

DEPARTMENT OF ENFORCEMENT,	:	Disciplinary Proceeding
	:	No. C1020050061
Complainant,	:	
	:	DEFAULT DECISION
v.	:	
PHILLIP A. CHRISTIAN	:	Hearing Officer – SW
(CRD No. 4504875),	:	
Respondent.	:	April 10, 2006

Appearances

No appearance for Phillip A. Christian.

I. Introduction

On July 8, 2005, the Department of Enforcement (“Enforcement”) filed the attached two-count Complaint, alleging that Respondent Phillip A. Christian (“Respondent”): (i) participated in an outside business activity without providing prior written notice to his two employers, in violation of NASD Conduct Rules 3030 and 2110; and (ii) failed to respond to requests for information issued by the NASD staff pursuant to NASD Procedural Rule 8210, in violation of NASD Procedural Rule 8210 and Conduct Rule 2110.

On September 27, 2005, Enforcement filed a Motion for Entry of Default Decision ("Motion"), supported by the Declaration of Christina J. Kang, Esq., Regional Attorney in NASD's New York office, and 13 exhibits.¹ Enforcement supplemented its Motion on November 3, 2005, and on February 7, 2006, including five additional exhibits.² For the reasons set forth below, the *Hearing Officer grants Enforcement's* Motion, as supplemented.

II. Respondent's Default

On July 6, 2005, Enforcement served the Complaint and Notice of Complaint on Respondent, via certified and first class mail, at his most current residential address as reflected in the Central Registration Depository ("CRD address").³ (CX-1, p. 1; CX-3; DECL at ¶¶ 7-8). The mailing, however, did not contain pages four and five of the Complaint. (2nd SUPP DECL at ¶ 9). Respondent did not answer the Complaint. (DECL at ¶ 11).

On August 4, 2005, Enforcement served the Complaint and Second Notice of Complaint on Respondent, via certified and first class mail, at his CRD address. (CX-5; DECL at ¶ 12). The mailing, however, was similarly defective in that it did not contain pages four and five of the Complaint. (2nd SUPP DECL at ¶ 14). Respondent did not respond to the Complaint and Second Notice of Complaint. (2nd SUPP DECL at ¶ 17).

¹ Hereinafter, the statements in the Motion will be designated as "Motion, p."; statements in the Kang Declaration will be designated as "DECL at ¶"; and Enforcement's exhibits will be designated as "CX-" with the appropriate exhibit and page number.

² The statements in the November 3, 2005 Supplemental Declaration will be designated as "SUPP DECL at ¶," and the statements in the February 7, 2006 Supplemental Declaration will be designated as "2nd SUPP DECL at ¶."

³ Respondent's CRD address is [REDACTED] (CX-1, p. 1).

On December 8, 2005, to remedy the defective service, Enforcement served a Third Notice of Complaint and Complaint upon Respondent, via certified and first class mail, at his CRD address. (CX-14; 2nd SUPP DECL at ¶ 18). Respondent did not respond to the Complaint and Third Notice of Complaint. (2nd SUPP DECL at ¶ 21). On January 10, 2006, Enforcement served a Fourth Notice of Complaint and Complaint upon Respondent, via certified and first class mail, at his CRD address. (CX-16; 2nd SUPP DECL at ¶ 22). Respondent did not respond to the Complaint and Fourth Notice of Complaint. (2nd SUPP DECL at ¶ 25).

Enforcement complied with NASD Procedural Rule 9134(b)(1) by sending the mailings to Respondent's CRD address. Accordingly, the Hearing Officer finds that Respondent received effective constructive notice of this proceeding and defaulted by failing to answer the Complaint served on him on December 8, 2005 and January 10, 2006.

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

Respondent was registered as an investment company and variable contracts products representative with NASD member firms Metropolitan Life Insurance Company and MetLife Securities Inc. (collectively, "MetLife") from February 26, 2002 until July 28, 2004.⁴ (CX-1, pp. 3-4). Although Respondent was employed by Park Avenue Securities LLC from September 24, 2004 to January 3, 2005, Respondent has not been registered with NASD since July 28, 2004. (CX-1, pp. 2, 3).

⁴ On July 28, 2004, MetLife filed a joint Form U-5 terminating Respondent's association because Respondent sold non-MetLife products. (CX-2).

NASD has jurisdiction of this proceeding pursuant to Article V, Section 4 of NASD's By-Laws, which provides that NASD may bring a disciplinary proceeding against a formerly registered individual for two years after his registration is terminated. In this case, Respondent's registration ended on July 28, 2004, and Enforcement filed the Complaint within the two-year period of retained jurisdiction. Therefore, NASD has jurisdiction over this matter.

B. Respondent Engaged in an Outside Business Activity

The first cause of the Complaint alleges that Respondent violated NASD Conduct Rules 3030 and 2110 by entering into a contract with Fidelity & Guaranty Life ("F&G") on March 15, 2004, without providing written notice of his association with F&G to MetLife. (Complaint at ¶¶ 6-10; CX-7).

Specifically, the Complaint alleges that Respondent, while employed by MetLife, sold F&G annuities to MetLife customers JD and FD on June 1, 2004. (Complaint at ¶¶ 7-9). Respondent's association with F&G was outside the scope of his employment with MetLife, and he did not provide notice of his association with F&G to MetLife. (Complaint at ¶ 10; CX-9). Enforcement provided the additional information that as a MetLife representative, Respondent was limited to marketing MetLife products. (CX-9). Respondent earned \$29,000 in commissions for the sale of the F&G annuities to customers JD and FD. (CX-8; DECL at ¶ 20).

Under Rule 9215(f) and NASD Notice to Members 99-77, the allegations of cause one of the Complaint are deemed admitted, and they are hereby incorporated into this Default Decision as findings of fact.

Conduct Rule 3030 provides that “[n]o person associated with a member in any registered capacity shall be employed by, or accept compensation from, any other person as a result of any business activity, other than a passive investment, outside the scope of his relationship with his employer firm, unless he has provided prompt written notice to the member.”

Based on the allegations deemed admitted, the Hearing Officer finds that Respondent violated NASD Conduct Rules 3030 and 2110, by being associated with F&G and selling annuities through F&G, without providing written notice of his association to MetLife.

C. Respondent Failed to Respond to Requests for Information

The second cause of the Complaint alleges that Respondent failed to respond to requests for additional information regarding the circumstances surrounding the filing of the Form U-5 by MetLife, in violation of NASD Procedural Rule 8210 and Conduct Rule 2110. (Complaint at ¶¶ 11-31). The NASD staff sent each request for information to Respondent pursuant to NASD Procedural Rule 8210. (CX-12).

Specifically, in a September 8, 2004 letter sent to Respondent at his CRD address, the NASD staff requested that Respondent provide certain documentation and information. (Complaint at ¶ 12). The September 8, 2004 letter requested an explanation regarding MetLife’s allegation that Respondent had sold “a product outside of MetLife,” and his reasons for transferring customers from a MetLife product to an F&G product. (SUPP DECL at ¶ 7). On October 13, 2004, Respondent provided information in response to the NASD staff’s request. (Complaint at ¶ 13).

Subsequently, the NASD staff sent three requests for additional information to Respondent, dated November 3, 2004, November 19, 2004, and December 1, 2004; however, the staff failed to address the requests to Respondent's correct CRD address.⁵ (SUPP DECL at ¶ 11; CX-10, pp. 3-7).

On March 10, 2005 and May 3, 2005, the NASD staff sent two additional requests for information to Respondent at his correct CRD address, via first class mail and certified mail. (Complaint at ¶¶ 26, 29; CX-12, pp. 1-4). The March 10, 2005 and May 3, 2005 letters requested the same additional information requested in the letters dated November 3, 2004, November 19, 2004, and December 1, 2004. (SUPP DECL ¶¶ 12, 15). Respondent did not respond to any of the requests for additional information. (Complaint at ¶¶ 17, 21, 25, 28, 31).

Under Rule 9215(f) and NASD Notice to Members 99-77, the allegations of cause two of the Complaint are deemed admitted, and they are hereby incorporated into this Default Decision as findings of fact.

Under NASD Procedural Rule 8210, NASD may require any person subject to its jurisdiction to provide information regarding any matter under investigation. The obligation to respond is unqualified. Because NASD lacks subpoena power, Rule 8210 is the means by which NASD carries out its regulatory functions. It is a "key element in the NASD's efforts to police its members."⁶ Failure to comply with Rule 8210 requests for

⁵ The requests for information were sent to [REDACTED] rather than to [REDACTED] (CX-10, pp. 3, 5, 6; CX-1, p. 1). The NASD staff also sent copies of the requests dated November 3, 2004, November 19, 2004, and December 1, 2004 to Respondent at his then current business address at Park Avenue Securities LLC, 11 West 42nd Street, 29th Floor, New York, NY 10036. (Complaint at ¶¶ 14, 18, 22; CX-10).

⁶ See, e.g., Richard J. Rouse, 51 S.E.C. 581 1993 SEC LEXIS 1831, at *7 (1993).

information is a serious violation because it subverts NASD's ability to perform its regulatory responsibilities.⁷ A violation of NASD Procedural Rule 8210 is also a violation of NASD Conduct Rule 2110.⁸

The Hearing Officer finds that pursuant to Rule 8210(d), Respondent is deemed to have received the March 10, 2005 and May 3, 2005 requests for additional information sent to his correct CRD address. Accordingly, the Hearing Officer finds that Respondent received constructive notice of the requests for information and violated NASD Conduct Rule 2110 and NASD Procedural Rule 8210 by failing to respond to the requests.

IV. Sanctions

A. Respondent Failed to Respond to Rule 8210 Requests for Information

The NASD Sanction Guideline for failure to respond to Rule 8210 requests for information states that a bar should be standard where the respondent failed to respond in any manner.⁹ Enforcement has recommended that Respondent be barred for failing to respond to the March 10, 2005 and May 3, 2005 requests for additional information. The record contains no evidence of any mitigating factors warranting a lesser sanction. Accordingly, the Hearing Officer agrees with Enforcement's recommendation, and bars Respondent.

B. The Hearing Officer Imposes No Separate Sanction for Violating NASD Conduct Rules 3030 and 2110

Because the Hearing Officer barred Respondent for his failure to respond to the requests for additional information issued pursuant to NASD Procedural Rule 8210, no

⁷ Id.

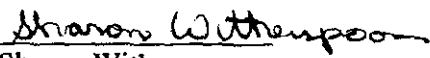
⁸ See Dep't of Enforcement v. Baxter, 2000 NASD Discip. LEXIS 3, at *21, *25 (NAC Apr. 19, 2000).

⁹ NASD Sanction Guidelines, p. 35 (2006).

separate sanction will be imposed for Respondent's violation of NASD Conduct Rules 3030 and 2110 by failing to disclose his outside business activity to his employers.

V. Order

Respondent Phillip A. Christian is barred from associating with any NASD member firm in any capacity for failing to respond to requests for additional information, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110. If this Default Decision becomes the final disciplinary action of NASD, the bar shall become effective immediately.


Sharon Witherspoon
Hearing Officer

Dated: Washington, DC
April 10, 2006

Copies to:
Phillip A. Christian (via Federal Express and first class mail)
Christina J. Kang, Esq. (via electronic and first class mail)
Rory C. Flynn, Esq. (via electronic and first class mail)

EXHIBIT A

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

PHILLIP A. CHRISTIAN
(CRD No. 4504875),

Respondent.

Disciplinary Proceeding
No. C1020050061

Hearing Officer _____

COMPLAINT

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

JURISDICTION

1. Phillip A. Christian (hereinafter "Respondent") first became registered with NASD as an Investment Company Products/Variable Contracts Representative ("IR") with Metropolitan Life Insurance Company (BD No. 4095) and MetLife Securities Inc. (BD No. 14251) (collectively "MetLife") on or about February 26, 2002.
2. From September 24, 2004, through January 3, 2005, Christian was employed by Park Avenue Securities LLC (BD No. 46173) ("Park Avenue").
3. On or about July 28, 2004, MetLife filed a Uniform Termination Notice for Securities Industry Registration ("Form U-5") to terminate Respondent's registration. The Form U-5 indicated that Respondent's last date of employment with MetLife was July 5, 2004, and that he had been discharged for "selling a product outside of MetLife by having the customer use funds from an existing MetLife product."

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.

FIRST CAUSE OF COMPLAINT
(Failure to Disclose Outside Business Activities)
Violation of NASD Conduct Rules 3030 and 2110

5. Paragraphs 1 through 4 above are realleged and incorporated herein by reference.
6. While associated with MetLife and registered with NASD through MetLife, Respondent, became an authorized agent of Fidelity & Guaranty Life Insurance Company ("F&G") on or about March 15, 2004.
7. On or about June 1, 2004, Respondent sold F&G products, Spectrum Rewards Reserve—Indexed Annuities, to two MetLife customers, JD and FD.
8. Respondent received approximately \$5,000 in compensation from F&G for his sale of the Spectrum Rewards Reserve—Indexed Annuity to JD.
9. Respondent received approximately \$24,000 in compensation from F&G for his sale of the Spectrum Rewards Reserve—Indexed Annuity to FD.
10. Respondent did not provide prompt notice, written or otherwise, to MetLife regarding his sale of the F&G products to JD and FD.

By reason of the foregoing, Respondent violated NASD Conduct Rule 3030 and NASD Conduct Rule 2110.

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

11. Paragraphs 1 through 9 above are realleged and incorporated herein by reference.
12. By letter dated September 8, 2004, the Staff of NASD's District No. 10 office (the "Staff") requested that Respondent provide certain documentation and/or information by

September 22, 2004 ("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 certified mail and first class mail.

13. Respondent responded to the Staff's First Request Letter on or about October 13, 2004.
14. By letter dated November 3, 2004, the Staff requested that Respondent provide certain additional documentation and/or information by November 17, 2004 ("First Additional Request Letter"). The requested information included, but was not limited to, issues concerning the suitability of the investment described in Cause One, and whether or not Respondent engaged in any other outside business activities. The First Additional Request Letter was sent via first class mail and certified mail, return receipt requested, to the following two addresses: (i) [REDACTED] (the "Hoboken Address"); and (ii) Park Avenue Securities LLC, 11 West 42nd Street, 29th Floor, New York, NY, 10036 (Respondent's then-current work address, as reflected in NASD's CRD) ("Work Address").
15. Both of the letters sent to the Hoboken Address were returned to the Staff.
16. The certified mailing receipt for the letter sent to the Work Address was delivered to the Staff bearing the signature ("F. Purkari") and the letter sent via first class mail was not returned.
17. Respondent did not respond to the Staff's First Additional Request Letter.
18. By letter dated November 19, 2004, the Staff again requested that Respondent provide certain additional documentation and/or information by November 29, 2004 ("Second Additional Request Letter"). The Second Additional Request Letter was sent via first

class mail and certified mail, return receipt requested, to the Hoboken and Work Addresses.

19. Both of the letters sent to the Hoboken Address were returned to the Staff.
20. The letter sent via certified mail to the Work Address was returned to the Staff and the letter sent via first class mail was not returned.
21. Respondent did not respond to the Staff's Second Additional Request Letter.
22. By letter dated December 1, 2004, the Staff requested that Respondent provide certain additional documentation and/or information by December 13, 2004 ("Third Additional Request Letter"). The Third Additional Request Letter was sent via first class mail and certified mail, return receipt requested, to the Hoboken and Work Addresses.
23. The letter sent to the Hoboken Address via certified mail was returned to the Staff and the letter sent via first class mail was not returned.
24. The certified mail receipt for the letter sent to the Work Address was delivered to the Staff bearing the signature "Florita Purkari" and the letter sent to via first class mail was not returned.
25. Respondent did not respond to the Staff's Third Additional Request Letter.
26. By letter dated March 10, 2005, the Staff requested that Respondent provide certain additional documentation and/or information by March 21, 2004 ("Fourth Additional Request Letter"). The Fourth Additional Request Letter was sent to Respondent's CRD Address via first class mail and certified mail, return receipt requested.
27. The letter sent via certified mail was returned to the Staff and the letter sent via first class mail was not returned.
28. Respondent did not respond to the Staff's Fourth Additional Request Letter.

29. By letter dated May 3, 2005, the Staff requested that Respondent provide certain additional documentation and/or information by May 16, 2005 ("Fifth Additional Request Letter"). The Fifth Additional Request Letter was sent to Respondent's CRD Address via first class mail and certified mail, return receipt requested.
30. The letter sent via certified mail was returned to the Staff and the letter sent via first class mail was not returned.
31. Respondent did not respond to the Staff's Fifth Additional Request Letter.

By reason of the foregoing, Respondent acted in contravention of Article V, Section 2(a)(2) of NASD's By-Laws and violated IM-1000-1 of NASD's Membership and Registration Rules 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 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: July 6 2005

DEPARTMENT OF ENFORCEMENT


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