

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

MAXIMILIANO M. TOLEDO, II
(CRD No. 1689814),



Respondent.

Disciplinary Proceeding
No. C07040091

Hearing Officer—Andrew H. Perkins

AMENDED DEFAULT DECISION

March 31, 2005

Respondent falsified documents, in violation of NASD Conduct Rule 2110, and failed to respond to staff requests for information, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110. For these violations, Respondent is barred from association with any NASD member firm in any capacity.

Appearances

Gene E. Carasick, Regional Counsel, Atlanta, GA (Rory C. Flynn, Chief Litigation Counsel, Washington, D.C., Of Counsel) for the Department of Enforcement.

The Respondent did not appear.

AMENDED DECISION¹

I. Introduction

On November 12, 2004, the Department of Enforcement (“Enforcement”) filed the Complaint in this disciplinary proceeding against the Respondent Maximiliano M.

¹ This decision is amended to correct a typographical error in reference to the number of requests for information NASD issued to the Respondent.

Toledo, II ("Toledo" or the "Respondent"). The Complaint contains two causes of action. In the first cause of action, the Complaint alleges that the Respondent violated NASD Conduct Rule 2110 by entering false information into Citicorp Investment Services' *computer system in connection with the liquidation of Class B shares for seven customers* between March and May 2003, in violation of NASD Conduct rule 2110. In the second cause of action, the Complaint alleges that the Respondent failed to respond to two written requests for information issued by NASD staff, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

The Respondent did not answer or otherwise respond to the Complaint. Consequently, on February 1, 2005, Enforcement filed a Motion for Entry of Default Decision ("Motion"). Enforcement's Motion is supported by the Affidavit of Gene E. Carasick ("Carasick Aff.") and two exhibits. In addition, on February 14, 2005, Enforcement filed a supplemental affidavit stating Carasick received a telephone call from the Respondent on February 11, 2005, during which the Respondent stated that he had received Enforcement's Motion and that he did not intend to oppose the Motion.²

Although Toledo received actual notice of this proceeding, he did not file an Answer or oppose Enforcement's Motion. Accordingly, pursuant to NASD Procedural Rules 9215 and 9269, the Hearing Officer grants Enforcement's Motion.

II. Respondent's Default

Enforcement served Toledo by first class and certified mail in accordance with NASD Procedural Rules 9134(a)(2) and 9134(b)(1). Enforcement mailed copies of the Complaint, Notice of Complaint, and Second Notice of Complaint to Toledo at his last

² Toledo also provided Enforcement with his current residential address: [REDACTED]
[REDACTED]

known residential address shown in the Central Registration Depository (the “CRD address”).³ Toledo thus received valid constructive notice of this proceeding.

Accordingly, the Hearing Officer finds Toledo in default and deems the allegations of the Complaint admitted.⁴

III. Findings of Fact and Conclusions of Law

A. Background

The Respondent first entered the securities industry with Nationsbanc Securities of Georgia, Inc. in May 1989.⁵ Most recently, the Respondent was associated with Citicorp Investment Services (“Citicorp”) where he was registered as a General Securities Representative from February 23, 2001, until July 11, 2003.⁶ The Respondent has not been registered with an NASD member firm since July 11, 2003.⁷

B. Jurisdiction

Article V, Section 4 of the NASD By-Laws provides for a two-year period of retained jurisdiction over a registered person after the effective date of the individual’s termination of registration. During this period of retained jurisdiction, NASD may file a complaint based upon conduct that occurred while the individual was registered with a member firm, or based upon such person’s failure to provide information requested pursuant to NASD Procedural Rule 8210, if the request was made, and the complaint is filed, during the foregoing period of retained jurisdiction.

³ Carasick Aff. ¶¶ 6–7.

⁴ The following Findings of Fact incorporate the allegations in the attached Complaint.

⁵ Ex. 1, at 9.

⁶ *Id.* at 6.

⁷ Ex. 1.

Here, Enforcement filed the Complaint, and NASD staff issued the requests for information underlying the Second Cause of Complaint, within the period of retained jurisdiction. In addition, the Complaint alleges misconduct that occurred while the Respondent was associated with Citicorp and registered with NASD. Accordingly, the Hearing Officer finds that NASD has jurisdiction of this proceeding.

C. Falsification of Records

The First Cause of Complaint alleges Toledo falsified Citicorp's records so that he could liquidate certain mutual fund shares in seven customers' accounts. In each case, Toledo falsely entered information into Citicorp's computer records that the reason for the mutual fund liquidations was the customer's death. Toledo provided this false information to obtain a waiver of the Contingent Deferred Sales Charges that would otherwise be due. In fact, none of the customers had died.

The foregoing allegations are sufficient to support the finding that Toledo falsified the records of his employer and thereby violated NASD Conduct Rule 2110.

D. Failure to Provide Information

The Second Cause of Complaint alleges that NASD staff served Toledo with two written requests for information relating to their investigation of the allegations set forth in the First Cause of Complaint. The requests were dated November 6 and 28, 2003. In accordance with Procedural Rule 8210, the staff served the requests by mailing them to the Respondent at his CRD address. NASD Staff sent the second request by certified mail as well, which the Respondent received as evidenced by the signed receipt for this mailing.

Procedural Rule 8210 authorizes NASD to require any person subject to its jurisdiction to provide information and testimony related to any matter under

investigation. Under Procedural Rule 8210(d), notice of an information request is considered received if the request is mailed or otherwise transmitted to the person's last known CRD address. Because Enforcement mailed the information requests to the Respondent's last known CRD address, he received valid constructive notice of the requests. The record also shows that Toledo actually received the second request. Therefore, the Hearing Officer finds that Toledo violated Procedural Rule 8210 and Conduct Rule 2110 by failing to respond.

IV. Sanctions

For falsification of records, the NASD Sanction Guidelines ("Sanction Guidelines") recommend a bar in egregious cases such as this.⁸ Here, there is no evidence of any mitigating factors that would reduce the level of sanctions. Indeed, the egregious nature of his misconduct precludes any consideration that he be permitted to remain in the securities industry. Toledo intentionally falsified the reason for the mutual fund liquidations for 19 transactions for 7 customers over a 3-month period. Clearly Toledo did not have a basis for a good-faith belief that his customers had died and were therefore entitled to have the Contingent Deferred Sales Charges waived.

For failing to respond in any manner to the requests for information NASD staff issued pursuant to Procedural Rule 8210, the Sanction Guidelines recommend the *imposition of a bar unless mitigating circumstances exist warranting a lesser sanction.*⁹ Here, the record discloses no mitigating factors. Accordingly, a bar also is appropriate for this violation.

⁸ NASD Sanction Guidelines 41 (2004 ed.).

⁹ *Id.* 37.

V. Order

Maximiliano M. Toledo, II is barred from association with any member firm in any capacity for falsifying records, in violation of NASD Conduct Rule 2110; and for failing to respond to two requests for information, in violation of NASD Conduct Rule 2110 and NASD Procedural Rule 8210. Each bar shall become effective once this decision becomes the final disciplinary action of NASD.



Andrew H. Perkins
Hearing Officer

Copies to:

Maximiliano M. Toledo, II (by overnight courier and first-class mail)
Gene E. Carasick, 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,

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v.

Maximiliano M. Toledo II
CRD No. 1689814

Respondent.

Disciplinary Proceeding
No. C07040091

Hearing Officer:

COMPLAINT

Upon information and belief, Complainant alleges as follows:

1. Respondent Toledo was registered with NASD member Citicorp Investment Services from about February 2001 until July 11, 2003. He first became registered with NASD in May 1989. NASD retains jurisdiction over Toledo pursuant to Article V, Section 4 of the NASD Bylaws.

**FIRST CAUSE OF COMPLAINT
Falsification of Records
NASD Conduct Rule 2110**

2. From about March through May 2003, Respondent Toledo effected nineteen mutual fund Class B share liquidations for seven Citicorp customers.
3. In connection with each such liquidation, Respondent Toledo entered into Citicorp's computer system that the reason for each of the liquidations was the death of the customer, which had the effect of waiving the CDSC charges on the liquidation. In fact, none of the customers had died, and none of them were entitled to the CDSC charge waiver.
4. Respondent Toledo's conduct in falsifying Citicorp's records constitutes separate and distinct violations of NASD Conduct Rule 2110 by Toledo.

SECOND CAUSE OF COMPLAINT
Failure to Respond to Information Requests
NASD Conduct Rule 2110; Procedural Rule 8210

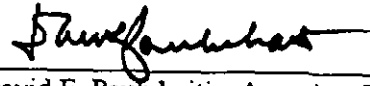
5. By letter dated November 6, 2003, sent via first class mail to Respondent Toledo's CRD address at [REDACTED] the staff requested Toledo, pursuant to Rule 8210, to provide a signed, detailed statement responding to specific questions regarding the matters set forth in the First Cause of Complaint by November 27, 2003. The mailing was not returned by the postal service.
6. No response having been received to the November 6 letter, by letter dated November 28, 2003, sent via first class and certified mail to Respondent Toledo's CRD address, the staff again requested Toledo, pursuant to Rule 8210, to provide a written statement responding to the allegations against him, this time by December 19, 2003. The staff received a signed delivery receipt for the certified mailing, indicating a delivery date of December 1, 2003. The first class mailing was not returned.
7. As of the date of this Complaint, Respondent Toledo has not responded to either request.
8. Respondent Toledo's failure to respond to the staff's information requests constitutes separate and distinct violations of NASD Conduct Rule 2110 and Procedural Rule 8210.

PRAYER FOR RELIEF

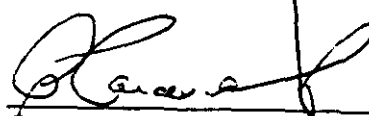
WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Respondent Toledo committed the violations charged and alleged herein;
- B. An order imposing sanctions upon the Respondent 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.



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