

This Order has been published by FINRA's Office of Hearing Officers and should be cited as OHO Order 08-04 (2006005849101).

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

Respondent.

Disciplinary Proceeding
No. 2006005849101

Hearing Officer – SW

ORDER DENYING MOTION TO SET ASIDE DEFAULT DECISION

On January 14, 2008, Respondent filed a motion pursuant to Rule 9269(c), requesting that the Hearing Officer set aside a default decision that she had issued previously on August 30, 2007 (“Default Decision”) pursuant to Rule 9269.

Based on the allegations of the Complaint, which were deemed admitted, the Hearing Officer found that Respondent (1) violated NASD Conduct Rule 2110 and Procedural Rule 8210 by failing to respond to requests for information, and (2) violated NASD Conduct Rule 2110 by failing to disclose that he had been charged with misdemeanor theft of property on the Form U-4, which he signed and caused Ameriprise Financial Services, Inc. (“Ameriprise”) to file on his behalf.

Pursuant to the Default Decision, for failing to respond, Respondent was barred from associating with any FINRA member in any capacity. The Hearing Officer did not impose a separate sanction on Respondent for his Form U-4 violation.

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In his January 14, 2008 motion, Respondent argued that (1) he did not know he was supposed to answer FINRA after Ameriprise decided not to hire him, and (2) he just found out that letters had been sent to his previous addresses.

On February 14, 2008, Respondent supplemented his motion to acknowledge that he did not update his Central Registration Depository ("CRD") address.¹ Respondent wrote that he was not aware that he had an obligation to update his CRD address because he never completed the hiring process with Ameriprise. Further, Respondent wrote that he was unaware of his continuing obligation to inform FINRA of his current addresses never having worked as a financial advisor, and never having taken a single exam.

However, Respondent did not deny the allegations of the Complaint that (i) on October 13, 2006, the FINRA staff sent letters to Respondent, pursuant to Rule 8210, via first-class and certified mail, at Respondent's CRD address and at an address for Respondent obtained by the FINRA staff from Autotrack, and (ii) Respondent signed a receipt for the October 13, 2006 letter, evidencing Respondent's receipt of the October 13, 2006 certified mailing sent to the Autotrack address.

On February 28, 2008, the Department of Enforcement filed a response opposing Respondent's motion to set aside, arguing that by signing the Form U-4, Respondent knew or should have known that he was required to keep his CRD address current and that by ignoring at least one request for information, Respondent ignored his obligation to respond to an 8210 request for information and the possible consequences of his actions.

¹ On January 25, 2008, the Hearing Officer issued an order, which among other things directed Respondent to supplement his motion with a statement setting forth whether he notified the CRD of any change of address and any other information that he believed relevant. In his supplement, Respondent did not explain why he failed to disclose his misdemeanor charge on his Form U-4.

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Rule 9269(c) provides that the Hearing Officer may set aside a default “[u]pon a showing of good cause.” In Notice to Members (NTM) 99-77, FINRA explained that the relevant factors in deciding whether a respondent has shown good cause to set aside a default include:

- (1) whether the respondent notified the Central Registration Depository (CRD) of any change of address;
- (2) the length of time that has passed between the issuance of the default decision and the respondent's appeal or motion to set aside; and
- (3) the reasons for the respondent's failure to participate in the proceeding before the Hearing Officers.

With respect to the first factor, Respondent admitted that he failed to update his CRD address. As an associated person, Respondent was obligated to keep FINRA apprised of his current address via CRD.² Respondent became an associated person when he signed and caused the Form U-4 application for registration to be filed.³

Secondly, nearly four months have elapsed between the issuance of the Default Decision and the filing of Respondent's motion. To explain this delay, Respondent asserts that he was not made aware of the disciplinary proceeding because he did not receive the letters. But, Respondent received a Rule 8210 request letter from FINRA in October 2006, requesting information concerning his failure to disclose his misdemeanor theft of property charge on the initial Form U-4, and warning him that a failure to comply with the request could subject him to disciplinary action and sanctions. Respondent should reasonably have expected that there would be some consequences for failing to

² *Warren B. Minton, Jr.*, Exch. Act Rel. No. 46,709 (Oct. 23, 2002), 78 SEC Docket 2369, 2375 n.15 (quoting *William T. Banning*, 50 S.E.C. 415, 416 (1990) (associated persons have “a continuing duty to notify [FINRA] . . . of [their] current address, and to receive and read mail sent to [them] at that address”)); See also *Dennis A. Pearson, Jr.*, Exch. Act Rel. No. 54,913 (Dec. 11, 2006).

³ Article I, Section (rr) of the NASD's By-laws, defines an “associated person” to include a “natural person who is registered or has applied for registration under the Rules of [FINRA].”

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respond to FINRA's request for information, and therefore should have taken reasonable steps to make himself aware of FINRA's continued investigation and disciplinary action.

Finally, Respondent explains his reasons for not participating in the disciplinary proceeding as not being aware of the disciplinary proceeding because he did not receive the letters. Once again the Hearing Officer notes that Respondent had a duty to keep FINRA informed of his current address.

Thus, based on the factors set forth in NTM 99-77, Respondent has failed to demonstrate good cause for setting aside his default. Accordingly, Respondent's motion to set aside his default is denied.

SO ORDERED.

Sharon Witherspoon
Hearing Officer

Dated: Washington, DC
March 18, 2008