

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

STACY J. MCBEE
(CRD No. 2630337),

Respondent.

Disciplinary Proceeding
No. E072004088201

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

June 6, 2006

Respondent failed to provide written notification of securities account, in violation of NASD Conduct Rules 3050 and 2110; engaged in outside business activities without first providing his firm with written notice, in violation of NASD Conduct Rules 3030 and 2110; and failed to respond to requests for information issued by NASD staff, in violation of NASD Procedural Rule 8210 and Conduct Rule 2110. Held: For each violation the Respondent is barred from associating in any capacity with any member firm.

Appearances

William B. La Hue, Regional Counsel, Atlanta, GA, for the Department of Enforcement. Rory C. Flynn, Chief Litigation Counsel, and Roger D. Hogoboom, Deputy Chief Litigation Counsel, Of Counsel.

No appearance by or on behalf of the Respondent.

DECISION

I. Introduction

On January 18, 2006, the Department of Enforcement ("Enforcement") filed the attached Complaint against the Respondent Stacy J. McBee ("McBee" or the "Respondent"). The Complaint charges that the Respondent failed to provide written notification of securities account, in violation of NASD Conduct Rules 2110 and 3050;

engaged 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 failed to respond to requests for information from NASD staff, in violation of Procedural Rule 8210 and NASD Conduct Rule 2110.

The Respondent did not answer or otherwise respond to the Complaint. Consequently, on April 11, 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. The Respondent did not reply to the motion. Accordingly, for the reasons set forth below, the Hearing Officer grants Enforcement's motion.

II. Respondent's Default

On January 17, 2006, Enforcement served the Complaint and Notice of Complaint on the Respondent by certified and first-class mail sent to his current residential addresses shown in the Central Registration Depository (the "CRD addresses").¹ The Respondent did not file an Answer. Thus, on February 15, 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 addresses.² The Respondent did not file an Answer in response to the Second Notice of Complaint.³

The evidence shows that Enforcement properly served the Respondent with the Complaint by mailing it to his CRD addresses.⁴ 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

¹ La Hue Aff. ¶ 7.

² *Id.* ¶ 8.

³ *Id.* ¶ 10.

⁴ *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 (9th Cir. Aug. 12, 1998).

finds the Respondent in default and deems the allegations in the attached Complaint admitted.

III. Jurisdiction

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.

The record reflects that McBee was associated with VFinance Investments, Inc. ("VFinance"), an NASD member firm, from October 18, 2002, to January 20, 2004, and he was registered as General Securities Representative from October 2002 until February 13, 2004.⁵ The misconduct alleged in the Complaint occurred while McBee was registered with VFinance, and Enforcement filed the Complaint on January 18, 2006, within two years of the date his registration terminated. Accordingly, the Hearing Officer finds that NASD has jurisdiction of this proceeding.

IV. Findings of Fact and Conclusions of Law

A. Outside Securities Account

The First Cause of Complaint alleged that, on or about November 4, 2003, McBee, while registered with VFinance, opened a securities account with ACAP Financial, Inc. ("ACAP"), another NASD member firm, without disclosing that he was associated with VFinance. In addition, McBee failed to disclose to VFinance that he had opened the new account with ACAP. These allegations are sufficient to establish for purposes of this Default Decision, that Respondent violated NASD Conduct Rules 3050

⁵ Ex. 2 at 5.

and 2110. Conduct Rule 3050(c) requires an associated person “prior to opening an account or placing an initial order for the purchase or sale of securities with another member” to “notify both the employer member and the executing member, in writing, of his [] association with the other member.” According to the Complaint, McBee failed to provide notice to either firm.

B. Outside Business Activities

NASD Conduct Rule 3030 provides that no person registered with a member “shall be employed by, or accept compensation from, any other 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.⁶ Conduct Rule 3030 requires disclosure of all outside business activity, not just securities-related activity.⁷

The Second Cause of Complaint alleges that McBee entered into two consulting agreements while he was associated with VFinance. The first agreement was with 20/20 Networks, Inc. (“20/20”). McBee received 150,000 shares of 20/20 common stock for the services he provided under the 20/20 agreement. The second agreement was with MicroSignal Corporation (“MicroSignal”). McBee received 8 million shares of MicroSignal common stock for the services he provided under the MicroSignal agreement. The Second Cause of Complaint further alleges that McBee failed to provide

⁶ *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).

⁷ *District Bus. Conduct Comm. v. Cruz*, No. C8A930048, 1997 NASD Discip. LEXIS 62, at *96 (N.B.C.C. Oct. 31, 1997).

VFinance with written notice of his outside business activities or his receipt of compensation for those activities from 20/20 and MicroSignal.

Based on the foregoing, the Hearing Officer finds that McBee violated NASD Conduct Rules 3030 and 2110.

C. Failure to Respond to Requests for Information

The Third Cause of Complaint alleges that on February 24, 2005, and March 14, 2005, NASD staff sent letters to McBee, pursuant to NASD Procedural Rule 8210, requesting that he provide information related to his securities account at ACAP and his consulting agreements with 20/20 and MicroSignal. The staff sent both requests to the Respondent at his CRD addresses. The staff sent the first request by first-class mail and the second request by both certified and first-class mail. The Respondent did not respond to either request.

These allegations are sufficient to establish for purposes of this Default Decision that the Respondent failed to respond to the requests for information, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

V. Sanctions

The NASD Sanction Guidelines governing prohibited transactions by an Associated Person recommend a fine of \$1,000 to \$25,000. In addition, for egregious cases the Guidelines recommend a suspension of up to two years or a bar.⁸ Here, the aggravating circumstances surrounding McBee's establishment and use of the ACAP account warrant a bar. In opening the ACAP account, McBee falsely represented that he was employed by Ravina Capital, a company controlled by McBee and another individual. In addition, McBee deposited the shares of stock he received from the consulting agreements with 20/20 and MicroSignal in the ACAP account, thereby preventing VFinance from discovering and supervising his outside business activities.

⁸ NASD SANCTION GUIDELINES 17 (2006 ed.).

Moreover, the customer complaint against VFinance underlying this proceeding involved securities transactions involving Ravina Capital and ACAP.⁹

The 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.¹⁰ When the outside business activities involve aggravating conduct, the Guidelines provide for a longer suspension of up to one year. Finally, in egregious cases, the Guidelines provide for a bar.¹¹

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.¹² In light of these important protective goals, engaging in unreported outside business activities is considered a serious violation. Viewed with these protective goals in mind, the Hearing Officer concludes that this case involved an egregious violation because McBee's outside business activities involved providing business and financial consulting services, activities that could expose VFinance to legal claims. Thus, the Hearing Officer concludes that a bar is the appropriate sanction for this violation.

Finally, for failing to respond in any manner to NASD staff requests for information issued pursuant to Procedural Rule 8210, the Sanction Guidelines recommend the imposition of a bar unless mitigating circumstances exist to warrant a

⁹ See Ex. 1.

¹⁰ SANCTION GUIDELINES 14.

¹¹ *Id.*

¹² 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)).

lesser sanction.¹³ Here, there is no evidence of mitigating circumstances that would warrant a lesser sanction. Accordingly, McBee also will be barred for this violation.

VI. Order

Stacy J. McBee is barred from associating with any member firm in any capacity for failing to provide written notification of a securities account, in violation of NASD Conduct Rules 2110 and 3050; engaging in undisclosed outside business activities, in violation of NASD Conduct Rules 3030 and 2110; and failing to respond to requests for information from NASD staff, in violation of Procedural Rule 8210 and NASD Conduct Rule 2110. The bars shall become effective immediately if this Decision becomes the final disciplinary action of NASD.



Andrew H. Perkins
Hearing Officer

Copies to:

Stacy J. McBee (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)
Roger D. Hogoboom ((by electronic and first-class mail)

¹³ SANCTION GUIDELINES at 35.

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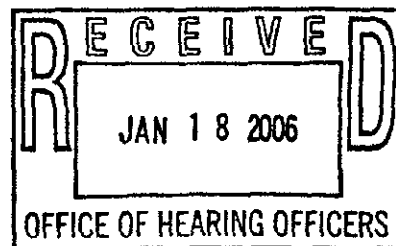
STACY J. MCBEE
(CRD No. 2630337)

Respondent.

Disciplinary Proceeding
No. E072004088201

Hearing Officer:

COMPLAINT



Upon information and belief, Complainant alleges as follows:

RESPONDENT

1. Respondent Stacy McBee ("McBee") entered the securities industry in June 1995, when he was employed by NASD member Morgan Stanley DW, Inc. ("MSDW"). In August 1995, he became registered with the NASD as a general securities representative while still employed by MSDW. McBee was employed by VFinance Investments, Inc. ("VFinance") from October 2002 until January 20, 2004. McBee 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 3050

(Outside Securities Account)

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

3. On or about November 4, 2003, while employed as a registered representative with VFinance, McBee opened a securities account with ACAP Financial, Inc. ("ACAP"), a NASD member firm based in Salt Lake City, Utah.
4. McBee failed to disclose to ACAP that he was associated with VFinance. Instead, he indicated as noted on the new account form that he was employed by Ravinia Capital, an entity he controlled with another individual.
5. McBee further failed to give VFinance written notification that he opened a securities account with ACAP and failed to notify VFinance prior to the execution of the initial transaction in his account with ACAP.
6. Such failures to disclose his association with a member and the opening of a securities account with another member constitute separate and distinct violations of NASD Conduct Rules 2110 and 3050 by Respondent McBee.

FOR A SECOND CAUSE OF COMPLAINT

NASD Conduct Rules 2110 and 3030

(Outside Business Activities)

7. The allegations set forth in paragraphs 1 through 6 above, are hereby realleged and incorporated herein by reference.
8. In or about June 2003, while employed as a registered representative with VFinance, Respondent McBee executed a consulting agreement with 20/20 Networks, Inc. ("20/20").
9. The consulting agreement with 20/20 indicates that McBee will consult with 20/20 on "matters relating to the Telecommunications industry."

10. McBee's consulting agreement with 20/20 had a term of twelve months and McBee received compensation in the form of 150,000 shares of 20/20 common stock.
11. On or about November 19, 2003, while employed as a registered representative with VFinance, Respondent McBee executed a consulting agreement with MicroSignal Corporation ("MicroSignal").
12. McBee's consulting agreement with MicroSignal indicates that he will provide "business and financial consulting with respect to technology, marketing, sales, leasing, joint-ventures, strategic alliances, corporate opportunities and defensive strategies."
13. McBee's received compensation in the form of 8 million shares of common stock from MicroSignal pursuant to his consulting agreement.
14. Both consulting agreements were outside the scope of his relationship with VFinance.
15. McBee did not give VFinance prompt written notification (on a form required by VFinance) of his outside business activities concerning 20/20 or MicroSignal or his receipt of compensation from 20/20 or MicroSignal.
16. Such outside business activities constitute separate and distinct violations of NASD Conduct Rules 2110 and 3030 by Respondent McBee.

FOR A THIRD CAUSE OF COMPLAINT

NASD Conduct Rule 2110 and Procedural Rule 8210

(Failure To Respond to NASD Request for Information)

17. The allegations contained in paragraphs 1 through 16, above, are hereby realleged and incorporated herein by reference.
18. In December 2004, the NASD Atlanta District office received a complaint from a customer of VFinance regarding another representative as wells as McBee. The NASD

Atlanta District office initiated an investigation into the activities of McBee and the other representative.

19. By letter dated February 24, 2005, sent via first class mail to McBee at his CRD addresses

[REDACTED]

[REDACTED] McBee was requested, pursuant to Procedural Rule 8210, to provide a written statement regarding his securities account with ACAP and his consulting agreements with 20/20 and MicroSignal, among other things. The February 24, 2005 letter set a deadline of March 10, 2005 for the response.

20. The letter sent to the Tennessee address was not returned. The letter sent to the Georgia address was returned indicating that it was undeliverable and could not be forwarded.
21. McBee did not submit the written statement requested by the NASD by the March 10, 2005 deadline.
22. By letter dated March 14, 2005, sent via first class and certified mail to McBee at his CRD addresses [REDACTED]
- [REDACTED] McBee was requested, pursuant to Procedural Rule 8210, to provide the same written statement requested in the February 24 letter. The March 14, 2005 letter set a deadline of March 28, 2005 for the response.
23. Again, the March 14, 2005 letter sent to the Tennessee address by first class mail was not returned. However, the letter sent by certified mail to the Tennessee address was returned indicating that was "Not Deliverable as Addressed, Unable to Forward."
24. The March 14 letter sent by first class and certified mail to the Georgia address were both returned indicating that they were undeliverable and could not be forwarded.

25. McBee failed to submit the requested written statement by March 28, 2005 and, as of the date hereon, has not submitted the requested statement.
26. Such failures to respond to the February 24, 2005 and March 14, 2005, request letters constitutes separate and distinct violations of Procedural Rule 8210 and Conduct Rule 2110 by Respondent McBee.

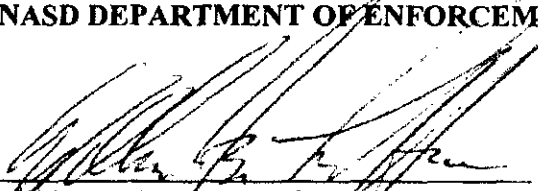
PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Respondent committed the violations alleged within this Complaint;
- B. An order imposing sanctions upon the Respondent in accordance with NASD 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 in accordance with NASD Rule 8330; and,
- E. An order imposing any other fitting sanction.

NASD DEPARTMENT OF ENFORCEMENT

Date: 1/17/06



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