

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD

In the Matter of the Association of

X

as a

General Securities Representative

with

The Sponsoring Firm

Redacted Decision

Notice Pursuant to
Rule 19h-1
Securities Exchange Act
of 1934

Decision No. SD05001

Dated: 2005

On June 21, 2004, the Sponsoring Firm¹ ("the Firm") completed a Membership Continuance Application ("MC-400" or "the Application") seeking to permit X, a person subject to a statutory disqualification, to associate with the Sponsoring Firm as a general securities representative. In September 2004, a subcommittee ("Hearing Panel") of NASD's Statutory Disqualification Committee held a hearing on the matter. X appeared in person at the hearing, and his proposed supervisor appeared by telephone. LL appeared on behalf of NASD's Department of Member Regulation ("Member Regulation").

For the reasons explained below, we approve the Sponsoring Firm's Application.

A. X's Statutorily Disqualifying Event

X is statutorily disqualified because in November 2002, he pleaded no contest to a felony in State 1 for possessing marijuana "for purpose of sale." The judge sentenced X to serve 60 days in the county jail (with two days' credit for time served) and three years' probation. X

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.

served 58 days in the Sheriff's Work Program.² The probation is scheduled to end in November 2005.

B. Background Information

1. X

X passed the general securities representative examination (Series 7) in May 2004, and the uniform combined state examination (Series 66) in July 2004. He has never been employed in the securities industry. He has been employed as a loan agent for Company One from October 2003 to the present, and as an assistant manager at Company Two from May 2003 to the present. He graduated from college in August 2002.

2. The Firm

The Sponsoring Firm is based in State 1, and it became a member of NASD in May 2001. The Firm has three offices of supervisory jurisdiction ("OSJs") and seven branch offices. It employs five registered principals, 19 registered representatives, and four other employees. The Firm operates as a retail broker-dealer.

The Firm does not employ any statutorily disqualified individuals, and it is not a member of any other self-regulatory organizations.

In 2001, NASD conducted the first routine examination of the Firm and issued it a Letter of Caution ("LOC") for failing to register three branch offices with NASD. The Firm responded to this LOC and stated that it had corrected the problem by registering the branches.

NASD also issued an LOC to the Sponsoring Firm after a 2003 alternate municipal examination, citing the Firm for improperly increasing the number of its registered persons and branch offices. The Firm corrected this deficiency by filing a continuing membership application pursuant to NASD Rule 1017.

The record shows no other disciplinary or regulatory actions against the Sponsoring Firm.

C. X's Proposed Business Activities and Supervision

The Sponsoring Firm proposes to employ X as a general securities representative in its home office in State 1. He will be compensated solely through commissions.

² The Sheriff's Work Program permitted X to continue to live at his parents' home, remain at his regular place of employment during the week, and perform community service on weekends. X participated in a community clean-up program, performing various acts of manual labor.

The Firm also proposes that the Proposed Supervisor will serve as X's primary, responsible supervisor. The Proposed Supervisor is the founder and President of the Sponsoring Firm, and he also serves as the Firm's Chief Compliance Officer. He has been with the Firm since its inception. He passed the general securities representative examination (Series 7) in 1994 and the general securities principal examination (Series 24) in 1998. He also received a law degree in 1992. He previously was employed by four firms from 1994 to 1999, when he founded the Sponsoring Firm. He has no disciplinary history.

D. Member Regulation's Recommendation

Member Regulation recommends that the Application be approved, subject to the specified terms and conditions of heightened supervision over X set forth below. In reaching this recommendation, Member Regulation states that, although X's felony conviction is somewhat recent, it was his first offense and did not involve securities, finances, or a finding of dishonest conduct. Member Regulation also notes that X has thus far fully complied with the terms and conditions of his probation, and that the Firm and the Proposed Supervisor have no disciplinary history.

E. Discussion

After carefully reviewing the entire record in this matter, we approve the Sponsoring Firm's Application to employ X as a general securities representative, subject to the supervisory terms and conditions set forth below.

In reviewing this type of application, we have considered whether the particular felony at issue, examined in light of the circumstances related to the felony and other relevant facts and circumstances, creates an unreasonable risk of harm to the market or investors.³ We assess the totality of the circumstances in reaching a judgment about Barba's future ability to deal with the public in a manner that comports with NASD's requirements for high standards of commercial honor and just and equitable principles of trade in the conduct of his business. Our assessment includes the nature of the Sponsoring Firm's business; its culture and values; its disciplinary history, if any; the experience, qualifications, and disciplinary history of X's proposed supervisor; the likely effectiveness of the proposed supervisory plan; the proposed activities in which X will engage; the seriousness and recency of the convictions; and whether X's conduct indicates that he may not act in the securities industry with honesty and integrity. For the reasons set forth below, we conclude that X's participation in the securities industry will not

³ See Frank Kufrovich, Exchange Act Rel. No. 45437, 2002 SEC LEXIS 357, at *16 (Feb. 13, 2002) (upholding NASD's denial of a statutory disqualification applicant, who had committed non-securities related felonies, "based upon the totality of the circumstances" and NASD's explanation of the bases for its conclusion that the applicant would present an unreasonable risk of harm to the market or investors).

present an unreasonable risk of harm to the market or investors. See SD01022, 20XX WL 4698320 (N.A.S.D.R.), available at http://www.nasd.com/web/groups/enforcement/documents/nac_stat_dq_decisions/nasdw_012608.pdf (NAC approved application involving individual who had been convicted of criminal sale of marijuana); SD00011, 20XX WL _____ (N.A.S.D.R.), available at http://www.nasd.com/web/groups/enforcement/documents/nac_stat_dq_decisions/nasdw_011564.pdf (NAC approved application involving individual who had been convicted of criminal sale of a controlled substance (cocaine)).

We acknowledge the seriousness of X's criminal conviction for possession of marijuana with the intent to sell. We also recognize that X has been punished by the State 1 legal system, which required him to perform community service and placed him on probation for three years.

We also note, however, that X's statutorily disqualifying activity is not securities or financial related, and did not involve a finding of dishonest conduct. The actual criminal conduct occurred in February 2002, when he was a senior in college, and it is the only negative mark on an otherwise blemish-free record. We have also considered the fact that X is still on probation with the criminal authorities, but we find that this factor is balanced by the fact that the disqualifying misconduct is not securities or financial related, that X's misconduct did not involve a finding of dishonesty, and that X has been complying with the terms of his probation to date. See SD01020, 20XX WL 4698318 (N.A.S.D.R.), available at http://www.nasd.com/web/groups/enforcement/documents/nac_stat_dq_decisions/nasdw_012606.pdf (NAC approved application involving individual who was still subject to three years of probation); SD04005, 20XX WL _____ (N.A.S.D.R.), available at http://www.nasd.com/web/groups/enforcement/documents/nac_stat_dq_decisions/nasdw_011758.pdf (NAC approved application involving individual who was still subject to 11 years of probation). X testified credibly at the hearing about the circumstances surrounding the incident (without collaterally attacking his conviction), the impact it has had on his life, and what he has done to fulfill his community service and meet the conditions of his probation. We found this information helpful in assessing X's fitness to deal with the investing public in a manner that comports with our rules. We had the opportunity to assess X's demeanor at the hearing, and we find that he is credible and truly remorseful. He has taken responsibility for his misconduct, completed his community service, and committed himself to continued compliance with the terms of his probation.⁴

The proposed supervisor, the founder and President of the Sponsoring Firm, is a qualified general securities principal who has been employed in the securities business for more than 10 years with no formal or informal regulatory history. The Proposed Supervisor stated that he understood the extra supervisory responsibilities that he was undertaking on behalf of X, and that he had informed X that any infraction would result in his immediate dismissal from the Firm.

⁴ Member Regulation staff stated at the hearing that it had confirmed with X's probation officer that X was in full compliance with the terms of his probation.

Finally, the Sponsoring Firm has no formal disciplinary history. Given the nature of X's non-securities related felony offense, we conclude that the following supervisory conditions agreed to by the Sponsoring Firm will provide the enhanced compliance measures necessary to monitor X's activities:

1. The Sponsoring Firm will amend its written supervisory procedures to state that the Proposed Supervisor is X's primary responsible supervisor;
2. *X will conduct all securities business from the Sponsoring Firm's home office, and he will be seated in close proximity to the Proposed Supervisor;⁵
3. X will not maintain discretionary accounts;
4. *X will not act in a supervisory capacity;
5. *The Proposed Supervisor will review and initial X's trades before they are executed. The Proposed Supervisor will maintain and segregate copies of these trade tickets for ease of review;
6. *The Proposed Supervisor will review and approve X's outgoing and incoming written correspondence at the time they are either sent or received;
7. The Proposed Supervisor will approve all new accounts that X opens, and the Proposed Supervisor will evidence his approval by initialing the account paperwork;
8. All complaints pertaining to X, whether oral or written, will be immediately referred to the Proposed Supervisor for review, and then he will maintain them in the Firm's Compliance Department files. The Proposed Supervisor will prepare a memorandum to the file as to what measures he took to investigate the merits of the complaint (e.g., contact with the customer) and the resolution of the matter. The Proposed Supervisor will keep all documents pertaining to these complaints segregated for ease of review;
9. *The Proposed Supervisor must certify quarterly (March 31st, June 30th, September 30th, and December 31st) to the Compliance Department of the Sponsoring Firm that X and the Proposed Supervisor are in compliance with all of the above conditions of heightened supervision; and

⁵ The Firm has indicated that those supervisory terms and conditions denoted with an asterisk (*) are special for X and are not required of the Firm's other registered representatives.

10. *For the duration of X's statutory disqualification, the Sponsoring Firm must obtain prior approval from Member Regulation if it wishes to change X's supervisor from the Proposed Supervisor to another person.

We conclude that X's employment in the securities industry will not create an unreasonable risk of harm to the market or investors. NASD certifies that: 1) X meets all applicable requirements for the proposed employment; and 2) X and the Proposed Supervisor have represented that they are not related by blood or marriage.

Accordingly, in conformity with the provisions of SEC Rule 19h-1, the association of X as a general securities representative with the Sponsoring Firm will become effective within 30 days of the Commission's receipt of this notice, unless otherwise notified by the Commission.

On Behalf of the National Adjudicatory Council,

Barbara Z. Sweeney, Senior Vice President and
Corporate Secretary