

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

STACEY PAUL HOLLINS
(CRD No. 4700182)



Respondent.

Disciplinary Proceeding
No. C10040120

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

April 20, 2005

The Respondent willfully failed to disclose his criminal record on a Form U-4, in violation of NASD Conduct Rule 2110 and IM-1000-1. The Respondent also failed to respond to four requests for information, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110. For his failure to respond to the information requests, he is barred from associating with any NASD member in any capacity. In light of the bar, no additional sanctions are imposed for his Form U-4 violations.

Appearances

For the Department of Enforcement: Soo H. Im, Regional Attorney, New York, NY (Rory C. Flynn, Chief Litigation Counsel, Washington, D.C., Of Counsel).

For the Respondent: No appearance.

DECISION

I. Introduction

The Department of Enforcement ("Enforcement") filed a Complaint¹ on December 23, 2004, alleging that Stacey Paul Hollins ("Hollins" or the "Respondent") willfully failed to disclose a felony criminal charge, a plea of *nolo contendere* to that felony charge, and a misdemeanor criminal charge involving the taking of property on a Uniform Application for Securities Industry Registration or Transfer ("Form U-4"), in violation of NASD Conduct Rule 2110 and IM-1000-1. The Complaint also charged that the Respondent failed to respond to requests for information, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110. The Respondent did not file an Answer to the Complaint. Consequently, on March 14, 2005, Enforcement filed a motion for entry of default decision, supported by the Declaration of Soo H. Im and 19 exhibits. The Respondent did not reply to the motion.

II. Respondent's Default

Enforcement served the Respondent with copies of the Complaint and Notice of Complaint on December 22, 2004, by certified and first class mail sent to his current residential address, as reflected in the Central Registration Depository (the CRD address), and to a second address NASD staff had obtained from Equifax (the "Equifax address").² The Respondent did not file an Answer.

¹ A copy of the Complaint is attached to this Decision as Exhibit A.

² Im Decl. ¶¶ 10-11.

On January 20, 2005,³ Enforcement served the Respondent with copies of the Complaint and Second Notice of Complaint by certified and first class mail sent to the same two addresses.⁴ 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 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 attached Complaint admitted.

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

On August 20, 2003, Hollins submitted an application for registration (Form U-4) to Metropolitan Life Insurance Company ("MetLife"), which MetLife filed with NASD on September 11, 2003.⁵ By so doing, Hollins voluntarily submitted to NASD's jurisdiction.⁶ Hollins was associated with MetLife until November 4, 2003, at which time MetLife discharged him for his failure to disclose his criminal record on the Form U-4.⁷

³ Im Decl. ¶ 17. The Certificate of Service incorrectly states that the Second Notice of Complaint was served on January 20, 2004.

⁴ *Id.*

⁵ *Id.* ¶ 7; Ex. 3.

⁶ See NASD By-Laws, Article I, Section (dd) (defining "person associated with a member"). Cf. *Market Reg. Comm. v. Vladislav Steven Zubkis*, No. CMS950129, 1997 NASD Discip. LEXIS 47 (N.B.C.C. Aug. 12, 1997); *District Bus. Conduct Comm. v. Ashvin R. Shah*, No. C8A920044, 1993 NASD Discip. LEXIS 254, at *16-17 (N.B.C.C. Aug. 30, 1993).

⁷ Ex. 1, at 3. The Respondent's finger print record from the Department of Justice reflected that he had been arrested for: (1) simple battery on a police officer, profane and abusive language, and terrorist

Pursuant to NASD By-Laws, Article V, Section 4(c), NASD retained jurisdiction until November 2005 to file a disciplinary complaint against Hollins based upon conduct that commenced before his association with MetLife ended and to request Hollins to provide information to NASD pursuant to NASD Procedural Rule 8210. Enforcement filed the Complaint initiating this disciplinary proceeding and issued the requests for information that are the subject of the second cause of action within the period of retained jurisdiction. Accordingly, the Hearing Officer finds that, under NASD By-Laws Article V, Section 4(c), NASD has jurisdiction of this proceeding.

B. Failure to Disclose Felony Charges

The first cause of the Complaint alleges that on or about September 11, 2003, MetLife submitted to NASD the Form U-4 Hollins completed and signed on or about August 20, 2003. The Form U-4 asked Hollins whether he had ever been charged with, or pled *nolo contendere* to, any felony, and whether he had ever been charged with a misdemeanor involving the wrongful taking of property. Hollins responded "no" to each question. In fact, Hollins had been charged in Texas with felony retaliation⁸ in June 1997 and in Georgia with misdemeanor theft by taking in July 2001. In addition, in August 1997, Hollins entered a plea of *nolo contendere* to the felony charge and was fined \$500 and sentenced to five years probation.⁹ The prosecutor dismissed the misdemeanor charge in September 2001 because the victim did not want to prosecute the case.¹⁰

threats in Georgia in 1994; (2) felony retaliation in Texas in 1997; and (3) misdemeanor theft in Georgia in 2001. (*Im Decl.* ¶ 22.)

⁸ According to the court documents, this charge involved a threat of harm to a women in retaliation for her reporting the occurrence of a crime. (*Ex. 17*, at 1.)

⁹ *Im Decl.* ¶ 23.

¹⁰ *Id.* ¶ 24.

In applying for registration, "applicants have an affirmative obligation to disclose fully all material facts, including an individual's criminal history, in response to the questions on the Form U-4."¹¹ A failure to do so, as occurred here, violates NASD Conduct Rule 2110 and IM-1000-1.¹²

Enforcement further alleges that the Respondent's conduct was willful. Willfulness is not required to establish a violation of Rule 2110, 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 the respondent "knew or reasonably should have known under the particular facts and circumstances that his conduct was improper."¹³ A finding of willfulness does not require intent to violate the law or a specific rule, but simply intent to commit the act that constitutes the violation.¹⁴

¹¹ *Department of Enforcement v. Day*, No. C8A010094, 2003 NASD Discip. LEXIS 9 at *3 (O.H.O. Feb. 10, 2003), citing *Rosario R. Ruggiero*, Exchange Act Release No. 37070, 1996 SEC LEXIS 990, at *8-9 (Apr. 5, 1996).

¹² *Department of Enforcement v. Knight*, No. C10020060, 2004 NASD Discip. LEXIS 5, at *7-8 (N.A.C. Apr. 27, 2004). 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.

¹³ *Christopher LaPorte*, Exchange Act Release No. 39171, 1997 SEC LEXIS 2058, at *8 n.2 (Sept. 30, 1997).

¹⁴ *Knight*, 2004 NASD Discip. LEXIS 5; *Department of Enforcement v. Sarris*, No. C9A020017, 2003 NASD Discip. LEXIS 12, at *11 (O.H.O. Mar. 17, 2003); *Christopher LaPorte*, Exchange Act Release No. 39171, 1997 SEC LEXIS 2058, at *8 (Sept. 30, 1997); *Arthur Lipper Corp. v. SEC*, 547 F.2d 171, 180 (2d Cir. 1976), cert. denied, 434 U.S. 1009 (1978).

The Hearing Officer concludes that the Respondent's criminal record was material information and that his failure to disclose this information was willful. Hollins knew or reasonably should have known that he was required to answer "yes" to the questions pertaining to the felony charge. The Hearing Officer notes that Hollins had been placed on probation for five years, which ended just 12 months before he submitted the Form U-4. In addition, Hollins had been fined \$500, ordered to perform 250 hours of community service, and ordered to attend violence counseling.¹⁵ *These circumstances belie any possible contention that his failure to disclose the charge was inadvertent.*

Moreover, Hollins knew or should have known that he was required to affirmatively disclose that he had been charged with misdemeanor theft of property. The criminal record from Cobb County, Georgia reflects that he was charged with stealing a leather bag.¹⁶ This charge falls squarely within the language of the question on the Form U-4. Thus, the Hearing Officer finds that the Respondent's failure to disclose the felony and misdemeanor charges on his Form U-4 on August 20, 2003, was willful.

C. Failure to Respond to Requests for Information

The second cause of the Complaint alleges that on November 25, 2003, December 17, 2003, January 9, 2004, and November 23, 2004, 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 felony and misdemeanor charges. The staff sent the requests to the

¹⁵ Ex. 17.

¹⁶ Ex. 18.

Respondent at his CRD address. The staff also sent the final letter to the Equifax address. The 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 the Respondent failed to respond to the requests for information, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

IV. Sanctions

Under the NASD Sanction Guidelines, a bar is standard for failing to respond to requests for information, which is the second cause of Complaint.¹⁷ There is no evidence of any mitigating circumstances that would justify a lesser sanction in this case.

For submitting a false, misleading, or inaccurate Form U-4, the Guidelines recommend a fine of \$2,500 to \$50,000 and a suspension of 5 to 30 business days. In egregious cases, the Guidelines recommend considering a longer suspension or a bar.¹⁸ The Respondent's willful failure to disclose the criminal charges was egregious, warranting a lengthy suspension.¹⁹ However, in light of the bar imposed for his failure to respond to requests for information,

¹⁷ NASD Sanction Guidelines at 35 (2005 ed.).

¹⁸ Guidelines at 73-74.

¹⁹ Enforcement requested that the Respondent be barred for this offense as well. However, the Hearing Officer notes that the charges did not result in his statutory disqualification under Section 3(a)(39)(F) and Section 15(b)(4)(B) of the Securities and Exchange Act of 1934. Under the Exchange Act, a person is subject to a statutory disqualification for ten years if such person has been convicted of any felony or certain specified misdemeanors. Hollins was not convicted of either offense. The prosecutor dismissed the misdemeanor charge, and the Respondent received a deferred finding of guilt on the felony charge. (See Ex. 17 and Ex. 18.)

additional sanctions would be redundant.²⁰ Therefore, no separate sanctions are imposed for the Form U-4 violations.

V. Order

Stacey Paul Hollins is barred from association with any member firm in any capacity for failing to respond to requests for information, in violation of NASD Procedural Rule 8210 and Conduct Rule 2110. In light of the bar, no separate sanctions are imposed for his failure to disclose his criminal charges on his Form U-4.

The bar will become effective immediately if this Default Decision becomes the final disciplinary action of NASD.



Andrew H. Perkins
Hearing Officer

Copies to:

Stacey Paul Hollins (by overnight courier and first-class mail)

Soo H. Im, Esq. (by first-class and electronic mail)

Rory C. Flynn, Esq. (by first-class and electronic mail)

²⁰ See *Department of Enforcement v. Hodde*, No. C10010005, 2002 NASD Discip. LEXIS 4, at *17 (N.A.C. Mar. 27, 2002).

NASD OFFICE OF HEARING OFFICERS

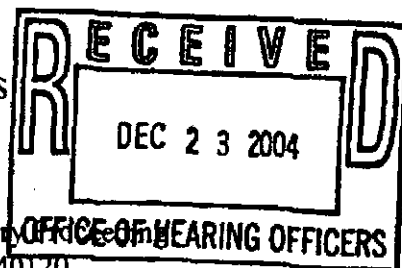
DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

STACEY PAUL HOLLINS
(CRD No. 4700182),

Respondent.



Disciplinary Office
No. C10040120

Hearing Officer

COMPLAINT

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

JURISDICTION

1. On or about August 19, 2003, Respondent Stacey Paul Hollins (CRD No. 4700182) ("Respondent") first became associated with NASD member firms MetLife Securities Inc. (BD No. 14252) and Metropolitan Life Insurance Company (BD No. 4095) (collectively, "MetLife").
2. In connection with his employment at MetLife, Respondent became an "associated person of a member" as that term is defined in Article I, paragraph (dd) of the NASD By-Laws, by virtue of the fact that he signed a Uniform Application for Securities Industry Registration or Transfer ("Form U-4") on or about August 20, 2003. MetLife submitted this Form U-4 to NASD on or about September 11, 2003.
3. On or about November 14, 2003, MetLife filed a Uniform Termination Notice for Securities Industry Registration ("Form U-5") concerning Respondent. The Form

U-5 terminated Respondent's employment with MetLife for "failure to disclose [his] prior criminal record" and stated that Respondent's last date of employment was November 4, 2003.

4. Upon information and belief, Respondent is not currently registered with NASD, nor is he otherwise employed in the securities industry. However, Respondent remains subject to the jurisdiction of NASD pursuant to Article V, Section 4 of its By-Laws.

BACKGROUND

5. Paragraphs one through four of this Complaint are realleged and incorporated herein by reference.
6. On or about June 16, 1997, Respondent was charged with retaliation in the third degree, a felony, in the State of Texas (violation of Texas Penal Code § 36.06) (case number 751890) ("Felony Retaliation Charge").
7. On or about August 14, 1997, Respondent pled nolo contendere to the Felony Charge ("Felony Retaliation Plea") and was sentenced to a fine of \$500 and placed on probation for 5 years.
8. On or about July 12, 2001, Respondent was charged with theft by taking, a misdemeanor, in the State of Georgia (violation of the Official Code of Georgia Annotated § 16-8-2) (case number 01-W-6145) ("Misdemeanor Theft Charge").
9. On or about September 7, 2001, an order of nolle prosequi was entered dismissing the Misdemeanor Theft Charge because the victim no longer wished to prosecute the matter. However, the Misdemeanor Theft Charge was never expunged from Respondent's criminal record.

FIRST CAUSE OF COMPLAINT
(Failure to Disclose Material Facts on a Form U-4)
Violation of NASD Conduct Rule 2110 and NASD IM-1000-1

10. Paragraphs one through nine of this Complaint are realleged and incorporated herein by reference.
11. On or about September 11, 2003, MetLife submitted to NASD the Form U-4 Respondent completed and signed on or about August 20, 2003.
12. The Form U-4 requires an applicant to disclose information regarding his or her criminal history, including whether the applicant has ever been charged with any felony (question 14A(1)(b)), pled nolo contendere to any felony (question 14A(1)(a)), or been charged with a misdemeanor involving wrongful taking of property (question 14B(1)(b)).
13. Respondent answered "no" to question 14A(1)(b) on his Form U-4, which asked whether he had ever "*been charged with any felony*" (emphasis in original).
14. Respondent answered "no" to question 14A(1)(a) on his Form U-4, which asked whether he had ever "*pled ... nolo contendere ('no contest') ... to any felony*" (emphasis in original).
15. Respondent answered "no" to question 14B(1)(b) on his Form U-4, which asked whether he had ever "*been charged with a misdemeanor specified in 14B(1)(a)*" (emphasis in original). Question 14B(1)(a) includes any "*misdemeanor involving ... wrongful taking of property ...*" (emphasis in original).
16. Respondent willfully failed to disclose his Felony Retaliation Charge, Felony Retaliation Plea and Misdemeanor Theft Charge, which were material facts, on his Form U-4.

17. By reason of the foregoing, Respondent acted in contravention of Article V, Section 2 of NASD's By-Laws and thus violated NASD IM-1000-1 and NASD Conduct Rule 2110.

SECOND CAUSE OF COMPLAINT

(Failure to Respond)

Violation of NASD Procedural Rule 8210 and Conduct Rule 2110

18. Paragraphs one through seventeen of the Complaint are re-alleged and incorporated herein by reference.
19. By letter dated November 25, 2003, the Staff of NASD's District 10 office (the "Staff") requested that Respondent provide documentation and information relevant to Respondent's nondisclosures on his Form U-4 by December 11, 2003 ("First Request Letter"). The First Request Letter was sent to Respondent's last known residential address [REDACTED], as reflected in NASD's Central Record Depository ("Respondent's CRD Address"), by regular first class mail. The request was made pursuant to NASD Procedural Rule 8210.
20. The First Request Letter sent by regular first class mail was not returned by the United States Postal Service ("USPS") to the Staff.
21. Respondent did not respond to the First Request Letter.
22. By letter dated December 17, 2003, the Staff again requested that Respondent provide documents and information relevant to Respondent's nondisclosures on his Form U-4 by January 5, 2004 ("Second Request Letter"). The Second Request Letter was sent to Respondent's CRD Address by (i) regular first class

mail, and (ii) certified mail, return receipt requested. The request was made pursuant to NASD Procedural Rule 8210.

23. The Second Request Letter sent by regular first class mail to the CRD address was not returned by the USPS to the Staff. However, the certified mailing was returned by the USPS to the Staff as "unclaimed" with an unsigned, return receipt.
24. Respondent did not respond to the Second Request Letter.
25. By letter dated January 9, 2004, the Staff again requested that Respondent provide documents and information relevant to Respondent's nondisclosures on his Form U-4 by January 19, 2004 ("Third Request Letter"). The Third Request Letter was sent to Respondent's CRD Address by (i) regular first class mail, and (ii) certified mail, return receipt requested. The request was made pursuant to NASD Procedural Rule 8210.
26. The Third Request Letter sent by regular first class mail to the CRD Address was not returned by the USPS to the Staff. However, the certified mailing was returned by the USPS to the Staff as "unclaimed" with an unsigned, return receipt.
27. Respondent did not respond to the Third Request Letter.
28. By letter dated November 23, 2004, the Staff again requested that Respondent provide documents and information relevant to Respondent's nondisclosures on his Form U-4 by December 7, 2004 ("Final Request Letter"). The Final Request Letter was sent to Respondent's CRD Address by (i) regular first class mail, and (ii) certified mail, return receipt requested. The Final Request Letter was also sent to Respondent's current address obtained from Equifax [REDACTED] [REDACTED] ("Equifax Address") by (i) regular first

class mail, and (ii) certified mail, return receipt requested. The request was made pursuant to NASD Procedural Rule 8210.

29. The Final Request Letter sent by regular first class mail to the CRD Address was not returned by the USPS to the Staff. To date, the certified mailing of this letter and the certified mail receipt also have not been returned by the USPS to the Staff.
30. The Final Request Letters sent by regular first class mail to the Equifax Address was not returned by the USPS to the Staff. To date, the certified mailing of this letter and the certified mail receipt also have not been returned by the USPS to the Staff.
31. Respondent did not respond to the Final Request Letter.
32. By reason of the foregoing, Respondent violated NASD Procedural Rule 8210 and Conduct Rule 2110.

PRAYER FOR RELIEF

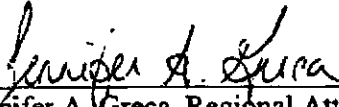
WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;
- B. Specific findings that Respondent's conduct 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 Respondent in accordance with NASD Procedural Rule 8310;

- D. An order imposing such costs of any proceeding as are deemed fair and appropriate under the circumstances and in accordance with NASD Rule 8330; and
- E. An order, pursuant to NASD Procedural Rule 8310, imposing any other fitting sanction.

Dated: December 22, 2004

DEPARTMENT OF ENFORCEMENT


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