

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JOSEPH D. BONANNO,
also known as TIMOTHY W. HYDE,
(CRD No. 4337524)

Respondent.

Disciplinary Proceeding
No. 2008016179401

Hearing Officer – RSH

DEFAULT DECISION

December 21, 2010

The Respondent was barred for violating Conduct Rules 2110, 2010, and IM-1000-1 by willfully failing to disclose accurate information and felony charges on Forms U4, and for violating Procedural Rule 8210 and Conduct Rule 2010 by failing to appear for testimony.

Appearances

Dale A. Glanzman, Senior Regional Counsel, and Mark A. Koerner, Regional Chief Counsel, Chicago, IL, for the FINRA Department of Enforcement.

No appearance by or for Joseph D. Bonanno.

DECISION

I. Introduction

The FINRA Department of Enforcement filed a Complaint in this proceeding on June 24, 2010. In its Complaint, Enforcement charged that the Respondent, Joseph D. Bonanno, also known as Timothy W. Hyde ("Bonanno") violated Conduct Rules 2110, 2010, Membership and Registration Rule Interpretive Material ("IM") 1000-1, and Article V, Section 2 of FINRA's By-Laws by willfully failing to disclose accurate

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information and felony charges on 22 Applications for Securities Industry Registration or Transfer ("Forms U4"). Enforcement also charged that Bonanno violated Procedural Rule 8210 and Conduct Rule 2010 by failing to appear for testimony and failing to respond to requests for information.¹

Bonanno did not answer or otherwise respond to the Complaint. Consequently, on October 26, 2010, Enforcement filed a Motion for Entry of Default Decision, supported by the Affidavit of Dale A. Glanzman and 12 exhibits. Bonanno did not reply to the motion.²

II. Jurisdiction and Origin of the Complaint

A. Jurisdiction

Bonanno, using the name Timothy Welland Hyde ("Hyde"), entered the securities industry as a General Securities Representative with a FINRA member firm in April 2001. Between January 2007 and December 2008, Bonanno was registered with Cadaret, Grant & Co., Inc. ("Cadaret"), a FINRA member firm.³ Bonanno has not been associated with a FINRA member firm since December 31, 2008.⁴ Nevertheless, FINRA has jurisdiction over this disciplinary proceeding, pursuant to Article V, Section 4(a) of FINRA's By-Laws, because the Complaint was filed within two years after the last date of Bonanno's registration with Cadaret.⁵

¹ The FINRA Rules, which include NASD Procedural and Conduct Rules, are available at www.finra.org/Rules. On December 15, 2008, the first phase of new consolidated FINRA Rules went into effect. See, Regulatory Notice 08-57. In that process, Rule 2110 was renumbered to 2010.

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 Declaration of Dale A. Glanzman ("Glanzman Decl.") ¶ 5.

⁴ Enforcement Exhibit ("CX")-3.

⁵ See Article V, Sec. 4(a), FINRA By-Laws, available at www.finra.org/Rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: By-Laws").

B. Origin of the Complaint

The investigation leading to the filing of the Complaint began when FINRA received a letter in December 2008 saying that Timothy Welland Hyde, who had worked at a number of broker-dealers over the years, was actually Bonanno. The letter said that in 1989, Bonanno had been charged with felonies in Massachusetts, and, in an effort to avoid the charges, had assumed the identity of a baby who had died nine days after being born. FINRA's subsequent investigation revealed that the facts alleged in the letter were true.⁶

III. Respondent's Default

On July 13, 2010, Enforcement sent the Complaint and Notice of Complaint to Bonanno by first-class and certified mail (return receipt requested) to his residential address as recorded in the Central Registration Depository ("CRD Address"), as well as to the address in Beaumont, TX, where Bonanno had been incarcerated in federal prison ("Prison Address"). The first-class and certified mailings sent to Bonanno's CRD Address were returned, marked "Forward time exp."⁷ The first-class mailing sent to Bonanno's Prison Address was not returned, and the certified mailing receipt was returned signed.⁸

On August 19, 2010, Enforcement sent the Complaint and Second Notice of Complaint to Bonanno by first-class and certified mail, to his CRD Address and Prison Address. As before, the first-class and certified mailings sent to his CRD Address were

⁶ Glanzman Decl. ¶ 12.

⁷ CX-4, 5, 6; Glanzman Decl. ¶ 6.

⁸ CX-7, 8; Glanzman Decl. ¶ 7.

returned, marked "Forward time exp."⁹ The first-class mailing sent to Bonanno's Prison Address was not returned, and the certified mailing receipt was returned signed.¹⁰ Bonanno did not respond to the Complaint by September 7, 2010, the date specified in the Second Notice of Complaint. To date, Bonanno has not filed an answer with the Office of Hearing Officers or otherwise responded to the Complaint.¹¹

Bonanno defaulted by failing to answer the Complaint.¹² 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.

IV. Violations

A. Willful Failure to Disclose Accurate Information and Felony Charges on Forms U4

The Complaint alleges that Bonanno violated Conduct Rule 2110, 2010, IM-1000-1, and Article V, Section 2 of FINRA's By-Laws by willfully failing to disclose accurate information felony charges on 22 Forms U4.

According to the Complaint, Bonanno signed approximately 22 Forms U4 between January 2001 and February 2009. At the time he completed each of the Forms U4, his real name was Bonanno, his birth date was [REDACTED] and he had pending against him felony larceny charges in Massachusetts.¹³ Bonanno willfully failed to

⁹ CX-9, 10, 11; Glanzman Decl. ¶ 8.

¹⁰ CX-12; Glanzman Decl. ¶ 9.

¹¹ Glanzman Decl. ¶ 10.

¹² *Dep't. 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)).

¹³ Glanzman Decl. ¶ 11.

accurately complete the 22 Forms U4 because on each of the Forms U4, Bonanno attested that his name was Timothy W. Hyde, that he was born on [REDACTED] (the birth date of the dead baby), and that he had never been charged with a felony.

Conduct Rules 2110 and 2010 and IM-1000-1 require associated persons to disclose accurately and fully information required in the Form U4 and to observe high standards of commercial honor and just and equitable principles of trade.¹⁴ The accuracy of an applicant's Form U4 "is critical to the effectiveness" of a self-regulatory organization's ability "to monitor and determine the fitness of securities professionals."¹⁵

The allegations in the Complaint are sufficient to establish, for purposes of this Default Decision, that Bonanno willfully failed to disclose information requested on his Form U4, as required by FINRA By-Laws. Accordingly, the Hearing Officer finds that Bonanno violated FINRA's By-Laws, NASD Conduct Rules 2110, 2010, and IM-1000-1.

B. Failure to Appear for Testimony

The Complaint alleges that Bonanno violated Procedural Rule 8210 and Conduct Rule 2010 by failing to appear for scheduled on-the-record testimony ("OTR") and failing to respond to written requests for information concerning his identity and Forms U4.

The Second Cause of Action of the Complaint alleges that on February 24, 2009, FINRA staff sent to Bonanno, who was then known as Hyde, a request that he appear for an OTR. The Staff sent the letter to Bonanno at his CRD Address. On March 3, 2009,

¹⁴ IM-1000-1 provides that the filing of registration information that "is incomplete or inaccurate so as to be misleading ... or the failure to correct such filing after notice thereof, may be deemed to be conduct inconsistent with just and equitable principles of trade" in violation of Rule 2110 (the predecessor of Rule 2010). See also *Thomas R. Alton*, 52 S.E.C. 380, 382 (1995).

¹⁵ *Rosario R. Ruggiero*, 52 S.E.C. 725, 728 (1996) (citing *Alton*, 52 S.E.C. at 382); see also *Guang Lu*, Exchange Act Rel. No. 51047, 2005 SEC LEXIS 117, at *19-20 (Jan. 14, 2005) (recognizing that "the candor and forthrightness of applicants is critical to the effectiveness of the screening process").

the Staff received a letter from Bonanno's attorney confirming that Bonanno would appear for the OTR on April 9, 2009, the date agreed to by the Staff. On April 1, however, the attorney sent a letter to the Staff saying that Bonanno would not appear for the OTR. To date, Bonanno has not appeared, or agreed to appear, for an OTR as requested by the Staff.¹⁶

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this Default Decision, that Bonanno failed to appear for testimony, thereby violating Procedural Rule 8210. A violation of Rule 8210 is also a violation of Rule 2010.¹⁷

Enforcement filed a Third Cause of Action alleging that Bonanno failed to respond to two written requests for information that FINRA Staff sent pursuant to Rule 8210. However, the Complaint alleges that the two requests were sent to Bonanno's attorney, rather than to Bonanno's CRD Address, as required for providing constructive notice under Rule 8210(d). Enforcement did not allege that Bonanno received actual notice of the Rule 8210 requests. Because the facts as alleged in the Third Cause of Action fail to establish that Bonanno received actual or constructive notice of Enforcement's Rule 8210 requests, the Hearing Officer does not find that he violated Rules 8210 and 2010 by failing to respond to FINRA's written requests for information.

¹⁶ Glanzman Decl. ¶¶ 13, 14.

¹⁷ *Wanda P. Sears*, Exchange Act Rel. No. 58075, 2008 SEC LEXIS 1521, at *19, n.28 (July 1, 2008); *Anthony H. Barkate*, Exchange Act Rel. No. 49542, 2004 SEC LEXIS 806, at n.1 (Apr. 8, 2004); *Dep't. of Enforcement v. Hoeper*, No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (N.A.C. Nov. 2, 2001).

V. Sanctions

A. Willful Failure to Disclose Felony Charges on Form U4

FINRA Sanction Guidelines (“Guidelines”) governing sanctions for false and misleading Forms U4 direct adjudicators to consider the nature and significance of the information at issue when determining sanctions.¹⁸ The Guidelines direct adjudicators to consider two relevant “principal considerations” when determining sanctions: (1) the nature and significance of the information at issue; and (2) whether [the] failure resulted in a statutorily disqualified individual becoming or remaining associated with a firm.¹⁹

Bonanno’s true identity and felony charges were material and would have been significant to broker-dealers and investors. The National Adjudicatory Council (“NAC”) has determined that information on the Form U4 is material if a reasonable employer reading the form would “view the disclosure of the omitted information as significantly altering the total mix of information available.”²⁰ Furthermore, the NAC has made clear that “[b]ecause of the importance that the industry places on full and accurate disclosure of information required by the Form U4, [it is] presumed that essentially all the information that is reportable on the Form U4 is material.”²¹ In this case, Bonanno had been falsifying his identify for years, and had been charged with felony larceny. The NAC has consistently held that criminal history is material.²²

¹⁸ FINRA Sanction Guidelines 73 (2007), www.finra.org/sanctionguidelines.

¹⁹ *Id.* 73.

²⁰ *Dep’t. of Enforcement v. Knight*, 2004 NASD Discip. LEXIS 5, at *14 (N.A.C. Apr. 27, 2004), (quoting *SEC v. Mayhew*, 121 F.3d 44, 52 (2d Cir. 1997)).

²¹ *Id.* at *13.

²² *Dep’t. of Enforcement v. Craig*, 2007 FINRA Discip. LEXIS 16 (N.A.C. Dec. 27, 2007); *Dep’t. of Enforcement v. Knight*, 2004 NASD Discip. LEXIS 5.

Bonanno's failure to disclose his identity and the felony charges was also willful. "Willfulness" is established by a showing that a person "knew or reasonably should have known under the particular facts and circumstances that his conduct was improper."²³ A finding of willfulness does not require intent to violate the law or specific rule; it simply requires intent to commit the act that constitutes the violation.²⁴ Bonanno signed 22 false Form U4s, and the Hearing Officer finds that Bonanno's failure to disclose his true identity and the felony charges on the forms was willful. Therefore, Bonanno is subject to statutory disqualification.²⁵

The record contains no evidence of mitigating factors. Accordingly, the Hearing Officer will bar Bonanno from associating with any FINRA member firm in any capacity.

B. Failure to Appear for Testimony

A violation of Rule 8210 is serious because Rule 8210 is a key element in FINRA's oversight function and allows FINRA to carry out its regulatory functions without subpoena power.²⁶ When an individual fails to provide testimony and information, FINRA's ability to perform its regulatory functions is subverted.²⁷ For these reasons, the Guidelines recommend a bar when a respondent fails to respond in any manner to a request for information issued pursuant to Rule 8210.²⁸ Bonanno failed to appear at a scheduled OTR. There is no evidence of any mitigating facts that would justify a sanction of less than a bar.

²³ *Christopher LaPorte*, Exchange Act Release No. 39171, 1997 SEC LEXIS 2058, at *8, n.2 (Sep. 30, 1997).

²⁴ *Dep't. of Enforcement v. Knight*, 2004 NASD Discip. LEXIS 5, at *10.

²⁵ FINRA By-Laws, Article III, Sec. 4.

²⁶ *Howard Brett Berger*, Exchange Act Rel. No. 58950, 2008 SEC LEXIS 3141 (Nov. 14, 2008); *Joseph G. Chiulli*, Exchange Act Rel. No. 42359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000).

²⁷ *Joseph P. Hannan*, Exchange Act Rel. No. 40438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998).

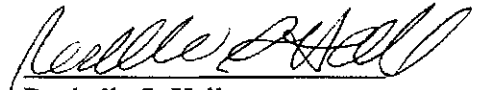
²⁸ Guidelines 35 (2007).

Accordingly, the Hearing Officer finds that Bonanno should be barred from associating with any FINRA member firm in any capacity for violating Procedural Rule 8210 and Conduct Rule 2010.

VI. Order

For failing to disclose his true identify and felony charges on 22 Forms U4, in violation of Conduct Rules 2110, 2010, IM-1000-1 and Article V, Section 2 of FINRA's By-Laws, and for failing to appear for testimony, in violation of Procedural Rule 8210 and Conduct Rule 2010, Joseph D. Bonanno is barred from associating with any FINRA member firm in any capacity. The bars will become effective immediately if this Default Decision becomes FINRA's final disciplinary action in this proceeding.

SO ORDERED.



Rochelle S. Hall
Hearing Officer

Copies to: Joseph D. Bonanno (*via Federal Express and first-class mail*)
Dale A. Glanzman, Esq. (*via electronic and first-class mail*)
Mark Dauer, Esq. (*via electronic mail*)
David Sonnenberg, Esq. (*via electronic mail*)