

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,	:	
	:	
Complainant	:	Disciplinary Proceeding
	:	No. C9A040020
	:	
v.	:	Hearing Officer – DMF
	:	
PAUL V. RODDY, JR.	:	HEARING PANEL DECISION
(CRD No. 4665217)	:	
	:	
8082-11 Green Bud Lane	:	November 24, 2004
Glen Burnie, MD 21061	:	
	:	
HC 71 Box 69	:	
Taos, NM 87571,	:	
Respondent.	:	

Respondent is suspended from associating with any NASD member in any capacity for one year and fined \$10,000 for willfully misrepresenting his criminal record on a Form U-4, in violation of Rule 2110 and IM-1000-1.

Appearances

Thomas K. Kilkenny, Esq., Philadelphia, PA, (Rory C. Flynn, Esq., Washington, DC, Of Counsel), for Complainant.

Respondent appeared pro se.

DECISION

1. Procedural History

The Department of Enforcement filed a Complaint on June 14, 2004, charging that Respondent Paul V. Roddy, Jr. willfully misrepresented material facts regarding his criminal record on a Uniform Application for Securities Industry Registration or Transfer (Form U-4), in violation of Rule 2110 and IM-1000-1. On August 31, 2004, the Office of Hearing Officers received a letter from Respondent that the Hearing Officer accepted as an Answer to the Complaint. Respondent's letter did not, however, request a hearing.

The Hearing Officer issued an order extending the time for Respondent to request a hearing, and advising the parties that if Respondent did not request a hearing by that date, this proceeding would be decided on the basis of the parties' written submissions, unless the Hearing Officer or the Hearing Panel determined that a hearing was required. Respondent did not request a hearing by the extended deadline; therefore, the Hearing Officer issued an order directing the parties to file written submissions in lieu of a hearing. Enforcement filed its submission on October 5, 2004, including a memorandum and nine exhibits (CX 1-9); Respondent did not file any submission. Thus, the Hearing Panel, composed of the Hearing Officer and two members of the District 9 Committee, considered the charge in the Complaint based on the Complaint, Respondent's Answer and Enforcement's written submission.

2. Facts

Respondent became associated with NASD member American Express Financial Advisors Inc. and its affiliate IDS Life Insurance Company (collectively "AMEX") pursuant to a Form U-4 that Respondent signed and dated May 29, 2003, and AMEX filed with NASD electronically on June 26, 2003. In the Form U-4, Respondent sought to become registered with NASD as a general securities representative with AMEX and to take the appropriate qualifying examination. (CX 5-6.) Respondent's association with AMEX ended on August 6, 2003, when he was terminated for failing to disclose a reportable event, without ever having been registered.¹ (CX 1.)

¹ Although he was never registered, Respondent was associated with AMEX, because a "person associated with a member" includes "a natural person who ... has applied for registration" NASD By-Laws, Art. I, § (dd); see also Rule 0121 (By-Law definitions apply to the Rules, unless the context requires otherwise). Even though he has not been associated with any NASD member since AMEX terminated him, he remains subject to NASD jurisdiction for purposes of this proceeding, pursuant to Art. V, §4 of NASD's By-Laws, because the Complaint charges him with misconduct while he was associated with AMEX and the Complaint was filed within two years after his association with AMEX terminated.

In completing his Form U-4, Respondent was required to answer whether he had ever “been charged with any felony,” and whether he had ever “pled guilty ... to any felony.” Respondent answered both questions, “no.” (CX 5-6.) Those answers were false. In fact, on February 6, 1998, Respondent was charged with possession of cocaine, a felony under Florida law, and on April 8, 1998, he entered a guilty plea to that charge. After he entered his guilty plea, adjudication of guilt (i.e., a conviction) was withheld, and Respondent was placed on probation for 18 months, which he apparently completed successfully. (CX 4.)

3. Discussion

“The filing with [NASD] of information with respect to ... registration as a Registered Representative which is incomplete or inaccurate so as to be misleading ... may be deemed conduct inconsistent with just and equitable principles of trade and when discovered may be sufficient cause for appropriate disciplinary action.” IM-1000-1. It is well established that it is a violation of Rule 2110 to provide false or incomplete information on a Form U-4. “The violation of providing false information to the NASD requires only that the complainant prove the information was false.” DBCC No. 7 v. Prewitt, No. C07970022, 1998 NASD Discip. LEXIS 37 (NAC Aug. 17, 1998). In this case, the evidence demonstrates that Respondent’s “no” answers to the questions concerning his criminal history were false.

In his Answer, Respondent stated, “I think if you look at the document in question you will see that I answered the question asked with the statement ‘No Adjudications’. If that is not the case I made an error in my filing of the aforementioned document.” He made similar statements in his responses to requests for information during NASD staff’s investigation. (CX 7-9.) The Form U-4, however, clearly asked Respondent whether he had ever been charged with a felony, and whether he had ever pled guilty to a felony, and

he responded “no” to each question, which was false. If he wanted to note that he had not been convicted of the charge, he could have answered “yes,” truthfully, with the additional explanation that there was no adjudication. (CX 5-6.)

“It is axiomatic that the person who provides information for a regulatory filing and executes that filing is responsible for ensuring that the information contained therein is accurate.” Department of Enforcement v. Howard, 2000 NASD Discip. LEXIS 16, at *31 (NAC Nov. 16, 2000) (citation omitted), aff’d, 2002 SEC LEXIS 1909 (July 26, 2002), aff’d, 77 Fed. Appx. 2 (1st Cir. 2003). Respondent failed to provide accurate information in response to the Form U-4 questions concerning his criminal record. Therefore, the Hearing Panel concludes that Respondent violated Rule 2110 and IM-1000-1, as charged.

Enforcement further alleges that Respondent’s false statements regarding his criminal history were willful. Willfulness is not required to establish a violation of Rule 2110 or IM-1000-1, but Article III, § 4(f) of NASD’s By-Laws provides that a person who has willfully made any false or misleading statement as to any material fact in any application to become registered with an NASD member, or who has omitted to disclose any material fact which is required to be disclosed in such an application, is subject to a “disqualification.” For this purpose, it is sufficient to establish willfulness that Respondent “knew or reasonably should have known under the particular facts and circumstances that his conduct was improper.” Christopher LaPorte, Exch. Act Rel. No. 39171, 1997 SEC LEXIS 2058, at *8 n.2 (Sept. 30, 1997).

The Form U-4 clearly and unambiguously asked Respondent whether he had ever been charged with or had ever pled guilty to a felony, and he falsely responded “no” to both questions. Respondent was charged, was represented by counsel, pled guilty to the charge in open court, and was sentenced to and apparently successfully completed 18

months of supervised probation. He was unlikely to have forgotten those events when he completed his Form U-4. Nevertheless, he gave false answers to the questions regarding his criminal record, and then signed the Form U-4 below the statement, "I swear or affirm that I have read and understand the items and instructions on this form and that my answers (including attachments) are true and complete to the best of my knowledge. I understand that I am subject to administrative, civil or criminal penalties if I give false or misleading answers." He provided no explanation for these actions in his Answer or in his responses to the staff's requests for information during the investigation, other than to note that the charge had not been adjudicated. Under these circumstances, the Hearing Panel finds that Respondent knew or should have known that his conduct in providing the false answers was improper, and, therefore, that his misconduct was willful.

4. Sanctions

For filing a false or misleading Form U-4, the Sanction Guidelines recommend, in egregious cases, a suspension of up to two years or a bar, as well as a fine of \$2,500 to \$50,000. NASD Sanction Guidelines at 75, 76 (2004 ed.). The Hearing Panel finds that this is an egregious case.

The Form U-4 is fundamental to the integrity of the securities industry. It "serves as a vital screening device for hiring firms and the NASD against individuals with 'suspect history.'" DBCC No. 7 v. Prewitt, 1998 NASD Discip. LEXIS 37 at *8. The criminal charge and guilty plea that Respondent failed to disclose involved possession of cocaine; truthful answers to the U-4's questions would have provided important information for AMEX to consider in deciding whether to hire Respondent and, if hired, what sort of supervision might be appropriate for him. As explained above, the Hearing Panel found that Respondent's decision to answer those questions falsely was willful.

Enforcement requests that Respondent be suspended for one year in all capacities and fined \$10,000. These sanctions are within the recommendations in the Guidelines and the Hearing Panel finds that they are appropriate under the facts and circumstances of this case. In that regard, the Panel notes that the violation involved just one Form U-4; that, although the information regarding Respondent's criminal record was very important, it did not subject him to a disqualification under Article III, § 4 of NASD's By-Laws, because no judgment of conviction was entered; and that Respondent's misconduct did not cause harm to AMEX or anyone else. Because Respondent is not currently in the industry, and has indicated in his Answer and other submissions to NASD that he does not intend to return, the fine will be due and payable only when and if he changes his mind and decides to try to return.

5. Conclusion

Respondent Paul V. Roddy, Jr. is suspended from associating with any NASD member in any capacity for one year and fined \$10,000 for willfully misrepresenting his criminal record on his Form U-4, in violation of Rule 2110 and IM-1000-1. If this decision becomes NASD's final disciplinary action in this proceeding, the suspension will be effective beginning on January 17, 2005 and ending on January 16, 2006, and the fine will be due and payable when and if Respondent seeks to return to the securities industry.²

HEARING PANEL

By: David M. FitzGerald
Hearing Officer

Copies to:

Paul V. Roddy, Jr. (*via overnight and first class mail*)

² 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.

Thomas K. Kilkenny, Esq. (*electronically and via first class mail*)
Rory C. Flynn, Esq. (*electronically and via first class mail*)