

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT	:	
	:	
Complainant,	:	Disciplinary Proceeding
	:	No. C04030057
	:	
v.	:	Hearing Officer – DMF
	:	
SHERRY LEE WILLIAMS	:	HEARING PANEL DECISION
(CRD No. 4342271)	:	
530 Oliver Avenue	:	May 4, 2004
Minneapolis, MN 55405	:	
	:	
Respondent.	:	

Respondent is barred from associating with any NASD member in any capacity for willfully failing to disclose her criminal record on her Form U-4, in violation of Rule 2110 and IM-1000-1.

Appearances

James M. Stephens, Esq., Kansas City, MO, (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 October 28, 2003, charging that respondent Sherry Lee Williams willfully failed to disclose her criminal history on a Uniform Application for Securities Industry Registration or Transfer (Form U-4) that she signed and submitted for filing with NASD, in violation of Rule 2110. On December 18, 2003, Enforcement filed with the Office of Hearing Officers a letter dated December 17, 2003 that Williams had sent to Enforcement by facsimile, apparently in response to the

Complaint. In light of the letter, on December 19, 2003, the Hearing Officer issued an order extending the time for Williams to answer the Complaint and to request a hearing.

On January 12, 2004, the Office of Hearing Officers received from Enforcement a handwritten letter from Williams, addressed to counsel for Enforcement, which the Hearing Officer treated as an Answer. The Answer did not request a hearing on the charges in the Complaint.

On January 13, 2004, in light of Williams' failure to request a hearing, the Hearing Officer issued an order directing the parties to file written submissions in lieu of a hearing. On February 17, 2004, Enforcement filed its submission, which included a motion for entry of decision, a supporting memorandum and 21 Complainant's Exhibits (CX 1-21). On March 4, 2004, the Office of Hearing Officers received from Enforcement a handwritten letter from Williams to Enforcement counsel, which appears to have been in response to Enforcement's submission; Williams did not file any other written submission with the Office of Hearing Officers.

On March 10, 2004, the Hearing Officer issued an order directing Enforcement to supplement its written submission by filing the full transcript of NASD staff's on-the-record examination of Williams on June 5, 2003, a portion of which had been included as an exhibit in Enforcement's submission. On March 16, 2004, Enforcement filed the complete transcript, together with the exhibits used by NASD staff in the on-the-record examination, as an additional Complainant's Exhibit (CX 22).

2. Facts

Williams became employed by NASD member RBC Dain Rauscher, Inc. in September 2000, in a position that did not require her to be registered with NASD. Prior to being hired by Dain, she completed a Dain "Prehire Verification for Non-Registered

Candidates Form,” which she signed and dated August 25, 2000. Among other things, the Prehire Form asked Williams for a “Criminal Disclosure,” including whether she had ever been charged with, convicted of, or pled guilty or nolo contendere to any felony, or had ever been charged with, convicted of, or pled guilty or nolo contendere to any misdemeanor involving, among other things, fraud, false statements or omissions, or wrongful taking of property. Williams responded “no” to each of these questions. (CX 18.)

In fact, in September 1993, Williams had been charged with theft by false representation, a felony; in December 1994, she had been charged with wrongfully obtaining unemployment benefits, a felony; in May 1998, she had been charged with theft and attempt to commit a theft by false representation, both misdemeanors, but involving wrongful taking of property, and therefore covered by Dain’s Prehire Form. In addition, in August 1996, she had been charged with obstructing legal process or arrest, a misdemeanor that was not covered by Dain’s Prehire Form.

Williams did not enter a plea to the September 1993 charge; instead, she took part in a pre-trial diversion program and paid restitution, and the charge was subsequently dismissed. The December 1994 charge was also dismissed, without a plea, after she took part in a pre-trial diversion program and paid restitution. In June 1998 she pled guilty to the May 1998 theft charge, and the attempted theft charge was dismissed. Thereafter, she served a one-year probation and paid restitution, in exchange for a stay of imposition of a sentence, and in October 1999 the court discharged her. With regard to the August 1996 charge, she pled guilty to disorderly conduct in April 1997, and paid a \$100 fine and

served a one-year probation in exchange for a stay of imposition of a sentence; in April 1998, the court discharged her. (CX 7-17.)

In March 2001, after Dain submitted Williams' fingerprints, as required, NASD's Central Registration Depository (CRD) notified Dain that CRD had received information from the Federal Bureau of Investigation disclosing Williams' 1994 unemployment benefits charge and her 1996 obstruction charge. CRD requested that Dain provide complete information about those charges, as well as any other criminal charges against Williams during the prior 10 years. Dain, in turn, asked Williams to provide information about the two charges identified by CRD, and told her that CRD had also requested information about any additional criminal charges. Williams provided information about the two charges that had been identified, but did not disclose the rest of her criminal history. Dain forwarded the information that Williams provided regarding the two identified charges to CRD, but did not know about, and was therefore unable to advise CRD of, the other criminal charges that had been filed against Williams. (CX 2-3, 19.)

In August 2002, in anticipation of taking an examination to qualify for registration as a general securities representative, Williams signed a Form U-4 for Dain to submit to NASD on her behalf. Like Dain's Prehire Form, the Form U-4 required her to disclose any prior felony charge, conviction, or guilty or nolo contendere plea, as well as any misdemeanor charge, conviction, or guilty or nolo contendere plea involving, among other things, fraud, false statements or omissions, or wrongful taking of property. Williams answered "no" in response to the felony questions; she initially checked "yes" in response to the misdemeanor questions, but changed those answers to "no." (CX 6.)

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, there is no question that Williams’ “no” answers to the questions concerning her criminal history were false.

During the investigation, Williams raised several arguments. She claimed that she did not understand that she was required to disclose her criminal history on the Form U-4, because the 1993 and 1994 felony charges were dismissed, without pleas, after Williams completed pretrial diversion programs and paid restitution, and, although she pled guilty to the 1998 misdemeanor theft charge, that plea was vacated and the case dismissed after she completed her probation. The Form U-4, however, clearly asked not only about convictions and pleas, but also about any charges, regardless of their ultimate disposition; moreover, her prior experience, after she failed to disclose her criminal history on her Prehiring Form, should have alerted her to the fact that she was required to disclose the charges on her Form U-4. (CX 22.)

She also claimed that she received confusing advice from Dain concerning her disclosure obligations, which explains why she first answered some of the questions on the Form U-4 “yes” before changing those answers to “no.” (CX 22.) But “[i]t 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). Moreover, Williams did not make a complete disclosure of her criminal record to Dain, so she could not reasonably rely on Dain’s advice regarding her disclosure obligations.

Therefore, the Hearing Panel concludes that Williams violated Rule 2110 and IM-1000-1, as charged. Further, the Panel finds that Williams’ violation was willful, given the number and nature of the charges, her failure to disclose them on her Prehire Form, and her failure to disclose her entire criminal history in response to the notice from CRD.¹

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 78 (2001 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. Williams made materially false statements regarding her “suspect history” on her Form U-4. The criminal charges against Williams involved fraudulent and dishonest conduct

¹ Willfulness is established if “the respondent knew or reasonably should have known under the particular facts and circumstances that [her] conduct was improper.” Christopher LaPorte, Exchange Act Release No. 39,171, 1997 SEC LEXIS 2058, at *8 n. 2 (Sept. 30, 1997).

that cast serious doubt on her suitability to work in the securities industry; complete and accurate disclosure of her record was thus critical to ensure the protection of the investing public, as well as Dain and any future employers. Further, the sequence of events strongly suggests that Williams' failure to disclose her criminal record on the Form U-4 was deliberate.

Accordingly, the Panel concludes that the appropriate sanction in this case is to bar Williams from associating with any NASD member in any capacity. In light of the bar, the Hearing Panel will not impose a fine.

5. Conclusion

Respondent Sherry Lee Williams is barred from associating with any NASD member in any capacity for willfully failing to disclose her criminal history on her Form U-4, in violation of Rule 2110 and IM-1000-1. The bar will become effective immediately if this decision becomes NASD's final action in this disciplinary proceeding.²

HEARING PANEL

By: David M. FitzGerald
Hearing Officer

Copies to:

Sherry Lee Williams (via overnight and first class mail)
James M. Stephens, Esq. (electronically and via first class mail)
Rory C. Flynn, Esq. (electronically and via 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.