

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

GREGORY BARTON
(CRD No. 1680043),

Respondent.

Disciplinary Proceeding
No. 2013037128401

Hearing Officer–KBW

DEFAULT DECISION

October 8, 2015

Respondent Gregory Barton willfully violated Article V, Section 2(c) of FINRA's By-Laws, FINRA Rules 1122 and 2010, NASD Interpretative Material 1000-1, and NASD Conduct Rule 2110 by failing to timely amend his Form U4 to reflect six events relating to his financial condition. For these violations, Respondent is fined \$5,000 and suspended from associating in any capacity with any FINRA member firm for six months.

Appearances

Matthew M. Ryan, Esq. Philadelphia, Pennsylvania, for the Department of Enforcement, Complainant.

No appearance by or on behalf of Gregory Barton, Respondent.

DECISION

I. Introduction

Respondent Gregory Barton was formerly a registered representative with FINRA member firm Stock USA Execution Services, Inc. During the 2013 routine cycle examination of Stock USA, Member Regulation Staff discovered that Barton had failed to amend his Uniform Application for Securities Industry Registration or Transfer (Form U4) to disclose that he had filed a voluntary petition for bankruptcy and was the subject of three Internal Revenue Service ("IRS") liens and two New York State tax warrants.

On May 18, 2015, FINRA's Department of Enforcement filed a complaint with the Office of Hearing Officers alleging that Barton failed to timely amend his Form U4 to reflect the six events identified by the Member Regulation Staff. The Complaint charged that by willfully failing to amend his Form U4 to disclose these events, Barton violated Article V, Section 2(c) of

the FINRA By-Laws, FINRA Rules 1122 and 2010, NASD Interpretative Material 1000-1, and NASD Conduct Rule 2110.¹

Enforcement served Barton with the Complaint in accordance with FINRA's Code of Procedure, and Barton failed to file an Answer. Accordingly, on August 7, 2015, Enforcement filed a Motion for Entry of Default Decision and Supporting Memorandum of Law ("Default Motion"), together with a Declaration in Support of Motion for Entry of Default Decision ("Ryan Decl.") and four exhibits.

II. Findings Of Fact And Conclusions Of Law

A. Barton's Background

Barton became registered with FINRA in October 2006. Barton changed firms in June 2008 and December 2010, before moving to FINRA member firm Stock USA Execution Services, Inc. in June 2012. On May 30, 2013, Stock USA filed a Uniform Termination Notice for Securities Industry Registration (Form U5), disclosing that Barton was terminated because "Stock USA could not comply [with a FINRA] record request [related to Barton's financial disclosures] because Mr. Barton would not provide information to Stock USA."²

B. Jurisdiction

FINRA has jurisdiction over this disciplinary proceeding, pursuant to Article V, Section 4(a) of FINRA's By-Laws, because (1) Enforcement filed the Complaint on May 18, 2015, which was within two years after the termination of Barton's registration with Stock USA and (2) the Complaint charges Barton with misconduct that occurred while he was associated with a FINRA member firm.³

C. Barton's Default By Failing To Answer Complaint

Enforcement served the Complaint and Notice of Complaint and the Complaint and Second Notice of Complaint in accordance with FINRA Rules 9131 and 9134. Enforcement served the Complaint and Notice of Complaint on May 18, 2015, and the Complaint and Second Notice of Complaint on June 18, 2015. In each instance, Enforcement served Barton by both first-class mail and certified mail (return receipt requested) to Barton's last known residential address as reflected in the Central Registration Depository.⁴ Thus, Barton received valid constructive notice of this proceeding.

¹ FINRA's by-laws and rules are available at www.finra.org/rules.

² Complaint ("Compl.") ¶¶ 3-8.

³ See Article V, Sec. 4(a)(i), FINRA By-Laws.

⁴ Ryan Decl. ¶¶ 11-21.

Pursuant to FINRA Rules 9215 and 9138(c), Barton's Answer was due within fourteen days of service of the Second Notice of Complaint, plus an additional three days because service was made by first class mail and by certified mail. Barton did not file an Answer.⁵

The Hearing Officer finds that Barton defaulted by failing to file an Answer to the Complaint. Therefore, the Hearing Officer deems the allegations in the Complaint admitted pursuant to FINRA Rules 9215(f) and 9269(a).

D. Events Relating to Barton's Financial Condition

1. IRS Liens

In 2008, the IRS recorded three liens against Barton. On or about May 14, 2008, the IRS recorded a \$19,224.96 lien. On or about October 6, 2008, the IRS recorded a \$4,971.76 lien. On or about October 15, 2008, the IRS recorded a \$4,528.99 lien. Barton had contemporaneous knowledge of each lien.⁶

2. New York State Tax Warrants

The New York State Department of Taxation and Finance recorded a \$4,856.50 warrant against Barton on or about October 6, 2010, and a \$1,051.08 warrant against Barton on or about September 12, 2011. Barton had contemporaneous knowledge of each warrant.⁷

3. Bankruptcy

In September 2012, Barton filed a voluntary petition for bankruptcy.⁸

E. Failure To Disclose Events

Barton did not disclose the IRS liens, the New York State tax warrants, or his bankruptcy petition on his Form U4.⁹

F. Barton Violated Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 And 2010

Registered representatives like Barton must complete and file with FINRA a Form U4 to become registered through a FINRA member firm. Article V, Sec. 2(c) of FINRA's By-Laws requires a registered representative to keep his or her Form U4 current at all times by filing a supplementary amendment within 30 days after learning of facts or circumstances giving rise to

⁵ Ryan Decl. ¶ 22.

⁶ Compl. ¶¶ 14 (a), (b), and (c); Ryan Decl. ¶¶ 23, 26.

⁷ Compl. ¶ 14 (d) and (e); Ryan Decl. ¶ 26.

⁸ Compl. ¶¶ 11 and 14 (a), (b), and (c).

⁹ Compl. ¶ 15.

the amendment. NASD IM-1000-1 and its successor, FINRA Rule 1122, prohibit associated persons from filing registration information that is incomplete or inaccurate so as to be misleading, or failing to correct such filing after notice thereof.¹⁰ Accordingly, once a registered representative files a Form U4, the representative is under a continuing obligation to timely update information required by the Form U4 as changes occur.¹¹

As the Securities and Exchange Commission (“SEC”) has explained, Form U4 “is critical to the effectiveness of the screening process used to determine who may enter (and remain in) the industry. It ultimately serves as a means of protecting the investing public.”¹² “Form U4 is used by all self-regulatory organizations (including FINRA), state regulators, and broker-dealers to determine and monitor the fitness of securities professionals who seek initial or continued registration with a member firm.”¹³

During the relevant period, Form U4 included Question 14M, which asked, “Do you have any unsatisfied judgments or liens against you?” Form U4 also included Question 14K(1), which asked, “Within the past 10 years have you made a compromise with creditors, filed a bankruptcy petition or been the subject of an involuntary bankruptcy petition?”¹⁴

By failing to timely amend his Form U4 to disclose the IRS liens, the New York State tax warrants, and his bankruptcy petition, Barton violated Article V, Section 2(c) of the FINRA By-Laws, FINRA Rules 1122 and 2010, NASD Interpretative Material 1000-1, and NASD Conduct Rule 2110.¹⁵

G. Barton Is Subject To Statutory Disqualification

Under Article III, Section 3(b) of FINRA’s By-Laws, a “statutorily disqualified” person cannot become or remain associated with a FINRA member firm unless FINRA has approved the association.¹⁶ A person is subject to a statutory disqualification under Section 3(a)(39)(F) of the Securities Exchange Act of 1934 if he “has *willfully* made or caused to be made in any application . . . to become associated with a member of a self-regulatory organization . . . any statement which was at the time, and in the light of the circumstances under which it was made,

¹⁰ The conduct rules that apply in this case are those that existed at the time of the conduct at issue. *Dep’t of Enforcement v. McCune*, No. 2011027993301, 2015 FINRA Discip. LEXIS 22 at *1 n.1 (NAC July 27, 2015). Barton was obligated to keep his Form U4 current both before and after the rule change.

¹¹ *Dep’t of Enforcement v. The Dratel Group, Inc.*, No. 2009016317701, 2015 FINRA Discip. LEXIS 10, at *10-11 (NAC May 6, 2015).

¹² *Joseph S. Amundsen*, Exchange Act Release No. 69406, 2013 SEC LEXIS 1148, at *23 n.41 (Apr. 18, 2013)(quoting *Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at *26 (Nov. 9, 2012)), *petition for review denied*, 575 Fed. App’x 1 (D.C. Cir. 2014) (citations omitted).

¹³ *Amundsen*, 2013 SEC LEXIS 1148, at *23-24 (quoting *Tucker*, 2012 SEC LEXIS 3496, at *26).

¹⁴ Compl. ¶¶ 10, 13

¹⁵ *McCune*, 2015 FINRA Discip. LEXIS 22, at *7; *The Dratel Group, Inc.*, 2015 FINRA Discip. LEXIS 10, at *11-2.

¹⁶ FINRA By-Laws, Article III, Section 3.

false or misleading with respect to any *material* fact, or has omitted to state . . . any *material* fact which is required to be stated therein.”¹⁷ Thus, a registered person is subject to statutory disqualification for failing to timely update his or her Form U4 if the failure was willful and the omitted information was material.

1. Barton’s Failure Was Willful

Barton’s failure to disclose the judgment was willful. “A willful violation under the federal securities laws means ‘that the person charged with the duty knows what he is doing.’”¹⁸ A finding of willfulness does not require intent to violate the law, but merely intent to do the act that constitutes a violation of the law.¹⁹ Barton had contemporaneous knowledge of the IRS liens, the New York State tax warrants, and his bankruptcy petition, yet he failed to amend his Form U4 to report the events. Barton’s knowledge is therefore sufficient to establish “willfulness.”²⁰

2. The Omitted Information Was Material

The omitted information was material. “Information is material if it would have ‘significantly altered the total mix of information made available.’”²¹ The IRS liens, the New York State tax warrants, and the bankruptcy were material because they “raise concerns about whether [Respondent] could responsibly manage his own financial affairs, and ultimately cast doubt on his ability to provide trustworthy financial advice and services to investors relying on him to act on their behalf as a securities industry professional.”²² Furthermore, “[b]ecause of the importance that the industry places on full and accurate disclosure of information required by the Form U4, [it is presumed] that essentially all the information that is reportable on the Form U4 is material.”²³

III. Sanctions

For failing to file forms or amendments, FINRA’s Sanctions Guidelines (“Guidelines”) recommend a fine of \$2,500 to \$73,000 and consideration of suspension in any or all capacities

¹⁷ 15 U.S.C. § 78c(a)(39)(F) (emphasis added).

¹⁸ *Tucker*, 2012 SEC LEXIS 3496, at *41 (quoting *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quotation omitted)).

¹⁹ *Wonsover*, 205 F.3d at 414; *Arthur Lipper Corp. v. SEC*, 547 F.2d 171, 180 (2d Cir. 1976).

²⁰ *The Dratel Group*, 2015 FINRA Discip. LEXIS 10, at *14-15.

²¹ *Dep’t of Enforcement v. North Woodward Financial Corp.*, No. 2010021303301, 2014 FINRA Discip. LEXIS 32, at *17 n.13 (NAC July 21, 2014) (quoting *Mathis v. SEC*, 671 F.3d 210, 220 (2d Cir. 2012)).

²² *Tucker*, 2012 SEC LEXIS 3496, at *32.

²³ *McCune*, 2015 FINRA Discip. LEXIS 22, at *12 (citations omitted).

for five to 30 business days.²⁴ For egregious cases (such as those involving repeated failures to file), the Guidelines call for consideration of a longer suspension for up to two years, or a bar.²⁵

The Guidelines provide three Principal Considerations in Determining Sanctions that are specific to failing to file an amendment. Principal Consideration No. 1 applies to Barton's conduct and is considered aggravating: the nature and significance of the information at issue.²⁶ As set forth above, the undisclosed information was material. Barton's failure to disclose the required information significantly affected the mix of information available to regulators assessing whether to scrutinize Barton's conduct, member firms assessing whether to hire Barton, and investors assessing whether to trust Barton's competence and integrity.

The Hearing Officer also considered several of the principal considerations that the Guidelines state should be considered in imposing sanctions with respect to all violations.²⁷ Barton's failure to amend his Form U4 constituted a pattern of misconduct relating to six reportable events.²⁸ Barton's failure to amend extended over a substantial period of time.²⁹ Barton's failure to file was intentional in that he knew of the reportable events.³⁰ Barton's failure to report the liens and bankruptcy petition enhanced his prospects of obtaining employment in the securities industry as he changed firms in 2008, 2010, and 2012.³¹

In light of these aggravating factors, the Hearing Officer concludes that Barton's misconduct was egregious and a \$5,000 fine and a suspension of six months are reasonable and appropriate sanctions that will serve the remedial purposes of the Guidelines.

²⁴ FINRA Sanction Guidelines at 69 (2015), www.finra.org/Industry/Sanction-Guidelines.

²⁵ Guidelines at 70.

²⁶ Guidelines at 69. The other two principal considerations specific to Form U4 violations do not apply to Barton: whether the failure resulted in a statutorily disqualified individual becoming or remaining associated with a firm; and whether a firm's misconduct resulted in harm to a registered person, another member firm, or any person or entity. Because these considerations do not apply, the Hearing Officer did not consider them either aggravating or mitigating.

²⁷ Guidelines at 6-7.

²⁸ See Guidelines at 6 (Principal Considerations in Determining Sanctions, No. 8 (directing adjudicators to consider whether the respondent engaged in numerous acts and/or a pattern of misconduct)).

²⁹ See Guidelines at 6 (Principal Considerations in Determining Sanctions, No. 9 (directing adjudicators to consider whether the respondent engaged in misconduct over an extended period of time)).

³⁰ See Guidelines at 7 (Principal Considerations in Determining Sanctions, No. 13 (directing adjudicators to consider whether the respondent's misconduct was the result of an intentional act, recklessness, or negligence)).

³¹ See Guidelines at 7 (Principal Considerations in Determining Sanctions, No. 17 (directing adjudicators to consider whether the respondent's misconduct resulted in the potential for the respondent's monetary or other gain)).

IV. Order

For willfully violating Article V, Section 2(c) of the FINRA By-Laws, FINRA Rules 1122 and 2010, NASD Interpretative Material 1000-1, and NASD Conduct Rule 2110, Respondent Gregory Barton is fined \$5,000, suspended from associating in any capacity with any FINRA member firm for six months, and is subject to statutory disqualification.

If this decision becomes FINRA's final disciplinary action, Barton's suspension shall commence at the opening of business on November 16, 2015, and end on May 15, 2016. The fine shall be due and payable if and when Barton re-enters the securities industry.



Kenneth Winer
Hearing Officer

Copies to: Gregory Barton (via first-class mail)
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