

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT

Complainant,

v.

ALFRED P. MONTGOMERY
(CRD No. 4721887),



Respondent.

Disciplinary Proceeding
No. C05040088

Hearing Officer – SNB

DEFAULT DECISION

May 3, 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

Laura Leigh Blackston, Esq., Senior Regional Attorney, New Orleans, Louisiana, and
Rory C. Flynn, Esq., Washington, DC, of Counsel, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

I. Background

On December 14, 2004, the Department of Enforcement ("Enforcement") filed a one-cause Complaint in this proceeding, attached to this Decision as Exhibit A. The Complaint alleges that Respondent Alfred P. Montgomery ("Respondent") violated NASD Conduct Rule 2110 and IM-1000-1 by failing to disclose material information on a Uniform Application for Securities Industry Registration or Transfer ("Form U-4"). Respondent did not file an Answer to the Complaint. On March 14, 2005, Enforcement filed a Motion for Entry of Default Decision,

supported by the declaration of Laura Leigh Blackston and seven exhibits. Respondent did not reply to the Motion. For the reasons set forth below, the Motion is granted.¹

II. Respondent's Default

Enforcement sent the Complaint and Notice of Complaint to Respondent on December 10, 2004, by first class and certified mail to his last known residential address listed in the Central Registration Depository (the "CRD address"), and to two alternate addresses. In the same manner, Enforcement sent the Complaint and Second Notice of Complaint to Respondent on January 11, 2005. Respondent did not file an Answer to the Complaint.

Enforcement complied with Procedural Rule 9134(b)(1) by mailing the Complaint and Notices of Complaint to Respondent's CRD address, thereby giving Respondent constructive notice of this proceeding. By failing to file an Answer, Respondent defaulted. Pursuant to Rules 9215(f) and 9269(a)(2), the allegations in the Complaint are deemed admitted.

III. Jurisdiction

From October 20, 2003, until December 22, 2003, Respondent was associated with NASD member firms IDS Life Insurance Company and American Express Financial Advisors Inc. ("American Express" or "Firm"). Respondent took the Series 7 examination and passed, and American Express submitted a Form U-4 on Respondent's behalf on November 6, 2003. However, his registration was not approved, and his association with American Express was terminated on December 22, 2003.

¹ The factual determinations in this decision are based on the allegations of the attached Complaint, which are deemed admitted, and the declaration and exhibits filed by Enforcement with its motion.

Respondent submitted to NASD jurisdiction by applying for registration on Form U-4.² Article V, Section 4 of the NASD By-Laws allows NASD to retain jurisdiction over a formerly associated person for two years following the effective date his association terminated. Enforcement filed the Complaint within two years after Respondent's association terminated, and the Complaint alleges misconduct in connection with his attempt to become registered with NASD. Accordingly, the Hearing Officer finds that NASD has jurisdiction over this proceeding.

IV. Violations

A. Failure to Disclose Material Information on a Form U-4

The Complaint alleges that on October 20, 2003, Respondent submitted a Form U-4 to American Express on which he failed to disclose material information. Specifically, the Complaint alleges Respondent falsely answered "no" to Items 14A(1)(a) and (b) which asked Respondent whether he had ever been charged with, or pled guilty to, a felony. Respondent's "no" answer was false because in 1988 Respondent was charged with making untrue statements of material fact in the sale of securities, and in 1989 he pled guilty to a felony involving fraudulent representation in connection with the sale of securities. Therefore, Respondent violated NASD Rule 2110 and IM-1000-1.

V. Sanctions

For filing a materially false Form U-4, the NASD Sanction Guidelines recommend a fine of \$2,500 to \$50,000 and a suspension in any or all capacities from five to 30 days. In egregious

² Article 1, Section (dd)(1) of the NASD By-Laws defines an "associated person" as "a natural person who . . . has applied for registration under the Rules of the Association." Jurisdiction thus attaches to a person when he signs and submits a Form U-4. See Notice to Members 99-95, 1999 NASD LEXIS 117 (Nov. 1999) (explaining that a person who applies for registration on Form U-4 is an associated person); *Dep't of Enforcement v. Gray*, No. C02030015, 2003 NASD Discip. LEXIS 52, at *3 (OHO Nov. 14, 2003) ("Gray voluntarily submitted to NASD's jurisdiction by applying for registration under NASD's rules."); *Dep't of Enforcement v. Respondent*, No. C10010146, 2003 NASD Discip. LEXIS 1 (NAC Jan. 3, 2003) (finding that, although the respondent never became registered, he was subject to NASD jurisdiction because he executed and submitted a Form U-4 to NASD).

cases, the guidelines suggest a longer suspension in any or all capacities for up to two years or a bar.³ The Hearing Officer finds that Respondent's false statements in his Form U-4, and his failure to disclose that he was charged with, and pled guilty to a felony involving fraudulent representations in connection with the sale of securities, justifies a bar in this case. The Hearing Officer was particularly troubled by the fact that the omitted disclosure of fraud was directly relevant to Respondent's fitness to become associated with an NASD member. It was, therefore, especially important for Respondent to disclose this information to his firm and NASD on his form U-4, for the protection of the investing public. Accordingly, Respondent is barred from associating with any member firm in any capacity.

VI. Conclusion

Respondent Alfred P. Montgomery is barred from associating with any NASD member in any capacity for failing to disclose material information on his Form U-4, in violation of NASD Conduct Rule 2110 and IM-1000-1. The bar will become effective immediately if this decision becomes NASD's final disciplinary action.

SO ORDERED.


Sara Nelson Bloom
Hearing Officer

Dated: May 3, 2005

Copies to: Alfred P. Montgomery (via overnight and first class mail)
Laura Leigh Blackston, Esq. (via electronic and first class mail)
Rory C. Flynn, Esq. (via electronic and first class mail)

³ NASD Sanction Guidelines at p. 72-73 (2005 ed.).

EXHIBIT A

**NASD
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

Alfred P. Montgomery,
Associated Person
[CRD No. 4721887],

Respondent.

Disciplinary Proceeding
No. C05040088

Hearing Officer: ____

COMPLAINT

Upon information and belief, Complainant alleges as follows:

1. Alfred P. Montgomery ("Montgomery") was associated with member firms American Express Financial Advisors Inc. ("American Express " or the "firm") and IDS Life Insurance Company from October 20, 2003, until his termination on December 22, 2003. American Express filed a Uniform Application for Securities Industry Registration or Transfer ("Form U-4") on behalf of Montgomery on November 6, 2003. Although Montgomery scheduled the examination for the Series 7 (General Securities Representative), and took and passed the examination, his registration was not approved. Therefore, Montgomery was not registered with NASD. The NASD, however, has jurisdiction over Montgomery as an associated person by virtue of his filling out the Form U-4 on October 20, 2003, to take the Series 7 examination. American Express filed Montgomery's Uniform Termination Notice for Securities Industry Registration ("Form U-5") on December 22, 2003. Montgomery is not currently associated with a member firm of NASD. Although Montgomery is not currently registered, he remains subject to the jurisdiction of NASD, pursuant to

Article V, Section 4 of NASD's By-Laws, which provides for a two-year period of retained jurisdiction over formerly associated persons.

CAUSE OF COMPLAINT

Article V, Section 2 of the NASD By-Laws, NASD Conduct Rule 2110 and IM-1000-1:
Failure to Disclose Material Information on Uniform Application for Securities Industry
Registration or Transfer, Against Respondent Montgomery

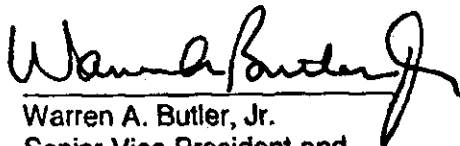
2. On or about October 20, 2003, Alfred P. Montgomery willfully failed to disclose certain material information on a Uniform Application for Securities Industry Registration or Transfer ("Form U-4"). Specifically, Montgomery answered "No" to Items 14A. (1)(a) and (b) on Form U-4, which ask whether the applicant has ever been convicted of or pled guilty to any felony, or been charged with any felony. Montgomery answered "No" despite the fact that he had been charged with making untrue statements of material fact in the sale of securities in 1988 and had pled guilty to a felony involving fraudulent representation in sale of securities in 1989 in the Circuit Court for Montgomery County, Alabama.
3. Such acts, practices, and conduct constitute separate and distinct violations of Article V, Section 2 of the NASD By-Laws, NASD Conduct Rule 2110, and IM-1000-1 by Alfred P. Montgomery.

PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein, including, without limitation, a finding that Respondent willfully failed to disclose a material fact on a Form U-4 and a conclusion that under Section 15(b)(4)(A) of the Securities Exchange Act of 1934 and Article III, Section 4(f) of the NASD By-Laws, this omission makes respondent subject to a statutory disqualification with respect to association with a member;
- B. An order imposing sanctions upon the Montgomery in accordance with NASD Rule 8310;
- C. An order imposing such costs of any proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330; and
- D. An order imposing any other fitting sanction.

December 10, 2004
Date


Warren A. Butler, Jr.
Senior Vice President and
Regional Director
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