

SECURITIES AND EXCHANGE COMMISSION
Washington D.C.

SECURITIES AND EXCHANGE ACT OF 1934
Rel. No. 50570 / October 20, 2004

Admin. Proc. File No. 3-11414

In the Matter of the Application of

LEE GURA
840 Brooktree Lane #265
Vista, CA 92081

For Review of Action Taken by

NASD

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION - - REVIEW OF NASD ACTION

Jurisdiction to Review Action of Association

Former registered representative of a member firm of registered securities association who failed to respond to requests for information appealed association's sanction. Held, the application for review is dismissed.

APPEARANCES

Lee Gura, pro se.

Marc Menchel and Alan B. Lawhead, for NASD.

Appeal filed: February 24, 2004
Last brief received: June 14, 2004

I.

Lee Gura, formerly a registered representative associated with First Union Securities ("First Union" or "the Firm"), an NASD member firm, seeks review of NASD disciplinary action. NASD found that Gura failed to provide information that it requested

pursuant to NASD Rule 8210. 1/ As a result of his failure to respond, NASD barred Gura from association with any member firm in any capacity. We base our findings on an independent review of the record.

II.

By letter dated October 14, 2002, NASD staff notified Gura that they had received several significant complaints alleging that Gura, while a registered representative at First Union, had violated the federal securities laws by engaging in unauthorized trading, churning customers' accounts, and making unsuitable recommendations. 2/ The letter requested that Gura provide a written statement addressing these allegations by October 28, 2002. Gura did not provide the requested information. Instead, at the request of NASD, Gura submitted a signed document, dated November 20, 2002, stating that he would not respond to NASD's request for information.

On April 29, 2003, NASD staff sent a second letter to Gura again requesting a written response, by May 7, 2003, to the allegations against him. This letter referenced "several correspondences and conversations" between NASD staff and Gura regarding the information request and warned Gura that failure to comply with the request would subject him to disciplinary action. Gura did not respond to the April letter.

On May 8, 2003, NASD staff sent a third letter to Gura and stated that it was "imperative" that NASD receive the information requested on or before May 19, 2003. Again, staff noted that failure to comply with the request would subject him to disciplinary action. Gura did not respond.

On July 16, 2003, NASD staff sent Gura a "Pre-Suspension Notice" warning Gura that, pursuant to NASD Rule 9541(b), NASD planned to suspend Gura from associating with any member firm in any capacity. 3/ The Pre-Suspension Notice explained that, if

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

2/ Gura's last employment in the securities industry was terminated on October 12, 2000.

3/ NASD Rule 9541(b) provides that, if an associated person
(continued...)

Gura did not take corrective action by providing the information NASD had repeatedly requested within twenty days, the suspension would take effect. The Pre-Suspension Notice further stated that Gura could stay his pending suspension if he requested a hearing within five days of receipt of the notice. Gura did not request a hearing or otherwise respond to the Pre-Suspension Notice in any manner.

On August 11, 2003, NASD staff notified Gura that, because he failed to provide requested information or take corrective action, he was suspended from association with any NASD member. The letter stated that Gura could file a Motion for Reinstatement pursuant to NASD Rule 9544 4/ within six months of service or receipt of the Pre-Suspension Notice at which time a Hearing Panel would be convened to consider his request for reinstatement. The letter further stated that, if Gura failed to file such a motion, he automatically would be barred. Gura failed to file a Motion for Reinstatement.

On January 22, 2004, NASD advised Gura that effective immediately he was barred from associating with any NASD member firm in any capacity. On February 24, 2004, Gura appealed the NASD action to the Commission.

3/ (...continued)
fails to furnish information requested by NASD, NASD may 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 constitutes grounds for suspending that person's association.

We note that NASD rules have been amended since NASD's decision in this case in part to consolidate and clarify them (Rule 9550 Series on Expedited Proceedings). These amendments became effective on June 28, 2004. For consistency with NASD's decision and the pleadings in this case, we will refer to the previous 9540 denominations.

4/ NASD Rule 9544 provides that persons who are suspended pursuant to NASD Rule 9541(b) and who fail to request a hearing to challenge the suspension within six months of receipt of a Pre-Suspension Notice will be barred or expelled automatically.

III.

Section 19(f) of the Securities Exchange Act of 1934 provides the standards for our review. 5/ If we find that "the specific grounds" on which NASD based its action "exist in fact," that NASD's determination not to permit Gura'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, 6/ we must dismiss Gura's appeal.

Gura does not dispute that "the specific grounds" on which NASD based its action, i.e. his failure to respond, exist in fact. Instead, he contends that he was suffering from severe depression, caused by "divorce, the death of [his] father, the loss of various jobs and two careers, bankruptcy and the constant court battles regarding visitation with [his] children" and was advised, by "therapists and friends," that he should not respond to NASD's inquiries to avoid further emotional stress and depression. 7/

We previously have determined that the Commission will not consider an application for review if the applicant failed to follow NASD procedures. 8/ The NASD's actions were in accordance

5/ 15 U.S.C. § 78s(f).

6/ Gura does not claim, and the record does not support a conclusion, that NASD's action has imposed an undue burden on competition.

7/ NASD suggests that Gura might be challenging NASD's jurisdiction when he states in his brief that he has not been employed in the securities industry since late October 2000. We find that NASD has jurisdiction here. Article V, Section 4(a) of the NASD By-Laws provides that NASD retains jurisdiction for two years from the filing of certain amendments to a termination of registration. Here, the Uniform Termination Notice for Securities Industry Registration ("Form U-5") terminating Gura's registration was submitted on December 6, 2000, and an amended Form U-5 was filed on March 9, 2001. NASD's October 14, 2002, request for information was made within two years of the filing of both the initial and amended Forms U-5.

8/ See Gary A. Fox, Securities Exchange Act Rel. No. 46511
(continued...)

with its rules and the purposes of the Exchange Act. NASD's rules set forth the procedures for suspending and ultimately barring individuals who fail to supply requested information or take corrective action. Gura chose not to avail himself of these procedures. He failed to respond to NASD's requests for information, failed to respond to the Pre-Suspension and Suspension Notices, and failed to file a Motion for Reinstatement. As a result, Gura's bar was imposed "automatically."

Nor do the other issues raised by Gura mitigate his failure to comply with these procedures. Gura has not provided any evidence substantiating his claims of depression so severe that he could not respond in any manner to NASD's multiple requests for information. In any event, we previously have found that unsubstantiated personal and medical problems do not excuse an applicant's failure to respond. 9/

Accordingly, we dismiss Gura's application for review.

An appropriate order will issue. 10/

By the Commission (Chairman DONALDSON and Commissioners GLASSMAN, GOLDSCHMID, ATKINS and CAMPOS).

8/ (...continued)
(Sept. 18, 2002), 78 SEC Docket 1533, 1536 (finding that the Commission was precluded from considering an application for review where applicant failed to respond to NASD requests for information, failed to respond to Pre-Suspension and Suspension Notices, and failed to move for reinstatement within the prescribed time limits). See also David I. Cassuto, Exchange Act Rel. No. 48087 (Jun. 25, 2003), 80 SEC Docket 1775, 1780 (same).

9/ See John A. Malach, 51 S.E.C. 618, 620 (1993) (finding unsubstantiated "personal problems" do not excuse respondent's failure to furnish information to NASD over the course of a two-year period).

10/ 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.

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Jonathan G. Katz
Secretary

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION
Washington D.C.

SECURITIES EXCHANGE ACT OF 1934
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In the Matter of the Application of

LEE GURA
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ORDER DISMISSING APPLICATION FOR REVIEW OF DISCIPLINARY
PROCEEDINGS OF REGISTERED SECURITIES ASSOCIATION

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

ORDERED that the appeal of disciplinary proceedings taken by
NASD against Lee Gura be, and it hereby is, dismissed.

By the Commission.

Jonathan G. Katz
Secretary