

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934  
Rel. No. 49727 / May 19, 2004

Admin. Proc. File No. 3-11358

In the Matter of the Application of

GINA M. GUZZONE  
1762-74th Street  
Brooklyn, New York 11204

For Review of Action Taken by  
NASD

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION -- REVIEW OF ASSOCIATION  
ACTION DENYING WAIVER OF EXAMINATION REQUIREMENTS

Registered securities association denied the request by a member firm, on behalf of a former registered representative whose registrations as a general securities representative and equity trader limited representative had lapsed, that the applicable qualification examinations be waived and that the representative be permitted to resume those licenses without re-qualifying by examination. Held, review proceeding dismissed.

COUNSEL:

Gina M. Guzzone, pro se.

Marc Menchel, Alan B. Lawhead, and Jennifer C. Brooks, for NASD.

Appeal filed: December 15, 2003  
Last brief received: March 1, 2004

I.

Gina M. Guzzone seeks review of a November 14, 2003 decision by NASD. NASD denied the request by member firm Parker Financial Corp. ("Parker Financial" or the "Firm") on Guzzone's behalf for a waiver of the qualification examinations required by NASD

Membership and Registration Rule 1031(c) ("Rule 1031(c)") for reinstatement of Guzzone's Series 7 (general securities representative) and Series 55 (equity trader limited representative) licenses, which had lapsed. We base our findings on an independent review of the record.

## II.

Guzzone first became registered in 1996, and last took a licensing examination in March 2000. On October 30, 2000, Guzzone became a registered representative with Abel/Noser Corp., an NASD member firm, where she was licensed as a general securities representative and equity trader limited representative. On June 6, 2001, Guzzone terminated her employment with Abel/Noser Corp. From that time until August 2002, Guzzone was unemployed.

Pursuant to Rule 1031(c), 1/ Guzzone had two years from the date of her termination from Abel/Noser Corp. to reinstate her securities licenses without being required to retake the Series 7 and Series 55 qualification examinations, by obtaining employment with another member firm. On August 5, 2002, Parker Financial hired Guzzone as an equity trader. On August 14, 2002, Parker Financial filed Guzzone's initial Uniform Application for Securities Industry Registration or Transfer ("Form U4") with NASD to register Guzzone as a general securities representative and equity trader limited representative at Parker Financial.

On November 7, 2002, however, Parker Financial filed with the Central Registration Depository ("CRD") a Uniform Termination Notice for Securities Industry Registration ("Form U-5") for Guzzone as a result of a corporate restructuring that culminated in the closure of Parker Financial's Manhattan office and the termination of all representatives, including Guzzone, who worked at that office. At the time of her termination from Parker Financial, Guzzone's securities licenses had not yet been transferred to the Firm. 2/

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1/ Rule 1031(c) provides in pertinent part that any person whose most recent registration "has been terminated for a period of two (2) or more years immediately preceding the date of receipt by [NASD] of a new application" must pass the appropriate qualification examinations.

2/ Parker Financial's August 26, 2003 letter to NASD seeking the waiver at issue in this proceeding attributed the Firm's  
(continued...)

After Parker Financial terminated Guzzone's employment, she worked for a temporary employment service in a non-investment related capacity. On June 6, 2003, the applicable two-year period for the reinstatement of Guzzone's registrations as a general securities representative and equity trader limited representative expired without their reactivation. On August 1, 2003, Guzzone was hired by Gagnon Securities, a member firm, but was terminated on August 13, 2003. 3/ On August 25, 2003, however, Parker Financial rehired Guzzone.

On August 26, 2003, Parker Financial requested, on Guzzone's behalf, a waiver of re-examination pursuant to NASD Membership and Registration Rule 1070(d) ("Rule 1070(d)"). 4/ Patrick Walker, Parker Financial's current compliance officer, stated in the waiver request that:

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2/ (...continued)

failure to complete the transfer of Guzzone's licenses before her 2002 termination to the delay caused by a deficiency in the Firm's CRD account. The record also indicates that Parker Financial filed Guzzone's fingerprint card late (more than 30 days after the filing of her Form U4), although Guzzone had submitted the fingerprint card to Parker Financial in a timely fashion.

3/ According to Parker Financial's waiver request to NASD, the termination was due to Gagnon Securities' discovery that Guzzone's licenses were inactive.

4/ Rule 1070(d) provides that NASD may, "in exceptional cases and where good cause is shown," waive the applicable qualification examination and accept other evidence of an applicant's qualifications for registration. In addition to the waiver Parker Financial requested for Guzzone of the Series 7 and Series 55 qualification examinations, the Firm sought a waiver for her Series 63 examination (the state law examination for general securities representatives). Although NASD administers the Series 63 qualification examination on behalf of the North American Securities Administrators Association, it does not have the authority to waive the examination. See [NASD Qualification Examination Waiver Guidelines, at http://www.nasdr.com/5200\\_asp](http://www.nasdr.com/5200_asp). (updated Apr. 22, 2003) ("NASD Waiver Guidelines"). Consequently, NASD's National Adjudicatory Council did not address that part of Parker Financial's waiver request relating to the Series 63 qualification examination.

Apparently as it turns out Ms. Guzzone's registration had never been completed at the time a Form U-5 was submitted to CRD. It appears as though this oversight resulted in her licenses becoming inactive. I interviewed Ms. Guzzone and the former [c]ompliance [o]fficer to determine if [Guzzone] had effected any business during the delay period in question and was informed by both that she had not done any securities related business at that time.

On September 15, 2003, NASD's Department of Testing and Continuing Education ("the Department") denied Parker Financial's request for an examination waiver for Guzzone. The Department concluded that neither Parker Financial's representations on Guzzone's behalf, nor the official registration record, warranted a waiver. On November 14, 2003, NASD's National Adjudicatory Council (the "NAC") affirmed the Department's denial of Parker Financial's waiver request. The NAC found that Parker Financial did not represent, as required for a "filing error" waiver, that Guzzone functioned as a representative and an equity trader, in good faith, with a member firm during the time that her registration was not reflected in the CRD. The NAC found that Parker Financial had not established the circumstances required to warrant a waiver of the qualification examinations. Guzzone seeks review of the NAC's decision.

### III.

NASD's denial of a waiver for Guzzone, in effect, constitutes a bar from Guzzone associating with any NASD member. The statutory standards for review of NASD's bar or denial of membership are codified in Section 19(f) of the Securities Exchange Act of 1934. 5/ Pursuant to Exchange Act Section 19(f), we review NASD's action to determine whether: (1) the specific grounds on which the action is based exist in fact; (2) the action is in accordance with NASD's rules; and (3) NASD's rules are and were applied in a manner consistent with the purposes of the Exchange Act. 6/ If we make these findings, we must dismiss Guzzone's appeal unless NASD's action imposes an undue burden on competition. 7/ If we do not make these findings or if we find

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5/ 15 U.S.C. § 78s(f).

6/ Id.

7/ Id. Guzzone does not argue, nor does the record indicate,  
(continued...)

that NASD's action imposes an undue burden on competition, we must set aside NASD's action. 8/

Because more than two years have elapsed since Guzzone left her employment at Abel/Noser Corp., Rule 1031(c) requires that she pass the appropriate qualification examinations in order to reinstate her registration. Rule 1070(d) provides, however, that, "in exceptional cases and where good cause is shown," NASD may waive the applicable qualification examination and accept other evidence of an applicant's qualifications for registration. NASD guidelines provide that NASD will grant relief from the re-examination requirements to individuals where a member firm, acting in good faith, has failed to file the appropriate application forms. 9/ In order to qualify for this relief, a member firm must document the nature of the filing error and confirm that the individual in question has in good faith conducted investment banking or securities business during the period that his or her registration was not reflected in CRD. 10/

Guzzone asserts that the untimely filing of her registration papers was not her fault, but was caused by a filing error by Parker Financial. 11/ Guzzone contends that, during the time

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7/ (...continued)  
that NASD's action imposes a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act, and we do not consider that it does. See Exchange Services, Inc., 48 S.E.C. 210, 215 (July 10, 1985), aff'd, Exchange Services, Inc. v. SEC, 797 F.2d 188 (4th Cir. 1986) (requiring applicant's employees to take NASD qualification examination did not subject applicant to unfair competitive disadvantage).

8/ 15 U.S.C. § 78s(f).

9/ See NASD Waiver Guidelines. NASD grants waivers in various other circumstances, none of which is relevant here. See id.

10/ Id.

11/ Guzzone did not file a brief in support of her application for review as directed by our briefing schedule order. NASD moved to dismiss Guzzone's application due to her failure to prosecute the proceeding. Our Rule of Practice 180(c) provides that, if a person fails to make a filing required  
(continued...)

that her registration was not reflected in CRD, she functioned in good faith as a general securities representative and equity trader at Parker Financial. This contention is not borne out by Parker Financial's waiver request, in which Walker informed NASD that both Guzzone and the Firm's former compliance officer assured him that Guzzone had not conducted any securities-related business during the relevant period. Moreover, in her application for review, Guzzone states that, while working at Parker Financial, she had to expend her retirement money to survive because "no commission dollars were ever made." There is no evidence in the record that Guzzone functioned as a general securities representative or an equity trader during the time that her registrations were not reflected in CRD. 12/ We find that the specific grounds on which NASD based its denial of the "filing error" waiver sought by Parker Financial on Guzzone's behalf exist in fact.

Guzzone does not dispute that NASD's action was in accordance with its rules. Under NASD's qualification examination waiver guidelines, NASD staff must convey its decision regarding a waiver request in writing and allow a member firm to appeal the waiver decision to NASD within 15 calendar days after receipt of the decision letter. 13/ Our review indicates that, in denying Parker Financial's waiver request,

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11/ (...continued)

by the Rules of Practice, the Commission may, among other things, enter a default against that person pursuant to our Rule of Practice 155 or dismiss the case. Neither of these options is mandatory. Guzzone is acting pro se and her application for review articulated her position in sufficient detail to enable NASD to respond. Accordingly, we deny NASD's motion.

12/ Cf. Investors Discount Corp., 48 S.E.C. 182, 184-190 (1985) (noting that NASD treated applicant's request to convert from SECO membership to NASD membership as an application for waiver, and finding that NASD properly determined that the limited nature of the duties of applicant's employees and their limited securities industry experience did not establish sufficient grounds for a waiver of the general securities representative qualification examination).

13/ NASD Waiver Guidelines.

NASD complied with all its appropriate notice and other procedural requirements. 14/

NASD asserts that, in denying Parker Financial's waiver request for Guzzone, NASD applied its rules in a manner consistent with the purposes of the Exchange Act. Section 15(b)(7) of the Exchange Act authorizes the Commission to establish qualification standards for persons associated with brokers or dealers. 15/ Exchange Act Rule 15b7-1 requires such persons to pass "any required examinations" established by the rules of self-regulatory organizations such as NASD. 16/ Rule 1031(c), as discussed above, requires persons whose registrations have expired without reactivation for a period of two or more years to retake the appropriate qualifying examinations in order to reinstate their licenses. We have previously stated that requiring an applicant whose registrations had lapsed and who had been denied a waiver by NASD "to take an examination . . . is fully consistent with the purposes of the [Exchange] Act and will ensure that [the applicant] maintains the requisite levels of knowledge and competence." 17/ Here, Guzzone has not functioned as a general securities representative or an equity trader for over two years. It is reasonable to conclude that, in that time, there have been changes to the securities laws and regulations with which Guzzone should become familiar. We believe that requiring Guzzone to retake the qualification examinations is fully consistent with the statutory goal of ensuring the requisite levels of knowledge and competency of associated persons. 18/ For the reasons discussed above, we find that NASD's registration and waiver rules are and were applied by NASD in a manner consistent with the purposes of the Exchange Act.

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14/ Id.

15/ 15 U.S.C. § 78o(b)(7).

16/ 17 C.F.R. § 240.15b7-1.

17/ Jon G. Symon, Securities Exchange Act Rel. No. 41285 (Apr. 14, 1999), 69 SEC Docket 1620, 1628.

18/ Id.

NASD properly denied Parker Financial's examination waiver request. Accordingly, on the basis of the foregoing, we dismiss this appeal.

An appropriate order will issue. 19/

By the Commission (Chairman DONALDSON and Commissioners CAMPOS and ATKINS); Commissioners GLASSMAN and GOLDSCHMID not participating.

Jonathan G. Katz  
Secretary

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

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ORDER DISMISSING REVIEW PROCEEDING

On the basis of the Commission's opinion issued this day, it is  
ORDERED that the application for review filed by Gina M. Guzzone  
be, and it hereby is, dismissed.

By the Commission.

Jonathan G. Katz  
Secretary