

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD REGULATION, INC.

In the Matter of
the Association

of

X

as a

General Securities Representative

with

The Sponsoring Firm

Redacted Decision

Notice Pursuant to
Section 19(d)
Securities Exchange Act
of 1934

SD99026

On July 21, 1999, a member firm (“the Sponsoring Firm”) submitted an MC-400 application (Application) to permit X¹, a person subject to a statutory disqualification, to associate with the Firm as a general securities representative. In October 1999, a subcommittee (“Hearing Panel”) of the Statutory Disqualification Committee of NASD Regulation, Inc. (“NASD Regulation”) held a hearing on the matter. X appeared and was accompanied by his counsel, by his proposed supervisor, the President of the Sponsoring Firm (“the Proposed Supervisor”), and by X’s therapist who testified on his behalf. BA appeared on behalf of NASD Regulation’s Department of Member Regulation (“Member Regulation”).

Statutory Disqualification. X is subject to a statutory disqualification under Section 3(a)(39)(F) of the Securities Exchange Act of 1934 and Article III, Section 4(g) of the NASD By-Laws due to a 1999 felony conviction. In 1999, X pleaded guilty to operating a motor vehicle under the influence of liquor in the third degree. X’s conviction was elevated to a felony because it was his third offense within a 10-year period. He previously pleaded guilty to two separate misdemeanors of operating under the

¹ The names of the Statutorily Disqualified individual, the Sponsoring Firm, the Proposed Supervisor, and other information deemed reasonably necessary to maintain confidentiality have been redacted.

influence of liquor in 1990, and in 1995. X was sentenced to two years of probation with the first six months to be served in a County Jail, followed by electronic monitoring for six months. He also was ordered to undergo periodic substance abuse treatment and testing, and his driving privileges were revoked. X was released from jail early, in 1999, and he is now on electronic monitoring until January 2000.

X. X was first registered in the securities industry in 1979 as a registered representative. He was employed by various firms until May of 1999, when he was terminated from Firm A as a Senior Vice-President due to his statutory disqualification.

The Sponsoring Firm. The Sponsoring Firm has been a member of the NASD since 1994 and is engaged in a general securities business, including the sale of options, mutual funds, variable annuities, and insurance products. The Sponsoring Firm has one office of supervisory jurisdiction and two branch offices, and it employs six registered principals and 25 registered representatives. NASD Regulation scheduled a routine examination of the Sponsoring Firm in 1998, but the examination had not been completed by the date of the hearing in this proceeding. The Sponsoring Firm was subject to two NASD Regulation cause examinations in 1998 and 1999, but both were filed without action. In 1997, deficiencies noted in an off-cycle municipal exam resulted in a Letter of Caution for violations of MSRB Rule G-14. The Sponsoring Firm employs no statutorily disqualified individuals.²

The Sponsoring Firm proposes to employ X as a general securities representative located in the home office, to be supervised by the President of the Sponsoring Firm. The Proposed Supervisor had been a general securities representative since 1979 and a general securities principal since 1994. In 1996, he was terminated from Firm B for failing to supervise the activities of registered personnel. According to his Central Registration Depository (“CRD”) record, Firm B alleged on the relevant Uniform Termination Notice for Securities Industry Registration (“Form U-5”) that the Proposed Supervisor had permitted a registered representative to solicit variable annuities while the representative’s registration application was pending. Member Regulation has represented that it is unaware of any investigation by NASD Regulation of the circumstances surrounding the Proposed Supervisor’s termination from Firm B. In 1997, an arbitration was filed against the Proposed Supervisor and others alleging breach of fiduciary duty, misrepresentation, the omission of facts, and suitability violations. The Proposed Supervisor was found liable and paid \$5,000 in compensatory damages.

Member Regulation’s Recommendation. Member Regulation recommends that the Application be denied. Member Regulation bases this recommendation on the recency of the felony conviction, the fact that X is still on probation, X’s pattern of convictions from 1990 to 1999, and Member Regulation’s uncertainty as to whether X is rehabilitated. Although Member Regulation noted concern over the Proposed Supervisor’s termination from Firm B, it did not rely on that fact in concluding that the Application should be denied.

² The Application disclosed that a pending arbitration was filed against the Firm in April 1999.

Discussion

After a thorough review of the record, we conclude that the Sponsoring Firm's Application to employ X as a registered representative should be denied. We find that due to the recency of X's felony conviction and the fact that he is still serving probation, it would not be in the public interest at this time to permit his association with the Firm.

We accept X's representations that he has been actively involved in Alcoholics Anonymous ("AA"), and we recognize his remorse over having engaged in the activity that led to the felony conviction. We also commend X on his current active involvement in seeking treatment for alcoholism, and we credit the testimony of X's therapist, who testified at the hearing in this regard. We note, however, that X's conviction was only about six months ago, and that it followed two prior misdemeanor convictions for the same activity. While we recognize the strides that X has taken toward rehabilitation, we note that he also was involved in AA prior to the recent felony conviction, albeit in a lesser role. We think that at this time, while X is still in his probationary period, he has not demonstrated that sufficient time has passed for us to conclude that he is presently rehabilitated, or that his association would be in the public interest.

Because we have made this determination, we reach no judgment regarding the adequacy of the proposed supervision. We note that in 1997, the Proposed Supervisor was found liable in an arbitration proceeding and was required to pay \$5,000 in compensatory damages. We make no judgment on this event, because the reasons stated above serve as the basis for our denial. Like Member Regulation, we are concerned about the Proposed Supervisor's termination from Firm B. Given that no action appears to have been taken to explore the facts surrounding that termination, however, we do not consider it in reaching a determination in this matter. We likewise do not draw any conclusions regarding the pending arbitration against the Firm, as no award or findings have yet been made in that matter.

We find that given the recency of the conviction, and the fact that X is still serving probation, we are not convinced that it would be in the public interest to permit his association with a member firm at this time. Accordingly, we conclude that the Sponsoring Firm's Application should be denied.

On Behalf of the National Adjudicatory Council,

Joan C. Conley
Senior Vice President and Corporate Secretary