

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ZELMAN SANDERS III
(CRD No. 4837422),

Respondent.

Disciplinary Proceeding
No. E8A2004086101

Hearing Officer – DRP

DEFAULT DECISION

June 20, 2006

Respondent 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 NASD Conduct Rule 2110. In light of the bar, no additional sanctions are imposed for failing to disclose material facts on a Form U-4, in violation of NASD Conduct Rule 2110 and IM-1000-1.

Appearances

UnBo Chung, Senior Regional Attorney, Chicago, IL (Rory C. Flynn, Washington, DC, Of Counsel) for Complainant.

No appearance by or for Zelman Sanders III.

DECISION

I. Background

On November 9, 2005, the Department of Enforcement filed a two-count Complaint in this proceeding, attached to this Decision as Exhibit A. The Complaint alleges that Respondent Zelman Sanders III (Respondent or Sanders) failed to disclose he had been charged with, and pled guilty to, a felony on his Uniform Application for Securities Industry Registration (Form U-4), in violation of NASD Conduct Rule 2110 and IM-1000-1, and failed to respond to requests

for information, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

Respondent did not file an Answer to the Complaint.

Accordingly, on February 6, 2006, Enforcement filed a motion for entry of default decision, supported by the declaration of UnBo Chung and 16 exhibits. Sanders did not file a response to the motion. For the reasons set forth below, Enforcement's motion is granted.¹

II. Respondent's Default

On or about November 8, 2005, Enforcement served the Complaint and Notice of Complaint on Respondent by first class and certified mail sent to Respondent's last known residential address, as reflected in the Central Registration Depository (CRD address).² Respondent did not file an Answer.³

On or about December 7, 2005, Enforcement served the Complaint and Second Notice of Complaint on Respondent by first class and certified mail sent to Respondent's CRD address. As before, Respondent did not file an Answer.⁴

Enforcement complied with Procedural Rule 9134(b)(1) by mailing the Complaint and Notices of Complaint to Respondent's CRD address, thereby providing constructive notice of this proceeding. By failing to file an Answer or otherwise respond to the Complaint, Respondent defaulted. Pursuant to Rules 9215(f) and 9269(a)(2), the allegations in the Complaint are deemed admitted.

¹ The factual determinations in this Decision are based on the allegations of the attached Complaint, which are deemed admitted, and the declarations and exhibits filed by Enforcement.

² Respondent's CRD address is 1704 North 45th Street, East St. Louis, IL 62204.

³ The first-class mailing was not returned. The certified mailing was returned, marked "unclaimed."

⁴ Once again, the first-class mailing was not returned. The certified mail receipt was returned bearing an illegible signature.

III. Jurisdiction

Respondent was associated with NASD member American Express Financial Advisors (AEFA) and its affiliated company, IDS Life Insurance Company, from August 2004 to September 2004. In August 2004, AEFA submitted a Form U-4 to register Respondent as a general securities representative. Respondent applied to sit for the examination to obtain a Series 7 license, but withdrew his application once his employment was terminated on September 1, 2004. Since then, he has not been associated or registered with any NASD member.

Although he was never registered, Respondent was associated with AEFA, because a “person associated with a member” includes “a natural person who . . . has applied for registration”⁵ Respondent is thus subject to NASD jurisdiction pursuant to Art. V, Section 4 of NASD’s By-Laws, because the Complaint, which was filed within two years of the termination of Respondent’s association with AEFA, alleges misconduct that occurred while he was an associated person, and a failure to comply with requests for information made during the two-year period following the termination.

IV. Findings of Fact and Conclusions of Law

A. Failure to Disclose Material Facts on Form U-4

The first cause of the Complaint alleges that Respondent failed to disclose material facts about his criminal history on a Form U-4 that he prepared in August 2004. In completing the Form U-4, Respondent was required to disclose whether he had ever been charged with any felony. He responded “no.” Respondent was also obligated to divulge whether he had pled

⁵ NASD By-Laws, Art. I (dd).

guilty to any felony. Again, he answered “no.”⁶ In fact, Respondent had been charged with, and pled guilty to, a drug-related felony in 2002.⁷

In response to AEFA’s inquiry, Respondent admitted having been charged with possession of marijuana but said he did not believe he was obligated to disclose the charge on the Form U-4, because his arrest did not result in a criminal conviction. It is true that Respondent’s guilty plea did not constitute a conviction under Texas law, because the court deferred the proceedings by placing Respondent on community supervision for three years.⁸ This does not excuse Respondent’s failure to disclose the felony charge and guilty plea in response to questions on the Form U-4, however, particularly when he was on community supervision at the time of his application.

In applying for registration, an applicant has “an affirmative obligation to disclose fully all material facts . . . in response to the questions of the Form U-4.”⁹ A failure to do so, as occurred here, violates Conduct Rule 2110 and IM-1000-1, which provides that the filing of registration information that is incomplete or inaccurate so as to be misleading . . . may be deemed a violation of Rule 2110.¹⁰

⁶ The applicant is required to report whether he or she has ever “been convicted of or pled guilty or nolo contendere (“no contest”) . . . to any felony” at question 14A(1)(a) and whether he or she has ever “been charged with any felony” at question 14A(1)(b).

⁷ Respondent was charged with, and pled guilty to, one count of Possession of Marihuana of Four Ounces or More but less than Five Pounds, a felony under Section 481.121 of the Texas Health & Safety Code.

⁸ See *Ex parte Garza*, 2006 Tex. App. LEXIS 3032, **6-7 (Tex. 2006) (citations omitted).

⁹ *Dep’t of Enforcement v. Day*, No. C8A010094, 2003 NASD Discip. LEXIS 9 at *3 (OHO Feb. 10, 2003), citing *Rosario R. Ruggiero*, Exchange Act Release No. 37,070, 1996 SEC LEXIS 990, at **8-9 (Apr. 5, 1996).

¹⁰ *Dep’t of Enforcement v. Knight*, No. C10020060, 2004 NASD Discip. LEXIS 5, at **7-8 (NAC Apr. 27, 2004).

Accordingly, 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 failed to *disclose material facts on a Form U-4, in violation of NASD Conduct Rule 2110 and IM-1000-1.*

B. Failure to Respond to Requests for Information

The second cause of the Complaint charges that Respondent violated Procedural Rule 8210 and Conduct Rule 2110 by failing to respond to the staff's requests for information. The Complaint alleges that on or about September 9, 2004, the staff sent Respondent a request for information pursuant to Rule 8210 by first class and certified mail to Respondent's CRD address. He did not respond in any manner to the request.¹¹

The Complaint further alleges that on or about October 7, 2004, the staff sent Respondent a second Rule 8210 request for information by first class and certified mail to his CRD address. When he did not respond in any manner to the request,¹² the staff sent a third request on October 25, 2004. The third request for information was also sent by first class and certified mail to Respondent at his CRD address. To date, Sanders has not responded in any manner to any of the staff's requests.¹³

Procedural Rule 8210 provides that NASD "staff shall have the right to require a member . . . to provide information . . . with respect to any matter involved in [an] investigation" Rule 8210 imposes an absolute obligation on members and associated persons to cooperate with NASD investigations. When an associated person fails to cooperate fully and promptly with

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NASD staff requests for documents and information, he undermines NASD's ability to carry out its regulatory responsibilities.¹⁴

By mailing the requests to Respondent at his last known residential address as reflected in CRD, the staff complied with Rule 8210(d), and pursuant to that rule, Respondent is deemed to have received them. Thus, the allegations in the second cause of the Complaint, which are deemed admitted, are sufficient to establish for purposes of this default decision that Respondent failed to respond to the staff's requests for information, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

V. Sanctions

Under NASD Sanction Guidelines, a bar is standard for failure to respond to requests for information.¹⁵ There is no evidence of any mitigating circumstances here that would warrant a lesser sanction. Accordingly, Respondent will be barred in all capacities for this violation.

Enforcement does not seek any additional sanctions for Respondent's failure to file an accurate Form U-4. In light of the bar imposed, additional sanctions would be redundant.¹⁶ Accordingly, no separate sanctions will be imposed for that violation.

VI. Conclusion

Respondent Zelman Sanders III is barred from association with any member firm in any capacity for failure to respond to requests for information, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110. In light of the bar, no additional sanctions are imposed for failing to disclose material facts on a Form U-4, in violation of NASD Conduct Rule 2110 and

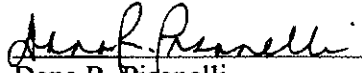
¹⁴ *Toni Valentino*, Exchange Act Release No. 49,255, 2004 SEC LEXIS 330, at *14.

¹⁵ *NASD Sanction Guidelines* at 35 (2006 ed.).

¹⁶ See *Dep't of Enforcement v. Hodde*, No. C10010005, 2002 NASD Discip. LEXIS 4, at *17 (NAC Mar. 27, 2002).

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

SO ORDERED. .


Dana R. Pisanelli
Hearing Officer

Dated: June 20, 2006
Washington, DC

Copies to: Zelman Sanders III (*via overnight and first class mail*)
UnBo Chung, Esq. (*via electronic and first class mail*)
Mark P. Dauer, Esq. (*via electronic and first class mail*)
Rory C. Flynn, Esq. (*via electronic and first class mail*)

EXHIBIT A

**NASD
OFFICE OF HEARING OFFICERS**

Department of Enforcement,	Disciplinary Proceeding
Complainant,	No. E8A2004086101
v.	Hearing Officer
Zelman Sanders III,	COMPLAINT
CRD No. 4837422,	
Respondent.	

Upon information and belief, Complainant alleges as follows:

1. Respondent Zelman Sanders III ("Sanders") was associated with American Express Financial Advisors ("Member"), a member of NASD, from about August 2004 to September 2004. Sanders became registered with NASD in August 2, 2004. On September 1, 2004, the Member filed a Uniform Termination Notice for Securities Industry Registration (Form U-5) that disclosed that Sanders engaged in conduct actionable under NASD rules. Therefore, pursuant to Article V, Section 4 of the NASD's By-Laws, Sanders is subject to the jurisdiction of the NASD.

**FIRST CAUSE FOR COMPLAINT
NASD Conduct Rule 2110 and IM 1000-1
Failure to Disclose Criminal Background**

2. Paragraph number 1, above, is re-alleged and incorporated herein by reference.

3. On or about March 20, 2002, in the state of Texas, Sanders was arrested and charged with the felony of possession of marijuana, 4 ounces or more, but less than 5 pounds.
4. On or about May 17, 2002, in the state of Texas, Sanders pled guilty to the felony of possession of marijuana, and received the sentence of three years of community supervision, drug treatment and a \$100 fine. The court deferred the adjudication of guilt.
5. On or about August 12, 2004, Sanders failed to disclose material facts on a Uniform Application for Securities Industry Registration or Transfer (Form U-4) by failing to disclose that he had been charged with and pleaded guilty to the aforementioned felony as described in Paragraphs 3 and 4 above, in violation of NASD Conduct Rule 2110 and IM 1000-1.

SECOND CAUSE FOR COMPLAINT
NASD Conduct Rule 2110 and NASD Procedural Rule 8210
Failure to Respond to Requests for Information

6. Paragraph number 1 through 5, above, are re-alleged and incorporated herein by reference.
7. On or about September 9, 2004, NASD Staff sent to Sanders a request that he provide certain information, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210. That request for information was sent by first class and certified mail to Sanders' address of record as contained in the records of the Central Registration Depository ("CRD address"). The first class mailings to the CRD address was not returned to the NASD staff, but the certified mailing to the CRD address was returned, marked "Unclaimed."

8. On or about October 7, 2004, NASD staff sent to Sanders a second request that he provide the information initially requested on September 9, 2004, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210. This request for information was sent by first class and certified mail to Sanders's CRD address. The first class mailing to the CRD address was not returned. The receipt for the certified mailing was returned back to NASD, but the signature is illegible.
9. On or about October 25, 2004, NASD Staff sent to Sanders a third request for information initially requested on September 9, 2004, pursuant to and in accordance with the provisions of NASD Procedural Rule 8210. This request for information was sent by first class and certified mail to Sanders' CRD address. The first class mailings to the CRD address was not returned to the NASD staff, but the certified mailing to the CRD address was returned, marked "Unclaimed."
10. Sanders has failed to respond to the requests for information described in Paragraphs 7, 8 and 9 above to date, and the dates for responding to the requests have passed.
11. The acts, practices and conduct described above constitute separate and distinct violations of NASD Conduct Rule 2110 and Procedural Rule 8210 by Sanders.

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**



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Date: November 8, 2005

**NASD Regional Director
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