

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JOSHUA WILLIAM MOSS
(CRD No. 5535804),

Respondent.

Disciplinary Proceeding
No. 2008014116901

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

August 12, 2009

The Respondent was barred for violating Conduct Rule 2110 and Procedural Rule 8210 by failing to respond to requests for information. In light of the bar, no additional sanction was imposed for his violation of Conduct Rule 2110 and IM-1000-1 by failing to disclose on his Form U4 that he had been convicted of a reportable misdemeanor.

Appearances

William Brice La Hue, Sr., Senior Regional Counsel, Atlanta, GA, for the Department of Enforcement.

No appearance by or for Joshua William Moss.

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 April 22, 2009. The First Cause of Action alleges that Respondent Joshua William Moss (“Moss”) violated Conduct Rule 2110 and Membership and Registration Rule Interpretive Material (“IM”) 1000-1 by willfully failing to disclose on his Uniform Application for Securities Industry Registration or Transfer (“Form U4”) that he had been convicted of

deposit account fraud, a misdemeanor under Georgia law. The Second Cause of Action alleges that Moss violated Procedural Rule 8210 and Conduct Rule 2110 by failing to respond to FINRA requests for information issued in connection with FINRA staff's investigation into the allegations on his Uniform Termination Notice for Securities Industry Registration (Form U5) filed on his behalf by Ameriprise Financial Services, Inc. ("Ameriprise").¹ The Form U5 disclosed that Ameriprise had discharged Moss because he had failed to disclose a reportable event on his Form U4.

Moss did not answer or otherwise respond to the Complaint. Consequently, on July 21, 2009, Enforcement filed a Motion for Entry of Default Decision, supported by the Affidavit of William Brice La Hue, Sr. ("La Hue Aff.") and four exhibits. Moss did not reply to the motion.

II. Findings of Fact and Conclusions of Law

A. Jurisdiction

Moss was employed by Ameriprise from May 27 to July 8, 2008. On or about June 24, 2008, Moss completed and signed a Form U4 to become registered with FINRA as a General Securities Representative. However, before Moss's registration became effective, Ameriprise terminated him and filed a Form U5 with FINRA. Ameriprise filed the Form U5 on July 8, 2008. Moss has never worked for another broker-dealer.²

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. The applicable rules are available at www.finra.org/rules.

² Complainant's Exhibit (CX)-1.

By applying for registration with FINRA, Moss became an associated person of Ameriprise subject to FINRA's jurisdiction.³ Further, FINRA has jurisdiction to bring this proceeding under Article V, Section 4 of FINRA By-Laws because (1) the Complaint was filed within two years after the date he ceased to be associated with Ameriprise, and (2) the Complaint charges him with misconduct committed while he was associated with Ameriprise and with failing to respond to FINRA's requests for information made during the two-year period following the termination of his association with the firm.⁴

B. Respondent's Default

On April 22, 2009, Enforcement sent the Complaint and Notice of Complaint to Moss by first-class and certified mail (return receipt requested) to his residential address recorded in the Central Registration Depository ("CRD Address") and to an alternative address Moss had provided to FINRA staff during its investigation.⁵ The first-class mailings were not returned; however, the United States Postal Service returned the certified mailings with notations that they were not deliverable as addressed.⁶

On May 21, 2009, Enforcement served Moss with the Complaint and Second Notice of Complaint, by first-class and certified mail, to his CRD Address and the alternate address. Again, the Second Notices sent by first class mail to Moss's CRD address and the alternate address were not returned. According to the United States Postal Services website, the Second Notice sent by certified mail to Moss's CRD address was returned with a notation

³ FINRA By-Law Article I(II)(1) defines "associated person of a member" as "a natural person who is registered or has applied for registration under [FINRA's Rules]." NASD Notice to Members 99-95 states that "any person who signs and submits a Form U4 is an associated person." NASD Notice to Members 99-95 (Dec. 1, 1999).

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

⁵ La Hue Aff. ¶ 7.

⁶ *Id.*; CX-3.

that it was “unclaimed,” although FINRA staff does not have a record of receiving the returned mail.⁷ To date, Moss has not filed an Answer with the Office of Hearing Officers or otherwise responded to the Complaint.

Moss defaulted by failing to answer the Complaint.⁸ Accordingly, pursuant to Procedural Rules 9215(f) and 9269(a)(2), the Hearing Officer deems the allegations in the Complaint admitted and grants Enforcement’s motion for entry of a default decision.

C. False Form U4

On June 24, 2008, Moss applied for registration as a General Securities Representative by completing a Form U4. Moss answered “No” to Questions 14B(1)(a) and 14B(1)(b) of the Form U4 that required him to disclose if he had ever been charged with and convicted of a misdemeanor involving the wrongful taking of property. In fact, in September 2001, Moss had been charged with and convicted of deposit account fraud (passing worthless checks) in Athens-Clarke County, Georgia.⁹ Deposit account fraud is a misdemeanor under Georgia law.

Applicants for registration with FINRA must fully and accurately disclose all material information in response to questions on a Form U4. “[T]he candor and forthrightness of applicants is critical to the effectiveness of the screening process” because the Form U4 is used by FINRA and other self-regulatory organizations, state regulators, and broker-dealers to determine and monitor the fitness of securities professionals.¹⁰ A Form U4 that is

⁷ La Hue Aff. ¶ 9.

⁸ *Department of Enforcement v. Reynolds Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at *5 (N.A.C. Dec. 9, 2003) (NASD Procedural Rule 9134(b)(1) allows for constructive notice by mailing a complaint to the respondent’s most recent CRD address) (quoting *Lubeck v. SEC*, 1998 U.S. App. LEXIS 18849, at *20 (9th Cir. Aug. 12, 1998)).

⁹ La Hue Aff. ¶ 11.

¹⁰ *Guang Lu*, Exchange Act Rel. No. 51047, 2005 SEC LEXIS 117, at *19-20 (Jan. 14, 2005), *aff’d*, 179 Fed. Appx. 702 (D.C. Cir. 2006).

inaccurate or incomplete so as to be misleading may be deemed to be conduct inconsistent with just and equitable principles of trade in violation of Conduct Rule 2110.¹¹

Based on the allegations in the Complaint, the Hearing Officer finds that Moss violated Conduct Rule 2110 and IM-1000-1 by not disclosing on his Form U4 that he had been convicted of a misdemeanor involving the wrongful taking of property.

The Hearing Officer further finds that Moss is subject to statutory disqualification because his failure to disclose his criminal conviction was willful. Section 3(a)(39)(F) of the Securities Exchange Act of 1934 ("Exchange Act") 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 such application is "statutorily disqualified" from participating in the securities industry.¹² The allegations in the Complaint and the evidence submitted by Enforcement in support of the Motion for Entry of Default Decision are sufficient to establish that Moss acted "willfully" in failing to disclose "material" information on his Form U4. The nature of the offense supports the conclusion that Moss intended to elect not to report the misdemeanor conviction on his Form U4. The conviction of a crime that involves financial fraud squarely falls within the range of offenses that are important to firms and regulators. This is sufficient to support the determination that he acted "willfully." A finding of "willful" does not require that Moss intended to violate Conduct Rule 2110.¹³

In addition, the evidence supports the finding that the omitted information was material for purposes of disclosure on Moss's Form U4. "Because of the importance that the

¹¹ See IM-1000-1; *Thomas R. Alton*, 52 S.E.C. 380, 382 (1995), *petition for rev. denied*, 105 F.3d 664 (9th Cir. 1996).

¹² See also Article III, Sec. 4 of the FINRA By-Laws.

¹³ *Dep't of Enforcement v. Mathis*, No. C10040052, 2008 FINRA Discip. LEXIS 49, at *18 (N.A.C. Dec. 12, 2008).

industry places on full and accurate disclosure of information required by the Form U4, [FINRA] presume[s] that essentially all the information that is reportable on the Form U4 is material.”¹⁴ In this case, the Hearing Officer concludes that a reasonable employer or regulator would have viewed his criminal conviction as relevant to the evaluation of his fitness to work in the securities industry.¹⁵ Moss is therefore statutorily disqualified from participating in the securities industry.

D. Failure to Respond to Information Requests

The Second Cause of Action alleges that Moss failed to respond to three written requests that he provide information regarding his failure to disclose his criminal charges on his Form U4. The requests were dated July 23, 2008, August 20, 2008, and October 24, 2008. FINRA staff sent the first two requests to Moss at his CRD Address by regular and certified first-class mail pursuant to Procedural Rule 8210. Moss signed the receipt for the second mailing.¹⁶

After Moss provided FINRA staff with a more current address, the staff sent Moss a third information request addressed to the new address and his CRD Address. Moss signed the receipt for the mailing sent to the new address.¹⁷ Moss did not respond to any of the requests.¹⁸

¹⁴ *Dep't of Enforcement v. Knight*, No. C10020060, 2004 NASD Discip. LEXIS 5, at *13 (N.A.C. Apr. 27, 2004) (citing *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965)).

¹⁵ See, e.g., *Dep't of Enforcement v. Toth*, No. E9A2004001901, 2007 NASD Discip. 25, at *34-35 (N.A.C. July 27, 2007), *aff'd*, *Douglas J. Toth*, Exchange Act Rel. No. 58074, 2008 SEC LEXIS 1520 (July 1, 2008), *petition for review denied*, *Toth v. SEC*, 2009 U.S. App. LEXIS 7226 (3d Cir. Apr. 6, 2009).

¹⁶ *La Hue Aff.* ¶ 21.

¹⁷ *Id.* ¶ 23.

¹⁸ *Id.* ¶ 24.

The Hearing Officer finds that the allegations in the Second Cause of Action are sufficient to establish, for purposes of this default decision, that Moss violated Procedural Rule 8210 and Conduct Rule 2110.

III. Sanctions

A. Failure to Respond to Requests for Information

The FINRA Sanction Guidelines (“Guidelines”) recommend a bar where a respondent fails to respond in any manner to a request for information issued pursuant to Procedural Rule 8210.¹⁹ Here, Moss failed to respond in any manner to three written requests that he provide information in connection with the Staff’s investigation into the circumstances surrounding his failure to report his criminal conviction on his Form U4. There are no mitigating factors that would justify a less severe sanction. Accordingly, the Hearing Officer will bar Moss from associating with any FINRA member in any capacity for violating Procedural Rule 8210 and Conduct Rule 2110.

B. False Form U4

For filing a false, misleading or inaccurate Form U4 or failing to file necessary amendments to a Form U4, the Guidelines recommend that an individual be fined from \$2,500 to \$50,000 and suspended in all capacities for five to 30 business days. In egregious cases, the Guidelines call for consideration of a suspension in any or all capacities of up to two years, or a bar.²⁰ One of the principal considerations for determining sanctions for such a violation is the nature and significance of the information at issue.²¹

¹⁹ FINRA Sanction Guidelines 35 (2007), *available at* www.finra.org/sanctionguidelines.

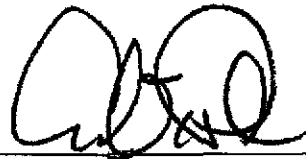
²⁰ FINRA Sanction Guidelines 73-74.

²¹ *Id.*

While Moss's violation of Rule 2110 and IM-1000-1 is serious and would merit a sanction at the upper end of the recommended sanctions, in light of the bar for his failure to respond to FINRA's information requests, no additional sanction will be imposed for this violation.

IV. Order

Moss is barred from association with any member firm in any capacity for his failure to respond to requests for information, in violation of Conduct Rule 2110 and Procedural Rule 8210. The bar will become effective immediately if this Default Decision becomes FINRA's final disciplinary action in this proceeding.

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

Andrew H. Perkins
Hearing Officer

Copies to:

Joshua William Moss (by FedEx, next-day delivery, and first-class mail)
William Brice La Hue, Sr., Esq. (by first-class and electronic mail)
David Sonnenberg, Esq. (by electronic mail)
Mark P. Dauer, Esq. (by electronic mail)

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
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DEPARTMENT OF ENFORCEMENT,

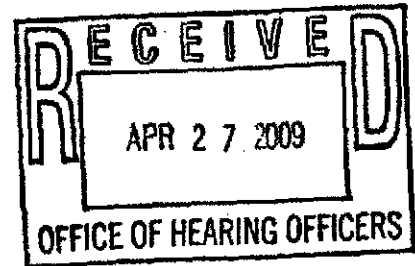
Complainant,

v.

JOSHUA WILLIAM MOSS
(CRD No. 5535804)

Respondent.

Disciplinary Proceeding
No. 2008014116901



COMPLAINT

The Department of Enforcement alleges:

RESPONDENT AND JURISDICTION

1. Joshua William Moss ("Moss") entered the securities industry in May 2008, when he was employed by FINRA member Ameriprise Financial Services, Inc. ("Ameriprise"). Moss signed and submitted to Ameriprise a Uniform Application for Securities Industry Registration ("Form U4"), dated June 24, 2008. Moss was never registered with FINRA, and was terminated by Ameriprise on July 8, 2008.
2. Moss is not currently employed by a FINRA member, but remains subject to FINRA's jurisdiction pursuant to Article V, Section 4 of FINRA's By-Laws in that: the misconduct alleged in the First Cause of Action occurred while Moss was associated with a member firm; and this Complaint was filed within, and the violation of NASD Procedural Rule 8210 alleged in the Second Cause of Action occurred within, two years of his last association with a FINRA member.

SUMMARY

3. Moss willfully failed to disclose on a June 24, 2008 Form U4 that, in September 2001, he had been charged with and convicted of a misdemeanor for deposit account fraud i.e., issuing a bad check, in violation of NASD Conduct Rule 2110 and IM-1000-1. In addition, Moss failed to respond to requests for information made by FINRA, pursuant to Procedural Rule 8210, during its investigation, in violation of NASD Procedural Rule 8210 and Conduct Rule 2110.

FIRST CAUSE OF ACTION

NASD CONDUCT RULE 2110 AND IM-1000-1

(Willful Failure to Disclose a Material Event on Form U4)

4. The Department re-alleges and incorporates by reference paragraphs 1 through 3 above.
5. In September 2001, Moss was charged with and convicted of one count of deposit account fraud *i.e.*, bad check writing, a misdemeanor pursuant to Georgia Code Annotated § 16-9-20(b)(1), in an Athens-Clarke County, Georgia court.
6. On or about June 24, 2008, Moss completed and signed a Form U4 application for registration, and submitted the Form U4 to Ameriprise.
7. Questions 14B(1)(a) and 14B(1)(b) relate to whether the applicant has ever been charged and/or convicted, pled guilty or pled nolo contendere to a misdemeanor involving, among other things, false statements or omissions and wrongful taking of property.
8. Moss falsely answered "No" to questions 14B(1)(a) and 14B(1)(b) on the June 24, 2008 Form U4.
9. Moss willfully failed to disclose to Ameriprise the material facts that he had been charged with and convicted of a reportable misdemeanor, when he answered "No" to questions 14B(1)(a) and 14B(1)(b) on the June 24, 2008 Form U4.
10. Such acts, practices and conduct alleged above constitute separate and distinct violations of NASD Conduct Rule 2110 and IM-1000-1 by Respondent Moss.

SECOND CAUSE OF ACTION

NASD CONDUCT RULE 2110 AND PROCEDURAL RULE 8210

(Failure to Respond)

11. The Department re-alleges and incorporates by reference paragraphs 1 through 10, above.
12. In July 2008, FINRA initiated an investigation into the allegations on a Uniform Termination Notice for Securities Industry Registration ("Form U5") filed by Ameriprise regarding Moss. The Form U5 indicates that Moss had failed to accurately complete a Form U4.

13. On July 23, 2008, FINRA sent a letter, via first class mail, to Moss at his last known residential address as reflected in the records of FINRA's Central Registration Depository ("CRD") [REDACTED]
[REDACTED] The July 23, 2008 letter requested, pursuant to NASD Procedural Rule 8210, that Moss submit a signed written statement no later than August 8, 2008.
14. The July 23, 2008 letter was not returned. Moss failed to respond by the August 8, 2008 deadline.
15. On August 20, 2008, FINRA sent a second letter via first class and certified mail to Moss at his residential CRD address. Moss was requested, once again, to submit a detailed, signed written statement, pursuant to NASD Procedural Rule 8210, this time by September 5, 2008.
16. The August 20, 2008 letter sent by first class mail was not returned. A receipt was received for the August 20, 2008 letter sent by certified mail, indicating that it had been delivered and signed for by Moss. Moss failed to respond by the September 5, 2008 deadline.
17. On October 24, 2008, FINRA sent a third letter via first class and certified mail to Moss at a new address given to FINRA by Moss [REDACTED] Moss was requested, once again, to submit a detailed, signed written statement, pursuant to NASD Procedural Rule 8210, this time by November 3, 2008.¹
18. The October 24, 2008 letter sent by first class mail was not returned. A return receipt was received for the October 24, 2008 letter sent to the Unit 1 address by certified mail, indicating that it had been delivered and signed for by Moss.
19. The October 24, 2008 letter sent by first class mail to Moss's residential CRD address was not returned. However, the October 24, 2008 letter sent by certified mail to Moss's residential CRD address was returned to FINRA indicating that it was "not deliverable as addressed." Moss failed to respond by the November 3, 2008 deadline.
20. To date, FINRA has not received any response to the foregoing requests for information.

¹ The October 24, 2008 letter was also sent to Moss at his residential CRD address via first class and certified mail, but it was not mailed until October 27, 2008.

21. Such acts, practices and conduct described above constitute separate and distinct violations of NASD Procedural Rule 8210 and Conduct Rule 2110 by Respondent Moss.

RELIEF REQUESTED

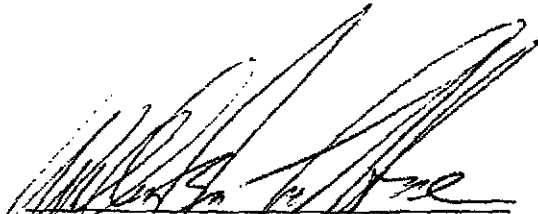
WHEREFORE, the Department respectfully requests that the Panel:

- 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; 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:

4/22/09


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