's By-Laws, and thereby subjected himself to FINRA's jurisdiction.

Although Respondent has not been associated with any FINRA member since December 14, 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 association with a member firm, and it charges him with misconduct while he was associated with a member firm and with failure to respond to requests for information during the two-year period following his association with the firm.

### **III. Violations**

#### **A. Respondent Violated NASD Conduct Rule 2110, IM-1000-1, and Article V, Section 2 of the By-Laws by Failing to Disclose Material Facts on His Form U4**

Article V, Section 2 of the 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 are required to complete a Form U4 disclosing, among other things, whether they had ever been charged with any felony. FINRA uses Form U4 "to monitor and determine the fitness of securities professionals."<sup>3</sup> Article V, Section 2(c) of the By-Laws requires members to keep Forms U4 current. Amendments to a Form U4 must be filed not more than 30 days after a member learns of facts or circumstances giving rise to the amendment. 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.<sup>4</sup>

Respondent signed and submitted a Form U4 to Schwab on July 31, 2007. On August 12, 2007, Respondent was arrested and charged with possession of methamphetamine, a felony. Schwab requested additional information from Respondent on August 21, 2007. In response to Schwab's request, Respondent re-submitted his Form U4 on August 21, 2007. Despite having been charged with a felony only nine days earlier, Respondent marked "No" in response to Question 14A, which asked if the applicant had ever been charged with any felony. Respondent

<sup>3</sup> *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).

<sup>4</sup> 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).

did not file an amended Form U4. Schwab did not learn of the pending felony charge until an anonymous source provided the information on December 7, 2007.

Respondent failed to disclose material information on his Form U4. A pending felony drug charge would be material information to his employer, investors, and regulators. By providing inaccurate information, and failing to amend his Form U4, Respondent violated NASD Conduct Rule 2110, IM-1001-1, and Article V, Section 2 of the By-Laws.<sup>5</sup>

**B. Respondent Violated FINRA Procedural Rule 8210 and Conduct Rule 2010 by Failing to Appear at an On-the-Record Interview**

FINRA Procedural Rule 8210 authorizes FINRA to require any person subject to its jurisdiction to provide information related to any matter under its investigation. The second cause of action of the Complaint alleges that on April 20, 2009, FINRA staff sent a request to Respondent at his CRD address by first-class and certified mail, pursuant to Rule 8210, directing him to appear and testify at an on-the-record interview on May 5, 2009. The first-class mailing was not returned by the Postal Service. The certified mailing was returned, marked "Notice Left, April 24, 8:04 a.m." The Postal Service tracking system reported that delivery was attempted and a notice was left at the CRD address on April 24, 2009. Respondent did not appear to testify.

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent failed to respond to requests for information, in violation of FINRA Procedural Rule 8210 and Conduct Rule 2010.<sup>6</sup>

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<sup>5</sup> The Complaint does not charge Respondent with willful submission of false information on his Form U4.

<sup>6</sup> A violation of Rule 8210 is also a violation of Rule 2010. *Dep't of Enforcement v. Hoeper*, No. C02000037, 2001 NASD Discip. LEXIS 37, at \*5 (N.A.C. Nov. 2, 2001). Effective December 15, 2007, FINRA Conduct Rule 2010 replaced NASD Conduct Rule 2110, without material change. Regulatory Notice 08-57.

#### **IV. Sanctions**

For failing to respond in any manner to requests for information, the Sanction Guidelines recommend a bar. *FINRA Sanction Guidelines* at 35 (2007). Where mitigation exists, or the person did not respond in a timely manner, the Guidelines recommend a suspension for up to two years. 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. There is no evidence of mitigation. A bar is the appropriate sanction.

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 – 74. One principal consideration is the nature and significance of the information at issue, which is an aggravating factor here. Information concerning a pending felony charge would be very important to regulators, the firm, and potential clients. Enforcement recommends a fine of \$5,000. Given the nature of the information that was omitted, Enforcement's recommendation is not reasonable. A suspension of 30 business days would be appropriate in addition to the fine. In light of the bar, however, no additional sanction is imposed.

#### **V. Conclusion**

For Respondent's failure to appear at an on-the-record interview, in violation of FINRA Procedural Rule 8210 and Conduct Rule 2010, Respondent is barred from associating with any FINRA member firm in any capacity. In light of the bar, no additional sanction is imposed for Respondent's failure to make required disclosures concerning a felony charge on his Form U4, in violation of NASD Conduct Rule 2110, IM-1000-1, and Article V, Section 2 of the By-Laws.

The bar will become effective immediately if this default decision becomes FINRA's final disciplinary action in this proceeding.

**SO ORDERED.**

  
Lawrence B. Bernard  
Hearing Officer

Copies to: Philip Wade Dennis (*via overnight courier and first-class mail*)  
Pamela Shu, Esq. (*via e-mail and first-class mail*)  
Mark P. Dauer, Esq. (*via e-mail*)  
David R. Sonnenberg, Esq. (*via e-mail*)

**FINANCIAL INDUSTRY REGULATORY AUTHORITY**

**OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

Philip Wade Dennis, ("Dennis")  
Associated Person  
CRD # 5120867

Respondent.

DISCIPLINARY PROCEEDING  
No. 2007011826401

**COMPLAINT**

The Department of Enforcement alleges:

**RESPONDENT AND JURISDICTION**

1. Philip Wade Dennis became employed by Charles Schwab & Co., Inc. ("Schwab") a member of FINRA, on March 22, 2006, where he worked until he was terminated by Schwab on December 14, 2007. Dennis is not currently registered or associated with any FINRA member. Pursuant to Article V, Section 4 of the FINRA By-Laws, FINRA retains jurisdiction over Dennis.

**SUMMARY**

2. While employed by Schwab in an unregistered capacity, Dennis submitted a Uniform Application for Securities Industry Registration or Transfer (Form U4) in anticipation of becoming a Series 7 Registered Representative. Dennis completed the Form U4, which was submitted on or about August 21, 2007, without disclosing that he had been charged with a

felony on or about August 12, 2007. Thereafter, Dennis failed to disclose the felony charge on a Form U4 Amendment until December 2007, when Schwab discovered his felony arrest and charge, and directed him to disclose it by amending his Form U4.

3. Dennis subsequently failed to appear to give on the record testimony to FINRA on May 5, 2009, pursuant to FINRA Rule 8210.

**FIRST CAUSE OF ACTION  
NASD Conduct Rule 2110 and IM 1000-1 and NASD By-Law Article V Section 2  
Failure to Disclose a Felony Charge for  
Possession of Methamphetamine by Respondent Dennis.**

4. The Department re-alleges and incorporates by reference paragraphs 1 through 3 above.

5. On or about March 22, 2006, Dennis became employed by Schwab in an unregistered capacity.

6. On or about July 31, 2007, Dennis completed and submitted a Form U4 to Schwab to apply to become a Series 7 Registered Representative.

7. Question 14A of the Form U4 asked: "Have you ever been *charged* with any *felony*?" Dennis checked the "NO" box.

8. After his submission of the Form U4, Dennis was arrested in Carmel, Indiana on or about August 12, 2007, and was charged with a felony, possession of methamphetamine.

9. On or about August 21, 2007, Schwab requested additional information from Dennis prior to the processing of his Form U4 which required Dennis to re-submit his Form U4.

10. When Dennis re-submitted his Form U4 on or about August 21, 2007, he failed to disclose to Schwab and failed to change the information on his Form U4 to disclose that he had been charged with a felony since his previous completion of the Form U4.

11. Dennis failed to file a Form U4 Amendment to disclose the pending felony charge against

him, until on or about December 7, 2007, when Schwab discovered that Dennis had been charged with a felony and directed him to disclose it by filing an amended Form U-4.

12. Dennis' failure to disclose the August 12, 2007 felony charge on Form U4 was in contravention of, and constitutes violations of NASD Conduct Rule 2110 and IM 1000-1 and NASD By-Law Article V Sec. 2.

#### **SECOND CAUSE OF ACTION**

##### **FINRA Rules 2010 and 8210**

##### **Failure to Appear for an On-the-Record Interview ("OTR")**

13. The Department re-alleges and incorporates by reference paragraphs 1 through 12 above.

14. On or about April 20, 2009, FINRA staff sent to Dennis a request that he appear for an OTR on May 5, 2009, pursuant to and in accordance with the provisions of FINRA Rule 8210. The staff, in its letter, warned Dennis that his failure to appear and testify at the OTR might subject him to disciplinary action. That request was sent by first class mail and by certified mail, return receipt requested, to Dennis' address of record as contained in the records of the Central Registration Depository ("CRD address"). The first class mailing to the CRD address was not returned to FINRA staff. The certified mailing to the CRD address was returned, marked "Notice Left, April 24, 2009, 8:04 a.m." The U.S. Postal Service delivery tracking information stated "We attempted to deliver your item at 8:04 a.m on April 24, 2009 in INDIANAPOLIS, IN 46240 and a notice was left. No further information is available for this item."

15. Dennis failed to appear for the OTR on May 5, 2009, and did not contact FINRA staff to explain why he failed to appear.

16. The acts, practices and conduct described above constitute a violation of FINRA Rules 2010 and 8210 by Dennis.

## **RELIEF REQUESTED**

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed; and
- B. order that the Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

## **FINRA DEPARTMENT OF ENFORCEMENT**

Date: July 13, 2009

  
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Pamela Shu, Senior Regional Counsel  
Mark A. Koerner, Associate Vice President and  
Regional Chief Counsel  
FINRA Department of Enforcement  
55 West Monroe, 27<sup>th</sup> Floor  
Chicago, IL 60603  
Phone: (312) 899-4353; Fax: (312) 899-4600  
e-mail: [pamela.shu@finra.org](mailto:pamela.shu@finra.org)