

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

HURSON BELIZAIRE
(CRD No. 2700118),

Respondent.

Disciplinary Proceeding
No. C10050026

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

October 4, 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 misleading communications with the public, in violation of NASD Conduct Rule 2210.

Appearances

Soo H. Im, Regional Attorney, New York, NY, (Rory C. Flynn, Esq., Of Counsel, Washington, DC) for Complainant.

No appearance by or for Hurson Belizaire.

DECISION

I. Introduction

On May 5, 2005, the Department of Enforcement ("Enforcement") filed a three-count Complaint against the Respondent Hurson Belizaire ("Belizaire" or the "Respondent"). A copy of the Complaint is attached to this Default Decision as Exhibit A. The Complaint alleges that Belizaire: (1) posted an unbalanced and misleading message on an Internet website and sent an email to a customer that contained false and misleading information, in violation of NASD Conduct Rule 2210(d); (2) failed to obtain approval of the posted message and the email from a registered principal at his firm, Milestone Group Management, LLC ("Milestone"), in violation

000054159 2011

of NASD Conduct Rule 2210(b); and (3) failed to respond to requests for information issued by NASD staff, in violation of Procedural Rule 8210 and NASD Conduct Rule 2110.

The Respondent did not file an Answer to the Complaint. Accordingly, on July 26, 2005, Enforcement filed a motion for entry of default decision, supported by the declaration of Soo H. Im and 20 exhibits.¹ Belizaire did not respond to the motion.

For the reasons set forth below, Enforcement's motion is granted.²

II. Respondent's Default

On May 4, 2005, Enforcement served the Complaint and Notice of Complaint on the Respondent by certified and first class mail, sent to the Respondent's current residential address, as reflected in the Central Registration Depository (the "CRD Address")³ and to a second address Enforcement obtained from an on-line database search (the "Alternate Address").⁴ Enforcement received a signed receipt for the certified mailing sent to the Alternate Address.⁵ The certified mailing to the CRD Address was returned to Enforcement with the notation, "Unclaimed Refused."⁶ The envelopes sent by first-class mail were not returned.⁷

On June 13, 2005, Enforcement served the Complaint and Second Notice of Complaint on the Respondent by certified and first class mail at the same two addresses. Enforcement received a signed receipt for the certified mailing sent to the Alternate Address.⁸ Enforcement

¹ The exhibits are referred to as "CX."

² The factual determinations in this Decision are based on the allegations of the attached Complaint, which are deemed admitted, and the declaration and exhibits Enforcement filed with its motion.

³ CX 1

⁴ CX 4

⁵ CX 6

⁶ CX 5

⁷ Im Decl. ¶¶ 15, 17.

⁸ CX 9

also received by return mail the certified mailing it had sent to the CRD Address marked, "Unclaimed."⁹ Neither of the first-class mailings were returned to Enforcement.¹⁰

Enforcement complied with Procedural Rule 9134(b)(1) by mailing the Complaint and Notices of Complaint to the Respondent at the two foregoing addresses, thereby providing the Respondent with constructive notice of this proceeding. By failing to file an Answer or otherwise respond to the Complaint in a timely fashion, the Respondent defaulted. Accordingly, the Hearing Officer deems the allegations in the Complaint admitted pursuant to Rules 9215(f) and 9269(a)(2).

III. Jurisdiction

Belizaire was associated with NASD member firm Milestone from October 2001 until his employment was terminated on December 20, 2002. Thereafter, he was associated with Gilford Securities Incorporated ("Gilford") from January 6, 2003, until February 3, 2003. He has not been associated or registered with any NASD member since he left Gilford.¹¹ Belizaire's last registration with NASD as a General Securities Representative terminated on February 4, 2003.¹²

Belizaire 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 date Milestone filed an amended Uniform Termination Notice for Securities Industry Registration-Form U-5 ("Amended Form U-5") on his behalf, alleges misconduct that occurred while he was a registered representative at Milestone, and a failure to comply with requests for information made during the two-year period of retained jurisdiction.¹³

⁹ CX 8.

¹⁰ Im Decl. ¶¶ 21, 23.

¹¹ *Id.* ¶¶ 9, 11; CX 1 at 4-5.

¹² CX 1 at 4.

¹³ Milestone filed the Form U-5 on September 24, 2003, within two years of the date the Respondent's registration terminated. CX 2

IV. Findings of Fact and Conclusions of Law

A. Posting Misleading Internet Message

The first cause of Complaint alleges that, on March 3, 2002, Belizaire posted a message on an electronic bulletin board run by YAHOO! (YAHOO! Finance) using the address "bond_profits@yahoo.com" that solicited individuals to contact him to learn how they could make a minimum of 30% interest per year by purchasing US treasury bonds.¹⁴ The title of the message was, "Learn Strategies for 30% interest." The message further stated that by using more aggressive strategies it was possible to earn 42% interest per year.¹⁵ The Complaint further alleges that Belizaire violated Conduct Rule 2210(d) by posting the message on the website because the message: (1) failed to include any risk disclosure; (2) failed to disclose the basis for the statement, "Interest income is what has been creating wealth on Wall St. for decades"; and (3) failed to disclose that market risk is not eliminated because the payment of principal and interest is backed by the federal government.¹⁶

"Conduct Rule 2210(d)(1) prohibits members and associated persons from making exaggerated, unwarranted or misleading statements in their public communications."¹⁷ All public communications must be accurate and must provide sufficient information to evaluate the facts with respect to the securities products or services discussed.¹⁸

Here, Belizaire's message touted the risk-free nature of government bonds and implied sure returns of not less than 30% per year without any discussion of the attendant market risks. In addition, Belizaire failed to provide the basis for his statement regarding the historical use of government bonds by Wall Street investors. By so doing, Belizaire violated Conduct Rule

¹⁴ Compl. ¶ 8; CX 11 (printout of the posted message). The message was included in a thread of messages entitled, "best bonds to buy."

¹⁵ *Id.*

¹⁶ The message included the following misleading statement: "Working with government debt insures an investment being backed by the full faith of 'Uncle Sam'." (Compl. ¶ 8.)

¹⁷ *Department of Enforcement v. Pac. On-Line Trading & Sec.*, No. C01000027, 2002 NASD Discip. LEXIS 19, at *19 (N.A.C. Nov. 27, 2002).

¹⁸ *Id.*

2210(d). The message was not balanced, and it omitted material information concerning the investment strategy Belizaire advertised.

The first cause of Complaint further alleges that, on March 13, 2002, Belizaire sent an email to LR in response to her request for further information after she saw Belizaire's message on the YAHOO! Finance bulletin board. In the email, Belizaire disclosed that he was a senior account executive at Milestone and that it was actually very easy to achieve a 30% return. Belizaire wrote that LR should contact him if she wished to receive further information.¹⁹ LR subsequently opened an account with Belizaire at Milestone.

The Complaint alleges, and the Hearing Officer finds, that the email response Belizaire sent was unbalanced and misleading because it failed to include any risk disclosure. In addition, the statement that it was quite easy to earn a 30% return by investing in treasury bonds is misleading. Accordingly, the Hearing Officer finds that Belizaire also violated Conduct Rule 2210(d) by sending LR the email response dated March 13, 2002.

B. Unapproved Message and Email

The second cause of Complaint charges that Belizaire posted the message on the website and sent the email to LR without first obtaining approval of their content from a registered principal at Milestone, as required by Conduct Rule 2210(b).

NASD Conduct Rule 2210 governs member communications with the public.²⁰ The rule defines advertisements as "material ... that is published ... [in an] electronic or other public media." In addition, the rule defines sales literature as "written or electronic communication ... distributed or made generally available to customers or the public" which does not constitute an "advertisement."²¹ Under Rule 2210(b), each advertisement and item of sales literature must be

¹⁹ CX 12 (reply email).

²⁰ Respondent was charged with violating provisions of Rule 2210 that existed prior to November 3, 2003, when the rule was amended. Accordingly, the Hearing Officer considered, and this Decision references, only the former provisions.

²¹ Rule 2210(a)(2). Materials that are published, or designed for use, in some form of public media qualify as advertisements. Rule 2210(a)(1).

approved by signature or initial of a registered principal of the member in advance of its use or filing with NASD for approval.

Here, the evidence shows that no one at Milestone approved Belizaire's message. Milestone provided written responses to NASD staff confirming that it did not advertise using electronic communications and that it had not approved Belizaire's Internet posting.²² Accordingly, the Hearing Officer finds that Belizaire violated Conduct Rule 2210(b) by posting the message on the Internet without the approval of a registered principal at Milestone.²³

C. Failure to Respond to Requests for Information

The third cause of the Complaint alleges that Belizaire violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by failing to respond to the staff's requests for information about the disclosures in the Amended Form U-5 that Milestone filed on September 24, 2003. The Amended Form U-5 disclosed that LR had filed an arbitration claim involving Belizaire's handling of her account. In the course of the ensuing investigation, NASD staff uncovered the message and email discussed above. To obtain information about these issues from Belizaire, NASD staff sent him a request for information on November 10, 2003.²⁴ The staff sent the request to Belizaire's CRD Address by first-class mail. He did not respond.

On December 3, 2003, the staff sent Belizaire a second request for the same information.²⁵ This time the staff sent the request to Belizaire's CRD Address by certified mail, return receipt requested. NASD staff received the envelope by return mail marked, "Unclaimed."²⁶ Belizaire did not respond to the second request.

²² CX 14.

²³ Enforcement further alleged that the Respondent violated Rule 2210(d) by failing to have his firm approve the email he sent to LR. Correspondence, however, is not required to be pre-approved under Rule 2210(d). Accordingly, the Respondent did not violate Rule 2210(d) when he sent LR the email dated March 13, 2002.

²⁴ CX 16.

²⁵ CX 17.

²⁶ Im Decl. ¶ 48; CX 18.

Thus, on December 17, 2003, the staff sent Belizaire a third and final request for information.²⁷ The staff sent the third request to Belizaire at his CRD Address by certified mail, return receipt requested. Again, the staff received the envelope by return mail marked, "Unclaimed."²⁸ Belizaire did not respond to the third request for information.

The staff served the requests in accordance with Rule 8210(d), and pursuant to that rule the Respondent is deemed to have received them.²⁹ Accordingly, the Hearing Officer finds that Belizaire violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by failing to respond in any manner to the staff's requests for information.

V. Sanctions

The NASD Sanction Guidelines provide that a bar is standard for failure to respond to requests for information.³⁰ There is no evidence of any mitigating circumstances that would justify a lesser sanction in this case. Accordingly, the Hearing Officer will impose a bar for this violation.

As to the remaining violations, consistent with the Guidelines for an intentional or reckless violation of Conduct Rule 2210, Enforcement requests that Belizaire be suspended from associating with any member firm in any capacity for one year and fined \$10,000.³¹ The Hearing Officer finds the requested sanction appropriate under the facts and circumstances of this case. However, in light of the bar imposed on the third cause of Complaint, no remedial purpose would be served by the imposition of additional sanctions for these violations.³²

²⁷ CX 19.

²⁸ Im Decl. ¶ 51; CX 20.

²⁹ See, e.g., *David I. Cassuto*, Exchange Act Release No. 48,087, 2003 SEC LEXIS 1496, at *9 (June 25, 2003).

³⁰ NASD Sanction Guidelines 25 (2005 ed.).

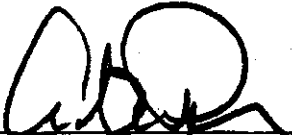
³¹ *Id.* at 85.

³² See *Department of Enforcement v. Hodge*, 2002 NASD Discip. LEXIS 4, at *17 (N.A.C. Mar. 27, 2002).

VI. Order

Hurson Belizaire 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, he will not be further sanctioned for his violations of Conduct Rule 2210.

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

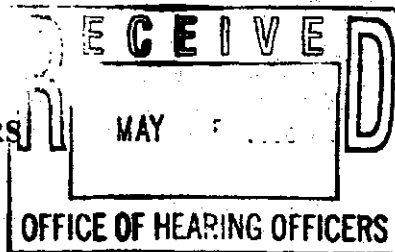


Andrew H. Perkins
Hearing Officer

Copies to:

Hurson Belizaire (*via overnight and first class mail*)
Soo H. Im, Esq. (*via electronic and first class mail*)
Rory C. Flynn, Esq. (*via electronic and first class mail*)

NASD OFFICE OF HEARING OFFICERS



DEPARTMENT OF ENFORCEMENT,

Complainant.

v.

HURSON BELIZAIRE
(CRD No. 2700118),

Respondent.

Disciplinary Proceeding
No. C10050026

Hearing Officer _____

COMPLAINT

Upon information and belief, the Department of Enforcement alleges that:

JURISDICTION

1. Respondent Hurson Belizaire ("Respondent") first became registered with NASD as a General Securities Representative (GSR) on January 31, 1996.
2. Subsequently, Respondent was registered as a GSR with NASD through various member firms.
3. From October 2001 to December 2002, Respondent was registered with NASD as a GSR through member firm Milestone Group Management, LLC (BD No. 44486) ("Milestone").
4. More recently, from January 2003 to February 2003, Respondent was registered with NASD as a GSR through his association with a different member firm.
5. On January 2, 2003, Milestone filed a Uniform Termination Notice for Securities Industry Registration ("Form U-5") concerning Respondent, indicating that his last day of employment at Milestone was December 20, 2002. On or about September 24, 2003, Milestone filed an amended Form U-5 indicating that Respondent engaged in potentially actionable conduct.

000011 284 05

6. Currently, Respondent is not associated with any member firm. However, NASD retains jurisdiction over Respondent pursuant to Article V. Section 4 of its By-Laws.

FIRST CAUSE OF COMPLAINT
(Advertising Violation)
(Violation of NASD Conduct Rules 2210(d) and 2110)

7. Paragraphs 1 through 6 are re-alleged and incorporated herein by reference.

March 3, 2002 Electronic Posting

8. On or about March 3, 2002, Respondent, while associated with Milestone, posted an electronic bulletin board message, using the address, bond profits@yahoo.com, on the yahoo website (the "March 3 Electronic Posting"). Respondent's advertisement on the yahoo website was titled, "Learn strategies for 30% interest..." The posting stated:

Using conservative strategies the US Treasuries have consistently been the back bone [sic] of many diversified portfolios. Interest income is what has been creating wealth on Wall St. for decades... Working with government debt insures an investment being backed by the full faith of "UNCLE SAM".

Many investors fail to realize the potential in US treasuries to earn a MINIMUM of 30% interest per year on their investments....More aggressive strategies earn 42% PER YEAR!

Anyone interested in Learning how....I'll check this message board periodically or just e-mail me for all pertinent documentation...

9. The posting: (a) was unbalanced and failed to include any risk disclosure, including market risk and the fact that government securities are subject to availability and change in price; (b) failed to disclose the basis for the statement

that "[i]nterest income is what has been creating wealth on Wall St. for decades..."; and (c) failed to disclose that government guarantees apply only to timely payment of principal and interest and does not eliminate market risk, rendering the statement - "Working with government debt insures an investment being backed by the full faith of 'UNCLE SAM'" - misleading.

March 13, 2002 E-mail

10. In response to the March 3 Electronic Posting, LR contacted Respondent via e-mail. In her e-mail to Respondent dated March 8, 2002, she inquired about Respondent's strategy concerning the 30% per year interest on treasury investments.

11. On March 13, 2002, Respondent sent an e-mail to LR responding to her inquiry (the "March 13 E-mail Message"). In that response, he disclosed that he was a "senior account executive at MGM Group in NY..." and stated in part that, "As for the 30%, it s [sic] actually very easy..."

12. This message: (i) was misleading in that it failed to provide a substantive explanation for the above statement; (ii) promoted the facility of earning 30% interest without disclosing risks, including market risk and the fact that government securities are subject to availability and change in price; and (iii) was false, exaggerated and unwarranted.

By reason of the foregoing, Respondent violated NASD Conduct Rules 2210(d) and 2110.

SECOND CAUSE OF COMPLAINT
(Failure to Obtain Principal's Approval for Advertisement)
(Violation of NASD Conduct Rules 2210(b) and 2110)

13. Paragraphs 1 through 12 are re-alleged and incorporated herein by reference.
14. Respondent's March 3 Electronic Posting constitutes "advertisement" under NASD Conduct Rule 2210(a).
15. Pursuant to Rule 2210(b), a "registered principal of the member must approve by signature or initial and date each advertisement....before the earlier of its use or filing with NASD's Advertising Regulation Department."
16. According to Milestone, the firm did not have knowledge of, and did not approve Respondent's March 3 Electronic Posting.
17. Respondent did not obtain approval from a registered principal of Milestone for the March 3 Electronic Posting before he made it available to the public. In fact, in communicating with the public in the manner that he did, he violated Milestones' policy concerning advertisements and communications with the public, as well as NASD Conduct Rule 2210(b).

Based on the foregoing, Respondent violated NASD Conduct Rules 2210(b) and 2110.

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

18. Paragraphs 1 through 17 are re-alleged and incorporated herein by reference.

First Request

19. By letter dated November 10, 2003, the Staff requested that Respondent provide information and documents concerning his termination. The letter was sent via
-

first class mail to Respondent's current residential address as reflected in the records of the NASD Central Registration Depository. [REDACTED]

[REDACTED] (the "CRD Address"). The request was made pursuant to, and in accordance with, Rule 8210, and required a response by November 24, 2003.

20. The letter sent by first class mail was not returned to the Staff.

21. The Staff did not receive a response from Respondent.

Second Request

22. By letter dated December 3, 2003, the Staff requested that Respondent provide information and documents concerning his termination. The letter was sent via certified mail, return receipt requested to the CRD Address. This request was made pursuant to, and in accordance with, Rule 8210, and required a response by December 17, 2003. The letter also stated that the failure to comply with the request could subject Respondent to disciplinary action.

23. The certified mailing was returned, "Unclaimed." The return receipt accompanying the certified mailing was also returned unsigned.

24. The Staff did not receive a response from Respondent.

Third Request

25. By letter dated December 17, 2003, the Staff once again requested that Respondent provide information and documents concerning his termination. The letter was sent via certified mail, return receipt requested to the CRD Address. This request was made pursuant to, and in accordance with, Rule 8210, and

required a response by December 30, 2003. The letter also stated that the failure to comply with the request could subject Respondent to disciplinary action.

26. The certified mailing was returned. "Unclaimed." The return receipt accompanying the certified mailing was also returned unsigned.

27. The Staff did not receive a response from Respondent.

By reason of the foregoing, Respondent 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 Procedural Rule 8310;
- C. An order requiring Respondent 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 proceedings as are deemed fair and appropriate under the circumstances in accordance with NASD Procedural Rule 8330; and
- E. An order imposing any other fitting sanction.

Dated: May 4, 2005

DEPARTMENT OF ENFORCEMENT

Soo H. Im

Soo H. Im
Regional Attorney
NASD
District 10
One Liberty Plaza
New York NY 10006

Of Counsel:

David M. Jaffe
Regional Chief Counsel
Department of Enforcement, District 10
NASD
One Liberty Plaza
New York, NY 10006

Rory C. Flynn
Chief Litigation Counsel
Department of Enforcement
NASD
1801 K Street, N.W., Suite 800
Washington, D.C. 20006