

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

THOMAS DEAN BADE
(CRD No. 1957919),

Respondent.

Disciplinary Proceeding
No. E3A2004034901

Hearing Officer – SNB

Default Decision

May 8, 2006

Respondent is barred from associating with any NASD member in any capacity for willfully failing to disclose material information on his Form U-4, in violation of Rule 2110 and IM-1000-1.

Appearances

Helen G. Barnhill, Esq., Regional Counsel, Denver, CO, and Rory C. Flynn, Esq., Washington, DC, Of Counsel, for the Department of Enforcement.

No appearance by Respondent.

DECISION

I. Background

On December 20, 2005, the Department of Enforcement ("Enforcement") filed a one-cause Complaint in this proceeding, attached to this Decision as Exhibit A. The Complaint alleges that Respondent Thomas Dean Bade ("Respondent") violated Rule 2110 and IM-1000-1 by willfully failing to disclose material information on his Form U-4. Respondent did not file an Answer to the Complaint. Accordingly, on January 23, 2006, Enforcement filed a Motion for Entry of Default Decision ("Motion"), supported by the

declaration of Helen Barnhill and eight exhibits. Respondent did not reply to the Motion. For the reasons set forth below, the Motion is granted.¹

II. Respondent's Default

On December 14, 2005, Enforcement sent the Complaint and Notice of Complaint by first class and certified mail to Respondent's last known residential address listed in the Central Registration Depository (the "CRD address"). In the same manner, Enforcement sent the Complaint and Second Notice of Complaint to Respondent at the same address on January 18, 2006. Respondent did not file an Answer to the Complaint.²

Enforcement complied with 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) and 9269(a) (2), the allegations in the Complaint are deemed admitted.

III. Jurisdiction

Respondent first became registered with NASD in January 2003. Between January 2003, and April 2004, Respondent was registered with Zions Investment Securities, Inc. ("Zions"), an NASD member firm. Respondent was briefly associated with NASD member firm ING Funds Distributor Inc. ("ING"), from approximately

¹ The factual determinations in this Decision are based on the allegations in the Complaint, which are deemed admitted, and Enforcement's Motion for Entry of Default Decision and supporting materials.

² Counsel for Enforcement indicated in her supporting papers that she spoke with Respondent prior to the filing of the Complaint in this matter. During that conversation, Respondent said that his CRD address was no longer current. However, Respondent refused to provide Enforcement with a current address. Moreover, when Counsel for Enforcement advised Respondent of the nature of the proposed charges against him, Respondent indicated that he "did not care" about the matter, as he was no longer in the business. Because Respondent was no longer employed by a member firm, Enforcement was unable to serve the Complaint on Respondent at his place of business. Enforcement had no actual knowledge of an alternative address. Therefore, Enforcement complied with the requirements of the Code of Procedure by mailing the Complaint to Respondent's last known residential address.

November 1, 2004, through November 2, 2004. He is not currently associated with an NASD member firm.

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 the Complaint charges Respondent with misconduct while he was associated with an NASD member firm and the Complaint was filed within two-years after termination of his last registration.

IV. Violation -Willful Failure to Disclose Material Information on Form U-4

The one-cause Complaint alleges that Respondent violated Rule 2110 and IM-1000-1 by willfully failing to disclose material information in a Form U-4, which Respondent completed when he first associated with ING. In particular, the Complaint alleges that Respondent failed to disclose that he was discharged from Zions shortly after he was disciplined for using false signatures and false information on new account forms. The Complaint also alleges that Respondent failed to disclose a customer complaint alleging a sales practice violation and losses of \$433,319.

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 ever resigned or were discharged following allegations of investment related violations, or whether within that past 24 months they have been the subject of a customer complaint involving \$5,000 or more.

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

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 material information on his Form U-4.

Enforcement further alleges that Respondent’s failure to make these Form U-4 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.” Christopher LaPorte, Exch. Act Rel. No. 39171, 1997 SEC LEXIS 2058, at *8 n.2 (Sept. 30, 1997). In this case, Respondent knew or reasonably should have known that his Form U-4 disclosures were materially inaccurate. Accordingly, the Hearing Officer finds that Respondent’s failure to disclose these items on his Form U-4 was willful.

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, 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).

V. Sanctions

For failing to disclose material information in a Form U-4, the NASD Sanction Guidelines ("Guidelines") recommend a fine of \$2,500 to \$50,000 and, in egregious cases, a suspension of up to two years or a bar. The Guidelines state that egregious cases include those involving inaccurate or misleading filings, and failure to disclose customer complaints. Principle considerations include the nature and significance of the information at issue. NASD Sanction Guidelines at 73, 74 (2006 ed.).

In this case, Respondent willfully failed to disclose material information in his Form-U-4 regarding the circumstances of his resignation, which included allegations that he falsified customer signatures. Respondent also failed to disclose a customer complaint. These are matters which bear upon Respondent's honesty, integrity, and competence as a registered representative. Respondent failed to disclose material information that a firm would consider in deciding whether to hire Respondent. 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.

Further, the Hearing Officer finds that Respondent's conduct was willful. Respondent is therefore statutorily disqualified from association with any NASD member under Article III, Section 4(f) of the NASD By-Laws.

VI. Conclusion

Respondent is barred from associating with any NASD member in any capacity, for failing to disclose material information in a Form U-4, in violation of Rule 2110 and

IM-1000-1. This bar shall become effective immediately if this Decision becomes the final disciplinary action of NASD.

SO ORDERED.


Sara Nelson Bloom
Hearing Officer

Copies to:

Thomas Dean Bade (*via certified and first class mail*)
Helen G. Barnhill, Esq. (*via electronic and first class mail*)
Rory C. Flynn, Esq. (*via electronic and first class mail*)
Roger D. Hogoboom, Esq. (*via electronic and first class mail*)