

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

KATHLEEN A. SHAVE
(CRD No. 1767646),

Respondent.

Disciplinary Proceeding
No. 2008014423801

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

May 15, 2009

The Respondent violated Conduct Rule 2110 and Procedural Rule 8210 by failing to respond to requests for information, and violated Conduct Rule 2110 and IM-1000-1 by failing to update her Form U4 to disclose an investment-related civil action filed by the State of California. For these violations, the Respondent was barred from associating with any member firm in any capacity.

Appearances

Joel T. Kornfeld, Senior Regional Counsel, Los Angeles, CA (Mark P. Dauer, New Orleans, LA, Of Counsel) for the Department of Enforcement.

No appearance by or for Kathleen A. Shave.

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 February 6, 2009. The First Cause of Action alleges that Respondent Kathleen A. Shave (“Shave”) violated Conduct Rule 2110 and Membership and Registration Rule Interpretive Material (“IM”) 1000-1 and by willfully failing to amend her Uniform Application for Securities Industry Registration or Transfer (“Form U4”) to disclose a pending civil action

filed by the State of California (the “California Action”). The Second Cause of Action alleges that Shave violated Procedural Rule 8210 and Conduct Rule 2110 by failing to respond to FINRA requests for information regarding the allegations in the California Action.¹

Shave did not answer or otherwise respond to the Complaint. Consequently, on April 21, 2009, Enforcement filed a Motion for Entry of Default Decision, supported by the Declaration of Joel T. Kornfeld (“Kornfeld Decl.”) and 11 exhibits. Shave did not reply to the motion.²

II. Findings of Fact and Conclusions of Law

A. Respondent’s Default

The Hearing Officer finds that Enforcement properly served Shave with the Complaint by mailing the Complaint and the First and Second Notices of Complaint to her most current residential address shown in the 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 Shave by first-class and certified mail on February 6, 2009.³ The United States Postal Service returned the certified mailing to FINRA marked, “Return to Sender – Unclaimed.”⁴ The regular first-class mailing was not returned. Enforcement mailed the Complaint and Second Notice of Complaint to Shave’s CRD

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 consolidate 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 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.

³ Kornfeld Decl. ¶ 5.

⁴ CX-4.

Address by first-class and certified mail on March 9, 2009. Once again the certified mailing returned the certified mailing to FINRA marked, "Return to Sender – Unclaimed," and the mailing sent by regular first-class mail was not returned.⁵ To date, Shave has not filed an Answer with the Office of Hearing Officers or otherwise responded to the Complaint.

Shave defaulted by failing to answer the Complaint.⁶ 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

Shave registered as a General Securities Representative, a General Securities Principal, and an Options Principal through FINRA member firm Ashton Capital Management, Inc. ("Ashton") on May 10, 2000. She was continuously registered in those capacities while associated with Ashton until January 5, 2009, when FINRA canceled Ashton's membership for failure to pay member assessment fees.⁷ Shave held the positions of President, Director, and Chief Compliance Officer at Ashton.⁸

Shave has not been associated with a FINRA member firm since January 5, 2009. Nonetheless, she 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 her registrations, and (2) the Complaint

⁵ Kornfeld Decl. ¶ 6; CX-6.

⁶ *Dep't of Enforcement v. 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)).

⁷ Kornfeld Decl. ¶ 3; CX-1.

⁸ CX-1, at 17.

charges her with misconduct committed while she was associated with Ashton and with failing to respond to FINRA's requests for information made during the two-year period following the termination of her FINRA registrations.⁹

C. Failure to Update Form U4

On July 31, 2008, Shave filed a Form U5 for one of Ashton's registered representatives. The Form U5 disclosed that the representative had been discharged for possible violations of several securities rules and regulations.¹⁰ FINRA staff commenced an investigation after receiving the Form U5 during the course of which the staff discovered that the State of California had filed a lawsuit against Shave and others. After the staff reviewed the California complaint, the staff expanded the scope of its investigation to encompass the allegations in the California Action.¹¹

The First Cause of Action alleges that Shave violated Conduct Rule 2110, IM-1000-1, and Article V, Section 2 of FINRA's By-Laws by failing to update her Form U4 to disclose the California Action, which alleged that Shave had participated in a fraudulent Ponzi scheme involving the sale of promissory notes.¹² Shave knew of the California Action. She acknowledged receipt of the California Action in writing on August 20, 2008.¹³

Form U4 Question 14H. (2) requires an applicant to disclose if she is named in any pending investment-related civil action that could result in a finding that she had been involved in a violation of any investment-related statute or regulation. Shave did not update her "no" answer to that question after she received notice of the California Action. Shave last

⁹ Article V, Sec. 4, FINRA By-Laws, available at www.finra.org/rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: Bylaws").

¹⁰ CX-2.

¹¹ Kornfeld Decl. ¶ 4.

¹² *Id.* ¶ 7; CX-7.

¹³ CX-8.

updated her Form U4 on August 30, 2007, about one year before she was sued by the State of California.¹⁴

Applicants for registration with FINRA must fully and accurately disclose all material information in response to questions on Form U4. In addition, FINRA registrants are required to keep their Form U4s current at all times by filing supplementary amendments as necessary. Such amendments must be filed with FINRA not later than 30 days after learning of the facts or circumstances giving rise to the amendment.¹⁵

Both the National Adjudicatory Council ("NAC") and the Securities and Exchange Commission ("SEC") have stated that the responsibility for maintaining the accuracy of Form U4, by updating information as necessary, lies with the registered representative.¹⁶ By failing to disclose the California Action, Shave violated FINRA's By-Laws, NASD Conduct Rule 2110, and IM-1000-1.

D. Failure to Respond to Information Requests

The Second Cause of Action alleges that Shave failed to respond to two written requests that she provide information about the allegations in the California Action. The requests were dated October 24 and November 10, 2008. FINRA staff sent each request to Shave at her CRD Address by regular and certified first-class mail pursuant to Procedural Rule 8210. Shave did not respond to either request.¹⁷

¹⁴ Kornfeld Decl. ¶ 10; CX-1.

¹⁵ Article V, Section 2(c) of FINRA's By-Laws.

¹⁶ *Frank R. Rubba*, 53 S.E.C. 670, 1998 SEC LEXIS 1499, at *8 (July 21, 1998); *DOE v. Daniel Richard Howard*, Complaint No. C11970032, 2000 NASD Discip. LEXIS 16 at *30-32 (N.A.C. November 16, 2000), *aff'd*, 2002 SEC LEXIS 1909 (July 26, 2002).

¹⁷ Kornfeld Decl. ¶¶ 11-14.

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

III. Sanctions

A. Failing to Update Form U4

For filing a false, misleading or inaccurate Form U4 or failing to file necessary amendments to a Form U4, FINRA Sanction Guidelines (“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.¹⁸ One of the principal considerations for determining sanctions for such a violation is the nature and significance of the information at issue.¹⁹

This is an egregious case for which Shave should be barred. The California Action involved extremely serious allegations of widespread fraudulent conduct. The California Action accused her of participating in the fraudulent sale of securities over several years that operated as a Ponzi scheme. The value of the securities sold was approximately \$8.6 million. Undoubtedly, this was material information to investors and regulators, which Shave clearly knew or should have known. On the other hand, the record contains no mitigating factors. Accordingly, the Hearing Officer will bar Shave from associating with any member firm in any capacity for her failure to update her Form U4 to disclose the California Action.

¹⁸ FINRA Sanction Guidelines 73-74 (2007).

¹⁹ *Id.*

B. Failure to Respond to Requests for Information

The Sanction Guidelines recommend a bar where a respondent fails to respond in any manner to a request for information issued pursuant to Procedural Rule 8210.²⁰ Here, Shave failed to respond in any manner to two written requests that she provide information in connection with the Staff's investigation into the allegations of securities fraud in the California Action. There are no mitigating factors that would justify a less severe sanction. Accordingly, the Hearing Officer will bar Shave from associating with any FINRA member in any capacity for violating Procedural Rule 8210 and Conduct Rule 2110.

IV. Order

Shave is barred from association with any member firm in any capacity for her failure to update her Form U4 to disclose that she had been sued by the State of California for securities fraud, in violation of Conduct Rule 2110 and IM-1000-1, and her failure to respond to requests for information, in violation of NASD Conduct Rule 2110 and NASD Procedural Rule 8210. The bars will become effective immediately if this Default Decision becomes FINRA's final disciplinary action in this proceeding.



Andrew H. Perkins
Hearing Officer

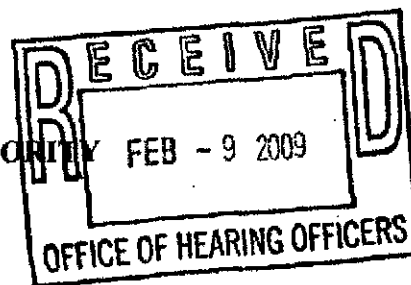
Copies to:

Kathleen A. Shave (by FedEx, next-day delivery, and first-class mail)
Joel T. Kornfeld, Esq. (by first-class and electronic mail)
David Sonnenberg, Esq. (by electronic mail)
Mark P. Dauer, Esq. (by electronic mail)

²⁰ Guidelines at 35.

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS



DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

KATHLEEN A. SHAVE
(CRD No. 1767646)

Respondent.

DISCIPLINARY PROCEEDING
No. 2008014423801

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. While associated with Ashton Capital Management, Inc., Respondent Kathleen A. Shave failed to amend her Form U4 to disclose that she had been sued by the State of California in a lawsuit that alleged that she had participated in an \$8.6 million Ponzi scheme involving the sale of promissory notes. Shave also failed to respond to the staff's requests for information. Her failure to update her Form U4 violated Conduct Rule 2110, IM-1000-1, and Article V, Section 2 of FINRA's By-Laws; her failure to respond to the staff's information requests violated Procedural Rule 8210 and Conduct Rule 2110.

RESPONDENT AND JURISDICTION

2. From May 10, 2000 through January 5, 2009, Kathleen A. Shave was associated with former FINRA member Ashton Capital Management, Inc. Shave was registered as a General Securities Representative, General Securities Principal, and Registered Options Principal. From May 2000 through January 5, 2009, Shave served as the firm's President and Chief Compliance Officer.

3. Ashton Capital, formerly known as Costi White Securities, was a FINRA member from 1990 until January 5, 2009, when FINRA cancelled its registration. Its principal place of business was located in San Diego, California.

FIRST CAUSE OF ACTION

(Failure to Amend Form U4)

(NASD Conduct Rule 2110, IM-1000-1, and Art. V, Sec. 2 of the By-Laws)

4. On July 23, 2008, the State of California, by and through the California Corporations Commissioner, filed a lawsuit entitled, *People of the State of California v. Bridge Harbor Management, Inc., Creative Insurance Concepts, Inc., Kathleen Shave, and Russell Millard, et al.*, bearing Case No. 37-2008-00088219 in the Superior Court of California, San Diego County. The lawsuit alleged that Shave participated in a \$8.6 million Ponzi scheme involving the sale of an investment in the form of promissory notes. In particular, it alleged that Shave: (i) offered and sold unregistered securities in violation of California Corporations Code § 25110; and (ii) made false statements and omissions in connection with the sale of those notes in violation of California Corporations Code § 25401. Among other things, the lawsuit sought injunctive relief, disgorgement and penalties against Shave.

5. Question No. 14H(1)(a) on Form U4 asks whether "any domestic or foreign court ever: (a) enjoined you in connection with any investment-related activity?" Question No.

14H(1)(b) asks whether “any domestic or foreign court ever: (b) found that you were involved in a violation of any investment-related statute(s) or regulations(s)?” Finally, Question 14H(2) asks, “Are you named in any pending investment-related civil action that could result in a “yes” answer to any part of 14H(a)?”

6. In fact, Shave was named in a pending investment-related civil action that could result in a “yes” answer to Question No. 14H(a). The State of California’s lawsuit sought to enjoin her from making false statements and omissions in connection with the offer and sale of securities and sought to hold her liable for selling unqualified securities and making false statements and omissions in connection with the offer and sale of those securities. And, on August 20, 2008, Shave acknowledged receipt of a copy of the Complaint.

7. Shave was required by Article V, Section 2 of the FINRA By-Laws to amend her then-current Form U4 on or before September 19, 2008, to provide an affirmative answer to Question 14H(2) and to disclose the pending investment related civil action brought by the State of California.

8. Shave’s failure to update her Form U4 on or before September 19, 2008, violated Conduct Rule 2110, IM-1000-1 and Article V, Section 2 of FINRA’s By-Laws.

SECOND CAUSE OF ACTION
(Failure to Provide Requested Information)
(NASD Procedural Rule 8210 and Conduct Rule 2110 by Shave

9. Paragraph Nos. 1 through 8 are re-alleged and incorporated by reference.

First Request

10. On October 24, 2008, pursuant to Rule 8210, FINRA staff requested that Shave provide information relating to, among other things, the promissory note transactions that were

the subject of the California Corporations Commissioner's Complaint and her failure to update her Form U4. The request specified that the information be provided on or before November 7, 2008.

11. The request was sent by first class and certified mail to Shave's CRD residential address, [REDACTED] ("Shave's CRD Address") and to Ashton Capital's registered address, 7966 Arjons Drive, Suite 102, San Diego, CA 92126 ("Ashton Capital's CRD Address").

12. The request sent by first class mail to Shave's CRD Address was not returned and the request sent by certified mail to Shave's CRD Address was returned and marked "Unclaimed."

13. The request sent by first class mail to Ashton Capital's CRD Address was returned and marked "Moved, Left No Address, Unable to Forward." The request sent by certified mail was returned and marked "Attempted - Not Known, Unable to Forward."

14. Shave did not respond to the Rule 8210 request for information

Second Request

15. On November 10, 2008, the staff sent Shave a second Rule 8210 request ("Second Request") for information and asked for the same information the First Request, dated October 24, 2008, had sought. This Second Request specified that the information be provided by November 24, 2008. The Second Request was sent by first class and certified mail to Shave's CRD Address and to Ashton Capital's CRD Address.

16. The requests sent by first class mail and certified mail to Shave's CRD Address were not returned. The requests sent by first class mail and certified mail to Shave's CRD Address were returned and marked "Moved, Left No Address, Unable to Forward."

17. Shave did not respond to the Second Request

18. Shave's failure to respond violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

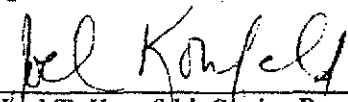
RELIEF REQUESTED

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: February 6, 2009


Joel T. Kornfeld, Senior Regional Counsel
Sandra J. Harris, Deputy Regional Chief Counsel
Jacqueline D. Whelan, Regional Chief Counsel
FINRA Department of Enforcement
300 S. Grand Avenue, Suite 1600
Los Angeles, CA 90071
(213) 613-2643; Fax: (213) 617-1570
joel.kornfeld@finra.org
sandra.harris@finra.org
jacqueline.whelan@finra.org