

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD REGULATION, INC.

In the Matter of District Business Conduct Committee For District No. 7, Complainant, vs. Allen R. Prewitt Brdenton, Florida, Respondent.	<u>DECISION</u> Complaint No. C07970022 District No. 7 (ATL) Dated: August 17, 1998
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The December 18, 1997 decision of the District Business Conduct Committee for District No. 7 ("DBCC") regarding Allen R. Prewitt ("Prewitt") was called for review pursuant to NASD Procedural Rule 9312.¹ We find that Prewitt violated NASD Conduct Rule 2110 by filing a false statement with the NASD. We increase the sanctions imposed on Prewitt by changing his three-year suspension to a bar. We affirm the DBCC's sanctions of a censure and a \$10,000 fine, and, in light of the bar, we eliminate the requirement that Prewitt requalify by examination.

Background

Prewitt entered the securities industry in the United States in January 1996 as a general securities representative with Suntrust Securities, Inc. ("Suntrust"). Suntrust

¹ The National Business Conduct Committee ("NBCC") of NASD Regulation, Inc. called this case for review to determine whether the sanctions imposed by the District Business Conduct Committee for District No. 7 were appropriate in light of the findings of violations. This matter was decided by the National Adjudicatory Council ("NAC"), which, as approved by the Securities and Exchange Commission, became the successor to the NBCC on January 16, 1998.

terminated Prewitt's employment in June 1996.² Prewitt is not currently associated with any member of this Association.

Facts

From August 1992 until March 1995, Prewitt was employed by Balanced Planning Investments Corporation ("Balanced Planning") as a mutual fund salesman in the province of Manitoba, Canada. Balanced Planning was a registered "Broker-Dealer" under the Manitoba Securities Act. On March 17, 1995, the Manitoba Securities Commission issued an order that suspended Prewitt from engaging in the securities business for 15 days, during which time a public hearing regarding allegations against Prewitt would be held.

Prewitt was represented by legal counsel, James McLandress ("McLandress"), a solicitor. McLandress requested, and the Manitoba Securities Commission granted, an adjournment of Prewitt's hearing from March 31, 1995 to May 5, 1995. The Manitoba Securities Commission issued an appropriate order and Prewitt's suspension was extended until May 5, 1995. McLandress again requested and was granted an additional adjournment of Prewitt's hearing until September 12, 1995. By a third order of the Manitoba Securities Commission, Prewitt's suspension was extended until the conclusion of his September hearing.

Shortly before the scheduled hearing, on September 8, 1995, Prewitt wrote to the Manitoba Securities Commission and informed it that he was immediately canceling his registration under the Manitoba Securities Act. McLandress also wrote to the Manitoba Securities Commission and requested a copy of any order it made in the case.

In an order dated September 12, 1995, the Manitoba Securities Commission ordered that Prewitt's registration be canceled and that Prewitt pay \$3,000 as a contribution toward the costs of the investigation and hearing of his case. By a letter of the same date, an Assistant Counsel of the Manitoba Securities Commission sent this order to McLandress. The order canceling Prewitt's registration did not contain any factual findings; however, the "Statement of Allegations," which was prepared before the hearing, indicated that Prewitt had forged a customer's signature on mutual fund redemption forms, had forged a change of address card to the mutual fund

² The complaint in this matter was prompted by Suntrust's filing of a Uniform Termination Notice for Securities Industry Registration, a Form U-5, which disclosed that Prewitt was terminated when Suntrust learned that Prewitt had failed to disclose that the Manitoba Securities Commission had previously canceled his securities license.

company so that checks would be forwarded to him, rather than to the customer, and had forged a customer's signature on redemption checks.

On March 11, 1996, Prewitt completed and signed a Uniform Application for Securities Industry Registration or Transfer form, a Form U-4. Item number 22E(5) on the Form U-4 asked Prewitt:

Has any . . . foreign financial regulatory authority ever . . . denied, suspended, or revoked your registration or license or otherwise prevented you from associating with an investment-related business, or disciplined you by restricting your activities?

Prewitt answered this question "no."

In his answer to the complaint in this matter, Prewitt waived his right to a hearing. The NASD Regulation regional attorney for District No. 7 advised Prewitt that the DBCC would rule on the merits of the complaint based solely on the written submissions of the parties. Although Prewitt was given the opportunity to submit written materials in addition to his answer to the complaint, he submitted no additional materials. In response to the call for review in this case, Prewitt did not submit a brief and did not attend the oral argument.

Discussion

Conduct Rule 2110 prohibits associated persons from failing to disclose information required by the Form U-4. In re Jon R. Butzen, Exchange Act Rel. No. 36512 (Nov. 27, 1995); see IM-1000-1. Based on the evidence in the record, there is no dispute that Prewitt provided false information on his Form U-4. Given the Manitoba Securities Commission's suspension of Prewitt's registration and the September 12, 1995 order canceling his registration, Prewitt should have answered "yes" to Item number 22E(5). His answer of "no" was false. The only issue for our consideration is whether Prewitt's explanation of his "no" answer makes his misconduct less serious.

In Prewitt's answer to the amended complaint, he claimed that he had been unaware of the outcome of the Manitoba Securities Commission's proceeding until Florida securities regulators informed him, in June 1996, that his registration had been canceled in Manitoba. Prewitt claimed that neither his legal counsel nor the Manitoba Securities Commission had informed him of the cancellation.

We find Prewitt's explanation unavailing. First, Prewitt knew that he had been suspended by the Manitoba Securities Commission, beginning on March 17, 1995 and continuing until September 1995. Because the Form U-4 asked whether Prewitt had

been suspended, his answer was false. The fact that Prewitt has not explained any reasonable basis for failing to disclose his previous suspension leads us to conclude that Prewitt acted intentionally or in reckless disregard of the truth. We make this finding only for purposes of assessing sanctions, however. The violation of providing false information to the NASD requires only that the complainant prove that the information was false.

Second, we find that Prewitt's claim that he was unaware that his registration had been canceled shows a troubling indifference to regulatory proceedings. Prewitt's legal counsel, McLandress, received a copy of the Manitoba Securities Commission's order canceling Prewitt's registration. Because McLandress was Prewitt's authorized agent, we presume that he transmitted the order to Prewitt. Even if Prewitt did not receive a copy of the order directly from his attorney or the Manitoba Securities Commission, Prewitt failed to ask McLandress what the Manitoba Securities Commission had done. Moreover, Prewitt himself knew how to contact the Manitoba Securities Commission; he had written to it canceling his registration days before the hearing in his case. Here again, Prewitt failed to inquire about the resolution of the action against him. Prewitt's explanation of why he did not know that his Manitoba registration had been canceled does not lessen the severity of his violation.

We uphold the findings of the DBCC and conclude that Prewitt violated Conduct Rule 2110 by providing false information to the NASD.

Sanctions

The Securities and Exchange Commission ("SEC") has explained the importance of providing truthful information in the context of the Form U-5:

In a business that relies heavily on candor and truthful representation, submitting a Form U-5 doctored to delete unfavorable information in order to gain employment is serious misconduct. The Form U-5 serves as a warning mechanism to firms of the potential risks and accompanying supervisory responsibilities they must assume if they decide to employ an individual with a suspect history.

In re Henry Irvin Judy, Jr., Exchange Act Rel. No. 38418 (Mar. 19, 1997). This rationale is equally applicable to Form U-4, which serves as a vital screening device for hiring firms and the NASD against individuals with "suspect history." In Prewitt's case, he failed to disclose information that categorized him as statutorily disqualified. See By-Laws of the National Association of Securities Dealers, Inc., Art. 3, § 4(b). Prewitt's false statement on his Form U-4 concealed from his employer that it was

unwittingly registering a statutorily disqualified individual, a fact that we consider an aggravating circumstance.

In light of all the facts of this case, we find that Prewitt committed a serious violation of the NASD's Conduct Rules. Under the NASD Sanction Guidelines ("Guidelines"), there is no specific Guideline addressing false statements on the Form U-4.³ We follow the SEC's reasoning that candor and truthful representations are bedrock principles of the securities industry. Here, Prewitt has violated those principles. We conclude that Prewitt's failure to tell the truth about an extremely important securities regulatory proceeding signifies to us that he is unfit to serve as a registered representative. We impose a bar on Prewitt both to deter similar misconduct by others in the industry and to protect the public.

Accordingly, we order that Prewitt be censured, fined \$10,000, and barred from associating with any member in any capacity. The bar in all capacities is effective upon service of this decision.⁴

On Behalf of the National Adjudicatory Council,

Joan C. Conley, Corporate Secretary

³ The most analogous Guideline is for "False or Inaccurate Reports (FOCUS or Other) to the NASD." That guideline calls for considering a bar of the person responsible for filing FOCUS reports when "materially inaccurate reports were intentionally prepared." See Guidelines (1996 ed.) at 23 (False or Inaccurate Reports to the NASD). By analogy, our sanctions are consistent with this Guideline.

⁴ We have considered all of the arguments of the parties. They are rejected or sustained to the extent that they are inconsistent or in accord with the views expressed herein.

Pursuant to NASD Procedural Rule 8320, any member who fails to pay any fine, costs, or other monetary sanction imposed in this decision, after seven days' notice in writing, will be summarily suspended or expelled from membership for non-payment. Similarly, the registration of any person associated with a member who fails to pay any fine, costs, or other monetary sanction, after seven days' notice in writing, will be summarily revoked for non-payment.

Joan C. Conley
Corporate Secretary

August 17, 1998

VIA CERTIFIED MAIL: RETURN RECEIPT REQUESTED

Allen R. Prewitt
Bradenton, Florida

Re: Complaint No. C07970022: Allen R. Prewitt

Dear Mr. Prewitt:

Enclosed herewith is the Decision of the National Adjudicatory Council in connection with the above-referenced matter. Any fine and costs assessed should be made payable and remitted to the National Association of Securities Dealers, Inc., Department #0651, Washington, D.C. 20073-0651.

You may appeal this decision to the U.S. Securities and Exchange Commission ("SEC"). To do so, you must file an application with the Commission within thirty days of your receipt of this decision. A copy of this application must be sent to the NASD Regulation, Inc. ("NASD Regulation") Office of General Counsel as must copies of all documents filed with the SEC. Any documents provided to the SEC via fax or overnight mail should also be provided to NASD Regulation by similar means.

Your application must identify the NASD Regulation case number, and set forth in summary form a brief statement of alleged errors in the determination and supporting reasons therefor. You must include an address where you may be served and phone number where you may be reached during business hours. If your address or phone number changes, you must advise the SEC and NASD Regulation. If you are represented by an attorney, he or she must file a notice of appearance.

The address of the SEC is:
Office of the Secretary
U.S. Securities and Exchange
Commission
450 Fifth Street, NW, Stop 6-9
Washington, DC 20549

The address of NASD Regulation is:
Office of General Counsel
NASD Regulation, Inc.
1735 K Street, NW
Washington, DC 20006

Questions regarding the appeal process may be directed to the Office of the Secretary at the SEC. The phone number of that office is 202-942-7070.

Very truly yours,

Joan C. Conley

Enclosure

cc: Alan M. Wolper, Esq.