

**NASD REGULATION, INC.  
OFFICE OF HEARING OFFICERS**

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DEPARTMENT OF ENFORCEMENT,	:	
	:	
Complainant,	:	Disciplinary Proceeding
	:	No. C9A990029
v.	:	
	:	Hearing Officer - Alan W. Heifetz
SHANNON JOHNSON	:	
(CRD #2884555),	:	<b>Hearing Panel Decision</b>
	:	
Montgomery Village, MD	:	
	:	
	:	
Respondent.	:	April 3, 2001

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**Director of member firm failed to respond to requests for information from NASD staff. Respondent found liable for violation of NASD Conduct Rule 2110 and Procedural Rule 8210, and barred from associating with any member firm.**

Appearances:

Thomas K. Kilkenny, Esq. for the Department of Enforcement

No appearance for Shannon Johnson

**DECISION**

**Background**

The Department of Enforcement (“Enforcement”) filed the Complaint in this proceeding on August 9, 2000, alleging that Shannon Johnson (“Johnson” or “Respondent”), while subject to the jurisdiction of NASD Regulation, Inc., failed to respond to three written notices requiring him to provide information and documents pursuant to NASD Procedural Rule 8210. Because

Johnson failed to file an Answer to the Complaint, on August 31, 2000, the Department served him with a Second Notice of Complaint. Johnson again failed to file a timely Answer to the Complaint. However, on September 25, 2000, M. David Sayid, Esq., of New York, New York, filed an appearance on behalf of Respondent, along with an Answer to the Complaint. The Answer denied certain allegations in the Complaint and, as to other allegations, asserted a lack of knowledge or information sufficient to form a belief as to their truth or falsity. Following a pre-hearing conference with counsel for both parties, this matter was set for hearing on March 6, 2001, in Washington, D.C.

The Initial Pre-Hearing Order required the parties, *inter alia*, to file witness lists and proposed exhibits by a date certain. Enforcement complied with that Order; however, Respondent filed no proposed witness list nor any proposed exhibits. Respondent's counsel did not file a withdrawal of appearance, nor did he appear at the hearing. Respondent also did not appear at the hearing. The hearing was held as scheduled before a panel consisting of the Hearing Officer and a former member of the District 9 Committee.<sup>1</sup>

### **Findings of Fact**

In March 1997, Shannon Johnson became a director of Meridian Equities Company, a member firm of the NASD. He is listed as a director of Meridian in the Central Records Depository ("CRD") and is also so listed on a Form BD amendment that was provided to the staff of NASD Regulation, Inc. by Meridian. CX-2; CX-4, at 6; CX-22, at 5.<sup>2</sup>

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<sup>1</sup> A third panelist was scheduled to hear this matter; however, shortly before the hearing was to begin, that panelist notified the Hearing Officer that she was unable to participate. The Chief Hearing Officer approved the proposal to proceed with two panelists.

<sup>2</sup> Complainant's exhibits are denoted as CX\_\_\_. Transcript references are noted as Tr.\_\_\_\_.

On June 29, 1998, Johnson testified under oath in an NASD Regulation investigation of Meridian Equities Company. He stated that he was a director of Meridian, that he attended board of directors meetings in person and by telephone, and that he signed minutes of the board of directors. CX-6; CX-8, CX-9. In his capacity as a director, he executed unanimous consents of directors on 12 occasions during 1997. CX-10 through CX-21. As a director, he remained an associated person of an NASD member firm until Meridian's membership terminated on November 20, 1998. CX-5.

In 1998, NASD examiner Joseph Sloan conducted a cycle examination of Meridian. As a consequence of that examination, Sloan began an investigation into the relationship between Meridian and Y.B.C. & Associates, a company with which Johnson was listed in the CRD as vice-president. CX-2. As part of his investigation, Sloan sent three requests for information, including requests for correspondence between Meridian and Y.B.C. during the period February 1996 to May 1998, to Johnson at his residential CRD address of record, \_\_\_\_\_, Montgomery Village, Maryland \_\_\_\_\_. Tr. 21-22.; CX-1; CX-4, at 6. All three mailings were returned marked "forwarding order expired." Tr. 22.

In response to his request to another NASD employee for an address search for Johnson, Sloan was given two addresses: \_\_\_\_\_, Gaithersburg, Maryland \_\_\_\_; and \_\_\_\_\_, Laytonsville, Maryland \_\_\_\_\_. CX-23. In his earlier testimony on June 29, 1998, Johnson had stated that his address was \_\_\_\_\_, Laytonsville, Maryland. CX-7.

On February 15, 2000, Sloan sent a request for information and documents pursuant to NASD Rule 8210, and a copy of Rule 8210, to Johnson at the two \_\_\_\_\_ addresses and the \_\_\_\_\_ address. All three mailings were sent by certified mail. Tr. 23. The certified receipts for the two \_\_\_\_\_ addresses were signed for by a Brittany Johnson. Tr. 23, 24. The receipt for the \_\_\_\_\_ address was returned marked “forwarding order expired.” CX-24, at 5. Johnson did not reply to the request for information and documents. Tr. 24.

On March 1, 2000, Sloan sent another request for the same information and documents to Johnson at the same three addresses noted above. Those mailings were sent by first class mail. CX-25. Neither mailing to the \_\_\_\_\_ addresses was returned to Sloan at the District Office. The mailing to the \_\_\_\_\_ address was returned marked “forwarding order expired.” CX-25, at 2. Johnson did not reply to the request for information and documents. Tr. 26.

Finally, on March 16, 2000, Sloan sent a third request for the same information and documents by certified mail to Johnson at the same three addresses noted above. Brittany Johnson signed a receipt for the mailing to Laytonsville, Maryland, address. The mailing to Gaithersburg, Maryland, was returned unclaimed, and the mailing to the \_\_\_\_\_ address was returned marked “forwarding order expired.” CX-26. Johnson did not reply to this request for information and documents, nor has he ever provided any of the information and documents that were requested by examiner Sloan. Tr. 27.

## Discussion and Conclusions

Article V, Section 4 of the NASD By-Laws provides a two-year period of retained jurisdiction over formerly associated persons, imposing a continuing duty on such persons to respond to requests for information issued by the NASD during this two-year period. Article I, section (ee) specifically includes directors, whether registered or not with the NASD, within the definition of associated persons. Johnson was associated with Meridian until its NASD membership terminated on November 20, 1998. Because the requests for information were sent to Johnson and the Complaint was filed within two years of that date, the NASD has jurisdiction over Johnson and the charges alleged in the Complaint.

Rule 8210 provides the NASD Regulation staff with the right to require a person subject to the NASD's jurisdiction to provide information, *inter alia*, orally or in writing, with respect to any matter involved in an investigation. The purpose of the Rule is to provide a means for the NASD to carry out its self-regulatory functions in the absence of subpoena power. Failures to comply with Rule 8210 requests are serious violations because they subvert those functions. *Joseph Patrick Hannan*, Exchange Act Release No. 40438, 1998 SEC LEXIS 1955 at \*8 (Sept. 14, 1998). A violation of Rule 8210 is also a violation of NASD Conduct Rule 2110 which requires that a member - and by virtue of NASD Rule 0115, a person associated with a member - conduct business by observing "high standards of commercial honor and just and equitable principles of trade." *See Id.* at \*2.

Under Rule 8210(d), notice of a request for information is deemed received by the person to whom it is directed by mailing the notice, *inter alia*, to the last known residential address of the person as reflected in the Central Registration Depository (“CRD”), or if the NASD staff has actual knowledge that the CRD address is out of date or inaccurate, then to that last known address *and* to “any other more current address of the...person known to the...Association staff who is responsible for mailing...the notice.” The three notices that form the basis of the Complaint, dated February 15, March 1, and March 16, 2000, were all sent to Johnson’s CRD address and to the most current address the staff could find from an address search. The \_\_\_\_\_ address in Laytonsville, Maryland, was the same address that Johnson claimed was his in his testimony on June 29, 1998. CX-7. A Brittany Johnson signed for two notices that were sent to that address. A third notice, sent by first class mail to that address, was not returned. Accordingly, the Hearing Panel concludes that Johnson is deemed to have received all three notices.

Johnson failed to respond to any of the three notices. Accordingly, the Hearing Panel concludes that Johnson violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

### **Sanctions**

For failing to respond to requests for information in any manner, the NASD Sanction Guidelines provide that “a bar should be standard.” *NASD Sanction Guidelines* 31 (1998). The record contains no evidence of any mitigating factor that would warrant a lesser sanction. Accordingly, the Hearing Panel orders that Johnson be barred from associating with any

member firm in any capacity. The bar shall become effective immediately if this Decision becomes the final disciplinary action of the NASD.

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Alan W. Heifetz  
Hearing Officer  
For the Hearing Panel

Copies to:  
Via First Class Mail & Overnight Courier  
Shannon Johnson  
M. David Sayid, Esq.

Via First Class & Electronic Mail  
Thomas K. Kilkenny, Esq.  
Rory C. Flynn, Esq.