

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT

Complainant,

v.

CHRISTOPHER GADDY
(CRD No. 4872241),

Respondent.

Disciplinary Proceeding
No. C3A050038

Hearing Officer – SNB

DEFAULT DECISION

November 30, 2005

Respondent is barred from associating with any NASD member in any capacity for failing to provide requested information, in violation of Rules 8210 and 2110. In light of the bar, no additional sanctions are imposed for Respondent's failure to disclose his criminal history on his Form U-4, in violation of Rule 2110.

Appearances

Jacqueline D. Whelan, Esq. Regional Counsel, NASD, San Francisco, CA, and Rory C. Flynn, Esq., Washington, DC, of Counsel, for the Department of Enforcement.

No appearance by Respondent.

DECISION

I. Background

On July 8, 2005, the Department of Enforcement ("Enforcement") filed a two-cause Complaint in this proceeding, attached to this Decision as Exhibit A. The Complaint alleges that Respondent Christopher E. Gaddy ("Respondent") violated NASD Conduct Rule 2110 by willfully failing to disclose his criminal history on a Uniform Application for Securities Registration or Transfer ("Form U-4"). The Complaint also alleges that Respondent violated NASD Procedural Rule 8210 and Conduct Rule 2110 by failing to respond to NASD Staff

requests for information. Respondent did not file an Answer to the Complaint. On September 30, 2005, Enforcement filed a Motion for Entry of Default Decision, supported by the declaration of Jacqueline D. Whelan, Esq. and four exhibits. Respondent did not reply to the Motion. For the reasons set forth below, the Motion is granted.¹

II. Respondent's Default

Enforcement sent the Complaint and Notice of Complaint to Respondent on July 5, 2005, by first class and certified mail to his last known residential address listed in the Central Registration Depository (the "CRD address"). Respondent did not file an Answer to the Complaint. In the same manner, Enforcement sent the Complaint and Second Notice of Complaint to the same address on August 4, 2005. Respondent did not file an Answer to the Complaint.

Enforcement complied with Procedural Rule 9134(b)(1) by mailing the Complaint and Notices of Complaint to Respondent's CRD address, thereby giving Respondent constructive notice of this proceeding. By failing to file an Answer, Respondent defaulted. Pursuant to Procedural Rules 9215(f) and 9269(a)(2), the Hearing Officer will deem the allegations in the Complaint admitted.

III. Jurisdiction

Respondent became associated with NASD member Intersecurities, Inc. on October 7, 2004, when he submitted a Form U-4 to NASD. Respondent was associated with Intersecurities until his termination on November 16, 2004, for the conduct charged in the Complaint. He has not been associated or registered with NASD since that time.

Although Respondent is not currently associated with a member firm, NASD has

¹ 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.

jurisdiction to bring this proceeding, pursuant to Art. V, § 4 of NASD's By-Laws, because (1) the Complaint charges Respondent with misconduct while he was associated and with failing to comply with requests for information made during the two-year period following termination of his last association, and (2) the Complaint was filed within that two-year period.

IV. Violations

A. Failure to Disclose Criminal History on Form U-4

The Complaint alleges that Respondent willfully failed to disclose on his Form U-4 three charges of misdemeanor theft, and his subsequent guilty pleas to two of the counts.

On March 7, 2003, Respondent was charged with three counts of theft. The stolen property was identified as Target Stores Gift cards with a value of less than \$250 each. On October 1, 2003, Respondent entered a guilty plea to two counts of theft. The plea was entered in conjunction with a deferred adjudication plea agreement. Pursuant to the agreement, entry of a judgment of conviction and imposition of sentence were suspended pending completion of probation and other conditions, and on November 12, 2004, the guilty plea was withdrawn and the charges were dismissed.

In October 2004, following his guilty plea and prior to the dismissal of the charges, Respondent completed a Form U-4. In connection with this, Respondent answered "no" to question 14B(1)(a), which asked if Respondent had ever "been convicted of or pled guilty or nolo contendere ("no contest") in a domestic...court, to a misdemeanor involving...wrongful taking of property..." Respondent also answered "no" to question 14B(1)(b) which asked if Respondent had ever been "charged with a misdemeanor specified in 14B(1)(a)."

The charges had not been dismissed nor the guilty plea withdrawn when Respondent completed the Form U-4. Therefore, Respondent was required to answer "yes" to questions 14B(1)(a) and (b).

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-4, disclosing, among other things, whether they have been charged with, pled guilty to, or been convicted of, any misdemeanor involving, among other things, the wrongful taking of property. "The accuracy of disclosures on a Form U-4 "is critical to the effectiveness" of a self-regulatory organization's ability to screen and monitor the professionals within the securities industry."²

Therefore, the allegations of the Complaint, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent violated Rule 2110 by failing to disclose his criminal record on his Form U-4.³

B. Failure to Respond

The Complaint also alleges that on December 7, 2004, and January 4, 2005, NASD Staff sent Respondent requests for information. The Staff sent these requests to Respondent at his CRD address by first class and certified mail, pursuant to Procedural Rule 8210, and therefore Respondent is deemed to have received them. Respondent did not respond.

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

² *Dep't of Enforcement v. Lu*, No. C9A020052, 2004 NASD Discip. LEXIS 8, at *32 (NAC May 13, 2004) (quoting *Rosario R. Ruggiero*, 52 S.E.C. 725-728 (1996)), *aff'd*, Exchange Act Release No. 51,047, 2005 SEC LEXIS 117 (Jan. 14, 2005), *petition for review filed*, No. 05-8006 (D.C. Cir. Mar. 14, 2005). See also *Daniel Richard Howard*, Exchange Act Release No. 46,269, 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.")

³ Enforcement further alleges that Respondent's failure to disclose his criminal record on his Form U-4 was willful, which would subject Respondent to "disqualification" under Article III, Section 4(f) of NASD's By-Laws. However, given Respondent's bar for violating of Rule 8210, the Hearing Officer finds it unnecessary to determine whether Respondent's failure was willful.

subpoena power.⁴ Here, although Respondent received valid constructive notice of the Staff's requests, he failed to respond to them.⁵ Respondent thereby violated Rules 8210 and 2110.

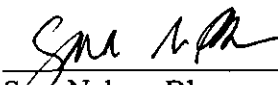
V. Sanctions

For failure to provide requested information, a bar is standard.⁶ There is no evidence of any mitigating circumstances that would justify a lesser sanction in this case for the violation. Therefore, Respondent is barred from associating with any NASD member in any capacity. In light of the bar, no further sanctions are imposed for Respondent's U-4 violation.

VI. Conclusion

For Respondent's failure to provide requested information, in violation of Rules 8210 and 2110, Respondent is barred from associating with any NASD member in any capacity. In light of the bar, no further sanctions are imposed for Respondent's U-4 violation. The bar shall become effective immediately if this Decision becomes the final disciplinary action of NASD.

SO ORDERED.


Sara Nelson Bloom
Hearing Officer

Dated: November 30, 2005

cc: Christopher Gaddy (*via certified and first class mail*)
Jacqueline D. Whelan, Esq. (*via overnight and first class mail*)
Rory C. Flynn, Esq. (*via first class mail*)

⁴ See, e.g., *Dep't of Enforcement v. Valentino*, No. FPI010004, 2003 NASD Discip. LEXIS 15, at *12 (NAC May 21, 2003) ("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), *aff'd*, 2004 SEC LEXIS 330 (Feb. 13, 2004); *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).

⁵ See *David I. Cassuto*, Exchange Act Release No. 48,087, 2003 SEC LEXIS 1496, at *9 (June 25, 2003).

⁶ *Id.* at 35.