

**NASD OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

LOUIS S. GRAY  
(CRD No. 4380025)

Chatsworth, CA,

Respondent.

Disciplinary Proceeding  
No. C02030015

Hearing Officer—Andrew H. Perkins

**HEARING PANEL DECISION**

November 14, 2003

**Respondent willfully submitted false information on an application for registration, in violation of NASD Conduct Rule 2110. The Respondent is barred from association with any member firm in any capacity.**

**Appearances**

Sylvia M. Scott, Regional Counsel, Los Angeles, CA (Rory C. Flynn, Chief Litigation Counsel, Washington, D.C., Of Counsel) for the Department of Enforcement.

Respondent Louis S. Gray appeared on his own behalf.

**DECISION**

**I. Introduction**

The Department of Enforcement (the “Department”) charged that Louis S. Gray (“Gray” or the “Respondent”) violated NASD Conduct Rule 2110 by failing to disclose his criminal history on the Uniform Application for Securities Industry Registration or Transfer (“Form U-4”) that he submitted to Morgan Stanley Dean Witter, Inc. (“Morgan Stanley” or the “Firm”) when it

hired him on March 1, 2001. Gray filed an Answer in which he stated that he misunderstood the applicable questions. Gray claimed that he understood that he needed to include only criminal history involving “investments [and] trades.”<sup>1</sup>

During the Initial Pre-Hearing Conference on May 16, 2003, Gray denied any wrongdoing and stated that he desired a hearing<sup>2</sup> to explain the circumstances surrounding his failure to disclose his criminal history on the Form U-4. Accordingly, the Hearing Officer scheduled the case for a hearing.

The hearing was held in Los Angeles on September 10, 2003, before a Hearing Panel comprised of the Hearing Officer, a current member of the District 2 Committee, and a former member of the District 2 Committee. The Department called four witnesses to testify, including the Respondent, and introduced eight exhibits.<sup>3</sup> The Respondent also testified on his own behalf, but he introduced no other evidence.

For the reasons discussed below, the Hearing Panel found that Gray willfully submitted a materially false Form U-4, in violation of NASD Conduct Rule 2110, and determined that Gray should be permanently barred from associating with any member firm in any capacity.

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<sup>1</sup> Ans. 1.

<sup>2</sup> Gray had not requested a hearing in his Answer.

<sup>3</sup> The hearing transcript is cited as “Tr. \_\_\_,” and the Department’s exhibits are cited as “Ex. C-.”

## **II. Findings of Fact and Conclusions of Law**

### **A. Jurisdiction**

Gray voluntarily submitted to NASD's jurisdiction by applying for registration under NASD's rules.<sup>4</sup> Moreover, NASD retained jurisdiction over Gray for two years after his association with Morgan Stanley ceased,<sup>5</sup> and the Department filed this disciplinary proceeding within that period of retained jurisdiction. Accordingly, the Hearing Panel finds that, under NASD By-Laws Article V, Section 4(c), NASD has jurisdiction of this proceeding.

### **B. Failure to Disclose Criminal History**

Gray was associated with Morgan Stanley as a financial advisor trainee from March 1 to June 18, 2001.<sup>6</sup> During this period, Gray assisted brokers in Morgan Stanley's Beverly Hills office and studied to take the Series 7 examination. However, the week before the examination, Gray's supervisor received the results from Gray's criminal record check, which disclosed the following:

1) In or about August 1986, Gray was convicted of grand theft property, (California Penal Code Section 487) in California. As a result of the conviction, Gray was sentenced to 130 days in jail and placed on probation.<sup>7</sup>

2) On or about July 18, 1990, Gray was charged with grand theft vehicle (California Penal Code Section 487H(A)) and taking a vehicle without the owner's consent (California Vehicle Code Section 10851(A)). On or about October 17, 1990, Gray pled guilty to the second charge. As a result, he was placed on probation.<sup>8</sup>

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<sup>4</sup> See NASD By-Laws, Article I, Section (ee) (defining "person associated with a member"). Cf. *Market Reg. Comm. v. Vladislav Steven Zubkis*, No. CMS950129, 1997 NASD Discip. LEXIS 47 (NBCC Aug. 12, 1997); *District Bus. Conduct Comm. v. Ashvin R. Shah*, No. C8A920044, 1993 NASD Discip. LEXIS 254, at \*16-17 (NBCC Aug. 30, 1993).

<sup>5</sup> NASD By-Laws, Article V, Section 4(c).

<sup>6</sup> Ex. C-1, at 4.

<sup>7</sup> Ex. C-2, at 10; Ex. C-3, at 2.

<sup>8</sup> Ex. C-2, at 11-12; Ex. C-4.

3) On or about April 17, 1991, Gray was convicted of petty theft (California Penal Code Section 666) for stealing tools from a department store. As a result of this conviction, Gray was sentenced to three days in county jail and ordered to perform 30 hours of community service.<sup>9</sup>

4) On or about October 4, 1991, Gray was charged with possession of a controlled substance (a felony under California Penal Code Section 11350(A)). The court dismissed this charge on or about April 27, 1993.<sup>10</sup>

Upon learning that Gray had failed to disclose any of the foregoing history, one of Gray's supervisors called Gray and told him that he needed to come to the office to discuss his criminal history.<sup>11</sup> When Gray refused, Morgan Stanley fired him.<sup>12</sup> His employment with Morgan Stanley ended on June 18, 2001.<sup>13</sup>

Question 23A(1) on the Form U-4 required Gray to disclose whether he had ever been convicted or charged with any felony, and Question 23B(1) required Gray to disclose whether he had ever been convicted or charged with a misdemeanor involving, among other things, the wrongful taking of property.<sup>14</sup> Accordingly, Gray should have disclosed each of the foregoing incidents. However, Gray answered each question "No," falsely indicating that he had no such criminal history.

At the hearing, Gray testified that he omitted his criminal history from both Morgan Stanley's employment application<sup>15</sup> and the Form U-4 to avoid being embarrassed.<sup>16</sup> The Morgan

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<sup>9</sup> Ex. C-2, at 12; Ex. C-3, at 2; Ex. C-6.

<sup>10</sup> Ex. C-2, at 13; Ex. C-3, at 2; Ex. C-5.

<sup>11</sup> Tr. 66.

<sup>12</sup> *Id.*

<sup>13</sup> Ex. C-1, at 4.

<sup>14</sup> Ex. C-7, at 7; Ex. C-8, at 3.

<sup>15</sup> Ex. C-7, at 7.

Stanley recruiters who interviewed him explained that they would do a criminal background check and find everything, whether he disclosed it or not. Gray therefore thought that he could omit the material and let the Firm find it on its own. Then, once the Firm had the information, it could decide if it wanted to hire him.<sup>17</sup> Gray seemed to imply that he believed his answers were unimportant because the Firm intended to check with the Federal Bureau of Investigation. In contrast to his statement at the pre-hearing conference, Gray did not contend that he misunderstood the questions.

Based on his testimony, the Hearing Panel finds that Gray willfully submitted a false application for registration in violation of NASD Conduct Rule 2110. Gray's explanation at the hearing provides no mitigation. Indeed, the Hearing Panel finds that Gray fully understood his obligation to disclose his criminal history, and, instead of doing so, he took a calculated gamble that the criminal record check might not show his complete record. In other words, he hoped to avoid detection. This was not a good-faith misunderstanding of his reporting obligation. In fact, Gray acknowledged at the hearing that when he applied he was advised that he had to disclose his entire criminal history.

In addition, the Hearing Panel notes that Gray has taken inconsistent positions regarding his violation, which further supports the Hearing Panel's finding that Gray acted willfully. For example, in an initial statement Gray provided to NASD Staff, he admitted that he did not disclose his criminal history on the Form U-4 because he "did not feel it was any of Morgan Stanley's

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<sup>16</sup> Tr. 63–64.

<sup>17</sup> *Id.*

business” and “did not think it had any bearing on [his] being licensed.”<sup>18</sup> However, during his subsequent on-the-record interview, he indicated that he did not disclose his criminal record because either it was unrelated to investments or he was confused.<sup>19</sup>

In summary, the Hearing Panel finds that Gray intentionally provided false information to Morgan Stanley and NASD by submitting a materially false application for employment and a materially false application for registration and that his actions evidence his unfitness to work in the securities industry.

### **III. Sanctions**

In egregious cases, the NASD Sanction Guideline for filing false forms recommends a suspension of up to two years or a bar.<sup>20</sup> This is an egregious case. Gray submitted an application for registration that failed to disclose that he was statutorily disqualified from registration due to his felony conviction. As the Securities and Exchange Commission has emphasized:

Form U-4 is used by ... NASD and other self-regulatory organizations, as well as by state regulators and broker-dealers, to determine the fitness of applicants for registration as securities professionals. The candor and forthrightness of applicants is critical to the effectiveness of this screening process.<sup>21</sup>

Here, Gray failed to disclose four material criminal events. Significantly, three of the criminal charges and two of the convictions involved theft of property, and the 1991 petty theft conviction disqualified Gray from registering as a securities professional. In addition, his testimony and inconsistent statements indicated that he would pose a significant risk to the public

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<sup>18</sup> C-3, at 1.

<sup>19</sup> C-2, at 14-15.

<sup>20</sup> NASD Sanction Guidelines, 78 (2001 ed.).

<sup>21</sup> *Daniel Richard Howard*, Exchange Act Release No. 46269, 2002 SEC LEXIS 1909, at \*9-10 (July 26, 2002) (quoting *Thomas R. Alton*, 52 S.E.C. 380, 382 (1995), *aff'd*, 105 F.3d 664 (9th Cir. 1996) (Table)).

if he were to enter the securities industry. Accordingly, the Hearing Panel will bar the Respondent from ever associating with an NASD member firm.

#### **IV. Order**

Louis S. Gray is barred from association with any member firm in any capacity, for violation of NASD Conduct Rule 2110 and IM-1000-1.<sup>22</sup> The bar shall become effective once this decision becomes the final disciplinary action of NASD.

In addition, Gray is ordered to pay the costs of this proceeding in the total amount of \$1,368.58, which include an administrative fee of \$750 and hearing transcript costs of \$618.58

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Andrew H. Perkins  
Hearing Officer  
For the Hearing Panel

Copies to:

Louis S. Gray (by overnight courier and first-class mail)  
Sylvia M. Scott, Esq. (by first-class and electronic mail)  
Rory C. Flynn, Esq. (by first-class and electronic mail)

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<sup>22</sup> The Hearing Panel has considered all of the arguments of the Parties. They are rejected or sustained to the extent they are inconsistent or in accord with the views expressed herein.