

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant

v.

Jason A. Craig
(CRD No. 4016543),

Respondent.

Disciplinary Proceeding
No. E8A2004095901

Hearing Officer – RSH

Hearing Panel Decision
August 28, 2006

Respondent Jason A. Craig violated NASD Membership and Registration IM 1000-1 and NASD Conduct Rule 2110 by failing to disclose his criminal record. For this violation, he is barred from association with any member firm in any capacity.

Appearances

Richard A. March, Esq., Mark A. Koerner, Esq., Kevin G. Kulling, Esq., Chicago, IL (Rory C. Flynn, Esq., NASD Chief Litigation Counsel, Washington, DC, Mark Dauer, Esq., New Orleans, LA, Of Counsel) for the Department of Enforcement.

John A. Dienner, Esq. of Kubasiak, Fylstra, Reizen & Rotunno, P.C., Chicago, IL, for Jason A. Craig.

DECISION

I. Procedural History

The Department of Enforcement (“Enforcement”) filed an Amended Complaint against Jason A. Craig on November 15, 2005. The Complaint charged that Craig violated Conduct Rule 2110 and Membership and Registration Rules Interpretive Material (“IM”) 1000-1 by failing to disclose four felony charges and one misdemeanor conviction on his Uniform Application for Securities Industry Registration or Transfer (“Form U-4”).

Craig filed an Answer to the Amended Complaint on December 29, 2005 in which he admitted the factual allegations but denied that he had violated NASD rules. He requested a hearing.

The hearing was held on June 2, 2006 in Chicago, Illinois before a Hearing Panel composed of the Hearing Officer and two current members of NASD's District 8 Committee. Enforcement called three witnesses: Linda Horney, Director of Recruiting for Hantz Financial Services, Inc. ("Hantz"); Lisa McClain, Senior Vice President with Hantz; and Nichole Allen, an NASD compliance specialist.¹ Enforcement also introduced nine exhibits into evidence.² Craig testified but did not introduce any exhibits.

II. Findings of Fact

A. Craig's Registration Background

Craig first became registered as a General Securities Representative with American Express Financial Advisors in January of 2000. His Central Records Depository ("CRD") file states that he was discharged from American Express in 2001 for "default of franchise agreement."³ Craig testified that he "wanted some time out of the [securities] business for a little bit" and so went to work with his sister selling payroll systems.⁴ He worked in that business until 2004, when he applied for a position as a registered representative at Hantz.⁵ Craig has been employed since February 2005 at Linsco/Private Ledger Corp. ("Linsco") as a non-registered associated person.⁶

¹ The hearing transcript is referred to as "Tr."

² Exhibits CX-1-9, except for CX-3, pgs. 1-3.

³ CX-7 at 3.

⁴ Tr. at 120-121.

⁵ Tr. at 121.

⁶ CX 7 at 1; Tr. at 110-111.

B. Craig's Criminal Record

Craig admitted that his criminal record contains the following five felony charges and one misdemeanor conviction, all in the state of Michigan.⁷

1. On August 30, 2002, Craig was charged in Detroit with the felony offense of possession of a controlled substance (“Detroit Charge”).

2. On May 27, 2003, Craig was charged with the felony offense of uttering and publishing.⁸

3. On July 24, 2003, the uttering and publishing charge was reduced to misdemeanor larceny and Craig entered a plea of guilty. The Court entered an order deferring dismissal of the misdemeanor larceny charge for one year pending payment of fines and costs and completion of 50 hours of community service within 180 days. Craig failed to meet those conditions, and, on July 7, 2004, the Court revoked the deferral and entered a conviction for the misdemeanor larceny charge.⁹

4. On September 30, 2003, Craig was charged in Macomb County with the felony offense of possession of a controlled substance (“Macomb Charge”).¹⁰

5. On July 19, 2004, Craig was charged with the felony offense of writing checks drawn on a financial institution at which he had no account (“No Account Check Offense”).

⁷ Answer to Amended Complaint at ¶¶ 2-7; CX-5; Stipulation Regarding Exhibits. Craig also testified that he had been charged twice with selling drugs to an undercover agent when he was seventeen, but those charges had been expunged from his record (Tr. at 147).

⁸ Under Michigan law, “uttering and publishing” involves forging, altering or counterfeiting a document. Craig testified under cross-examination that this charge resulted from his conduct in connection with a loan he took from his credit union. The loan was made to pay credit card bills and the checks were made payable to MasterCard and Visa. Craig altered the checks to make them payable to himself.

⁹ CX-4 at 5; CX-5 at 1.

¹⁰ CX-5 at 45.

6. On July 19, 2004, Craig was charged with the felony offense of altering or forging the electronic data contained on a driver's license with the intent to aid in the commission of a No Account Check Offense.

C. Craig's Form U-4

Linda Horney, Director of Recruiting for Hantz, testified that she interviewed Craig for a position as a registered representative in August 2004.¹¹ She had four additional meetings with Craig.¹² In none of those meetings did Craig disclose his criminal record. In a meeting on August 18, 2004, Lisa McClain, Senior Vice President of Hantz (at that time she was the vice president of recruiting), offered Craig the position.¹³ During this meeting, Ms. McClain asked Craig whether there was "anything in his background" that would prevent her from hiring him. Craig answered, "No."¹⁴ Craig accepted Hantz's offer of employment and was scheduled to begin work in September.

On August 24, 2004, Ms. Horney met with Craig to complete pre-employment documents. At the meeting, Craig signed a form giving Hantz authorization to conduct a criminal and credit background check. Ms. Horney asked Craig whether he "needed to disclose anything," such as arrests, convictions, defaulting on a loan, bankruptcy or compromising with a credit card company. She directed him to list any such events on the bottom of the authorization. Craig told Ms. Horney that he had nothing to disclose.¹⁵

As Craig was completing his Form U-4, he told Ms. Horney that he had been charged, but not convicted, of a felony. In response to Question 14A(1)(b), on Form U-4,

¹¹ Tr. at 21.

¹² Tr. at 25-26; CX-8.

¹³ Tr. at 67-68.

¹⁴ Tr. at 65.

¹⁵ Tr. at 30-31.

Craig checked that he had been charged with a felony. In explaining the charge, Craig wrote, “possession of marijuana and cocaine,” and stated that the formal charge was “felony possession.” He wrote that he had been charged on August 8, 2002 and that the charge was still pending.¹⁶ Craig testified that he was referring to the Macomb Charge; however, he provided the incorrect date for the charge.¹⁷ During the hearing, Craig admitted that he failed to disclose the four other felony charges and the one misdemeanor conviction on his Form U-4.¹⁸

In late September, after Craig had begun working at Hantz, Ms. Horney received a report from NASD asking for an explanation of a charge with a date that did not match the charge disclosed on Craig’s Form U-4. When Ms. Horney questioned Craig about the discrepancy, he stated that he “must have gotten the date wrong.” Ms. Horney decided to double-check with NASD and upon doing so was told that it had found two additional criminal charges that Craig had not disclosed on his Form U-4.¹⁹ On October 7, 2005, Ms. Horney met with Craig and asked for an explanation. She pointed out that NASD had identified three different charges on three different dates by three different arresting agencies. Craig said he had no explanation. Ms. Horney then turned the matter over to her supervisor in the compliance department, Lisa McClain.²⁰

Ms. McClain met with Craig to discuss the situation in mid-October. At that time, Craig told Ms. McClain that the felony charge for possession of a controlled substance (the Macomb Charge) was supposed to have been expunged, and that his

¹⁶ Tr. at 32; CX-3 at 8, 17.

¹⁷ Tr. at 164.

¹⁸ Tr. At 132-133; 158-159.

¹⁹ Tr. at 35-38; CX-4 at 1-2.

²⁰ Tr. at 40-42.

attorney had told him that he did not have to disclose it.²¹ When asked about the two other charges, Craig alternated between saying, “I’m not sure,” “I don’t recall,”²² and “I don’t know.”²³ Ms. McClain then terminated Craig’s employment.²⁴ After Craig’s termination, his attorney faxed documents to Ms. McClain which showed, contrary to Craig’s representations, that his criminal charges had not been expunged from his record.²⁵

D. Craig’s Explanation for Failing to Disclose His Criminal Record

Craig claimed that he did not believe he was required to disclose his criminal charges and conviction on his Form U-4 because he believed they had been or *were going to be* expunged or dismissed.²⁶ Craig admitted during his testimony that, in fact, some charges were expunged *after* he filled out his Form U-4, and some charges were still *in the process of* being expunged at the time of the hearing.²⁷

The Hearing Panel found that Craig’s explanation, even if true, was not a defense. Regardless of whether Craig expected the charges or conviction to be expunged or vacated at some future time, at the time he was completing his Form U-4, he knew that they were still pending.²⁸

During his testimony, Craig gave other inconsistent reasons for not disclosing his felony charges. He testified that he did not intentionally fail to disclose all of the charges and argued that his execution of a release authorizing Hantz to conduct a criminal

²¹ Tr. at 71, 83.

²² Tr. at 81.

²³ Tr. at 83.

²⁴ Tr. at 69-71.

²⁵ Tr. at 89-90.

²⁶ Answer to Amended Complaint at ¶¶ 1-5.

²⁷ Tr. at 123-128.

²⁸ Tr. at 136-137. The Form U-4 instructions do not explicitly address whether a charge or conviction that has been expunged must nevertheless be disclosed. The Panel found it unnecessary to address that issue in this case.

background check proves that he was not trying to hide his criminal record. He claimed that he believed that if he disclosed one of his felony charges, the background check would find all of them.²⁹ At another point in his testimony, Craig claimed that he actually had told Ms. Horney that he had three felony charges pending. He said Ms. Horney's testimony to the contrary was "incorrect."³⁰

The Hearing Panel did not find Craig's claims to be credible. Ms. Horney testified that when she questioned him on October 7, 2004 about the three felony charges that had been reported back by NASD, he did not tell her that the charges had been or would be expunged; he said he didn't know what they were.³¹ Later, when Ms. McClain questioned Craig about the charges, he said his attorney had told him he wasn't required to disclose the charges because they had been expunged.³² Yet, during his direct testimony, in response to his attorney's question asking about Craig's understanding about the status of the criminal charges at the time he was filling out the Form U-4, Craig answered, "...they were still pending."³³

After listening to and observing the demeanor of the witnesses, and considering the inconsistent explanations Craig has offered at various times, the Hearing Panel concluded that Craig's testimony was not credible and that at the time he filled out the Form U-4 he willfully failed to disclose four felony charges.

With respect to the misdemeanor conviction, Craig admitted that he should have disclosed it, but claimed that his failure to do so was not intentional.³⁴ In light of Craig's

²⁹ Tr. at 132; Answer to Amended Complaint at ¶ 5; Tr. at 158-159.

³⁰ Tr. at 136-137, 170.

³¹ Tr. at 39-41.

³² Tr. at 71.

³³ Tr. at 136-137.

³⁴ Tr. at 132.

other disingenuous testimony, the Hearing Panel did not credit his testimony, and finds that his failure to disclose his misdemeanor conviction was also willful.

III. Conclusions of Law

Craig Violated NASD Conduct Rule 2110 and IM-1000-1 by Failing to Disclose His Criminal Record on a Form U-4

Rule 2110 provides that, “a member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade.” IM-1000-1 alerts registered representatives that, “the filing with [NASD] of information with respect to membership or registration as a Registered Representative which is incomplete or inaccurate...may be deemed to be conduct inconsistent with just and equitable principles of trade....” Failing to disclose information required on the Form U-4 is a violation of Conduct Rule 2110.³⁵ The Securities and Exchange Commission (“SEC”) has explained the significance of providing truthful information in the context of Form U-5:

In a business that relies heavily on candor and truthful representation, submitting a Form U-5 doctored to delete unfavorable information in order to gain employment is serious misconduct. The Form U-5 serves as a warning mechanism to firms of the potential risks and accompanying supervisory responsibilities they must assume if they decide to employ an individual with a suspect history.³⁶

The same rationale is equally applicable to a Form U-4, which is a “vital screening device for hiring firms and the NASD against individuals with suspect history.”³⁷

The NASD required Craig to complete a Form U-4, disclosing, among other

³⁵ *DBCC v. Bernadette Jones*, 1998 NASD Discip. LEXIS 60, *9 (NAC August 7, 1998), citing *Jon R. Butzen*, Exchange Act Rel. No. 36512 (Nov. 27, 1995).

³⁶ *Henry Irvin Judy*, Exchange Act Rel. No. 38418 (Mar. 19, 1997).

³⁷ *DBCC v. Bernadette Jones*, *supra*; *DBCC v. Allen R. Prewitt*, 1998 NASD Discip. LEXIS 37, *8 (NAC August 17, 1998).

things, whether he had “ever been charged with any felony”³⁸ and whether he had “ever been convicted of or pled guilty...to a misdemeanor involving...any fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery....”³⁹ Both Form U-4 questions required Craig to explain all “yes” answers.

Craig checked “yes” in answer to the question asking whether he had ever been charged with any felony; however, he failed to list and explain all of the felonies with which he had been charged. Instead, he listed only the Macomb charge for possession of controlled substances, and did not list his other four felony charges.⁴⁰ Craig’s multiple explanations for failing to disclose the charges were contradictory and, rather than evidencing confusion, indicated that he knew he should have disclosed them and deliberately failed to do so.

In answer to the question relating to misdemeanor convictions, Craig answered “no.”⁴¹ In his Answer, Craig admitted that he failed to list his conviction for misdemeanor larceny, which a court had entered on July 7, 2004—less than two months before he filled out the Form U-4.

The Hearing Panel finds that Craig was required to disclose the four felony charges and one misdemeanor conviction. His failure to do so was willful and violated Rule 2110 and IM-1000-1.

IV. Sanctions

Enforcement requested a suspension of at least 18 months and a fine of \$10,000. The Hearing Panel decided that those sanctions are too lenient.

³⁸ CX-3 at 8.

³⁹ Id.

⁴⁰ CX-3 at 17.

⁴¹ CX-3 at 8, Q. 14B(1)(a).

The NASD Sanction Guidelines (“Guidelines”) for filing a false or inaccurate Form U-4 provide for fines ranging from \$2,500 to \$50,000 and, in egregious cases, a bar.⁴² The Guidelines for Form U-4 violations define “Egregious Cases” to include those involving “false, inaccurate or misleading filings” and identify a number of factors to be considered in determining sanctions, including “Nature and significance of information at issue,” and “Whether failure resulted in a statutorily disqualified individual becoming or remaining associated with a firm.” Here, Craig failed to disclose criminal charges and a conviction that would have raised serious questions for any potential employer firm, as well as any member of the investing public. Moreover, the misdemeanor conviction for “larceny” might have rendered Craig statutorily disqualified under Article 3, Section 4(g)(1)(iii) of NASD’s By-Laws.⁴³

The Guidelines also include a number of general considerations applicable to all types of misconduct, including: “whether the respondent attempted to conceal his or her misconduct or to lull into inactivity...the member firm with which he or she is/was associated” (No. 10) and “whether the respondent’s misconduct was the result of an intentional act, recklessness, or negligence.” (No. 13).⁴⁴ In this case, Craig intentionally attempted to conceal his criminal history.

For these reasons, the Hearing Panel finds that Craig should be barred from associating with any member in any capacity.

⁴² NASD Sanction Guidelines at 73-74 (2006 ed.).

⁴³ See *DOE v. Zdzieblowski*, 2005 NASD Discip. LEXIS 3, *18 (NAC May 3, 2005).

⁴⁴ NASD Sanction Guideline at 6-7 (2006 ed.).

V. Order

Jason A. Craig is barred from association with any member firm in any capacity for violation of NASD Conduct Rule 2110 and IM-1000-1. The bar shall become effective immediately if this decision becomes the final disciplinary action of NASD.⁴⁵

In addition, Craig is ordered to pay the cost of this proceeding in the total amount of \$2,050.72, which includes an administrative fee of \$750, and hearing transcript costs of \$1,300.72.

HEARING PANEL

By: Rochelle S. Hall
Hearing Officer

Copies to: John A. Dienner, Esq. (*via facsimile and first class mail*)
Richard A. March, Esq. (*electronically and via first class mail*)
Kevin G. Kulling, Esq. (*electronically and via first class mail*)
Rory C. Flynn, Esq. (*electronically and via first class mail*)

⁴⁵ 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 findings and conclusions expressed herein.