

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT

Complainant,

v.

FRANCIOS BELIZAIRE
a/k/a FRANCOIS W. BELIZAIRE
(CRD No. 4495421),


Respondent.

Disciplinary Proceeding
No. C10040110

Hearing Officer – AWH

DEFAULT DECISION

April 27, 2005

Formerly associated person barred from association with any member firm in any capacity for falsifying documents, in violation of NASD Conduct Rule 2110, and for failing to respond to NASD Staff requests for information, in violation of NASD Procedural Rule 8210 and Conduct Rule 2110.

Appearances:

Evan J. Gordon, Esq., for the Department of Enforcement.

No appearance by or for Francois W. Belizaire.

DECISION

Background

On November 18, 2004, the Department of Enforcement ("Enforcement") issued the two-cause Complaint in this proceeding, alleging that Francois W. Belizaire ("Respondent" or "Belizaire") falsified direct deposit authorization 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 Conduct Rule 2110.

Belizaire failed to file an Answer to the Complaint; he similarly failed to respond to the Second and Third Notices of Complaint, mailed to him on December 21, 2004, and January 13, 2005, respectively. As a result, Enforcement filed a Motion for Entry of Default Decision on March 14, 2005. Belizaire failed to respond to the Motion. Accordingly, pursuant to Procedural Rules 9215(f) and 9269, Enforcement's Motion will be granted, and the allegations of the Complaint, attached to this decision, will be deemed admitted.

Findings of Fact¹

Respondent

Belizaire was associated with NASD member firm Citicorp Investment Services ("CIS") from November 20, 2000, until November 20, 2002. Although Belizaire signed a Form U-4 reflecting his intent to take the Series 6 exam, which CIS filed on January 15, 2002, he never became registered with NASD. On November 26, 2002, CIS filed a Form U-5 on Belizaire's behalf, stating that he was no longer associated with the firm. Since that time, Belizaire has not been associated with any member firm.

Falsification of Documents

On October 30, 2002, Belizaire completed direct deposit authorization forms for two customers, AHC and ZQ, by printing their names on the forms without their knowledge or consent. He admitted to his supervisor that he completed the forms without AHC's and ZQ's consent, but claimed he did so to exempt the customers from paying fees by qualifying them for a free checking account. As a result of Belizaire's actions, however, the customers' existing direct deposit arrangements with other

¹ All findings of fact are based upon the admitted allegations in the Complaint, the Declaration in Support of Complainant's Motion for Entry of Default Decision by Evan J. Gordon, and the exhibits attached thereto.

institutions were terminated, causing one of the customers to write checks against insufficient funds in one of her other accounts.

Failure to Respond

On February 18, 2003, pursuant to Procedural Rule 8210, Enforcement requested that Belizaire provide documents and a written statement pertaining to the conduct giving rise to this proceeding. The request was sent by first-class mail to Belizaire's most current residential address, as reflected in the Central Registration Depository ("CRD"), [REDACTED] ("the CRD address"). Belizaire did not respond to the request.

Enforcement sent additional requests to the CRD address on March 11 and September 12, 2003, via first-class and certified mail. On September 19, 2003, Enforcement received a facsimile from Emmanuel Roy, Esq., of Agbayewa, Mayas, Raymond & Roy LLP, stating that the firm had been hired to represent Belizaire in a lawsuit against CIS, and that, although Belizaire wanted to cooperate, he would not provide a written statement at that time. On September 22, 2003, Enforcement left a voice mail message for Mr. Roy, explaining that his client's refusal to provide the requested information was a violation of Rule 8210 and would result in sanctions. Neither Belizaire nor Mr. Roy further responded to the requests or to Enforcement's warning.

Service of the Complaint

On November 18, 2004, Enforcement served Belizaire with the Complaint and Notice of Complaint by both first-class and certified mail, sent to the CRD address and to

an address obtained through an Equifax search, [REDACTED] [REDACTED] ("the Equifax address"). Belizaire did not respond to the Complaint.

On December 21, 2004, Enforcement served Belizaire with the Complaint and Second Notice of Complaint in an identical manner. Again, Belizaire did not respond. However, the certified mailing sent to the CRD address was returned by the Postal Service bearing a handwritten address, [REDACTED] ("the Stuyvesant address").

After receiving this new address, Enforcement served Belizaire with the Complaint and a Third Notice of Complaint on January 13, 2005, sending it to the CRD address, the Equifax address, and the Stuyvesant address, using both first-class and certified mail. The return receipt for the certified mailing sent to the Stuyvesant address was returned bearing an illegible signature. For a third time, Belizaire failed to file an Answer or respond to the Complaint in any way.

Discussions and Conclusions

NASD Jurisdiction Over Formerly Associated Persons

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

Enforcement filed the Complaint on November 18, 2004, within two years of the November 20, 2002, termination of Belizaire's association. Additionally, the Complaint is based upon conduct that occurred while he was associated with CIS, as well as failures to respond to requests for information during the period of retained jurisdiction. Therefore, NASD has jurisdiction over this proceeding.

Respondent's Default

Enforcement properly served the Complaint on Belizaire by sending it via first-class and certified mail to his CRD address, as well as to the Equifax and Stuyvesant addresses. Pursuant to NASD Procedural Rule 9134, the mailings establish valid constructive notice of the Complaint. Because Belizaire failed to respond, Procedural Rules 9215(f) and 9269 authorize entry of a default decision against him. Accordingly, the allegations in the Complaint against Belizaire are deemed admitted.

Falsification of Documents

NASD Conduct Rule 2110 requires that associated individuals "observe high standards of commercial honor, and just and equitable principles of trade." Falsifying documents is an archetypal violation of Conduct Rule 2110.² Here, Belizaire printed AHC's and ZQ's names on the direct deposit authorization form, creating the false impression that the customers had consented to its terms. Accordingly, by falsifying the documents, Belizaire violated NASD Conduct Rule 2110.

Failure to Provide Information

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

² See *Charles E. Kautz*, 1996 SEC LEXIS 994 (April 5, 1996); *Dep't of Enforcement v. Brookes McIntosh Bendelsen*, 2003 NASD Discip. LEXIS 30 (OHO July 8, 2003).

investigation. The Rule serves as a key element in NASD's oversight function and allows NASD to carry out its regulatory functions without subpoena power.³ When an individual fails to respond to information requests, NASD's ability to perform its regulatory responsibilities is subverted.⁴ A violation of Procedural Rule 8210 is also a violation of Conduct Rule 2110.⁵

Here, pursuant to Procedural Rule 8210(d), the mailings sent to Belizaire's CRD address provide effective constructive notice of the Staff's requests for information. Further, his attorney at the time acknowledged his actual receipt of the requests and intention not to comply. Accordingly, Belizaire's failures to respond to those requests for information violated Procedural Rule 8210 and Conduct Rule 2110.

Sanctions

Falsification of Documents

For falsification of documents and records, the NASD Sanction Guidelines recommend a fine and a suspension, or, in egregious cases, a bar.⁶ Here, Enforcement requests that Belizaire be barred. Belizaire printed the customers' names on the direct deposit authorization forms despite knowing that he lacked both the authority and the requisite customer consent. Further, his knowingly violative conduct resulted in inconvenience and financial harm to the affected customers. Accordingly, Belizaire will

³ See Joseph G. Chiulli, Exchange Act Release No. 42,359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for NASD effectively to conduct its investigations, and emphasizing that NASD members and associated persons must fully cooperate with requests for information); *Dep't of Enforcement v. Benz*, No. C01020014, 2003 NASD Discip. LEXIS 11, at *18 (OHO Mar. 4, 2003) ("Because NASD has no subpoena power, timely and full compliance with information requests is essential to NASD's self-regulatory function.").

⁴ Joseph P. Hannan, Exchange Act Release No. 40,438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998).

⁵ *Dep't of Enforcement v. Baxter*, No. C07990016, 2000 NASD Discip. LEXIS 3, at *25 (NAC, Apr. 19, 2000).

⁶ NASD SANCTION GUIDELINES, p. 41 (2004 ed.).

be barred in all capacities for falsifying documents, in violation of NASD Conduct Rule 2110.

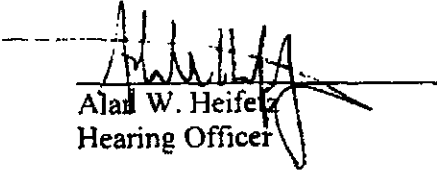
Failure to Appear and Provide Testimony

For failure to respond to requests for information made pursuant to Rule 8210, NASD Sanction Guidelines provide that a bar is the standard sanction where, as here, the individual did not respond in any way.⁷ Belizaire's refusal to comply with the requests, made through his attorneys, was unequivocal and complete. There are no mitigating circumstances that would warrant a sanction less than a bar. Accordingly, Belizaire will be barred in all capacities for failing to respond in any manner to requests for information made pursuant to Rule 8210.

Order

Francois W. Belizaire is barred from association with any NASD member firm in any capacity for falsifying documents, in violation of NASD Conduct Rule 2110, and for failing to respond to NASD Staff requests for information, in violation of NASD Procedural Rule 8210 and Conduct Rule 2110. The bar shall become effective immediately if this Decision becomes the final disciplinary action of NASD.

SO ORDERED.


Alan W. Heifetz
Hearing Officer

⁷ *Id.* at 37.

Copies to:

Via First Class Mail & Overnight Courier

Francois W. Belizaire

Emmanuel Roy, Esq.

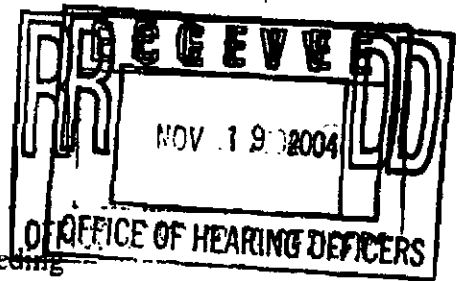
Via First Class & Electronic Mail

Evan J. Gordon, Esq.

David M. Jaffe, Esq.

Rory C. Flynn, Esq.

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COMPLAINT

Upon information and belief, Complainant, the Department of Enforcement, alleges the following:

JURISDICTION

1. Respondent Francios W. Belizaire a/k/a Francois W. Belizaire ("Belizaire" or "Respondent") has never been registered with NASD.
2. From November 20, 2000 through November 20, 2002, Respondent was associated with NASD member Citicorp Investment Services ("CIS") (BD No. 23988) based on his employment with CIS.
3. On or about November 5, 2001, Respondent signed a Uniform Application for Securities Industry Registration or Transfer ("Form U-4") which CIS filed with NASD on January 15, 2002, reflecting his intention to take the Series 6 (Investment Company and Variable Contracts Products Representative) and Series 63 (State Broker-Dealer Agent) examinations. Respondent never became registered with NASD.

4. On November 26, 2002, CIS filed a Uniform Termination Notice for Securities Industry Registration ("Form U-5") indicating that Respondent's association with CIS ended effective November 20, 2002.
5. Based on Article V, Section 4(c) of NASD's By-Laws, NASD retains jurisdiction over Respondent until November 19, 2004, which is within two years after the date upon which Belizaire ceased to be associated with a member firm.

FIRST CAUSE OF COMPLAINT
Falsification of Records
(Violation of NASD Conduct Rule 2110)

6. Paragraphs one through five are realleged and incorporated herein by reference.
7. On or about October 30, 2002, while associated with member firm CIS, Belizaire falsified an "Authorization Agreement for Automatic Deposits (Credits)" ("Direct Deposit Authorization") for customer AHC by printing AHC's name on the Direct Deposit Authorization without the customer's knowledge, authorization or consent.
8. On or about October 30, 2002, while associated with member firm CIS, Belizaire falsified a Direct Deposit Authorization form for customer ZQ by printing ZQ's name on the Direct Deposit Authorization without the customer's knowledge, authorization or consent.
9. By reason of the foregoing, on each occasion, Belizaire violated NASD Conduct Rule 2110.

SECOND CAUSE OF COMPLAINT
Failure to Respond
(Violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110)

10. Paragraphs one through nine are realleged and incorporated herein by reference.

11. By letter dated February 18, 2003, NASD Staff (the "Staff") sent Belizaire a written request for documents and a written statement regarding the two falsified Direct Deposit Authorizations. The Staff sent the request via first class mail to Belizaire's last known address as reflected in the records of NASD's Central Registration Depository ("CRD"). The Staff's request required a response by March 5, 2003.
12. The Staff did not receive back the request sent via first class mail from the United States Postal Service.
13. Belizaire failed to produce the requested documents and written statement.
14. By letter dated March 11, 2003, the Staff sent Belizaire a written request for documents and a written statement regarding the two falsified Direct Deposit Authorizations. The Staff sent the request via first class mail and certified mail, return receipt requested, to Belizaire's CRD address. The Staff's request required a response by March 21, 2003.
15. The Staff did not receive back the request sent via first class mail from the United States Postal Service.
16. On April 8, 2003, the staff received the certified mailing from the United States Postal Service marked "unclaimed."
17. Belizaire failed to produce the requested documents and written statement.
18. By letter dated September 12, 2003, the Staff sent Belizaire a written request for documents and a written statement regarding the two falsified Direct Deposit Authorizations. The Staff sent the request via first class mail and certified mail, return receipt requested, to Belizaire's CRD address.
19. On or about September 19, 2003, the Staff received a facsimile from Emmanuel Roy, Esq., of Agbayewa, Mayas, Raymond & Roy LLP. In his letter to the Staff dated

September 19, 2003, Mr. Roy wrote, "[w]e are the attorneys for Mr. Belizaire, and we are writing in response to your letter to Mr. Belizaire dated September 12, 2003 . . . At this point, we are unable to provide you with any written statement from Mr. Belizaire regarding the details of his termination at Citibank."

20. Belizaire failed to produce the requested documents and written statement.
21. By reason of the foregoing, Belizaire violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

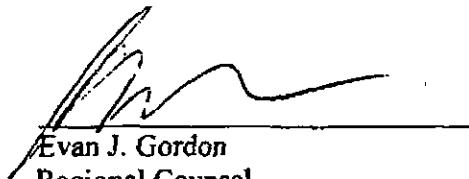
PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

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

Dated: November 18, 2004

DEPARTMENT OF ENFORCEMENT



Evan J. Gordon
Regional Counsel
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New York, NY 10006