

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

EUGENE G. ABEYTA
(CRD No. 2987570),

Respondent.

Disciplinary Proceeding
No. E3A2004036101

Hearing Officer – SNB

DEFAULT DECISION

May 19, 2006

For 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 additional sanctions are imposed for Respondent's failure to provide prompt written notice to his employer of outside business activities, in violation of Rules 3030 and 2110.

Appearances

Helen Barnhill, Esq., Denver, CO, Lewis Taylor Egan, Esq., San Francisco, CA,

Rory C. Flynn, Esq., Washington, DC, Of Counsel, for Complainant.

No appearance by Respondent.

DECISION

I. Introduction

On December 29, 2004, the Department of Enforcement ("Enforcement") filed a two-cause Complaint in this matter, alleging that Respondent Eugene G. Abeyta ("Respondent") (1) failed to provide written notice of his outside business activities to his employer, in violation of Rules 3030 and 2110, and (2) failed to respond to NASD Staff ("Staff") requests for information, in violation of Rules 8210 and 2110. On January 25,

2006, Respondent filed a document entitled "Verified Petition in the Nature of a Petition to Dismiss under Authority of 42 U.S.C. 1983 and 12(b)1 of FRCP for Lack of Subject Matter Jurisdiction." On February 1, 2006, the Hearing Officer issued an Order denying Respondent's motion to dismiss, and directing Respondent to file an answer by February 14, 2006, or be found in default. Respondent did not file an Answer to the Complaint. On March 17, 2006, the Hearing Officer issued an Order holding respondent in default. On March 29, 2006, Enforcement filed a motion for a default decision, supported by the declaration of Helen G. Barnhill, Esq., and two exhibits. Respondent did not reply to Enforcement's motion.¹

II. Respondent's Default

Respondent demonstrated that he had actual notice of the Complaint when he filed his Motion to Dismiss, and, therefore, service of the Complaint is not at issue in this matter. When Respondent failed to file an answer following the Hearing Officer's Order that he do so, the Hearing Officer defaulted Respondent. Pursuant to Rule 9215(f), the Hearing Officer deems the allegations in the Complaint admitted.

III. Jurisdiction

Respondent was registered through NASD member American General Securities Inc. ("AGSI"), as an investment company and variable contracts products limited representative until December 14, 2004. 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

¹ The factual determinations in this decision are based on the allegations of the attached Complaint, which are deemed admitted, and the additional materials filed by Enforcement with its motion.

misconduct while he was registered and with failing to comply with requests for information made during the two-year period following termination of his last registration, and (2) the Complaint was filed within that two-year period.

IV. Violations

A. Outside Business Activities

The first cause of the Complaint alleges that in or about April 2004, while he was associated with AGSI, Respondent provided tax preparation services to customer JR, for which Respondent received \$350. Respondent failed to give AGSI any written notice of this activity.

Rule 3030 provides that no person associated with an NASD member may be employed by, or accept compensation from, any other person as a result of any business activity, other than a passive investment, outside the scope of his relationship with his employer firm, unless he has provided prompt written notice to the member. Thus, the allegations in the first cause of the Complaint, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent violated Rule 3030. A violation of Rule 3030 is also a violation of Rule 2110.

B. Failure to Respond

The second cause of the Complaint alleges that on March 9, 2005, and March 24, 2005, the Staff sent Respondent requests for information concerning the activity alleged in the first cause of the Complaint. The Staff sent these requests, via certified and regular mail, to Respondent's last known address, as reflected in the Central Registration Depository (the "CRD address"). The Staff served the requests in accordance with Rule

8210(d), and therefore Respondent is deemed to have received them. However, Respondent did not respond.

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.² Here, although Respondent received valid constructive notice of the Staff's requests,³ he failed to respond. Respondent thereby violated Rules 8210 and 2110.

V. Sanctions

For failing to provide requested information, the NASD Sanction Guidelines ("Guidelines") recommend a bar. Guidelines at 35 (2006 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 for this violation of Rules 8210 and 2110. In light of this bar, no further sanctions are imposed for Respondent's failure to provide written notice of his outside business activities to his employer, in violation of Rules 3030 and 2110.

VI. Conclusion

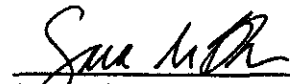
For failing to provide requested information, in violation of Rules 8210 and 2110,

² 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).

³ See David I. Cassuto, Exchange Act Release No. 48,087, 2003 SEC LEXIS 1496, at *9 (June 25, 2003).

Respondent is barred from associating with any NASD member in any capacity. In light of this bar, no further sanctions are imposed for Respondent's failure to provide written notice of his outside business activities to his employer, in violation of Rules 3030 and 2110. The bar shall become effective immediately if this Decision becomes the final disciplinary action of NASD.

SO ORDERED.


Sara Nelson Bloom
Hearing Officer

Copies to: Eugene G. Abeyta (*via certified and first class mail*)
Helen 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*)

**NASD
OFFICE OF HEARING OFFICERS**

Department of Enforcement,	Disciplinary Proceeding
Complainant,	No. E3A2004036101
v.	Hearing Officer
Eugene G. Abeyta (CRD No. 2987570)	COMPLAINT
Respondent.	

Upon information and belief, Complainant alleges as follows:

1. During the approximate period from October 31, 2003 until December 14, 2004,
2. Respondent Eugene G. Abeyta ("Abeyta") was registered as an Investment Company & Variable Contracts Products Representative with American General Securities Incorporated ("AGSI"), a member of NASD. Abeyta is not presently associated with an NASD member. However, NASD retains jurisdiction to file this Complaint pursuant to Article V, Section 4 of NASD's By-Laws.

FIRST CAUSE OF COMPLAINT
**(Outside Business Activities – Violations of
Rules 3030 and 2110 by Respondent Abeyta)**

2. Complainant incorporates and realleges by reference Paragraph 1 above.
3. In or about April 2004, Abeyta engaged in an outside business activity by providing tax preparation services to customer JR for which he received \$350. Abeyta did not provide prompt written notice of this activity to AGSI.
4. Previously, in or about November 2003, Abeyta had disclosed, in writing, other outside business activities to AGSI.

5. The foregoing acts, practices and conduct constitute separate and distinct violations of Rules 3030 and 2110 by Respondent Abeyta.

SECOND CAUSE OF COMPLAINT
**(Failure to Provide Information – Violations of
Procedural Rule 8210 and Conduct Rule 2110 by Respondent Abeyta)**

6. On March 9, 2005, and March 24, 2005, pursuant to and in accordance with Rule 8210, NASD requested that Abeyta provide information and documentation to NASD in connection with its investigation into his outside business activities and suitability allegations made by customer JR against him.
7. NASD's two requests were sent by regular first class and certified mail to Abeyta's last known address, as reflected in the Central Registration Depository.
8. The certified letter from the March 9th mailing was returned marked "Unclaimed." The first class mailing was not returned.
9. The certified letter from the March 24, 2005 mailing was signed for by someone with the last name Abeyta. The first class mailing was not returned.
10. Abeyta received actual notice of the March 9th mailing as he responded to that letter on March 23, 2005. However, he failed to provide the information and documentation sought by NASD in the letter. Abeyta failed to provide the requested information in violation of Procedural Rule 8210 and Conduct Rule 2110.
11. The foregoing acts, practices and conduct constitute separate and distinct violations of Rules 8210 and 2110 by Respondent Abeyta.

PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Respondent Abeyta committed the

violations charged and alleged herein;

- B An order imposing sanctions upon Respondent Abeyta in accordance with NASD Rule 8310.
- C. An order requiring Respondent Abeyta 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: December 27, 2005


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