

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant

v.

SCOTT ANTHONY BARTLETT
(CRD No. 3211860)



Respondent.

Disciplinary Proceeding
No. C06040033

Hearing Officer – DM

DEFAULT DECISION

March 15, 2005

Respondent willfully failed to disclose a felony criminal charge on a Form U-4 and willfully failed to update the Form U-4 when he pled guilty and was convicted of the felony, in violation of Rule 2110. He also failed to respond to requests for information, in violation of Rules 8210 and 2110. For these violations, he is barred from associating with any NASD member in any capacity.

Appearances

George C. McGuigan, Jr., Esq., Dallas, TX (Andrew A. Favret, Esq., New Orleans, LA, Rory C. Flynn, Esq., Washington, DC, Of Counsel), for Complainant

No appearance by or for Respondent.

DECISION

I. Introduction

The Department of Enforcement filed a Complaint (attached to this Decision as Exhibit A) on October 20, 2004, alleging that Respondent Scott Anthony Bartlett willfully failed to disclose a felony criminal charge on a Uniform Application to Transfer Securities Registration or Transfer (Form U-4) and failed to update the Form U-4 when he pled guilty and was convicted of the charge, in violation of Rule 2110, Article V.

Section 2 of NASD's By-Laws and IM-1000-1. The Complaint also charged that Respondent failed to respond to requests for information, in violation of Rules 8210 and 2110. Respondent did not file an Answer to the Complaint. On January 18, 2005, Enforcement filed a motion for a default decision, supported by the declaration of C. C. McGuigan, Jr. and three exhibits. Respondent did not reply to the motion.¹

II. Respondent's Default

Enforcement sent the Complaint and Notice of Complaint to Respondent on October 19, 2004, by certified and first class mail to his most current residential address in the Central Registration Depository (the "CRD address"). Enforcement sent the Complaint and Second Notice of Complaint to Respondent on November 23, 2004, by certified and first class mail to the CRD address.

Enforcement served the Complaint and the Notices of Complaint on Respondent in accordance with Rule 9134, giving him constructive notice of this proceeding. By failing to respond, he defaulted. Pursuant to Rule 9215(f), the Hearing Officer will find the allegations in the Complaint admitted.

III. Jurisdiction

From December 17, 2001 until July 15, 2003, Respondent was registered as a NASD member Premier Group, Inc., as a direct participation program limited representative. He has not been associated with any NASD member since that date, but he remains subject to NASD jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of NASD's By-Laws, because (1) the Complaint was filed on or

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

two years after the termination of his registration with Premier, and (2) the Complaint charges him with misconduct while he was associated with Premier, and with failing to respond to requests for information sent to him during the two-year period following the termination of his registration.

IV. Violations

A. Form U-4 Violations

The first cause of the Complaint alleges that on or about December 17, 2001 Respondent completed a Form U-4 for Premier to submit to NASD on his behalf. The Form U-4 asked Respondent whether he had ever been charged with any felony. Respondent failed to disclose that on or about October 17, 2001, two months earlier, he had been charged with Driving While Intoxicated (DWI), a felony. On or about March 28, 2002, Respondent pled guilty to and was convicted of the DWI charge, and received a sentence of five years probation. Respondent failed, however, to update his Form U-4 to disclose his guilty plea and conviction.

Article V, Section 2 of NASD's By-Laws requires that persons who apply for registration with NASD must provide "such ... reasonable information with respect to the applicant as the NASD may require." Specifically, applicants must complete a Form U-4 disclosing, among other things, whether they have been charged with, pled guilty to or been convicted of any felony. Article V, Section 2 of NASD's By-Laws further requires that "[e]very application for registration filed with the NASD shall be kept current at all times by supplementary amendments [which] shall be filed with the NASD not later than 30 days after learning of the facts or circumstances giving rise to the amendment."

IM-1000-1 provides: "The filing with [NASD] of information with respect to membership or registration as a Registered Representative which is incomplete or inaccurate so as to be misleading ... or the failure to correct such filing after notice thereof, may be deemed conduct inconsistent with just and equitable principles of trade and when discovered may be sufficient cause for appropriate disciplinary action."

NASD Rule 2110 and IM-1000-1 require associated persons to disclose accurately and fully information required in the Form U4. The accuracy of disclosures on a Form U4 "is critical to the effectiveness" of a self-regulatory organization's ability to screen and monitor the professionals within the securities industry. Rosario R. Ruggiero, 52 S.E.C. 725, 728 (1996); see also Daniel Richard Howard, Exchange Act Rel. No. 46269, 2002 SEC LEXIS 1909, at *9-10 (July 26, 2002) ("The candor and forthrightness of applicants is critical to the effectiveness of this screening process.").

Department of Enforcement v. Lu, Complaint No. C9A020052, 2004 NASD Disc. LEXIS 8 at * 32 (May 13, 2004), aff'd, Exch. Act. Rel. No. 51047, 2005 SEC LEXIS 1000 (Jan. 14, 2005).

Therefore, the allegations in the first cause of the Complaint, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent violated Rule 2110 by failing to disclose his DWI felony charge on his December 2001 Form U-4 and by failing to up-date his Form U-4 when he pled guilty to and was convicted of the charge in March 2002.²

Enforcement further alleges that both Respondent's failure to disclose the DWI charge on his Form U-4 and his failure to update his Form U-4 after he pled guilty to

² The Complaint also alleges that in July 2003, after Respondent's registration with Premier was terminated, he re-applied for registration with Premier without disclosing to Premier that he had pled guilty to and been convicted of DWI. The Complaint does not, however, specifically allege that Respondent completed a Form U-4 at that time. Because the allegations are unclear, the Hearing Officer does not make his determination that Respondent violated Rule 2110 on the July 2003 events.

was convicted were willful. Willfulness is not required to establish a violation of Rule 8210, but Article III, Section 4(f) of NASD's By-Laws provides that a person who has willfully made any false or misleading statement as to any material fact in any application to become registered with an NASD member, or who has omitted to disclose any material fact which is required to be disclosed in such an application, is subject to a "disqualification." For this purpose, it is sufficient to establish willfulness if Respondent "knew or reasonably should have known under the particular facts and circumstances that his conduct was improper." Christopher LaPorte, Exch. Act Rel. No. 39171, 1997 SEC LEXIS 2058, at *8 n.2 (Sept. 30, 1997).

The Hearing Officer notes that the Form U-4 asked clearly and unambiguously whether Respondent had ever been charged with any felony, and therefore concludes that when Respondent completed the December 2001 Form U-4, he knew or reasonably should have known that he was required to disclose the October 2001 DWI charge. In addition, Respondent knew or reasonably should have known that he was required to update his Form U-4 to disclose his guilty plea and conviction. Accordingly, the Hearing Officer finds that both Respondent's failure to disclose the charge when he completed the Form U-4 and his subsequent failure to update the Form U-4 were willful.

B. Failure to Respond Violation

The second cause of the Complaint alleges that on September 15 and November 21, 2003, NASD staff sent Respondent requests, pursuant to Rule 8210, for information regarding the DWI charge, and his subsequent guilty plea and conviction. The staff sent the requests to Respondent by first class and certified mail to his CRD address. Respondent did not respond to the requests.

These allegations, which are also deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent failed to respond to requests for information, in violation of Rules 8210 and 2110.

V. Sanctions

Under the Sanction Guidelines, a bar is standard for failing to respond to requests for information. NASD Sanction Guidelines at 37 (2004). There is no evidence of any mitigating circumstances that would justify a lesser sanction in this case.

For submitting an inaccurate Form U-4, the Guidelines recommend a fine of \$2,500 to \$50,000 and, in egregious cases, a suspension of up to two years or a bar. Guidelines 75-76. Respondent's failure to disclose the DWI charge on his December 2001 Form U-4, and his subsequent failure to update his Form U-4 to disclose his guilty plea and conviction were egregious. Respondent had been charged with felony DWI just two months before he completed the December 2001 Form U-4, and the charge was still pending; therefore he should have been well aware of the need to disclose it. Moreover, once he pled guilty to and was convicted of the DWI felony, he was statutorily disqualified from associating with an NASD member, pursuant to Article III, Section 4(g)(2) of NASD's By-Laws. Under these circumstances, a bar is also appropriate for these violations.

VI. Conclusion

Respondent Scott Anthony Bartlett willfully failed to disclose a criminal conviction on a Form U-4 and failed to update his Form U-4 when he subsequently pled guilty to and was convicted of the charge, in violation of Rule 2110. He also failed to respond to requests for information, in violation of Rules 8210 and 2110. For these violations, he

barred from associating with any NASD member in any capacity. The bar will become effective immediately if this decision becomes NASD's final disciplinary action in this proceeding.

SO ORDERED.



David M. FitzGerald
Hearing Officer

Copies to: Scott Anthony Bartlett (*via overnight courier and first class mail*)
 George C. McGuigan, Jr., Esq. (*via electronic and first class mail*)
 Andrew A. Favret, Esq. (*via electronic and first class mail*)
 Rory C. Flynn, Esq. (*via electronic and first class mail*)

EXHIBIT A

**NASD
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant

v.

Scott Anthony Bartlett
CRD No. 3211860

Respondent

Disciplinary Proceeding
No. C06040033

Hearing Officer:

COMPLAINT

Date: October 19, 2004

Upon information and belief the Department of Enforcement ("Complainant") alleges as follows:

1. Respondent Scott Anthony Bartlett (hereinafter referred to as "Bartlett") joined the securities industry on or about May 4, 1999, as a Direct Participation Program Representative with a member of NASD. In December 2001 he registered with member firm Premier Group, Inc. as a Direct Participation Program Representative. On or about July 15, 2003, his registration with Premier Group was terminated and since that time he has not been registered with any other member of NASD. NASD has jurisdiction to file this complaint against Bartlett pursuant to Article V, Section 4 of NASD By-Laws.

FIRST CAUSE OF COMPLAINT

Bartlett Willfully Failed to Disclose A Felony

**(Violation of Article V, Section 2 of the NASD By-Laws, IM-1000-1 and
NASD Conduct Rule 2110)**

2. Paragraph number 1 above is realleged and incorporated herein by reference.
3. On or about October 17, 2001, Bartlett was charged with Driving While Intoxicated ("DWI"), a felony.
4. On or about December 17, 2001, Bartlett completed a Uniform Application for Securities Industry Registration or Transfer form ("Form U-4") for former member firm Premier Group, Inc. Bartlett willfully failed to disclose on his Form U-4 that in October 2001, he had been charged with felony DWI.
5. On or about March 28, 2002, and while registered with member firm Premier Group, Inc., Bartlett pled guilty to the felony DWI charge and received five years probation. Bartlett willfully failed to update his Form U-4 to reflect that he had pled guilty to the felony DWI charge.
6. In or about July 2003, Bartlett's registration with Premier Group was terminated but during the same month he re-applied for registration with the same firm. During the re-registration process, Bartlett never told his firm that he had pled guilty to the felony DWI. When Premier Group discovered, on its own, that Bartlett had pled guilty to the felony DWI charge, it terminated his registration.
7. The aforementioned acts, practices, and conduct constitute separate and distinct violations of Article V, Section 2 of the NASD By-Laws, IM-1000-1 and NASD Conduct Rule 2110 by Respondent Scott Anthony Bartlett.

SECOND CAUSE OF COMPLAINT

Bartlett Failed to Respond to Requests For Information

(Violation NASD Conduct Rule 2110 and NASD Procedural Rule 8210)

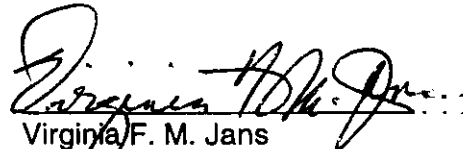
8. Paragraph numbers 1 - 7 above is realleged and incorporated herein by reference.
9. By letter dated September 15, 2003, (the "September 15th letter") NASD staff requested, pursuant to Procedural Rule 8210, that Bartlett provide information relating to the felony DWI charge and conviction. The September 15th letter was sent, via certified and regular mail, to Bartlett at his CRD home address which was [REDACTED] and requested that he provide the information no later than September 26, 2003. Both the certified and regular mailings were returned to the district office marked "Return to Sender."
10. By letter dated November 21, 2003, (the "November 21st letter") NASD staff again requested, pursuant to Rule 8210, that Bartlett provide the information previously requested in the September 15th letter. This final request was sent, via certified and regular mail, to Bartlett at his CRD home address which was [REDACTED]. The November 21st letter requested that Bartlett provide the requested information by December 5, 2003. Both the certified and regular mailings were returned to the district office marked "Return to Sender."
11. Bartlett never responded to the September 15th letter and never responded to the November 21st letter.
12. The aforementioned acts, practices, and conduct constitute separate and distinct violations of NASD Conduct Rule 2110 and NASD Procedural Rule 8210 by Respondent Scott Anthony Bartlett.

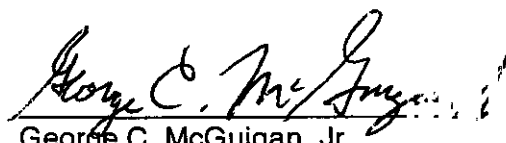
PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Bartlett committed the violation charged and alleged herein;
- B. Specific findings that Bartlett's failure to disclose his felony charge and conviction was willful; the omitted information was material; and the omission to state material facts was on a Form U-4 application;
- C. An order imposing sanctions upon Bartlett in accordance with NASD Rule 8380;
- D. An order imposing such costs of any proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8380;
- E. An order imposing any other fitting sanction.

Date: October 19, 2004


Virginia F. M. Jans
Associate Vice President and Director
NASD, District No. 6
12801 North Central Expressway
Suite 1050
Dallas, TX 75243
972/ 701-8554


George C. McGuigan, Jr.
Regional Counsel
NASD, District No. 6
12801 North Central Expressway
Suite 1050
Dallas, TX 75243
972/ 701-8554

Rory C. Flynn, Of Counsel
Department of Enforcement
NASD
1801 K Street, N.W., Suite 800
Washington, D.C. 20006
(202) 974-2874