

**NASD OFFICE OF HEARING OFFICERS**

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DEPARTMENT OF ENFORCEMENT,	:	
	:	
Complainant,	:	Failure to Provide
	:	Information Proceeding
	:	
v.	:	No. FPI030003
	:	
STANLEY M. WISE	:	Hearing Officer - AWH
(CRD #470488),	:	
Newport Beach, CA	:	<b>HEARING PANEL DECISION</b>
	:	
	:	September 30, 2003
Respondent.	:	

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**Respondent barred for failing to respond to requests for information,  
in violation of Rules 8210 and 2110, and assessed costs.**

Appearances

David A. Greene, Esq., for Department of Enforcement.

Stanley M. Wise, *pro se*.

**DECISION**

**Procedural History**

On May 27, 2003, Stanley M. Wise was suspended from associating with any NASD member in any capacity, pursuant to Rule 9541, for failing to provide information requested by NASD staff under Rule 8210. By letter dated May 30, 2003, Wise filed a motion for reinstatement, pursuant to Rule 9544. On September 9, 2003, a hearing was held on his motion in Los Angeles, CA, before a Hearing Panel composed of the Hearing Officer and two members of the District 2 Committee.

## Findings of Fact<sup>1</sup>

Wise began his employment in the securities industry more than 20 years ago. He has been registered with NASD as both a General Securities Representative and as a Principal. From January 14, 1999, to May 2, 2001, he was registered with NASD as a General Securities Representative through member firm Wells Fargo Securities, Inc. He was registered as a General Securities Representative through member firm Wells Fargo Investments, LLC, from May 2, 2001, to July 3, 2001, when that firm filed a Form U-5 Uniform Termination Notice for Securities Industry Registration with NASD, terminating Wise's registration. The U-5 indicated that he was permitted to resign when the firm began an internal review to determine whether he had made inappropriate mutual fund sales to a customer. He has not been registered or associated with any NASD member since July 3, 2001. CX 1; Tr. 15-18.

As a result of the U-5 filing, NASD staff began an investigation into the circumstances surrounding Wise's resignation from Wells Fargo Securities, LLC. On September 25, 2002, NASD staff sent a letter to Wise seeking a written response to questions propounded pursuant to Procedural Rule 8210. The letter was sent to Wise at his address listed in the Central Registration Depository ("CRD"). On September 30, 2002, Wise responded to that letter. CX 9.

On January 8, 2003, the staff wrote to Wise at his CRD address, requesting his on-the-record testimony ("OTR") concerning its investigation into the cause for his resignation. The letter noted that the request was made pursuant to Procedural Rule 8210, and that his failure to appear would result in disciplinary action taken against him.

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<sup>1</sup> References to Enforcement's exhibits are designated as CX\_, and the transcript of the hearing, as Tr.\_. Respondent offered no exhibits.

CX 3. On January 9, 2003, Wise telephoned the staff, stating that he had received the January 8, 2003, request for his testimony, but that he had left the securities industry, did not plan to re-enter it, and would not appear for the OTR. The staff then wrote to Wise on January 13, 2003, memorializing that conversation, and reminding Wise that his failure to appear at the scheduled OTR would be a violation of NASD rules and would result in disciplinary action taken against him. CX 4. Wise returned the January 13 letter to the staff, with a handwritten note stating: "I have no plans on coming back into this industry and am trying to start a new career in insurance. I can not come in." CX 5.

On May 5, 2003, NASD regional counsel notified Wise, by letter sent to his CRD address, that he would be suspended from associating with any member in any capacity for failure to appear at the OTR, unless he took corrective action within 20 days from the service of the letter, or requested a hearing on the proposed suspension. CX 6. Wise did not respond to the May 5 letter. As a result, on May 27, 2003, NASD notified Wise that he was suspended from associating with any member firm in any capacity for failure to provide requested information. CX 7. On May 30, 2003, Wise filed a Motion for Reinstatement, pursuant to NASD Rule 9544. The Motion reiterated that Wise had told NASD staff that his full attention was required by his efforts to establish himself in the insurance business and that those efforts "did not afford the time to testify in this matter." CX 8.

At the hearing, Wise testified that he didn't really read the May 5, 2003, pre-suspension letter, that Rule 8210 didn't mean anything to him, and that he did not know that a suspension from the securities industry might affect his efforts to become established in the insurance industry. Tr. 6, 9, 14. He plans to retire to Las Vegas,

Nevada, and to sell insurance in that state. When he received an application to become licensed to do so, he discovered that he would have to answer a question whether he had ever been suspended in any administrative proceeding regarding a professional or occupational licence. Tr. 14. He then realized the significance of his suspension by NASD and now seeks reinstatement in order to clear his record prior to filing an insurance license application. He does not intend actively to re-enter the securities business. Tr. 36, 38.

### **Discussion**

Rule 8210 authorizes NASD staff to require any member, person associated with a member, or person subject to NASD's jurisdiction to provide information orally or in writing with respect to any matter involved in an NASD investigation. Even though Wise was no longer associated with an NASD member at the time these requests were made, he was still subject to NASD jurisdiction, pursuant to Art. V, §4 of NASD's By-Laws, which gives NASD two years of continuing jurisdiction to request information from formerly registered persons. NASD staff complied with the procedural requirements of Rule 8210 by sending the requests to Wise at his CRD address, and he admits that he received those requests.

As the SEC has explained, "It is well settled that, in order for the NASD to perform its self-regulatory functions effectively, NASD members and associated persons must cooperate fully with NASD requests for information . . . . The NASD should not have to bring a disciplinary proceeding in order to obtain a response to its requests for information. The NASD lacks subpoena power and [respondent] substantially undermined the NASD's ability to carry out its regulatory responsibilities by failing to

provide the documents when the NASD requested them.” *Joseph G. Chiulli*, Exch. Act Rel. No. 42359, 2000 SEC LEXIS 112, at \*16, 19 (Jan. 28, 2000) (footnotes omitted). For NASD “to carry out its regulatory functions, it must have the full and prompt cooperation of persons associated with members when requests are made.” *Michael David Borth*, 51 S.E.C. 178, 180 (1992).

It is not a defense that Wise had no intention to remain in the securities industry, or only now realizes the significance of his failure to appear for the OTR. When he became registered with NASD, he agreed to abide by its Procedure and Conduct Rules which are unequivocal with respect to the obligation to cooperate with the NASD. His failure to appear at the OTR frustrated the staff’s investigation into his conduct while he was registered through a member firm. Because that conduct occurred more than two years ago, NASD now has no jurisdiction to determine whether his conduct violated any law, rule, or regulation applicable to the securities industry. By failing to respond to the January 2003 request for his on-the-record testimony, the Hearing Panel finds that Wise violated Rules 8210 and 2110.

### **Sanctions**

Rule 9544 provides that “the Hearing Panel may impose any fitting sanction.” Enforcement argues that a bar is the appropriate sanction in this case. Wise urges the Panel to reinstate him and clear his record.

The NASD Sanction Guidelines recommend a fine of \$10,000 to \$25,000 for failure to respond completely. In addition, the Guidelines provide that if “the individual did not respond in any manner, a bar should be standard. Where mitigation exists, or the

person did not respond in a timely manner, consider suspending the individual in any or all capacities for up to two years.” NASD SANCTION GUIDELINES, at 39 (2001 ed.).

The staff was unable to conclude its investigation of a serious customer complaint. Moreover, as noted above, because Wise has now been out of the industry for more than two years, NASD no longer has jurisdiction to pursue disciplinary charges against him, even if the customer complaint proved valid. *See* NASD By-Laws, Art. V, §4. For these reasons, the NAC has treated a refusal to provide information as equivalent to a failure to respond in any manner for purposes of imposing sanctions. *See, e.g., Dep’t. of Enforcement v. Steinhart*, No. FPI020002 (NAC August 11, 2003) (bar imposed where NASD no longer has jurisdiction to file a new complaint based on suspected misconduct against formerly registered representative). Here, Wise refused to appear at the OTR and supply the requested information, and the Hearing Panel finds no mitigating circumstances that would warrant a sanction less than a bar. Accordingly, the Hearing Panel will bar Wise. He will also be assessed hearing costs of \$1,157.03, consisting of a \$750 administrative fee and a \$407.03 transcript fee.

### **Conclusion**

Stanley M. Wise is barred from associating with any member firm in any capacity for failing to respond to an NASD staff request for information, in violation of NASD Procedural Rule 8210 and Conduct Rule 2110. Wise is also ordered to pay hearing costs

in the total amount of \$1,157.03. The bar shall become effective immediately if this Decision becomes the final disciplinary action of NASD.

**SO ORDERED**

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Alan W. Heifetz  
Hearing Officer  
For the Hearing Panel

Copies to:

David A. Greene, Esq (electronically and via first class mail)  
Rory C. Flynn, Esq. (electronically and via first class mail)  
Stanley M. Wise (via overnight delivery and first class mail)