

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JOSEPH N. BARNES, SR.
(CRD No. 5603198),

Respondent.

Disciplinary Proceeding
No. 2013038418201

Hearing Officer—MJD

HEARING PANEL DECISION

June 28, 2016

For his willful failure to timely update his Form U4 to disclose two bankruptcy petitions, Respondent is suspended from associating with any FINRA member firm in any capacity for six months and fined \$5,000. His willful violation subjects him to statutory disqualification. Respondent is assessed the costs of the hearing.

Appearances

For the Complainant: William Brice La Hue, Esq., Kathryn M. Wilson, Esq., and David B. Klafter, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: *Pro se*.

I. Introduction

The Department of Enforcement charges Respondent Joseph N. Barnes, Sr., with failing to timely amend his Uniform Application for Securities Industry Registration or Transfer (Form U4) to disclose two bankruptcy petitions. The sole cause of the Complaint alleges that Barnes willfully violated Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010.

Many of the facts in this case are not in dispute. Barnes does not contest that he failed to timely amend his Form U4, but he denies that he acted willfully. He argues that he disclosed his bankruptcy petitions to his firm. He also argues that he believed he was not obligated to amend his Form U4 because the bankruptcy petitions were filed solely for the purpose of halting the pending foreclosure on his family residence. The Hearing Panel disagrees and finds that Barnes willfully violated Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010. The Hearing Panel suspends Barnes from associating with any firm for six months in any

capacity, and imposes a \$5,000 fine. Because he acted willfully, Barnes is also subject to statutory disqualification.

II. Findings of Fact and Conclusions of Law

A. Respondent's Background and FINRA's Jurisdiction

Barnes practiced law and owned his own law firm before entering the securities industry.¹ He first became associated with a FINRA member firm in October 2008. In February 2010, he became associated with Blaylock Robert Van, LLC ("Blaylock") as a Municipal Securities Representative.² He worked at the firm's New York City branch office. On September 26, 2013, Blaylock filed a Uniform Termination Notice for Securities Industry Registration Form (Form U5) terminating Barnes's registration with the firm. The Form U5 reported that Barnes had been discharged on September 18, 2013, for failing to disclose on Blaylock's year-end compliance questionnaire that he had filed a bankruptcy petition in May 2012, and for failing to update his Form U4 to disclose that he filed a second bankruptcy petition in March 2013.³

In July 2012, while still registered with Blaylock, Barnes filed a Statement of Claim with FINRA Dispute Resolution against the firm alleging breach of employment contract and damages of more than \$1.2 million in unpaid commissions. The arbitration remained pending at the time of this disciplinary hearing.⁴ Barnes alleged at the hearing that Blaylock management denied he told the firm of his bankruptcies because he had filed the arbitration claim.

On September 19, 2013, Barnes became associated with another FINRA member firm.⁵ On July 21, 2014, that firm filed a Form U5 terminating Barnes's registration. Barnes has not been associated with a FINRA member firm since then.⁶

FINRA has jurisdiction over this disciplinary proceeding pursuant to Article V, Section 4(a) of FINRA's By-Laws because (1) the Complaint was filed within two years after the effective date of termination of Barnes's registration with a member firm, and (2) the Complaint charges him with misconduct that commenced while he was associated with a member firm.

¹ Hearing Transcript ("Tr.") 263-64, 328; Joint Exhibit ("JX-") 1, at 14-15; JX-20, at 1; JX-21, at 4; Respondent's Exhibit ("RX-") 16, at 5; RX-23, at 1. According to his Form U4, in 1999, Barnes was suspended from the practice of law for three years by the New York State Bar Association for failing to file tax returns for three years. JX-2, at 16-17.

² JX-1, at 2; Stipulations of Facts ("Stip.") ¶¶ 1, 3-4. Blaylock changed its name to Blaylock Beal Van, LLC, in 2014. Tr. 95.

³ Stip. ¶ 28; JX-6, at 1-2.

⁴ Stip. ¶¶ 5-7; JX-3. The hearing was held in Boca Raton, Florida, on March 29-30, 2016.

⁵ Stip. ¶¶ 29-30; JX-5, at 1.

⁶ Stip. ¶¶ 34-35; JX-19. The July 21, 2014 Form U5 reported that Barnes left the firm voluntarily. JX-19, at 1.

B. Origin of the Matter

In approximately August 2013, during the discovery process relating to Barnes's arbitration proceeding against the firm, Blaylock learned that Barnes had filed two bankruptcy petitions. Blaylock's arbitration counsel discovered emails on Barnes's firm computer referring to a possible bankruptcy petition filed by his wife. By searching court records, Blaylock learned that Barnes had filed two personal bankruptcy petitions.⁷ Blaylock then looked at Barnes's 2012 compliance certification and found that he had failed to disclose the first bankruptcy petition.⁸ Within a few weeks, Blaylock discharged Barnes and filed a Form U5 to terminate his registration. Enforcement commenced its investigation of Barnes as a result of his dismissal.⁹

C. Barnes Twice Failed to Timely Amend Form U4 to Disclose Bankruptcy Petitions

Blaylock's written supervisory procedures required that its employees update their Form U4 to disclose a "[b]ankruptcy or other compromise with creditors," among other reportable events. The procedures required employees to disclose such information to Blaylock and amend their Form U4 within ten days of an occurrence.¹⁰ The procedures reminded employees that a failure to make appropriate and timely disclosures on a Form U4 could lead to FINRA disciplinary action, including a fine, censure, and a suspension or bar. They cautioned that "[c]omplete and accurate disclosure is required," and that an employee's failure to disclose information could result in termination by the firm, in addition to FINRA disciplinary action.¹¹ Blaylock's President, Eric Standifer, testified that appropriate disclosures had to be made to the Blaylock's chief compliance officer.¹² The firm's procedures instructed employees that "it is the responsibility of each registered representative to update FINRA records, on a timely basis, whenever changes occur."¹³

1. The May 2012 Bankruptcy Petition

On May 25, 2012, Barnes filed a Chapter 13 bankruptcy petition in the U.S. Bankruptcy Court for the Southern District of Florida (the "May 2012 Petition"). He signed the petition and therefore was aware of the filing.¹⁴ On July 16, 2012, the Bankruptcy Court dismissed the

⁷ Tr. 30, 104-05, 167-69; RX-23, at 2; RX-27.

⁸ Tr. 105.

⁹ Tr. 27-28.

¹⁰ Stip. ¶ 13; JX-12, at 1.

¹¹ JX-12, at 1.

¹² Tr. 156-57.

¹³ JX-12, at 1.

¹⁴ Stip. ¶¶ 10-11; JX-7, at 9.

petition because Barnes failed to file required schedules and financial statements, among other documents.¹⁵

In December 2012, Barnes attested in writing that he attended Blaylock's annual compliance meeting and that he understood the subject matter covered at the meeting. One of the subjects covered at the compliance meeting was the need to update a Form U4.¹⁶ Barnes falsely stated on a personal history compliance form, specifically stressing the importance of keeping a Form U4 up-to-date, that he had not filed a bankruptcy petition within the last ten years.¹⁷ On another compliance form, Barnes certified that he had reviewed Blaylock's written supervisory procedures, including its provisions about the requirement to keep Form U4 current.¹⁸ Barnes signed both compliance forms on December 20, 2012.

2. The March 2013 Bankruptcy Petition

On March 18, 2013, Barnes filed a bankruptcy petition in the U.S. Bankruptcy Court for the Southern District of New York (the "March 2013 Petition"). He signed the petition and therefore was aware of the filing.¹⁹ Pursuant to court order, Barnes filed the required schedules with the court in September 2013.²⁰ According to the bankruptcy schedules he submitted, Barnes had unpaid taxes dating from 1999 exceeding \$1 million, including penalties and interest. He owed the state of New York \$1,107,269.09, and the Internal Revenue Service \$60,000. He had additional personal debts of \$124,000.²¹ The March 2013 Petition was converted from a Chapter 7 to a Chapter 11 proceeding and remained pending at the time of the disciplinary hearing.²²

Barnes disclosed the March 2013 Petition when he submitted a Form U4 on September 25, 2013, in connection with his association with another member firm after being

¹⁵ Stip. ¶ 15; JX-8.

¹⁶ Stip. ¶ 16.

¹⁷ Blaylock's personal history form 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 (which HAS NOT previously been disclosed on your Form U4)?" [Emphasis in original.] (The substance of the question is the same as Question 14K(1) on Form U4.) Barnes checked "No." The personal history form instructed Blaylock personnel that "If you answered 'Yes' to any of the above items, you are required to update your Form U4. Please provide a brief explanation of any 'Yes' answer to the items above and contact the Compliance Department directly."

¹⁸ Stip. ¶ 18; JX-11; JX-12.

¹⁹ Stip. ¶¶ 19-20; JX-13, at 3, 5, 10.

²⁰ Stip. ¶ 22; JX-15.

²¹ JX-15, at 10-11. In April 2011, as a result of unpaid state taxes in the amount of \$1,107,269.09, including interest and penalties, the New York State Department of Taxation and Finance garnished Barnes's wages by serving Blaylock with a garnishment notice. RX-9, at 3. According to records Enforcement uncovered during the investigation, Barnes had approximately 50 civil judgments and tax liens recorded against him in New York from 1994 to 2008. JX-14, at 2-25. The Complaint does not charge Barnes with failing to disclose the judgments and liens or the garnishment on his Form U4.

²² Stip. ¶ 23.

terminated by Blaylock.²³ However, he did not amend his Form U4 to disclose the May 2012 Petition until March 25, 2014.²⁴

D. Barnes Violated FINRA Rules 1122 and 2010 and FINRA's By-Laws

The Complaint charges Barnes with violating FINRA Rules 1122 and 2010 and Article V, Section 2(c) of FINRA's By-Laws, by willfully failing to amend, or timely amend, his Form U4 to report the two bankruptcy petitions.

Article V, Section 2 of FINRA's By-Laws requires that associated persons applying for registration with FINRA provide "such . . . reasonable information with respect to the applicant as [FINRA] may require" and further states that such applications "shall be kept current at all times by supplementary amendments . . . filed . . . not later than 30 days after learning of the facts or circumstances giving rise to the amendment." To implement this provision, FINRA Rule 1122 prohibits associated persons from filing or failing to correct registration information that is incomplete or inaccurate so as to be misleading. These provisions are intended to ensure that the Forms U4 of registered persons contain accurate, up-to-date information so that regulators, employers, and members of the public "have all material, current information about the securities professional with whom they are dealing."²⁵ Therefore, filing a false or incomplete Form U4, or failing to timely amend a Form U4, violates FINRA Rule 1122.²⁶ FINRA Rule 2010 requires FINRA members and their associated persons to observe high standards of commercial honor and just and equitable principles of trade, which includes disclosing information required in a Form U4.²⁷

Barnes is charged with failing to truthfully answer Question 14K(1) of Form U4 by not disclosing his bankruptcy petitions. It asks: "Within the past 10 years: (1) have you made a compromise with creditors, filed a bankruptcy petition or been the subject of an involuntary bankruptcy petition?" Barnes admits that he failed to update his Form U4 within 30 days of filing each bankruptcy petition.

Barnes presents two arguments in support of his defense that he did not act willfully in failing to timely disclose his bankruptcy petitions on his Form U4. First, he claims that he told his firm about the bankruptcy petitions. In his Answer, Barnes said that "he fully informed the firm principals and his immediate supervisor of all of his actions in advance, in every

²³ Stip. ¶¶ 29-31; JX-5, at 15.

²⁴ Stip. ¶ 32; JX-18, at 15.

²⁵ *Richard A. Neaton*, Exchange Act Release No. 65598, 2011 SEC LEXIS 3719, at *17-18 (Oct. 20, 2011).

²⁶ *See, e.g., Dep't of Enforcement v. Mathis*, No. C10040052, 2008 FINRA Discip. LEXIS 49, at *16-17 (NAC Dec. 12, 2008), *aff'd*, *Scott Mathis*, Exchange Act Release No. 61120, 2009 SEC LEXIS 4376 (Dec. 7, 2009), *aff'd*, 671 F.3d 210 (2d Cir. 2012).

²⁷ *Dep't of Enforcement v. North Woodward Fin. Corp.*, No. 2010021303301, 2014 FINRA Discip. LEXIS 32, at *17 (NAC July 21, 2014); *Michael Earl McCune*, Exchange Act Release No. 77375, 2016 SEC LEXIS 1026, at *12 (Mar. 15, 2016).

instance.”²⁸ Barnes alleges that Blaylock does not admit that he told the firm about the bankruptcy petitions because of the pending arbitration proceeding.²⁹

Second, he states that because he had no intention of completing the bankruptcy process, but only to prevent foreclosure of his residence, he did not have to disclose the petitions on his Form U4. In his Answer, Barnes describes his bankruptcy petitions as “emergency” filings to avoid foreclosure on his home “that did not constitute a bankruptcy that had to be disclosed.”³⁰ Barnes says he “assumed” Blaylock agreed with his assessment that this was not a reportable event, and “[e]ven if [his] assessment was wrong his actions were not willful.”³¹

1. Barnes Did Not Tell Blaylock He Had Filed Bankruptcy Petitions

Barnes’s first defense is that Blaylock knew of his dire financial condition and that he had informed principals of the firm that he had filed the bankruptcy petitions. Barnes relies in part on email exchanges with Standifer (who was also Barnes’s supervisor³² in addition to serving as the firm’s President) in which he discusses the possibility of filing for bankruptcy protection. Barnes accordingly states that the firm “was fully aware”³³ that he had filed—or was going to file—bankruptcy petitions.

On April 25, 2012, a month before filing his first bankruptcy petition, Barnes emailed Standifer that he needed an advance to avoid losing his family home in Florida. He stated that his bankruptcy attorney needed money immediately to file a Chapter 13 petition to stop the foreclosure sale set for May 9, 2012. This statement—that he intended to file a bankruptcy—is insufficient notice to the firm that Barnes filed a bankruptcy petition. He also said he owed \$12,000 in attorney’s fees related to defending against the foreclosure. He told Standifer that he owed an additional \$16,000 in tuition for his son’s private school and that he needed \$10,000 to retrieve his wife’s jewelry, which he had pawned to make a partial tuition payment. In the email to Standifer, Barnes described his situation as “the worst financial crisis in my life.”³⁴

On April 27, 2012, Barnes again emailed Standifer because he “desperately needed” \$10,000 to pay his bankruptcy counsel.³⁵ Standifer replied that the firm did not have the money

²⁸ Complaint ¶ 1; Answer (“Ans.”) ¶ 1.

²⁹ Ans. ¶ 3 (“Blaylock will never admit knowledge, since they believe that they can procedurally by a FINRA [E]nforcement action instigated by their erroneous U5 hamper my ability to fully prosecute my rightful arbitration claims against Blaylock.”).

³⁰ Ans. ¶¶ 14, 22.

³¹ Ans. ¶¶ 14, 22.

³² Tr. 98, 199.

³³ Tr. 305.

³⁴ JX-9, at 1; RX-5, at 1.

³⁵ JX-9, at 3; RX-5, at 3.

to advance him.³⁶ On May 17, 2012, Barnes emailed Standifer that he needed \$52,000 because he was another month behind on payments and the foreclosure on his home was rescheduled for May 29, 2012, “therefore requiring me to file a Chapter 13 . . . to prevent the sale.”³⁷

On May 25, 2012, Barnes filed his first bankruptcy petition. On May 30 and June 8, 2012, Barnes emailed Standifer to reiterate his need for an advance. Barnes did not tell Standifer in the emails that he had just filed a bankruptcy petition. At the hearing, Standifer testified that Barnes never told him or emailed him that he had filed the May 2012 Petition or the March 2013 Petition, nor did he provide him with a copy of either bankruptcy petition.³⁸ Standifer testified that he first learned of the bankruptcy petitions when the firm’s attorney in the arbitration proceeding brought them to his attention in mid-2013.³⁹ After learning of the bankruptcies, Standifer terminated Barnes “because he lied to the firm” on the 2012 annual compliance certification forms and failed to update his Form U4 to disclose the bankruptcies.⁴⁰

Barnes also claimed that he told two other persons at the firm that he filed bankruptcy petitions—its Chief Compliance Officer, Richard Hanley, and a person with whom he worked, Aquacena Lopez. Hanley and Lopez’s testimony directly contradicted Barnes’s testimony on this point. They credibly testified that Barnes never told them that he had filed bankruptcy petitions. In fact, Lopez credibly testified that Barnes told her his intention was not to file for bankruptcy protection.⁴¹

Hanley worked at Blaylock’s New York City branch office, where Barnes worked. He was responsible for updating registered representatives’ Forms U4 as their circumstances required.⁴² The firm’s procedure for a registered representative to disclose a bankruptcy or other reportable event was to inform Hanley verbally or by email.⁴³ Hanley testified that he was not aware of Barnes’s general financial situation and bankruptcy until September 2013, when Standifer told Hanley to file a Form U5 to terminate Barnes’s registration.⁴⁴

³⁶ JX-9, at 3; RX-5, at 3.

³⁷ JX-9, at 7; RX-5, at 7.

³⁸ Tr. 103. Consistent with his hearing testimony, Standifer told Enforcement’s examiner during the investigation that Barnes never told him that he had filed a bankruptcy petition. RX-23, at 2.

³⁹ Tr. 105-06, 160.

⁴⁰ Tr. 117. Standifer testified that Blaylock did not file an amended Form U4 for Barnes to disclose the bankruptcy petitions because the firm elected instead to terminate his registration by filing a Form U5. Tr. 120, 150.

⁴¹ Tr. 194, 208.

⁴² Tr. 218.

⁴³ Tr. 191, 252-53.

⁴⁴ Tr. 220-22, 225-26, 235, 238. When asked directly at the hearing if he had told or emailed Hanley that he had filed the bankruptcy petitions, Barnes answered, “No, that discussion was had with Standifer.” Tr. 354.

Lopez was a Senior Vice President and a manager in Blaylock's municipal securities department. She was not a principal and had no supervisory duties.⁴⁵ She worked at the firm's Oakland, California office, where Standifer worked. She communicated frequently with Barnes by telephone or email concerning municipal bond offerings. They occasionally worked together on projects.⁴⁶ Lopez knew that Barnes was having financial difficulties because he copied her on some of the emails he sent to Standifer asking for an advance of pay. She was not aware of "every aspect of his situation," but Barnes had told Lopez he was in danger of losing his home.⁴⁷ Lopez told Enforcement during the investigation, and testified at the hearing, that Barnes did not tell her he had filed bankruptcy petitions.⁴⁸ Lopez first learned that Barnes had filed bankruptcy petitions from Standifer after Blaylock terminated him.⁴⁹

The Hearing Panel finds that, contrary to his assertions, Barnes did not inform his firm that he had filed bankruptcy petitions. However, even had he done so, it was ultimately Barnes's responsibility to amend his Form U4.

2. Barnes Was Required to Disclose His Bankruptcy Petitions

Barnes's second defense against the charge that he acted willfully is that he believed he did not have to disclose the bankruptcy petitions because they were not intended to be permanent. Barnes states that each time he filed for bankruptcy protection it was "never [his] intent to complete the bankruptcy through providing schedules and completing financial disclosure."⁵⁰ The purpose of filing the petitions was to delay scheduled foreclosures on his Florida residence.⁵¹ He describes his filings as "notices" of bankruptcy petitions, and not actual petitions.⁵² For this reason, Barnes testified, he answered "No" on Blaylock's 2012 compliance certification forms asking whether he had filed a bankruptcy petition in the last ten years.⁵³

Barnes explained that he ultimately disclosed the March 2013 Petition on his Form U4 when he registered with the new firm on September 25, 2013, only because the Bankruptcy

⁴⁵ Tr. 179-80, 197-99.

⁴⁶ RX-8; Tr. 181-82, 193.

⁴⁷ Tr. 182-83, 194; JX-9, at 7; RX-5, at 7. For example, Lopez personally advanced Barnes \$1,500 for official travel expenses after receiving Standifer's assurances that the firm would reimburse her. Tr. 199.

⁴⁸ RX-8; Tr. 208.

⁴⁹ Tr. 187.

⁵⁰ Barnes Pre-Hearing Br., at 2. During the investigation, Barnes told Enforcement that he did not consider the bankruptcy petitions to be official until he submitted required schedules, which he never did in the case of the May 2012 Petition. In the case of the March 2013 Petition, this was not done until September 2013. RX-29.

⁵¹ Barnes Pre-Hearing Br., at 2; JX-21, at 5-6, 15.

⁵² Tr. 266, 270, 279, 281, 283, 322, 336, 348, 351. At his on-the-record interview during Enforcement's investigation, Barnes stated regarding the May 2012 Petition that what he filed did not constitute a bankruptcy petition, because "a petition requires schedules," and "[t]o complete or commence a bankruptcy, you need schedules." JX-21, at 12.

⁵³ Tr. 348.

Court had just ordered him, on September 13, 2013, to file required schedules. Accordingly, Barnes claims his disclosure of the March 2013 Petition on his Form U4 was timely.⁵⁴

Barnes states that he “assumed” that Blaylock agreed with his assessment that he was not required to amend his Form U4 because he had filed the petitions under emergency conditions to prevent foreclosure on his home.⁵⁵ Barnes testified that he “presumed that [Blaylock] embraced my assessment” because no one at the firm asked him to update his Form U4.⁵⁶ Because Standifer, Hanley, and Lopez credibly testified that Barnes did not tell them he had filed bankruptcy petitions, there is no basis for Barnes to claim that Blaylock agreed with his supposed determination that his Form U4 need not be amended.

The Hearing Panel rejects Barnes’s argument that he was not required to disclose each bankruptcy petition with 30 days of their filing because they were “emergency” petitions or temporary “notices” of petitions. Question 14K(1) on Form U4 is clear when it asks, without qualification, if a registered person has filed a bankruptcy petition within the past ten years. Regardless of whether or not he filed bankruptcy schedules, the bankruptcy petition is a reportable event on Form U4.

3. Barnes’s Other Defenses Are Unavailing

Barnes impermissibly tries to shift the responsibility to Blaylock for disclosing his bankruptcy petitions. Barnes argues that in reviewing his email communications for compliance purposes Blaylock should have spotted his private or personal emails on his firm computer that would have alerted it to his financial situation and his bankruptcy petitions.⁵⁷ Standifer and Hanley testified that they did not see emails that referred to Barnes’s bankruptcy while he was registered with the firm.⁵⁸ In any event, it is Barnes’s responsibility—not his employer’s—to ensure that his Form U4 is amended to report material events.

Barnes also charges that Standifer, Hanley, and Lopez deny that he told them he had filed bankruptcy petitions because he filed the arbitration claim against Blaylock. In support of this argument, Barnes charges that the Form U5 the firm filed on his behalf falsely states that he had

⁵⁴ Barnes testified that filing the required schedules “transformed [the March 2013 Petition] in my mind’s eye from a notice to a filing.” See Tr. 336-37. In his pre-hearing brief, Barnes states that, by filing required schedules for his March 2013 bankruptcy, the “Notice of Petition was transformed into a Bankruptcy filing and in the assessment of Respondent only then did it become reportable pursuant to Respondent[’]s U4.” Barnes Pre-Hearing Br., at 9. *See also* JX-21, at 16.

⁵⁵ Ans. ¶¶ 14, 22.

⁵⁶ Tr. 347.

⁵⁷ Tr. 328-29 (testifying that the firm had software that would allow it to “remotely go onto [his] computer at any time . . . and see anything, e-mails, my work, any issue that I was on.”); *see also* Barnes Pre-Hearing Br., at 7.

⁵⁸ Tr. 243-49.

failed to tell Blaylock of his bankruptcy petitions to disqualify him from working for competitors.⁵⁹ The Hearing Panel finds no evidence supporting these charges.

E. Barnes 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. A person is subject to a statutory disqualification under Section 3(a)(39)(F) of the Securities Exchange Act of 1934 if, among other things, the person:

has willfully made or caused to be made in any application for membership or participation in, or 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, false or misleading with respect to any material fact, or has omitted to state in any such application, . . . any material fact which is required to be stated therein.

Thus, a registered person is subject to statutory disqualification for failing to timely update Form U4 if the failure was willful and the omitted information was material.⁶⁰

As discussed below, the Hearing Panel finds that Barnes acted willfully when he failed to disclose the bankruptcy petitions and the information concerning his bankruptcies is material.

1. Barnes Acted Willfully

A willful violation of the securities laws means "intentionally committing the act which constitutes the violation."⁶¹ Stated differently, "it means no more than [] the person charged with the duty knows what he is doing."⁶² A finding of willfulness does not require that the person acted with a culpable state of mind or that he was aware of the rule that he violated.⁶³ "A failure to disclose is willful . . . if the respondent of his own volition provides false answers on his Form U4."⁶⁴

Here, it is undisputed that Barnes knew he filed bankruptcy petitions, yet failed to timely amend his Form U4 to report the filings. Barnes did not inform his firm that he had filed bankruptcy petitions. Barnes's argument that he was not required to disclose them until he filed

⁵⁹ Tr. 137-39, 334-35; Barnes Pre-Hearing Br., at 4-5.

⁶⁰ *Dep't of Enforcement v. The Dratel Grp., Inc.*, No. 2009016317701, 2015 FINRA Discip. LEXIS 10, at *18 (NAC May 6, 2015) (holding that individual respondent was statutorily disqualified because the NAC found that the individual respondent willfully failed to disclose material information on his Form U4).

⁶¹ *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965).

⁶² *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)).

⁶³ *Joseph S. Amundsen*, Exchange Act Release No. 69406, 2013 SEC LEXIS 1148, at *38 (Apr. 18, 2013).

⁶⁴ *Id.* (citing *Mathis*, 2009 SEC LEXIS 4376, at *19).

required schedules has no basis. He has not produced any authority supporting this argument, and the Hearing Panel is aware of none. The Hearing Panel accordingly finds that Barnes's actions were willful.

2. The Bankruptcy Was Material

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.⁶⁵ The National Adjudicatory Council ("NAC") has held that "essentially all of the information that is reportable on the Form U4 may be considered material."⁶⁶ A bankruptcy petition has specifically been determined to be material information that must be reported on a Form U4.

Disclosing the bankruptcy petitions and Barnes's accumulated debts, which exceeded \$1 million, would have alerted his employer to the outside financial pressures he was facing; given customers a means to assess if the bankruptcies "had a bearing on his ability to provide them with appropriate financial advice"; and provided regulators "with early notice about his financial difficulties and ability to manage his financial obligations."⁶⁷ For these reasons, the Hearing Panel finds that Barnes's bankruptcy filings are material information that should have been reported on his Form U4.

The Hearing Panel finds that Barnes willfully violated Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010 by failing to timely amend his Form U4 to disclose his bankruptcy petitions.

III. Sanctions

In determining the appropriate sanction, the Hearing Panel considered FINRA's Sanction Guidelines ("Guidelines"). For filing a false, misleading, or inaccurate Form U4, the Guidelines recommend a fine ranging from \$2,500 to \$73,000, and a suspension in any or all capacities for 5 to 30 business days.⁶⁸ For egregious cases, including cases involving repeated failures to file, untimely filings, or false, inaccurate, or misleading Form U4 filings, the Guidelines call for consideration of a longer suspension of up to two years in any or all capacities, or a bar.⁶⁹

⁶⁵ *North Woodward Fin. Corp.*, 2014 FINRA Discip. LEXIS 32, at *17 n.13 (citing *Mathis*, 671 F.3d at 220).

⁶⁶ *Dep't of Enforcement v. Toth*, No. E9A2004001901, 2007 NASD Discip. LEXIS 25, at *34 (NAC July 27, 2007).

⁶⁷ *McCune*, 2016 SEC LEXIS 1026, at *21-22, and n.25-26. *See also Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at *32-33 (Nov. 9, 2012) (The respondent's liens, bankruptcies, and judgments found significant as 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 . . . [and] also reflected significant outside financial pressures that could affect his judgment when providing financial services.").

⁶⁸ FINRA Sanction Guidelines at 69 (2015), <http://www.finra.org/industry/sanction-guidelines>.

⁶⁹ Guidelines at 70.

The relevant Principal Consideration in Determining Sanctions in this case is the nature and significance of the information at issue.⁷⁰ The undisclosed information—that Barnes had filed bankruptcy petitions—was material. Barnes’s failure to disclose the bankruptcy filings significantly affected the mix of information available to regulators assessing whether to scrutinize Barnes’s conduct, member firms assessing whether to hire Barnes, and investors and clients assessing whether to trust Barnes.

The Hearing Panel also considered other aggravating factors. Barnes twice failed to amend his Form U4, and this failure extended over a substantial period of time. Barnes did not disclose his bankruptcy filing until September 2013, 15 months after he was obligated to disclose the May 2012 Petition.⁷¹ The Hearing Panel finds that Barnes acted willfully when he decided not to update his Form U4.⁷² The Hearing Panel finds aggravating that Barnes gave his employer a false answer on the compliance questionnaire asking if he had filed a bankruptcy petition.⁷³ Finally, Barnes does not accept responsibility for his misconduct. He blames his employer for failing to detect his bankruptcy filings when reviewing his firm and personal emails. He also claims that firm employees were not being truthful when they testified that he did not tell them he had filed a bankruptcy petition because he had filed an arbitration claim against Blaylock.

When fashioning appropriate sanctions, the Guidelines instruct adjudicators also to consider whether the employer disciplined the respondent before regulatory detection.⁷⁴ Here, Blaylock terminated Barnes before FINRA learned of his misconduct. Thus, the Hearing Panel finds that Barnes’s termination is a mitigating factor that can be considered in determining sanctions,⁷⁵ but the Hearing Panel gives it little weight because Barnes associated with another firm one day after Blaylock discharged him.

Barnes argues that the Hearing Panel should find that he did not act willfully because he did not try to conceal from Blaylock that he had filed bankruptcy petitions, and had “screamed his financial unravelling . . . to everyone within Blaylock.” As he put it at the hearing, his financial affairs were “an open book.” Barnes urges the Hearing Panel to impose sanctions limited to a fine of \$1,000. According to Barnes, his last employer firm paid this amount as a fee or penalty to FINRA when it filed the September 2013 Form U4 that first disclosed the

⁷⁰ Guidelines at 69.

⁷¹ 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).

⁷² 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).

⁷³ Guidelines at 6 (Principal Considerations in Determining Sanctions, No. 10) (directing adjudicators to consider whether the respondent attempted to conceal his misconduct).

⁷⁴ Guidelines at 7 (Principal Considerations in Determining Sanctions, No. 14).

⁷⁵ *John M.E. Saad*, Exchange Act Release No. 76118, 2015 SEC LEXIS 4176, at *18-19 (Oct. 8, 2015), *appeal docketed*, No. 15-1430 (D.C. Cir. Nov. 20, 2015) (finding that termination of employment can be a mitigating factor) (citing *Denise M. Olson*, Exchange Act Release No. 75838, 2015 SEC LEXIS 3629, at *18 (Sept. 3, 2015)) (same).

March 2013 Petition.⁷⁶ Evidence presented at the hearing shows that Barnes did not reimburse his employer the \$1,000 fee.⁷⁷ The Hearing Panel finds that considerably more substantial sanctions are required than a fine of \$1,000.

The Securities and Exchange Commission has explained that a broker's 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."⁷⁸ "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."⁷⁹

Aside from the fact that he was terminated by Blaylock, the Panel finds no mitigating circumstances warranting reduced sanctions. Given the seriousness of his misconduct, the Hearing Panel finds it appropriately remedial to suspend Barnes from associating with any FINRA member firm in any capacity for six months and to impose a \$5,000 fine for willfully failing to timely amend his Form U4 to disclose his bankruptcy petitions, in violation of Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010. Because his misconduct was willful, and the information about his bankruptcy petitions is material, Barnes is subject to statutory disqualification.⁸⁰

IV. Order

Respondent Joseph N. Barnes, Sr., is suspended from associating with any member firm in any capacity for six months for failing to timely disclose his bankruptcy petitions on his Form U4, in willful violation of Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010. He also is fined \$5,000 and ordered to pay the costs of the hearing in the amount of \$3,996, which includes the cost of the hearing transcript and a \$750 administrative fee.

⁷⁶ Barnes Pre-Hearing Br., at 10-11.

⁷⁷ Tr. 46.

⁷⁸ *Amundsen*, 2013 SEC LEXIS 1148, at *24 n.44 (quoting *Tucker*, 2012 SEC LEXIS 3496, at *26), *petition for review denied*, 575 F. App'x 1 (D.C. Cir. 2014) (citations omitted).

⁷⁹ *Id.* at *23 (quoting *Tucker*, 2012 SEC LEXIS 3496, at *26) (citations omitted).

⁸⁰ The Hearing Panel considered and rejected without discussion all other arguments by the parties.

If this decision becomes FINRA's final disciplinary action, Barnes's suspension shall become effective with the opening of business on August 15, 2016. The fine and assessed costs shall be due on a date set by FINRA, but not less than 30 days after this decision becomes FINRA's final disciplinary action in this proceeding.

Michael J. Dixon
Hearing Officer
For the Hearing Panel