LAW IS FOR ONE AND ALL

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This article is case summary concerning the technicalities of law, which everyone should respect and follow. This case^2 wherein the Department of Enforcement, NASD, clearly stated that the Perpetual Securities Inc., and its owners are at default in complying with the NASD Rules. The facts of the case are

On 14th July 1995, Perpetual Securities (the Firm), became a member of National Association of Securities Dealers, Inc. (NASD). On the same day, through the firm, Youwei P. Xu (Xu), the Respondent No.1 and Cathy Y. Huang (Huang), the Respondent No.2, were registered with NASD as a general securities representative, general securities principal, and registered options principal. Previously (22nd September 1993), they were registered with NASD as a general securities representative with a member firm. Xu served both as a chief executive officer and president for the firm and, Huang as a chief financial officer and executive vice-president, during the period December 2002 – January 14th 2003. Further, during the same period they also held an ownership interest in the firm.

On 18th June 2002, NASD’s office of Dispute Resolution, Department of Enforcement, the Complainant, passed an order stating that the firm’s membership would be entitled for suspension in case the firm fails to honor the arbitration award issued by it previously (14th November 2000). Prior to the issue of the suspension order, the firm requested the NASD for a hearing. Contrary to this, the parties to the pre-hearing meeting with the NASD Hearing Officer, raised objections for hearing on the ground that there exists no factual issues in dispute. The firm challenged the validity of the arbitration award on the ground that the award is not confirmed by the court of competent jurisdiction. On these objections and challenges the hearing officer gave his verdict that the firm’s obligation to pay the arbitration award is absolute and for this no confirmation is needed from any judiciary. Further, he gave his decision on 25th November 2002 that the firm’s registration will get suspended in case the firm fails to honor the arbitration award in terms of Rule 10330(h) of the Code of Arbitration Procedure. This decision was communicated by NASD to the respondents on the same day basing on the address available at the NASD Central Registration Depository System (CRD).

However, the address to which the suspension order was mailed for the respondents was proved to be wrong address. This came to limelight when one of the NASD staff contacted Huang, who provided with an updated address of the firm. The suspension order was then sent to this address in the name of Huang and firm through courier on 2nd December 2002. On 3rd December, the Federal Express through which the courier was dispatched confirmed the delivery of the same to the firm and Huang.

There exists a conclusive proof that during the period, December 2002 – 14th January 2003, the firm conducted retail and proprietary trading business despite being suspended by NASD. To this, the respondents claimed that they did not receive any notice of the Firm’s suspension until 14th January 2003. The date on which the NASD staff during their on-site audit told the respondents

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that the firm’s membership with NASD got suspended. Reacting to this, Xu, the respondent, asked the firm’s compliance officer to stop operating the firm’s securities business. NASD was communicated about the same.

On 19th February 2004, NASD staff made a formal request to Huang for submission of information and documentation, which became necessary in course of NASD investigation into the affairs of the firm. The request also includes that in case of failure to provide the requisite information or documents then Huang be taken into disciplinary action. This request was made in terms of NASD Rule 8210. On 8th March 2004, NASD received a response letter from Huang. But, the response letter did not provide all the requisite information mentioned in the formal request. For example, when NASD, asked for a copy of the supervisory procedures undergone during December 2002 – January 2003, Huang replied in his letter that during this period the firm was in the process of closing down its business and discussed her duties in this regard.

In spite of giving several opportunities of being heard, the Huang and his Firm failed to honor the formal requests. Towards this, the Department of Enforcement, NASD, (appellant) on 29th June 2004 filed a three-cause complaint against the respondents.

The complainant contended on this complaint that Perpetual Securities, respondent, violated Conduct Rule 2110 of NASD because it conducted its securities business even after its registration suspended by NASD. Xu and Huang, respondent no.1 & 2, knew or had reason to know of the Suspension Decision and that they violated NASD Conduct Rule 2110 by allowing Perpetual Securities to conduct a securities business during its suspension. Huang, respondent no. 2, did not respond to NASD staff-issued requests for information dated 18th March and 7th April, 2004, in violation of NASD Procedural Rule 8210 and NASD Conduct Rule 2110. And, default on the part of the respondents to appear at the pre-hearing conferences, dated 27th January and 14th February 2005.

To this, the respondents denied that the firm had conducted any trade during such period, they had received any written notification that NASD had suspended the firm, and there was a failure on the part of Huang to respond to Enforcement’s request for information. However, they accepted the allegation that the Firm conducted the securities business during the suspension period but made a contention that the hearing officer was biased in his decision-making.

On the contentions of the parties and the facts of the case, the court observations in this regard are

- Huang, respondent no.1, provided the information but not exactly as requested by the NASD. She did not exhibit her inability to provide such requested information. Further, her responses to most of the requests were not timely. Because she responded to them after the appellant filed a complaint in this matter. Thus, it was a conclusive proof that Huang, respondent no. 2, failed to provide the requested information in a complete and timely manner.

  The evidence demonstrates that Huang received a proper notice of the requests and as an associated person of NASD she was obliged to comply with the notice.

- The respondents contended that the performance and the decision of the hearing officer was biased. This was not proved with substantial evidence as it was observed that his approach towards the case was on par with the rights and powers entrusted to him by the NASD Procedure Rules.
Huang and XU, respondents no.1 & 2, failed to show good cause for not attending either the pre-hearing or hearing conferences. This was observed to be misconduct on the part of the respondents.

There is a record proof exhibiting that the perpetual securities, respondent, had conducted its securities business even after NASD passed an order suspending its business. The record also establishes that a proper notice to this extent was properly served on the Firm’s counsel. Thus, there exists a violation of Conduct Rule 2110 by the Firm, Xu and Huang.

On the basis of its observations, the National Adjudicatory Council, NASD held that “We affirm the Hearing Officer’s findings that the Firm conducted a securities business while suspended and that Xu and Huang permitted the Firm to conduct a securities business while suspended, in violation of Conduct Rule 2110. We find that Huang failed to respond to requests for documents and information timely and fully, in violation of Procedural Rule 8210 and Conduct Rule 2110. We order that the firm be expelled for conducting a securities business while suspended. We also order that Xu and Huang be barred in all capacities from associating with any NASD member for permitting the Firm to conduct a securities business while suspended. We also impose a bar in all capacities against Huang for failing to respond to NASD staff requests for information. The bars and expulsion will be effective immediately upon service of this decision”.

To conclude, the case was rightly adjudicated because no one is above law. Every one is bound to respect law. The respondent contravened the NASD rules several times in the given case. The respondents made an attempt to hide the actual facts of the case by giving false and inappropriate information, and many a times did not abide to the technicalities of the law involved.