

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

SAN SANA NEAL
(CRD No. 4870917),

Respondent.

Disciplinary Proceeding
No. E3B20040218-01

Hearing Officer---Andrew H. Perkins

DEFAULT DECISION

April 5, 2006

The Respondent willfully failed to disclose his criminal record on a Form U-4, in violation of NASD Conduct Rule 2110 and IM-1000-1. The Respondent is barred from association with any member of NASD in any capacity.

Appearances

For the Department of Enforcement: Mark A. Graves, Senior Regional Attorney, San Francisco, CA (Rory C. Flynn, Chief Litigation Counsel, Washington, D.C., Of Counsel).

For the Respondent: No appearance.

DECISION

I. Introduction

On December 16, 2005, the Department of Enforcement ("Enforcement") filed the attached Complaint alleging that the Respondent, San Sana Neal ("Neal" or the "Respondent") willfully failed to disclose material information on his Uniform Application for Securities Industry Registration or Transfer (Form U-4), in violation of NASD Conduct Rule 2110 and IM-1000-1.

The Respondent did not file an Answer to the Complaint. Consequently, on March 20, 2006, Enforcement filed a Motion for Entry of Default Decision, which is supported by the Declaration of Mark A. Graves (“Graves Decl.”) and seven exhibits. The Respondent did not respond to the Motion.

For the reasons discussed below, the Hearing Officer grants Enforcement’s Motion.¹

II. Respondent’s Default

Enforcement served the Respondent with copies of the Complaint and Notice of Complaint on December 15, 2005, by certified and first-class mail sent to his current residential address, as reflected in the Central Registration Depository (the “CRD address”).² Enforcement received a signed certified mail delivery receipt from the Postal Service indicating that delivery was made on December 17, 2005.³ “Karmen Bickel” signed the receipt. The Respondent did not file an Answer by the due date in the Notice of Complaint. On January 17, 2006, Enforcement sent the Complaint and Second Notice of Complaint by both first-class mail and certified mail, return receipt requested, to the Respondent’s CRD address. The certified mailing was returned to Enforcement with the notation, “Unclaimed.”⁴ Again, the Respondent failed to answer or otherwise respond to the Complaint.

¹ The factual findings in this Default Decision are based on the attached Complaint, the allegations of which are deemed admitted pursuant to Procedural Rule 9215(f), and on the declaration and exhibits Enforcement filed with the Motion.

² Graves Decl. ¶ 6.

³ *Id.* ¶ 7; Ex. 5.

⁴ Graves Decl. ¶ 8.

Enforcement properly served the Respondent in compliance with Procedural Rule 9134(b)(1) by sending the Complaint by certified mail to the Respondent's CRD address. 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 finds the Respondent in default and deems the allegations in the Complaint admitted.

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

On September 29, 2004, Neal submitted an application for registration (Form U-4) to American Family Securities, LLC.⁵ By so doing, Neal voluntarily submitted to NASD's jurisdiction. Neal was associated with American Family Securities from September 2004 until November 2004, at which time it permitted Neal to resign after it discovered that he had failed to disclose his criminal record.⁶

Pursuant to NASD By-Laws, Article V, Section 4(c), NASD retained jurisdiction until November 2006 to file a disciplinary complaint against Neal based upon conduct that commenced before his association with American Family Securities ended. Enforcement filed the Complaint initiating this disciplinary proceeding within the period of retained jurisdiction. Accordingly, the Hearing Officer finds that NASD has jurisdiction of this proceeding.

B. Failure to Disclose Felony Charges

The Complaint alleges that Neal executed a Form U-4 on September 29, 2004, which indicated that he had never been charged with a felony. This representation was

⁵ *Id.* ¶ 12; Compl. ¶ 9.

⁶ CX 1 at 5.

false. In fact, Neal had been charged with two felonies—entering a motor vehicle and felony theft. He pled guilty to felony entry of a motor vehicle on September 27, 1993, in the District Court of Johnson County, Kansas. On December 17, 1993, he was sentenced to 24 months of probation and was ordered to pay restitution and costs.⁷ Neal was obligated to disclose each of these charges and his conviction on his Form U-4, which he failed to do.

The criminal history of an applicant for NASD registration is material because it directly relates to the applicant's fitness for employment in the securities industry. And filing incomplete or inaccurate information that could in any way mislead NASD is inconsistent with just and equitable principles of trade and violates NASD Conduct Rule 2110 and IM-1000-1.

In this case, there is no question that the serious nature of the criminal charges against Neal would have been important information in evaluating Neal's suitability for employment and registration. Thus, the Hearing Officer finds that Neal violated NASD Conduct Rule 2110 and IM-1000-1 when he failed to disclose this information.

Enforcement further alleges that Neal's conduct was willful. Willfulness is not required to establish a violation of Rule 2110, but Article III, Section 4(f) of the NASD 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 "disqualification." For this purpose, it is sufficient to establish willfulness if the respondent "knew or reasonably should have

⁷ Graves Decl. ¶¶ 15-17. The second charge was dismissed as part of his guilty plea.

known under the particular facts and circumstances that his conduct was improper.”⁸ A finding of willfulness does not require intent to violate the law or a specific rule, but simply intent to commit the act that constitutes the violation.⁹

The Hearing Officer concludes that the Respondent’s criminal record was material information and that his failure to disclose this information was willful. Although the felony charges were brought more than ten years before he applied for registration, the nature of the charges should have left no doubt that he was obligated to disclose this information. Indeed, other questions on the Form U-4 specifically question applicants about crimes involving the wrongful taking of property, even if the charges are misdemeanors. Here, Neal was charged with felony theft. Without question, Neal knew that this was a material fact that he was obligated to disclose on his application for registration.

In conclusion, the Hearing Officer finds that Neal willfully filed false and misleading information on his Form U-4, in violation of NASD Conduct Rule 2110 and IM-1000-1.

IV. Sanctions

The NASD Sanction Guidelines recommend a fine of \$2,500 to \$50,000 and a suspension in any or all capacities of from 5 to 30 days. In egregious cases, the Guidelines recommend consideration of a longer suspension or a bar.¹⁰ The principal

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

⁹ *Department of Enforcement v. Nelson C. Onyejiaka*, No. C10990121, 2000 NASD Discip. LEXIS 22, at *11 (O.H.O. Oct. 20, 2000).

¹⁰ NASD Sanction Guidelines 75-76 (2006 ed.).

considerations listed in determining the appropriate sanction are the nature and significance of the information at issue.¹¹

Here, Enforcement requests imposition of a \$10,000 fine and a one-year suspension in all capacities. Enforcement argues that these sanctions are appropriately remedial under the facts and circumstances of this case. Enforcement points out that his period of statutory disqualification that resulted from his felony conviction had ended before he submitted the Form U-4 to American Family Securities. The Hearing Officer, however, does not find this factor mitigating in light of the nature of the felony charges. Neal's conviction of felony entry into another's automobile to steal property raises serious questions about his fitness to work in the securities business. Respondents are obligated to disclose such charges regardless of when they occurred because such information is vital to a firm's ability to assess an applicant's integrity. The fact that he was no longer statutorily disqualified does not mitigate his willful failure to bring this information to his firm's attention.

Accordingly, taking into consideration all of the evidence available in the record, the Hearing Officer concludes that a bar is the appropriate sanction in this case. Further, the Hearing Officer finds that Neal's failure to disclose his criminal record was willful. Neal is therefore statutorily disqualified from association with a member of NASD under Article III, Section 4(f) of the NASD By-Laws.

V. Order

San Sana Neal is barred from association with any NASD member in any capacity for his failure to disclose material information on his application for registration, in

¹¹ *Id.*

violation of NASD Conduct Rule 2110. The bar shall become effective once this decision becomes the final disciplinary action of NASD.



Andrew H. Perkins
Hearing Officer

Copies to:

San Sana Neal (by overnight courier and first-class mail)
Mark A. Graves, Esq. (by first-class and electronic mail)
Rory C. Flynn, Esq. (by first-class and electronic mail)
Roger D. Hogoboom, Esq. (by first-class and electronic mail)

**NASD
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT, Complainant, v. SAN SANA NEAL (CRD No. 4870917), Respondent.	Disciplinary Proceeding No. E3B20040218-01 Hearing Officer - COMPLAINT
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Upon information and belief, the Department of Enforcement ("Complainant") alleges as follows:

JURISDICTION

1. On or about September 29, 2004, Respondent San Sana Neal ("Respondent") first became associated with member firm American Family Securities, LLC (BD No. 104433) ("AFS"). Respondent remained associated with AFS until on or about November 1, 2004.
2. On or about November 1, 2004, AFS terminated its employment relationship with Respondent based upon his failure to disclose reportable information on a Uniform Application for Securities Industry Registration or Transfer ("Form U-4"). AFS then filed a Uniform Termination Notice for Securities Industry Registration ("Form U-5") with respect to Respondent on or about November 3, 2004.
3. NASD retains jurisdiction over Respondent through October 31, 2006 (two years from November 1, 2004), pursuant to Article V, Section 4 of its By-Laws.

BACKGROUND

4. Paragraphs one through three above are realleged and incorporated herein by reference.
5. On or about September 27, 1993, Respondent was arrested by the Olathe Kansas Sheriff's Office and charged with two felony counts, one for entering a motor vehicle and the other for theft of articles inside the vehicle that were valued over \$500 (the "two felony counts").
6. On or about November 12, 1993, Respondent pled guilty in the District Court of Johnson County, Kansas to the felony charge of entering a motor vehicle, while the other charge of theft was dismissed by the State of Kansas, with prejudice (the "felony conviction").
7. On or about December 17, 1993, Respondent was sentenced to 24 months of probation and required to pay all court costs assessed and make restitution in the amount of approximately \$1,394.35.

CAUSE OF COMPLAINT

**(Willful Misrepresentation on Form U-4)
Violation of NASD Membership and Registration Rule IM-1000-1 and Conduct
Rule 2110**

8. Paragraphs one through seven above are realleged and incorporated herein by reference.
9. In connection with Respondent's association with AFS, Respondent signed a Form U-4, dated September 29, 2004. By signing the Form U-4, Respondent was attesting to the completeness and accuracy of the Form U-4.

10. Question 14A.(1)(b) asks the applicant whether they have ever been charged with a felony.
11. Respondent answered "No" to Question 14A.(1)(b) of the Form U-4, and thereby willfully failed to disclose the two felony counts, a material fact, on the Form U-4.
12. Question 14A.(1)(a) asks the applicant whether they have ever been convicted of or pled guilty or no contest to a felony.
13. Respondent answered "No" to Question 14A.(1)(a) of the Form U-4, and thereby willfully failed to disclose the felony conviction, a material fact, on the Form U-4.
14. Based on the foregoing, Respondent acted in contravention of Article V, Section 2(c) of the NASD's By-Laws and thus violated NASD Membership and Registration Rule IM-1000-1 and Conduct Rule 2110.

PRAYER FOR RELIEF

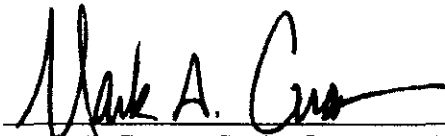
WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;
- B. Specific findings that Respondent's conduct with regard to his Form U-4 application was willful; the misrepresented information was material; and the misrepresentation of material facts was on a Form U-4 application;
- C. An order imposing sanctions upon the 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 in accordance with NASD Procedural Rule 8330; and
- E. An order imposing any other fitting sanction.

NASD DEPARTMENT OF ENFORCEMENT

Dated: December 15, 2005



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