

SECURITIES AND EXCHANGE COMMISSION  
Washington D.C.

SECURITIES EXCHANGE ACT OF 1934  
Rel. No. 50917 / December 22, 2004

Admin. Proc. File No. 3-11511

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In the Matter of the Application of

ROBERT J. LANGLEY  
c/o Keesal, Young & Logan  
400 Oceangate  
P.O. Box 1730  
Long Beach, CA 90801-1730

For Review of Disciplinary Action Taken by

NASD

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OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION -- REVIEW OF DISCIPLINARY  
PROCEEDINGS

Failure to Provide Requested Information

Former registered representative of member firm of registered securities association who failed to respond to requests for information appealed association's sanction. Held, the proceedings are remanded for further consideration.

APPEARANCES

Robert H. Logan, Esther E. Cho, and Evelyn A. Christensen, of Keesal, Young & Logan,  
for Robert J. Langley.

Marc Menchel, Alan Lawhead, and Gary J. Dernelle, for NASD.

Appeal filed: May 19, 2004  
Last brief received: September 1, 2004

## I.

Robert J. Langley, formerly a registered representative associated with UBS PaineWebber, Inc. ("UBS" or the "Firm") 1/, an NASD member firm, seeks review of NASD disciplinary action. NASD found that Langley failed to respond to NASD requests for information related to a customer complaint, in violation of NASD Rule 8210. 2/ As a result of his failure to respond, NASD barred Langley from association with any member firm in any capacity. To the extent we make findings, we base them on an independent review of the record.

## II.

In April 2002, a husband and wife filed a complaint against Langley in connection with his handling of their securities accounts at UBS and at an earlier firm with which Langley had been associated. The complaint alleged losses of several hundred thousand dollars, based on unsuitable recommendations and related misconduct. At the time of this complaint, Langley was no longer employed by UBS or working in the financial industry, having left UBS in November 2001.

NASD sent Langley written inquiries about the customer complaint. 3/ Langley did not respond to these inquiries. In June 2003, NASD staff sent Langley a "Pre-Suspension Notice" warning him that, because of his failure to respond to the earlier inquiries, NASD planned to

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1/ UBS PaineWebber, Inc. subsequently changed its name to UBS Financial Services, Inc.

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

3/ On February 10, 2003, NASD staff sent Langley a letter advising him that it had learned of the customer complaint made against him and requesting that he provide a written statement by February 24, 2003 addressing the matters raised in the complaint. The letter cautioned Langley that failure to comply with the information request could subject him to disciplinary action. This letter was sent to a Laguna Beach, California address listed in Langley's NASD Central Registration Depository ("CRD") file (the "CRD Address") and a Corona Del Mar, California address where he had resided earlier (the "Corona Del Mar Address"). The letters were sent by certified first class mail, return receipt requested.

On March 4, 2003, NASD staff sent a second letter to Langley's CRD and Corona Del Mar Addresses again requesting a written response, by March 18, 2003, to the allegations against him. The letters were also sent by certified first class mail, return receipt requested. Unlike certain subsequent NASD mailings to Langley, the record does not disclose whether these written inquiries were delivered to Langley or returned to NASD as undeliverable.

suspend Langley from associating with any member firm in any capacity pursuant to NASD Rule 9541(b). <sup>4/</sup>

At the relevant time, NASD Rule 9541(b) provided that, if an associated person failed to furnish information requested by NASD, NASD could 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 days after service of such written notice constituted grounds for suspending that person's association. <sup>5/</sup> Langley did not take corrective action, request a hearing, or otherwise respond to the Pre-Suspension Notice.

Later that month, NASD staff sent Langley a letter stating that, because he failed to provide the requested information or take corrective action, he was suspended from association with any NASD member (the "Suspension Notice"). <sup>6/</sup> The Suspension Notice indicated that Langley could file a Motion for Reinstatement, pursuant to NASD Rule 9544, <sup>7/</sup> within six months of service or receipt of the Pre-Suspension Notice, in response to which a Hearing Panel would be convened to consider his request for reinstatement. The Suspension Notice further stated that, if Langley failed to file such a motion, he automatically would be barred. As with the

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<sup>4/</sup> This and certain other rules related to NASD expedited proceedings were amended by NASD, effective June 28, 2004, to "streamline[] and clarif[y them] and make them more uniform." NASD Notice to Members 04-36 (May 15, 2004) (available through NASD Regulation, Inc.'s website, [www.nasdr.com](http://www.nasdr.com)). We refer to the applicable rules as they existed during the period at issue.

<sup>5/</sup> The Pre-Suspension Notice explained that, if Langley did not take corrective action by providing within twenty days the information NASD had repeatedly requested, the suspension would take effect. The Pre-Suspension Notice further stated that, if Langley requested a hearing within five days of receipt of the notice, "the effective date of this Pre-Suspension Notice [would] be stayed" pending the hearing.

The Pre-Suspension Notice was sent to Langley's CRD and Corona Del Mar Addresses by both an overnight delivery service and by first class mail, return receipt requested. The Federal Express tracking system showed that the letter sent to the CRD Address was delivered on June 3, 2003, while the letter sent to the Corona Del Mar Address was returned to NASD as undeliverable.

<sup>6/</sup> The Suspension Notice was sent to Langley's CRD and Corona Del Mar Addresses by an overnight delivery service, by certified mail, return receipt requested, and by first class mail.

<sup>7/</sup> NASD Rule 9544 provided that persons who were suspended pursuant to NASD Rule 9541(b), and who failed to request a hearing to challenge the suspension within six months of receipt of a Pre-Suspension Notice, would be barred or expelled automatically.

other mailings, Langley did not respond to the Suspension Notice. 8/ Six months later, NASD advised Langley by letter that, effective immediately, he was barred from associating with any NASD member firm in any capacity (the "Bar Notice" and, collectively with the Suspension Notice, the "NASD Notices"). 9/

In addition to the written correspondence discussed above, NASD staff appears to have contacted Langley by telephone on at least one occasion. According to Langley's brief, a member of NASD's staff called him "with general inquiries with respect to the customers and the accounts at issue." The record contains no details regarding this call, such as when it was made, the identity of the NASD staff member, or whether any follow-up call was attempted. NASD does not dispute that the call occurred, but offers no details regarding the exchange. Langley, in his brief, indicates that he remained reachable at the telephone number used to make this call throughout the period at issue, although the record is otherwise silent on this point. 10/

Langley claims that, at the time of the relevant NASD mailings, he no longer resided at the addresses to which NASD had sent the information requests and the NASD Notices. 11/ He asserts that he first learned of NASD's efforts to contact him when he "recently . . . checked his CRD and communicated with NASD" and discovered that he had been barred. He thereafter filed this appeal.

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8/ The Federal Express tracking system showed that the Suspension Notices sent to the CRD and Corona Del Mar Addresses were returned as undeliverable to NASD. The Suspension Notices sent to both addresses by certified mail, return receipt requested, were also returned as undeliverable. The Suspension Notice sent to the CRD Address by first class mail was similarly returned to NASD as undeliverable. The Suspension Notice sent by first class mail to the Corona Del Mar Address was not returned to NASD.

9/ The Bar Notice was sent to Langley's CRD and Corona Del Mar Addresses by an overnight delivery service, by certified mail, return receipt requested, and by first class mail. The Federal Express tracking system showed that the Bar Notices sent to the CRD and Corona Del Mar Addresses were returned as undeliverable to NASD. The Bar Notices sent to both addresses by certified mail, return receipt requested, and by first class mail were also returned as undeliverable.

10/ NASD states, in response to Langley's claim regarding his telephone conversation with NASD staff and his continued availability by telephone during the relevant period, that "[e]ven if true, this assertion is irrelevant" because Langley was responsible for updating his records but failed to do so.

11/ Langley states that he moved from the CRD Address in April 2001 and last lived at the Corona Del Mar Address in 1992.

## III.

Section 19(f) of the Securities Exchange Act of 1934 provides the standards for our review. 12/ If we find that "the specific grounds" on which NASD based its action "exist in fact," that NASD's determination not to permit Langley'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, we must dismiss Langley's appeal.

Langley does not dispute that the specific grounds on which NASD based its action, *i.e.*, his failure to respond to NASD's written inquiry, exist in fact, or that NASD acted in accordance with its rules. 13/ Instead, he argues that NASD did not apply its rules in a manner consistent with the purposes of the Exchange Act. Langley concedes that he failed to update his CRD address, and that he should be sanctioned in some way for that failure and for his resulting failure to respond to NASD's request for information. 14/ He argues, however, that because his misconduct was wholly inadvertent, a bar from the industry would constitute a "penal" sanction and not serve the remedial purposes embodied in the Exchange Act. Langley further questions the appropriateness of a bar in this case because, according to Langley, NASD could have contacted him by telephone but failed to do so, notwithstanding that at least a portion of NASD's mailings were returned to NASD as undeliverable.

We have repeatedly emphasized the importance of cooperating with NASD investigations. 15/ We also have emphasized the importance of associated persons, such as

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12/ 15 U.S.C. § 78s(f).

13/ Langley also does not claim that NASD's action has imposed an undue burden on competition.

14/ In his brief, Langley proposes that he be permitted to "submit a voluntary withdrawal of his registration in exchange for the revocation of the permanent bar . . . [or, alternatively, that] the permanent bar be amended to a failure by Mr. Langley to keep his address current with the CRD or failure to comply with NASD's request for production of documents."

15/ See, *e.g.*, Joseph Patrick Hannan, 53 S.E.C. 854, 858-59 (1998) (citations omitted):

We have repeatedly stressed the importance of cooperation in NASD investigations. We have also emphasized that the failure to provide information undermines the NASD's ability to carry out its self-regulatory functions. Since the NASD lacks subpoena power, it must rely upon Rule 8210 in connection with its obligation to police the activities of its members and associated persons. Failures

(continued...)

Langley, keeping their records current. 16/ Rule 8210(d) does not require NASD to take any affirmative action to track down a registered representative who has failed to provide NASD with a current address. As we have held, Langley "cannot shift the burden of keeping information current to the NASD" because "NASD must be able to rely on its records." 17/ Otherwise, "an applicant could thwart an NASD investigation" by changing his address without notifying NASD or making arrangements to forward his mail. 18/

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15/ (...continued)

to comply are serious violations because they subvert the NASD's ability to carry out its regulatory responsibilities.

16/ See, e.g., David I. Cassuto, Securities Exchange Act Rel. No. 48087 (June 25, 2003), 80 SEC Docket 1775, 1779 (respondent who failed to comply with NASD information requests had a "responsibility to maintain a current address in the CRD . . ."). See also William T. Banning, 50 S.E.C. 415, 416 (1990) (former registered representative "had 'a continuing duty to notify the Association . . . of his current address and to receive and read mail sent to him at that address.'" (citations omitted)).

17/ Nazmi C. Hassanieh, 52 S.E.C. 87, 90-91 n.13 (rejecting defense, in failure to cooperate proceeding, that "NASD failed to take reasonable steps to locate" respondent by contacting his former attorney).

18/ Cassuto, 80 SEC Docket at 1779. See also Ashton Noshir Gowadia, 53 S.E.C. 786, 790; Hassanieh, 52 S.E.C. at 91; Alan Howard Gold, 51 S.E.C. 998, 1001 (1994).

We note that, while Langley claims to have been unaware of NASD's requirement to maintain a current address, his ignorance is not an excuse. Warren B. Minton, Jr., Exchange Act Rel. No. 46709 (Oct. 23, 2002), 78 SEC Docket 2369, 2375 n.16 (rejecting claim that former registered representative was unaware of obligation to keep his address current after he left the securities industry); Richard J. Lanigan, 52 S.E.C. 375, 377 (1995) (rejecting claim that applicant was unaware of duty to keep current Form U-4 on file with NASD). Cf. Carter v. SEC, 726 F.2d 472, 473-74 (9th Cir. 1983) (rejecting claim that applicant was unaware of NASD prohibition against private securities sales).

We further note that a registered representative is "assumed as a matter of law to have read and have knowledge of these rules and requirements." Carter v. S.E.C., 726 F.2d 472, 473-474 (9th Cir. 1983). See also Walter T. Black, 50 S.E.C. 424, 426 (1990) ("lack of familiarity with the NASD's rules cannot excuse [registered representative's] conduct").

Nevertheless, we have determined that, under the circumstances of this case, a remand of this proceeding to NASD is warranted. <sup>19/</sup> As indicated above, certain factual aspects of this case are unclear from the record. For example, while the record indicates that many of NASD's mailings were returned as "undeliverable", it is silent as to others. Hence, it is unclear whether, in fact, Langley received any notice of NASD's information requests or of NASD's subsequent expedited proceedings to bar him.

Moreover, the record contains very little information about the telephone call NASD staff made to Langley regarding the customer complaint. NASD Procedural Rule 8210(d) requires that notice be given to the address listed in an associated person's CRD file unless there is a "more current address . . . known" to the staff. On remand, NASD should develop facts to determine whether its staff was able to contact Langley by telephone and, if so, whether such fact implicates this portion of Rule 8210(d).

We further believe that a remand is necessary to give NASD an opportunity to determine whether a bar is the appropriate sanction. As indicated, Langley was barred based on NASD's expedited procedures, without any hearing or review by any NASD adjudicatory panel. On remand, the parties should more fully develop whether, under the circumstances of this case, barring Langley is consistent with the purposes of the Exchange Act. In remanding, we do not intend to suggest any view as to a particular outcome.

An appropriate order will issue. <sup>20/</sup>

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

Jonathan G. Katz  
Secretary

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<sup>19/</sup> See, e.g., James L. Bari, Jr., Exchange Act Rel. No. 48292 (Aug. 6, 2003), 80 SEC Docket 2942 (remanding proceeding involving failure to comply with NASD information request where record was incomplete regarding whether NASD complied with its rules in providing requisite notice).

<sup>20/</sup> 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  
SECURITIES AND EXCHANGE COMMISSION  
Washington D.C.

SECURITIES EXCHANGE ACT OF 1934  
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ORDER REMANDING APPEAL FROM REGISTERED SECURITIES ASSOCIATION

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

ORDERED that these proceedings with respect to Robert J. Langley be, and they hereby are, remanded to NASD for further consideration.

By the Commission.

Jonathan G. Katz  
Secretary