

This Order has been published by the NASDR Office of Hearing Officers and should be cited as OHO Order 01-06 (C07000084).

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

Respondent.

Disciplinary Proceeding
No. C07000084

Hearing Officer—Andrew H. Perkins

**ORDER DENYING RESPONDENT'S MOTION
TO RECONSIDER AND TO SET ASIDE DEFAULT DECISION**

The Hearing Officer entered a default decision against the Respondent _____ on March 6, 2001, pursuant to NASD Code of Procedure Rule 9215(f), after the Respondent failed to answer or otherwise respond to the Complaint. On March 27, 2001, the Respondent, by counsel and pursuant to NASD Code of Procedure Rule 9269(c), filed a motion to set aside the default. In his motion, the Respondent states that his failure to respond to the Complaint resulted from the Department of Enforcement using his outdated

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residential address¹ recorded in the Central Registration Depository (“CRD”) and an alternate outdated address, which the Department obtained during its investigation.

The Respondent states that when he resigned from _____ on October 15, 1999, he incorrectly believed that he no longer had a responsibility to maintain a current address in CRD. (Motion at ¶ 3.) Both the Rule 8210 requests for information underlying the charges against the Respondent and the Complaint were sent to the Respondent after he moved from both of the service addresses. (Id.)

According to the motion, the Respondent last lived at the alternate address, _____, with a roommate. He moved from that address to an undisclosed address in October 1999.² Following this move, the Respondent relied on his former roommate to forward his mail. However, according to the Respondent, shortly after he moved, he and his roommate had “a falling out,” and his roommate thereafter refused to forward his mail. (Id.) At some later point, the Respondent claims that he discovered that his mail was either thrown out by his former roommate or returned to the sender. The Respondent states that “[u]ndoubtedly, this mail included the Requests for Information as well as the Complaint subsequently filed by the Department.” (Id.) The Respondent candidly admits that he could have given the US Postal Service a forwarding address, but he did not due to personal turmoil in his life. (Id. at ¶ 4.)

Although the Respondent does not directly challenge the validity of service of the Rule 8210 requests for information and the Complaint, the Respondent asks the Hearing Officer to

¹ _____

² Nowhere in the motion does the Respondent reveal this address or his current address.

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take into consideration certain facts in mitigation of the sanctions imposed in the Default Decision. First, the Respondent states that he is contrite and that he wishes a chance to cooperate and respond to the Rule 8210 requests. Second, the Respondent alludes to certain unspecified personal issues that distracted him from his obligations generally and that he did not know that he was subject to the NASD's jurisdiction after he resigned from _____ . Finally, the Respondent states that he accepts responsibility for his failure to respond to the Rule 8210 requests, and asks that the Hearing Officer consider imposing a suspension for a limited period of time rather than a bar. (Id. at ¶ 8.) In summary, the Respondent asserts that he did not intentionally ignore the Rule 8210 requests and the Complaint.

The Department opposes the relief the Respondent seeks. In its opposition, the Department includes evidence that the Respondent actually signed for the first Rule 8210 request letter dated February 4, 2000, which had been sent to _____ , _____ (the alternate address used for all the mailings in this case). (See Opposition at 2.) In support of its argument, the Department filed the affidavit of Steven Morsch, a Compliance Examiner in the Atlanta District Office of NASD Regulation, Inc. Attached to the Morsch Affidavit as Exhibit 2 is a copy of the signed certified mail receipt for the first Rule 8210 request.

The Department contends that the receipt bears the Respondent's signature. In support of this contention, the Department also attached copies of documents Morsch received from _____ during his investigation of the Respondent that bear his signature. A comparison of the documents shows that the signatures on these documents are identical to the signature on the certified mailing receipt.

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Upon consideration of the foregoing, the Hearing Officer finds that the Respondent has not shown good cause to set aside the Default Decision. Indeed, contrary to the Respondent's representations in his motion, the evidence shows that he received the first Rule 8210 request. The Hearing Officer also notes that the Default Decision was served at the same two addresses (the CRD address and the alternate address), which he received timely. This further undermines the Respondent's assertions that he was no longer receiving mail at either of these addresses.

Under all of the circumstances, and considering the nature of the Respondent's proffer of mitigating circumstances, the Hearing Officer finds that the Respondent has not carried the considerable burden to show good cause for reopening this case. The Respondent's belated statement of contrition and offer to cooperate in the underlying investigation more than a year after NASD Regulation staff first requested his cooperation is not sufficient.

Accordingly, the Hearing Officer denies the Respondent's motion to set aside the Default Decision.

SO ORDERED.

Andrew H. Perkins
Hearing Officer

April 6, 2001