

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT

Complainant,

v.

MARK ANTHONY POOLE
(CRD No. 3272063),

Respondent.

Disciplinary Proceeding
No. C3A050015

Hearing Officer – AWH

DEFAULT DECISION

August 5, 2005

Formerly registered person barred from association with any member firm in any capacity for failing to disclose felony charges on the Form U-4, in violation of NASD Conduct Rule 2110 and IM-1000-1, and failing to respond to information requests by NASD Staff in violation of Procedural Rule 8210 and Conduct Rule 2110.

Appearances

Helen G. Barnhill, Esq., for the Department of Enforcement.

No appearance by or for Mark Anthony Poole.

DECISION

Introduction

On March 24, 2005, the Department of Enforcement ("Enforcement") issued a Complaint in this proceeding, alleging that Mark A. Poole ("Poole" or "Respondent") failed to disclose material information on the Form U-4, in violation of NASD Rule 2110 and IM-1000-1. In addition, the Complaint alleges that Respondent failed to respond to Enforcement's request for documents in a timely manner, thereby violating NASD Rules 8210 and 2110.

Respondent did not file an Answer to the Complaint, nor did he respond to the

Second or Third Notice of Complaint, mailed to him April 29, 2005, and June 3, 2005, respectively.¹ As a result, Enforcement filed a Motion for Entry of Default Decision on July 7, 2005, to which Poole did not respond. Accordingly, pursuant to Procedural Rules 9215(f) and 9269, the Motion will be granted, and the allegations of the Complaint, which is attached to this Decision, will be treated as admitted.

Findings of Fact

Respondent

Poole was associated with member firm, SunAmerica Securities, Inc. ("SunAmerica"), from April 16, 2004, through July 12, 2004. Poole is not currently associated with a member firm.

Failure to Disclose Felony Charge on Form U-4

In or about August 1994, Poole was charged with "sexual abuse in the 1st degree," a Class D felony, in violation of Section 130.65 of New York Penal Law. Poole pled guilty to the lesser charge of unlawful imprisonment and received three years probation. On or about April 5, 2004, Respondent became associated with SunAmerica and completed a U-4 registration form.² In response to question 14A(1)(b) of the Form, which asks whether the applicant has ever been charged with a felony, Poole marked that he had not.³

Failure to Provide Information

In connection with an investigation into Respondent's U-4 filing, NASD staff sent

¹ The Third Notice of Complaint was issued when Enforcement became aware of an alternative mailing address for Respondent, other than that reflected in his CRD. In order to accommodate the additional time required to effectuate proper service, Enforcement requested, and was granted, an extension of time to file a Motion for Entry of Default Decision.

² Complainant's Exhibit 1.

³ *Id.* at p. 8

Respondent a written request for information and documents on or about September 24, 2004.⁴ The request was made pursuant to NASD Rule 8210 and was mailed first class and certified mail to Respondent's most recent address of record in the CRD. In response to NASD's written request, Poole called the staff on or about September 30 to ask for additional time to obtain documents.⁵ Poole did not respond in writing, nor did he provide the requested documentation. On October 15, 2004, NASD staff sent Respondent a second request letter, pursuant to NASD Procedural Rule 8210. The information and documents were to be provided by October 29, 2004. Respondent failed to respond at all to the October 15 letter.

Service of the Complaint

On March 24, 2005, Enforcement served the Complaint and Notice of Complaint on Poole at the most recent residential address reflected in the Central Registration Depository via first class and certified mail.⁶ The first class mailing was not returned. The certified mailing was returned marked "Refused."

A Second Notice of Complaint was mailed to Respondent's CRD address⁷ via first class and certified mail, on April 29, 2005.⁸ Again, the certified letter was returned marked "Refused" with the notation: "notify sender of new address, Poole, [REDACTED] [REDACTED]" The first class letter was not returned.

On June 3, 2005, Enforcement served a Third Notice of Complaint on Respondent at both the CRD address and the new address. Again, Poole failed to respond.

⁴ Declaration at ¶16.

⁵ *Id.* at ¶17.

⁶ CRD lists Poole's address as [REDACTED]. Enforcement mistakenly mailed the original Complaint to [REDACTED] but the error was corrected on subsequent correspondence. Declaration at ¶ 9.

⁷ The Second Notice was mailed to the correct address.

⁸ Declaration at ¶18.

Discussion and Conclusions

Jurisdiction

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

Respondent was employed by a member firm, SunAmerica Securities, from April 16, 2004, through July 12, 2004. The NASD staff mailed its written requests for information to Respondent on or about September 24, 2004, and the Complaint was filed March 24, 2005, each within the period of retained jurisdiction. The Complaint is based on misconduct that occurred while Poole was associated with SunAmerica. Therefore, NASD has jurisdiction over this proceeding.

Respondent's Default

Enforcement properly served the Complaint on Poole. The Complaint was mailed to Respondent's address on file with CRD at least twice.⁹ In addition, when Enforcement became aware that the address for Respondent on file with CRD was potentially out of date, another Complaint and Notice of Complaint were mailed to the forwarding address. Each mailing was made via first class and certified mail. Pursuant to Procedural Rule 9134, the mailings provided constructive notice of this proceeding. Because Poole failed

⁹ After realizing that the initial Complaint and Notice of Complaint had been improperly addressed [REDACTED], Enforcement mailed two subsequent notices to the correct address.

to respond to the Complaint, Procedural Rules 9215(f) and 9269 authorize the entry of a default decision against him. Accordingly, the allegations in the Complaint are deemed admitted.

Failure to Disclose Felony Charges on Form U-4

The Form U-4 “serves as a vital screening device for hiring firms and the NASD against individuals with ‘suspect history.’”¹⁰ Truthful responses are integral to NASD’s regulatory function and its goal of ensuring market integrity. Omissions and inaccuracies in registration documents undermine the efficacy of industry self-regulation.¹¹

Accordingly, failure to disclose felony charges on a Form U-4 is a breach of Membership and Registration Rule IM-1000-1, which prohibits the filing of misleading or inaccurate registration documents. Such a failure also contravenes the just and equitable principles of trade required by NASD Conduct Rule 2110.¹²

Here, Respondent was charged with felony sexual assault in 1994. Such information would be significant to firms evaluating an applicant’s suitability to become a registered securities professional, and is therefore material information. Question 14A(1)(b) of the Form U-4 specifically asks whether the applicant has ever been charged with a felony, to which Respondent answered “no.” Answering “no” to the question constitutes a failure to disclose material information on the Form U-4 in violation of NASD Conduct Rule 2110 and IM-1000-1.

¹⁰ *Dist. Bus. Conduct Comm. V. Bernadette Jones*, 1998 NASD Discip. LEXIS 60 at *9 (NAC Aug. 7, 1998).

¹¹ *See Dep’t of Enforcement v. Knight*, 2003 NASD Discip. LEXIS 27 (OHO June 5, 2003), *aff’d* 2004 NASD Discip. LEXIS 5 (NAC Apr. 27, 2004).

¹² *Id.*; *Dep’t of Enforcement v. Gray*, 2003 NASD Discip. LEXIS 52 (OHO Nov. 14, 2003); *See Dist. Bus. Conduct Comm. V. Prewitt*, 1998 NASD Discip. LEXIS 37, at **5, 7 (NAC Aug. 17, 1998) finding that an associated person violated Rule 2110 by providing false information on his Form U-4; *see also Thomas R Alton*, Exchange Act Rel. No. 36058, 1995 SEC LEXIS 1975, at *4 (Aug. 4, 1995) (stating that a material misrepresentation on a Form U-4 is a serious offense that is inconsistent with the just and equitable principals of trade which NASD members must uphold).

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 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.¹³ When an individual fails to respond to information requests, NASD's ability to perform its regulatory responsibilities is subverted.¹⁴ A violation of Procedural Rule 8210 is also a violation of Conduct Rule 2110.¹⁵

Here, pursuant to Procedural Rule 8210(d), the mailings sent to Poole's CRD address provide constructive notice of the Staff's request for information. Further, the certified mailing receipt was returned to the staff with a notation that it had been received by "Mark Poole."¹⁶ Combined with Respondent's subsequent phone call to the Staff, requesting additional time to respond, the evidence demonstrates that Respondent received actual notice of the request. Accordingly, Respondent's failure to respond to those requests for information violated Procedural Rule 8210 and Conduct Rule 2110.

Sanctions

For filing a false or misleading Form U-4, the NASD Sanction Guidelines recommend a range of fines and suspension, or, in egregious cases, a longer suspension

¹³ 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 to effectively 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."); *aff'd* 2004 NASD Discip. LEXIS 7 (NAC May 11, 2004).

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

¹⁵ *Dep't of Enforcement v. Baxter*, No. C07990016, 2000 NASD Discip. LEXIS 5, at *25 (NAC, Apr. 19, 2000).

¹⁶ Declaration at ¶16.

or a bar.¹⁷ For failing to respond to requests for information, NASD Sanction Guidelines provide that a bar is the standard sanction where the individual did not respond in any manner, and suspension for up to two years where mitigation exists.¹⁸

Poole's conduct in omitting the felony charge of sexual assault, despite the clear language of the question was egregious and unmitigated. Despite the passage of roughly ten years between the criminal proceeding and Respondent filing the U-4, it is inconceivable that he would have forgotten such a matter. The fact that Respondent pled guilty to a lesser charge in order to avoid felony prosecution can only have served to memorialize the entire proceeding for Poole. Moreover, such information was clearly material to NASD's consideration of Poole's application.

In addition, Poole's refusal to respond to NASD's requests for information was inexcusable. His phone request for additional time to respond does not mitigate his failure to respond. He was granted the additional time, but failed to provide the requested information.

In light of Respondent's clear violations of NASD Rules 8210, 2110 and IM-1000-1 and the absence of any mitigating circumstances, no sanction short of a bar is appropriate. Accordingly, Poole will be barred in all capacities from association with any NASD member firm for each violation.

Conclusion

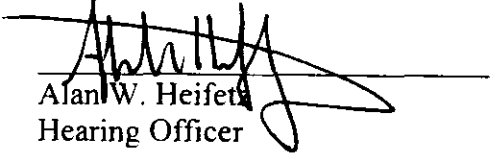
Mark Anthony Poole is barred from association with any NASD member firm in any capacity for failing to disclose his criminal history on a Form U-4 in violation of Conduct Rule 2110 and IM-1000-1, and for failing to respond to Staff information

¹⁷ NASD SANCTION GUIDELINES, pp. 75-76 (2004).

¹⁸ *Id.* at 37.

requests, in violation of Procedural Rule 8210 and Conduct Rule 2110. The bars shall become effective immediately if this Decision becomes the final disciplinary action of NASD.

SO ORDERED.



Alan W. Heifetz
Hearing Officer

Copies to:

Via First Class Mail & Overnight Courier

Mark Anthony Poole

Via First Class & Electronic Mail

Helen G. Barnhill, Esq.

Rory C. Flynn, Esq.

**NASD
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

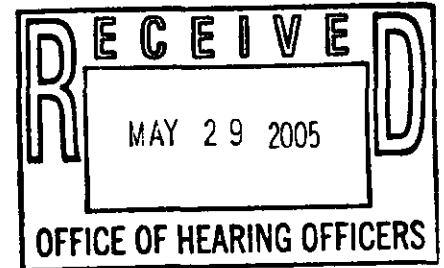
Mark Anthony Poole
CRD No. 3272063

Respondent.

Disciplinary Proceeding
No. C3A050015

Hearing Officer:

COMPLAINT



Upon information and belief, Complainant alleges as follows:

1. Respondent Mark Anthony Poole ("Respondent" or "Poole") was previously employed by a member firm, SunAmerica Securities, Inc. ("SunAmerica"), from April 16, 2004 through July 12, 2004. Poole is not currently associated with a member firm; however, he was associated at the time of the violations alleged herein and his most recent association terminated within the past two years. Therefore, NASD has jurisdiction to issue this Complaint pursuant to Article V, Section 4 of its By-Laws.

CAUSE ONE OF COMPLAINT

NASD Conduct Rule 2110 and Membership and Registration Rule IM-1000-1, Failure to Disclose Criminal Action, by Respondent Poole

2. Paragraph number 1 above is realleged and incorporated herein by reference.
3. In or about August 1994, Poole was charged with "sexual abuse in the 1st degree" in violation of Section 130.65 of New York Penal Law, a Class D felony in the Town Court of the Town of Harrison in the County of Westchester, New York.
4. On December 16, 1994, a disposition was rendered in the case whereby Poole pled guilty to

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the lesser charge of unlawful imprisonment and he received three years probation.

5. On or about April 5, 2004, Poole associated with SunAmerica and completed a Uniform Application for Securities Registration or Transfer ("Form U-4"). Poole answered "no" to Question 14A(1)(b) of the Form U-4, which asks if the applicant has ever been charged with any felony. By answering "no," Poole failed to disclose the felony charge described in paragraph 3, above.
6. The undisclosed information alleged in paragraph 3, above, was material to the consideration of Respondent's application by NASD.
7. The conduct described in paragraphs 3 through 5 above constitutes a failure to disclose material information on the Form U-4 in violation of NASD Conduct Rule 2110 and IM-1000-1 by Respondent.

CAUSE TWO OF COMPLAINT

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

8. Paragraph numbers 1 through 7 above are realleged and incorporated herein by reference.
9. On or about September 24, 2004, NASD staff sent to Respondent a written request for information and documents concerning the matters set forth in Cause One above ("the September letter"). This request was made pursuant to NASD Procedural Rule 8210 and was sent to Respondent by first-class and certified mail to his most recent address of record with CRD. The information was to be provided on or before October 8, 2004. The certified mailing receipt was returned to the staff with a notation that it was received by "Mark Poole", thereby confirming delivery of the September letter. The first-class mailing was not returned.
10. Poole called the staff on or about September 30, 2004 and explained that he would need

more time to obtain documents requested by the staff. Poole also provided an oral explanation for failing to disclose the felony charge on his Form U-4. The staff informed Poole that he still needed to provide the documents requested in the September letter and that he would need to provide all information he had conveyed orally, in writing. Nevertheless, Poole did not respond in writing to the September letter. Nor did he provide the requested documentation.

11. On October 15, 2004, NASD staff sent Poole a second request letter via first class and certified mail pursuant to Procedural Rule 8210, again requesting the same documents and information requested in the September letter. The information and documents were to be provided by October 29, 2004. The certified letter was returned, marked "Unclaimed." The letter sent via first class mail was not returned.
12. Poole failed to provide the requested information and documentation requested in the October 15, 2004 letter.
13. The failure to provide information and documentation in response to the 8210 requests described above in paragraphs 9 through 11, 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.

PRAYER FOR RELIEF

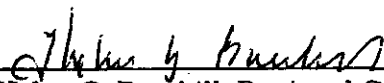
WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein:
- B. An order imposing sanctions upon the Respondent in accordance with NASD Rule 8310:
- C. A finding that the undisclosed information was material:

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

Date: March 24, 2005


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