

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF MARKET REGULATION,	:	
	:	
	:	
Complainant,	:	Disciplinary Proceeding
	:	No. CMS040069
v.	:	
	:	Hearing Officer – SW
NICHOLAS R. SCIASCIA	:	
(CRD No. 2813945)	:	Hearing Panel Decision
	:	
Howard Beach, NY,	:	Dated: January 21, 2005
	:	
Respondent.	:	

Respondent was barred from associating with any NASD member firm in any capacity for violating NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by failing to appear and provide testimony at an on-the-record interview scheduled by the NASD staff pursuant to Rule 8210.

Appearances

Michael J. Dixon, Esq., Counsel, and Jeffrey K. Stith, Esq., Associated Vice President and Chief Litigation Counsel, Rockville, MD, for the Department of Market Regulation.

Nicholas R. Sciascia, pro se.

DECISION

I. Introduction

A. Complaint and Answer

The Department of Market Regulation (“Market Regulation”) filed a one-count Complaint on May 11, 2004, alleging that Respondent Nicholas R. Sciascia (“Respondent”) violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by

failing to appear at two scheduled on-the-record interviews requested pursuant to Rule 8210.

Respondent filed an answer to the Complaint on July 9, 2004. In response to the Complaint, Respondent admitted that he failed to appear for the on-the-record interviews, but he argued that his failures do not warrant a bar.

B. The Hearing

The Parties presented evidence to a Hearing Panel on October 20, 2004, in New York, New York.¹ The Hearing Panel consisted of two current members of the District 10 Committee and the Hearing Officer.

II. Discussion

A. Jurisdiction

Article V, Section 4 of the NASD By-Laws creates a two-year period of retained jurisdiction over formerly registered persons, covering failures to provide testimony or information requested during the period of retained jurisdiction.

Respondent was last registered with NASD on December 31, 2003 when NASD member firm Shelman Securities Corp. (“Shelman Securities”) filed a Form U-5 on his behalf. (CX-1, pp. 3-4). Market Regulation filed the Complaint in this proceeding on May 11, 2004, well within the two-year period of retained jurisdiction. Further, the Complaint alleges a failure to provide testimony or information requested during the period of retained jurisdiction. Therefore, NASD has jurisdiction over this matter.

¹ “Tr.” refers to the transcript of the Hearing held on October 20, 2004, and “CX ” refers to Enforcement’s exhibits.

B. Respondent Failed to Appear for an On-the-Record Interview

Market Regulation noted a volume concentration in the stock of Centurion Gold Holdings and Natalyma Industries in the Hicksville, New York branch office of Shelman Securities and began an investigation. (Tr. p. 16). The NASD staff was collecting information about Respondent's participation, if any, in the sale of those securities to the public. (Tr. p. 32).

On December 8, 2003, the NASD staff issued requests for on-the-record interviews to five registered representatives of Shelman Securities, including Respondent. (Tr. p. 19; CX-2). The NASD staff sent its December 8, 2003 Rule 8210 request to Respondent at his business address at Shelman Securities, and requested that he appear for an on-the-record interview on January 29, 2004 in Rockville, Maryland.² (CX-2, p. 1; CX-2, p. 3).

After learning that Respondent was no longer employed by Shelman Securities, on December 17, 2003, the NASD staff sent a second Rule 8210 request for the January 29, 2004 on-the-record interview to Respondent's home address as it appeared in the NASD Central Registration Depository ("CRD address").³ (CX-4).

After the December 17, 2003 letter was returned as undeliverable, on January 7, 2004, the NASD staff sent a third Rule 8210 request for the January 29, 2004 on-the-

² Respondent's business address was Shelman Securities Corp., 76 N. Broadway, Suite 3000, Hicksville, NY 11801. (CX-2, p. 1).

³ Respondent's CRD address is 79-04 156 Ave., Howard Beach, NY 11414. (CX-1, p. 18). Respondent testified that, when he moved from his CRD address, he left a forwarding address of 1414 82nd Street, Brooklyn, New York 11228-3108, his father's address, at the U.S. Postal Service. (Tr. p. 47).

record interview to Respondent at his former CRD address, 156-34 89th Street, Howard Beach, NY 11414.⁴ (CX-1, p. 19; CX-5).

The NASD staff also obtained a telephone number from the Internet for Respondent in Howard Beach, and called Respondent on January 27, 2004. (Tr. pp. 22-23). The NASD staff left a message at the telephone number for Respondent to call the NASD staff regarding his securities license.⁵ (Id.). Respondent failed to appear in Rockville, MD, on January 29, 2004 for his on-the-record interview. (Tr. p. 23).

Respondent contacted the NASD staff on January 29, 2004, and requested that the on-the-record interview be rescheduled after February 2004.⁶ (Tr. p. 24; CX-7). Respondent testified that his father had contacted him about the January 27, 2004 telephone call from the NASD staff and that when he went to visit his father, he found the December 2003 letter among a pile of mail that his father had let pile up while recovering from an operation. (Tr. p. 48). Respondent also testified that he did not receive the December 2003 Rule 8210 request sent to his business address because he left the office in late October 2003 and did not return to work. (Tr. p. 47).

During the January 29, 2004 telephone call with the staff, Respondent acknowledged that he had failed to update his CRD address and therefore provided the NASD staff with two mailing addresses, 88-11 16th Avenue, Brooklyn, NY 11228 (“88-11 address”) and 136 Bay 50th Street, Brooklyn, NY 11204 (“Bay address”), and a telephone contact number. (CX-7).

⁴ The NASD staff testified that they sometimes send mail for a young registered representative to a prior CRD address because the prior CRD address may be a family address. (Tr. p. 15).

⁵ The individual answering the telephone stated that “Mr. Sciascia” was in Mexico and could not be reached. (Tr. p. 22).

⁶ Respondent initially told the NASD staff that he had not called previously because he lost the staff’s telephone number. (Tr. p. 24).

On February 4, 2004, the NASD staff telephoned Respondent at the telephone number that he had provided and left a message. (Tr. p. 41). Respondent did not return the NASD staff's telephone call. (Tr. p. 42). Respondent denied that he received the February 4, 2004 telephone call. (Tr. p. 48).

On February 25, 2004, the NASD staff sent to Respondent a Rule 8210 request scheduling an on-the-record interview for March 18, 2004. (CX-6). The Rule 8210 request was sent to Respondent at five addresses: (i) the 88-11 address; (ii) a variation of the 88-11 address; (iii) the Bay address; (iv) a variation of the Bay address; and (v) his CRD address.⁷ (CX-6). Respondent failed to appear at the March 18, 2004 on-the-record interview. (Tr. p. 26).

Procedural Rule 8210(a)(1) provides, in part, that “[f]or the purpose of an investigation, complaint, examination, or proceeding authorized by the NASD By-Laws or the Rules of [NASD], . . . [NASD] staff shall have the right to: require a member, person associated with a member, or person subject to [NASD]’s jurisdiction to provide information orally, in writing, or electronically . . . and to testify . . . , under oath or affirmation administered by a court reporter or a notary public if requested, with respect to any matter involved in the investigation, complaint, examination, or proceeding.” This Rule provides a means for NASD to carry out its regulatory functions in the absence of subpoena power. It is a “key element in the NASD’s efforts to police its members”; failure to respond subverts NASD’s ability to perform its regulatory responsibilities.⁸

⁷ The variation of the 88-11 address was 8811 16th Avenue, Brooklyn, NY 11214, which the NASD staff obtained from the U.S. Postal Service website. (Tr. p. 26). The variation of the 136 Bay address was 136 Bay 50th Street, Brooklyn, NY 11214, which the NASD staff also obtained from the U.S. Postal Service website. (*Id.*).

⁸ Richard J. Rouse, 51 S.E.C. 581 (1993); John J. Malach, 51 S.E.C. 618 (1993).

Respondent had a duty to receive, read, and respond to the requests sent to his CRD address.

Respondent denied that he received the Rule 8210 requests dated February 25, 2004, and he denied that he received the notices from the U.S. Postal Service to pick up the Rule 8210 requests.⁹ (Tr. pp. 53-54).

Respondent admitted that he received actual notice of the January 29, 2004 on-the-record interview. Respondent also admitted that in the January 29, 2004 conversation with the NASD staff, he was told that he would receive something from the NASD “in the next two weeks,” and he admitted that he received subsequent mail from NASD at the 88-11 address. (Tr. pp. 12, 49). Respondent testified, “I was sort of hoping I wasn’t going to have to deal with it. I was hoping that the investigation against the firm was going to be closed.” (Tr. p. 63).

Based on his receipt of subsequent NASD mail at the same address and his demeanor, the Hearing Panel does not find credible Respondent’s denial of the receipt of the notices for the Rule 8210 request dated February 25, 2004. The Hearing Panel finds that Respondent intentionally chose not to pick up the certified mailing announcing the on-the-record interview scheduled on March 18, 2004.

In any event, pursuant to NASD Procedural Rule 8210(d), Respondent is deemed to have received constructive notice of the requests sent to his CRD address and the

⁹ The certified mailing sent to the 88-11 address was returned, marked “Address Unknown.” (Tr. p. 25; CX-6, p. 4). The certified mailing sent to the variation of the 88-11 address was returned, marked “Unclaimed.” (CX-6, p. 5). The certified mailings sent to the Bay address and the variation of the Bay address were returned, marked “Unclaimed.” (CX-6, pp. 6-7). The certified mailing sent to the CRD address was returned, marked “Not deliverable as Addressed.” (CX-6, p. 8).

alternative addresses.¹⁰ NASD Procedural Rule 8210(d) provides that if the staff has actual knowledge that a CRD address is out of date or inaccurate, a Rule 8210 request will be deemed constructively received if a copy of the request is sent to the person's CRD address and any other more current address of the person. The NASD staff mailed its request for the March 18, 2004 on-the-record interview to Respondent at his CRD address and to four alternative addresses.

Accordingly, the Hearing Panel finds that service of the Rule 8210 request at the CRD address and at the four alternative addresses was valid and that Respondent had constructive notice of the request and chose not to comply. By failing to appear for both the January 29, 2004 and the March 18, 2004 on-the-record interviews requested by the NASD staff, the Hearing Panel finds that Respondent violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

III. Sanction

For failing to appear for his on-the-record interviews, Market Regulation recommended that Respondent be barred. The NASD Sanction Guidelines provide that a bar should be standard when an individual respondent does not respond in any manner to a request issued pursuant to Rule 8210.¹¹

Respondent admitted that he was aware that the Market Regulation staff wanted to arrange an on-the-record interview. Respondent's statement that he did not receive notice of NASD's request that he appear for the March 18, 2004 interview was not credible.

¹⁰ Respondent made no effort to update his CRD address although he was advised to do so in his January 29, 2004 conversation with the NASD staff. (Tr. pp. 61-62).

¹¹ NASD Sanction Guidelines, p. 37 (2004).

The Hearing Panel finds that Respondent hoped that the problem would go away if he engaged in dilatory tactics. The problem did not go away. The record does not reflect the existence of any mitigating factors that would warrant a lesser sanction. Accordingly, the Hearing Panel accepts Market Regulation's recommendation, and bars Respondent from associating with any member firm in any capacity for failing to appear for the March 18, 2004 interview.¹²

IV. Order

Respondent Nicholas R. Sciascia is barred from associating with any NASD member firm in any capacity for violating NASD Procedural Rule 8210 and NASD Conduct Rule 2110 by failing to appear for an on-the-record interview requested by the NASD staff, as alleged in the Complaint. The bar will become effective immediately upon this Decision becoming the final disciplinary action of NASD.¹³

SO ORDERED.

HEARING PANEL

By: _____
Sharon Witherspoon
Hearing Officer

Dated: Washington, DC
January 21, 2005

Copies to:
Nicholas R. Sciascia (via Federal Express mail and first class mail)
Michael J. Dixon, Esq. (via electronic and first class mail)
Jeffrey K. Stith, Esq. (via electronic and first class mail)

¹² Having found that Respondent's failure to appear for the March 18, 2004 on-the-record interview warranted a bar, the Hearing Panel did not determine whether his failure to appear for the January 29, 2004 on-the-record interview warranted a separate bar.

¹³ 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.