

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ANASTAS KALAJDIEV
(CRD No. 5498837),

Respondent.

Disciplinary Proceeding
No. 2008013050901

Hearing Officer – LBB

DEFAULT DECISION

August 21, 2009

Respondent is suspended for two years for providing an oral, rather than written, response to requests for information and failing to provide requested documents, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110. Respondent is suspended for an additional 90 days, to run consecutively, and fined \$5,000 for failure to disclose material information on his Form U4, in violation of Conduct Rule 2110, Article V, Section 2 of the By-Laws, and IM-1000-1.

Appearances

Helen G. Barnhill, Senior Regional Counsel, Denver, Colorado, 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 March 31, 2009, charging Respondent Anastas Kalaidjiev ("Respondent") with omission of material facts from his Uniform Application for Securities Industry Registration or Transfer (Form U4), in violation of NASD Conduct Rule 2110, Article V, Section 2 of the By-

Laws, and IM-1000-1, and failure to respond to requests for information, in violation of NASD Procedural Rule 8210 and Conduct Rule 2110.¹

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 June 22, 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.²

I. Respondent

Respondent was employed by member firm Ameriprise Financial Services, Inc., from February 28, 2008, until April 1, 2008. Respondent signed and submitted a Form U4, seeking to become a registered representative through Ameriprise, on February 28, 2008. Ameriprise submitted the Form U4 to FINRA on March 5, 2008. On April 3, 2008, Ameriprise filed a Uniform Termination Notice for Securities Industry Registration (Form U5), reporting that it had terminated Respondent's association with Ameriprise.

Respondent has not been associated or registered with another FINRA member firm since the termination of his association with Ameriprise.

II. Jurisdiction

Respondent was associated with a FINRA member firm in an unregistered capacity from February 28, 2008, until April 1, 2008, when his employment was terminated. CX-1, CX-2;

¹ As of July 30, 2007, NASD consolidated with the member firm regulation functions of NYSE and began operating under a new corporate name, the Financial Industry Regulatory Authority ("FINRA"). References in this decision to FINRA include, where appropriate, NASD. Initially, FINRA adopted NASD's rules and certain NYSE rules, but it is in the process of establishing a "Consolidated Rulebook" of FINRA Rules. To that end, on December 15, 2008, certain consolidated FINRA rules became effective, replacing parallel NASD and/or NYSE rules, and in some cases the prior rules were re-numbered and/or revised. See FINRA Regulatory Notice 08-57, 2008 FINRA LEXIS 50 (Oct. 2008). This decision refers to and relies on the NASD conduct rules that were in effect at the time of the conduct at issue.

² The factual determinations in this decision are based on the allegations of the attached Complaint and the materials Enforcement filed with its motion.

Barnhill Decl. ¶5. By signing and submitting a Form U4 to Ameriprise, which Ameriprise filed with FINRA, 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 firm since April 1, 2008, he remains subject to FINRA's 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 failure to respond to requests for information during the two-year period following his association with the firm.

III. Origin of the Investigation

FINRA's investigation of the circumstances surrounding the termination of Respondent's association with Ameriprise began in April 2008, following receipt of the Form U5 that Ameriprise filed on Respondent's behalf, reporting that Respondent had been discharged, "For cause, failure to get documentation."

IV. Respondent's Default

Enforcement served the Complaint and Notice of Complaint by first-class regular and certified mail on Respondent at his residential address, as listed in the Central Registration Depository ("CRD"), on March 27, 2009. Both mailings were returned marked "not deliverable as addressed – unable to forward." Barnhill Decl. ¶¶10, 11; CX-5. On April 27, 2009, Enforcement served the Complaint and Second Notice of Complaint on Respondent at his CRD address, by first-class regular and certified mail. Both mailings were returned to Enforcement marked "return to sender, Kaladyzhiev' Anastas moved, left no address, unable to forward, return to sender." Barnhill Decl. ¶¶12, 13; CX-6. Enforcement is not aware of any more current

address for Respondent. Respondent has not answered or otherwise responded to the Complaint. Barnhill Decl. ¶13.

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.

V. Violations

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

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 several categories of information, including information concerning the applicant's criminal history. FINRA uses Form U4 "to monitor and determine the fitness of securities professionals." *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). 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. *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).

Question 14(B)(1)(a) on Form U4 asks whether the applicant has ever been convicted or pled guilty to a misdemeanor involving the wrongful taking of property. When Respondent submitted his Form U4 to Ameriprise, he answered "No" to this question. Question 14(B)(1)(b) asks whether the applicant has ever been charged with any of the misdemeanor offenses specified in question 14(B)(1)(a). Respondent also responded "No" to this question on his Form U4. Both responses were false. On October 20, 2003, Respondent pled guilty to shoplifting, a

Class B misdemeanor involving the wrongful taking of property. By responding falsely, Respondent violated Conduct Rule 2110 and IM-1000-1.

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent violated NASD Conduct Rule 2110, Article V, Section 2 of the By-Laws, and IM-1000-1 by failing to disclose material facts on his Form U4.

B. Respondent Violated Procedural Rule 8210 and Conduct Rule 2110 by Failing to Respond to Requests for Information

On June 6, 2008, pursuant to Rule 8210, FINRA staff sent Respondent a written request for information related to the staff's investigation of Respondent's failure to disclose the misdemeanor theft charge and conviction on his Form U4. Among other things, the staff directed Respondent to submit a written explanation, supported by documents, of the disposition of the criminal matter, a statement of whether he had been charged with a misdemeanor or a felony, and an explanation of his failure to disclose his criminal history on his Form U4. The staff served the request on Respondent at his CRD address, both by certified and regular first-class mail. The certified mailing was returned, marked "return to sender, unclaimed, unable to forward."

Respondent did not respond to the request in writing. Instead, he telephoned the FINRA examiner on June 12, 2008. Respondent told the examiner that he had received the June 6 request for information. He said that, when he was 18 or 19 years old, he had taken food from a cafeteria and was arrested, pled guilty to a shoplifting charge, and ordered to pay a small fine. He said that he thought the charge was unimportant and did not realize its relevance when he completed the Form U4. In addition, he told the examiner that he was considering moving to his home country of Bulgaria, and not associating with another member firm. The examiner asked

Respondent to provide a written narrative of what he had told her, and to provide all requested documentation. Respondent did not provide a written response.

On July 31, 2008, FINRA staff sent a second written request for documents and information to Respondent by regular and certified first-class mail, pursuant to Rule 8210, requesting the same information that had been requested in the June 6 request. The certified mail receipt was returned to FINRA staff with the signature of someone named "Escobar." The first-class mailing was not returned to FINRA. Respondent did not respond to the second Rule 8210 request.

Both requests were served within two years of the termination of Respondent's association with a member firm. Respondent was required to respond pursuant to Rule 8210 and Article V, Section 4 of FINRA's By-Laws. 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 Procedural Rule 8210. A violation of Rule 8210 is also a violation of Conduct Rule 2110. *Dep't of Enforcement v. Hoeper*, No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (N.A.C. Nov. 2, 2001).

VI. Sanctions

A. Failure to Provide Documents and a Written Statement

The FINRA Sanction Guidelines ("Guidelines") recommend a bar for a failure to respond to a request for information in any manner. Guidelines at 35. Where mitigation exists, or the person did not respond in a timely manner, the Guidelines recommend consideration of a suspension in any or all capacities for up to two years.

Enforcement recommends a bar, arguing that an oral response was not useful because Respondent can later disavow such a response. In addition, Enforcement notes that the examiner explained to Respondent that he was required to provide a written response, but that Respondent

nevertheless failed to provide a written statement or to submit supporting documents. Recent decisions have imposed less than a bar when a respondent partially responds for a request for information. *Rooney A. Sahai*, Exchange Act Rel. No. 55046, 2007 SEC LEXIS 13 (Jan. 5, 2007) (two-year suspension); *CMG Institutional Trading, LLC and Shawn D. Baldwin*, Exchange Act Rel. No. 59325, 2009 SEC LEXIS 215 (Jan. 30, 2009) (two-year suspension for individual respondent). Here, Respondent Kalaidjiev responded orally and explained the circumstances of his conviction to the examiner. Although he failed to follow up with a written explanation and failed to provide documents supporting his explanation, Respondent did not completely fail to respond. A two-year suspension in all capacities is more appropriate than a bar.

B. Omission of Material Facts on Form U4

The Guidelines recommend a fine of \$2,500 to \$50,000, and consideration of a suspension for five to 30 days, for filing a false or inaccurate Form U4. Guidelines at 73. The principal considerations are the nature and significance of the information omitted, and whether the information resulted in a statutorily disqualified person becoming or remaining associated with a member firm.

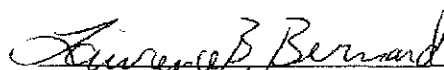
Enforcement recommends a fine of \$5,000 and a suspension of 20 business days for this violation. Enforcement's rationale is that because the court imposed only a \$300 fine for Respondent's misdemeanor conviction, the shoplifting "most likely was insignificant in nature." This sanction is inadequate. Respondent's conviction had occurred less than five years before he submitted his Form U4, and might well have been quite material to a potential employer. The Form U4 clearly requests information concerning misdemeanors in addition to felonies, and Respondent's failure to disclose the misdemeanor charge and conviction could not have been inadvertent. Accordingly, a suspension of 90 days, in addition to the fine of \$5,000, is more appropriate.

VII. Conclusion

Respondent is suspended for two years in all capacities for providing an oral, rather than written, response to requests for information and failing to provide requested documents, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110. Respondent is suspended for an additional 90 days, to run consecutively with the suspension for failure to respond to the Rule 8210 requests, and fined \$5,000 for failure to disclose material information on his Form U4, in violation of Conduct Rule 2110, Article V, Section 2 of the By-Laws, and IM-1000-1.

If this default decision becomes FINRA's final disciplinary action in this proceeding, Respondent's suspension shall begin on September 21, 2009, and end on December 19, 2011, and the fine shall be due and payable if and when Respondent applies to associate with a member firm following the end of his suspension.

SO ORDERED.



Lawrence B. Bernard
Hearing Officer

Copies to: Anastas Kalaidjiev (*via overnight courier and first-class mail*)
 Helen G. Barnhill, 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.

Anastas Kalaidjiev (CRD No. 5498837),

Respondent.

DISCIPLINARY PROCEEDING
No. 2008013050901

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. This Complaint asserts two causes of action against Respondent Anastas Kalaidjiev. The First Cause of Action pertains to Kalaidjiev's failure to disclose that: i) he had been charged with retail theft, a Class B Misdemeanor and that ii) he pled guilty to this charge on October 20, 2003, when completing his Uniform Application for Securities Industry or Transfer (Form U4) in February 2008. The Second Cause of Action addresses Kalaidjiev's failure to respond in writing to two properly-issued written Rule 8210 requests.

RESPONDENT AND JURISDICTION

2. Kalaidjiev was associated with member firm Ameriprise Financial Services, Inc., (the Firm) from on or about February 28, 2008 through on or about April 1, 2008. Kalaidjiev has not associated with a FINRA member since the termination of his association with Ameriprise in

April 2008. Pursuant to Article V, § 4 of FINRA's By-Laws, FINRA has jurisdiction to issue this Complaint

FIRST CAUSE OF ACTION

**(Omission of Material Facts Regarding Criminal Record on Form U4
ARTICLE V, SECTION 2 OF FINRA BY-LAWS, NASD REGISTRATION AND MEMBERSHIP
RULE IM 1000-1 AND NASD CONDUCT RULE 2110)**

3. Complaint paragraph numbers 1-2, above, are re-alleged and incorporated herein by reference.
4. On February 28, 2008, Kalaidjiev executed a Form U4 in order to become registered with the Firm. Kalaidjiev then submitted the signed Form U4 to the Firm, which then submitted it to FINRA on or about March 5, 2008.
5. By signing the Form U4, Respondent Kalaidjiev attested that he read and understood the Form U4 instructions and questions, and, that to the best of his knowledge, his answers contained therein were true and complete.
6. Form U4 question 14(B)(1)(a) reads as follows:

Have you ever 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?
7. The information requested in Form U4 question 14(B)(1)(a) is material.
8. Kalaidjiev responded "no" to Form U4 question 14(B)(1)(a). Kalaidjiev's response to this question was false because, on October 20, 2003, Kalaidjiev pled guilty to retail theft

(Shoplifting) a Class B misdemeanor involving the “wrongful taking of property.” The above criminal conduct occurred on or about September 19, 2003.

9. Form U4 question 14(B)(1)(b) reads as follows:

Have you ever been charged with a misdemeanor specified in 14B(1)(a)?

10. The information requested in U4 question 14(B)(1)(a) is material.

11. Kalaidjiev responded “no” to Form U4 question 14(B)(1)(b). Kalaidjiev’s response to this question was false as Kalaidjiev was charged with the offense described in paragraph 8 above.

12. Kalaidjiev’s failure to disclose the misdemeanor theft charge and guilty plea violated Article V, Section 2 of the FINRA By-LAWS, NASD Registration Rule IM 1000-1 and NASD Conduct Rule 2110.

SECOND CAUSE OF ACTION
(Failure to Respond to Rule 8210 Requests for Information
NASD PROCEDURAL RULE 8210 AND NASD CONDUCT RULE 2110)

13. Complaint paragraph numbers 1-2 and 4-12, above, are re-alleged and incorporated herein by reference.

14. On June 6, 2008, pursuant to NASD Procedural Rule 8210, FINRA staff sent Respondent Kalaidjiev a written request for information related to staff’s investigation into the conduct set forth in Complaint paragraphs 4-12 above. At the time it sent its request, FINRA staff did not have court records reflecting the disposition of the criminal proceeding against Kalaidjiev as set forth in paragraphs 8 and 11 above. Staff only knew that he had been arrested for retail theft. Specifically, the information requested included, but was not limited to, (i) a written explanation, supported by documents, of the disposition of the criminal matter; (ii) a

- statement as to whether he was charged with a misdemeanor or felony; and an explanation of his failure to disclose the matter when he completed the Form U4 in February 2008.
15. The June 6th Rule 8210 request was sent by both certified and first class mail to Kalaidjiev's CRD residential address – [REDACTED] (CRD Address). The requested information was to be provided to FINRA by June 20, 2008.
16. The certified letter was returned to FINRA. The notation on the envelope read "return to sender, unclaimed, unable to forward." The first class letter was not returned. FINRA never received a written response to the June 6th Rule 8210 request.
17. On June 12, 2008, Kalaidjiev telephoned the FINRA examiner, stating that he had received her letter dated June 6, 2008. He told the examiner that, when he was 18 or 19 years old, he took food from a cafeteria and was arrested; that he plead guilty to a charge and had to pay a small fine; that he thought it was unimportant and did not realize its relevance when completing the Form U4; he was considering moving back to Bulgaria, his home country and he was considering not joining another member firm. At the conclusion of the call, the examiner asked him to provide a **written** narrative of what he had told her and to also provide all requested documentation. Kalaidjiev did not provide a written response.
18. On July 31, 2008, FINRA staff sent Respondent Kalaidjiev a second written Rule 8210 request by both certified and first class mail to the CRD Address. The information sought was identical to that requested in the June 6, 2008 letter. The letter stated that Kalaidjiev had not provided any of the requested information to date and that FINRA staff was again requesting, pursuant to Procedural Rule 8210, that he do so. Kalaidjiev was to respond to the July 31st letter by August 14, 2008.

19. On August 7, 2008, the certified mail delivery receipt for the July 31st certified mailing was returned to staff with the signature of someone with the last name of "Escobar". The first class mailing was not returned to FINRA. Kalaidjiev did not respond to the July 31, 2008 Rule 8210 request.
20. The two written Rule 8210 requests for information were sent within two years of Kalaidjiev's most recent association with a member firm. Therefore, he was required by Procedural Rule 8210 to provide the requested information. Moreover, he was required to provide the information in writing as requested by FINRA staff.
21. Each failure to provide information constitutes a separate and distinct violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by Respondent Kalaidjiev.

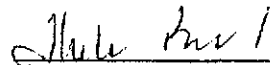
RELIEF REQUESTED

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.
- 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: March 27, 2009



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