

## NASD OFFICE OF HEARING OFFICERS

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DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

TYRONE V. BURROUGHS  
(CRD No. 2048487),

Respondent.

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Disciplinary Proceeding  
No. E072004082401

Hearing Officer – Andrew H. Perkins

**DEFAULT DECISION**

August 28, 2006

**Respondent is barred from associating with any member firm in any capacity for engaging in outside business activities, in violation of NASD Conduct Rules 3030 and 2110, and for giving false written statements to NASD staff, in violation of Procedural Rule 8210 and Conduct Rule 2110.**

### Appearances

William Brice La Hue, Regional Counsel, Atlanta, GA (Rory C. Flynn, Chief Litigation Counsel, Washington, D.C., Of Counsel) for the Department of Enforcement.

No appearance by or on behalf of Tyrone V. Burroughs.

### DECISION

#### I. Introduction

On April 13, 2006, the Department of Enforcement ("Enforcement") filed the attached Complaint against the Respondent, Tyrone V. Burroughs ("Burroughs" or the "Respondent"). The Complaint charges the Respondent with engaging in outside business activities without first providing his firm with written notice of his activities, in violation of NASD Conduct Rules 3030 and 2110, and with providing NASD staff with false or inaccurate written statements, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

The Respondent did not answer or otherwise respond to the Complaint. Consequently, on July 6, 2006, Enforcement filed a Motion for Entry of Default Decision, supported by the Affidavit of William B. La Hue ("La Hue Aff.") and four exhibits. Burroughs did not reply to the motion. Accordingly, for the reasons set forth below, the Hearing Officer grants Enforcement's motion.<sup>1</sup>

## **II. Respondent's Default**

On April 11, 2006, Enforcement served the Complaint and Notice of Complaint on the Respondent by certified and first-class mail sent to his residential address shown in the Central Registration Depository (the "CRD address").<sup>2</sup> The Respondent did not file an Answer. Thus, on May 10, 2006, Enforcement served the Complaint and Second Notice of Complaint on the Respondent by certified and first-class mail sent to the Respondent at his CRD address.<sup>3</sup> The Respondent did not file an Answer in response to the Second Notice of Complaint.<sup>4</sup>

The evidence shows that Enforcement properly served the Respondent with the Complaint and Notices of Complaint by mailing them to his CRD address by certified mail.<sup>5</sup> Thus, the Respondent received valid constructive notice of this proceeding and defaulted by failing to answer the Complaint. Accordingly, pursuant to Procedural Rules 9215(f) and 9269(a)(2), the Hearing Officer finds the Respondent in default and deems the allegations in the attached Complaint admitted.

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<sup>1</sup> The factual findings in this Default Decision are based on the attached Complaint, the allegations of which are deemed admitted pursuant to Procedural Rule 9215(f), and on the affidavit and exhibits Enforcement filed with the Motion.

<sup>2</sup> La Hue Aff. ¶ 7.

<sup>3</sup> *Id.* ¶ 8.

<sup>4</sup> *Id.* ¶ 10.

<sup>5</sup> *Department of Enforcement v. Reynolds Verdiner*, No. CAF020004, NASD 2003 NASD Discip. LEXIS 42, at \*5 (N.A.C. Dec. 9, 2003) (NASD Procedural Rule 9134(b)(1) allows for constructive notice by mailing a complaint to the respondent's most recent CRD address) quoting *Lubeck v. SEC*, 1998 U.S. App. LEXIS 18849, at \*20 (9<sup>th</sup> Cir. Aug. 12, 1998).

### III. Findings of Fact and Conclusions of Law

#### A. Jurisdiction

Burroughs entered the securities industry in March 1990.<sup>6</sup> From June 2001 until October 2004, he was registered as a General Securities Representative with Wachovia Securities, LLC ("Wachovia"), an NASD member firm.<sup>7</sup> Thereafter, the Respondent was registered as a General Securities Representative with Invest Financial Corp., another member firm, from December 2004 until June 2005.<sup>8</sup> The Respondent has not been associated with any NASD member firm since his last registration terminated on June 17, 2005.<sup>9</sup>

Article V, Section 4(a) of the NASD By-Laws provides for a two-year period of retained jurisdiction over formerly registered persons who are no longer associated with any member firm. During this period of retained jurisdiction, the NASD may file a complaint against such persons based upon conduct that occurred before their registrations terminated or for failure to respond to requests for information issued by NASD staff during the period of retained jurisdiction. The two-year period of retained jurisdiction runs from the effective date of termination of registration. Here, the alleged misconduct occurred while Burroughs was registered with Wachovia, and Enforcement filed the Complaint on April 13, 2006, within two years of the date his registration terminated. Accordingly, the Hearing Officer finds that NASD has jurisdiction of this proceeding.

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<sup>6</sup> Compl. ¶ 1.

<sup>7</sup> CX-2 at 6.

<sup>8</sup> *Id.* at 3.

<sup>9</sup> Compl. ¶ 1.

## **B. Outside Business Activity**

The First Cause of the Complaint alleges that, on May 2, 2003, Burroughs entered into an Agent Agreement with Allianz Life Insurance Company of North America ("Allianz").<sup>10</sup> Pursuant to the Agent Agreement, in 2003 and 2004, the Respondent sold various Allianz products and received commissions on those sales that totaled \$309,650.83.<sup>11</sup> The Respondent failed to give Wachovia advance written notice of his association with Allianz and the commissions it paid him.<sup>12</sup>

NASD Conduct Rule 3030 provides that no person registered with a member "shall be employed by, or accept compensation from, another person as a result of any business activity ... outside the scope of his relationship with his employer firm, unless he has provided prompt written notice to the member ... in the form required by the member." The purpose of Conduct Rule 3030 is to provide member firms with an opportunity to raise any objections to such activities at a meaningful time and to exercise appropriate supervision as necessary under applicable law.<sup>13</sup> Conduct Rule 3030 requires disclosure of all outside business activity, not just securities-related activity.<sup>14</sup> Based on the foregoing, the Hearing Officer finds that Burroughs violated NASD Conduct Rules 3030 and 2110.

## **C. False Statements and Impeding NASD Investigation**

The Second Cause of the Complaint alleges that on December 22, 2004, NASD staff sent the Respondent a request for information pursuant to Procedural Rule 8210 to obtain information

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<sup>10</sup> *Id.* ¶ 3.

<sup>11</sup> *Id.* ¶ 4.

<sup>12</sup> *Id.* ¶ 5.

<sup>13</sup> *Proposed Rule Change by NASD Relating to Outside Business Activities of Associated Persons*, Exchange Act Release No. 26,063, 1988 SEC LEXIS 1841 (Sept. 6, 1988), adopted at Exchange Act Release No. 26,178, 1988 SEC LEXIS 2032 (Oct. 13, 1988).

<sup>14</sup> *District Bus. Conduct Comm. v. Cruz*, No. C8A930048, 1997 NASD Discip. LEXIS 62, at \*96 (N.B.C.C. Oct. 31, 1997).

about his association with Allianz. On January 12, 2005, the Respondent falsely responded that he had not sold any Allianz products or received any commissions from Allianz.<sup>15</sup> When NASD staff confronted him with evidence of the sales and compensation during an on-the-record interview,<sup>16</sup> the Respondent admitted that he had conducted sales and received compensation from Allianz.<sup>17</sup>

Based on the foregoing allegations, the Hearing Officer finds that Burroughs violated Procedural Rule 8210 and Conduct Rule 2110, as alleged in the Second Cause of the Complaint.

#### **IV. Sanctions**

The NASD Sanction Guidelines governing outside business activities recommend a fine of \$2,500 to \$50,000 and a suspension of up to 30 business days where there are no aggravating circumstances.<sup>18</sup> When the outside business activities involve aggravating conduct, the Guidelines provide for a longer suspension of up to one year.<sup>19</sup> Finally, in egregious cases, the Guidelines provide for a bar.<sup>20</sup>

NASD adopted Rule 3030 to prevent harm to the investing public and to limit member firms' entanglements in legal difficulties that can result from unsupervised outside business activities, which may be unrelated to the securities industry.<sup>21</sup> In light of these important protective goals, engaging in unreported outside business activities is considered a serious

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<sup>15</sup> Compl. ¶ 14.

<sup>16</sup> Respondent participated in two on-the-record interviews with NASD staff. The first took place on April 25, 2005, and the second on July 28, 2005. (La Hue Aff. ¶ 20).

<sup>17</sup> La Hue Aff. ¶¶ 20, 21.

<sup>18</sup> NASD Sanction Guidelines 14 (2006 ed.).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> See Notice to Members 88-86, 1988 NASD LEXIS 207 (Nov. 1988). See also, e.g., *District Bus. Conduct Comm. v. Micah C. Douglas*, Nos. C06920046 and C06930068, 1995 NASD Discip. LEXIS 217, at \*18 (N.A.C. Sept. 19, 1995). Rule 3030 requires disclosure of all outside business activity, not just securities-related activity. (*District Bus. Conduct Comm. v. Cruz*, No. C8A930048, 1997 NASD Discip. LEXIS 62, at \*96 (N.B.C.C. Oct. 31, 1997)).

violation. Viewed with these protective goals in mind, the Hearing Officer concludes that this case involved an egregious violation. The Respondent engaged in the outside activities for an extended period (two years) and he in turn received substantial selling compensation. Accordingly, the Hearing Officer concludes that a bar is the appropriate sanction for this violation.

The applicable NASD Sanction Guideline for failing to respond truthfully to a request for information made pursuant to NASD Procedural Rule 8210 suggests that a bar should be standard where no mitigating circumstances exist.<sup>22</sup> "[T]here is no distinction between failing to provide information and providing untruthful information, and ... any sanctions which [do] not include a bar would fail to achieve the remedial purposes of general and special deterrence, whose importance the Securities and Exchange Commission ... has repeatedly emphasized."<sup>23</sup> In this case, the Hearing Officer finds that the Respondent responded falsely and the record presents no mitigating factors that warrant imposition of a sanction less than a bar. Accordingly, the Hearing Office will bar the Respondent for violating Procedural Rule 8210 and Conduct Rule 2110, as alleged in the Second Cause of the Complaint.

## V. Order

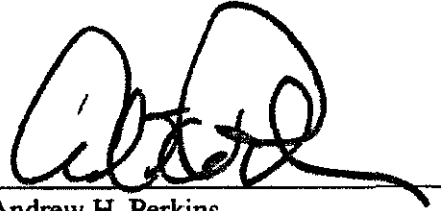
Tyrone V. Burroughs is barred from associating with any member firm in any capacity for engaging in outside business activities, in violation of NASD Conduct Rules 3030 and 2110; and for giving false written statements to NASD staff, in violation of Procedural Rule 8210 and Conduct Rule 2110.

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<sup>22</sup> *Sanction Guidelines* at 35.

<sup>23</sup> *District Bus. Conduct Comm. v. Mark A. Shear*, 1997 NASD Discip. LEXIS 24 at \*10 (N.B.C.C. Jan. 24, 1997) (citation omitted).

The bars shall become effective immediately if this Default Decision becomes the final disciplinary action of NASD.

A handwritten signature in black ink, appearing to read 'A. Perkins', written over a horizontal line.

Andrew H. Perkins  
Hearing Officer

**Copies to:**

Tyrone V. Burroughs (by FedEx overnight delivery and first-class mail)  
William B. La Hue, Esq. (by electronic and first-class mail)  
Rory C. Flynn, Esq. (by electronic and first-class mail)  
Mark P. Dauer, Esq. (by electronic and first-class mail)

**NASD OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

TYRONE V. BURROUGHS  
(CRD No. 2048487)

Respondent.

Disciplinary Proceeding  
No. E072004082401

Hearing Officer:

**COMPLAINT**

Upon information and belief, Complainant alleges as follows:

1. Respondent Tyrone V. Burroughs ("Burroughs") entered the securities industry in March 1990, when he was registered as a general securities representative with an NASD member firm. He was employed by Wachovia Securities, LLC ("Wachovia") from May 2001 until October 2004. Thereafter, he was employed by another member firm and was last registered in June 2005. Burroughs is not currently employed by a member but remains subject to the jurisdiction of the NASD pursuant to Article V, Sec. 4 of the NASD Bylaws.

**FOR A FIRST CAUSE OF COMPLAINT**

**NASD Conduct Rules 2110 and 3030**

**(Outside Business Activity)**

2. The allegations set forth in paragraph 1 above, are hereby realleged and incorporated herein by reference.

3. On or about May 2, 2003, while employed as a registered representative with Wachovia, Burroughs entered into an Agent Agreement with Allianz Life Insurance Company of North America ("Allianz").
4. Pursuant to his agency agreement with Allianz, Burroughs sold various Allianz products in 2003 and 2004. As a result, he received commissions from Allianz in the amounts of \$136,722.51 and \$172,928.32, respectively.
5. Burroughs failed to give Wachovia prompt written notification of his association with Allianz, its payment of compensation and his receipt thereof.
6. Such acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rules 2110 and 3030 by Respondent Burroughs.

**FOR A SECOND CAUSE OF COMPLAINT**

**NASD Procedural Rule 8210 and Conduct Rule 2110**

**(False Statements and Impeding NASD Investigation)**

7. The allegations set forth in paragraphs 1 through 6 above, are hereby realleged and incorporated herein by reference.
8. In October 2004, the Atlanta District office ("Staff") received a Uniform Termination Notice for Securities Industry Registration ("Form U-5") from Wachovia regarding Burroughs.
9. The Form U-5 concerning Burroughs alleged that he had engaged in undisclosed outside business activities and/or private securities transactions without approval from Wachovia.
10. The Staff opened an investigation into the allegations disclosed on the Form U-5.
11. During the course of its investigation the Staff forwarded a written request, pursuant to Procedural Rule 8210, to Burroughs dated December 22, 2004.

12. The December 22, 2004 request included, among other questions, a question asking Burroughs if he had sold any Allianz products while he was employed by Wachovia.
13. The December 22, 2004 request further included a question asking Burroughs if he received any compensation from Allianz while he was affiliated with Wachovia.
14. In a written response dated January 12, 2005, Burroughs specifically and unequivocally answered "No," without any elaboration or explanation, to the questions regarding his sales of Allianz products and compensation received from Allianz, as described in paragraphs 12 and 13, above.
15. Such answers were false and inaccurate in that he sold Allianz products while he was employed by Wachovia and received compensation from Allianz while he was affiliated with and employed by Wachovia.
16. Respondent Burroughs knowingly and intentionally gave false answers or did so in reckless disregard for whether the responses were true or false in an effort to mislead the NASD and impede its investigation and knew or should have known that that his false answers would impede the NASD's investigation.
17. Each such false statement constitutes a separate and distinct violation of NASD Procedural Rule 8210 and Conduct Rule 2110 by Respondent Burroughs.

#### **PRAYER FOR RELIEF**

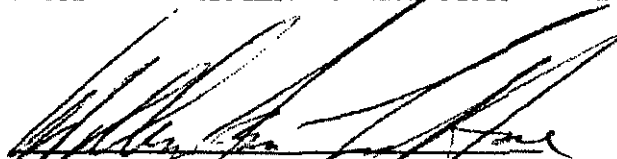
**WHEREFORE,** Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Respondent Burroughs committed the violations charged and alleged herein;

- B. An order imposing sanctions upon Respondent Burroughs in accordance with NASD Rule 8310;
- C. An order requiring Respondent Burroughs 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 in accordance with NASD Rule 8330; and
- E. An order imposing any other fitting sanction.

Date: 4/11/06

**NASD DEPARTMENT OF ENFORCEMENT**

  
William B. La Hue, Regional Counsel  
Andrew A. Favret, Regional Chief Counsel  
NASD Department of Enforcement  
Atlanta District Office  
One Securities Centre, Suite 500  
3490 Piedmont Road, N.E.  
Atlanta, GA 30305  
(404) 239-6111; Fax No. (404) 264-1586

**NASD District Director**  
Daniel J. Stefek, Director  
NASD, Atlanta District Office  
One Securities Centre, Suite 500  
3490 Piedmont Road, N.E.  
Atlanta, GA 30305  
(404) 239-6128

**Of Counsel**  
Rory C. Flynn, Of Counsel  
NASD Department of Enforcement  
1801 K Street, N.W., Suite 800  
Washington, D.C. 20006  
(202) 974-2974; Fax No. (202) 721-8318

Roger D. Hogoboom, Of Counsel  
NASD Department of Enforcement  
370 17<sup>th</sup> Street, Suite 2900  
Denver, CO 80202  
(303) 446-3114; Fax No. (303) 620-9540