

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JESUS FRANCISCO SCHETTINO,
(CRD No. 4718500)



Respondent.

Disciplinary Proceeding
No. C02040043

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

March 2, 2005

Respondent is barred from associating with any NASD member firm in any capacity for failing to disclose material information on a Form U-4, in violation of NASD Conduct Rule 2110 and IM-1000-1.

Appearances

Joel T. Kornfeld, Senior Regional Attorney, Los Angeles, CA (Rory C. Flynn, Chief Litigation Counsel, Washington, D.C., Of Counsel) for the Department of Enforcement.

No appearance by or on behalf of the Respondent.

DECISION

I. Introduction

On October 29, 2004, the Department of Enforcement (“Enforcement”) filed the attached Complaint against the Respondent Jesus Francisco Schettino (“Schettino” or the “Respondent”). The Complaint alleges that the Respondent willfully failed to disclose

material information on his Uniform Application for Securities Industry Registration or Transfer (Form U-4), in violation of NASD Conduct Rule 2110 and IM-1000-1.

The Respondent did not answer or otherwise respond to the Complaint. Consequently, on January 14, 2005, Enforcement filed a Motion for Entry of Default Decision ("Motion"), supported by the sworn declaration of Joel T. Kornfeld ("Kornfeld Decl.") and ten exhibits. The Respondent did not respond to the Motion.

For the reasons discussed below, the Hearing Officer grants Enforcement's Motion.¹

II. Respondent's Default

On October 27, 2004, Enforcement served the Complaint and Notice of Complaint on the Respondent by certified and first-class mail sent to his current residential address shown in the Central Registration Depository (the "CRD address").² The Respondent did not file an Answer. Thus, on November 26, 2004, Enforcement served the Complaint and Second Notice of Complaint on the Respondent by certified and first-class mail sent to the Respondent at his CRD address.³ The Respondent did not file an Answer in response to the Second Notice of Complaint.

¹ The factual findings in this Default Decision are based on the attached Complaint, the allegations of which are deemed admitted pursuant to Procedural Rule 9215(f), and on the declaration and exhibits Enforcement filed with the Motion.

² Kornfeld Decl. ¶ 7. Enforcement also served the Complaint on the Respondent at a second address that corrected an apparent misspelling in the CRD address. The CRD address contains the abbreviation "Sf." for Street rather than "St."

³ *Id.* ¶ 11. Enforcement also served the Second Notice of Complaint on the Respondent at the corrected CRD address.

The evidence shows that Enforcement properly served the Respondent with the Complaint by mailing it to his CRD address.⁴ Thus, the Respondent received valid constructive notice of this proceeding and defaulted by failing to answer the Complaint. Accordingly, pursuant to Procedural Rules 9215(f) and 9269(a)(2), the Hearing Officer finds the Respondent in default and deems the allegations in the attached Complaint admitted.

III. Jurisdiction

On or about September 18, 2003, Schettino submitted a Form U-4 to register with PFS Investments Inc. ("PFS") as an Investment Company and Variable Contracts Products Representative, which PFS filed with NASD.⁵ Schettino was associated with PFS from October 6, 2003, until December 5, 2003.⁶ PFS discharged Schettino after it discovered that he had not disclosed that in 1992 he had been charged in Los Angeles, California, with two misdemeanors: theft and providing a false identity.⁷ PFS discharged Schettino before he registered with NASD as an Investment Company and Variable Contracts Products Representative.⁸ The Uniform Termination Notice for Securities Industry Registration ("Form U-5") that PFS submitted on Schettino's behalf indicates that PFS discharged him because he "failed to properly disclose criminal matter."⁹

⁴ *Department of Enforcement v. Reynolds Verdiner*, No. CAF020004, NASD 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).

⁵ Compl. ¶ 1.

⁶ Ex. 1, at 4, 7.

⁷ Kornfeld Decl. ¶ 16.

⁸ Ex. 1.

⁹ *Id.* at 7.

Under Article I, Section (dd) of NASD By-Laws, a person who applies for registration is an “associated person of a member.” Article V, Section 4(c) of NASD By-Laws creates a two-year period of retained jurisdiction over such associated persons, running from the date upon which such person ceased to be associated with a member firm. Here, Schettino’s CRD record indicates that PFS filed the Form U-5 on December 17, 2003, and Enforcement filed the Complaint on October 29, 2004, which is within the two-year period. Accordingly, the Hearing Officer finds that NASD has jurisdiction of this proceeding.

IV. Findings of Fact and Conclusions of Law

The Complaint alleges that, on or about September 18, 2003, Schettino submitted a Form U-4 to PFS on which he willfully failed to disclose his criminal record.¹⁰ Specifically, the Complaint alleges that Schettino failed to disclose that he had been charged with two misdemeanors: (1) theft of property, in violation of California Penal Code § 484(a); and (2) providing a false identity to a police officer, in violation of California Penal Code § 148.9. Schettino also did not disclose that, on September 6, 1994, he pled guilty to both charges and was sentenced to 45 days in jail and 3 years probation. Schettino did not disclose either the charges or his guilty pleas in response to Question 14B. (1) of the Form U-4,¹¹ which asked whether he had ever been convicted of a misdemeanor involving the wrongful taking of property or false statements, or had ever been charged with a misdemeanor involving those offenses.¹²

¹⁰ Schettino had also denied having a non-felony criminal record on a Primerica Personal Financial Analyst Independent Business Application he signed on February 28, 2000, and which he later submitted to his employer.

¹¹ Compl. ¶ 4.

¹² Kornfeld Decl. ¶ 16.

When PFS questioned Schettino about why he failed to disclose his criminal record on his Form U-4, Schettino wrote in response that the person who originally recruited him had said that PFS did not care about misdemeanors.¹³ Therefore, he concluded that he would not disclose the charges and convictions so that he could join the firm. Schettino did not claim he misunderstood the Question 14B. 1 of the Form U-4. Schettino did not identify the person who told him that the firm did not care about misdemeanors.

Based on the foregoing evidence, the Hearing Officer finds that Schettino willfully failed to disclose two misdemeanor charges, in violation NASD Conduct Rule 2110 and IM-1000-1.

V. Sanctions

In egregious cases, the NASD Sanction Guidelines recommend a fine of \$2,500 to \$50,000 and a suspension in any or all capacities for up to two years or a bar for filing a materially false Form U-4.¹⁴ The Hearing Officer concludes that a bar is appropriate in this case because his guilty pleas and resulting convictions for theft of property meant that he was statutorily disqualified from associating with a member firm at the time he submitted the Form U-4 to PFS. Moreover, the Hearing Officer concludes that Schettino willfully failed to disclose his criminal record in order to enter the securities industry. Schettino's hand-written response indicates that he knew that the Form U-4 required that he disclose the charges, but he omitted the information so that he could join PFS.

¹³ Schettino wrote:

The person how recruit me long time ago tell me only felony was a problem that the company well not complain about my misdemeanor so I seed ok les do it I want to yoin and I want to winn. That was the reason I don't let the company know about my problem." (Emphasis and misspellings in the original.)

¹⁴ NASD Sanction Guidelines 75-76 (2004 ed.).

Accordingly, the Hearing Officer will bar the Respondent from associating with any member firm in any capacity for this violation.

VI. Order

Jesus Francisco Schettino is barred from association with any member firm in any capacity for his willful failure to disclose material information on a Form U-4, in violation of NASD Conduct Rule 2110 and IM-1000-1. The bar shall become effective once this decision becomes the final disciplinary action of NASD.

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:

Jesus Francisco Schettino (by overnight courier and first-class mail)
Joel T. Kornfeld, Esq. (by first-class and electronic mail)
Rory C. Flynn, Esq. (by first-class and electronic mail)

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JESUS FRANCISCO SCHETTINO
a.k.a. JESUS FRANCISCO SAUCEDO
(CRD No. 4718500),

Respondent.

Disciplinary Proceeding
No. C02040043

Hearing Officer -

COMPLAINT

Upon information and belief, Complainant alleges as follows:

RESPONDENT

1. From on or about October 6, 2003 through December 5, 2003, Jesus Francisco Schettino a.k.a. Jesus Francisco Saucedo ("Respondent") was associated with NASD member PFS Investments Inc. ("PFS") in an unregistered capacity. On or about September 18, 2003, Respondent provided to PFS, and the firm subsequently filed on Respondent's behalf, a Uniform Application for Securities Industry Registration ("Form U-4") to become associated with a member of a self-regulatory organization. Concurrently, Respondent registered with NASD to take the Series 6 Investment Company and Variable Contracts Products Representative examination. Respondent did not complete the examination. Respondent did not become and currently is not registered with any member firm. Pursuant to Article V, Section 4 of NASD's By-Laws, Respondent remains subject to the jurisdiction of NASD for purposes of this action.

CAUSE OF COMPLAINT

NASD Conduct Rule 2110 and IM-1000-1

(Willful Submission of Materially False Information in a Form U-4)

2. Paragraph number 1, above, is realleged and incorporated herein by reference.
3. On or about September 18, 2003, Respondent willfully misrepresented material facts on a Uniform Application for Securities Industry Registration or Transfer ("Form U-4") in connection with an application to become associated with a self-regulatory organization. On the Form U-4, Respondent falsely responded "No" to the following questions:

14B. (1) Have you ever:

- (a) 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?
- (b) been *charged* with a *misdemeanor* specified in 14B(1)(a)?

4. Contrary to the foregoing Form U-4 responses, in Los Angeles County, California, Respondent was charged with one count of misdemeanor theft of property, pursuant to California Penal Code §484(a) and one count of providing false identification to a police officer, pursuant to California Penal Code §148.9. On September 6, 1994, Respondent pled guilty to both of the foregoing charges. Respondent was sentenced to three years probation and ordered to spend 45 days in jail.

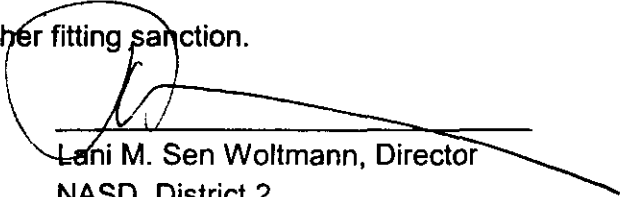
5. The aforementioned acts, practices, and conduct constitute a willful failure to disclose material information on the Form U-4 and constitute separate and distinct violations of NASD Conduct Rule 2110 and IM-1000-1 by Respondent.

PRAYER FOR RELIEF

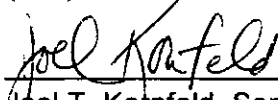
WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Respondent committed the violations alleged within this Complaint;
- B. An order imposing sanctions upon the Respondent in accordance with NASD Rule 8310;
- C. Specific findings that Respondent's conduct was willful; the omitted information was material; and that the omission to state material facts was in connection with a Form U-4 application;
- D. An order imposing such costs of any proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330; and
- E. An order imposing any other fitting sanction.

Date: October 27, 2004


Lani M. Sen Woltmann, Director
NASD, District 2
300 S. Grand Avenue, Suite 1600
Los Angeles, CA 90071
(213) 229-2300; Fax: (213) 617-3299

Date: October 27, 2004


Joel T. Kornfeld, Senior Regional Attorney
NASD, District 2
300 S. Grand Avenue, Suite 1600
Los Angeles, CA 90071
(213) 613-2643; Fax: (213) 617-1570

Rory C. Flynn, Of Counsel
Department of Enforcement
NASD
1801 K Street, N.W., Suite 800
Washington, D.C. 20006
(202) 974-2974 Fax No. (202) 974-2805