

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

BRAD NUSSBAUM
(CRD No. 2770338),

Respondent.

Disciplinary Proceeding
No. 20080120713-01

Hearing Officer – Andrew H. Perkins

DEFAULT DECISION

May 1, 2009

Respondent violated Procedural Rule 8210 and Conduct Rule 2110 by failing to respond to requests for information. For this violation he is barred from associating with any member firm in any capacity. Respondent also violated Conduct Rule 2110 by failing to honor an arbitration settlement agreement. For this violation Respondent is fined \$10,000 and suspended from associating with any member firm in any capacity until the Settlement Agreement is paid or otherwise satisfied in full, plus an additional 30 business days. If, after 24 months from the date of this Default Decision, Respondent has not paid or otherwise satisfied the Settlement Agreement in full, the suspension will convert to a bar in all capacities.

Appearances

Elissa Meth Kestin, Senior Regional Counsel, New York, NY, for the Department of Enforcement.

No appearance by or for Brad Nussbaum.

DECISION

I. Introduction

The Department of Enforcement (“Enforcement”) for the Financial Industry Regulatory Authority (“FINRA”) filed a Complaint (attached to this Decision as Exhibit A) on December 10, 2008, against Brad Nussbaum (“Nussbaum”). The Complaint alleges that

Nussbaum violated NASD Conduct Rule 2110 and IM-10100 of NASD's Code of Arbitration Procedure by failing to comply with the terms of a settlement agreement in connection with an arbitration brought under the procedures of the New York Stock Exchange. The Complaint also alleges that Nussbaum subsequently violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by failing to respond to requests that he produce documents and provide information regarding his failure to pay the amount due under the settlement agreement.¹

Nussbaum did not answer or otherwise respond to the Complaint. Consequently, on February 25, 2009, Enforcement filed a Motion for Entry of Default Decision and Imposition of Sanctions, supported by the Declaration of Elissa Meth Kestin ("Kestin Decl.") and 21 exhibits. Nussbaum did not reply to the motion.²

II. Findings of Fact and Conclusions of Law

A. Nussbaum's Default

The Hearing Officer finds that Enforcement properly served Nussbaum with the Complaint by mailing the Complaint and the First and Second Notices of Complaint to his last known residential address as shown in FINRA's Central Registration Depository (the "CRD Address"), in accordance with FINRA Procedural Rule 9134(b)(1).

Enforcement mailed the Complaint and First Notice of Complaint to Nussbaum's CRD Address by first-class and certified mail on December 10, 2008. Neither mailing was returned to FINRA by the United States Postal Service. Enforcement mailed the Complaint

¹ 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, including certain conduct rules and procedural rules. See Regulatory Notice 08-57 (Oct. 2008). This decision refers to and relies on the NASD Conduct Rules that were in effect at the time of Respondent's alleged misconduct. In addition, because the Complaint was filed before December 15, 2008, the NASD Procedural Rules were applied in this disciplinary proceeding, which are available at www.finra.org/rules (then follow "FINRA Manual" hyperlink to "NASD Rules").

² The factual determinations in this decision are based on the allegations of the attached Complaint, which are deemed admitted, as well as additional materials filed by Enforcement.

and Second Notice of Complaint to Nussbaum's CRD Address by first-class and certified mail on January 8, 2009. As before, neither mailing was returned; however, FINRA did receive the return receipt for the certified mailing. The receipt bears Nussbaum's signature and reflects that he received the mailing on January 12, 2009.³

The Second Notice of Complaint stated that Nussbaum was required to answer the Complaint by January 26, 2009. To date, Nussbaum has not filed an Answer or other response with the Office of Hearing Officers.

Nussbaum defaulted by failing to answer the Complaint.⁴ 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.

B. Jurisdiction

Nussbaum first entered the securities industry and registered with FINRA as a General Securities Representative in 1996. Between 1996 and 2002, Nussbaum was associated with two different member firms. In October 2002, Nussbaum associated with Citigroup Global Markets, Inc. ("Citigroup").⁵ He was registered as a General Securities Representative through Citigroup from October 18, 2002, until June 20, 2005.⁶ After Nussbaum left Citigroup, he was associated with and registered through two other FINRA member firms. His last registrations as a General Securities Representative and a General Securities Principal terminated on June 17, 2008.⁷

³ Complainant's Ex. ("CX") 7.

⁴ *Department of Enforcement v. Reynolds Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at *5 (N.A.C. Dec. 9, 2003).

⁵ Kestin Decl. ¶ 7. At the time, Citigroup was known as Salomon Smith Barney, Inc.

⁶ CX-1, at 1-3.

⁷ *Id.* at 1.

Although Nussbaum has not been registered with FINRA since June 17, 2008, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's Bylaws, because (1) the Complaint was filed within two years following the termination of his registrations with FINRA, and (2) the Complaint charges him with misconduct committed while he was associated with a FINRA member firm and with failing to respond to FINRA's requests for information made during the two-year period following his registration termination.⁸

C. Failure to Honor Settlement Agreement

The first cause of action in the Complaint alleges that Nussbaum violated NASD Conduct Rule 2110 and IM-10100 of NASD's Code of Arbitration⁹ by failing to pay the amounts due Citigroup under the terms of the Stipulation of Settlement, Withdrawal, Discontinuance, and Release dated April 24, 2007 ("Settlement Agreement").¹⁰ The Complaint alleges that Nussbaum settled an arbitration claim brought by Citigroup to recover the balance due under a promissory note. Under the terms of the Settlement Agreement, Nussbaum was obligated to make an initial payment of \$10,000, and then monthly payments of \$2,458.34, commencing on July 1, 2007. Nussbaum made the initial payment of \$10,000, but he failed to make any additional payments. Accordingly, on March 13, 2008, Citigroup obtained a judgment against Nussbaum for \$82,654.45 in the Supreme Court of New York, New York County.¹¹ Nussbaum has not made any further payments to Citigroup.¹²

⁸ Article V, Sec. 4(a), FINRA By-Laws, *available at* www.finra.org/rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: Bylaws").

⁹ IM-10100 provides in relevant part that it may be deemed conduct inconsistent with just and equitable principles of trade and a violation of Conduct Rule 2110 "to fail to honor an award, or comply with a written and executed settlement agreement, obtained in connection with an arbitration submitted for disposition pursuant to the procedures specified by ... the New York [Stock Exchange] where timely motion has not been made to vacate or modify such award pursuant to applicable law.

¹⁰ CX-8, at 4.

¹¹ CX-13, at 2.

¹² Kestin Decl. ¶ 34.

The Hearing Officer finds that the allegations in the first cause of action are sufficient to establish, for purposes of this default decision, that Nussbaum violated NASD Conduct Rule 2110 and IM-10100.

D. Failure to Respond to Requests for Information

The second cause of action alleges that Nussbaum failed to respond to two written requests that he provide documents and information to FINRA Staff ("Staff") concerning allegations that he had failed to pay the amount due Citigroup under the Settlement Agreement, as well as information regarding his termination from Citigroup and a loan he had received from another member firm.¹³ The Staff sent the first request on May 23, 2008, by first-class mail to his CRD Address and to his business address reflected in CRD.¹⁴ Nussbaum was required to respond to the request on or before June 6, 2008. By June 11, 2008, the Staff had not received a response although neither of the mailings had been returned by the United States Postal Service. Accordingly, the Staff sent Nussbaum a second request on June 11, 2008, by first-class and certified mail to the same two addresses.¹⁵ The Staff received the receipt for the certified mailing signed by "B.N. Nussbaum" and indicating delivery on June 16, 2008.¹⁶ The Staff also received a signed receipt for the certified mailing sent to Nussbaum's current business address.

The Hearing Officer finds that the allegations in the second cause of action are sufficient to establish, for purposes of this default decision, that Nussbaum violated Procedural Rule 8210 and Conduct Rule 2110.

¹³ Kestin Decl. ¶ 39. The Staff had sent Nussbaum two earlier requests for documents and information pursuant to Rule 8210 on January 30 and February 25, 2008, seeking information about his failure to honor the Settlement Agreement. Kestin Decl. ¶ 35. On March 14, 2008, Nussbaum provided a letter in response, claiming that he had misunderstood the terms of the Settlement Agreement. Nussbaum claimed that he understood that he was not obligated to begin making monthly payments until July 2008. CX-17.

¹⁴ Kestin Decl. ¶ 39; CX-18.

¹⁵ Kestin Decl. ¶ 43; CX-19.

¹⁶ Kestin Decl. ¶ 45.

III. Sanctions

A. Failure to Respond to Requests for Information

The FINRA Sanction Guidelines (“Sanction 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 Sanction 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. The fact that Nussbaum responded to the Staff’s initial requests is not sufficiently mitigating to warrant a sanction other than a bar. The scope of the information requested initially was much narrower than in the second two requests. The second two requests sought information about Nussbaum’s alleged failure to pay a second arbitration award, as well as further information about his admitted failure to honor the Settlement Agreement.¹⁸ Nussbaum’s refusal to provide this information impeded the Staff’s investigation. Accordingly, the Hearing Officer finds that Nussbaum should be barred from associating with any FINRA member in any capacity for violating Procedural Rule 8210 and Conduct Rule 2110.

B. Failure to Honor Settlement Agreement

The Sanction Guidelines for failure to honor an arbitration award or related settlement agreement provides for a fine of not less than \$5,000 and a suspension in all capacities until the amount due is paid in full, plus an additional 30 business days.¹⁹ In egregious cases, a bar may also be considered. The applicable principal considerations for determining sanctions are: (1) whether any portion of the arbitration award has been paid; (2) whether a good-faith attempt has been made to satisfy the award in whole or in part, and the promptness of any

¹⁷ FINRA Sanction Guidelines 35 (2007), available at <http://www.finra.org/RegulatoryEnforcement/index.htm> (then follow “FINRA Sanction Guidelines” hyperlink).

¹⁸ CX-18.

¹⁹ Sanction Guidelines 20.

such effort; and (3) whether any settlement or payment schedule that has been negotiated has been met.²⁰

Arbitration proceedings in the securities industry are designed to provide a mechanism for the speedy resolution of disputes among members, their employees, and the public.²¹ Here, Nussbaum has flouted that mechanism since July 2007 by refusing to honor the terms of the Settlement Agreement. Although Nussbaum made the initial \$10,000 payment due under the Settlement Agreement, he failed to make any further payments. The record fails to reflect that he made any effort to make partial payments or to renegotiate the payment schedule despite his representation in March 2008 that he was “ready to commence with [the] payment plan as set forth in [the Settlement Agreement].”²² Accordingly, the Hearing Officer finds that Nussbaum should be fined \$10,000 and suspended from associating with any member firm in any capacity until he satisfies the amount due under the Settlement, plus an additional 30 business days. In addition, if Nussbaum fails to satisfy the amount due under the Settlement Agreement within 24 months after the date of this Default Decision, Nussbaum’s suspension shall convert to a bar.²³

IV. Order

Nussbaum is barred from association with any member firm in any capacity for failing to respond to requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2110. In addition, Nussbaum is fined \$10,000 and suspended from associating with any member firm in any capacity until the Settlement Agreement is paid or otherwise satisfied in full, plus an additional 30 business days. If, after 24 months from the date of this

²⁰ Sanction Guidelines 20.

²¹ *Robert Tretiak*, Exchange Act Release No. 47534, 2003 SEC LEXIS 653, at *40 (Mar. 19, 2003).

²² CX-17.

²³ *Cf. Tretiak*, 2003 SEC LEXIS 653 (upholding similar sanction for failure to honor arbitration award).

Default Decision, the Settlement Agreement is not paid or otherwise satisfied in full, the suspension will convert to a bar in all capacities.

The bar will become effective immediately if this Default Decision becomes FINRA's final disciplinary action in this proceeding. The fine shall be due and payable if and when Nussbaum applies to re-enter the securities industry. If this Default Decision becomes FINRA's final disciplinary action, the suspension shall commence on June 1, 2009.

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

Andrew H. Perkins
Hearing Officer

Copies to:

Brad Nussbaum (by FedEx, next-day delivery, and first-class mail)
Elissa Meth Kestin, Esq. (by electronic and first-class mail)
David Jaffe, Esq. (by electronic and first-class mail)
Mark P. Dauer, Esq. (by electronic mail)
David R. Sonnenberg, Esq. (by electronic mail)

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

BRAD NUSSBAUM
CRD NO. 2770338,

Respondent.

DISCIPLINARY PROCEEDING
No. 20070072031-01

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Respondent Brad Nussbaum failed to comply with the terms of a settlement that he executed on or about April 27, 2007. The settlement addressed arbitration claims that had been filed against him on November 3, 2005 at the New York Stock Exchange by Citigroup Global Markets Holdings, Inc. ("CGMH"), the parent company of his former member firm, Citigroup Global Markets Inc.) (f/k/a Salomon Smith Barney, Inc.) (BD No. 7059) ("CGMI") in *In the Matter of Citigroup Global Markets Holdings Inc. vs. Brad N. Nussbaum*, Docket No. 2005-016323 (NYSE Arb. Nov. 3, 2005).
2. Pursuant to the settlement, Nussbaum agreed to repay CGMI in the net amount of \$69,000 for the outstanding balance of a loan CGMI had advanced him while he was employed there. He did not fully comply with that agreement. On March 13, 2008, the New York State Supreme Court entered a Judgment By Confession against Nussbaum and in favor of CGMI

in the amount of \$82,654.45, which represented the balance of the loan, plus interest and costs.

3. Nussbaum has not fully paid what he owes CGMH under either the settlement or the Judgment. Therefore, he violated NASD Conduct Rule 2110 and IM-10100 of NASD's Code of Arbitration Procedure.
4. Nussbaum also failed to respond to a request for information sent to him on May 23, 2008 and again on June 11, 2008 pursuant to NASD Procedural Rule 8210 by the staff of the Member Regulation Department of FINRA's District 10 office (the "Staff") regarding, among other things, the above settlement. Therefore, Nussbaum violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

RESPONDENT AND JURISDICTION

5. Nussbaum first became registered with a FINRA (formerly known as NASD) member firm, as a General Securities Representative from July 1, 1996 until September 3, 1996.
6. From March 10, 1997 through October 18, 2002, Nussbaum became registered with FINRA as a GSR through consecutive associations with two different member firms.
7. From October 18, 2002 through June 3, 2005, Nussbaum became registered with FINRA as a GSR through an association with member firm CGMI.
8. From June 3, 2005 through June 16, 2008 Nussbaum was registered with FINRA as a GSR through consecutive associations with two different member firms.
9. On January 12, 2006 through June 16, 2008, Nussbaum was registered with FINRA as a General Securities Principal through his associations with two different member firms.
10. Nussbaum was last registered with FINRA as a GSR and GSP on June 16, 2008.

11. Upon information and belief, Nussbaum is not currently registered with any FINRA member firm. However, pursuant to Article V, Section 4 of the FINRA By-Laws he remains subject to FINRA's jurisdiction.

FIRST CAUSE OF ACTION

Failure to Comply With Terms of a NYSE Arbitration Settlement Agreement NASD Conduct Rule 2110 and IM-10100 of NASD's Code of Arbitration Procedure

12. The Department realleges and incorporates by reference paragraphs 1 through 11 above.
13. During his employment with CGMI, Nussbaum received a loan from CGMH in the amount of \$122,523.00 secured by a Promissory Note he executed on October 22, 2002.
14. The terms of the Note, along with a Special Compensation Agreement that Nussbaum also signed, provided that CGMI would repay the loan through annual installment payments on Nussbaum's behalf, as long as he remained employed at CGMI. However, if Nussbaum separated from CGMI, the entire unpaid balance was due immediately.
15. During Nussbaum's employment, CGMI made two payments towards the loan of \$17,503.28 on his behalf.
16. Nussbaum resigned from CGMI on June 3, 2005. The balance of the Note, \$87,516.40, plus interest, costs and fees, became immediately due and payable upon his resignation.
17. Nussbaum did not repay what he owed under the Note.
18. On or about November 3, 2005, CGMH filed a claim with NYSE Arbitration seeking to recover the unpaid balance of the Note, \$87,516.40, plus interest, costs and fees.

19. On April 27, 2007, Nussbaum executed a Stipulation of Settlement, Withdrawal, Discontinuance, and Release ("Settlement"), which included an Affidavit of Confession of Judgment.
20. Following the Settlement the arbitration was closed.
21. The Settlement stated that Nussbaum would, *inter alia*, pay CGMH \$69,000 with \$10,000 due upon execution and delivery of the Settlement, followed by equal monthly installments of \$2,458.34 made every month from July 1, 2007 through June 1, 2009. Although Nussbaum made the initial payment due under the Settlement, he has failed to make any of the monthly installment payments.
22. On March 13, 2008, the New York State Supreme Court entered a Judgment By Confession against Nussbaum and in favor of CGMI in the amount of \$82,654.45, which represented the \$87,516.40 balance on the loan, less Nussbaum's \$10,000 initial payment under the Settlement, plus interest and costs.
23. Nussbaum has failed to pay what he owed under the Settlement and has failed to pay the Judgment awarded to CGMI by the New York State Supreme Court.

By reason of the foregoing Nussbaum has violated NASD Conduct Rule 2110 and IM-10100 of NASD's Code of Arbitration Procedure.

SECOND CAUSE OF ACTION

Failure to Respond to Request for Information

NASD Procedural Rule 8210 and NASD Conduct Rule 2110

24. The Department realleges and incorporates by reference paragraphs 1 through 23 above.

25. The Staff sent two letters, dated January 30, 2008 and February 25, 2008, to Nussbaum requesting, pursuant to Procedural Rule 8210, that he provide information regarding his failure to pay the Settlement.
26. The letters were sent via first class mail to Nussbaum's:
- a. most recent residential address as reflected in the records of the Central Registration Depository ("CRD Residential Address"), [REDACTED] and [REDACTED]
 - b. Nussbaum's then current work address as reflected in the records of the Central Registration Depository ("CRD Business Address"), Summit Brokerage Services, Inc., 101 Eisenhower PKWY, Suite 300, Roseland, NJ 07068.
27. By letter dated March 14, 2008, Nussbaum responded to the Staff's requests for information.
28. By letter dated May 23, 2008, sent via first class mail to Nussbaum's CRD Residential and Business addresses, the Staff requested that Nussbaum provide, pursuant to Procedural Rule 8210, additional information and documentation regarding, *inter alia*, the Settlement, an unrelated loan Nussbaum had received from another member firm and his terminations from CGMI and another member firm. A courtesy copy of the letter was also sent to the Chief Compliance Officer of the member firm that employed Nussbaum on May 23, 2008.
29. The May 23, 2008 letter requested a written response by June 6, 2008.
30. The first class mailings were not returned to the Staff. The Staff did not receive a response by June 11, 2008.

31. By letter dated June 11, 2008, sent via first class and certified mail to Nussbaum's CRD Residential and Business addresses, the staff reminded Nussbaum of the May 23, 2008 request for information and documentation, enclosed another copy of that request and requested, pursuant to NASD Procedural Rule 8210, that Nussbaum respond to that request by June 23, 2008. A courtesy copy of the letter was also sent to the Chief Compliance Officer of the member firm that employed Nussbaum on June 11, 2008.
32. The Staff received the return receipt for the certified mailing to the CRD Residential Address indicating it had been delivered on June 16, 2008. The receipt was signed "B. N. Nussbaum."
33. The first class mailing to the CRD Residential Address was not returned to the staff. The staff received a delivery receipt for the certified mailing to the CRD Business Address indicating it had been delivered on June 13, 2008. The signature on the receipt is illegible. The first class mailing to the CRD Business Address was not returned to the staff.
34. To date, Nussbaum has not responded to the staff's May 23, 2008 and June 11, 2008 requests for information.

By reason of the foregoing Nussbaum violated NASD Conduct 2110 and Procedural Rule 8210.

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: December 0, 2008



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