

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JEFFREY MILLS
(CRD #2695464)
West Orange, NJ,

Respondent.

Disciplinary Proceeding
No. C10020076

Hearing Officer— SW

Hearing Panel Decision

Dated: August 29, 2003

The Hearing Panel fined Respondent \$5,000 and suspended him for 12 months from associating with any member firm in any capacity for violating Article V, Section 2(a)(2) of the NASD By-Laws, NASD Conduct Rule 2110, and IM-1000-1, by failing to disclose his bankruptcy petitions on six separate Form U-4s submitted to NASD. Respondent willfully failed to disclose the bankruptcy petition.

Appearances

David M. Jaffe, Esq., and Evan J. Gordon, Esq., New York, New York,
appeared on behalf of the Department of Enforcement.

Jeffrey Mills appeared on his own behalf.

DECISION

I. Introduction

A. Complaint and Answer

In a one-count Complaint filed on August 7, 2002, the Department of Enforcement (“Enforcement”) charged Respondent Jeffrey Mills (the “Respondent”) with violating Article V, Section 2(a)(2) of NASD’s By-Laws, NASD Conduct Rule 2110, and IM-

1000-1, by willfully providing false responses to the question of whether he had ever filed a bankruptcy petition on six separate Uniform Applications for Securities Industry Registration or Transfer (“Form U-4s”).

Respondent filed his Answer on September 3, 2002. Respondent admitted that the Form U-4s were misleading, but denied that he willfully failed to provide NASD with information.

B. The Hearing

The Parties presented evidence to a Hearing Panel on April 24, 2003, in New York, New York.¹ The Hearing Panel consisted of a former member of District Committee 10, a former member of District Committee 11, and the Hearing Officer. At the Hearing, Enforcement presented three witnesses, Respondent and two NASD staff members. The Hearing Officer accepted exhibits labeled CX-1 -- CX-22 offered by Enforcement, and exhibit RX-1 offered by Respondent.

II. Discussion

A. Jurisdiction

Article V, Section 4 of the NASD’s By-Laws creates a two-year period of retained jurisdiction over former registered persons, covering misconduct occurring before the registration terminated. Respondent was last registered as a general securities representative with Worldco, L.L.C. (“Worldco”). (CX-1, p. 3). Respondent’s registration with Worldco terminated on June 27, 2002. (CX-1, p. 5). Enforcement filed the Complaint on August 7, 2002, within two years of the termination of Respondent’s

¹ References to the testimony set forth in the transcript of the April 24, 2003 Hearing will be designated as “Tr. p.” References to the exhibit presented by Respondent will be designated as “RX-1,” and references to exhibits presented by Enforcement will be designated as “CX-.”

registration, and the Complaint alleges misconduct occurring before Respondent's registration terminated. NASD thus has jurisdiction over Respondent.

B. Respondent Caused Six Misleading Form U-4s to be Filed

1. Background

On two separate occasions, Respondent filed bankruptcy petitions in the United States Bankruptcy Court for the District of New Jersey ("Bankruptcy Court"). (CX-3; CX-4). Specifically, on January 29, 1996, Respondent filed a voluntary petition to initiate a Chapter 13 bankruptcy proceeding. (CX-3). On February 14, 2000, Respondent filed a voluntary petition to initiate a Chapter 7 bankruptcy proceeding. (CX-4).

Respondent testified that he executed the Chapter 13 petition on advice of bankruptcy counsel, DB, who told him that the petition could be filed solely for the purpose of delaying foreclosure on his home, and would not appear on Respondent's credit report or constitute bankruptcy for any other purpose. (Tr. pp. 47, 86, 91). On May 20, 1996, the Bankruptcy Court lifted the automatic stay to permit Citicorp Mortgage, Inc. to foreclose on Respondent's property at 214 Irving Avenue, South Orange, New Jersey.² (CX-3, p. 38). On August 12, 1996, the Bankruptcy Court issued a notice dismissing the Chapter 13 bankruptcy petition, case number 96-20653. (CX-3, p. 33).

On February 14, 2000, Respondent filed his second bankruptcy petition, a Chapter 7 bankruptcy petition, case number 00-31366. (CX-4, p. 107). Respondent testified that, in January 2000, he again sought the advice of DB to discuss how to avoid continuing

² Respondent believed DB's explanation that the foreclosure on his property occurred because the bank that was to provide the financing "went under." (Tr. p. 113).

payments on a debt that Respondent had entered into in August 1999. (Tr. p. 114).

Respondent testified that DB indicated that he could again file a bankruptcy petition to delay the payments without actually becoming bankrupt. (Id.).

Subsequently, Respondent discovered that DB had been disbarred. (RX-1). Respondent testified that he discovered DB or one of his associates had purchased Respondent's 214 Irving Avenue property in foreclosure. (Tr. p. 91).

2. Six Form U-4 Filings

(1) GKN

On October 4, 1996, after the Bankruptcy Court dismissed Respondent's Chapter 13 bankruptcy petition, Respondent signed and filed a Form U-4 through NASD member firm GKN Securities Corp. ("GKN"). (CX-5). Question 22L of the GKN Form U-4 asks, "Have you . . . made a compromise with creditors, filed a bankruptcy petition or been declared bankrupt?" (CX-5; CX-5A). Respondent answered "no" to Question 22L on the Form U-4, and accordingly failed to submit an accompanying disclosure reporting page ("DRP") that stated the complete details of the Chapter 13 bankruptcy petition. (CX-5, p. 173). NASD approved Respondent's registration as a general securities representative with GKN on October 8, 1996. (CX-1, p. 9). Respondent remained registered with GKN through August 18, 1997. (Id.). Upon his termination from GKN, Respondent became responsible to repay \$23,488.01 to GKN pursuant to a letter agreement.³ (CX-13).

³ On August 25, 1999, GKN and Respondent reached a settlement agreement and set up a payment schedule. (CX-14).

(2) **MONY**

On April 24, 1998, Respondent signed and filed a Form U-4 through NASD member firm MONY Securities Corporation (“MONY”). (CX-6, p. 179). Question 22L of the MONY Form U-4 asks, “Within the past 10 years have you . . . made a compromise with creditors, filed a bankruptcy petition or been the subject of an involuntary bankruptcy petition.” (CX-6, p. 178). Respondent answered “no” to Question 22L on the MONY Form U-4, and failed to complete a DRP regarding the Chapter 13 petition. (CX-6). NASD approved Respondent’s registration as a general securities representative with MONY on May 7, 1998. (CX-1, p. 8). Respondent remained registered with MONY through October 7, 1998. (Id.).

(3) **Merrill Lynch**

On September 23, 1998, Respondent signed and filed a Form U-4 through NASD member firm Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill Lynch”). (CX-7, p. 184). Respondent also answered “no” to Question 22L, regarding the filing of a bankruptcy petition, on the Merrill Lynch Form U-4, and failed to complete a DRP. (CX-7). NASD approved Respondent’s registration as a general securities representative with Merrill Lynch on October 7, 1998. (CX-1, p. 7). Respondent remained registered with Merrill Lynch through February 1, 2000.⁴ (Id.).

(4) **Heartland**

On January 27, 2000, Respondent signed and filed a Form U-4 through NASD member firm Heartland Securities Corp. (“Heartland”). (CX-8, p. 189). Question 23K(1)

⁴ Respondent testified that he left Merrill Lynch because he no longer wanted to service retail customers; he wanted to act as a proprietary trader. (Tr. p. 76).

of the Heartland Form U-4 asks, “Within the past 10 years . . . have you made a compromise with creditors, filed a bankruptcy petition or been the subject of an involuntary bankruptcy petition.” (CX-8, p. 188). Respondent answered “no” to Question 23K(1), and failed to complete a DRP. (CX-8). Respondent never became registered with Heartland;⁵ Respondent voluntarily terminated his employment with Heartland on April 27, 2000. (CX-1, p. 7).

(5) **On-Line**

After filing a Chapter 7 bankruptcy petition on February 14, 2000, on June 29, 2000, Respondent signed and filed a Form U-4 through NASD member firm On-Line Investments Services, Inc. (“On-Line”). (CX-9). Respondent again answered “no” to Question 23K(1) on the On-Line Form U-4, and failed to complete DRPs that disclosed his filings of the Chapter 13 and the Chapter 7 bankruptcy petitions.⁶ (CX-9, p. 192). Respondent never became registered through On-Line. (CX-1, p. 6). On July 13, 2000, On-Line terminated Respondent for failing to disclose his Chapter 13 bankruptcy petition. (Id.).

(6) **Worldco**

Respondent learned from On-Line that the Chapter 13 bankruptcy petition was on his credit report. (Tr. pp. 51, 97). In early 2001, Respondent interviewed with Worldco and manually completed a Form U-4. (Tr. p. 105-106). Respondent answered, “yes” to

⁵ By submitting the Form U-4, Respondent submitted himself to the jurisdiction of NASD. See NASD By-Laws, Article I, Sec. (ee)(1).

⁶ On July 13, 2000, the Bankruptcy Court issued a notice dismissing Respondent’s Chapter 7 bankruptcy petition. (CX-4, p. 112).

Question 23K(1) on the Worldco Form U-4, and he completed a DRP disclosing the Chapter 13 bankruptcy petition. (CX-10, p. 204). However, Respondent failed to complete a DRP disclosing the Chapter 7 bankruptcy petition. (CX-10).

On March 8, 2001, in connection with an NASD investigation of Respondent's failure to disclose his Chapter 13 bankruptcy petition on his On-Line Form U-4, Respondent participated in an on-the-record interview with the NASD staff. (CX-17, p. 266). At the on-the-record interview, Respondent acknowledged that he was now aware that he had an obligation to disclose his two bankruptcy petitions on any Form U-4s. (Id.). Respondent failed to tell the NASD investigator that he was in the process of interviewing for a job with Worldco. (Tr. p. 119).

On April 11, 2001, Respondent signed and caused the typed version of his Worldco Form U-4 to be filed with NASD, without adding a DRP to disclose his Chapter 7 bankruptcy petition.⁷ (CX-10).

3. Respondent Violated Article V, Section 2(a)(2) of the NASD By-Laws, NASD Conduct Rule 2110, and IM-1000-1

Article V, Section 2(a)(2) of the NASD By-Laws provides that any application for registration with NASD shall be properly signed by the applicant and shall contain such reasonable information with respect to the applicant as NASD may require. The Form U-4 application for registration requires that an applicant disclose whether within the past 10 years he or she has filed a bankruptcy petition.

⁷ Respondent subsequently left Worldco in August 2001 and then rejoined Worldco in May 2002. (CX-1, p. 3).

The SEC has held that misrepresentations on an application for registration violate the standards of just and equitable principles of trade to which every person associated with any NASD member is held.⁸ IM-1000-1 provides that “[t]he filing with the Association of information with respect to membership or registration as a Registered Representative which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or the failure to correct such filing after notice thereof, may be deemed to be conduct inconsistent with just and equitable principles of trade. . .”

The evidence is undisputed, and Respondent admits that he failed to disclose his bankruptcy petitions on each of the six Form U-4s. Accordingly, the Hearing Panel finds that Respondent executed six Form U-4s containing misleading information, in violation of Article V, Section 2(a)(2) of NASD’s By-Laws, Conduct Rule 2110, and IM-1000-1.

C. Respondent Willfully Failed to Disclose his Bankruptcy Petition on the Worldco Form U-4

Enforcement alleged that Respondent’s failures to disclose his bankruptcy petitions were intentional decisions on his part. A finding of willfulness has serious collateral consequences. Section 15(b)(4)(A) of the Securities Exchange Act of 1934 states that a person who files an application for association with a member of a self-regulatory organization and who “willfully” fails to disclose “any material fact which is required to be stated” in that application is statutorily disqualified from participating in the securities industry.

⁸ Robert E. Kauffman, Exchange Act Rel. No. 33219 (Nov. 18, 1993), aff’d, Robert E. Kauffman v. S.E.C., 40 F.3d 1240 (3rd Cir. 1994).

Willfulness is defined as the intent to commit the act that constitutes the violation.⁹ The respondent does not have to intend to violate a specific rule or law; rather, the Hearing Panel must determine “whether the respondent knew or reasonably should have known under the particular facts and circumstances that his conduct was improper.”¹⁰

Arguing that the questions on the Form U-4s were clear and unambiguous, Enforcement argued that Respondent knew or should have known that he was required to disclose the bankruptcy petitions on each of the six Form U-4s and chose not to do so.

The Hearing Panel finds that, after the March 8, 2001 on-the-record interview, Respondent was aware of his obligation to disclose his two bankruptcy petitions. Although the Hearing Panel believes that Respondent manually completed the Worldco Form U-4 prior to March 8, 2001, Respondent reviewed and signed the typed Worldco Form U-4 after March 8, 2001. Respondent admitted that he had the opportunity to review the Worldco Form U-4 before he signed the completed Worldco Form U-4 on April 11, 2001.

Respondent was aware of what he was doing and either consciously, or in careless disregard of his obligations, chose not to meet his obligations. The Hearing Panel finds that Respondent’s failure to update the Worldco Form U-4 before signing it on April 11, 2001 was more than negligence. His failure to disclose his Chapter 7 bankruptcy petition on the Worldco Form U-4 was willful.

⁹ See Dep’t of Enforcement v. Nelson C. Onyejiaka, No. C10990121, 2000 NASD Discip. LEXIS 22, at *11 (OHO, Oct. 20, 2000).

¹⁰ Christopher LaPorte, Exchange Act Release No. 39171, 1997 SEC LEXIS 2058, at *8 n. 2 (Sept. 30, 1997).

Given that the Hearing Panel found that Respondent willfully failed to disclose his bankruptcy petition on the Worldco Form U-4, the Hearing Panel did not find it necessary to make willfulness findings concerning the prior Form U-4s, especially since “willfulness” differs from inadvertence or negligence, and evidence was presented that could be viewed as supporting a finding of negligence.

III. Sanctions

A Form U-4 is fundamental to the business and integrity of the securities industry. It is “used by all the self-regulatory organizations, including the NASD, state regulators, and broker-dealers to monitor and determine the fitness of securities professionals,”¹¹ and “serves as a vital screening device for hiring firms and the NASD against individuals with ‘suspect history.’”¹²

For filing a false, misleading, and inaccurate Form U-4, the NASD Sanction Guidelines recommend a fine ranging from \$2,500 to \$50,000, as well as the consideration of a 5 to 30 business-day suspension in all capacities.¹³ In egregious cases, such as those involving habitual misconduct, the Guidelines suggest a longer suspension of up to two years, or a bar. The Guidelines suggest three principal considerations bearing on sanctions for the submission of a false Form U-4: (1) the “[n]ature and significance of information at issue; (2) whether the omission resulted in a statutorily disqualified person

¹¹ In re Rosario R. Ruggiero, Exchange Act Release No. 37,070, 1996 SEC LEXIS 990, at *8-9 (Apr. 5, 1996).

¹² District Business Conduct Committee v. Prewitt, No. C07970022, 1998 NASD Discip. LEXIS 37, at *8 (NAC Aug. 17, 1998). See also, e.g., In re Thomas R. Alton, Exchange Act Release No. 36,058, 1995 SEC LEXIS 1975, at *4 (Aug. 4, 1995).

¹³ NASD Sanction Guidelines, pp. 77-78 (2001).

becoming associated with a firm; and (3) whether the misconduct harmed a registered person, a firm, or anyone else.”

Taking the above factors into consideration, and arguing that this case involved repeated and numerous failures to disclose over a course of time, Enforcement requested that the Hearing Panel fine Respondent \$7,500, and suspend him in all capacities for 12 months.

Generally agreeing with Enforcement’s analysis of the above factors, but finding that Respondent acknowledged his wrongdoing and demonstrated remorse, the Hearing Panel determined to impose on Respondent a \$5,000 fine and a 12-month suspension for his repeated failures to disclose his bankruptcy petitions.

IV. Order

Jeffrey Mills is fined \$5,000 and suspended for 12 months from associating with any NASD member firm in any capacity for filing false Form U-4s with NASD, in violation of NASD Conduct Rule 2110, as alleged in the Complaint. Respondent also is ordered to pay costs in the total amount of \$1,835.03, which include an administrative fee of \$750 and a hearing transcript cost of \$1,085.03.

The suspension shall become effective on a date set by NASD, but not earlier than 30 days after the date this Decision becomes the final disciplinary action of NASD; except that if this Decision becomes the final disciplinary action of NASD, the 12-month

suspension shall become effective with the opening of business on Monday, October 20, 2003, and end with the close of business on October 20, 2004.

HEARING PANEL

By: Sharon Witherspoon
Hearing Officer

Dated: Washington, DC
August 29, 2003

Copies to:

Jeffrey Mills (via first class mail and Federal Express)
Evan J. Gordon, Esq. (via first class and electronic mail)
David M. Jaffe, Esq. (via first class and electronic mail)
Rory C. Flynn, Esq. (via first class and electronic mail)