

BEFORE THE NATIONAL BUSINESS CONDUCT COMMITTEE

NASD REGULATION, INC.

In the Matter of

District Business Conduct Committee
For District No. 7

Complainant,

vs.

Darren L. Klemp
Clearwater, Florida,

Respondent.

DECISION

Complaint No. C07960110

District No. 7

Dated: November 20, 1997

Darren L. Klemp ("Klemp") has appealed the April 21, 1997 decision of the District Business Conduct Committee for District No. 7 ("DBCC") pursuant to Procedural Rule 9310. After a review of the entire record in this matter, we hold that, as alleged in the complaint, Klemp failed to notify his employer of an outside business activity in violation of Conduct Rules 2110 and 3030 and also failed to respond to NASD requests for information in violation of Conduct Rule 2110 and Procedural Rule 8210. We order that Klemp be censured, fined \$25,000, and barred from associating with any NASD member firm in any capacity.

Background. Klemp entered the securities industry in March 1991 as an investment company and variable contracts products representative. During the relevant time, Klemp was associated with Waddell & Reed, Inc. ("Waddell" or "the Firm"). Klemp also became associated with The Equitable of Iowa ("The Equitable") as an insurance agent in November 1994. Klemp has not worked in the securities industry since his termination from Waddell in August 1995.

Facts. Klemp was employed by Waddell from April 1993 through August 1995. On November 1, 1994, Klemp also became associated with The Equitable as an insurance agent, but he failed to disclose his association with The Equitable to Waddell as required by Conduct Rule 3030. On August 15, 1995, Waddell filed a Uniform Notice of Termination of Registration ("Form U-5") with the Atlanta District office of the NASD, which disclosed that Waddell had terminated Klemp for his failure to notify the Firm of his outside business activities.

On January 18, 1996, NASD Special Investigator David C. Suddeth ("Suddeth") spoke with Michael Collins ("Collins") of Waddell's Compliance Department regarding the circumstances of Klemp's outside employment. Collins advised Suddeth that a customer had contacted Waddell in Klemp's absence to discuss a fixed annuity issued by The Equitable that Klemp had sold to her. Upon his return to Waddell, Klemp confirmed to Collins that he was employed by The Equitable. Waddell terminated Klemp in August 1995 for failure to disclose his employment with The Equitable.

Klemp contended on appeal that he signed no papers telling Waddell that he was or was not licensed with any other companies after he received his license from The Equitable. The record showed that on April 24, 1995, Klemp had represented on a Waddell "Outside Business Activities" form that he did not receive compensation from any company other than Waddell. The record showed, however, that Klemp had received compensation from The Equitable on July 13, 1995.

On August 28, 1996, Suddeth sent Klemp a certified letter pursuant to Rule 8210 (then Article IV, Section 5 of the Rules of Fair Practice) requesting information regarding the April 24 form. The letter indicated that The Equitable had confirmed Klemp's employment as of November 1, 1994, and also that Klemp had received compensation from The Equitable on July 13, 1995. Suddeth received a receipt signed by Klemp indicating that Klemp had received the certified letter. Klemp did not respond to the request for information.

On December 18, 1996, District No. 7 staff served Klemp with the complaint and Notice of Complaint at his address of record, as indicated in the Central Registration Depository ("CRD"), by certified mail, return receipt requested, and regular first class mail. The Notice sent by certified mail was returned by the Postal Service marked "Unclaimed." The Notice sent by first class mail was not returned. On January 16, 1997, staff served Klemp with the complaint and Second Notice of Complaint by certified mail, return receipt requested, and regular first class mail at his CRD address. The receipt for the Second Notice indicates that Klemp received the certified letter. The Notice sent by first class mail was not returned by the Postal Service. Klemp did not file an answer. The DBCC issued a default decision on April 21, 1997.

This appeal followed.

Discussion. After careful consideration of the record, we affirm the DBCC's findings and sanctions. We find that Klemp engaged in an outside business activity without providing proper notice to Waddell, in violation of Conduct Rules 2110 and 3030. The evidence shows that Klemp was employed with The Equitable during the time he was employed by Waddell, and that Klemp did not advise Waddell of his employment with The Equitable as required by Conduct Rules 2110 and 3030. In fact, Klemp falsely represented to Waddell on April 24, 1995, while he was employed with The Equitable, that he did not receive compensation from any company other than Waddell.

On appeal, Klemp admitted that he had been licensed with The Equitable, but he contended that he had "signed no papers telling [Waddell] that [he] was or wasn't licensed with any other co.'s

(sic)." Klemp accused Waddell of a "personal vendetta" against him. Klemp stated his belief that he had done nothing wrong.¹

We also find that Klemp failed to respond to NASD requests for information in violation of Conduct Rule 2110 and Procedural Rule 8210.

Sanctions. We affirm the censure, bar, and \$25,000 fine (\$5,000 as to cause one and \$20,000 as to cause two) as appropriately remedial. As the Securities and Exchange Commission has reiterated on numerous occasions, because the NASD lacks subpoena power, "failure to comply with Article IV, Section 5 [now Procedural Rule 8210] subverts the NASD's ability to carry out its regulatory responsibilities and must be viewed as a serious violation." In re Charles R. Stedman, 51 S.E.C. 1228 (1994). See also In re John A. Malach, 51 S.E.C. 618 (1993) and cases cited therein.

Accordingly, we affirm the sanctions imposed by the DBCC. Thus, Klemp is censured, barred in all capacities, and fined \$25,000 (\$5,000 as to cause one and \$20,000 as to cause two).² The bar shall be effective as of the date of this decision.³

On Behalf of the National Business Conduct Committee,

Joan C. Conley, Corporate Secretary

¹ On appeal, Klemp sought to introduce evidence that he became licensed with The Equitable on the advice of a supervisor at Waddell. Whether or not this is so is not material to our consideration of Klemp's obligation to advise Waddell of his association with The Equitable, and we have determined not to enter this proffered evidence into the record on appeal.

² These sanctions are consistent with the NASD Sanction Guidelines ("Guidelines") (1996 ed.) at 45 (selling away - also applicable to outside business activities) and 22 (failure to respond).

³ We have considered all of the arguments of the parties. They are rejected or sustained to the extent that they are inconsistent or in accord with the views expressed herein.

Pursuant to NASD Procedural Rule 8320, any member who fails to pay any fine, costs, or other monetary sanction imposed in this decision, after seven days' notice in writing, will summarily be suspended or expelled from membership for non-payment. Similarly, the registration of any person associated with a member who fails to pay any fine, costs, or other monetary sanction, after seven days' notice in writing, will summarily be revoked for non-payment.