

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

HAIM A. LEVY
(CRD No. 4485483),

Respondent.

Disciplinary Proceeding
No. E1020040826-01

Hearing Officer – SNB

DEFAULT DECISION

DRAFT; January 13, 2006

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 failure to disclose his criminal history in his Form U-4, in violation of Rule 2110 and IM-1000-1, and his failure to disclose his criminal history in his employment application, in violation of Rule 2110.

Appearances

Soo H. Im, Esq. Regional Counsel, NASD, New York, NY, and Rory C. Flynn, Esq.,
Washington, DC, of Counsel, for the Department of Enforcement.

No appearance by Respondent.

DECISION

I. Background

On August 23, 2005, the Department of Enforcement ("Enforcement") filed a three-cause Complaint in this proceeding, attached to this Decision as Exhibit A. The Complaint alleges that Respondent Haim A. Levy ("Respondent") violated Rules 2110 and IM-1000-1 by willfully failing to disclose his criminal history on the Uniform Application for Securities Registration or Transfer ("Form U-4"). The Complaint also alleges that Respondent violated Rule 2110 by

willfully failing to disclose his arrests for Misdemeanor Forged Instrument Charge and Petit Larceny on his employment application with his firm. In addition, the Complaint alleges that Respondent violated Rules 8210 and 2110 by failing to respond to NASD Staff requests for information. Respondent did not file an Answer to the Complaint. On November 10, 2005, Enforcement filed a Motion for Entry of Default Decision and Request for Sanctions, supported by the declaration of Soo H. Im, Esq. and 26 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 August 22, 2005, by first class and certified mail to his last known residential address listed in the Central Registration Depository (the "CRD address"), as well as a second address obtained through an Equifax search (the "Equifax address").² In the same manner, Enforcement sent the Complaint and Second Notice of Complaint to Respondent on September 20, 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 Rules 9215(f) the Hearing Officer deems the allegations in the Complaint admitted.

III. Jurisdiction

Respondent first became associated with Joseph Stevens & Company ("Joseph Stevens"), an NASD member firm, in November 2003. Respondent was associated with Joseph Stevens

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.

² The Equifax address was the same address as the CRD address, with the addition of an apartment number "Apt. 1T."

until his termination in May 2004, for the conduct related to his Form U-4 violation charged in the Complaint. He has not been associated or registered with an NASD member since that time.

Although Respondent is not currently associated with a member firm, NASD has 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 an associated person 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 his criminal history on his Form U-4. In particular, when completing his Form U-4 in November 2003, Respondent answered "no" to question 14B(1)(b) which asked, among other things, whether he had been charged with a misdemeanor involving wrongful taking of property. However, in fact, in October 2001 Respondent had been arrested for Petit Larceny, a misdemeanor.³

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 or felony involving, among other things, wrongful taking of property. Article V, Section 2 of NASD's By-Laws further requires that "[e]very application for registration filed with the NASD shall be kept current at all times by supplementary amendments [which]...shall

³ Respondent ultimately pled guilty to a lesser charge of disorderly conduct in connection with this arrest.

be 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.” The accuracy of Form U-4 disclosures “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, Exchange 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.”). Department 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), petition for review filed, No. 05-8006 (D.C. Cir. Mar.14, 2005).

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 and IM-1000-1 by failing to disclose his criminal record on his Form U-4.⁴

B. Failure to Disclose Criminal History on Employment Application

The Complaint also alleges Respondent falsely answered “no” to a question in his employment application as to whether he had “ever been arrested.” In that regard, the Complaint alleges that Respondent failed to disclose his arrest for misdemeanor charges of

⁴ The Complaint 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, the Hearing Officer finds it unnecessary to determine whether Respondent’s U-4 violation was willful.

Criminal Possession of Forged Instrument in the Third Degree and Petit Larceny, in August 1999 and October 2001, respectively.⁵

Rule 2110 requires members to “observe high standards of commercial honor and just and equitable principles of trade” in the conduct of their business. Rule 2110 is not limited to securities related business conduct. Rather, it covers any unethical business-related conduct. DOE v. Shvarts, No. CAF980029, 2000 NASD Discip. LEXIS 6, at *16-18 (NAC June 2, 2000); Vail v. SEC, 101 F. 3d 37, 39 (5th Cir. 1996) (per curiam). False representations that are made on his employment application constitute a violation of Rule 2110. Department of Enforcement v. Eastman, Complaint No. C3A030012, 2004 NASD Discip. LEXIS 6 (holding that Respondents false representations to a member firm in order to obtain employment constituted a violation of Rule 2110).

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 history on his employment application.

C. Failure to Respond

The Complaint also alleges that on October 8, 2004, NASD Staff sent Respondent a request for information concerning his termination, by first class and certified mail to his Equifax address. The Staff again sent this request on May 20, 2005, this time by first class and certified mail to both his Equifax address and his CRD address. In addition, the Staff sent a request on October 27, 2004, for information concerning Respondent’s nondisclosures on his Form U-4, by first class and certified mail to his Equifax address. At a minimum, the Staff sent the May 20, 2005, request to Respondent at his CRD address by first class and certified mail, pursuant to NASD Procedural Rule 8210, and therefore Respondent is deemed to have received it.

⁵ The Respondent ultimately pled guilty to lesser charges of disorderly conduct in connection with these arrests.

Arguably, he is also deemed to have received the other requests sent to the Equifax address, given that it was the same as the CRD address, with the addition of an apartment number. However, the Hearing Officer is not required to resolve the issue, because Respondent did not respond to the May 20, 2005, request.

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

Here, although Respondent received valid constructive notice of at least the Staff's May 20, 2005 request, he failed to respond. Respondent thereby violated Rules 8210 and 2110. See, David I. Cassuto, Exchange Act Release No. 48,087, 2003 SEC LEXIS 1496, at *9 (June 25, 2003).

V. Sanctions

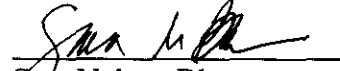
A bar is standard for failure to provide requested information. NASD Sanction Guidelines at 35, 73, 74 (2005 ed.). There is no evidence of any mitigating circumstances that would justify a lesser sanction. Therefore Respondent is barred from associating with any NASD

member in any capacity. In light of the bar, no further sanctions are imposed for Respondent's failure to disclose his criminal history in his Form U-4 and his employment application.

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 failure to disclose his criminal history in his Form U-4 and his employment application. The bar shall become effective immediately if this Decision becomes the final disciplinary action of NASD.

SO ORDERED.


Sara Nelson Bloom
Hearing Officer

Dated: January 13, 2006

Copies to:

Haim A. Levy (*via first class mail*)
Soo H. Im, Esq. (*via electronic and first class mail*)
Rory C. Flynn, Esq. (*via first class mail*)

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COMPLAINT

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

JURISDICTION

1. From November 6, 2003 to May 10, 2004, Respondent Haim Levy ("Respondent") was employed by member firm Joseph Stevens & Company, Inc. (BD No. 35459) ("Joseph Stevens").
2. Respondent has never been registered with NASD. However, in connection with his employment at Joseph Stevens, Respondent became an "associated person of a member" of Joseph Stevens, as that term is defined in Article I, paragraph (dd) of the NASD By-Laws, by signing a Uniform Application for Securities Industry Registration or Transfer Form ("Form U-4") on November 3, 2003. Joseph Stevens submitted this Form U-4 to NASD on Respondent's behalf on February 13, 2004.
3. On May 10, 2004, Joseph Stevens filed a Uniform Termination Notice for Securities Industry Registration ("Form U-5") concerning Respondent. According to the Form U-5, Respondent was terminated for failing to "disclose his criminal history during the

interview process, on the job application, or while completing his U-4 form.” The Form U-5 also indicated that Respondent’s last date of employment was May 10, 2004.

4. Upon information and belief, Respondent is not currently registered with NASD, nor is he otherwise employed in the securities industry. However, Respondent remains subject to the jurisdiction of NASD pursuant to Article V, Section 4 of its By-Laws.

BACKGROUND

5. Paragraphs 1 through 4 of this Complaint are realleged and incorporated herein by reference.
6. On or about August 10, 1999, Respondent was charged with Criminal Possession of Forged Instrument in the Third Degree (P.L. § 170.20), a misdemeanor offense under New York State law (the “Misdemeanor Forged Instrument Charge”).
7. In resolution of the Misdemeanor Forged Instrument Charge, on or about September 29, 1999, Respondent pled guilty to disorderly conduct (P.L. §240.20), a violation under New York State law.
8. On or about October 20, 2001, Respondent was charged with Petit Larceny (Penal Law § 155.25), a misdemeanor offense under New York State law (the “Misdemeanor Petit Larceny Charge”).
9. In resolution of the Petit Larceny Charge, on or about January 31, 2002, Respondent pled guilty to disorderly conduct (P.L. §240.20), a violation under New York State law.

FIRST CAUSE OF COMPLAINT

**(Willful Failure to Disclose Material Fact on a Form U-4)
Violation of NASD Conduct Rule 2110 and NASD IM-1000-1**

10. Paragraphs 1 through 9 of this Complaint are realleged and incorporated herein by reference.

11. On November 3, 2003, Respondent completed and signed a Form U-4 to begin his employment at Joseph Stevens.
12. The Form U-4 requires an applicant to disclose information regarding his or her criminal history, including whether the applicant has ever been charged with any misdemeanor, among other things, involving wrongful taking of property (Question 14B(1)(b)).
13. Respondent answered "no" to question 14B(1)(b) on his Form U-4, which asked whether he had ever "been charged with a misdemeanor specified in 14B(1)(a)." (Emphasis added). Question 14B(1)(a) includes any "misdemeanor involving ... wrongful taking of property..." (Emphasis added).
14. Respondent willfully failed to disclose his Misdemeanor Petit Larceny Charge, a material fact, on his Form U-4.

By reason of the foregoing, Respondent acted in contravention of Article V, Section 2 of NASD's By-Laws and thus violated NASD IM-1000-1 and NASD Conduct Rule 2110.

SECOND CAUSE OF COMPLAINT
(Failure to Disclose on Employment Application)
Violation of NASD Conduct Rule 2110

15. Paragraphs 1 through 14 of the Complaint are re-alleged and incorporated herein by reference.
16. In connection with his employment at Joseph Stevens, Respondent also completed an employment application. Specifically, in an Application for Employment for Joseph Stevens, Respondent answered "no" to the question that asked whether he had "ever been arrested."
17. Respondent did not disclose any of his criminal information when answering this question, when in fact he had been arrested: (1) on or about August 10, 1999 for the

Misdemeanor Forged Instrument Charge; and (2) on or about October 20, 2001 for the Misdemeanor Petit Larceny Charge.

Based on the foregoing, Levy violated NASD Conduct Rule 2110.

THIRD CAUSE OF COMPLAINT

(Failure to Respond)

Violation of NASD Procedural Rule 8210 and Conduct Rule 2110

18. Paragraphs 1 through 17 of the Complaint are re-alleged and incorporated herein by reference.

October 8, 2004 Letter

19. By letter dated October 8, 2004, the Staff of NASD's District 10 office (the "Staff") requested that Respondent provide information concerning his termination by October 25, 2004. The letter was sent by regular mail, and certified mail, return receipt requested to Respondent's current residential address obtained from an Equifax search ([REDACTED]) (the "Residential Address"). This address is identical to the last known residential address according to the records of NASD Central Registration Depository (CRD) except that it also included an apartment number. The request was made pursuant to, and in accordance with, NASD Procedural Rule 8210.
20. The letter sent by regular mail was not returned to the Staff. The certified mailing was returned to the Staff with a label, "Return to Sender, Unclaimed, Unable to Forward." The return receipt card accompanying the certified mailing was also returned unsigned.
21. Respondent did not respond to the October 8, 2004 letter.

October 27, 2004 Letter

22. By letter dated October 27, 2004, the Staff again requested that Respondent provide documents and information relevant to Respondent's nondisclosures on his Form U-4 by

November 8, 2004. The letter was sent to Respondent's Residential Address by regular mail, and certified mail, return receipt requested. The request was made pursuant to NASD Procedural Rule 8210.

23. The letter sent by regular mail was not returned to the Staff. The certified mailing was returned to the Staff with a label, "Return to Sender, Unclaimed, Unable to Forward." The return receipt card accompanying the certified mailing was also returned unsigned.
24. Respondent did not respond to the October 27, 2004 letter.

May 20, 2005 Letter

25. By letter dated May 20, 2005, the Staff once again requested that Respondent provide information concerning his termination requested in the prior letters by June 6, 2005. The letter was sent by regular mail, and certified mail, return receipt requested to the Residential Address as well as the current residential address as reflected in the records of the NASD CRD ([REDACTED]) (the "CRD Address"). This request was made pursuant to, and in accordance with, NASD Procedural Rule 8210.
26. The letters sent by regular mail were returned to the Staff.
27. The certified mailing to the Residential Address was returned to the Staff with a designation, "Unclaimed." The return receipt card accompanying the certified mailing was also returned unsigned.
28. The certified mailing to the CRD Address was returned to the Staff with a designation, "Not Deliverable as Addressed, Unable to Forward." The return receipt card accompanying the certified mailing was also returned unsigned.
29. Respondent did not respond to the May 20, 2005 letter.

By reason of the foregoing. Respondent violated NASD Procedural Rule 8210 and Conduct Rule 2110.

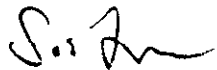
PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;
- B. Specific findings that Respondent's conduct was willful; the omitted information was material; and the omission to state material facts was on a Form U-4 application;
- C. An order imposing sanctions upon Respondent in accordance with NASD Procedural Rule 8310;
- D. An order imposing such costs of any proceeding as are deemed fair and appropriate under the circumstances and in accordance with NASD Rule 8330; and
- E. An order, pursuant to NASD Procedural Rule 8310, imposing any other fitting sanction.

Dated: August 22, 2005

DEPARTMENT OF ENFORCEMENT



Soo H. Im
Regional Attorney
NASD, District 10
One Liberty Plaza
New York, New York 10006
(212) 858-4170

Of Counsel:

David Jaffe, Esq.
Regional Chief Counsel
NASD, District 10
One Liberty Plaza
New York, New York 10006



Rory C. Flynn, Esq.
Chief Litigation Counsel
NASD
1801 K Street, NW, Suite 800
Washington, D.C. 20006

