

BEFORE THE NATIONAL ADJUDICATORY COUNCIL
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of

Department of Enforcement,

Complainant,

vs.

Charles A. Laverty
Newport Beach, CA,

Respondent.

DECISION

Complaint No. 2016050205901

Dated: December 22, 2020

Registered representative borrowed \$1.35 million from customers without notifying his firms or obtaining firm approval, falsified a firm compliance questionnaire and heightened supervision attestation, provided false testimony to FINRA, and willfully failed to disclose an unsatisfied judgment and tax lien on his Form U4. Held, findings and sanctions affirmed.

Appearances

For the Complainant: Joel T. Kornfeld, Esq., Douglas M. Ramsey, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Charles A. Laverty, Pro Se

Decision

Charles A. Laverty appeals a Hearing Panel decision issued on November 13, 2018. The Hearing Panel found that Laverty violated: (1) FINRA Rules 3240 and 2010 by borrowing a total of \$1.35 million in a series of eight loans from his customers without notifying, or receiving approval of the arrangements from, his employer firms; (2) FINRA Rule 2010 by providing false statements on his firm's compliance questionnaire and heightened supervision attestation; (3) FINRA Rules 8210 and 2010 by providing false testimony to FINRA about the loans during his on-the-record ("OTR") interview; and (4) FINRA Rules 1122 and 2010, and Article V, Section 2(c) of FINRA's By-Laws, by willfully failing to disclose on his Uniform Application for Securities Industry Registration or Transfer ("Form U4") material information related to an unsatisfied judgment and a federal tax lien. For his misconduct, the Hearing Panel barred Laverty for the undisclosed and unapproved loans with customers and false statements on his firm's compliance questionnaire and heightened supervision attestation. The Hearing Panel separately barred Laverty for his false testimony to FINRA. Lastly, the Hearing Panel assessed a nine-month suspension and \$15,000 fine for Laverty's Form U4 violations, but it declined to impose the sanctions given the bars imposed under the other causes of action.

On appeal, Laverty does not challenge the Hearing Panel's liability findings. Rather, he claims that FINRA staff treated him unduly harsh during the disciplinary proceeding and the Hearing Panel's sanctions are unwarranted. After an independent review of the record, we affirm the Hearing Panel's findings and sanctions.

I. Background

Laverty entered the securities industry in 2004. From October 2010 to February 2015 (the "Relevant Period"), Laverty consecutively was a registered representative at four brokerage firms: UBS Financial Services, Inc. ("UBS"), Oppenheimer & Co. Inc. ("Oppenheimer"), Calton & Associates, Inc. ("Calton"), and TCFG Wealth Management, LLC ("TCFG"). His latest employer, TCFG, terminated Laverty's registration on October 15, 2015. Since his termination, Laverty has not associated with a FINRA member firm.

II. Procedural History

On June 2, 2016, UBS filed an amended Uniform Termination Notice for Securities Industry Registration ("Form U5"), reporting that Laverty allegedly improperly solicited and accepted loans from RO and AO, an advanced aged married couple who were Laverty's customers. FINRA thereafter commenced its investigation.

On April 25, 2018, the Department of Enforcement ("Enforcement") filed a four-cause complaint against Laverty. Cause one alleged that, during the Relevant Period, Laverty contravened each of his firm's policies and borrowed \$1.35 million from customers RO and AO without disclosing the loans to his firms or obtaining his firms' approval, in violation of FINRA Rules 3240 and 2010. Cause two alleged that Laverty made false statements on an annual compliance questionnaire he submitted to Calton, and prior to that, a heightened supervision attestation he provided to Oppenheimer, in violation of FINRA Rule 2010.

Cause three alleged that Laverty provided false and misleading testimony to FINRA during his OTR interview when he denied borrowing money from any customers other than those identified during FINRA's investigation, and denied knowing the identity of an individual referenced in an August 2013 note given to him by a former customer, in violation of FINRA Rules 8210 and 2010. Lastly, cause four alleged that Laverty willfully failed to amend his Form U4 to disclose a judgment and tax lien, in violation of FINRA Rules 1122 and 2010, and Article V, Section 2(c) of FINRA's By-Laws.

On May 23, 2018, Laverty answered the complaint largely admitting to Enforcement's allegations. Laverty admitted he borrowed \$1.35 million from customers RO and AO in contravention of UBS's, Oppenheimer's, Calton's, and TCFG's written policies. Laverty also admitted that he lied on his annual compliance questionnaire and a heightened supervision attestation that he submitted to Calton and Oppenheimer, respectively, concerning his loans from customers. He admitted that his responses during his OTR interview related to his loans from

other customers were false.¹ And Lavery admitted that he failed to update his Form U4 to report his outstanding judgment and tax lien. Notwithstanding these admissions, Lavery asserted several defenses and denied that his conduct violated FINRA's rules.

The Hearing Panel held a hearing on October 15, 2018. Lavery did not testify at or attend the hearing, but his counsel was present. The Hearing Panel heard testimony from two of Enforcement's witnesses: RO and AO's son, DO, and a FINRA principal examiner. Lavery's counsel presented no defense at the hearing, filed no pre-hearing briefs, called no witnesses, and offered no exhibits into evidence. The Hearing Panel found that Lavery engaged in the misconduct alleged in the complaint and barred him for the misconduct. This appeal followed.

III. Facts

A. Customers RO and AO

Lavery met RO and AO in 2008 through RO's close friend, EL. RO and AO opened brokerage accounts at Lavery's member firms and were his customers.² RO was a retired physician, and he and his wife, AO, lived in California. When they met, Lavery was associated with Oppenheimer and maintained an office a short distance from RO and AO's residence. Lavery established a "near-familial" relationship with RO and AO. He dined with the couple frequently, attended holiday celebrations, and spoke with RO almost daily. During the Relevant Period, RO went on dialysis and his eyesight began failing him because of macular degeneration. Therefore, as DO testified, AO became "his eyes pretty much." AO also had a pacemaker implanted. When RO and AO first loaned money to Lavery, RO was 90 years old, and AO was 81 years old. AO died in September 2016. RO died in April 2017.

B. Lavery Borrows \$1.35 Million from Customers RO and AO Without Notifying His Firms or Obtaining Firm Approval

1. Lavery Borrows \$750,000 and Submits a False Compliance Questionnaire During His Association with UBS

Lavery became associated with UBS as a registered representative in May 2010. Shortly thereafter, RO and AO opened an account at UBS and became Lavery's customers. UBS had written policies that prohibited any employee from borrowing money from or lending money to any client, except in instances involving immediate family members or financial institutions in the business of lending money. For both exceptions, UBS required prior written approval by a manager in consult with the firm's legal or compliance department.

¹ As we further discuss in Part III.D. below, at a later OTR interview conducted in May 2017, Lavery also admitted that he falsely testified to FINRA about not knowing the identity of an individual in the August 2013 note.

² According to an application that RO and AO submitted to Oppenheimer in 2011 to open a securities account for a family trust, RO and AO had a net worth of \$10 million and an annual income of \$500,000.

On October 15, 2010, Lavery borrowed \$550,000 from RO and AO, which was the first loan.³ Lavery testified that he needed the money to prevent a foreclosure on his house. RO and AO thereafter extended three additional loans to Lavery: \$85,000 on February 11, 2011; \$50,000 on July 20, 2011; and \$65,000⁴ on November 3, 2011. Lavery borrowed a total of \$750,000 from RO and AO while at UBS.

Lavery did not disclose these loans to UBS. Nor did he receive written approval from the firm before he borrowed the funds. To the contrary, in January 2011, three months after Lavery borrowed the \$550,000 from RO and AO, he submitted an annual compliance questionnaire to UBS. The questionnaire asked, “Have you borrowed money from, loaned money to, put up collateral for, or guaranteed a loan from any client or employee of UBS . . . (NOT including an immediate family member)?” Lavery falsely answered “No.”⁵

2. Lavery Borrows \$155,000, and Submits Two False Compliance Questionnaires and a False Heightened Supervision Attestation During His Association with Oppenheimer

Lavery terminated his employment at UBS on November 3, 2011. He thereafter associated with Oppenheimer as a registered representative. Within a few days of Lavery’s employment, RO and AO opened accounts at Oppenheimer. Like UBS, Oppenheimer’s written policies prohibited any employee from borrowing money from, or lending money to, any client, with limited exceptions for immediate family members and lending amongst employees, which required prior written approval by a branch or department manager and the firm’s compliance department.

While at Oppenheimer, Lavery borrowed money from RO and AO on two separate occasions. On December 13, 2011, Lavery received his fifth loan from RO and AO in the amount of \$75,000. On October 4, 2013, Lavery borrowed an additional \$80,000. Lavery neither notified Oppenheimer of the loans, nor did he obtain the firm’s written approval.

In August 2012 and August 2013, respectively, Lavery submitted an annual compliance questionnaire to Oppenheimer. Each questionnaire asked, “Have you made loans to or borrowed from any customer?” Lavery falsely answered, “No.”

In December 2013, Oppenheimer discovered that Lavery received two loans from a firm customer, JA. Oppenheimer suspended Lavery for seven calendar days and placed Lavery on

³ RO and AO provided each loan to Lavery in the form of a handwritten bank check.

⁴ RO and AO wrote two checks to Lavery for \$30,000 and \$35,000 on the same day, November 3, 2011.

⁵ Enforcement did not charge Lavery with providing false compliance questionnaires to UBS in 2011, and to Oppenheimer in 2012 and 2013 because, as discussed in Part III.D below, FINRA cited these violations in a prior settled case against Lavery.

heightened supervision in January 2014. While on heightened supervision, Oppenheimer required Laverty to attest on a monthly basis that he had not borrowed money from any Oppenheimer customer. Laverty completed one heightened supervision attestation during his employment at Oppenheimer. On February 6, 2014, Laverty attested that he had not “borrowed nor loaned any monies to or from any of [his] clients nor any other Oppenheimer clients to the best of [his] knowledge.” His attestation, however, was false. Just four months prior, in October 2013, Laverty had borrowed \$80,000 from RO and AO, and \$75,000 from the couple in December 2011.

3. Laverty Borrows \$45,000 and Submits a False Compliance Questionnaire During His Association with Calton

Laverty terminated his registration with Oppenheimer on March 17, 2014. He then associated with Calton as a general securities representative. Soon after his association with Calton, RO and AO transferred their Oppenheimer accounts to Calton. Calton’s written supervisory procedures prohibited loans between customers and its registered employees unless the customer was an immediate family member, a financial institution in the business of loaning money, or the lending arrangement was based on a business relationship outside of the firm’s broker and customer relationship. The exceptions, however, required a written request and approval by the firm’s chief compliance officer.

On May 19, 2014, Laverty received his seventh loan from RO and AO in the amount of \$45,000. Laverty never notified Calton of the loan from his customers, nor did he obtain written approval from the firm.

In October 2014, Laverty completed a Calton annual compliance questionnaire. He certified in the questionnaire that his responses to the questions provided therein were “true and accurate.” The compliance questionnaire asked, “Since Your last report, have you solicited or accepted a loan from or made a loan to a client for any reason?” to which Laverty answered “No.” His answer was false because five months prior to submitting the questionnaire, he borrowed \$45,000 from RO and AO. The questionnaire further asked, “Since Your last report, have any judgments been entered against you?” Laverty answered “No” even though he was the subject of a civil judgment entered in May 2014 by the Superior Court of California, County of Riverside, for \$114,456.25.

4. Laverty Borrows \$400,000 During His Association with TCFG

On February 18, 2015, Laverty ended his employment at Calton and associated with TCFG as a general securities representative. A few days later, RO and AO opened accounts at the firm with Laverty as their registered representative. TCFG’s written supervisory procedures prohibited its registered persons from entering any lending arrangement with a customer, with no exception. On February 27, 2015, the same day that RO and AO became TCFG customers, Laverty borrowed \$400,000 from the couple. By the time Laverty obtained his eighth loan, RO was 94 years old, on dialysis, and nearly blind because of severe macular degeneration. AO was 85 years old, had two heart pacemakers, and required a hip replacement.

C. Laverty Fails to Repay RO and AO

Laverty signed a \$1.4 million secured promissory note (“Note”),⁶ dated February 25, 2015, for the eight loans that RO and AO extended to him. According to the Note, Laverty promised to repay RO and AO the principal sum of \$1.4 million in 12 consecutive monthly installments of \$100,000, with a final payment of all sums remaining unpaid due on or before June 30, 2016.⁷ Laverty, however, made none of the monthly payments.

In early 2015, DO testified that he and his wife found a copy of the Note which confirmed that his parents had loaned large sums of money to Laverty. DO was “flabbergasted” and already suspicious of Laverty because he visited his parents often. DO testified that he thought Laverty’s behavior towards his parents was “odd” because “nobody is this nice.”

After DO pressed Laverty to repay the loans to his parents, Laverty wrote two bad checks to RO and AO in the amounts of \$150,000 and \$200,000. Laverty’s \$150,000 check, dated March 8, 2016, bounced twice. About a week later, Laverty wrote another check in the amount of \$200,000, dated March 16, 2016, but told RO and AO not to deposit it because he did not have the funds to honor the check.

Laverty did not make any payments under the Note. In April 2016, he nonetheless told RO and AO in writing that he would repay them “in full” by late June 2016. Shortly thereafter, Laverty wrote to RO and AO a second time, stating that he would pay them in full even though “you both know I didn’t do anything wrong.” Laverty paid them nothing.

On May 3, 2016, RO and AO filed a Statement of Claim with FINRA Dispute Resolution against Laverty, UBS, Oppenheimer, Calton, and TCFG, seeking compensatory damages of \$1.5 million and other fees and costs.⁸ The Form U5 amendment that UBS filed on June 2, 2016, disclosing RO and AO’s claim was the first time FINRA learned about Laverty’s loan from RO and AO. On the day before RO and AO filed their claim, Laverty repaid RO and AO \$10,000 by cashier’s check. The couple died before their claim was resolved.

By July 2017, Laverty’s former firms settled RO and AO’s claim with DO as successor in interest to the family trust, collectively agreeing to pay \$1 million.⁹ That same month, just three

⁶ The Note was secured by certain assets of Laverty in accordance with a separate security agreement, dated March 15, 2015. The security agreement, however, is not included in the record. A FINRA principal examiner testified that, when FINRA staff asked Laverty to produce the security agreement, Laverty was unaware of it.

⁷ Interest on the unpaid principal balance of the Note was payable at a six percent rate per annum. The record does not explain why the Note is for \$1.4 million instead of \$1.35 million.

⁸ The \$1.5 million includes an additional \$150,000 that RO and AO loaned Laverty in February 2016, after his FINRA registration had terminated.

⁹ UBS paid RO and AO \$405,000; Oppenheimer paid \$95,000; Calton paid \$125,000; and TCFG paid \$375,000.

days before the arbitration hearing was scheduled to begin on July 31, 2017, DO settled RO and AO's claim against Laverty. Laverty agreed to pay \$677,500, by no later than June 30, 2018; an additional \$30,000, in forbearance interest by no later than August 4, 2017; and an additional \$37,000, in forbearance interest by no later than December 15, 2017. Laverty, however, failed to pay in accordance with the settlement agreement. According to DO's testimony, apart from one payment of \$8,000, Laverty made no other payments as agreed.¹⁰

D. Laverty's History of Borrowing from Customers and False Testimony to FINRA Concerning His Loans with Customers

Laverty has improperly borrowed money from customers in the past. In May 2012, FINRA issued a cautionary action letter against Laverty for borrowing \$20,000 from a firm customer, BT, without disclosing the loan to UBS in violation of FINRA Rule 3240.¹¹ The cautionary action letter warned that FINRA's action "will be taken into consideration" in the event of future violations.

In January 2014, FINRA commenced an investigation after learning that Oppenheimer had suspended Laverty for borrowing money from customer JA. Laverty settled the case in December 2015. FINRA suspended Laverty in all capacities for 18 months and fined him \$5,000 ("2015 AWC").

The 2015 AWC included findings that Laverty violated FINRA Rules 3240 and 2010 when he borrowed over \$1.2 million between 2009 and 2013 from two married couples (HG and AG, and EL and LL) who were his customers,¹² and \$32,500 in 2013 from customer JA in contravention of UBS's and Oppenheimer's policies. In addition, the 2015 AWC found that Laverty submitted false annual compliance questionnaires to UBS in 2011, and Oppenheimer in 2012 and 2013. On the questionnaires, Laverty falsely denied borrowing money from his customers and falsely claimed that he had made all the required disclosures of outstanding judgments and liens filed against him on his Form U4. Lastly, the 2015 AWC found that

¹⁰ On December 12, 2017, FINRA suspended Laverty indefinitely for his failure to comply with the terms of "an arbitration award or settlement agreement."

¹¹ Like the Hearing Panel, we do not consider the cautionary action letter against Laverty for purposes of determining sanctions because it was an informal FINRA action. *See infra* n.20.

¹² In October 2014, HG and AG, and LL (LL's husband, EL, died in 2013) filed an arbitration claim against Laverty, Oppenheimer, and UBS. The claimants alleged, among other things, that Laverty solicited and induced them to loan him approximately \$690,000 while he was employed at Oppenheimer, and approximately \$516,000 while he was employed at UBS. The arbitration claim was the first instance that Oppenheimer and UBS had learned that Laverty borrowed from customers HG, AG, EL, and LL. In May 2017, the arbitration panel ordered Oppenheimer and Laverty to pay the claimants, jointly and severally, nearly \$1 million in compensatory damages and fees, plus interest. The panel further ordered that Laverty solely pay the claimants \$463,804.81 in compensatory damages and fees, plus interest.

Laverty willfully failed to disclose two unsatisfied judgments in 2010 and 2012 on his Form U4.¹³

During FINRA's investigation that led to the 2015 AWC, Laverty appeared for an OTR interview on July 16, 2015, pursuant to FINRA Rule 8210 ("July 2015 OTR"). At the July 2015 OTR, in addition to asking Laverty about loans he received from HG, AG, EL, LL, and JA, FINRA staff also asked, "Mr. Laverty, did you borrow from any other customers?" Laverty falsely replied, "No." The staff further probed, "Just the three customers [HG, AG, EL, LL, and JA] we've gone over today?" Laverty falsely responded, "Yes." Laverty's responses were false because, at the time of the July 2015 OTR, he had already borrowed \$1.35 million from RO and AO and signed the \$1.4 million Note for his repayment of the loans.

During the July 2015 OTR, Laverty also falsely denied knowing that a reference to a "Bob" concerned customer RO who had already loaned Laverty more than a million dollars. In particular, the FINRA staff asked Laverty about an August 2013 typed note he received from EL from whom he had borrowed money. The note referenced overdue loans from EL, HG, and "Bob." In the note, EL addressed the "overdue nature of the loans" to Laverty by proposing an extension of time to repay the money owed to him and requesting that Laverty prioritize the repayment of loans he received from HG and "Bob." Laverty knew that "Bob" was in fact RO, but falsely testified that he did not know who "Bob" was.

On May 3, 2017, Laverty testified at an OTR pursuant to FINRA Rule 8210 during the investigation that gave rise to this disciplinary proceeding ("May 2017 OTR"). FINRA staff questioned him about the testimony he provided two years earlier, during the July 2015 OTR. At the May 2017 OTR, Laverty admitted that he knew "Bob" was RO but had concealed that fact from the staff. Laverty's false and deceptive answers during his July 2015 OTR delayed FINRA's investigation of his multiple loans from RO and AO for at least a year.

E. Laverty Fails to Disclose a Judgment and Tax Lien on His Form U4

1. The Security Bank of California Judgment

On May 22, 2014, the Superior Court of the State of California for Riverside County entered a judgment against Laverty for \$114,456.24 in a civil suit brought by Security Bank of California ("Security Bank") for his failure to repay a \$100,000 short-term loan. On October 29, 2014, Security Bank filed an acknowledgment of satisfaction of judgment reporting that Laverty had paid the judgment in full. When the court entered the judgment, Laverty was associated with Calton, but he never amended his Form U4 to disclose the Security Bank judgment.

¹³ The first judgment against Laverty was entered in the amount of \$493,175.15 on May 20, 2010. By the time Oppenheimer received an earnings withholding order in connection with the judgment, the remaining balance outstanding was \$87,199.98. The second judgment was entered against Laverty on October 19, 2012. When Oppenheimer learned of the judgment in January 2014, the remaining amount outstanding was \$59,600.87.

On October 8, 2014, Lavery completed an annual compliance questionnaire. The Calton questionnaire asked, "Since your last report, have any judgments been entered against you?" Lavery replied "No," even though the Security Bank judgment was outstanding since May 2014. Lavery falsely replied to the Calton compliance questionnaire.

2. Federal Tax Lien (February 2015)

On February 26, 2015, the Internal Revenue Service ("IRS") recorded a tax lien against Lavery in the amount of \$63,410.90 in Orange County, California. At the time, Lavery was registered with TCFG. Although Lavery admitted that he knew about the IRS tax lien, he never amended his Form U4 to disclose it. In fact, in April 2015, Lavery amended his Form U4 to report that he satisfied an outstanding judgment awarded to UBS due to an employment dispute, but he did not report the unsatisfied tax lien that the IRS recorded just two months prior.

Before the entry of the Security Bank judgment and federal tax lien, Lavery acknowledged to FINRA that he understood he had an obligation to disclose judgments and liens on Form U4. In April 2014, Lavery responded in writing to a FINRA request for information made pursuant to FINRA Rule 8210. Lavery explained that he "now understands and recognizes the disclosure obligations imposed on him as a FINRA registered representative." Despite this statement, Lavery failed to disclose the Security Bank judgment entered against him only a month later and the federal tax lien recorded in February 2015.

IV. Discussion

A. Lavery Obtained Several Loans from Customers RO and AO Without Notifying His Member Firms or Obtaining His Member Firms' Approval (Cause One)

Under the first cause of action, the Hearing Panel found that Lavery violated FINRA Rules 3240 and 2010 by borrowing from firm customers RO and AO without prior notification and firm approval. We affirm these findings.

FINRA Rule 3240 prohibits associated persons in any registered capacity from borrowing funds from a customer unless the person's firm has a written procedure allowing such borrowing and the arrangement meets certain conditions provided in the rule.¹⁴ See FINRA Rule 3240(a). A permissible lending or borrowing arrangement requires that the associated person notify and receive written approval by the employing firm before he or she enters such arrangement.

¹⁴ Specifically, a permissible lending arrangement must meet one of the following conditions: (1) the customer is a member of the registrant's immediate family; (2) the customer is a financial institution regularly engaged in the business of providing or extending credit, financing, or loans in the ordinary course of business; (3) the customer and registrant are both registered persons of the same member; (4) the arrangement is based on a personal relationship with the customer, such that the loan would not have been solicited, offered, or given had the customer and the registrant not maintained a relationship outside of the broker-customer relationship; or (5) the arrangement is based on a business relationship outside of the broker-customer relationship. See FINRA Rule 3240(a)(2)(A)-(E).

FINRA Rule 3240(b). A violation of FINRA Rule 3240 is inconsistent with just and equitable principles of trade and violates FINRA Rule 2010. *John Edward Mullins*, Exchange Act Release No. 66373, 2012 SEC LEXIS 464, at *44 n.45 (Feb. 10, 2012).

It is undisputed that, from October 2010 to February 2015, Lavery borrowed a total of \$1.35 million comprised of eight loans he obtained from his customers RO and AO. UBS, Oppenheimer, Calton, and TCFG had written procedures that expressly prohibited its registered employees from borrowing from any customers except under limited circumstances and only with prior written permission by the firm. In contravention of these procedures, Lavery failed to notify each firm of the loans he received from customers RO and AO and obtain written approval from the firm before he borrowed the money.

Lavery does not dispute that he borrowed the funds from RO and AO without notifying his member firms. On appeal, he claims that RO and AO were friends and “[t]here were no securities violations, except for I didn’t report it to the brokerage house.” Lavery appears to be relying on a condition under FINRA Rule 3240(a)(2)(D) that permits lending arrangements between brokers and customers if such arrangement is based on a personal relationship. For such an arrangement to be permissible, however, FINRA Rule 3240 requires that the associated person receive written approval from his employer firm *before* any money is exchanged. We acknowledge, as did the Hearing Panel, that Lavery and RO and AO had a close, “near-familial” relationship. Nevertheless, Lavery was obligated to notify his firms and obtain written approval before obtaining each loan from RO and AO. He failed to provide the requisite notice, failed to obtain the required approval, and thereby violated FINRA Rules 3240 and 2010.¹⁵ *See Mullins*, 2012 SEC LEXIS 464, at *43 (finding applicants violated NASD Rule 2370, the predecessor to FINRA Rule 3240, for borrowing funds from a customer without the firm’s approval).

B. Lavery Submitted a False Compliance Questionnaire and Heightened Supervision Attestation to His Employing Member Firms (Cause Two)

Under the second cause of action, the Hearing Panel found that Lavery violated FINRA Rule 2010 when, in February 2014, he failed to state he had borrowed from customers on Oppenheimer’s heightened supervision attestation form and, in October 2014, falsely stated on Calton’s annual compliance questionnaire that he had not borrowed from customers and had no judgments entered against him. Lavery has admitted that he committed these violations. We affirm the Hearing Panel’s findings.

“It is a basic duty of all securities professionals to respond truthfully and accurately to their firm’s requests for information.” *Id.* at *45. A false statement on a compliance questionnaire violates the ethical standards of FINRA Rule 2010, “especially when the purpose of the information request is to help to ensure that the associated person is in compliance with applicable laws, rules, and policies.” *Id.*; *see also Allen Holeman*, Exchange Act Release No.

¹⁵ FINRA Rule 2010 requires members in the conduct of their business to “observe high standards of commercial honor and just and equitable principles of trade.” FINRA Rule 2010 applies to Lavery through FINRA Rule 0140(a), which provides that a person associated with a member shall have the same duties and obligations as a member. Lavery’s violation of FINRA Rule 3240 also violated FINRA Rule 2010. *See Mullins*, 2012 SEC LEXIS 464, at *44 n.45.

86523, 2019 SEC LEXIS 1903, at *30-31 (July 31, 2019) (finding that respondent's false statements on annual compliance certification violates FINRA Rule 2010), *appeal docketed*, No. 19-1251 (D.C. Cir. Nov. 26, 2019); *Richard Allen Riemer, Jr.*, Exchange Act Release No. 84513, 2018 SEC LEXIS 3022, at *17-18 (Oct. 31, 2018) (same); *Bernard G. McGee*, Exchange Act Release No. 80314, 2017 SEC LEXIS 987, at *40-41 (Mar. 27, 2017) (same), 733 F. App'x 571 (2d Cir. 2018).

While on heightened supervision, Oppenheimer required Laverty to declare on a monthly basis that he had not borrowed from any firm customer. Laverty admits that, on February 6, 2014, he attested that he had not borrowed money from any Oppenheimer customer even though, four months earlier he borrowed \$80,000 from RO and AO, and in December 2011, RO and AO loaned him \$75,000. Moreover, in October 2014, Laverty completed Calton's annual compliance questionnaire, in which he falsely denied accepting loans from firm customers for any reason and falsely stated that he did not have any judgments entered against him. Despite these representations, five months before he submitted the Calton compliance questionnaire, Laverty received a \$45,000 loan from RO and AO, and the Superior Court of California entered a civil judgment against him in the amount of \$114,456.25 for his failure to repay a \$100,000 promissory note. We therefore affirm the Hearing Panel's findings that Laverty's false statements made to Oppenheimer and Calton violated FINRA Rule 2010.

C. Laverty Provided False Testimony to FINRA Regarding His Loans from RO and AO (Cause Three)

We affirm the Hearing Panel's uncontested findings under the third cause of action that Laverty provided false testimony to FINRA during his July 2015 OTR, in violation of FINRA Rules 8210 and 2010.

FINRA Rule 8210 requires members and persons associated with a member to provide FINRA with information orally, in writing, or electronically, and to testify at a location specified by FINRA staff under oath or affirmation with respect to any matter involved in an investigation, complaint, examination, or proceeding. *See* FINRA Rule 8210. "An associated person who provides false or misleading information to [FINRA] in the course of an investigation violates [FINRA] Rule 8210." *See Geoffrey Ortiz*, Exchange Act Release No. 58416, 2008 SEC LEXIS 2401, at *23 (Aug. 22, 2008). A violation of FINRA Rule 8210 also constitutes a violation of FINRA Rule 2010. *Id.*

On July 16, 2015, Laverty testified under oath about his alleged loans from customers but failed to respond truthfully. Laverty received eight loans for more than four years, borrowing a total of \$1.35 million from RO and AO. Yet, when FINRA staff asked Laverty at the July 2015 OTR whether he had borrowed money from anyone else besides customers HG and AG, EL and LL, and JA, Laverty blatantly answered, "No." When asked a second time, Laverty, again, falsely confirmed that he had borrowed only from the customers HG, AG, EL, LL, and JA.

During the July 2015 OTR, FINRA staff asked about a "Bob" reference in an August 2013 note that Laverty received from EL. When FINRA staff asked, "So you don't know who Bob is?" Laverty falsely replied, "No. I don't." Laverty later admitted during the May 2017 OTR that he in fact knew that "Bob" was RO, and there was never any question in his mind who "Bob" was. Before his July 2015 OTR began, Laverty confirmed under oath that he understood his obligation to answer all questions asked of him truthfully. He also stated that he understood

the failure to answer the staff's questions "completely and truthfully" would be a violation of FINRA Rule 8210. Nevertheless, Laverty falsely testified to FINRA under oath, in violation of FINRA Rules 8210 and 2010.

D. Laverty Willfully Failed to Amend His Form U4 (Cause Four)

Under the fourth cause of action, the Hearing Panel found that Laverty willfully failed to amend his Form U4 to report an unsatisfied civil judgment and federal tax lien in violation of FINRA Rules 1122 and 2010, and Article V, Section 2(c) of FINRA's By-Laws. We affirm these findings.

An associated person has an obligation under FINRA rules to keep their Form U4 "current at all times" and update required information on the form as changes occur but no later than 30 days after learning of the facts and circumstances that give rise to the reportable event. See Section 2(c) of Article V of the FINRA By-Laws. FINRA Rule 1122 provides that "[n]o member or person associated with a member shall file with FINRA information with respect to membership or registration which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or fail to correct such filing after notice thereof." The rule is intended to ensure that an associated person's Form U4 contains accurate, up-to-date information so that regulators, employers, and members of the public "have all of the material, current information about the registered representative with whom they are dealing." *Michael Earl McCune*, Exchange Act Release No. 77375, 2016 SEC LEXIS 1026, at *12 (Mar. 15, 2016), *aff'd*, 672 F. App'x 865 (10th Cir. 2016). Failing to timely amend a Form U4, violates FINRA Rule 1122. A violation of FINRA Rule 1122 also constitutes a violation of FINRA Rule 2010. *Dep't of Enforcement v. N. Woodward Fin. Corp.*, Complaint No. 2011028502101, 2016 FINRA Discip. LEXIS 35, at *35 (FINRA NAC July 19, 2016).

Laverty was the subject of a judgment entered on May 22, 2014, by the Superior Court of the State of California for Riverside County in the amount of \$114,456.24 for his failure to repay a short-term loan to Security Bank. Laverty was required to amend his Form U4 to report the unsatisfied judgment within 30 days, which he failed to do. Question 14.M on Form U4 asked, "Do you have any unsatisfied judgments or liens against you?" At the time of the Security Bank judgment, Laverty was associated with Calton. His initial Form U4 answered "No" to Question 14.M., and he never amended his Form U4 to reflect the judgment entered against him.

On February 26, 2015, the IRS recorded a tax lien against Laverty in the amount of \$63,410.90 in Orange County, California. At that time, Laverty was registered with TCFG but never amended his Form U4 to disclose the tax lien. Laverty even updated his Form U4 to report that he satisfied an outstanding judgment awarded to UBS, but he did not disclose that he had an outstanding federal tax lien recorded just two months prior.

Before entry of the Security Bank judgment and recorded IRS tax lien, Laverty had acknowledged to FINRA that he understood he had an obligation to disclose these items on his Form U4. In April 2014, Laverty responded to a FINRA Rule 8210 request concerning prior unsatisfied judgments and liens that he failed to report on his Form U4. In his response, Laverty assured FINRA staff that he "now underst[ood] and recognize[d] the disclosure obligations imposed on him as a FINRA registered representative." Despite his statement to FINRA, however, Laverty repeatedly failed to amend his Form U4 to report his financial condition within the requisite period, in violation of FINRA's By-Laws and rules.

Laverty's failure to update his Form U4 to reflect the judgment and tax lien constituted willful misconduct and the Security Bank judgment and federal tax lien were material disclosures. Therefore, Laverty is subject to statutory disqualification. *See* Section 3(a)(39)(F) of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(39)(F). Laverty was willful in his failure to amend his Form U4 to disclose his unsatisfied judgment and tax lien. It is undisputed that Laverty knew about the judgment and tax lien when they were entered and of his disclosure obligations, yet he voluntarily chose not to disclose them on his Form U4 notwithstanding FINRA's affirmative reporting requirement. *See Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (holding that the term "willful" means that the person with the duty knows what he is doing, but does not require that one know that he is breaking the law). This exceeds the recklessness standard that the Securities and Exchange Commission has acknowledged in *Holeman*. *See* 2019 SEC LEXIS 1903, at *37-43 (finding respondent acted at least recklessly in failing to update his Form U4 because he was aware of his outstanding tax liens and should have known of the danger that investors, employers, and regulators would be misled by failing to report them).

We also find that the Security Bank judgment and the IRS tax lien were material information that related to Laverty's financial condition. For purposes of the Form U4, a fact is material "if there is a substantial likelihood that a reasonable regulator, employer, or customer would have viewed it as significantly altering the total mix of information made available." *Louis Ottimo*, Exchange Act Release No. 83555, 2018 SEC LEXIS 1588, at *25-26 (Jun. 28, 2018). "[E]ssentially all the information that is reportable on the Form U4 is material." *Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at *47 (Nov. 9, 2012) (citations omitted). In this case, Laverty failed to update pertinent financial disclosures that FINRA requires an associated person to provide on the Form U4. Moreover, judgments and liens are material because they raise concerns about whether Laverty can be trusted as a securities professional to provide appropriate financial advice when dealing with the investing public. *See id.* (finding judgments, bankruptcies, and liens material because they cast doubt on an associated person's ability to manage his personal financial affairs and provide investors with appropriate financial advice). Laverty's willful failure to update his Form U4 to disclose an outstanding judgment and federal tax lien rendered against him constituted material omissions that violated Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010.

E. Laverty Received a Fair Proceeding

Laverty complains on appeal that he was "subjected to personal attacks by certain members of [FINRA]." The record provides that, three weeks before the hearing was scheduled to begin, Laverty, through counsel, moved to continue the hearing for nearly three months. Laverty declared in a sworn statement with an attached doctor's note that he was unable to attend the scheduled hearing for medical reasons, that he has dizzy spells every time he stands or walks, and that he would be "bed-bound for a while." Just before and after filing his motion, Laverty attended a medical symposium in San Diego, California, and thereafter gave a presentation in San Francisco to promote his start-up medical device company. Enforcement learned of the presentation from advertisements on Laverty's internet posts and his company's website. A FINRA investigator attended Laverty's presentation, which was open to the public, and

witnessed that, for about an hour, Lavery presented before an audience standing upright and speaking in a strong voice without coughing once.¹⁶

Lavery argues that the FINRA staff's conduct was unjustified. He explains that the staff "sneaked" into his presentation to make a judgment about his health even though he had not been registered as a FINRA representative for the past five years.¹⁷ According to Lavery, the staff's attendance at his presentation caused him to lose his employment and was a "personal assault" aimed at causing great harm to him. Lavery also claims that FINRA has distorted facts related to his previous loans from firm customers and spends much of his brief explaining those prior circumstances, which are not at issue in this appeal.

Our independent review of the record finds no evidence that Lavery was unjustly targeted or subjected to bias or selective prosecution. A successful claim of bias must show that Lavery was "singled out for enforcement action while others who were similarly situated were not" or that his "prosecution was motivated by arbitrary or unjust considerations such as his race, religion or the desire to prevent his exercise of a constitutionally protected right." *Brian Prendergast*, 55 S.E.C. 289, 312 (2001). None of the necessary factors to establish a claim of bias or selective prosecution is present here.

Lavery provides no evidence that the staff's attendance at Lavery's presentation caused him to lose his job. There is also no evidence that the FINRA staff mocked Lavery's medical condition or personally assaulted him. The photographs the FINRA investigator took during Lavery's presentation evidenced that he was not bedridden or medically incapacitated, in contrast to his representations in his request to postpone the hearing in this matter. Thus, Lavery's claims of bias and selective prosecution ring hollow.¹⁸

¹⁶ Lavery was the only speaker at the San Francisco event. During his presentation, Lavery mentioned that he had attended the five-day medical symposium in San Diego the preceding week.

¹⁷ Although Lavery is no longer registered as an associated person, FINRA retains jurisdiction to commence a disciplinary proceeding up to two years from the date a person ceases to be associated with a FINRA member, or as in this case, within two years of a former firm's filing of an amended Form U5 reporting alleged misconduct committed while the individual was associated with a FINRA member. *See* FINRA Bylaws, Article V, Section 4(a). UBS filed its amended Form U5 on June 2, 2016. The complaint, which alleges that Lavery committed misconduct while he was registered, was filed on April 25, 2018.

¹⁸ Lavery further argues that "FINRA publications and internet activity has been unjustified." FINRA, however, is required to release to the public information about disciplinary complaints alleging violations of its rules. *See* FINRA Rule 8313 ("Release of Disciplinary Complaints, Decisions and Other Information"); *see also* *Robert E. Strong*, Exchange Act Release No. 57426, 2008 SEC LEXIS 467, at *41-42 (Mar. 4, 2008) (rejecting applicant's argument that an NASD press release depicting the nature of the complaint against him was an "unfair punitive measure").

To the contrary, the record establishes that Laverty received a fair proceeding. A formal investigation commenced after FINRA discovered that Laverty received loans from additional customers. Laverty's alleged misconduct was plainly articulated in the complaint, and he largely admitted liability. He was afforded a fair opportunity to present evidence, witnesses, and arguments, and Laverty retained the counsel of his choosing to advocate in his defense. Despite the many protections afforded Laverty to ensure a fair hearing, Laverty did very little to mount any cognizable defense to Enforcement's complaint. He provided no pre-hearing submissions, and his counsel presented no evidence, called no witnesses, and declined to cross-examine Enforcement's witnesses at the hearing. Laverty received a fair proceeding, and any arguments to the contrary rests squarely with his litigation decisions. *Dep't of Enforcement v. Epstein*, Complaint No. C9B040098, 2007 FINRA Discip. LEXIS 18, at *98 (FINRA NAC Dec. 20, 2007) (rejecting respondent's argument that he was not afforded a fair disciplinary hearing because he "was given every opportunity to present his relevant defenses in accordance with NASD procedure"), *aff'd*, Exchange Act Release No. 59328, 2009 SEC LEXIS 217 (Jan. 30, 2009).

V. Sanctions

The Hearing Panel imposed a unitary sanction and barred Laverty in all capacities for causes one and two, which related to Laverty's loans from customers RO and AO and his misrepresentations to Oppenheimer and Calton on his firm's compliance certifications. The Hearing Panel imposed a second bar on Laverty for providing false testimony to FINRA during his July 2015 OTR as alleged in cause three. The Hearing Panel assessed a \$15,000 fine and nine-month suspension in all capacities for his Form U4 violations as alleged in cause four but declined to impose these sanctions in light of the bars. For the reasons discussed below, we affirm the Hearing Panel's sanctions.

A. Laverty Has Relevant Disciplinary History

In determining appropriate sanctions for Laverty's misconduct, we consulted FINRA's Sanction Guidelines ("Guidelines").¹⁹ Consistent with the Guidelines, Laverty's disciplinary history is relevant here as it demonstrates his recidivist conduct. *See Guidelines*, at 2 ("Sanctions imposed on recidivists should be more severe because a recidivist, by definition, already has demonstrated a failure to comply with FINRA's rules or the securities laws."). We consider that, pursuant to the 2015 AWC, Laverty was suspended for 18 months and fined \$5,000 for borrowing large sums of money from five other customers, making false statements on his firm's compliance questionnaires, and willfully failing to disclose two outstanding judgments on his Form U4, in violation of FINRA's rules—i.e., identical misconduct that occurred in this

¹⁹ *See FINRA Sanction Guidelines* (2018), https://www.finra.org/sites/default/files/2018_Sanctions_Guidelines.pdf [hereinafter *Guidelines*]. We applied the relevant Guidelines in effect at the time of Laverty's appeal to the NAC and considered the Guideline applicable to the violation, the General Principles Applicable to All Sanction Determinations, and the Principal Considerations in Determining Sanctions.

proceeding.²⁰ *Guidelines*, at 3 (recommending higher sanctions when disciplinary history includes significant past misconduct that is like the misconduct at issue or shows a pattern of, among other things, disregarding regulatory requirements).

B. Borrowing Funds from Customers and False Statements to Member Firms

In examining relevant Guidelines, we aggregate Laverty's misconduct related to his loans from customers RO and AO and his misrepresentations about those loans on his firm's compliance forms. For improper borrowing from customers, the Guidelines instruct us to consider a fine between \$2,500 to \$73,000, and a suspension for a period up to three months.²¹ Where aggravating factors predominate, however, the Guidelines recommend a longer suspension of up to two years or a bar.²²

For recordkeeping violations, the Guidelines recommend a fine of \$1,000 to \$15,000, and suspending individuals in any or all capacities for up to three months.²³ When aggravating factors predominate, the Guidelines instruct us to consider a fine of \$10,000 to \$146,000 (or higher where significant aggravating factors predominate) and a lengthier suspension of up to two years or a bar.²⁴

For the falsification of records, the Guidelines recommend a fine between \$5,000 and \$146,000 and a suspension of 10 business days to two years, depending on whether the

²⁰ For purposes of determining sanctions, we do not consider the May 2012 cautionary action letter because it was an informal FINRA action. *See Guidelines*, at 9. We also do not consider the May 2017 arbitration award against Laverty. FINRA revised its Guidelines in May 2018 by amending General Principles Applicable to All Sanction Determinations, No. 2, instructing adjudicators to consider customer-initiated arbitrations that result in adverse arbitration awards or settlements when assessing sanctions. These revisions, however, applied only to complaints filed beginning June 1, 2018. *See id.* at 2-3; *see also FINRA Regulatory Notice 18-17* (May 2018), <http://www.finra.org/industry/notices/18-17>. Enforcement filed its complaint against Laverty on April 25, 2018, before the new guidance went into effect.

²¹ *Guidelines*, at 77.

²² *Id.*

²³ *Id.* at 29. The Guidelines do not specifically address the violation of making false statements on firm compliance forms. We therefore apply the recordkeeping and the falsification of records Guidelines because they are the most analogous to Laverty's falsification of his firm's records. *See Guidelines*, at 1 (encouraging adjudicators, for violations not addressed specifically, to look to the Guidelines for analogous violations); *cf. Dep't of Enforcement v. McGee*, Complaint No. 2012034389202, 2016 FINRA Discip. LEXIS 33, at *86 (FINRA NAC July 18, 2016) (applying the recordkeeping and falsification of records Guidelines for misstatements on firm compliance questionnaires).

²⁴ *Guidelines*, at 29.

falsification was authorized, there was customer harm, and the misconduct involved other violations.²⁵ When a respondent falsifies a document without authorization in furtherance of another violation, resulting in customer harm, or accompanied by significant aggravating factors, however, a bar is standard.²⁶ The record in this case establishes a dearth of mitigating circumstances and the presence of several aggravating factors that weigh heavily towards a higher sanction.

We determine that Laverty's misconduct was egregious. The number of loans at issue in this matter are voluminous.²⁷ Laverty repeatedly borrowed large sums of money totaling \$1.35 million from customers RO and AO over a period of more than four years.²⁸ Laverty failed in numerous instances to repay RO and AO the loans as agreed.²⁹ In February 2015, Laverty signed a Note promising to repay the loans in monthly installments of \$100,000, at a six percent annual interest rate. He instantly breached the Note by not paying as agreed. When DO pressed him to repay his parents, Laverty presented two bad checks to RO and AO. In April 2016, Laverty wrote to the couple twice promising to repay them "in full" by no later than June of the same year. That did not happen. In July 2017, Laverty settled RO and AO's claim for the loans with their son, DO, agreeing to pay a total of \$744,500 in three installments by no later than June 2018. That also did not happen. The most Laverty repaid to RO and AO was \$18,000.

FINRA takes a legitimate interest in loans between registered persons and their customers because such arrangements are ripe for misconduct, as evidenced here. RO and AO were older adult customers with degenerative health issues, which further aggravates Laverty's severe misconduct.³⁰ RO's and AO's age and financial condition made them attractive targets for Laverty's unscrupulous conduct and he exercised undue influence over them.³¹ Laverty exploited RO's and AO's trust in him, continually financed his lifestyle at their expense (such as using the loans to prevent a foreclosure on his residence), and had no regard for their best interest. He purposely evaded his firm's procedures and FINRA's rules against borrowing from customers and made no earnest attempt at fulfilling his commitment to repay RO and AO. We agree with the Hearing Panel that Laverty had no intention on voluntarily repaying his loans in

²⁵ *Id.* at 37.

²⁶ *Id.* Principal considerations in determining sanctions for recordkeeping violations and falsification of records include the nature and materiality of the inaccurate or missing information and the nature of documents falsified. *Id.* at 27, 29. Other relevant principal considerations include whether the inaccurate or missing information was entered or omitted intentionally, recklessly, or as the result of negligence. *See id.* at 29.

²⁷ *Id.* at 7 (Principal Consideration No. 17) and 77 (Specific Consideration No. 2).

²⁸ *Id.* at 7 (Principal Consideration No. 9) and 77 (Specific Consideration No. 5).

²⁹ *Id.* at 77 (Specific Consideration No. 6).

³⁰ *Id.* (Specific Consideration No. 7).

³¹ *Id.* at 8 (Principal Consideration No. 19) and 77 (Specific Consideration No. 7).

full. We condemn Laverty's predatory practices of abusing RO's and AO's trust and confidence in him as their securities professional by repeatedly using loans from his customers for his own personal benefit, with no foreseeable expectation of repayment. *See FINRA Regulatory Notice 17-13*, 2017 FINRA LEXIS 39, at *3 (Apr. 2017) (reaffirming that the financial exploitation of senior and other vulnerable customers should result in strong sanctions); *NASD Notice to Members 03-62*, 2003 NASD LEXIS 70, at *2 (Oct. 2003) (stating that FINRA disciplines registered persons who "tak[e] unfair advantage of their customers by inducing them to lend money in disregard of the customers' best interests, or borrowing funds from, but not repaying, customers").

Moreover, Laverty associated with four member firms, intentionally concealing eight loans he received from RO and AO from each of his employers.³² Escaping detection for several years prevented Laverty's firms from disapproving of, or exercising reasonable supervision over, his improper borrowings. We, like the Hearing Panel, also find that Laverty acted intentionally when he falsified his annual compliance questionnaire at Calton and a heightened supervision attestation at Oppenheimer—forms that were designed to ensure regulatory compliance at his firms.³³ *Ortiz*, 2008 SEC LEXIS 2401, at *22-23 (finding that the entry of accurate information on firm records is a predicate to FINRA's regulatory oversight and any firm's internal compliance program). Laverty has a disturbing history of borrowing from (and not repaying) his customers and lying to his firms when questioned about the loans he obtained from RO and AO. His deception was part of a pattern of misconduct that allowed him to impermissibly receive loans from his customers while avoiding detection by his firms for an extended period.³⁴

Given that no mitigating circumstances exist, and aggravating factors predominate here, we find that a bar is the appropriate sanction to remedy Laverty's egregious misconduct. Laverty is thus barred from associating with any member firm in any capacity for his violations of FINRA Rules 3240 and 2010.

C. Providing False Testimony to FINRA

For failing to respond truthfully to information requested by FINRA under Rule 8210, the Guidelines recommend a fine of \$25,000 to \$73,000 and state that, absent mitigating circumstances, a bar is the standard sanction.³⁵ The importance of the information requested as viewed from FINRA's perspective is a relevant principal consideration here.³⁶

³² *Id.* at 7-8 (Principal Consideration Nos. 10, 13) and 77 (Specific Consideration No. 9).

³³ *Id.* at 7-8 (Principal Consideration Nos. 10, 13) and 37 (Specific Consideration No. 1).

³⁴ *Id.* at 7 (Principal Consideration No. 8) and 29 (Specific Consideration Nos. 4, 5).

³⁵ *Id.* at 33.

³⁶ *Id.*

The vital need for FINRA Rule 8210 to police the activities of FINRA's members and associated persons cannot be overstated. A failure to comply with FINRA Rule 8210 "is a serious violation because it subverts [FINRA's] ability to execute its regulatory responsibilities." *Joseph Ricupero*, Exchange Act Release No. 62891, 2010 SEC LEXIS 2988, at *21 (Sept. 10, 2010), *aff'd*, 436 Fed. App'x 31 (2d Cir. 2011). As a result, violators of FINRA Rule 8210 "present too great a risk to the markets and investors to be permitted to remain the securities industry." *PAZ Sec., Inc.*, Exchange Act Release No. 57656, 2008 SEC LEXIS 820, at *13 (Apr. 11, 2008), *aff'd*, 566 F.3d. 1172 (D.C. Cir. 2009).

Laverty admitted that he provided false and misleading testimony during the July 2015 OTR, which concealed his impermissible borrowing of multiple loans from customers RO and AO. The loans Laverty obtained from RO and AO were important because FINRA was investigating Laverty to ascertain the extent of his improper borrowing practices from firm customers. While under oath, Laverty repeatedly denied the series of loans he obtained from RO and AO and pretended not to know who "Bob" was in a note he received from EL. Laverty engaged in dishonest misconduct that impeded FINRA's investigation and evaded FINRA's rules. "The obligation to provide truthful information to FINRA is fundamental to participation in the securities industry, and the appropriate sanction for a failure to provide truthful information is a bar." *Dep't of Enforcement v. Saliba*, Complaint No. 2013037522501, 2019 FINRA Discip. LEXIS 1, at *63 (FINRA NAC Jan. 8, 2019), *appeal docketed*, No. 3-18989 (SEC Feb. 6, 2019).

Laverty argues that, while he does not intend to work in the securities industry again, his "lifetime ban" would cause a hardship to himself and his family. However, Laverty's future career prospects and anticipated hardships do not mitigate his grievous misconduct. *See, e.g., Thomas C. Gonnella*, Exchange Act Release No. 78532, 2016 SEC LEXIS 2786, at *51 (Aug. 10, 2016) (finding the collateral consequences of respondent's misconduct, including the loss of employment, reputation, and income, to be not mitigating). "The public interest demands honesty from associated persons of [FINRA] members; anything less is unacceptable." *Ortiz*, 2008 SEC LEXIS 2401, at *29. As a FINRA associated person, Laverty bore the responsibility of both understanding his obligations under FINRA rules and the consequences of his non-compliance. Therefore, any hardship that Laverty might suffer from the bars we impose results from his own wrongdoing. *See Jason A. Craig*, Exchange Act Release No. 59137, 2008 SEC LEXIS 2844, at *28 (Dec. 22, 2008) (declining to find mitigating the economic disadvantages the respondent allegedly suffered because they were a result of his misconduct). We find that Laverty's deception and dishonesty to FINRA undoubtedly makes him unfit to serve in an industry that heavily relies on the transparency and integrity of its securities professionals. Accordingly, Laverty is barred from associating with any member firm in any capacity for violating FINRA Rules 8210 and 2010.

D. Form U4 Violations

For individuals that fail to file timely or accurate amendments to the Form U4, the Guidelines recommend a fine ranging between \$2,500 and \$37,000, and a suspension in any or all capacities of 10 business days to six months.³⁷ When aggravating factors predominate,

³⁷ *Id.* at 71.

adjudicators should consider a longer suspension of up to two years, or a bar where the respondent intended to conceal information or mislead.³⁸

In addition to considering aggravating or mitigating factors that are applicable to determining sanctions for all violations, we also assess the principal considerations applicable to Form U4 violations relevant here, including: (1) the nature and significance of information at issue; (2) the duration of the delinquency; and (3) whether a lien or judgment that was not timely disclosed has been satisfied.³⁹

Laverty's repeated failures to file timely amendments to his Form U4 reflect a blatant disregard for complying with FINRA's rules and warrants a higher sanction. As discussed above, the Security Bank judgment and federal tax lien significantly affected the mix of information available to the investing public, potential employing firms, and regulators. During a prior FINRA investigation concerning another Form U4 violation, Laverty stated that he understood his obligation to update his Form U4 within 30 days of receiving notice of a reportable event. Yet, just a month later, a court entered a \$114,456.24 judgment against Laverty, and he took no steps to amend his Form U4 and disclose the unsatisfied judgment within the requisite 30 days. Within one year of confirming that he understood his Form U4 reporting obligations, Laverty again violated FINRA's rules, failing to amend his Form U4 to report a \$63,410.90 federal tax lien. Laverty's deliberate failure to disclose these reportable events on a timely basis caused the information on his Form U4 related to his financial condition to be inaccurate and misleading.⁴⁰

On appeal, Laverty argues that the judgment and tax lien were satisfied, and the purpose of the Security Bank loan was to satisfy lease payments owed to Oppenheimer that he guaranteed. While we find no evidence supporting Laverty's claim that he satisfied the IRS tax lien, any mitigative value attributed to his eventual satisfaction of the judgment or the tax lien is significantly outweighed by his repeated failures to update his Form U4 with the reportable events in the first place. The timely entry of required financial disclosure on the Form U4 is paramount to FINRA's regulatory oversight of its securities professionals. Given Laverty's repeated failures to timely update his Form U4, we find it appropriate to suspend Laverty for nine months in all capacities and fine him \$15,000. We, however, do not impose these sanctions considering the bars imposed for his other violations.

VI. Conclusion

For borrowing from customers and providing false statements to his firms on an annual compliance questionnaire and a heightened supervision attestation, Laverty is barred from associating with any FINRA member in any capacity. For providing false testimony to FINRA, Laverty is separately barred from association with any FINRA member in all capacities. For his

³⁸ *Id.*

³⁹ *See id.* (Specific Consideration Nos. 1, 4, 6).

⁴⁰ *See id.* at 8 (Principal Consideration No. 13).

Form U4 violations, we suspend Lavery for nine-months and fine him \$15,000, but do not impose these assessed sanctions in light of the bars imposed. Lavery is ordered to pay hearing costs of \$2,483.22 and appeal costs of \$1,358.38. The bars will become effective immediately upon service of this decision.

On Behalf of the National Adjudicatory Council,

Jennifer Piorko Mitchell,
Vice President and Deputy Corporate Secretary