

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

SALVATORE PUCCIO
(CRD No. 2416853),



Respondent.

Disciplinary Proceeding
No. C07040071

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 respond to requests for information, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110. Because of the bar, the Respondent is not further sanctioned for engaging in outside business activities, in violation of NASD Conduct Rules 3030 and 2110, and for opening an undisclosed securities account away from his firm, in violation of NASD Conduct Rules 2110 and 3050(c).

Appearances

William Brice LaHue, Regional Counsel, Atlanta, GA (Rory C. Flynn, Esq., Of Counsel, Washington, DC) for Complainant.

No appearance by or for Salvatore Puccio.

DECISION

I. Introduction

On October 22, 2004, the Department of Enforcement ("Enforcement") filed a four-count Complaint against the Respondent Salvatore Puccio ("Puccio" or the "Respondent"). The Complaint, which is attached to this Decision as Exhibit A, alleged that Puccio (1) opened an undisclosed securities account with Track Data Securities Corporation ("Track Data") while he

was associated with LH Ross & Company, Inc. ("LH Ross"), in violation of NASD Conduct Rules 2110 and 3050; (2) sold securities away from LH Ross, in violation of NASD Conduct Rules 2110 and 3040; and (3) failed to respond to requests for information issued by NASD staff, in violation of Procedural Rule 8210 and NASD Conduct Rule 2110. In the alternative, the Complaint alleged that his activities away from LH Ross constituted impermissible outside business activities, in violation of NASD Conduct Rules 2110 and 3030.

The Respondent did not file an Answer to the Complaint. Accordingly, on January 14, 2005, Enforcement filed a motion for entry of default decision, supported by the affidavit of William Brice LaHue and four exhibits. The Respondent did not file a response to the motion. Accordingly, for the reasons set forth below, Enforcement's motion is granted.¹

II. Respondent's Default

On October 19, 2004, Enforcement served the Complaint and Notice of Complaint on the Respondent by certified and first class mail, sent to his current residential address, as reflected in the Central Registration Depository (the CRD address).² The Respondent did not file an Answer. On November 29, 2004, Enforcement served the Complaint and Second Notice of Complaint on the Respondent by certified and first class mail sent to the same address.³ Again, Respondent failed to file an Answer or otherwise respond to the Complaint.

Enforcement complied with Procedural Rule 9134(b)(1) by mailing the Complaint and the Second Notice of Complaint to the Respondent's CRD address, thereby providing the Respondent with constructive notice of this proceeding. By failing to file an Answer or otherwise

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

² LaHue Aff. ¶ 7.

³ *Id.* ¶ 8.

respond to the Complaint, the Respondent defaulted. Consequently, pursuant to Procedural Rules 9215(f) and 9269(a)(2), the Hearing Officer deems the allegations in the Complaint admitted.

III. Jurisdiction

The Respondent was registered with NASD member LH Ross as a corporate securities representative from February 11, 2000, to April 25, 2003.⁴ LH Ross permitted Puccio to resign effective March 26, 2003.⁵ Since April 2003, the Respondent has not been associated or registered with any NASD member.

Respondent is subject to NASD jurisdiction pursuant to Article V, Section 4 of NASD's By-Laws, because the Complaint, which was filed within two years of the termination of the Respondent's registration with LH Ross, charges him with misconduct that commenced while he was registered, and with failing to comply with requests for information made during the two-year period following the termination.

IV. Findings of Fact and Conclusions of Law

A. Respondent's Opening of an Undisclosed Securities Account

The First Cause of the Complaint alleges, Puccio by default admits, and the Hearing Officer finds, that, on or about October 23, 2000, Puccio violated Conduct Rule 3050 when he opened an account with Track Data. According to Conduct Rule 3050(c), Puccio had a duty to provide written notice of the account to LH Ross, the "employer member," and written notice of his association with another member firm to Track Data, the "executing member," before he opened the account. Puccio failed to provide prior written notice to either firm and thus violated NASD Conduct Rule 3050(c).

⁴ CX-2.

⁵ *Id.* at 6.

By violating Conduct Rule 3050(c), Puccio also violated NASD Conduct Rule 2110.⁶ Conduct Rule 2110 requires that a member conduct business by observing "high standards of commercial honor and just and equitable principles of trade" and NASD Rule 0115 extends that requirement to a person associated with a member.⁷ Accordingly, the Hearing Officer finds that when Puccio failed to provide written notice of his account in violation of Rule 3050(c), he also violated Conduct Rule 2110.

B. Outside Business Activities⁸

The third count of the Complaint alleges that, on or about December 10, 2001, Puccio entered into an Independent Sales Agent Contractor Agreement with iBidUSA Franchise Group, Inc., an affiliate of iBidAmerica, Inc. ("iBid") and remained associated with iBid throughout his association with LH Ross.⁹ According to the Complaint, iBid is an online marketing, advertising, and sales promotion company that sells licenses to investors whereby the investors receive a portion of the income iBid generates from its sales activities and warrants for the purchase of iBid common stock. Further, the Complaint alleges that the Respondent recruited prospects to become iBid licensees for which activity iBid compensated him with 285,249 shares of iBid common stock.¹⁰ The Respondent did not provide LH Ross with written notice of his employment relationship with iBid or his receipt of compensation, and thereby violated NASD Conduct Rule 3030.¹¹

⁶ *Steven J. Gluckman*, Exchange Act Release No. 41,628, 1999 SEC LEXIS 1395, at *22 (July 20, 1999) (stating a violation of another NASD rule or regulation constitutes a violation of Conduct Rule 2110).

⁷ *Joseph Patrick Hannan*, Exchange Act Release No. 40,438, 1998 SEC LEXIS 1955, at *8 (Sept. 14, 1998).

⁸ Enforcement did not move for alternative findings that the Respondent's outside business activities constituted private securities transactions, in violation of NASD Conduct Rule 3040. Accordingly, this Default Decision does not address the second cause of action.

⁹ Compl. ¶ 8.

¹⁰ *Id.* ¶¶ 10-12, 19.

¹¹ *Id.* ¶ 20.

C. Failure to Respond to Requests for Information

The fourth cause of the Complaint alleges that on October 17, 2003, and again on November 19, 2003, NASD staff sent a letter to the Respondent, pursuant to NASD Procedural Rule 8210, requesting that he provide information in writing and documentation concerning the information provided by LH Ross in the Form U-5 it filed on his behalf. The Complaint further alleges that the staff sent a copy of each letter to the Respondent's attorney. The staff received confirmation that the Respondent received the November 19 mailing; nonetheless, the Respondent did not provide the requested information.

These allegations, which are deemed admitted, are sufficient to establish for purposes of this Default Decision that the Respondent failed to respond to the staff's requests for information, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110, as alleged in the fourth cause of the Complaint.

V. Sanctions

The NASD Sanction Guidelines provide that a bar is standard for failure to respond to requests for information absent mitigating circumstances.¹² Here, no such mitigating circumstances exist. Accordingly, a bar is appropriate for this violation.

In light of the bar imposed, additional sanctions need not be imposed for the remaining violations because no remedial purpose would be served by the imposition of a suspension or fine for these violations.¹³

VI. Order

Salvatore Puccio is barred from associating with any NASD member firm in any capacity for failing to respond to requests for information, in violation of NASD Procedural Rule 8210

¹² NASD Sanction Guidelines at 37 (2004 ed.).

¹³ See *Department of Enforcement v. Hodde*, 2002 NASD Discip. LEXIS 4, at *17 (N.A.C. Mar. 27, 2002).

and NASD Conduct Rule 2110. Because of the bar, he will not be further sanctioned for engaging in outside business activities, in violation of NASD Conduct Rules 3030 and 2110, and for opening an undisclosed securities account, in violation of NASD Conduct Rules 2110 and 3050(c). The charge for participating in private securities transactions is dismissed because Enforcement did not request findings on this charge.

The bar shall become effective immediately upon this Default Decision becoming the final disciplinary action of NASD.

A handwritten signature in black ink, appearing to read 'A. Perkins', written over a horizontal line.

Andrew H. Perkins
Hearing Officer

Copies to:

Salvatore Puccio (*via overnight and first class mail*)
William Brice LaHue, Esq. (*via electronic and first class mail*)
Rory C. Flynn, Esq. (*via electronic and first class mail*)

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DEPARTMENT OF ENFORCEMENT,

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SALVATORE PUCCIO
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Disciplinary Proceeding
No. C07040071

Hearing Officer:

COMPLAINT

Upon information and belief, Complainant alleges as follows:

1. Respondent Salvatore Puccio (Puccio) entered the securities industry in October 1993 when he was employed by former NASD member Corporate Securities Group, Inc. However, he did not become registered with the NASD until February 1998 when he was registered as a corporate securities representative while employed by Paragon Capital Corporation. He became registered with L.H. Ross & Company, Inc. (LHR) in February 2000. Puccio was employed by LHR until March 2003. Puccio is not currently employed by a member but remains subject to the jurisdiction of the NASD pursuant to Article V, Sec. 4 of the NASD Bylaws.

FOR A FIRST CAUSE OF COMPLAINT

NASD Conduct Rules 2110 and 3050

(Outside Securities Account)

2. The allegations set forth in paragraph 1 above, are hereby realleged and incorporated herein by reference.

3. On or about October 23, 2000, while employed as a registered representative with LHR, Puccio opened a securities account with Track Data Securities Corporation (TDSC), an online brokerage firm based in New York.
4. Puccio failed to disclose to TDSC that he was associated with LHR. Instead, he indicated on the new account form that he was employed as owner of Tint America, a Florida corporation.
5. Puccio further failed to give LHR written notification that he opened a securities account with TDSC and failed to notify LHR prior to the execution of the initial transaction in his account with TDSC.
6. Such failures to disclose his association with a member and a securities account with another member constitute separate and distinct violations of NASD Conduct Rules 2110 and 3050 by Respondent Puccio.

FOR A SECOND CAUSE OF COMPLAINT

NASD Conduct Rules 2110 and 3040

(Private Securities Transactions)

7. The allegations set forth in paragraphs 1 through 6 above, are hereby realleged and incorporated herein by reference.
8. On or about December 10, 2001, while employed as a registered representative with LHR, Respondent Puccio executed an Independent Sales Agent Contractor agreement with iBidUSA Franchise Group, Inc., an affiliate of iBidAmerica, Inc. (IBID). Puccio remained associated with IBID throughout his association with LHR.
9. IBID is a Florida-based company that operates through a subsidiary, iBidUSA.com, an internet website. IBID is an online marketing, advertising and sales promotion company

that combines sales promotion techniques of discount coupons and promotional offers with an internet auction. It offers customers a platform to bid to acquire gift certificates redeemable for such items as hotel accommodations, restaurant meals, concerts, and other.

10. IBID sells licenses whereby investors receive a portion of any auction income generated from specific geographical areas. The licensees also received warrants for the purchase of IBID common stock
11. Puccio recruited prospects to become IBID licensees and received 66% of the initial license fee paid by the licensee. Puccio further recruited others to promote IBID licenses and received compensation from IBID for any sales by persons he recruited.
12. Respondent Puccio participated in the sale of IBID licensees and equity stock warrants.
13. The licensees and equity stock warrants sold by IBID were securities as that term is defined under the federal securities laws and for purposes of NASD Conduct Rule 3040.
14. Respondent Puccio did not give LHR written notice of his participation in the sale of the IBID interests prior to his participation, as required by NASD Conduct Rule 3040.
15. During the period from December 10, 2001 through March 2003, Respondent Puccio engaged in private securities transactions without prior written notice to and approval from his employer/member LHR, in that he participated in the sale of IBID licenses and equity stock warrants, both securities products, to customers.
16. Such participation in private securities transactions constitutes separate and distinct violations of NASD Conduct Rules 2110 and 3040 by Respondent Puccio.

FOR A THIRD CAUSE OF COMPLAINT

(Pled in the Alternative to the SECOND CAUSE OF COMPLAINT)

NASD Conduct Rules 2110 and 3030

(Outside Business Activities)

17. The allegations set forth in paragraphs 1 through 16 above, are hereby realleged and incorporated herein by reference.
18. For purposes of this alternative cause of complaint only, Complainant asserts that the transactions described above in Paragraphs 7 through 19, did not involve the sale of securities.
19. Puccio, while associated with member firm LHR engaged in outside business activities, which consisted of the following activities:
 - a. Employed as a Sales Agent Contractor with IBID; and
 - b. Received compensation from IBID in the form of 285,249 shares of IBID common stock for services rendered to IBID in or about 2002.
20. Respondent Puccio did not give LHR prompt written notification (on a form required by LHR) of his employment by IBID or his receipt of compensation from IBID, both of which were outside the scope of his relationship with LHR.
21. Such outside activities constitute separate and distinct violations of NASD Conduct Rules 2110 and 3030 by Respondent Puccio.

FOR A FOURTH CAUSE OF COMPLAINT

NASD Conduct Rule 2110 and Procedural Rule 8210

(Failure To Respond to NASD Request for Information)

22. The allegations contained in paragraphs 1 through 21, above, are hereby realleged and incorporated herein by reference.
23. In April 2003, the NASD Atlanta District office received a Form U-5 notice of termination filed by LHR on behalf of Respondent Puccio reflecting that an internal review was ongoing regarding Puccio's participation in an outside business activity. The NASD Atlanta District office initiated an investigation into such activities.
24. By letter dated October 17, 2003, sent via first class and certified mail to Puccio at his CRD address [REDACTED] with a copy to his attorney, Puccio was requested, pursuant to Procedural Rule 8210, to provide certain information along with financial statements and tax returns. The October 17 letter set a deadline of November 14, 2003 for the response.
25. None of the copies of the October 17 letter were returned but Puccio failed to provide the requested information by November 14, 2003.
26. Consequently, Puccio was again requested by letter dated November 19, 2003, sent to his CRD address via both certified and first class mail (and with a copy to his attorney), pursuant to Procedural Rule 8210, to provide the same information previously requested in the October 17 letter. Puccio's response was due no later than December 3, 2003.
27. A signed receipt was returned to the NASD indicating that the November 19 letter sent by certified mail was delivered to Puccio's CRD address. The November 19 letter sent by first class mail was not returned.

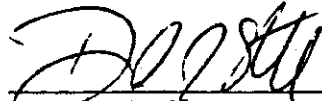
28. Puccio failed to respond by November 19, 2003, and, as of the date hereon, has not responded.
29. Such failure to respond to the October 17 and November 19, 2003, request letters constitutes separate and distinct violations of Procedural Rule 8210 and Conduct Rule 2110 by Respondent Puccio.

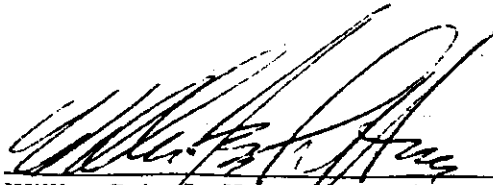
PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Respondent Puccio committed the violations charged and alleged herein;
- B. An order imposing sanctions upon Respondent Puccio in accordance with NASD Rule 8310;
- C. An order requiring Respondent Puccio to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest.
- 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: 10/19/04


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