

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD REGULATION, INC.

In the Matter of
the Association

of

X

as a

General Securities Representative

with

The Sponsoring Firm

Redacted Decision

Notice Pursuant to
Section 19h-1
Securities Exchange Act
of 1934

SD99012

On May 22, 1998, a member firm ("the Sponsoring Firm" or "the Firm") submitted a Membership Continuance Application ("MC-400" or "the Application") to permit X¹, a person subject to a statutory disqualification, to associate with the Firm as a general securities representative. In January 1999, a subcommittee of the Statutory Disqualification Committee ("Hearing Panel") of NASD Regulation, Inc. ("NASD Regulation") held a hearing on the matter. X appeared and was accompanied by his proposed supervisor, a general securities principal with the Sponsoring Firm ("the Proposed Supervisor"), his mother, and one of the owners ("the EVP") of the Sponsoring Firm. BA appeared on behalf of the Department of Member Regulation ("Member Regulation").

X is subject to a statutory disqualification as a result of his 1993 guilty plea in a State 1 court to petit larceny, a Class A Misdemeanor.² At the hearing, X explained that this event occurred while he

¹ The names of the Statutorily Disqualified individual, the Sponsoring Firm, the Proposed Supervisor, and other information deemed reasonably necessary to maintain confidentiality have been redacted.

² This misdemeanor comes within the definition of a statutory disqualification since there was an allegation involving the theft of currency. A misdemeanor property theft would not result in a determination of statutory disqualification.

was pledging a fraternity for his university in his senior year of college. The pledges were asked to go to a sorority dormitory on campus and retrieve a "pledge plaque." While X and several other pledges were in the dorm, apparently other things were taken, along with a woman's pocketbook containing cash. X denied that he took the pocketbook, and stated that he did not even see anybody take the pocketbook. X stated that nonetheless, he had provided a written statement to the police several days after the incident that included a reference to the stolen pocketbook and money because he wanted to cooperate with the police and get out of the police station quickly, and because he was trying desperately to get into the fraternity and "get in with these people."³ For this misconduct, X was placed on probation for three years.⁴ In 1996, he received an early discharge from probation. In 1998, a judge issued a Certificate of Relief from Disabilities to X.⁵

After the events surrounding his disqualification, X worked in the securities industry for more than one year, until it was determined that his misdemeanor guilty plea caused him to be statutorily disqualified. First, he was employed by Firm A from November 1996 to December 1996. Second, he was associated with the Sponsoring Firm from December 1996 to February 1998. X reported the petit larceny conviction on each Form U-4, but he was not notified by the Central Registration Depository ("CRD") of NASD Regulation that he had to go through the statutory disqualification process until April 1998, when he tried to transfer to Firm B.⁶ The MC-400 Application that NASD Regulation forwarded to Firm B was not returned. X terminated from Firm B and rejoined the Sponsoring Firm in May 1998, at which time the instant Application was filed and this process was begun.

³ The police statement included the following language: "We went into [person 1's] bedroom and she was sleeping. I saw a pocketbook on I think it was a dresser and I took it. I put a shirt over the pocketbook and the three of us ran out of the room. We ran down the stairs and I handed the pocketbook to [person 2]. We stopped on the stairs and we looked through the pocketbook. We took money from the pocketbook, I'm not sure how much it was . . . On the night we took the money I put an IOU in the pocketbook, it wasn't actually that night, but the next morning when I took the pocketbook back to [person 1's] room that I put the IOU in the bag."

⁴ X stated that because of this and other similar incidents, the fraternity was banned from campus.

⁵ A Certificate of Relief from Disabilities restores to an individual certain of the rights and responsibilities of citizenship that a convicted person may be disqualified from exercising, including the right to engage in certain licensed professions or businesses. Such a Certificate does not remove a person's designation as a statutorily disqualified individual or the ability of the Association to subject him to discretionary review pursuant to the proscribed procedures. It is merely a factor to be considered in determining whether an application on behalf of such an individual to be permitted to work in the securities industry should be granted. In re Jonathan Scott Saluk, Exchange Act Rel. No. 35623 (Apr. 19, 1995).

⁶ The CRD did not notify X of his status as a statutorily disqualified individual because the Forms U-4 mentioned only the theft of property (the sorority pledge plaque) and not the theft of currency as the basis for the 1993 misdemeanor conviction.

The Sponsoring Firm is organized as a corporation and has been a member of the NASD since April 1996.⁷ Its primary sources of income are retail brokerage, securities investment banking, and trading.⁸ The Sponsoring Firm employs 25 individuals, of whom four are general securities principals and 14 are registered representatives. The Sponsoring Firm has no branch offices or Offices of Supervisory Jurisdiction. The Sponsoring Firm proposes to employ X at its New York office.

The Sponsoring Firm has no formal disciplinary history. In March 1997, following a routine examination of the Sponsoring Firm, a Letter of Caution was issued for a misleading advertisement; inaccurate net capital computations; failure to maintain certain information on the Firm's blotter; inadequate written supervisory procedures with regard to customer checks being made payable to the clearing firm; and violation of the NASD's rule requiring quotations from three sources on over-the-counter order tickets.

In August 1997 a "FINOP Special" examination of the Sponsoring Firm resulted in a Letter of Acceptance, Waiver and Consent. The Sponsoring Firm was censured and fined \$500 for failing to maintain its minimum required net capital.

During 1998, three customer complaints were filed against the Sponsoring Firm alleging unauthorized transactions. These complaints are currently being reviewed by the Association. Two of the registered representatives named in the complaints no longer work for the Sponsoring Firm, and neither of the two persons proposed as supervisors for X is named in the complaints.

The Sponsoring Firm proposes to have X supervised by the Proposed Supervisor, who has been a general securities representative since 1993, a general securities principal since 1996, and a municipal securities principal since 1998. The Proposed Supervisor has no disciplinary history. On the rare instances when the Proposed Supervisor is not available, the Sponsoring Firm proposes to have the EVP act as X's supervisor, and the Proposed Supervisor has acknowledged his understanding that he will be ultimately responsible for both the EVP's supervision of X and any actions engaged in by X. The EVP has been a general securities principal since 1996, and he has no disciplinary history.

⁷ The EVP, the Sponsoring Firm's Executive Vice President, owns 33.38 percent of the stock, as does the Sponsoring Firm's Compliance Officer. The remainder is split among nine other shareholders, ranging from .37 percent to 25.62 percent.

⁸ In a post-hearing submission, the Sponsoring Firm reported that, as of an NASD exam completed in December 1998, its revenues are derived approximately 80 percent from sales commissions, 15 percent from investment banking (private placements), and 5 percent from proprietary trading. Of the Sponsoring Firm's commissions, approximately 60 percent are from agency transactions and 40 percent are from principal transactions. The Sponsoring Firm estimates that about 30 to 35 percent of its transactions are NYSE transactions.

Discussion

We conclude that X should be permitted to associate with the Sponsoring Firm as a general securities representative. The activity that resulted in X's statutory disqualification occurred almost six years ago when he was 21 years old. The incident occurred while he was pledging for a fraternity in college, and was not securities-related. X has successfully completed his probation. Moreover, X previously was employed in the securities industry for more than one year with no customer complaints.

Member Regulation had opposed the Sponsoring Firm's Application to employ X solely on the basis of its concern with alleged discrepancies in his descriptions of the 1993 incident.⁹ Member Regulation had stated that there was an "appearance of deception" in the manner in which X had described the 1993 incident in his Form U-4 applications (which consistently refer only to the taking of a sorority pledge plaque as part of a fraternity prank), in the written statement he provided to the police (in which mention was made of the stealing of a pocketbook and currency), and the November 1998 Affidavit provided by X to Member Regulation in support of this Application (which mentioned the taking of a pledge plaque, as well as a pocketbook and currency, alleged that all items were returned, and declared that someone other than X had taken the pocketbook and money).

We have considered the discrepancies in the statements and we conclude that they did not result from any intention to deceive on the part of X. We find, based upon our assessment of his testimony and his demeanor at the Hearing, that X believed that he was fully disclosing the 1993 event when he reported it on his Form U-4. He testified that he orally disclosed the incident to Firm A and was told that it was not a problem. In response to questioning by the Hearing Panel, X stated that he did not realize that the theft of currency would make his misdemeanor event a statutorily-disqualifying incident, whereas the theft of property (such as a sorority plaque), would have been a mere misdemeanor that would not have required him to make an application pursuant to the statutory disqualification process. X also stated, in response to questioning about the apparent inconsistencies in the descriptions of his disqualifying event, that he had written exactly what the police told him to write on the statement he gave in 1993 because he wanted to "get out of [the police station]" and keep his friends and his fraternity out of trouble. We do not condone X's actions in 1993, nor do we condone his haste to sign a police statement that contained less than the truth in an effort to protect his friends or his fraternity. We find, however, that X's actions appear to have been youthful indiscretions, that he has made attempts to better his life, and that he understands the importance of integrity on the part of participants in the securities industry. Accordingly, we have determined that X should be permitted to associate with the Sponsoring Firm.

⁹ Member Regulation also had some questions about the Sponsoring Firm's originally-proposed supervisory procedures; however, the parties later agreed to the revised supervisory procedures which are set forth below.

The Proposed Supervisor, the EVP, and the Sponsoring Firm have no formal disciplinary histories, and they have proposed an effective plan of supervision. We therefore conclude that they are qualified to supervise X pursuant to the following terms of that plan:

1. That X conduct securities business on behalf of the Sponsoring Firm only from the office where the Proposed Supervisor is physically located;
2. That the supervisory procedures of the Sponsoring Firm shall be amended clearly to establish the Proposed Supervisor's responsibility to supervise X;
3. That the specific steps of heightened supervision of X by the Proposed Supervisor that are incorporated into the Sponsoring Firm's written supervisory procedures shall include the following additional specific items:
 - a. Discretionary accounts will not be maintained by X at any time.
 - b. The review of New Account Forms will entail a review for suitability, and a verification that X is registered in the state of the customer's domicile.
 - c. The Proposed Supervisor is to review and approve all of X's order tickets on a daily basis. X's incoming correspondence will be reviewed by the EVP and his outgoing correspondence will be reviewed by the EVP or the Proposed Supervisor when the EVP is unavailable.
 - d. The Proposed Supervisor will keep a written record evidencing review and approval of all of X's transactions, the opening of new accounts, and all correspondence.
 - e. The Proposed Supervisor and the EVP will meet with X on a quarterly basis to review his transactions with clients. This will entail a review of the distribution of customer funds. A log shall be kept by the Sponsoring Firm of these meetings.
 - f. All customer complaints of X's, verbal or written, will be immediately referred to the Proposed Supervisor for review, and to the EVP or the Director of Compliance. The Proposed Supervisor will prepare a memorandum to the file as to what measures he took to investigate the merits of the complaint (i.e., contact with the customer) and the resolution of the matter. These complaints should be kept segregated for ease of review.
 - g. X will be prohibited from accepting funds from customers in his name. Rather, all funds must be payable to either the Sponsoring Firm or the particular fund. The Sponsoring Firm will develop a procedure to compare X's customer requests for disbursement to monthly statements.

h. X will be required to attend an annual compliance meeting, and evidence of his attendance will be kept segregated in a file for easy review.

The Sponsoring Firm employs no other individuals who are subject to statutory disqualification.

The NASD certifies that: 1) X meets all applicable requirements for the proposed employment; 2) the Sponsoring Firm is not a member of any other self-regulatory organization; and 3) X, the Proposed Supervisor, and the EVP have represented that they are not related by blood or marriage.

Accordingly, in conformity with the provisions of SEC Rule 19h-1, the registration of X as a general securities representative associated with the Sponsoring Firm will become effective within 30 days of the issuance of this decision unless otherwise notified by the Commission.

On Behalf of the National Adjudicatory Council,

Alden S. Adkins
Senior Vice President and General Counsel