

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

EDMUND B. PEARSON
(CRD No. 2236530),

Respondent.

Disciplinary Proceeding
No. E8A2003095101

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

December 29, 2005

The Respondent failed to update his application for securities industry registration (Form U-4), in violation of NASD Conduct Rule 2110 and IM-1000-1. The Respondent also failed to respond to three requests for information, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110. For his failure to respond to the information requests, he is barred from associating with any NASD member in any capacity. In light of the bar, no additional sanctions are imposed for his failure to update his Form U-4.

Appearances

Kevin G. Kulling, Regional Attorney, Chicago, IL (Rory C. Flynn, Chief Litigation Counsel, Washington, D.C., and Roger D. Hogoboom, Denver, CO, Deputy Chief Litigation Counsel, Of Counsel) for Complainant.

No appearance by or for Respondent.

DECISION

I. Introduction

The Department of Enforcement ("Enforcement") filed a Complaint (attached as Exhibit A) on September 8, 2005, alleging that Edmund B. Pearson ("Pearson" or the "Respondent") violated NASD Conduct Rule 2110 and IM-1000-1 by failing to update his Uniform Application for Securities Industry Registration or Transfer ("Form U-4") and violated NASD

Procedural Rule 8210 and Conduct Rule 2110 by failing to provide testimony and by failing to respond to requests for information.

The Respondent did not file an Answer to the Complaint. Consequently, on December 5, 2005, Enforcement filed a Motion for Entry of Default Decision, which is supported by the Declaration of Kevin G. Kulling ("Kulling Decl.") and six exhibits. The Respondent did not file a response to the motion. Accordingly, for the reasons set forth below, the Hearing Officer grants Enforcement's motion.¹

II. Respondent's Default

Enforcement served the Respondent with copies of the Complaint, Notice of Complaint, and Second Notice of Complaint in accordance with Procedural Rule 9134(b)(1). Enforcement sent the Complaint and Notice of Complaint to the Respondent on September 7, 2005, by both first-class mail and certified mail, return receipt requested, to his residential address listed in the Central Registration Depository ("CRD address"). Enforcement received a signed certified mail delivery receipt from the Postal Service indicating that delivery was made on September 9, 2005.² "Edmund Pearson" signed the receipt.³ The Respondent did not file an Answer by the due date in the Notice of Complaint. On October 11, 2005, 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.

The Respondent received actual notice of this proceeding. Thus, by failing to file an Answer or otherwise respond to the Complaint, the Respondent defaulted. Consequently,

¹ The findings of fact in this Decision are based on the allegations in the attached Complaint, which are deemed admitted, as well as the additional materials Enforcement filed with its motion.

² Kulling Decl. ¶ 6; Ex. 3.

³ CX 3.

⁴ Kulling Decl. ¶ 7.

pursuant to Procedural Rules 9215(f) and 9269(a)(2), the Hearing Officer will deem the allegations in the Complaint admitted.

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

The record shows that the Respondent was registered with NASD member firm A. CH. Securities, Inc. from July 1998 until October 2003. Thereafter, the Respondent was registered with three other member firms. His last NASD registration terminated on December 9, 2004.⁵

The Respondent is not currently registered; however, he remains subject to NASD jurisdiction for the purposes of this proceeding pursuant to Article V, Section 4 of NASD's By-Laws because Enforcement filed the Complaint within two years following the termination of his registration and the Complaint charges him with misconduct committed while he was associated with A. CH. Securities and with failing to respond to requests for information made by NASD staff during the two-year period following the termination of his registration.

B. Failure to Update Form U-4

The first cause of the Complaint alleges that the Respondent violated Conduct Rule 2110 and IM-1000-1 by failing to update his Form U-4 after two customers filed civil actions against him alleging fraud and breach of fiduciary duty relating to investment recommendations the Respondent made to the customers.⁶ Both actions were filed in Montgomery County, Ohio. The first was filed on December 16, 2003, and the second on September 22, 2004.⁷ The Respondent did not amend his Form U-4 to disclose either action.

These allegations, which are deemed admitted, are sufficient to establish for the purposes of this proceeding that the Respondent failed to update his Form U-4. Article V, Section 2 of

⁵ Kulling Decl. ¶ 5; CX 1, at 5.

⁶ Compl. ¶¶ 3-7. The Respondent had updated his Form U-4 to reflect other civil actions that customers had filed against him alleging sales practice violations. Kulling Decl. ¶ 12; Enforcement's Mot. at 4.

⁷ Compl. ¶¶ 3, 5, 7.

NASD's By-Laws requires registered representatives to keep their applications for registration current. Specifically, the Form U-4 requires the disclosure of any civil action that names a registered representative as a defendant and alleges one or more sales practice violations.⁸ Such amendments must be filed not later than 30 days after learning of the facts or circumstances giving rise to the amendment. A failure to update the Form U-4 with such information violates NASD Conduct Rule 2110 and IM-1000-1.⁹ Accordingly, the Hearing Officer finds that the Respondent violated NASD Conduct Rule 2110 and IM-1000-1.

C. Failure to Respond to Requests for Information

The second and third causes of the Complaint allege that the Respondent failed to respond to requests for information issued by NASD staff pursuant to Procedural Rule 8210. The second cause of the Complaint alleges that, on October 19, 2004, NASD staff requested the Respondent to appear for an on-the-record interview. NASD staff issued the request in furtherance of its investigation into a number of customer complaints that had been lodged against the Respondent. The Respondent received the request and asked for a continuance of the scheduled date for the on-the-record interview. Enforcement granted the Respondent's request for a postponement and rescheduled the on-the-record interview for December 9, 2004. The Respondent then requested a second continuance, which Enforcement granted. Enforcement rescheduled the on-the-record interview for December 22, 2004. However, on December 20, 2004, the Respondent told NASD staff in a telephone conversation that he would not appear on December 22, 2004.¹⁰

⁸ See *Department of Enforcement v. Vu*, No. C06010015, 2001 NASD Discip. LEXIS 40, at *8 (O.H.O. Nov. 15, 2001) (holding that an applicant must update his or her Form U-4 as changes occur).

⁹ *Department of Enforcement v. Knight*, No. C10020060, 2004 NASD Discip. LEXIS 5, at *7-8 (N.A.C. Apr. 27, 2004). 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 conduct inconsistent with just and equitable principles of trade and when discovered may be sufficient cause for appropriate disciplinary action.

¹⁰ Kulling Decl. ¶ 13.

The third cause of Complaint alleges that the Respondent failed to respond to two requests for information related to a customer complaint. NASD staff sent the first request to the Respondent at his CRD address on December 9, 2004.¹¹ A few days later, the Respondent telephoned NASD staff and advised that he would not provide the requested information.¹² NASD staff then sent a second request for information to the Respondent at his CRD address, which requested the same information. The Respondent did not provide the requested information.

These allegations, which are deemed admitted, are sufficient to establish for the purposes of this proceeding that the Respondent failed to respond to Enforcement's requests for information and thereby violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110.¹³ A violation of Procedural Rule 8210 is also a violation of Conduct Rule 2110.¹⁴

IV. Sanctions

For failing to respond in any manner to NASD staff requests for information issued pursuant to NASD Procedural Rule 8210, the NASD Sanction Guidelines recommend the imposition of a bar unless mitigating circumstances exist to warrant a lesser sanction.¹⁵ Here, there is no evidence of mitigating circumstances that would warrant a lesser sanction. Accordingly, the Respondent will be barred from associating with any member firm in any capacity.

¹¹ *Id.* ¶ 15.

¹² *Id.*

¹³ *See, e.g., Joseph G. Chiulli, Exchange Act Release No. 42,359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000).*

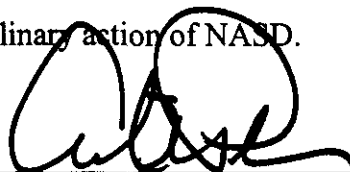
¹⁴ *See, e.g., Department of Enforcement v. Baxter, No. C07990016, 2000 NASD Discip. LEXIS 3, at *25 (N.A.C. Apr. 19, 2000).*

¹⁵ NASD Sanction Guidelines at 35 (2005 ed.).

In light of the bar imposed for the Respondent's failure to respond to the requests for information, no additional sanction will be imposed for the Respondent's failure to update his Form U-4. No remedial purpose would be served by the imposition of additional sanctions.¹⁶

V. Order

Edmund B. Pearson is barred from association with any member firm in any capacity for failing to respond to requests for information, in violation of NASD Procedural Rule 8210 and Conduct Rule 2110, as alleged in the second and third causes of Complaint. The bar will become effective once this Default Decision becomes the final disciplinary action of NASD.



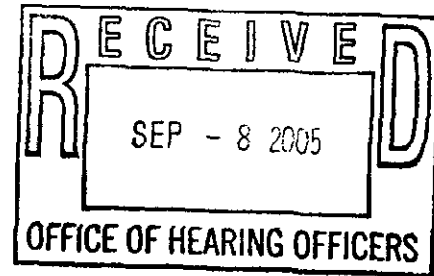
Andrew H. Perkins
Hearing Officer

Copies to:

Edmund B. Pearson (by overnight courier and first-class mail)
Kevin G. Kulling, 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)

¹⁶ See *Jeffrey B. Hodde*, 2002 NASD Discip. LEXIS 4 (N.A.C. Mar. 27, 2002).

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COMPLAINT

Upon information and belief, Complainant alleges as follows:

1. Respondent Edmund B. Pearson entered the securities industry in 1993 as a General Securities Representative of a member of NASD. In or about November 1997, Pearson became registered as a General Securities Principal with A.CH. Securities (Member) where he remained until October 2003. Pearson was subsequently registered with other members of NASD between November 2004 and December 2004.

**FIRST CAUSE OF COMPLAINT
Failure to Amend Form U-4
NASD By-Laws Art. V, Sec. 2
NASD Conduct Rules 2110 and IM 1000-1**

2. Paragraph number 1, above, is realleged and incorporated herein by reference.
3. On or about December 16, 2003, customer M.K. filed a civil action in the court of Common Pleas, Montgomery County, Ohio, against Respondent Pearson.

4. The complaint alleged that Respondent Pearson was liable for fraud, misrepresentation, negligence and breach of fiduciary duty related to Pearson's recommendations and sales of viatical settlements to customer M.K.
5. In addition, on or about September 22, 2004, customer E.M. filed a civil action in the Court of Common Pleas, Montgomery County, Ohio, against Respondent Pearson related to his recommendation and sale of shares of stock which customer E.M. alleged involved a highly speculative, illiquid company.
6. The complaint alleged breach of fiduciary duty, negligence, and fraud, among others.
7. Although required to do so pursuant to NASD By-Laws Article V, Sec. 2, Respondent Pearson did not amend or cause to be amended his Form U-4 to reflect that these two investment-related lawsuits had been filed or were pending.
8. Respondent Pearson's failure to amend his Form U-4 to reflect the filing of the lawsuits is a violation of NASD By-Laws Article V, Sec. 2 and NASD Conduct Rules 2110 and IM 1000-1.

SECOND CAUSE FOR COMPLAINT

Failure to appear for testimony

NASD Conduct Rule 2110 and NASD Procedural Rule 8210

9. On or about October 19, 2004, NASD Staff requested that Respondent Pearson appear for on-the-record testimony under oath pursuant to NASD Procedural Rule 8210.
10. Respondent Pearson acknowledged that he received the request and contacted staff by telephone to request a postponement of the testimony, which was granted.
11. On or about November 8, 2004, staff sent a letter to confirm the agreed upon continued date of December 9, 2004 for the on-the-record testimony.

12. Prior to December 9, 2004, Respondent Pearson requested another postponement and staff again agreed to reschedule the testimony for December 22, 2004.
13. However, on or about December 20, 2004, Respondent Pearson informed staff during a telephone conversation that he refused to appear for testimony on December 22, 2004.
14. *Consequently, Respondent Pearson did not appear for testimony on December 22, 2004.*
15. The above constitutes separate and distinct violations of NASD Conduct Rule 2110 and NASD Procedural Rule 8210 by Respondent Pearson.

THIRD CAUSE FOR COMPLAINT
Failure to respond to Rule 8210 requests for information
NASD Conduct Rule 2110 and NASD Procedural Rule 8210

16. On or about December 9, 2004, staff sent a written request to Respondent Pearson for information related to a customer complaint.
17. The request was sent to Respondent Pearson's address as listed in CRD (CRD Address) by regular first class mail and by certified mail, return receipt requested.
18. The first class mailing was not returned to staff and the certified mailing was returned marked, "Unclaimed."
19. Although Respondent Pearson did not respond in writing to staff requests, on or about December 13, 2004, Respondent Pearson contacted staff by telephone and indicated that he refused to respond to the written requests for information.
20. On or about December 29, 2004, staff sent a second written request to Respondent Pearson pursuant to NASD Rule 8210 to his CRD address, again requesting information related to the customer complaint.
21. The request was sent by first class mail and by certified mail, return receipt requested.

22. The first class mail was not returned and the receipt for the certified mailing was returned marked, "Unclaimed."
23. To date, Respondent Pearson has not responded to the above NASD staff requests for information.
24. The above constitutes separate and distinct violations of NASD Conduct Rule 2110 and NASD Procedural Rule 8210 by Respondent Pearson.

PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests:

- A. Findings of fact and conclusions of law that Respondent committed the violations alleged within this Complaint;
- B. An order imposing sanctions upon the Respondent in accordance with NASD Rule 8310;
- C. An order imposing such costs of any proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330;
and
- D. An order imposing any other fitting sanction.

**NASD DEPARTMENT OF
ENFORCEMENT**

Date: Sept. 7, 2005

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