

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

BLACKLAKE SECURITIES CORPORATION
(BD No. 104128),

and

WESLEY ARTHUR BENNETT, JR.
(CRD No. 2254995),

Respondents.

Disciplinary Proceeding
No. E102004005702

Hearing Officer – SNB

DEFAULT DECISION

March 14, 2007

For failing to comply with the firm's membership agreement, in violation of Rules 1017 and 2110, the individual respondent is barred, and firm respondent is expelled. The individual respondent is also barred for willfully failing to make timely Form U4 disclosures of material facts, in violation of IM-1000-1 and Rule 2110. In light of the bars and expulsion, no further sanctions are imposed for the Respondents' failure to report statistical and summary information in violation of Rule 3070.

Appearances

Paul Hare, Esq., David Jaffe, Esq., New York, NY, (Rory C. Flynn, Esq., of Counsel, Washington, DC), for the Department of Enforcement.

Wesley Arthur Bennett, Jr., representing himself and Respondent Blacklake Securities Corporation.

DECISION

I. Background

On April 18, 2006, the Department of Enforcement ("Enforcement") filed a Complaint in this proceeding, attached to this Decision as Exhibit A. The Complaint alleges that Respondents Blacklake Securities Corporation ("Blacklake") and Wesley Arthur Bennett, Jr. ("Bennett")

(collectively, “Respondents”) failed to adhere to Blacklake’s membership agreement by engaging in more than ten proprietary transactions in a calendar year, in violation of Rule 1017 and 2110, and failed to report statistical and summary information for six customer complaints, in violation of Rules 3070 and 2110. In addition, the Complaint alleges that Bennett willfully failed to timely update his Form U4, in violation of IM-1000-1 and Rule 2110. On June 6, 2006, Respondents filed an Answer.

II. Respondents’ Default

On April 17 and May 19, 2006, Enforcement sent its Complaint to Respondents at six known addresses, including the current address listed in the Central Registration Depository (the “CRD” address) for each Respondent. During the June 19, 2006, initial pre-hearing conference in this matter, Bennett stated that all correspondence should be sent to an address on Varick Street, in Jersey City, New Jersey (the “Jersey City Address”). This address was the same as the CRD address for Bennett, other than that it included an apartment number. By Order dated July 14, 2006, pursuant to Rule 9134(b)(1), the Hearing Officer waived the requirement of service at Bennett’s CRD address, provided that he was served at the Jersey City Address. Moreover, pursuant to Rule 9134(b)(2), the Order provided that Blacklake should also be served at the Jersey City Address, because Bennett represented Blacklake.

Following this Order, the Office of Hearing Officers’ certified mailings to the Jersey City Address were returned as “unclaimed.” The Hearing Officer was concerned that Respondents might have abandoned their defense of the case, so she issued an order scheduling a pre-hearing conference. That Order stated in bold: “[t]he parties are reminded that a failure to appear at the Conference, in person or through counsel or a representative, may be deemed a default.” In an abundance of caution, the Hearing Officer served the Order on the addresses previously used by Enforcement to serve the Complaint, and directed Enforcement to do the

same in any future filings. The conference was originally scheduled for November 28, 2006, at 2 p.m., but was rescheduled for 10 a.m. on the same day, at Enforcement's request. The Order changing the time of the hearing was served on Respondents by overnight and first class mail, to the Jersey City Address and the alternative addresses previously used by Enforcement to serve the Complaint.

Respondents failed to appear at the pre-hearing conference. In response, the Hearing Officer issued an order requiring Respondents to show cause, by December 8, 2006, why they should not be held in default. Respondents failed to respond. Accordingly, on December 11, 2006, pursuant to Rule 9241(f), the Hearing Officer issued an Order of Default against Respondents. On January 8, 2007, Enforcement filed a Motion for Entry of Default Decision. For the reasons set forth below, the Motion is granted.¹

III. Jurisdiction

A. Bennett

Bennett first registered with NASD in 1996. From December 2000 through March 2005, Bennett was registered with NASD as a General Securities Representative, General Securities Principal, and an Options Principal through his association with Blacklake. From April 2005 through January 2006, Bennett was registered with two other member firms. Bennett is not currently registered with NASD.

B. Blacklake

Blacklake has been a member of NASD since December 2000. In March 2005, Blacklake filed a request for termination of its NASD Membership (a "Form BDW"), and that request is still pending. During the timeframe alleged in the Complaint, Bennett, who had controlling

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 for Default.

ownership of Blacklake, was the firm's sole principal, and was responsible for Blacklake's compliance with NASD Rules.

IV. Violations

A. Violation of Membership Agreement (Rules 1017 and 2110) - Blacklake and Bennett

Rule 1017(a)(5) requires a member to file with NASD's Department of Member Regulation, an application for approval of a change to its ownership, control, or business operations, where there is a "material change in business operations." Rule 1011(i) defines a "material change in business operations" as, among other things, "adding business activities that require a higher minimum net capital under SEC Rule 15c3-1."

Blacklake's membership agreement did not authorize proprietary transactions. Rather, Blacklake operated with a minimum net capital requirement of \$5,000 pursuant to SEC Rule 15c3-1(a)(2)(vi), which permitted the firm to engage in no more than ten proprietary trades during a calendar year. Despite this, from March 2003 through June 2003, Blacklake, acting through Bennett, engaged in approximately 200 proprietary transactions.

By engaging in more than ten proprietary trades, Blacklake added a business activity that required a higher minimum net capital – a material change in its business operations under Rule 1011. Accordingly, Respondents were required to file an application for a change in its business operations, and receive approval for such change, prior to engaging in such activity. However, Respondents did not file the required application.

The allegations of the Complaint, which are deemed admitted, are therefore sufficient to establish, for purposes of this default decision that Blacklake, acting through Bennett, violated Rules 1017 and 2110. See Dist. Bus. Conduct Comm. v. Gallegos, Complaint No. C019200011, 1993 NASD Discip. LEXIS 275, at *16 (NAC Jan. 26, 1993) ("[R]esponsibility for complying

with restriction agreements, as well as maintaining membership applications, rests appropriately with the member and its associated persons.”).

B. Failure to Report Statistical and Summary Information Regarding Customer Complaints (Rule 3070) - Blacklake and Bennett

Rule 3070 provides “[e]ach member shall report to the Association statistical and summary information regarding customer complaints by the 15th day of the month following the calendar quarter in which the customer complaints are received by the member.” It is important that members comply with Rule 3070 by timely reporting customer complaints. Among other things, this information assists NASD staff in detecting and investigating sales practice violations.

Bennett was responsible for reviewing and reporting customer complaints. From August 2001 through March 2002, Blacklake, acting through Bennett, failed to report statistical and summary information regarding six customer complaints.²

The allegations of the Complaint, which are deemed admitted, are therefore sufficient to establish, for purposes of this default decision, that Respondents failed to report statistical and summary information for customer complaints, in violation of Rules 3070 and 2110.

C. Failure to Timely File Form U4 (IM-1000-1 and Rule 2110) - Bennett

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 U4, disclosing, among other things, whether any self-regulatory organization has disciplined them by suspending their

² As recognized in recent decisions, persons responsible for compliance with Rule 3070 may be held liable for a member firm’s failure to comply. Dep’t of Enforcement v. Investment Management Corp. and Kevin D. Kunz, No. C3A010045, 2003 NASD Discip. LEXIS 47 *21-22 (NAC Dec. 15, 2003); Dep’t of Enforcement v. Yankee Financial Group, Inc., Richard F. Kresge and Joseph C. Korwasky, No. CMS030182, 2004 NASD Discip. LEXIS 56 *60-61 (NAC Aug. 4, 2006).

association with a member or restricting their activities. Applicants must also disclose whether, within the past 24 months, they have been the subject of a customer complaint involving \$5,000 or more. In addition, Article V, Section 2 requires that Form U4s “be kept current at all times by supplementary amendments ... filed with the NASD not later than 30 days after learning of the facts or circumstances giving rise to the amendment.”

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.”³

In January 2003, the National Futures Association (“NFA”) suspended Bennett for providing inaccurate and misleading information, and for failing to cooperate during an NFA audit. In May 2003, the NFA filed a complaint against Bennett alleging that he provided inaccurate and misleading information to the NFA concerning customer accounts. In June 2003, the Complaint was settled based upon Bennett’s agreement to immediately withdraw from NFA membership, and pay a \$75,000 fine should he become re-associated with the NFA within ten years. While the January 2003, suspension was lifted based upon Bennett’s eventual compliance with NFA requests for information, Bennett was ordered to withdraw from NFA membership in June 2003, pursuant to the terms of the settlement. Despite his obligation to do so, Bennett did not amend his Form U4 to disclose the NFA suspension and disciplinary action until October

³ 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, Exch. Act Rel. 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.”). Dep’t. of Enforcement v. Lu, Complaint No. C9A020052, 2004 NASD Discip. LEXIS 8 at * 32 (NAC May 13, 2004), aff’d, Exch. Act. Rel. No. 51047, 2005 SEC LEXIS 117 (Jan. 14, 2005).

2004, after NASD Staff discovered the non-disclosure and contacted Bennett about it. Moreover, in January 2003, a Blacklake customer filed an arbitration claim against Bennett alleging fraud, negligence, excessive trading and unsuitable recommendations. This claim was settled in July 2003, for approximately \$18,000. Despite his obligation to do so, Bennett did not amend his Form U4 to disclose the arbitration and settlement until October 2004, after NASD Staff discovered the non-disclosure and notified Bennett about it.

Therefore, the allegations of the Complaint, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Bennett failed to timely amend his Form U4, in violation of IM-1000-1 and Rule 2110.

Enforcement further alleges that Bennett's failure to make these Form U4 disclosures 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."⁴ In this case, Bennett knew or reasonably should have known that, unless timely amended, his Form U4 disclosures were materially inaccurate. Accordingly, the Hearing Officer finds that Bennett's failure to timely update his Form U4 to disclose these items was willful.

⁴ Christopher LaPorte, Exch. Act Rel. No. 39171, 1997 SEC LEXIS 2058, at *8 n.2 (Sept. 30, 1997).

V. Sanctions

Enforcement recommends that for all violations Bennett be fined \$22,500, suspended from association with any NASD member firm in all capacities for five months, and suspended from associating with any NASD member firm in all principal capacities for fifteen business days.⁵

For membership agreement violations, the NASD Sanction Guidelines (“Guidelines”) recommend a fine of \$2,500 to \$50,000, and, in cases involving serious breaches, consideration of a suspension of up to two years. In egregious cases, the Guidelines recommend consideration of a bar. Guidelines at 47 (2006). Enforcement recommends that Bennett be fined \$7,500 and Blacklake be censured.⁶

The Guidelines’ principal considerations for membership agreement violations include whether the breach was of a material provision, whether it involved a restriction that was particular to the firm, and whether the firm had applied for or was denied a waiver of the restriction at the time of the breach. Id. In this case, NASD Rule 1011(i) makes clear that the breach was material. Moreover, the magnitude of the violation – 200 proprietary trades over a four month period – is significant. Given the flagrant violation of a material provision of the membership agreement, the Hearing Officer finds that Respondents’ conduct was egregious. Accordingly, Blacklake is expelled, and Bennett is barred.

⁵ In its conclusion, Enforcement recommends a six month suspension. The Hearing Officer was unable to reconcile this reference with Enforcement’s earlier statements.

⁶ In support of its recommendation to only censure Blacklake, Enforcement cites to Notice to Members 06-55, which revises the Guidelines and directs that a firm’s revenue and financial resources be considered when imposing a fine. As applied to this case, Blacklake has reported no revenue since the fourth quarter of 2005. However, because the Hearing Officer finds that Blacklake’s misconduct is egregious and warrants an expulsion, this analysis does not apply.

For failure to report statistical and summary information for customer complaints, the Guidelines recommend a fine of \$5,000 to \$100,000, and, in egregious cases, a supervisory suspension of up to two years, or a bar. Id. at 78. Enforcement recommends that Bennett be fined \$5,000 and suspended in his principal capacity for 15 days, and that Blacklake be censured.

The Guidelines' principal considerations for this violation include the number and type of unreported events, and whether the events establish a pattern of potential misconduct. In this case, there were six unreported complaints – including three claiming unauthorized fees, and one claiming unauthorized transactions. Thus, while the number of unreported complaints is not great, their nature is generally serious, and would have established a pattern of potential misconduct, particularly with respect to unauthorized fees. Given the bar and expulsion for the other violations, no further sanctions are imposed.⁷

For late filing of Form U4 amendments, the Guidelines suggest a fine of \$2,500 to \$25,000 and a suspension of ten to 30 days, or in egregious cases, a longer suspension, or a bar. Id. at 73-74. Enforcement recommends that Bennett be fined \$10,000 and suspended for five months for this violation.

Applying the Guidelines' principal considerations, the Hearing Officer finds that Bennett's conduct is egregious and warrants a bar. In particular, the Hearing Officer considered that the omissions were egregious. Bennett was sanctioned and suspended by the NFA for providing misleading and inaccurate information and for failing to cooperate during an NFA audit. Bennett also received a customer complaint alleging sales practice violations, which he later settled for \$18,000. Bennett did not amend his Form U4 to reflect these significant events

⁷ If a sanction were to be imposed for the violation, the Hearing Officer finds that Respondents' misconduct would support a 30 day supervisory suspension and a \$10,000 fine with respect to Bennett, and a censure with respect to Blacklake.

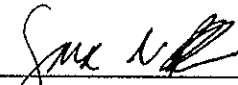
until NASD Staff brought the issue to his attention. Moreover, Bennett's action was willful.

VI. Conclusion

For failing to comply with the firm's membership agreement, in violation of Rules 1017 and 2110, Bennett is barred, and Blacklake is expelled. Bennett is also barred for willfully failing to make timely Form U4 disclosures of material facts, in violation of IM-1000-1 and Rule 2110. In light of the bars and expulsion, no further sanctions are imposed for the Respondents' failure to report statistical and summary information in violation of Rule 3070.

These bars and the expulsion shall become effective immediately if this Decision becomes the final disciplinary action of NASD.

SO ORDERED.



Sara Nelson Bloom
Hearing Officer

Copies to:

Blacklake Securities Corp. *(via overnight and certified mail)*
Wesley Arthur Bennett, Jr. *(via overnight and certified mail)*
Paul Hare, Esq. *(via electronic and first-class mail)*
Rory C. Flynn, Esq. *(via electronic mail)*
Mark P. Dauer, Esq. *(via electronic mail)*

EXHIBIT A

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

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BLACKLAKE SECURITIES CORPORATION
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WESLEY ARTHUR BENNETT, JR.
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No. E102004005702

Hearing Officer

COMPLAINT

Upon information and belief, the Department of Enforcement ("Complainant") alleges as follows:

JURISDICTION

Blacklake Securities Corporation

1. Respondent Blacklake Securities Corporation ("Blacklake") has been a member of NASD since December 14, 2000.
2. On March 29, 2005, Blacklake filed a request for termination of its NASD Membership, and that request is still pending.
3. Blacklake is subject to NASD's jurisdiction because it is presently an NASD member firm.

Wesley Arthur Bennett, Jr.

4. On or about August 30, 1996, Respondent Wesley Arthur Bennett, Jr. ("Bennett") first became registered with NASD through his association with a member firm.

5. From May 10, 2000, through March 16, 2005, Bennett was registered as a General Securities Representative ("GSR"), General Securities Principal ("GSP") and an Options Principal ("OP") with NASD through his association with Blacklake.
6. From October 28, 2005, through January 4, 2006, Bennett was also registered as a GSR, GSP and OP through his association with another member firm.
7. Bennett is not currently registered with NASD, but he remains subject to NASD jurisdiction pursuant to Article V, Section 4, of the Association's By-Laws.

BACKGROUND

8. Paragraphs one through seven above are re-alleged and incorporated herein by reference.
9. Bennett has been the President of Blacklake since April 2000, and is the sole owner of Blacklake, LLC, the parent company of Blacklake.
10. Since Blacklake first became registered with NASD, Bennett has been responsible for the firm's overall supervision and compliance.

FIRST CAUSE OF COMPLAINT

Violation of NASD Membership and Registration Rule 1017 and NASD Conduct Rule 2110 (Membership Agreement) (Bennett and Blacklake)

11. Paragraphs one through ten above are re-alleged and incorporated herein by reference.
12. In or about March 2003, Blacklake's Membership Agreement (the "Membership Agreement") did not permit Blacklake to engage in more than ten proprietary transactions in a calendar year. Although the Membership Agreement was silent as to proprietary trading, it stated that Blacklake would operate with a minimum net capital requirement of \$5,000 pursuant to the SEC Rule 15c3-1(a)(2)(vi) exception, which prohibits a firm engaging in more than ten proprietary trades during a calendar year.

13. From on or about March 3, 2003, through on or about June 30, 2003, Blacklake, acting through Bennett, engaged in more than 10 proprietary transactions. In fact, the firm engaged in approximately 200 proprietary transactions.
14. Engaging in these proprietary transactions constituted a material change in Blacklake's business operations, which required Blacklake to file with NASD an application for approval to change the Membership Agreement prior to engaging in these proprietary transactions.
15. Blacklake, acting through Bennett, failed to file the required application for approval to change the Membership Agreement before engaging in the proprietary transactions.

By reason of the foregoing, Blacklake and Bennett violated NASD Membership and Registration Rule 1017 and NASD Conduct Rule 2110.

SECOND CAUSE OF COMPLAINT
Violation of NASD Conduct Rules 3070 and 2110.
(Statistical Reporting of Customer Complaints)
(Bennett and Blacklake)

16. Paragraphs one through fifteen are re-alleged and incorporated herein by reference.
17. From in or about August 2001 through in or about March 2002, Blacklake, acting through Bennett, failed to report statistical and summary information regarding approximately six customer complaints, as required by NASD Conduct Rule 3070.

By reason of the foregoing, Blacklake and Bennett violated NASD Conduct Rules 3070 and 2110.

THIRD CAUSE OF COMPLAINT
Contravention of Article V of NASD By-Laws and
Violation of NASD Conduct Rule 2110 and IM-1000-1
(Failure to Timely Amend a Uniform Application for
Securities Industry Registration or Transfer ("Form U-4"))
(Bennett)

18. Paragraphs one through seventeen are re-alleged and incorporated herein by reference.
19. In or about March 28, 2000, Bennett executed a Form U-4 that was submitted to NASD on his behalf by Blacklake (the "Blacklake Form U-4").
20. From January 2003 through October 2004, while registered through Blacklake, Bennett willfully failed to amend his Form U-4 to disclose certain material information.
21. Specifically, Bennett failed to disclose that he was suspended by the National Futures Association ("NFA"), and that he was the subject of a consumer-initiated arbitration alleging sales practice violations that settled for more than \$10,000.

NFA Disciplinary Action

22. On or about January 30, 2003, the NFA suspended Bennett for providing inaccurate and misleading information to the NFA and for failing to cooperate during an NFA audit.
23. On or about May 28, 2003, the Compliance Department of the NFA filed a complaint (the "NFA Complaint") against Bennett, which alleged, *inter alia*, that he provided inaccurate and misleading information to NFA concerning customer accounts.
24. On or about June 4, 2003, Bennett submitted an Offer of Settlement to the Compliance Department of the NFA to settle the charges in the NFA Complaint. Bennett's Offer of Settlement stipulated that he would immediately withdraw from NFA membership, and pay a \$75,000 fine should he become re-associated with the NFA within ten years.
25. On or about June 6, 2003, the NFA suspension was lifted, based on a satisfactory showing that Bennett had subsequently complied with NFA requests for information.

26. On or about June 18, 2003, the NFA Business Conduct Committee, in accordance with the terms of the Offer of Settlement, ordered Bennett to immediately withdraw from NFA membership, and pay a \$75,000 fine should he become re-associated with the NFA within ten years.
27. Question 14E of the Form U-4 asks, in pertinent part, “Has any *self-regulatory organization* or commodities exchange ever . . . (4) disciplined you by expelling or suspending you from membership, barring or suspending your association with its members, or restricting your activities?”
28. Bennett did not file an amendment to his Form U-4 disclosing the NFA suspension and disciplinary action until October 19, 2004, after NASD Staff (the “Staff”) discovered the non-disclosure and notified Bennett about it.
29. Accordingly, Bennett willfully failed to timely amend his Form U-4 to disclose that he was suspended and ultimately ordered to withdraw from the NFA.

Customer Arbitration and Settlement

30. On or about January 6, 2003, Blacklake customer WE commenced an arbitration against Bennett alleging fraud, negligence, excessive trading and making unsuitable recommendations with regard to WE’s Blacklake account.
31. On or about July 23, 2003, WE entered into a written agreement with Bennett to settle his arbitration claim for approximately \$18,000.
32. Question 14I(1) of the Form U-4 asks, in pertinent part, “Have you ever been named as a respondent/defendant in an *investment-related*, consumer-initiated arbitration or civil litigation which alleged that you were *involved* in one or more *sales practice violations* and which: (a) is still pending; or . . . (c) was settled for an amount of \$10,000 or more?”

33. Bennett did not file an amendment to his Form U-4 disclosing the WE arbitration and settlement until October 19, 2004, after the Staff discovered the non-disclosure.

34. Accordingly, Bennett willfully failed to timely amend his Form U-4 to disclose the existence of WE's arbitration claim, and the eventual settlement thereof for more than \$10,000, within 30 days of learning of each event.

By reason of the foregoing, Bennett contravened Article V of NASD By-Laws and violated NASD Conduct Rule 2110 and IM-1000-1.

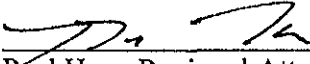
PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Respondents committed the violations alleged within this Complaint;
- B. Specific findings that Bennett's conduct was willful; the omitted information on the Form U-4 was material; and the omission to state material facts was on a Form U-4 application;
- C. An order imposing sanctions upon the Respondents in accordance with NASD Rule 8310;
- 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.

Dated: April 17, 2006

DEPARTMENT OF ENFORCEMENT



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