

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT

Complainant,

v.

CHARLES LEE WILLIAMS
(CRD No. 4767254),

Respondent.

Disciplinary Proceeding
No. C3A050011

Hearing Officer – SNB

DEFAULT DECISION

August 17, 2005

Respondent is barred from associating with any NASD member in any capacity for filing false and misleading information on his Form U-4, in violation of NASD Conduct Rule 2110 and IM-1000-1, and for his failure to provide requested information, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

Appearances

Helen G. Barnhill, Regional Counsel, NASD, Denver, CO, and Rory C. Flynn, Esq., Washington, DC, of Counsel, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

I. Background

On February 14, 2005, the Department of Enforcement ("Enforcement" or the "staff") filed a two-cause Complaint in this proceeding.¹ The Complaint alleges that Respondent, Charles Lee Williams ("Respondent" or "Williams"), violated NASD Rule 2110 and IM-1000-1 by providing false and misleading information on his Uniform Application for Securities Registration or Transfer ("Form U-4") filed with the NASD. The Complaint also alleges that Respondent violated NASD Procedural Rule 8210 and

¹ The Complaint is attached to this Decision as Exhibit A.

NASD Conduct Rule 2110 by failing to respond to NASD Staff requests for information. Respondent did not file an Answer to the Complaint. Accordingly, on June 23, 2005, Enforcement filed a Motion for Entry of Default Decision, supported by the declaration of Helen G. Barnhill, and seven exhibits. Respondent did not reply to the Motion. For the reasons set forth below, the Motion for Default Decision is granted.²

II. Respondent's Default

Enforcement sent the Complaint and Notice of Complaint ("First Notice") to Respondent on February 10 and March 15, 2005, by first class and certified mail to his last known address as listed in the Central Registration Depository (the "CRD addresses"), as well as another address discovered during the investigation. Respondent did not file an Answer.

In the same manner, Enforcement served the Complaint and Second Notice of Complaint on Respondent at the same addresses on April 18, 2005. 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 Notices of Complaint to Respondent's CRD addresses as well as to an additional potential address for the Respondent that the staff became aware of during the investigation, thereby giving Respondent constructive notice of this proceeding. By failing to file an Answer, Respondent defaulted. Pursuant to Rules 9215(f) and 9269(a)(2), the Hearing Officer will deem the allegations in the Complaint admitted.

III. Jurisdiction

Respondent first became associated with NASD member firm Morgan Stanley DW, Inc. ("Morgan Stanley") in February 2004 when he filed a Form U-4 for

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 filed by Enforcement with its motion.

registration. On May 17, 2004, NASD approved his application for registration as a General Securities Representative.³ Respondent's employment with Morgan Stanley, and consequently his registration with NASD, ended June 18, 2004, when he was discharged from the firm.⁴ Respondent is not currently registered with an NASD member.

Although Respondent is not currently associated with a member firm, NASD has jurisdiction to bring this proceeding, pursuant to Art. V, § 4 of NASD's By-Laws, because (1) the Complaint charges the Respondent with misconduct that occurred while he was registered, and with failing to comply with requests for information made during the two-year period following termination of his registration, and (2) Enforcement filed the Complaint within that two-year period.

IV. Violations

A. Filing False Information on the Form U-4

The Complaint alleges that Respondent included false and misleading information on his Form U-4 filed with NASD. Specifically, Respondent did not use his own social security number and birth date in the application. Rather, he used the social security number and birth date of a person with the same first and last name, and the same middle initial. The result of Respondent's false filing was that he avoided disclosure of his criminal history, which included a number of arrests, among them arrests for theft, and a conviction for fraud involving insufficient funds.

Article V, Section 2 of NASD's By-Laws requires that persons who apply for registration with NASD must provide "such ... reasonable information with respect to the applicant as the NASD may require." Specifically, applicants must complete a Form U-

³ CX-1 at 3.

⁴ *Id.*

4, disclosing, among other things, whether they have been charged with, pled guilty to, or been convicted of any misdemeanor or felony involving, among other things, fraud.

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 to be conduct inconsistent with just and equitable principles of trade and when discovered may be sufficient cause for appropriate disciplinary action."

The accuracy of disclosures on a Form U4 "is critical to the effectiveness" of a self-regulatory organization's ability to screen and monitor the professionals within the securities industry. Rosario R. Ruggiero, 52 S.E.C. 725, 728 (1996); see also Daniel Richard Howard, Exchange Act Release No. 46269, 2002 SEC LEXIS 1909, at *9-10 (July 26, 2002) ("The candor and forthrightness of applicants is critical to the effectiveness of this screening process.").

Department of Enforcement v. Lu, Complaint No. C9A020052, 2004 NASD Discip. LEXIS 8 at * 32 (NAC May 13, 2004), aff'd, Exchange Act. Release No. 51047, 2005 SEC LEXIS 117 (Jan. 14, 2005), petition for review filed, No. 05-8006 (D.C. Cir. Mar. 14, 2005).

The Hearing Officer therefore concludes that the allegations of the Complaint, which are deemed admitted for purposes of this default decision, are sufficient to establish that Respondent violated Conduct Rule 2110 and IM-1000-1 by using a false social security number and a false birth date on his Form U-4.

Enforcement further alleges that Respondent's failure to disclose his criminal record on his Form U-4 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 Respondent "knew or reasonably should have known under the particular facts and circumstances that his conduct was improper." Christopher LaPorte, Exchange Act Release No. 39171, 1997 SEC LEXIS 2058, at *8, n.2 (Sept. 30, 1997). In this case, Respondent's false entries on his Form U-4 were clearly willful.

B. Failure to Respond

The Complaint also alleges that on August 9, September 9 and October 14, 2004, the staff sent requests for information concerning its investigation into Respondent's false Form U-4 filings, via first class and certified mail, to Respondent's CRD addresses. In the same manner, on November 5, 2004, Enforcement sent its request to the CRD addresses and an additional address uncovered in the investigation. The staff therefore complied with the requirements of Procedural Rule 8210; thus, Respondent is deemed to have received the requests for information. Respondent did not respond.

Procedural Rule 8210 authorizes NASD to require any person subject to its jurisdiction to provide information related to any matter under 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. See, e.g., Dep't of Enforcement v. Valentino, No. FPI010004, 2003 NASD Discip. LEXIS 15, at *12 (NAC May 21, 2003), aff'd, 2004 SEC LEXIS 330 (Feb. 13, 2004) ("It is well established that because NASD lacks subpoena power over its members, a failure to provide information fully and promptly undermines NASD's ability to carry out its regulatory mandate.") (citation omitted); 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 the NASD effectively to conduct its investigations, and emphasizing that NASD members and associated persons

must fully cooperate with requests for information). Here, although Respondent received valid constructive notice of the Staff's requests, he failed to respond to them. See David I. Cassuto, Exchange Act Release No. 48,087, 2003 SEC LEXIS 1496, at *9 (June 25, 2003). Respondent thereby violated Procedural Rule 8210 and Conduct Rule 2110.

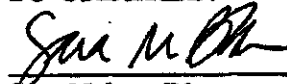
V. Sanctions

For filing false information on a Form U-4, the NASD Sanction Guidelines recommend a fine of \$2,500 to \$50,000 and, in egregious cases, a suspension of up to two years or a bar. NASD Sanction Guidelines ("Guidelines") at 73-74 (2005 ed.). In this case, Respondent's conduct was egregious, as it involved a failure to disclose a statutory disqualification event, and also likely delayed a regulatory investigation or termination for cause. A bar is also standard for failure to provide requested information. Guidelines at 35. There is no evidence of any mitigating circumstances that would justify a lesser sanction in this case for either violation; therefore, Respondent is barred from associating with any NASD member in any capacity.

VI. Conclusion

For filing false and misleading information on his Form U-4, in violation of Conduct Rule 2110 and IM-1000-1, and for his failure to provide information requested by NASD, in violation of Procedural Rule 8210 and Conduct Rule 2110, Respondent is barred from associating with any NASD member in any capacity. These bars shall become effective immediately if this Decision becomes the final disciplinary action of NASD.

SO ORDERED.



Sara Nelson Bloom
Hearing Officer

Copies to: Charles Lee Williams (*via first class mail*)
Helen G. Barnhill, Esq. (*via facsimile and first class mail*)
Rory C. Flynn, Esq. (*via facsimile and first class mail*)

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COMPLAINT

Upon information and belief, Complainant alleges as follows:

1. Respondent Charles Lee Williams ("Respondent" or "Williams") was associated with Morgan Stanley DW, Inc., ("Morgan Stanley") a member of NASD, from about February 23, 2004 to May 19, 2004. On or about May 17, 2004, Respondent became registered as a General Securities Representative with Morgan Stanley.

CAUSE ONE

**NASD Conduct Rule 2110 and Membership and Registration Rule IM-1000-1, Providing
False Information on a Form U-4, by Respondent Williams**

2. Paragraph number 1, above, is realleged and incorporated herein by reference.
3. On or about February 24, 2004, Respondent completed an application for employment with Morgan Stanley. Also, on or about February 24, 2004, Respondent completed a Form U-4. Respondent had to complete the employment application and the Form U-4 in order to enter Morgan Stanley's training program in Colorado Springs, Colorado.
4. When completing the employment and Form U-4 applications, Respondent did not use his own social security number. Rather, he used the social security number of another individual

with the same first and last name. The middle name for Respondent and this other individual were different, though they both started with an "L". This other individual (referred to hereafter as "CLW") does not know Respondent and did not know (in February 2004) that Respondent was using his social security number.

5. Respondent also used an incorrect date of birth on his Form U-4 application.
6. In connection with his Form U-4 application, Respondent completed fingerprint cards on three occasions that were deemed illegible. Nevertheless, NASD ultimately permitted Respondent to be registered based on a successful FBI name check.
7. CLW does not have a criminal record. Because Respondent was using CLW's social security number, the name check was returned as clear. Respondent does have a criminal record. If he had submitted a legible fingerprint card, Morgan Stanley would have learned that Respondent was not who he claimed to be and that Respondent had a criminal record.
8. Respondent last reported to work at Morgan Stanley on or about May 19, 2004. He never completed the training program.
9. Due to the foregoing, Respondent's CRD records contain an incorrect social security number and an incorrect date of birth.
10. The conduct described in paragraphs 2 through 9 above constitutes the filing of misleading information by Respondent with NASD in connection with a Form U-4 in violation of NASD Conduct Rule 2110 and Membership and Registration Rule IM-1000-1.

CAUSE TWO

NASD Conduct Rule 2110 and Procedural Rule 8210 Failure to Provide Information by Respondent Williams

11. Paragraph numbers 1 through 10 above are realleged and incorporated herein by reference.
12. On or about August 9, 2004, NASD staff ("the staff") sent to Respondent a written request

for information concerning the matters set forth in Cause One above. This request was made pursuant to NASD Procedural Rule 8210 and was sent to Respondent by first-class and certified mail to his then most recent addresses of record with CRD: [REDACTED]

[REDACTED] ("Colorado CRD address") and [REDACTED] ("California CRD address"). The information was to be provided on or before August 23, 2004. The first class and certified letters sent to the Colorado CRD address were both returned marked "Insufficient Address." The first class and certified letters sent to the California CRD address were also returned. One was marked "No such address" and the other was marked "Undeliverable As Addressed."

13. On September 9, 2004, the staff sent Respondent a second request letter pursuant to NASD Procedural Rule 8210 via first-class and certified mail to the Colorado and California CRD addresses, which were still the most recent addresses of record with CRD. The information was to be provided on or before September 23, 2004. The first class and certified letters sent to the Colorado CRD address were both returned marked "Insufficient Address." The first class and certified letters sent to the California CRD address were returned marked "No such address."

14. On October 14, 2004, the staff sent Respondent a third request letter pursuant to NASD Procedural Rule 8210 via first-class and certified mail to the Colorado and California addresses, which were still the most recent addresses of record with CRD. The information was to be provided on or before October 28, 2004. The first class letter sent to the Colorado CRD address was returned marked "Insufficient Address" and the certified letter was returned marked "Attempted Not Known." The certified letter sent to the California CRD address was returned marked "No such address." The first class letter sent to the California

CRD address was not returned.

15. On November 5, 2004, the staff sent Respondent a fourth and final request letter pursuant to NASD Procedural Rule 8210 via certified and first class mail to the California and Colorado CRD addresses, which were still the most recent addresses of record with CRD. In addition, the staff sent a certified and first class letter to Respondent at a new address, as it had learned at that stage in the investigation, of a new address where it was possible Respondent resided.

That address was [REDACTED] The information was to be provided on or before November 19, 2004. The first class and certified letters sent to the Colorado CRD address were returned marked "Attempted Not Known." The certified letter sent to the California CRD address was returned marked "No such address." The first class letter sent to the California CRD address was not returned. The first class and certified letters sent to the Oak Valley address were both returned. One was marked "Vacant" and the other was marked "Moved Left No Address."

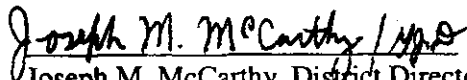
16. As a result of the foregoing, service was effected on Respondent in accordance with the requirements of Procedural Rule 8210.
17. Respondent did not respond to any of the 8210 requests letters described in paragraphs 12 through 15 above. This failure to respond or to provide information in response to the 8210 requests constitutes a violation of NASD Procedural Rule 8210 by Respondent. Such conduct is also inconsistent with high standards of commercial honor and just and equitable principles of trade and a violation of NASD Conduct Rule 2110 by Respondent.

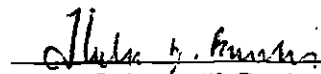
PRAAYER FOR RELIEF

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 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.

Date: February 10, 2005


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