

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD

In the Matter of

Department of Enforcement,

Complainant,

vs.

Dulce Maria Salaverria,
Maracaibo, Venezuela,

Respondent.

DECISION

Complaint No. C07040077

Dated: December 12, 2005

Respondent knowingly provided member firm falsified results of her Series 7 securities registration examination. Held, Hearing Officer's finding of violation and sanctions are affirmed.

Appearances

For the Complainant: Joel Beck, Esq., Leo F. Orenstein, Esq., Department of Enforcement, NASD

For the Respondent: Pro Se

Decision

Dulce Maria Salaverria ("Salaverria") appeals, under NASD Procedural Rule 9311, from a March 4, 2005 Hearing Officer default decision ("Default Decision"). After thoroughly reviewing the record in this proceeding, we find that the Hearing Officer's entry of default was proper and that Salaverria did not establish good cause for her failure to participate in the proceedings before the Hearing Officer. We also find that Salaverria violated NASD Conduct Rule 2110 by knowingly providing a false Series 7 general securities representative qualification examination score report to the member firm with which she was associated. We impose a bar on Salaverria from associating with any NASD member in any capacity.

I. Background

Salaverria was associated with NASD member firm Dresdner Lateinamerika Financial Advisors LLC (“DLFA”) from January 1, 1998 until March 31, 2004. On November 4, 2003, Salaverria applied to become registered as a general securities representative and a foreign associate. NASD approved Salaverria’s registration as a foreign associate on February 2, 2004. On April 29, 2004, DLFA terminated Salaverria’s registration as a foreign associate and her application for registration as a general securities representative. Salaverria has not been associated with an NASD member firm since her termination from DLFA.¹

II. Factual and Procedural History

On September 3, 2004, Enforcement filed a one-cause complaint against Salaverria alleging that Salaverria knew, or should have known, that the score report that she submitted to DLFA, purporting to show that she scored a “70%” on the Series 7 examination, was fictitious.² The complaint further alleged that Salaverria’s conduct in submitting a fictitious score report to DLFA violated NASD Conduct Rule 2110.

On September 3, 2004, Enforcement served the complaint and notice of complaint on Salaverria, via certified and first-class mail, using her residential address, as listed in the Central Registration Depository (“CRD®”).³ The return receipt for the certified mailing reflected the signature of “Maria Salaverria.” The first-class mailings were not returned. Salaverria did not file an answer by the October 1, 2004 deadline specified in the notice of complaint.

On October 5, 2004, Enforcement served the complaint and second notice of complaint on Salaverria at her CRD address by certified and first-class mail and via Federal Express.⁴ The Postal Service did not return either the certified or first-class mailings. Nor did it return the return receipt for the certified mailing. Additionally, Federal Express did not return the mailing as undeliverable.

¹ Salaverria is subject to NASD jurisdiction under Art. V, Section 4 of NASD’s By-Laws because the complaint, which was filed within two years of the termination of her registration with DLFA, alleges misconduct that occurred while she was registered as a foreign associate and an applicant for registration as a general securities representative.

² After receiving a copy of the purported test result from Salaverria on March 5, 2004, the Firm sent a copy of the document to NASD on the same date.

³ Enforcement also emailed the complaint and notice of complaint to Salaverria at her email address on September 7, 2004.

⁴ Enforcement also sent the complaint and second notice of complaint to Salaverria’s email address.

On October 19, 2004, Salaverria sent an email to Enforcement requesting additional time in which to respond to the complaint because she was hiring an attorney. Joel R. Beck (“Beck”), the Enforcement attorney who handled this matter in the proceedings below, replied via email to Salaverria and explained that a request for additional time to respond to the complaint should be directed to NASD’s Office of Hearing Officers (“OHO”). Beck’s response also included OHO’s address and telephone/facsimile numbers.

Salaverria did not file an answer by the October 22, 2004 deadline specified in the second notice of complaint. Nor did Salaverria request an extension of time from OHO to file an answer, as Beck had instructed her to do. On November 9, 2004, Enforcement filed a motion for entry of a default decision with OHO and simultaneously served it on Salaverria at her CRD address by first-class mail and overnight courier.

On or about November 15, 2004, Salaverria left a telephone voice mail message for OHO staff requesting additional time in which to file her answer to the complaint and stating that she was obtaining counsel. OHO staff responded to Salaverria via email on November 15, 2004 because Salaverria did not provide a telephone number.⁵ Salaverria called the next day to give OHO staff detailed information about her attorney and to request an extension. OHO staff told Salaverria that she needed to file a written request for an extension; otherwise, Enforcement’s pending motion for entry of a default decision would be granted. Salaverria did not further contact OHO, submit to OHO a written request for an extension to file an answer to the complaint, or file an answer to the complaint. There is no evidence that Salaverria ever retained counsel to represent her in this matter.

On March 4, 2005, the Hearing Officer issued a decision finding that Salaverria defaulted by failing to answer the complaint. The Hearing Officer imposed a bar on Salaverria based on findings that she knowingly provided a fictitious score report to DLFA showing that she had passed her Series 7 examination with a score of 70 percent. The Hearing Officer’s factual findings were based on the allegations in the complaint, which were deemed admitted, and the declaration and exhibits that Enforcement filed with its motion for entry of a default decision (“Enforcement’s Declaration”).

On March 22, 2005, Salaverria filed a notice of appeal. In a letter to Salaverria dated March 24, 2005, NASD’s Office of General Counsel for Regulatory Policy and Oversight acknowledged receipt of Salaverria’s appeal and advised her that she could file a motion with OHO to set aside the March 4, 2005 default decision under NASD Procedural Rule 9269(c). The letter also advised Salaverria that the motion should explain why she did not file an answer to the complaint and why she did not send a written request for additional time to file an answer to the complaint.

⁵ The record does not include a copy of OHO’s email response to Salaverria. Such evidence is not pertinent, however, to our decision on the issue of whether Salaverria defaulted in this matter.

On April 13, 2005, OHO received a letter from Salaverria dated April 8, 2005, requesting that the Hearing Officer reduce the bar to a lesser sanction. Salaverria explained that she did not file an answer to the complaint because she had not retained an attorney and did not know how to file an answer. On April 18, 2005, the Hearing Officer issued an order in response to Salaverria's letter captioned, "Order Denying Motion to Set Aside Default Decision" ("Order").⁶ The Hearing Officer rejected as unpersuasive Salaverria's explanation for her failure to file an answer to the complaint and found that Salaverria had not shown good cause for setting aside her default.⁷

III. Discussion

We first address whether the Hearing Officer properly determined that Salaverria was in default. We find that the evidence supports the Hearing Officer's determination. We next consider whether Salaverria demonstrated good cause for her failure to participate in the proceedings below. We find that she has not. Finally, we consider whether the allegations included in Enforcement's complaint are substantiated and conclude that the evidence supports the allegations.

A. The Hearing Officer's Entry of Default Was Appropriate.

Procedural Rule 9269 gives Hearing Officers the authority to enter a default when a respondent fails to file an answer or otherwise respond within a specified time after NASD has served a second notice of complaint. Enforcement complied with Procedural Rule 9134(b)(1) by mailing the complaint and notices of complaint to Salaverria's CRD address, thereby providing constructive notice of this proceeding.⁸ Although actual notice is not required, we also find that Salaverria had actual notice of the complaint as

⁶ The Hearing Officer stated in the Order that even though Salaverria's April 13, 2005 letter was untimely, and her request vague, it would be treated as a motion to set aside the Default Decision under Rule 9269(c).

⁷ Procedural Rule 9269(c) provides that the Hearing Officer may set aside a default upon a showing of "good cause." Hearing Officers and the NAC take into consideration the following factors in evaluating good cause: (1) whether the respondent notified CRD of any address changes; (2) the length of time that has passed between the issuance of the default decision and the respondent's appeal; and (3) the reasons for the respondent's failure to participate in the proceeding before the Hearing Officer. *See Notice to Members 99-77* (Sept. 1999). The Hearing Officer found that Salaverria's failure to retain an attorney did not excuse her failure to file an answer to the complaint.

⁸ *See Dep't of Enforcement v. Verdiner*, Complaint No. CAF020004, 2003 NASD Discip. LEXIS 42, at *5 n.1 & *6 (NAC Dec. 9, 2003) (finding that mailing of complaint to respondent's most recent CRD address constituted constructive service under Rule 9134(b)(1), and that respondent was therefore properly served).

shown by her contact with Enforcement and OHO subsequent to Enforcement's mailing of the complaint and the second notice of complaint.⁹ We therefore find that Enforcement properly served the complaint on Salaverria. It is also undisputed that Salaverria failed to file an answer to the complaint, as required under Procedural Rule 9215. The Hearing Officer's entry of default was therefore appropriate.

B. Salaverria Failed to Show Good Cause for Her Failure to Answer the Complaint.

NASD Procedural Rule 9344(a) sets forth the procedures applicable to appeals of default decisions. Under Rule 9344(a), the NAC will consider default decision appeals on the basis of the written record without the opportunity for oral argument, unless the respondent demonstrates good cause for his failure to participate in the proceedings below. If good cause is established, the rule permits the NAC to dismiss the appeal and remand the matter for further proceedings or to order the appeal to proceed.

Salaverria has not shown good cause for failing to file an answer to the complaint. Although Salaverria had numerous opportunities to file an answer to the complaint, she failed to do so. Almost six months elapsed from the time Salaverria was first properly served with the September 3, 2004 complaint until the Default Decision was issued on March 4, 2005. Within that period, Salaverria had constructive and actual notice of the proceedings instituted against her, including notice of Enforcement's November 9, 2004 motion for the entry of a default decision. Salaverria, nevertheless, failed to file either a written request for an extension to file an answer or an answer to the complaint. On the basis of these facts, we cannot find that Salaverria had good cause for failing to file an answer. *Cf. Dep't of Enforcement v. Paz Sec., Inc.*, Complaint No. C07030055, 2005 NASD Discip. LEXIS 1, at *11 (NAC Feb. 10, 2005) (holding that respondents did not show good cause when they "at every opportunity ignored the [disciplinary] proceedings until the Hearing Officer imposed significant sanctions against them").

Salaverria asserts on appeal that her unsuccessful efforts to retain an attorney affected her ability to answer the complaint. The lack of legal counsel, however, does not serve as a defense for failing to participate in disciplinary proceedings. There is no constitutional or statutory right to representation by counsel in NASD proceedings. *See Mark H. Love*, Exchange Act Rel. No. 49248, 2004 SEC LEXIS 318, at *18 (Feb. 13, 2004). In addition, the notices to the complaint included specific instructions about when the answer was due to be filed and what type of information should be included in the

⁹ *See Dep't of Enforcement v. Ryan*, Complaint No. CAF010013, 2003 NASD Discip. LEXIS 2, at *17-18 (NAC Apr. 25, 2003) (finding that although actual notice of the complaint is not required, respondent's message to Enforcement staff that he would be retrieving the second notice of the complaint and other evidence show that he received actual notice).

answer.¹⁰ Therefore, Salaverria's contention that she did not know "what to do or how to do it" is unpersuasive.

We find that Salaverria has failed to show good cause for her failure to participate in the proceedings below. Thus, we have considered this appeal on the basis of the written record, in accordance with Rule 9344.

C. Evidentiary Basis for the Findings of Violation

The Hearing Officer based the factual determinations in the Default Decision on the allegations in the complaint and Enforcement's Declaration. Although the NAC may deem the allegations of the complaint admitted, the NAC is not doing so in this case. We have conducted an independent review of the evidence and find that the record supports the findings set forth in the Default Decision.¹¹

¹⁰ The notices to the complaint explained that the answer "must admit, deny or state that you do not have or are unable to obtain sufficient information to admit or deny each allegation in the complaint." The notices also explained that the answer "must specifically state whether you request a hearing on the allegations of the complaint or whether you waive a hearing."

¹¹ The SEC has indicated that when a default decision is appealed, the record should contain sufficient independent evidence to support the findings of violation to enable the SEC to discharge its review function under Section 19 of the Securities Exchange Act of 1934. See *James M. Russen, Jr.*, 51 S.E.C. 675, 678 (1993) (noting approvingly in default case that NASD, rather than simply basing its conclusions on the allegations in the complaint, had reviewed the record evidence and determined that it supported a finding of violation); *Troy A. Wetter*, 51 S.E.C. 763, 767-68 (1993) (ruling in default case that the SEC could "conclude, on this record, that [the firm] effected only 5, rather than 30, securities transactions" and reducing the sanctions). Under Procedural Rule 9346(f), which permits a subcommittee of the NAC ("Subcommittee") to order that the record be supplemented with additional evidence it deems relevant, the Subcommittee that considered this matter on appeal ordered Enforcement to supplement the record with certain documents identified in, but not included with, Enforcement's Declaration.

The Subcommittee also ordered Salaverria to supplement the record, under Procedural Rule 9346(f), with the "piece of paper" referenced in Salaverria's notice of appeal that purportedly showed her final score as "70%." The letter setting forth the Subcommittee's order to supplement the record was sent to Salaverria's CRD address via first-class mail, certified mail, and Federal Express. Salaverria therefore received constructive notice of the order. Additionally, the Federal Express receipt shows that the letter was delivered to Salaverria's address. Moreover, the Postal Service did not return the first-class and certified mailings, or the certified mailing return receipt. Salaverria did not respond in any manner, despite evidence indicating that she was properly served with the Subcommittee's order.

Conduct Rule 2110 requires associated persons to “observe high standards of commercial honor and just and equitable principles of trade.” The SEC has consistently held that “NASD’s disciplinary authority under Conduct Rule 2110 ‘is broad enough to encompass business-related conduct that is inconsistent with just and equitable principles of trade, even if that activity does not involve a security.’” *Daniel D. Manoff*, Exchange Act Rel. No. 46708, 2002 SEC LEXIS 2684, at *12 (Oct. 23, 2002) (quoting *Vail v. SEC*, 101 F.3d 37, 39 (5th Cir. 1996) (per curiam)).

The evidence shows that Salaverria knowingly reported a false Series 7 examination score to DLFA. The official report of NASD’s Testing and Continuing Education Department, a copy of which is included in the record, shows that Salaverria took the Series 7 examination on February 18, 2004, and answered 56 percent of the questions correctly. The official report also explicitly indicates that Salaverria failed the examination. Salaverria provided DLFA with a score report for the same test, however, that showed she had received a score of 70 percent. A copy of the score report that Salaverria provided to DLFA is contained in the record. Furthermore, Salaverria orally told a DLFA employee that she received a score of 70 percent on the examination.¹²

Moreover, according to the lead test center administrator at the site where Salaverria took the Series 7 test on February 18, 2004, the format of the test score report that Salaverria provided to DLFA resembles the score report for a failing examination. In an affidavit, the administrator provided the following explanation of the distinct differences between the information that appeared on passing and failing score reports during the relevant period:

Due to a technical problem that has since been corrected by NASD, the score reports for candidates who failed the Series 7 printed differently than normal for a time – differently than the way they print for candidates who pass the examination. For Series 7 failures during late 2003 through April 2004, the text on the score report began a third of the way down the page and cut off after bullet point 4. Candidates who pass the Series 7 ([including] those who passed during the time of the [printing] defect) receive the entire 7 bullet points – one per section. The attached document [that shows Salaverria’s score as 70%] resembles the score report for a failing examination during the time of the printing defect.

Salaverria claimed in her brief on appeal to the NAC that she had submitted the original test score report to DLFA on the date of the examination and that DLFA had lost the original. There is no evidence in the record, however, apart from Salaverria’s self-

¹² The record includes a copy of this employee’s email to another DLFA employee in which the employee states that Salaverria told her that she received a score of 70 percent on the examination at issue.

-serving statement, to support this contention. DLFA’s Letter to Enforcement indicates that the Firm did not have a copy of Salaverria’s original score report.

Knowingly providing a member firm with a fictitious score report that falsely represents that an associated person has passed a registration examination is conduct that falls within the broad ethical principle included in Conduct Rule 2110. *See, e.g., Daniel D. Manoff*, 2002 SEC LEXIS 2684, at *12 (concluding that respondent’s unauthorized use of co-worker’s credit card “constituted unethical business-related conduct, and call[ed] into question his ability to fulfill his fiduciary duties in handling other people’s money”). *See generally Thomas E. Jackson*, 45 S.E.C. 771, 772 (1975) (“Although [respondent’s] wrongdoing in this instance did not involve securities, . . . NASD could justifiably conclude that on another occasion it might”). Accordingly, we find that Salaverria violated Conduct Rule 2110 by providing DLFA with a fictitious score report that she knew or should have known falsely represented that she had passed the Series 7 examination.¹³

IV. Sanctions

The Hearing Officer found Salaverria’s conduct, namely, falsification of an examination score report to DLFA, her employing member firm, to be egregious and barred Salaverria from associating with any member firm in any capacity. We affirm the Hearing Officer’s findings and sanctions.

The NASD Sanction Guidelines (“Guidelines”) for forgery and/or falsification of records recommends a fine of \$5,000 to \$100,000.¹⁴ The Guidelines state that for egregious cases, the adjudicator should consider a bar, and where mitigating factors exist, consider suspending respondent in any or all capacities for up to two years.¹⁵

We find that Salaverria’s conduct was egregious. The Guidelines for forgery and/or falsification of records instruct adjudicators to consider the nature of the document falsified.¹⁶ Here, Salaverria provided DLFA with a fictitious examination score result in an apparent attempt to obtain a Series 7 registration with NASD, despite having received a failing grade of 56 percent on her Series 7 examination. We regard this as a highly aggravating factor. Like the registered representative in *District Business Conduct Committee. v. Bruno*, Complaint No. C10970007, 1998 NASD Discip. LEXIS 51 (NAC July 8, 1998), whom we barred after he had an imposter take the Series 7 qualification

¹³ Our findings are based on the allegations in the complaint and the record evidence.

¹⁴ *See* Guidelines (2001 ed.) at 43 (Forgery And/Or Falsification Of Records).

¹⁵ *Id.*

¹⁶ *Id.*

examination on his behalf, Salaverria's conduct poses a threat to the investing public because she sought to act as a registered general securities representative without being qualified and cheated before she ever entered the securities industry. Salaverria attempted to deliberately deceive DLFA into believing that she passed the Series 7 examination. Such conduct threatens the integrity of NASD's registration process and cannot be tolerated.

Moreover, we find that Salaverria's continued assertions that the falsified document was accurate, in the face of conflicting CRD evidence, constitute evidence of additional aggravating circumstances. Salaverria "maintained her innocence" when DLFA representatives confronted her on two separate occasions about the discrepancy between the test score report that she gave to DLFA and the test results that CRD reported, according to a letter that DLFA management sent to Enforcement in response to a request for information under Procedural Rule 8210 ("DLFA's Letter"). The record demonstrates that Salaverria failed to provide any reasonable explanation or evidence to support her claim of innocence even though she had several opportunities to do so following the Firm's discovery of the discrepancy in the score reports. Salaverria claimed that the testing center had made a mistake when representatives from DLFA called Salaverria on March 6, 2004, to express concern about the fact that the test result that she provided to the Firm differed from the test result posted on CRD. Salaverria continued to maintain her innocence the next day, on March 7, 2004, when a DLFA representative contacted Salaverria and gave her another opportunity to tell the truth. Furthermore, although the Subcommittee gave Salaverria the opportunity to provide the NAC with written evidence to support her assertion that she had not provided a fictitious score report,"¹⁷ Salaverria did not provide the Subcommittee with a response.

Salaverria's conduct is contrary to the ethical standards to which members of the industry must adhere. There are no mitigating factors. We therefore find that it is necessary to exclude Salaverria from the securities industry to protect the registration examination process. We order that Salaverria be barred from associating with any member firm in any capacity.¹⁸

¹⁷ See note 11, *supra*.

¹⁸ In light of our policy determination that, in certain cases involving the imposition of a bar, no further remedial purpose is served by the additional imposition of a monetary sanction, we do not impose a fine for Salaverria's violation. See Guidelines (2001 ed.) at 13-14 (Technical Matters).

IV. Conclusion

We find that Salaverria knowingly provided a false Series 7 score report to DLFA, in violation of Conduct Rule 2110. Accordingly, we order that Salaverria be barred from association with any NASD member firm in any capacity. The bar will be effective as of the date of this decision.¹⁹

National Adjudicatory Council,

Barbara Z. Sweeney
Senior Vice President and Corporate Secretary

¹⁹ We have considered, and reject without discussion, all other arguments of the parties.