

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

**ANDREW SIRICO
(CRD No. 1848034),**

Respondent.

**Disciplinary Proceeding
No. ELI2003056602**

Hearing Officer – Dana Pisanelli

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

DATE: March 6, 2006

INTRODUCTION

Disciplinary Proceeding No. ELI2003056601 was filed on December 2, 2005, by the Department of Enforcement of NASD ("Complainant"). Respondent Andrew Sirico ("Respondent") submitted an Offer of Settlement ("Offer") to Complainant on February 9, 2006. Pursuant to Code of Procedure Rule 9270(e), the Complainant and the National Adjudicatory Council ("NAC") Review Subcommittee or the Office of Disciplinary Affairs ("ODA") have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to Code of Procedure Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.

Under the terms of the Offer, Respondent has consented, without admitting or denying the allegations of the Complaint,¹ and solely for the purposes of this proceeding and any other

¹ Except that the allegation in the first cause of complaint that Respondent's failure to disclose an arbitration filed by customers GD and ED on or about May 23, 2002 (the "May 23, 2002 Arbitration") on his Uniform Applications for Securities Industry Registration or Transfers ("Forms U-4") was willful (paragraphs 15 and 19 of the Complaint) has been withdrawn with prejudice. Further, the allegation in the second cause of complaint that Respondent failed to respond has been changed to a failure to timely respond.

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proceeding brought by or on behalf of NASD, or to which NASD is a party, to the entry of findings and violations consistent with the allegations of the Complaint, and to the imposition of the sanctions set forth below, and fully understands that this Order will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by NASD.

BACKGROUND

Respondent first became registered with NASD as a General Securities Representative in February 1989 through an association with a member firm.

Thereafter, from 1991 to 2003, Respondent was registered with NASD through associations with various member firms.

From September 4, 2003 to September 25, 2003, Respondent was registered with member firm The Investment Center, Inc. (BD No. 17839) ("Investment Center").

From October 1, 2003 to September 29, 2004, Respondent was associated with member firm Online Brokerage Services (BD No. 104281) ("Online").

Respondent is not currently registered with the NASD or employed in the securities industry. However, pursuant to Article V, Section 4 of the NASD's By-Laws, he is subject to NASD's jurisdiction.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:

Failure to Disclose on Forms U-4

On or about May 23, 2002, customers GD and ED commenced an NASD arbitration against Respondent alleging unsuitable transactions, unauthorized trading, and churning, and claiming \$177,832 in compensatory and \$50,000 in punitive damages (May 23, 2002

Arbitration). Respondent was the only named respondent; a firm was not named as a respondent. On or about September 3, 2003, the arbitration was resolved by an award for the claimants. As a result, Respondent became liable for \$91,537.62, plus interest.

In connection with his employment with Investment Center, Respondent signed a Uniform Application for Securities Industry Registration or Transfer ("Form U-4") on September 2, 2003 that was submitted to NASD on his behalf by Investment Center on the same day.

Respondent answered "no" to question 14I(1)(a): "Have you ever been named as a respondent/defendant in an investment-related, consumer-initiated arbitration or civil litigation which alleged that you were involved in one or more sales practice violations and which....is still pending..."

Respondent thereby failed to disclose the May 23, 2002 Arbitration, which was a material fact, on his Investment Center Form U-4 or any DRP attached thereto.

In connection with his employment with Online, Respondent executed a Form U-4 that was submitted to NASD on his behalf by Online on or about November 4, 2003.

The Form U-4 requires an applicant to disclose information regarding his or her customer complaint/arbitration history, including whether the applicant has ever been named as a respondent in an arbitration (involving an investment-related, consumer-initiated arbitration or civil litigation concerning one or more sales practice violations) that resulted in an award or a judgment against the respondent, regardless of the amount (Question 14I(1)(b)).

Respondent failed to disclose the May 23, 2002 Arbitration on his Online Form U-4 or any DRP attached thereto.

By reason of the foregoing, Respondent violated NASD IM-1000-1 and NASD Conduct Rule 2110.

Failure to Timely Respond

By letter dated August 2, 2005, the staff of NASD's District No. 10 office (the "Staff") requested that Respondent provide information concerning whether or not he had disclosed the May 23, 2002 Arbitration at Online. The request was made pursuant to, and in accordance with, NASD Procedural Rule 8210. No response was received.

By letter dated August 17, 2005, the Staff requested that Respondent provide information concerning whether or not he had disclosed the May 23, 2002 Arbitration at Online. This request was made pursuant to, and in accordance with, NASD Procedural Rule 8210. No response was received.

By letter dated September 9, 2005, the Staff requested that Respondent provide information concerning whether or not he had disclosed the May 23, 2002 Arbitration at Online. This request was made pursuant to, and in accordance with, NASD Procedural Rule 8210.

On September 21, 2005, the Staff received a handwritten response from Respondent stating in part: "I have again included all copies of details involved with this matter," and indicating that he no longer resided at the CRD Address and that the Equifax Address was the most current address. However, Respondent failed to respond to the question of whether he had disclosed the May 23, 2002 Arbitration at Online.

As a result, on October 20, 2005 the Staff held a telephonic conversation with Respondent during which time the Staff requested that Respondent answer the question whether he had disclosed the May 23, 2002 Arbitration at Online (requested in the 8210 letters).

As a follow up to the October 20 telephonic conversation between Respondent and the Staff, once again, by letter dated October 20, 2005, the Staff requested that Respondent provide

information concerning whether or not he had disclosed the May 23, 2002 Arbitration at Online. This request was made pursuant to, and in accordance with, NASD Procedural Rule 8210. No response was received.

In December 2005 this disciplinary proceeding commenced.

After the Complaint was filed, Respondent sent an undated letter to Complainant. This letter was received by Complainant on January 12, 2006. Respondent's letter belatedly addressed his Online Form U-4.

By reason of the foregoing, Respondent violated NASD Procedural Rule 8210 and Conduct Rule 2110 by failing to respond to NASD requests for information in a timely manner.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondent from any future misconduct, and represent a proper discharge by NASD, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

It is ordered that Respondent be fined in the amount of \$10,000 and suspended from associating with any NASD member firm in any capacity for a period of seven (7) months.

The sanctions imposed herein shall be effective on a date set by NASD staff.

SO ORDERED.

NASD

By: 

Soo H. Im, Senior Regional Attorney
on behalf of the Director of ODA,
pursuant to delegated authority