

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

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DEPARTMENT OF ENFORCEMENT,	:	
	:	
Complainant,	:	Disciplinary Proceeding
	:	No. C9B970016
	:	
v.	:	<b>DECISION</b>
	:	
EDWARD GOLICK,	:	Hearing Officer - DMF
(CRD #715218)	:	
	:	
Del Mar, CA	:	May 14, 1998
	:	
and	:	
Rancho Santa Fe, CA	:	
	:	
Respondent.	:	

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Digest

The Department of Enforcement filed a Complaint alleging that a registered representative violated NASD Rules 8210 and 2110 by failing to respond to a request for information. The respondent answered and requested a hearing. Following the hearing, the Hearing Panel held that the respondent violated NASD Rules 8210 and 2110 by refusing to appear for an on-the-record interview that the NASD properly requested in the course of an investigation of the respondent. The Hearing Panel found that the record did not establish any mitigating factors, and, accordingly, censured the respondent, fined him \$20,000, barred him from associating with any NASD member firm in any capacity, and imposed costs on him in the amount of \$1,105.

Appearances

Thomas M. Huber, Regional Counsel, Philadelphia, Pennsylvania (Rory C. Flynn, Washington, DC, of counsel) for the Department of Enforcement.

Edward Golick pro se.

## **DECISION**

### **Procedural Background**

The Department of Enforcement filed the Complaint in this disciplinary proceeding on November 17, 1997. The Complaint alleged that Edward Golick violated NASD Rules 8210 and 2110 by failing to appear for an on-the-record interview in response to a request for information issued by the NASD.

Enforcement served the Complaint on November 14, 1997. On December 12, 1997, Golick filed a request for an extension of time to file an Answer to the Complaint. On December 18, 1997, the Hearing Officer issued an order extending Golick's time to file an Answer to January 7, 1998. Golick filed an Answer on January 7, 1998. On January 21, 1998, the Hearing Officer conducted an Initial Pre-Hearing Conference, during which Golick indicated that he wished to have a hearing on the charges, but had not realized he was required to request a hearing with his Answer. Accordingly, the Hearing Officer gave Golick additional time in which to file a written request for a hearing, and Golick filed such a request on January 30, 1998.

The hearing was held in San Diego, California, on March 19, 1998, before a Hearing Panel composed of the Hearing Officer and two former members of the District Committee for District 2 appointed by the Chief Hearing Officer pursuant to NASD Rule 9232. At the hearing, Enforcement offered the testimony of two NASD staff members (Susan Decker and William M. Harter, Jr.) and Golick, as well as 16 exhibits (CX 1-16). Golick testified in his own behalf, but did not offer any exhibits.

## Findings

Golick has been registered with the NASD and employed in the industry since 1980. He has qualified by examination as a general securities representative, and a general securities principal.<sup>1</sup> His last employer was member firm The Agean Group, Inc. Golick served as branch manager for the firm's California office. This was the first time that Golick had served in a management or supervisory capacity with any firm. The firm closed that office and terminated Golick's employment with the firm in May 1997.<sup>2</sup> Golick has not been employed in the industry since then.<sup>3</sup> Golick has no prior disciplinary history.<sup>4</sup>

In May 1997, Golick was the subject of an NASD investigation.<sup>5</sup> On May 9, 1997, Harter, on behalf of the NASD, sent Golick a letter requesting Golick's appearance for an on-the-record interview, pursuant to NASD Rule 8210. Harter offered to conduct the interview in San Diego, "to accommodate you and your attorney." Harter requested that Golick provide a date for the interview, but stated that the interview "should be completed no later than May 30, 1997." Harter sent a copy of the letter to an attorney, Grant Teeple, who Harter understood was representing Golick in an SEC matter.<sup>6</sup> Golick received the letter and authorized Teeple to represent him in dealing with the NASD.<sup>7</sup>

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<sup>1</sup> CX 1.

<sup>2</sup> Tr. 92-95.

<sup>3</sup> CX 1.

<sup>4</sup> Tr. 90 (stipulation).

<sup>5</sup> Tr. 45.

<sup>6</sup> CX 2; Tr. 46, 48.

<sup>7</sup> CX 2; Tr. 126-27.

Harter and Teeple agreed that the NASD would conduct Golick's interview in San Diego, at Teeple's office, on June 20, 1997.<sup>8</sup> Harter confirmed the agreement in a letter to Teeple, and sent a copy to Golick.<sup>9</sup> A week before the interview was scheduled, Decker, who was working on the investigation with Harter, called Teeple and confirmed that Golick would attend the interview.<sup>10</sup>

On the morning of June 18, 1997, when Decker arrived at her office, she found a recorded telephone message from Teeple stating that Golick would not appear for the interview on June 20. Teeple's message indicated that Golick had decided he did not want to talk to the NASD. Decker forwarded the message to Harter, who prepared and faxed a letter to Teeple.<sup>11</sup>

In his letter to Teeple, Harter noted Teeple's message to Decker and told Teeple that Golick's failure to appear for the interview could lead to "serious consequences." He explained: "The NASD Sanction Guidelines indicate that a bar and a \$20,000 fine should be standard, where a registered representative fails to respond." Harter asked Teeple to contact him immediately upon receiving the faxed letter, and stated that he planned to send a copy of the letter by Federal Express directly to Golick.<sup>12</sup>

Later on the morning of June 18, after receiving the faxed letter, Teeple called Harter. Teeple confirmed that Golick would not appear for the interview on June 20. Teeple also objected to Harter sending a copy of the letter directly to Golick, citing ethical prohibitions

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<sup>8</sup> Tr. 49.

<sup>9</sup> CX 3.

<sup>10</sup> Tr. 28.

<sup>11</sup> Tr. 29, 53; CX 4.

<sup>12</sup> CX 4.

against a lawyer communicating directly with a person who is represented by an attorney.<sup>13</sup> In response, and upon Teeple's representation that he would communicate the substance of the letter to Golick, Harter agreed not to send a copy of his letter directly to Golick. Harter confirmed this conversation in a letter to Teeple, also dated June 18, 1997.<sup>14</sup>

Golick knew his interview was scheduled for June 20. He was also aware before June 20 that Teeple had notified the NASD that Golick would not appear. Golick says that Teeple advised him not to appear, and he followed that advice. Golick now believes Teeple gave him bad advice.<sup>15</sup> Golick "was not at all made aware by counsel that I could and would be sued by the NASD for not appearing ...." Specifically, "we're talking about the fine. He would not give me any specific indication on the status of a fine if I, in fact, were fined. ... [H]e completely ignored telling me that there would be a claim filed."<sup>16</sup>

During the June 18 conversation, Teeple "asked [Harter] whether the NASD would pursue collection of the \$20,000 fine, the likely sanction for Mr. Golick's failure to appear." Harter responded that he "could not answer definitively, noting that although NASD has not aggressively pursued collection in the past, this could change in the future, because of the restructuring of the organization. [Teeple] stated that [he] would contact a specialist in the Los Angeles area, to further check on this."<sup>17</sup>

On June 19, 1998, Harter received the next communication from Teeple, a letter in which Teeple "request[ed] some additional time to reconsider whether or not Mr. Golick will make

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<sup>13</sup> See Model Rules Of Professional Conduct Rule 4.2 (1997).

<sup>14</sup> Tr. 54-55; CX 16.

<sup>15</sup> Tr. 128-29.

<sup>16</sup> Tr. 14, 111.

<sup>17</sup> CX 16; Tr. 59.

himself available for an interview,” and also “request[ed] that [Harter] transmit to [Teeple] any authority ... which would support [the] assertion that the \$20,000 fine may be reduced to a civil judgment against Mr. Golick.”<sup>18</sup> On June 20, 1997, Harter sent Teeple a response to his June 19 letter, in which Harter advised that Golick had violated Rule 8210 (in Harter’s view) by refusing to attend the June 20 interview, and that, if Golick changed his mind and agreed to testify, the interview would have to be held in Washington, where Harter and Decker were located. In addition, Harter advised Teeple that the NASD had obtained civil judgments based on fines “in a good number of decisions.”<sup>19</sup>

Teeple subsequently called Harter. In the conversation, Teeple expressed his view that the NASD could not collect a fine from Golick because he was no longer associated with a member firm. Harter disagreed, but suggested a settlement under which the NASD would suspend collection of the fine until Golick again became associated with a member firm.<sup>20</sup>

In keeping with this proposal, Harter sent Teeple a proposed Acceptance, Waiver and Consent agreement in July 1997.<sup>21</sup> After the NASD’s new Code of Procedure came into effect, Harter sent Teeple a revised proposed AWC in September 1997.<sup>22</sup> Teeple did not respond to either of these communications.<sup>23</sup> Golick was aware of these AWC proposals, but rejected them.<sup>24</sup>

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<sup>18</sup> CX 5.

<sup>19</sup> CX 6.

<sup>20</sup> Tr. 64, 65.

<sup>21</sup> CX 7.

<sup>22</sup> CX 8.

<sup>23</sup> Tr. 70; 72.

Neither Teeple nor Golick communicated to Harter that Golick was willing to appear and testify until after Enforcement filed the Complaint initiating this proceeding.<sup>25</sup> In his Answer, filed January 7, 1998, Golick stated: “I will submit to an interview, and simultaneously will respectfully request, if rules allow, that you set aside this complaint, as I am assuming the complaint is unnecessary if an interview is agreed to.” In mid-January, Golick called Harter and told him that he was willing to appear and testify, if Enforcement would dismiss this proceeding. Harter responded that (in Harter’s view) Golick had violated NASD rules when he refused to appear in June 1997, and that Enforcement would not dismiss this proceeding just because Golick was now prepared to testify.<sup>26</sup>

On January 23, 1998, Thomas Huber, the attorney representing Enforcement in this proceeding, sent Golick a request to appear for an on-the-record interview, in response to Golick’s statements that he was now prepared to testify. Huber warned, however, that, “even if you testify promptly, we intend to seek a finding and sanctions in the Complaint, although the nature and severity of the sanctions we seek will be less if you appear and testify fully.” Huber indicated that Golick would have to appear for the interview in Washington, D.C., or Philadelphia, but Huber included a financial disclosure form with the letter. Huber stated that the information in the form could establish that Golick lacked the financial resources to travel to the East Coast to testify. Huber added: “[Y]our financial circumstances, in addition to being relevant regarding the location of your testimony, could become relevant in trying to determine

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<sup>24</sup> Tr. 115. The AWC communications are noted as part of the course of communications between the Parties, but Golick’s refusal to enter into an AWC agreement is neither evidence of a violation, nor an aggravating or mitigating factor in assessing sanctions. See Tr. 67-69.

<sup>25</sup> Tr. 73.

<sup>26</sup> Tr. 74; 78.

appropriate sanctions in the disciplinary proceeding if settlement discussions ensue or if a rule violation is found after a hearing.”<sup>27</sup>

On February 3, 1998, Huber sent Golick another letter noting that he had failed to submit a financial disclosure form. On February 10, 1998, Huber sent Golick a third letter, noting that Huber had been unable to reach him directly by telephone and had left several recorded messages that Golick had not returned. In the letter, Huber stated that, because Huber had been unable to reach him, he had scheduled Golick’s interview for February 24, 1998, in Philadelphia.<sup>28</sup>

On February 22, 1998, Golick sent Huber a letter by fax and first class mail in which he stated it was financially impossible for him to travel to Philadelphia, and that, in any event, he was precluded from traveling at that time due to the threat to his family residence from flooding.<sup>29</sup> Golick did not appear for the scheduled interview.<sup>30</sup>

At the hearing, Golick blamed his refusal to appear and testify in June 1997 on bad advice from his lawyer. He reiterated his willingness to testify – provided that NASD did not impose sanctions for his refusal to appear in June 1997.<sup>31</sup> Golick stated that he did not have the time or money to travel to the East Coast to testify, but acknowledged that he had not completed and submitted the financial disclosure form that Huber sent him, stating that it was “downright embarrassing” and that he did not “feel the NASD ... has a compelling need to know the state of

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<sup>27</sup> CX 9.

<sup>28</sup> CX 10, 12.

<sup>29</sup> CX 14.

<sup>30</sup> Tr. 124. Enforcement does not claim that Golick’s failure to appear for the February 22 interview constitutes a separate violation of Rule 8210 for purposes of this proceeding, but rather argues that it tends to rebut Golick’s argument in mitigation that he is now willing to testify. Tr. 68-69, 143-44.

<sup>31</sup> Tr. 147-48.



my finances in the kind of detail that they're looking for."<sup>32</sup> Golick claimed, however, that: "I don't have anything to put down [on the disclosure form]. I don't own a home. I don't own a vehicle. I have no money in the bank. I've lost all but maybe one credit card through this process, and that's the situation I'm in. There's nothing to put down on the form, for that matter, unless you want to see all the debt that has accumulated over the course of the last year to year and a half. That's where I am."<sup>33</sup> Because Golick refused to complete the financial disclosure form, the record contains nothing to substantiate these claims.

## **Conclusions**

### **A. Jurisdiction**

Golick was associated with a member firm and registered with the NASD until May 29, 1997. Pursuant to Article IV, Section 4 of the NASD By-Laws, Golick remained obligated to respond to NASD requests for information under Rule 8210, and remained subject to an NASD complaint for any failure to respond to such requests, for two years after the termination of his employment and registration. The NASD made the request that Golick appear for an on-the-record interview and filed the Complaint within the two year period. Therefore, the NASD has jurisdiction over this disciplinary proceeding.

### **B. Violation of Rule 8210**

Rule 8210(a)(1) authorizes the NASD to require any associated person "to provide information orally, in writing, or electronically ... with respect to any matter involved in [an] investigation ...." This rule provides a means for the NASD to carry out its regulatory functions in the absence of subpoena power. As such, the rule is a "key element in the NASD's effort to

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<sup>32</sup> Tr. 118, 137.

police its members."<sup>34</sup> Any failure to respond to requests for information impedes the NASD's ability to carry out its regulatory obligations.

In this case, Harter properly notified Golick of the NASD's request that he provide an on-the-record interview. Harter made the request in connection with the NASD's investigation of Golick. Golick authorized Teeple to communicate with the NASD on his behalf. Harter and Teeple, on Golick's behalf, agreed that Golick would appear at Teeple's office and testify on June 20, 1998. Teeple, on Golick's behalf, canceled the appearance just two days before the scheduled date. By failing to appear for the on-the-record interview, Golick violated NASD Rules 8210 and 2110.

Even if Golick received and relied on bad advice from Teeple, that would not be a defense to the charge in the Complaint. "[The] Rules of Fair Practice ... are unequivocal with respect to the obligation to cooperate with the NASD. Reliance on counsel is immaterial to an associated person's obligation to supply requested information to the NASD."<sup>35</sup> Reliance on advice of counsel has been recognized as a defense, under limited circumstances, only where proof of the respondent's state of mind ("scienter") is required, such as in cases alleging fraud. Proof of scienter is not required, however, to establish a violation of Rule 8210. Golick violated the Rule when he refused to appear for his interview, regardless of his state of mind. Reliance on counsel may, however, be a mitigating factor in setting sanctions.<sup>36</sup>

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<sup>33</sup> Tr. 137.

<sup>34</sup> Richard J. Rouse, 51 S.E.C. 581 (1993).

<sup>35</sup> Michael Markowski, Securities Exchange Act Rel. No. 32562, 1993 Lexis 1695 at \*11 (June 30, 1993), aff'd, 34 F.3d 99 (2d Cir. 1994).

<sup>36</sup> District Business Conduct Committee for District No. 1 v. John Thomas Higley, Complaint No. C01950034, 1997 NASD Discip. Lexis 5, at \*9, 11 (NBCC Mar. 5, 1997).

## Sanctions

The NASD Guidelines indicate that a bar and \$20,000 fine are appropriate where the record contains evidence of constructive or actual service, but the respondent did not respond in any manner, or did not respond truthfully or completely. The Guidelines provide that, where there are mitigating circumstances, the Hearing Panel may consider a suspension of six months to two years.<sup>37</sup> The principal sanctions considerations listed in the Guidelines include whether there was “a reasonable explanation why respondent failed to provide the requested information”; whether there is documented proof “of any effort by respondent to comply with [the] request”; as well as “[o]ther aggravating or mitigating factors.”

As explained above, reliance on advice of counsel is not a defense to a charge under Rule 8210, but it may be considered in mitigation.<sup>38</sup> In some circumstances, advice of counsel may provide a “reasonable explanation” for a respondent’s failure to provide requested information that would justify milder sanctions.

The Hearing Panel concluded, however, that in this case there is no evidence of “advice of counsel” that would establish any reasonable explanation for Golick’s refusal to appear for his interview. Both Golick’s testimony and Teeple’s communications with the NASD strongly

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<sup>37</sup> NASD Sanction Guidelines 22 (1996 ed.).

<sup>38</sup> Higley at \*11.

suggest that Golick's principal concern in seeking advice of counsel was whether the NASD would take disciplinary action if he refused to appear, and would thereafter pursue collection of any fine that NASD imposed.<sup>39</sup> Golick's mistaken hope that NASD would not pursue him if he refused to comply with Rule 8210 -- even if his lawyer gave him advice that fostered that hope -- is not a "reasonable explanation" for his refusal to testify that justifies reducing the sanctions in this case.

The Hearing Panel also considered whether Golick's repeated statements, after the Complaint was filed, that he is now willing to be interviewed should be considered a mitigating "effort by respondent to comply with [the] request." As a general matter, "answering an information request after the issuance of a disciplinary complaint is unacceptable and provides no mitigation."<sup>40</sup> Moreover, in this case Golick has never provided the requested interview. Instead, he has held out the possibility of testifying as a bargaining chip, suggesting that he would be willing to grant an interview if the Complaint were dismissed and the interview were scheduled at a time and location convenient to him. "The importance of the NASD's ability to require members and associated persons to provide information and testimony mandates that such members and associated persons not place conditions on compliance with the requirements of Procedural Rule 8210."<sup>41</sup> Therefore, the Hearing Panel concluded that Golick's conditional offer to testify is not a mitigating factor.

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<sup>39</sup> Tr. 14, 111; CX 5, 6, 16.

<sup>40</sup> Higley at \*12.

<sup>41</sup> Market Regulation Committee v. John J. Fiero, Complaint No. CMS960012, 1997 NASD Discip. Lexis 29, at \*9 (NBCC Mar. 10, 1997).

The Hearing Panel also considered and rejected as an “other mitigating factor” Golick’s statements at the hearing regarding his assets. Evidence of financial hardship may be considered in assessing a fine. For example, in District Business Conduct Committee for District No. 5 v. James C. Arnold, No. C05960034 (NBCC Feb. 25, 1997), the National Business Conduct Committee substantially reduced the fine imposed by the District Business Conduct Committee, and suspended collection of the reduced fine, based on financial information contained in a completed financial disclosure form. The NBCC pointed out that the disclosure form is employed by the SEC “in determining a respondent's inability to pay disgorgement, interest, or penalties assessed in connection with SEC enforcement actions.”<sup>42</sup> In contrast, Golick refused to complete the disclosure form and provided only unsubstantiated statements at the hearing to support his claim that he has no assets. The Hearing Panel does not find these statements credible, or entitled to any weight, given Golick’s refusal to complete the disclosure form. Accordingly, the Hearing Panel does not find that Golick’s financial condition constitutes a mitigating factor in this case.

Finally, the Hearing Panel considered whether, under the circumstances of this case, it would be appropriate to condition the sanctions. For example, in Fiero, the Market Regulation Committee imposed a bar on the respondent, but provided that if the respondent testified as requested, without condition, the bar would be reduced to a six-month suspension from the date of his testimony. The respondent did testify while the case was on appeal to the NBCC, which therefore reduced the sanction to a six-month suspension.<sup>43</sup>

Several factors, however, weigh against imposing a similar condition in this case. Golick failed to offer any good faith basis for his failure to appear for his scheduled interview. His

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<sup>42</sup> Id. at n.16.

<sup>43</sup> Fiero at \*19.

primary defense has been that his lawyer misled him into believing that he could refuse to appear with impunity, because the NASD would not pursue him if he refused to appear. His actions since the Complaint was filed do not suggest Golick has had any real change in attitude. Instead, Golick has tried to use an offer to testify as a bargaining chip to achieve his original goal. Under these circumstances, the Hearing Panel concluded that there was no reason to afford Golick yet another opportunity to testify. The Hearing Panel also considered, but rejected, suspending the collection of the fine until such time as Golick reenters the industry. Suspending collection would, in effect, confirm the “bad advice” Golick says he got from his lawyer.

Accordingly, Respondent Golick is censured, fined \$20,000, permanently barred from association with any member firm in any capacity, and assessed costs in the amount of \$1,105. These sanctions shall become effective on a date set by the Association, but not before the expiration of 45 days after the date of this decision.<sup>44</sup>

**HEARING PANEL**

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By: David M. FitzGerald  
Hearing Officer

Dated: Washington, DC  
May 14, 1998

Copies:

Edward Golick (via certified and first class mail)

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<sup>44</sup> The Hearing Panel has 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.

Rory C. Flynn, Esq. (via first class mail)  
Thomas M. Huber, Esq. (via first class mail)