

**NASD REGULATION, INC.
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

SAMUEL WEREB
(CRD #2174774),

Columbus, Ohio

and

Dublin, Ohio,

Respondent.

Disciplinary Proceeding
No. C8B990036

Hearing Officer—Andrew H. Perkins

**Hearing Panel Decision
Granting Complainant's Motion for
Summary Disposition**

March 6, 2000

Digest

The Department of Enforcement filed a Complaint alleging that the Respondent violated Conduct Rule 2110 and Procedural Rule 8210 by failing to respond to four requests for information sent to him by NASD Regulation, Inc. In his Answer, Respondent admitted that he had not responded to any of the requests.

The Department of Enforcement moved for summary disposition, pursuant to Rule 9264, requesting that the Hearing Panel: (1) find that Respondent violated Rules 8210 and 2110, as alleged in the Complaint; and (2) bar him from association with any member firm in any capacity. The Respondent did not oppose the motion.

The Hearing Panel found that the Respondent violated Rules 2110 and 8210 and ordered that he be barred from association with any member firm in any capacity.

Appearances

Shelly A. Goering, Regional Counsel, Cleveland, Ohio, and Rory C. Flynn, Chief Litigation Counsel, Washington, DC, for the Department of Enforcement.

Samuel Wereb appeared *pro se*.

DECISION

I. Procedural Background

On November 12, 1999, the Department of Enforcement (“Enforcement”) filed a one-cause Complaint against Samuel Wereb (“Wereb”) alleging that he violated NASD Conduct Rule 2110 and Procedural Rule 8210 by failing to respond to four requests for information dated July 20, August 2, August 17, and September 1, 1999. Each of the requests was sent pursuant to Rule 8210.

Wereb answered the Complaint and admitted that he had not responded to any of the requests. Wereb contended that he had not received any of them. Accordingly, at the pre-hearing conference held on December 30, 1999, the Hearing Officer informed Wereb that he could still respond to the requests and his cooperation would be considered a mitigating factor if the Hearing Panel found that he had violated Rules 2110 and 8210 by not responding earlier. The Hearing Officer further ordered that Wereb give Enforcement his responses to the requests for information no later than January 28, 2000.

At the December 30 pre-hearing conference, Enforcement advised that it would be filing a Motion for Summary Disposition the following day.¹ With Wereb's agreement, the Hearing Officer set January 21, 2000, as the deadline for him to file an opposition to the Motion for Summary Disposition.

Wereb did not file an opposition to the Motion for Summary Disposition. Consequently, the Hearing Officer scheduled a second pre-hearing conference for February 4, 2000.² The purpose of this conference was to ask Wereb whether he intended to participate further in this proceeding, but Wereb did not appear. Enforcement confirmed that Wereb had not availed himself of the opportunity to respond to the requests for information and had not been in contact with Enforcement since the first pre-hearing conference. Accordingly, and upon consideration of the papers Enforcement filed in support of its motion, the Hearing Panel granted Enforcement's Motion for Summary Disposition.

II. Summary Disposition Standard

Code of Procedure Rule 9264(d) provides that the Hearing Panel "may grant the motion for summary disposition if there is no genuine issue with regard to any material fact and the Party that files the motion is entitled to summary disposition as a matter of

¹ Enforcement's Motion for Summary Disposition is supported by a Memorandum of Points and Authorities, a Statement of Undisputed Facts, and the affidavit of Debra J. Jastredowski, a Compliance Examiner with NASD Regulation, Inc. There are also 10 exhibits attached to her affidavit. References to the affidavit are cited as "Jastredowski Aff. ¶ __," and references to the exhibits are cited as "Ex. C-__."

² Notice of this conference was sent to Wereb on January 28, 2000, by Airborne Express, next day delivery, and by first-class mail.

law.” It is well-established that the moving party, in this case Enforcement, bears the initial burden of showing “the absence of a genuine issue of material fact.”³ The substantive law governing the case will identify those facts which are material and “only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.”⁴

If the moving party meets that initial burden, the opposing party must come forward with specific evidence demonstrating the existence of a genuine dispute of material fact.⁵ In so doing, the non-moving party “must do something more than simply show that there is some metaphysical doubt as to the material facts.”⁶ “The pivotal question will always be whether the non-moving party has produced sufficient evidence that a reasonable jury could find for him at a trial on the matter.”⁷

In this case, there are no material facts in dispute: to the contrary, Wereb admits that he did not respond to the four requests for information, and the undisputed evidence establishes that Enforcement sent the requests to Wereb at both his most current address recorded in the Central Registration Depository (“CRD address”)⁸ and his current home address.⁹

³ Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).

⁴ Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

⁵ Id. at 249.

⁶ Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986) (citations omitted).

⁷ Pickett v. RTS Helicopter, 128 F.3d 925, 928 (5th Cir. 1997).

⁸ _____, Columbus, Ohio _____. (Ex. C-10, at 1.)

⁹ _____, Dublin, Ohio _____. At the December 30, 1999, pre-hearing conference, Wereb confirmed that he lived at this address when the requests were made.

III. Findings of Fact

A. Respondent's Background in the Securities Industry

Wereb entered the securities industry in November 1993 when he joined Corna Securities, Inc. ("Corna"), a member of the National Association of Securities Dealers, Inc. ("NASD").¹⁰ Wereb was associated with Corna until June 1994. Between 1994 and 1998, Wereb worked at several other broker-dealers before rejoining Corna in February 1998. During this period, Wereb was registered with the NASD as a General Securities Representative. Thereafter, he was associated with Corna until April 19, 1999, during which period he was registered with the NASD as a General Securities Representative.¹¹ He also registered as an Options Principal in May 1998.¹² Both registrations terminated as of April 20, 1999.¹³ Wereb is not currently registered.

B. Failure to Provide Information

NASD Regulation, Inc. staff commenced the investigation that led to this proceeding after it received a complaint letter from J.R. dated May 13, 1999, which alleged in part that Wereb, her broker at Corna, had misrepresented the commissions due on certain municipal bond transactions.¹⁴ In furtherance of that investigation, NASD Regulation staff sent Wereb four separate requests for information pursuant to Rule 8210.¹⁵ Wereb did not respond to any of the requests.¹⁶

¹⁰ Ex. C-10, at 2.

¹¹ Id. at 5.

¹² Id.

¹³ Id.

¹⁴ Ex. C-3, at 2; Jastredowski Aff. ¶¶ 2-3.

¹⁵ Jastredowski Aff. ¶¶ 3-6. Each request was sent to Wereb by first-class mail and certified mail, return receipt requested. The first request was sent to Wereb's CRD address. The US Postal Service returned these

IV. Conclusions of Law

A. Jurisdiction

Enforcement filed the Complaint and NASD Regulation sent the requests for information within two years after the date Wereb's registrations with the NASD terminated. Accordingly, the NASD has jurisdiction over this proceeding pursuant to Article V, Section 4 of the NASD's By-Laws.

B. Failure to Respond to Requests for Information

NASD Procedural Rule 8210(a)(1) authorizes the NASD to require an associated person "to provide information orally, in writing, or electronically . . . with respect to any matter involved in [an] investigation . . ." The Rule provides a means for the NASD to carry out its regulatory mandate in the absence of subpoena power. As such, the Rule is a "key element in the NASD's effort to police its members."¹⁷ A failure to respond "undermines the NASD's ability . . . to carry out its self-regulatory functions,"¹⁸ and frustrates its ability "to conduct investigations and thereby protect the public interest."¹⁹

In this case, the evidence demonstrates that NASDR sent Wereb four requests for information, pursuant to Rule 8210, in connection with a bona fide investigation of a

mailings and noted a forwarding address, Wereb's current home address. Enforcement then re-mailed the first request to his new home address. When Wereb still did not respond, Enforcement mailed the last two requests to both his CRD address and his new home address. At the pre-hearing conference on December 30, 1999, Wereb confirmed that he lived at _____, Dublin, Ohio _____.

¹⁶ Jastredowski Aff. ¶ 7.

¹⁷ In re Richard J. Rouse, 51 S.E.C. 581, 1993 SEC LEXIS 1831, at *7 (1993).

¹⁸ In re John J. Fiero, Exchange Act Release No. 39544, 1998 SEC LEXIS 49, at *5 (Jan. 13, 1998), rev'd on other grounds, Summary Order No. 98-4103 (2d Cir. Jan. 20, 1999).

¹⁹ In re Barry C. Wilson, Exchange Act Release No. 37867, 1996 SEC LEXIS 3012, at *14 (Oct. 25, 1996) (quoting Rouse, 51 S.E.C. at 588, 1993 SEC LEXIS 1831, at *16).

customer complaint relating to Wereb's sales practices at Corna. NASD Regulation staff provided Wereb proper notice of the requests by sending them to his CRD address and by sending a copy of the requests to his current home address once it was discovered that his CRD address was out of date.²⁰ Accordingly, by failing to provide the information requested, Wereb violated Rules 2110 and 8210.²¹

V. Sanctions

The applicable NASD Sanction Guideline, as amended by Notice to Members 99-86 (Oct. 1999), recommends that where an individual respondent did not respond in any manner to a request for information issued pursuant to Rule 8210, a bar should be standard. Enforcement requests that Wereb be barred, and the record does not indicate the existence of any mitigating factors that would warrant a lesser sanction. Indeed, Wereb was given an opportunity to provide a late response to the requests for information, and he declined to do so, which the Hearing Panel considers should be treated as a refusal to cooperate under the Sanction Guideline. Accordingly, the Hearing Panel will bar Wereb from associating with any member firm in any capacity.

VI. Order

Respondent Samuel Wereb is barred from association with any NASD member in any capacity for failing to respond to NASD Regulation's requests for information in

²⁰ See Rule 8210(d).

²¹ In re Wheaton D. Blanchard, 46 S.E.C. 365 (1976).

violation of Rules 2110 and 8210. The bar shall become effective immediately upon this Decision becoming the final disciplinary action of the NASD.

Andrew H. Perkins
Hearing Officer
For the Hearing Panel

Copies to:

Samuel Wereb (by Airborne Express, next day delivery, and first-class mail)
Shelly A. Goering, Esq. (by first-class and electronic mail)
Rory C. Flynn, Esq. (by first-class and electronic mail)