

**NASD REGULATION, INC.
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,	:	
	:	
	:	
Complainant,	:	Disciplinary Proceeding
	:	No. C8A010063
v.	:	
	:	Hearing Officer - AWH
BOBBY R. TURNER, JR.	:	
(CRD #3252999),	:	Hearing Panel Decision
	:	
Westland, MI	:	
	:	
	:	
Respondent.	:	March 26, 2002

Formerly registered representative failed to disclose his prior criminal arrests and convictions on a Form U-4, in violation of NASD Conduct Rule 2110. Respondent barred from associating with any member firm in any capacity.

Appearances:

Dale A. Glanzman, Esq., for the Department of Enforcement

Bobby R. Turner, Jr., *pro se*

Decision

Introduction

On September 20, 2001, the Department of Enforcement (“Enforcement”) filed the Complaint in this matter, alleging that Bobby R. Turner, Jr. (“Turner” or “Respondent”) signed a Uniform Application for Securities Industry Registration or Transfer (Form U-4) on which he willfully failed to disclose his prior criminal history. On October 17, 2001, Respondent filed an Answer to the Complaint, denying all allegations in the Complaint and requesting a hearing.

A hearing was held in Troy, Michigan, before a panel composed of the Hearing Officer and two members of District Committee No. 8. Enforcement presented one witness and 16 exhibits. Respondent chose not to testify.

Findings of Fact

Turner's Pre-Registration History

On June 5, 1992, Turner was charged with a felony in the State of Michigan. CX 5, CX 9, CX 10.¹ On July 3, 1992, Turner was charged with two felonies in the State of Ohio. CX 5, CX 9, CX 10. On November 30, 1992, Turner pleaded guilty and was convicted of two lesser included offenses of the charges filed on July 3, 1992. Both lesser included offenses were felonies. CX 15. On August 24, 1993, Turner was charged with another felony in the State of Ohio. CX 5, CX 9, CX 10. On May 27, 1994, Turner was found not guilty of the offense for which he was charged on August 24, 1993. CX 10, CX 16.

Turner's Association with a Member

On May 24, 1999, Turner began his employment and became an associated person with Dean Witter Reynolds, Inc. (Dean Witter), a member of the NASD. CX 1. On June 10, 1999, Turner completed and signed a Form U-4 to become registered with the NASD through Dean Witter. Tr. 30; CX 6. The Form U-4 was filed with the NASD, and Turner became registered as a General Securities Representative through Dean Witter on August 12, 1999. CX 1.

The Form U-4

In 1999, question 22A on the Form U-4 asked the applicant whether he had "ever been convicted of or plead (sic) guilty or nolo contendere ('no contest') in a domestic, foreign, or military court" to any felony. In answer to this question, Turner checked the box that was captioned "NO." CX 6, at 3. On that same form, question 22B asked the applicant whether he

¹ References to the Enforcement's exhibits appear as CX_. Citations to the transcript of the hearing appear as Tr._.

had “ever been charged with any felony or charged with a misdemeanor specified in question [22]A in a domestic, foreign, or military court.” In answer to this question, Turner again checked the “NO” box. *Id.*

Additional Relevant Facts

On October 19, 1999, Turner was discharged by Dean Witter for providing false or misleading information during the hiring process. CX 1. On October 28, 1999, Dean Witter filed a Form U-5, terminating Turner’s registration with the NASD. CX 2.

On November 24, 1999, in an Order on Application to Set Aside Conviction, a court in Michigan set aside Turner’s conviction on the offense for which he was charged on June 5, 1992. CX 14. On March 16, 2000, a court in Ohio approved Turner’s application to seal the record in the case in which Turner pled to lesser included offenses. CX 15.

During the course of her investigation of Turner’s termination from Dean Witter, an NASD compliance examiner asked Turner to address in writing certain documents related to his criminal history that she had received from Dean Witter. In his response to her letter, Turner wrote that he was not aware that:

even previously closed legal matters were to be disclosed on this particular form [the U-4]. In fact, counsel advised me: that there was no legal or ethical reason that I disclosed (sic) this immaterial information. Since, the charges in question did not have any bearing on the position that I was applying for, and as far as my ability to perform in the position: it was concluded that the information was irrelevant.

CX 10.

Discussion

Jurisdiction

On October 28, 1999, the NASD received the Form U-5 terminating Turner's association with the member. The Complaint in this matter was filed on September 20, 2001, within two years of the termination of Turner's association with the member. Accordingly, the NASD has jurisdiction over this proceeding pursuant to Article V, Section 4(a) of the NASD By-Laws.

False Information on the Form U-4

The filing of false or incomplete information with respect to registration with the NASD is conduct inconsistent with just and equitable principles of trade, in violation of Conduct Rule 2110. *See DBCC v. Prewitt*, No. C07970022, 1998 NASD Discip. LEXIS 37 (NAC Aug. 17, 1998) (associated person violated Conduct Rule 2110 by providing false information to the NASD in order to conceal his disciplinary history).

The uncontroverted evidence demonstrates that Turner failed truthfully to answer two questions on the Form U-4 which he completed and signed in 1999 to become registered with the NASD through a member. Turner's only explanation to the compliance examiner for the false information was that he thought the truthful information about his criminal history was "irrelevant." To the contrary, the information about his convictions², truthfully disclosed, would have subjected Turner to disqualification with respect to association with a member of the NASD, pursuant to Article III, Section 4(g)(2) of the NASD By-Laws (person is subject to disqualification if convicted of a felony within ten years of filing a Form U-4). The information about his other criminal history was material to a determination whether he would observe the high standards of conduct demanded of associated persons by the NASD. His determination that

² The fact that, in March 2000, a court sealed the record in the case in which Turner pled to lesser included offenses has no bearing on his duty to report those convictions on the Form U-4 that was completed and signed by Turner in June 1999.

such information was irrelevant demonstrates that he willfully submitted the false statements on the Form U-4. Doing so subjected him to disqualification with respect to association with a member of the NASD, pursuant to Article III, Section 4(f) of the NASD By-Laws.

Turner's ambiguous reference to "counsel" in his written response to the compliance examiner is of no avail. A defense of reliance on counsel requires a showing of (1) a request for advice of counsel on the legality of a proposed action, (2) full disclosure of the relevant facts to counsel, (3) receipt of advice from counsel that the action to be taken will be legal, and (4) reliance in good faith on counsel's advice. *DBCC v. Stout*, No. C02940038, 1995 NASD Discip. LEXIS 223 (NAC Sept. 7, 1995). Here, Turner provided no evidence that he retained counsel for any reason, that he disclosed all relevant facts to counsel, that he received advice from counsel that his proposed answers to the questions on the Form U-4 would be legal, or that he relied in good faith on the advice of such counsel. Moreover, because Turner failed to demonstrate reasonable reliance on competent legal advice, his purported reliance on counsel may not be used to mitigate sanctions. *DOE v. Fergus*, No. C8A990025, 2001 NASD Discip. LEXIS 3, at *46-47 (NAC May 17, 2001).

Sanctions

The NASD Sanction Guidelines consider the filing of a false Form U-4 to be egregious where, as here, there is a failure to disclose a statutory disqualification event. NASD SANCTION GUIDELINES, at 78. Under such circumstances, the Guidelines call for a suspension in any or all capacities of up to two years or a bar.

The Hearing Panel has considered the nature and significance of the false information, and the fact that three separate criminal incidents were not reported. The Hearing Panel has also considered the fact that Turner, without seeking the advice of his employer member or the

NASD, made a determination that the information was irrelevant, and then willfully failed to disclose his criminal history on the Form U-4. Under the circumstances, the Hearing Panel believes that Turner's conduct calls into question his fitness to be involved in the securities industry and his capacity to conform his conduct to that required under Conduct Rule 2110. Accordingly, Bobby R. Turner, Jr. will be barred from association with any NASD member firm in any capacity for willfully failing to disclose his prior criminal history on a Form U-4, in violation of Conduct Rule 2110. The bar shall become effective immediately if this Decision becomes the final disciplinary action of the NASD.

SO ORDERED.

Alan W. Heifetz
Hearing Officer
For the Hearing Panel

Copies to:

Via First Class Mail & Overnight Courier
Bobby R. Turner, Jr.

Via First Class & Electronic Mail
Dale A. Glanzman, Esq.
Rory C. Flynn, Esq.