

SECURITIES AND EXCHANGE COMMISSION
Washington D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 52571 / October 7, 2005

Admin. Proc. File No. 3-11851

In the Matter of the Application of

JEFFREY A. KING
2004 Sterling Terrace
Sellersberg, Indiana 47172

For Review of Action Taken by

NASD

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION - - REVIEW OF NASD ACTION

Failure to Provide Requested Information

Former registered representative of a member firm of registered securities association who failed to respond to requests for information appealed association's imposition of a bar. Held, the application for review is dismissed.

APPEARANCES

Jeffrey A. King, pro se.

Marc Menchel, Alan B. Lawhead, Carla J. Carloni, and Brant K. Brown, for NASD.

Appeal filed: March 10, 2005
Last brief received: June 10, 2005

I.

Jeffrey A. King, formerly a registered representative associated with Woodbury Financial Services ("Woodbury" or "the Firm"), an NASD member firm, seeks review of NASD action. NASD found that King failed to provide information that it requested pursuant to NASD Rule 8210. 1/ As a result of his failure to respond, NASD barred King from association with any member firm in any capacity. We base our findings on an independent review of the record.

II.

By letter dated October 15, 2003, NASD staff notified King that they had received several complaints alleging that King, while a registered representative at Woodbury, had violated the federal securities laws by engaging in unauthorized trading and soliciting a variable annuity contract that he was not licensed to sell. The letter asked that King provide a written statement addressing these allegations by October 29, 2003. 2/ King did not provide the requested information.

On October 31, 2003, NASD staff sent a second letter to King again requesting a written response, by November 14, 2003, to the allegations against him. This letter warned King that failure to comply with the request could subject him to disciplinary action. 3/ King did not respond to the October 31 letter.

1/ NASD Rule 8210 requires members and associated persons to provide information if requested by NASD as part of an investigation, complaint, examination, or proceeding.

2/ This letter was sent by certified mail, return receipt requested, to King's address on file at NASD's Central Registration Depository ("CRD"). The certified mail receipt was signed by King and returned to NASD.

3/ This letter was also sent by certified mail, return receipt requested, to King's CRD address. The certified mail receipt was returned to NASD on November 23, 2003 marked "unclaimed."

On August 19, 2004, NASD staff sent King a "Pre-Suspension Notice" warning King that, pursuant to NASD Rule 9552, 4/ NASD planned to suspend King from associating with any member firm in any capacity. 5/ The Pre-Suspension Notice explained that, if King did not take corrective action by providing the information NASD had requested by September 13, 2004, the suspension would take effect. The Pre-Suspension Notice further stated that King could stay his pending suspension if he requested a hearing as set out in NASD Rule 9552(e). 6/

On September 17, 2004, NASD staff notified King that, because he failed to provide requested information or take corrective action, he was suspended from association with any NASD member (the "Suspension Notice"). The Suspension Notice stated that King could file a Motion for Reinstatement pursuant to NASD Rule 9544 within six months of service or receipt of the Pre-Suspension Notice at which time a Hearing Panel would be convened to consider his request for reinstatement. 7/ The Suspension Notice further stated that, if King failed to file such a motion, he would automatically be barred. 8/ King failed to file a Motion for Reinstatement.

On February 25, 2005, NASD advised King that effective immediately he was barred from associating with any NASD member firm in any capacity (the "Bar Notice"). On March 7, 2005, King appealed the NASD action to the Commission.

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- 4/ NASD Rule 9552 provides that, if an associated person fails to furnish information requested by NASD, NASD may provide written notice (a "Pre-Suspension Notice") specifying the nature of that associated person's failure and stating that the failure to take corrective action within twenty-one days after service of such written notice will result in the suspension of that person's association.
- 5/ The Pre-Suspension Notice was sent to King's CRD address by Federal Express. The Federal Express proof of delivery shows that the Pre-Suspension Notice was delivered to King's CRD address and was signed by Laura King.
- 6/ NASD Rule 9552(e) provides that a person requesting a hearing must do so in writing before the effective date of the suspension.
- 7/ NASD Rule 9544 provides that persons who are suspended and who fail to request a hearing to challenge the suspension within six months of receipt of a Pre-Suspension Notice will be barred or expelled automatically.
- 8/ The Suspension Notice was sent to King's CRD address by an overnight delivery service. The record indicates that the Suspension Notice was left at King's door.

III.

Section 19(f) of the Securities Exchange Act of 1934 provides the standard for our review. 9/ If we find that "the specific grounds" on which NASD based its action "exist in fact," that NASD's determination not to permit King's association is in accordance with its rules, that such rules were applied in a manner consistent with the purposes of the Exchange Act, and that NASD's action does not impose an undue burden on competition, 10/ we must dismiss King's appeal.

King asserts that he did respond to NASD's request for information and thus he disputes that the specific grounds on which NASD based its action, i.e. his failure to respond, exist in fact. Specifically, he contends that he had sent a handwritten letter to NASD in August or September of 2004 11/ "stating all of the facts regarding this situation" and that, as NASD had not responded to his letter, King had assumed that the matter had been resolved. NASD disputes King's claim that he wrote a letter to NASD, contending that his claim is unsupported by the record. 12/

The record does not support King's assertion that he had contacted NASD in August or September of 2004. King has not submitted a copy of his purported letter, nor a delivery receipt or e-mail or fax transmission record. 13/ In the absence of such evidence in the record, we give no weight to King's unsubstantiated assertion. 14/

9/ 15 U.S.C. § 78s(f).

10/ King does not claim, and the record does not support a conclusion, that NASD's action has imposed an undue burden on competition.

11/ In his appeal to the Commission dated March 7, 2005, King claims that he wrote to NASD in September. In his subsequent brief to the Commission, King asserts that he sent his letter to NASD in August.

12/ NASD submitted an affidavit from one of its examiners who has worked on its examination of King since about January 2004. The examiner declared in his affidavit that "[f]rom the time of my first involvement with the investigation in or around January, 2004 through the date of the execution of this declaration [May 20, 2005], I have not received any letter, fax, or other written communication from King" and that NASD's investigation file of King "contained no written correspondence from King to NASD."

13/ In King's reply brief in this appeal, he claims that, for unspecified reasons, he was in "the county jail" on August 19, and September 17, 2004, and that he handed his letter addressed to NASD to a guard to mail. He further claims that, on August 24, "the mail in question was signed by my ex-wife while I was in jail, my father then mailed it to me while I was in jail." It is unclear why, if any of this is true, King did not mention it until filing his reply brief with the Commission on June 10, 2005.

14/ See Walter Capital Corp., 50 S.E.C. 176, 178 n.5 (1989) (the Commission gave "no weight to applicants' unsupported assertion that such a statement [from a bank official purportedly supporting one of applicant's factual assertions] exists"). Cf. Scott E. Wiard,

We previously have determined that the Commission will not consider an application for review if the applicant failed to follow NASD procedures. ^{15/} The NASD's actions were in accordance with its rules and the purposes of the Exchange Act. NASD's rules set forth the procedures for suspending and ultimately barring individuals who fail to supply requested information or take corrective action. Pursuant to these rules, NASD informed King in its various letters to him that he would be suspended and automatically barred if he failed to respond to NASD's inquiry. King chose not to avail himself of these procedures. He failed to respond to NASD's requests for information, failed to respond to the Pre-Suspension and Suspension Notices, and failed to file a Motion for Reinstatement. As a result, King's bar was imposed automatically in accordance with NASD's rules.

King claims that, at the time NASD contacted him, he was going through a divorce, and blames the stress this caused for his misconduct. However, neither King's divorce difficulties, nor the time he claims he spent in jail, mitigate his failure to comply with NASD's procedures. While King asserts that his divorce caused him to make "bad decisions" and "mistakes," he has not provided any evidence substantiating his claims that his divorce prevented him from responding to NASD's request for information, or from requesting a hearing as authorized under NASD's rules. His reply brief does not suggest that he did not receive the Suspension Notice, nor does it suggest that he was in jail and unable to communicate with NASD up until the February 2005 expiration of the six-month period allotted for him to request a reinstatement hearing. In any event, we previously have found that unsubstantiated personal problems do not excuse an applicant's failure to respond, and we do not believe that they excuse an applicant's failure to follow NASD procedures by timely seeking a hearing from NASD. ^{16/}

Accordingly, we dismiss King's application for review.

An appropriate order will issue. ^{17/}

Securities Exchange Act. Rel. No. 50393 (Sept. 16, 2004), 83 SEC Docket 2752, 2760 n.23 ("[a]bsent such a motion, under Exchange Act Section 19(f), we consider only the record presented to NASD").

^{15/} See Lee Gura, Exchange Act. Rel. No. 50570 (Oct. 20, 2004), 83 SEC Docket 3829, 3832-33 (finding that the Commission was precluded from considering an application for review where applicant failed to respond to NASD requests for information, failed to respond to Pre-Suspension and Suspension Notices, and failed to move for reinstatement within the prescribed time limits). See also David I. Cassuto, Exchange Act Rel. No. 48087 (Jun. 25, 2003), 80 SEC Docket 1775, 1780; and Gary A. Fox, Exchange Act Rel. No. 46511 (Sept. 18, 2002), 78 SEC Docket 1533, 1536 (same).

^{16/} See Gura, 83 SEC Docket at 3833 ("unsubstantiated personal and medical problems do not excuse an applicant's failure to respond"); John A. Malach, 51 S.E.C. 618, 620 (1993) (unsubstantiated "personal problems" do not excuse respondent's failure to furnish information to NASD over the course of a two-year period).

By the Commission (Chairman COX and Commissioners GLASSMAN, ATKINS, and NAZARETH); Commissioner CAMPOS not participating.

Jonathan G. Katz
Secretary

17/ We have considered all of the parties' contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
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ORDER DISMISSING APPLICATION FOR REVIEW OF NASD ACTION

On the basis of the Commission's opinion issued this day, it
is

ORDERED that the application for review of NASD action against Jeffrey A. King be,
and it hereby is, dismissed.

By the Commission.

Jonathan G. Katz

Secretary