FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. MIGUEL ORTIZ (CRD No. 5893323), Respondent.	Disciplinary Proceeding No. 2014041319201 Hearing Officer–CC **HEARING PANEL DECISION** November 6, 2015

Respondent violated Section 10(b) of the Securities Exchange Act of 1934, Exchange Act Rule 10b-5, and FINRA Rules 2020 and 2010 by distributing misleading emails and falsified account statements that misrepresented the true composition and value of an investment account and concealed the losses in the account. For this misconduct, Respondent is barred. Respondent also violated FINRA Rules 2010 and 1122, and Article V, Section 2(c) of FINRA's By-Laws by failing to update a Form U4 to disclose an unsatisfied judgment against him. In light of the bar, additional sanctions are not imposed.

Appearances

Mirella deRose, Esq., New York, New York, and Jeffrey D. Pariser, Esq., Rockville, Maryland, representing FINRA's Department of Enforcement.

Harry H. Wise, III, Esq., New York, New York, representing Miguel Ortiz.

I. Introduction

Respondent Miguel Ortiz ("Ortiz") had been a securities broker in Venezuela for many years before he came to the United States in 2010. Upon his arrival in the United States, he took up residence in New York City and associated first with former FINRA member firm John Thomas Financial, Inc. ("JTF") and later with FINRA member firm First Liberties Financial, Inc. ("First Liberties").

While associated with JTF, Ortiz guided two Venezuelan friends, both of whom knew Ortiz to be a registered securities broker in Venezuela, to open an account at JTF. The two resided in Venezuela and relied on Ortiz to oversee the account. The account performed poorly,

and the two friends lost a large portion of their investment. Before, during, and after Ortiz's association with First Liberties, he misrepresented the composition and value of his Venezuelan friends' account and actively concealed significant losses from them to avoid confrontation and prevent them from liquidating their account. Ortiz also failed to update the Form U4 that First Liberties filed on his behalf to disclose that he was the subject of an outstanding judgment in the amount of $4,983,606.

FINRA's Department of Enforcement ("Enforcement") filed the Complaint on March 6, 2015, and amended it on August 19, 2015. The Amended Complaint alleges that, between April 13, 2012, and March 15, 2013 ("the Relevant Period"), while associated with First Liberties, Ortiz sent his two Venezuelan friends four emails that intentionally misrepresented and omitted material information regarding their JTF securities account in order to prevent the customers from learning the level of their losses. The Amended Complaint also alleges that, while associated with First Liberties, Ortiz willfully failed to amend his Form U4 Uniform Application for Securities Industry Registration or Transfer ("Form U4") to disclose an unsatisfied September 2012 judgment against him. Ortiz filed an Answer on April 3, 2015, and an Amended Answer on August 24, 2015. Ortiz admits the underlying facts, but denies that he acted with scienter or willfully.

II. Background

Ortiz associated with JTF and First Liberties, but he was never licensed as a registered representative.[1] His experience in the securities industry mainly occurred in his home country of Venezuela. Between 1991 and 2005, Ortiz worked at various brokerage firms in Venezuela.[2] In 2005, Ortiz founded the investment advisory and brokerage firm of Equivalores Casa de Bolsa, C.A. ("Equivalores") in Venezuela.[3] Equivalores was a successful enterprise in Venezuela and, by 2008, employed 55 individuals.[4] Ortiz fled Venezuela at the end of March 2010.[5] He came to the United States and took up residence in New York City in April 2010.[6] Ortiz applied for political asylum in the United States, and the U.S. government granted his petition in August 2012.[7]

In June 2010, Ortiz formed Brickstone Equities, LLC ("Brickstone").[8] Soon thereafter, Ortiz rented office space for Brickstone at 14 Wall Street, New York, New York.[9] Ortiz hoped

[1] Joint Exhibit ("JX")-1 ¶ 1; JX-3.

[2] Hearing Transcript ("Tr.") 401-406.

[3] Tr. 30; JX-1 ¶ 17.

[4] Tr. 408-410.

[5] Ortiz testified that the government of Venezuela was very corrupt and, starting in late 2009, began taking over brokerage firms, closing them, and jailing their owners. Tr. 418-425.

[6] Tr. 31; JX-1 ¶ 17.

[7] Tr. 428.

[8] Tr. 33, 446; JX-1 ¶ 18; JX-10.

[9] Tr. 37; JX-1 ¶ 19.

to use funds from the sale of his assets in Venezuela to fund Brickstone.[10] Brickstone provided no professional or financial services, had no income, was not registered with the Securities and Exchange Commission ("Commission") as a broker-dealer, and was not a FINRA member.[11] Ultimately, Ortiz planned to acquire a broker-dealer through Brickstone and turn Brickstone into a registered broker-dealer.[12] Although Ortiz negotiated with different broker-dealers, he never accomplished his goal of turning Brickstone into a registered broker-dealer.[13]

In September 2010, Ortiz met Johnathan McHale ("JM"), a registered representative at former member firm JTF.[14] JM resided in the same apartment building as Ortiz.[15] Additionally, JTF's offices were in the same 14 Wall Street building as Brickstone's office.[16] JM ultimately introduced Ortiz to JTF's owner and chief executive officer, Anastasios Belesis ("AB").[17] AB offered to sponsor Ortiz for a work visa in the United States, suggested that Ortiz could register with JTF if he passed the Series 7 examination, and proposed that Ortiz open a Latin American branch of JTF.[18] In December 2010, Ortiz opened an account for himself at JTF.[19] In January 2011, Ortiz began training at JTF to take the Series 7 examination.[20]

MV and VE reside in Venezuela and traveled to New York City to testify before the Hearing Panel.[21] Although both are educated beyond high school or hold advanced degrees, neither is sophisticated with respect to financial matters and neither has significant investment experience.[22] VE was an old friend of Ortiz's from Venezuela.[23] They had known each other

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[10] Tr. 34.

[11] JX-1 ¶ 18.

[12] Tr. 34.

[13] Tr. 37-38.

[14] Tr. 39, 429; JX-1 ¶ 19. FINRA expelled JTF from membership on October 31, 2013. JX-1 ¶ 19; JX-17.

[15] Tr. 39, 429.

[16] Tr. 39; JX-1 ¶ 19.

[17] Tr. 39, 430; JX-1 ¶ 19.

[18] Tr. 40, 430-431; JX-1 ¶ 19.

[19] Tr. 41; JX-18. JM was the registered representative of record on the account. Tr. 41; JX-18.

[20] Tr. 41; JX-1 ¶ 2. On July 11, 2011, Ortiz signed a Form U4 prepared by JTF for Ortiz's association with JTF. Tr. 67-68; JX-1 ¶ 3; JX-3. JTF filed Ortiz's Form U4 on July 12, 2011. JX-1 ¶ 4; JX-3; JX-15. Ortiz was scheduled to take the Series 7 examination on August 5, 2011, but he failed to appear at the testing center. Tr. 68; JX-1 ¶ 5; JX-3, at 7. Ortiz took the Series 7 examination on September 2, 2011, but he did not pass. Tr. 74, 432-433; JX-1 ¶ 6; JX-3, at 7. On October 5, 2011, JTF filed a Form U5 Uniform Termination Notice for Securities Industry Registration ("Form U5") to terminate Ortiz's association with JTF. Tr. 74-75; JX-1 ¶ 7; JX-3; JX-16.

[21] Tr. 177, 313-314. The hearing commenced on August 31, 2015, and occurred over several days in New York City. Overall, we find MV's and VE's testimony to be very credible. Their version of their interactions with Ortiz did not conflict with Ortiz's own testimony for the most part. Both travelled from Venezuela to participate in the hearing. Tr. 177, 313-314. Both testified that they understand they are unlikely to recover their losses and that recovery is not the purpose of their testimony. Tr. 293-294, 361. They both stated that they hope to prevent Ortiz from misleading others in the future. Tr. 293-294, 361.

[22] Tr. 179-180, 314.

[23] Tr. 315, 434-435.

since they were college students.[24] In 2008, Ortiz became acquainted with MV through VE in Venezuela.[25] VE and MV were business partners who together ran an environmental company and a design studio.[26]

In March 2011, while MV and VE were in New York on holiday, Ortiz met with them for dinner.[27] MV and VE were aware of Ortiz's former ownership of Equivalores in Venezuela.[28] During the March 2011 meeting, Ortiz told MV and VE that he was training to take the Series 7 examination and that he hoped to affiliate with JTF and register Brickstone as a broker-dealer in the U.S.[29] He also told them that he managed his own account at JTF (through registered representative JM) and that the account was doing well.[30] MV and VE advised Ortiz that they were considering opening a brokerage account in the U.S., and Ortiz suggested that they consider opening an account with JTF.[31] Ortiz told them that, if JM served as their registered representative, JM could invest their money only in the securities in which Ortiz invested his own money so Ortiz would, in effect, make investment recommendations for them.[32]

Ortiz thereafter emailed investment suggestions to MV and VE from his Brickstone email address.[33] On March 23, 2011, Ortiz sent an email to MV, attaching a document on Brickstone letterhead titled "Recommendations March 2011."[34] Ortiz states in his email that he is attaching "our" recommendations and that "we think" this would be the "ideal growth portfolio" for MV and VE.[35] On the same day, Ortiz sent MV a second email, attaching another document on Brickstone letterhead titled "Recommendations November 22, 2010."[36] Ortiz stated in the email that Brickstone's recommended portfolio had grown 16.81%.[37] MV responded by email on

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[24] Tr. 315, 434-435.

[25] Tr. 42, 181, 435-436; JX-1 ¶ 20.

[26] Tr. 43, 178-179, 313-314. MV also is a writer and the two together produced a children's book about the environment. Tr. 184-185, 320, 435-436.

[27] Tr. 185-186, 323, 438.

[28] Tr. 182-183, 316-319; JX-1 ¶ 20.

[29] Tr. 44-45, 438-439; JX-1 ¶ 21.

[30] Tr. 46, 439; JX-1 ¶ 22.

[31] Tr. 46, 441-442.

[32] Tr. 47, 441-442. Ortiz testified that he told MV and VE that he did not have a work permit or securities license and that he could not legally sell securities in the United States. Tr. 58-59. MV and VE understood that JM at JTF would handle their account and invest their money as directed by Ortiz and only in investments that Ortiz had approved for his own account. Tr. 61.

[33] JX-1 ¶ 23.

[34] Tr. 190-191; JX-20; JX-20a.

[35] JX-1 ¶ 23; JX-20; JX-20a. Ortiz testified that, by using the terms "we" and "our," he was referring to Brickstone, and he did not mention JTF anywhere in the email or attachment. Tr. 47-48, 52; JX-20; JX-20a. MV also testified that she understood Ortiz's references to "we" and "our" to mean Ortiz and his brokers at Brickstone. Tr. 191-192.

[36] Tr. 192; JX-1 ¶ 24; JX-19; JX-19a.

[37] Tr. 50-51; JX-19; JX-19a.

March 24, 2011.[38] MV stated that she intended to give Ortiz $180,000 to invest and asked him for additional investment advice.[39]

In early April 2011, MV and VE opened a joint account at JTF with a $210,000 deposit.[40] MV and VE corresponded only with Ortiz regarding the account and they sent the completed account forms to Ortiz, not JM, even though JM was the registered representative of record on the account.[41] MV requested that she not receive paper account statements, and she signed up for Internet access to her account.[42] In April 2011, she accessed her account online to be sure that her initial deposit arrived.[43] After April 2011, she did not access her account online until she became concerned with Ortiz's conduct in 2013.[44] MV testified that she believed that Ortiz was making the investment decisions for her account so she did not need to review her account online.[45]

By the end of April 2011, MV's and JE's joint account had lost approximately $40,000.[46] Ortiz testified that he learned by May 2011 that the customers had lost some of their money, but he was not certain of the amount.[47] By the end of May 2011, MV's and VE's joint account at JTF had fallen further in value to $131,370.[48] The following month, Ortiz suggested that MV

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[38] JX-21; JX-21a. On March 25, 2011, Ortiz sent MV two additional emails from his Brickstone email account that contained links to online articles that discussed investments related to rare earth elements. JX-1 ¶ 27; JX-22; JX-22a; JX-23.

[39] JX-1 ¶ 25; JX-21; JX-21a. MV testified that she believed that Ortiz would decide where their money would be invested. Tr. 196, 216. MV's only condition was that Ortiz not invest their funds in fossil fuels and that he instead invest their money in alternate energy sources JX-1 ¶ 25; JX-21; JX-21a. VE also testified that she believed Ortiz would manage her investments. Tr. 330.

[40] Tr. 196-199; JX-1 ¶ 28; JX-24; JX-24a; JX-25. MV and VE pooled their money to invest. Tr. 196. MV was the point of contact for the account. Tr. 205. VE testified that, because she was friends with Ortiz, she felt it best for MV to be the point of contact on the account. Tr. 329.

[41] Tr. 197-200. MV testified that they received the paperwork to complete for the new account from Ortiz and returned it to him after it was completed. Tr. 197-199. Ortiz acknowledged that he functioned as the intermediary. Tr. 443.

[42] Tr. 206-207, 215-216.

[43] Tr. 206-207.

[44] Tr. 207.

[45] Tr. 216. Throughout April and May 2011, Ortiz sent MV articles and reports containing positive information about the stocks in which MV's and VE's joint account had invested or stocks in the same sectors. JX-27; JX-27a; JX-28; JX-28a; JX-29; JX-29a; JX-30; JX-30a.

[46] Tr. 61; JX-1 ¶ 31; JX-26.

[47] Tr. 63-64. Ortiz testified that he lost most of the money in his account by May 2011. Tr. 65; JX-33. By August 31, 2011, Ortiz's opening balance of approximately $145,000 (in January 2011) had dropped to approximately $28,000. JX-59. By June 30, 2012, Ortiz's total account value at JTF was approximately $5,000. JX-60. He stated that, although MV's and VE's account was invested similarly to his, his account included options and therefore was riskier. Tr. 66. Ortiz stated that he attempted in May 2011 to reach JM to try to sell some positions and curtail his losses, but JM would not return his calls. Tr. 66-67.

[48] JX-1 ¶ 32; JX-31. By the end of June 2011, MV's and VE's account value dropped to $103,855. JX-32.

and VE transfer their account from JM to Felippe Alves ("FA"), another registered representative at JTF.[49] He did not, however, advise MV and VE of the losses in their account.[50]

MV and VE never granted Ortiz power of attorney over their account, and he did not have their password information to review their account information online.[51] He testified that he knew the status of their account because JM and FA provided information to him whenever he asked.[52] Ortiz's statements in this regard are consistent with MV's testimony. MV understood that Ortiz made the investment decisions in her joint account at JTF, and she testified that when JM or FA contacted her directly, she asked Ortiz to intervene on her behalf so that she talked only with Ortiz.[53]

Throughout August and September 2011, Ortiz sent emails to MV, VE, and other Venezuelan contacts, some of whom Ortiz also had referred to JTF to open investment accounts.[54] Ortiz generally suggested in the emails that the U.S. economy was recovering and that he saw promising signs for the U.S. securities markets.[55] By the end of September 2011, MV's and VE's JTF account had lost 73% of its value and consisted of $55,058 in cash.[56] Ortiz knew at the time that the account had lost a significant amount of its value, but he did not tell MV and VE.[57]

Between October 2011 and April 2012, Ortiz was aware that MV's and VE's account had lost a significant amount of its value, but he did not want MV and VE to learn the extent of the losses.[58] He claims that he thought he would be able to convince AB, JTF's owner, to make their account whole before they learned of their losses.[59] To conceal the truth, Ortiz prepared and sent to MV and VE false account statements that inflated the value of their JTF account.[60]

On October 19, 2011, Ortiz sent MV, VE, and others an email with an attached document on Brickstone letterhead titled "Recommendations October 2011."[61] On the same day, MV

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[49] Tr. 67, 220-221; JX-1 ¶ 33. Ortiz also moved his personal account from JM to FA. JX-1 ¶ 33. Ortiz testified that he discovered that JM was charging them excessive commissions. Tr. 443-444. He stated that he confronted JM and eventually complained directly to AB to no avail. Tr. 443-446, 466-473.

[50] JX-34; JX-34a; JX-35; JX-35a; JX-36; JX-36a; JX-37; JX-37a; JX-38; JX-38a; JX-39; JX-39a; JX-40; JX-40a. MV testified that she had no idea what the balance was in her JTF account on May 31, 2011. Tr. 215.

[51] Tr. 100-101.

[52] Tr. 100-101.

[53] Tr. 211-212, 216, 221.

[54] Tr. 68-72; JX-37; JX-37a.

[55] Tr. 68-72; JX-34; JX-34a; JX-35; JX-35a; JX-36; JX-36a; JX-38; JX-38a; JX-39; JX-39a; JX-40; JX-40a.

[56] Tr. 72-73; JX-1 ¶ 34.

[57] Tr. 74.

[58] Tr. 81-82, 88-89, 92-93, 94-95, 471; JX-1 ¶ 35.

[59] Tr. 466-469.

[60] Tr. 468-469; JX-1 ¶ 36.

[61] Tr. 77-79; JX-41; JX-41a.

replied to Ortiz's email with a request for Ortiz to provide a "very brief summary of what happened with the money . . . simply what we have, where, how much has been lost."[62] Ortiz responded to MV's request the next day by providing MV and VE with a fake account statement titled "[JTF] BD," showing an account value for MV and VE in excess of $179,000.[63] The fake account statement listed investments that did not exist.[64] Ortiz knew at the time that the true value of MV's and VE's account was substantially less.[65] MV had no idea that her account value as of the end of October 2011 was $44,663.[66]

Ortiz continued the charade in December 2011. On December 9, 2011, Ortiz again used his Brickstone email to send MV and VE a fake account statement.[67] Ortiz listed fake investments and, this time, he listed their account value as $183,529, even though he knew that the true value of their account was less than half that amount.[68] Ortiz testified that he wanted MV and VE to believe that the value of their account had risen since October, and he did not want them to know that the account lost value.[69]

Ortiz thereafter repeated this pattern. Ortiz used his Brickstone email to send MV and VE a fake account statement dated February 6, 2012.[70] Ortiz listed false investments and reported that their account value had risen to $192,539, even though he knew that the true value of their account was closer to $50,000.[71] Ortiz did not want MV and VE to learn the true value of their JTF account.[72] Ortiz similarly sent MV and VE a fake account statement in March 2012 that falsely listed their account value as $200,174.[73]

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[62] Tr. 80; JX-1 ¶ 37; JX-42; JX-42a.

[63] Tr. 81-84; JX-1 ¶ 38; JX-43; JX-43a.

[64] JX-1 ¶ 38.

[65] Tr. 82-85; JX-1 ¶ 40.

[66] Tr. 233; JX-45. And the decline continued. As of November 30, 2011, the account value for MV's and VE's joint JTF account dropped to $32,530. JX-47.

[67] Tr. 86-90; JX-1 ¶ 41; JX-46; JX-46a.

[68] Tr. 86-90; JX-1 ¶¶ 41, 42; JX-46; JX-46a. The fake account statement also failed to account for MV's and VE's margin balance of $64.02. JX-1 ¶ 41. As of December 31, 2011, the account value for MV's and VE's joint JTF account was $31,735.98. JX-48.

[69] Tr. 90, 470-472.

[70] Tr. 90-92; JX-1 ¶ 43; JX-49; JX-49a.

[71] Tr. 90-93; JX-1 ¶¶ 43-44; JX-49; JX-49a; JX-50; JX-51.

[72] Tr. 93, 470-472.

[73] Tr. 93-95; JX-1 ¶¶ 45-47; JX-52; JX-52a. MV responded to Ortiz, "[w]hat a relief to see recovery." JX-57; JX-57a. As of March 31, 2012, the actual account value for MV's and VE's joint JTF account was $58,262.82. JX-53.

III. Discussion

A. FINRA Properly Exercised Jurisdiction Over Ortiz

FINRA possesses jurisdiction over Ortiz. On February 20, 2012, Ortiz entered into an operating agreement on behalf of Brickstone with member firm First Liberties.[74] Pursuant to this agreement, Ortiz prepared and signed a Form U4 and associated with First Liberties on April 13, 2012.[75] Any person who signs and submits a Form U4 is an associated person and subject to FINRA jurisdiction.[76]

Ortiz was scheduled to take the Series 7 examination in September 2012.[77] Ortiz did not take the examination as scheduled.[78] On March 15, 2013, Ortiz submitted a resignation letter to First Liberties, and the firm thereafter filed a Form U5 to terminate Ortiz's association with the firm on March 15, 2013.[79]

Ortiz remains subject to FINRA's jurisdiction because Enforcement filed the Complaint on March 6, 2015, which is within two years of the effective date of the termination of Ortiz's association with First Liberties on March 15, 2013.[80] The Complaint and Amended Complaint allege that Ortiz engaged in misconduct while he was associated with FINRA member firm First Liberties. Thus, Enforcement timely filed the Complaint, and FINRA has properly exercised jurisdiction in this matter.

B. Cause One

1. Findings of Fact

Cause one alleges that, between April 13, 2012, and March 15, 2013, the period when Ortiz was associated with First Liberties, Ortiz emailed four false account statements to MV and

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[74] Tr. 96-99; JX-9.

[75] Tr. 99; JX-1 ¶¶ 8-16; JX-7. First Liberties filed Ortiz's Form U4 with FINRA on April 13, 2012. JX-1 ¶ 12; JX-3; JX-4.

[76] *See Howard Brett Berger*, Exchange Act Release No. 55706, 2007 SEC LEXIS 895, at *17 (May 4, 2007), *remanded*, No. 07-2692 (2d Cir. Sept. 13, 2007) (remand order), *supplemental decision issued*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141 (Nov. 14, 2008), *aff'd*, 347 Fed. App'x 692 (2d Cir. 2009), *cert. denied* 130 S. Ct. 2380 (2010); Article I(rr) of FINRA's By-Laws (stating that a natural person who has applied for registration meets the definition of "associated person" under the By-Laws).

[77] Tr. 111; JX-1 ¶ 13; JX-3, at 7.

[78] Tr. 111; JX-1 ¶ 14; JX-3, at 7.

[79] JX-1 ¶¶ 15-16; JX-3; JX-12; JX-13.

[80] *See* JX-3 at 5; Art. V, Sec. 4 of FINRA's By-Laws (stating that a person whose association with a member firm has terminated shall continue to be subject to the filing of a complaint based on conduct that occurred prior to the termination or upon the person's failure, while subject to FINRA's jurisdiction, to provide information requested pursuant to FINRA's Rules if the complaint is filed within two years after the effective date of termination of registration or the date upon which the person ceased to be associated with a member firm).

VE.[81] Ortiz created the false account statements to mislead MV and VE into believing that their JTF account contained assets and investments that it did not contain and to prevent the customers from learning the true value of their JTF account.[82]

In April 2012, Ortiz continued the practice that he started in August 2011 of sending a small group of investors, including MV and VE, market information from Brickstone.[83] On May 9, 2012, MV sent an email to Ortiz to "see how things are going."[84] Ortiz did not reply and, on May 18, 2012, MV emailed Ortiz again, asking Ortiz for "a simple and direct number" for the value of her JTF account.[85] Ortiz responded the same day, advising MV that her account at JTF was performing well.[86] On June 8, 2012, MV expressed concern to Ortiz about losses in her account that he had reported to her in February and March 2012. She stated that she would like to recover her losses and "get out."[87] In a response email on June 12, 2012, Ortiz reassured MV.[88] On June 8, 2012, Ortiz sent MV and VE an email to which he attached a fake JTF account statement.[89] The fake JTF account statement showed that MV's and VE's portfolio included investments that did not exist and falsely represented that their account balance was $190,340.[90] Ortiz knew that he had inflated the value of their account.[91] On May 31, 2012, the net asset value of MV's and VE's account was approximately $32,757, and on June 30, 2012, it was approximately $28,882.[92]

Throughout June and July 2012, MV and Ortiz exchanged several emails. MV expressed her concerns about the joint account, asked for an estimate of how much she and VE could withdraw if they immediately liquidated the account, and stated that they would like to liquidate their account if they could recover their initial investment.[93] Ortiz reassured MV, stated that "everything will calm down," and suggested that Brickstone was "reviewing" their account.[94]

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[81] JX-1 ¶ 50.

[82] JX-1 ¶ 50.

[83] JX-58; JX-58a.

[84] JX-62; JX-62a.

[85] JX-1 ¶ 51; JX-63; JX-63a.

[86] JX-1 ¶ 51; JX-63; JX-63a.

[87] JX-67; JX-67a. The losses that Ortiz reported to MV in February and March, however, were much less than the actual losses that her account had sustained. *See* JX-1 ¶¶ 45-47; JX-52; JX-52a; JX-53.

[88] JX-67; JX-67a.

[89] Tr. 102-104; JX-1 ¶ 52; JX-64; JX-64a.

[90] Tr. 102-104; JX-1 ¶ 52; JX-64; JX-64a.

[91] Tr. 104; JX-1 ¶ 53.

[92] JX-1 ¶ 52; JX-65; JX-66.

[93] Tr. 103-108; JX-67; JX-67a; JX-68; JX-68a; JX-69; JX-69a. On July 12, 2012, MV emailed Ortiz to advise him that she received a "stack of papers two fingers thick" from JTF's clearing firm. JX-68; JX-68a. She stated that she had neither the time nor the ability to read them and prodded Ortiz to tell her where her account stood. JX-68; JX-68a.

[94] Tr. 104-108; JX-67; JX-67a; JX-68; JX-68a; JX-69; JX-69a.

On August 13, 2012, Ortiz emailed MV and VE a false "summary" of their portfolio.[95] Ortiz stated that the value of their portfolio "keeps growing in value which is what we were ultimately looking for to happen (sic). I do not want to get ahead of myself but in the next seven days we will have very good news with one of the positions . . ."[96] Ortiz attached to the email a JTF account summary that he created in which he listed investments that did not exist and a falsified account value of $192,949.[97] At the end of July 2012, the net asset value of MV's and VE's account was $31,631.94.[98] At the end of August 2012, the net asset value of MV's and VE's account was $26,786.99.[99] Ortiz testified that he provided MV and VE with a falsified account statement to prevent them from discovering the true account value at that time.[100] Ortiz hoped that he could force JTF to recover some of MV's and VE's funds before they knew the full extent of their losses.[101]

Ortiz continued this charade. On October 24, 2012, Ortiz emailed MV and VE another fake JTF account statement.[102] This time, the purported account statement that Ortiz attached to the email included Brickstone's letterhead and reported the value of MV's and VE's portfolio as $192,844.[103] In reality, the total account value as of September 30, 2012, was $26,785.92.[104] The body of Ortiz's October 24, 2012 email also contained misrepresentations. It stated, "the portfolio held up because the strategy that we have maintained has worked."[105]

On January 9, 2013, Ortiz emailed another fake account statement to MV and VE.[106] The fake account statement contained both JTF and Brickstone in the letterhead, stated that MV's and VE's account included assets that in reality did not exist, and reported inaccurately that the total value of MV's and VE's portfolio was $200,794 as of December 31, 2012.[107] Ortiz knew that the items he reported on the fake account statement were untrue and that the net asset value of the account at that time was approximately $26,157.[108]

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[95] Tr. 109-110; JX-1 ¶ 56; JX-70; JX-70a.

[96] JX-1 ¶¶ 57-58; JX-70; JX-70a, at 1.

[97] Tr. 109-110; JX-1 ¶ 56; JX-70; JX-70a.

[98] JX-71.

[99] Tr. 110; JX-1 ¶ 56; JX-72.

[100] Tr. 112.

[101] Tr. 112.

[102] Tr. 113-116; JX-1 ¶ 60; JX-73; JX-73a.

[103] Tr. 113-116; JX-73; JX-73a.

[104] Tr. 116; JX-1 ¶ 60; JX-74.

[105] JX-1 ¶¶ 62-63; JX-73a, at 1.

[106] Tr. 120-121; JX-1 ¶ 64; JX-78; JX-78a.

[107] Tr. 120-121; JX-1 ¶ 64; JX-78; JX-78a.

[108] Tr. 120-121; JX-1 ¶ 65; JX-79.

Ortiz was able to mislead MV and VE because they had not logged into their JTF account online since April 12, 2011.[109] MV and VE trusted Ortiz to safeguard their investments, and therefore they did not carefully follow the gains and losses in their account.[110] Ortiz claimed that JTF sent paper statements monthly to MV at an address that she maintained in Miami, Florida.[111] MV denied that she received paper statements in Florida where her father maintained an office or in Venezuela where she resided. She stated that she specifically requested that she not receive paper statements because she did not want to waste paper.[112]

Even after Ortiz's association with First Liberties ended, Ortiz was so invested in concealing the true value of MV's and VE's account that he continued fabricating account statements.[113] On March 26, 2013, Ortiz sent an email to MV and VE to which he attached a fake account statement with both JTF and Brickstone on the letterhead that reported an account value of $219,268.[114] Ortiz promised in the body of his email that the account had earned an additional nine percent return that did not show on the account statement.[115] With the added nine percent, MV calculated that her account was valued at approximately $239,000.[116] The true value of the account at the time was approximately $25,000.[117] MV and VE were thrilled to see such a profit, and they requested that Ortiz liquidate enough of their holdings to allow them to withdraw their $29,000 profit (above their initial $210,000 investment).[118] They asked Ortiz to transfer the money to MV's bank account.[119] They planned to leave the remainder of the funds in the account because they believed that their investments were doing well.[120]

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[109] Tr. 147-148; JX-101; JX-101a.

[110] Tr. 207, 225-226. MV trusted Ortiz so much that, when she received information from JM or his associate about her account, she sent it to Ortiz and asked him to explain it. Tr. 211-213; JX-29; JX-29a.

[111] Tr. 117-118.

[112] Tr. 206-207, 215-216. We find MV's testimony on this point more credible than Ortiz's testimony. MV and VE were environmentally conscious. They ran an environmental non-governmental organization and wrote a book to teach children about environmental causes. Tr. 178-179, 184-185. They specifically instructed Ortiz not to invest their funds in fossil fuels. Tr. 193-194; JX-1 ¶ 25; JX-21; JX-21a. Their desire to avoid receipt of paper account statements is consistent with their environmental awareness. Additionally, MV stated that she did not give her Miami address (which was her father's office) to JTF. Tr. 217-218. This is consistent with the JTF account statement included in the record, which lists MV's address in Venezuela, and with the directions that MV and VE provided in their account opening documents. JX-24a, at 3-4; JX-31.

[113] Our findings of violation relate only to four misrepresentative communications that Ortiz sent MV and VE during the Relevant Period. We discuss Ortiz's subsequent actions only insofar as they establish a pattern of misrepresentations, and we consider them only as to sanctions.

[114] Tr. 123-126; JX-1 ¶¶ 66-67; JX-80; JX-80a.

[115] Tr. 127; JX-1 ¶ 67; JX-80; JX-80a.

[116] Tr. 250; JX-85; JX-85a.

[117] Tr. 125-126; JX-1 ¶ 68; JX-81; JX-82.

[118] Tr. 250-251.

[119] Tr. 131, 251.

[120] Tr. 252.

Weeks passed, and Ortiz had not transferred the funds to MV's account as she had requested.[121] Ortiz misrepresented to MV and VE that Brickstone was transferring their account from the "JTF platform" to a platform with the Royal Bank of Canada, which he described to them as "a bigger platform."[122] Ortiz bought himself additional time by making MV and VE complete the same forms twice, demanding that they sign before a notary public, and adding an additional document to complete, purportedly to finalize the transfer.[123] MV began to lose her patience with Ortiz.[124] Thereafter, Ortiz falsely advised MV and VE that the United States government had closed JTF, the FBI had seized the firm's funds, and their funds would be returned to them in 10 working days.[125] MV expressed concern to Ortiz, but he continually reassured her that she would not lose any money, even though he knew that her account already had lost significant value.[126] Ortiz never intended to and never did open an account for MV and VE at the Royal Bank of Canada, and they never received any profits.[127]

In August 2013, MV attempted to use her username and password to review her JTF account online, and found that the password did not work.[128] MV thereafter contacted JTF's clearing firm, obtained a password, and logged onto her account.[129] On August 21, 2013, she sent Ortiz a screen shot of the account balance and asked him about it.[130] Rather than admitting to his misconduct, Ortiz continued to mislead MV with false assurances. He falsely claimed that her funds would be restored and that he had already transferred money to her bank account.[131]

MV and VE traveled to New York and, on September 25, 2013, appeared unexpectedly in Ortiz's office to demand an explanation.[132] Even then, Ortiz was not truthful. Ortiz told MV and VE that he could recover their funds and make them whole.[133] Ortiz even went so far as to tell MV and VE to meet him at his bank where he would give them a cashier's check, only to be told in front of them that his account was overdrawn.[134] As late as September 12, 2013, Ortiz

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[121] Tr. 253-254.

[122] Tr. 128-133, 253-255; JX-1 ¶ 69; JX-86; JX- 86a; JX-87; JX-87a; JX-88; JX-90; JX-90a.

[123] Tr. 128-141, 255-260, 265-267; JX-86; JX-86a; JX-87; JX-87a; JX-88; JX-88a; JX-90; JX-90a; JX-91; JX-91a; JX-94; JX-94a; JX-95.

[124] Tr. 260-263; JX-92; JX-92a; JX-96; JX-96a.

[125] Tr. 142-143, 274-275; JX-1 ¶ 71; JX-97; JX-97a.

[126] Tr. 133-146; JX-92; JX-92a; JX-94; JX-94a; JX-95; JX-96; JX-96a; JX-97; JX-97a; JX-98; JX-98a.

[127] Tr. 135, 268-270.

[128] Tr. 270; JX-100; JX-100a.

[129] Tr. 147-148, 272-273; JX-101; JX-101a.

[130] Tr. 147-148, 272-273; JX-1 ¶ 72; JX-101; JX-101a.

[131] Tr. 148-152, 275-276; JX-1 ¶ 72; JX-102; JX-102a; JX-104; JX-104a.

[132] Tr. 155, 277-283; JX-1 ¶ 73.

[133] Tr. 155-157, 277-288; JX-1 ¶ 73; Complainant's Exhibit ("CX")-1; CX-2; CX-3; CX-4.

[134] Tr. 156-157, 284-286, 359.

continued to lie to MV and VE.[135] MV and VE ultimately closed their JTF account in September 2013 and received a wire transfer of $47,156.09.[136] They lost approximately $162,843.[137]

Ortiz contends that he misled MV and VE because he believed that he could be successful in recovering their losses. He discouraged them from liquidating because he thought he could restore some value to their account before they realized how much they had lost.[138] Ortiz testified that he hired a lawyer to pursue legal action against JTF, but never recovered his or his friends' funds.[139]

2. Conclusions of Law

Ortiz violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), Exchange Act Rule 10b-5, and FINRA Rules 2020 and 2010 by making materially false and misleading statements and omitting material information in four email communications to MV and VE regarding their JTF account during the Relevant Period.

Section 10(b) of the Exchange Act and Rule 10b-5 make it unlawful for any person to use or employ, in connection with the purchase or sale of a security, any manipulative or deceptive device. Rule 10b-5 has three subsections. Subsection (a) prohibits directly or indirectly employing any device, scheme, or artifice to defraud; (b) prohibits directly or indirectly making an untrue statement of material fact or omitting a material fact necessary to make a statement not misleading; and (c) prohibits directly or indirectly engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon a person. Liability under the three sections requires a showing of scienter.[140] Thus, in order to establish a violation of Section 10(b) of the Exchange Act and Rule 10b-5 in this case, we must find that Ortiz made: (1) a material misrepresentation or omission (2) in connection with the purchase or sale of a security and (3) that he acted with scienter.[141]

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[135] Tr. 350-351.

[136] Tr. 289-290; JX-1 ¶ 74; JX-107.

[137] Tr. 293; JX-1 ¶ 74.

[138] Tr. 112, 138, 148, 468-469, 471.

[139] Tr. 160.

[140] *Mitchell H. Fillet*, Exchange Act Release No. 75054, 2015 SEC LEXIS 2142, at *40 (May 27, 2015).

[141] *SEC v. First Jersey Sec., Inc.*, 101 F.3d 1450 (2d Cir. 1996). In addition, violations of Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5 must involve the use of any means or instrumentalities of transportation or communication in interstate commerce, or the mails, or any facility of any national securities exchange. *See SEC v. Hasho*, 784 F. Supp. 1059, 1106 (S.D.N.Y. 1992). In this case, Ortiz does not dispute that the requirement of interstate commerce is satisfied. Ortiz communicated misrepresentations to MV and VE by electronic mail. *See* JX-1 ¶ 85; *U.S. v. Barlow*, 568 F.3d 215, 220 (5th Cir. 2009) (holding that "it is beyond debate that the Internet and email are facilities or means of interstate commerce"); *Dep't of Enforcement v. Becerril*, No. 2009018944001, 2012 FINRA Discip. LEXIS 4, at *17 (OHO Feb. 23, 2012) (finding that interstate commerce is established by communication, among other ways, through email).

FINRA's antifraud rule, Rule 2020, prohibits FINRA members and associated persons from effecting any securities transaction, or inducing the purchase or sale of a security, by means of any manipulative, deceptive, or other fraudulent device or contrivance.[142] FINRA Rule 2010 requires adherence to high standards of commercial honor and just and equitable principles of trade. Conduct that violates the Commission's or FINRA's rules, including the antifraud rules, is inconsistent with high standards of commercial honor and just and equitable principles of trade.[143]

Ortiz admits that he omitted from his communications with MV and VE the truth about what investments they held in their account and the current asset value of their account.[144] At the same time, he provided MV and VE fake account statements showing non-existent investments and an artificially inflated account value. The information that Ortiz omitted and misrepresented was material. "A fact is material if there is a substantial likelihood that a reasonable investor would have considered the fact important in making an investment decision, and disclosure of the omitted fact would have significantly altered the total mix of information available."[145] In other words, a misstated or omitted fact is material if a reasonable investor would have viewed the fact as having altered the "total mix" of information.[146] Ortiz admittedly misled MV and VE as to the true value and composition of the investments in their JTF account because he wanted to discourage them from liquidating their account and avoid embarrassment in front of his old friends.[147] The extreme lengths to which Ortiz went to conceal the actual value of MV's and VE's account demonstrates that this information was material and valuable to them. There can be little dispute that a reasonable investor would find the value of his or her investments to be material.[148]

Ortiz does not dispute that his misstatements and omissions to MV and VE satisfy the "in connection with" requirement. The Supreme Court has embraced an expansive interpretation of

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[142] *See Dep't of Enforcement v. Fillet*, No. 2008011762801, 2013 FINRA Discip. LEXIS 26, at *38 (NAC Oct. 2, 2013) (stating that FINRA Rule 2020 "captures a broader range of activity" than Rule 10b-5(b)), *aff'd in relevant part*, Exchange Act Release No. 75054, 2015 SEC LEXIS 2142 (May 27, 2015).

[143] *See Everest Sec., Inc.*, 52 S.E.C. 958, 959 (1996), *aff'd*, 116 F.3d 1235 (8th Cir. 1997). FINRA Rules 2020 and 2010 generally apply to FINRA members and are applicable to associated persons pursuant to FINRA Rule 0140.

[144] *See* JX-1(the parties' stipulations of facts).

[145] *Donner Corp. Int'l*, Exchange Act Release No. 55313, 2007 SEC LEXIS 334, at *30 (Feb. 20, 2007); *Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988).

[146] *See In re Time Warner, Inc. Securities Litigation*, 9 F.3d 259, 267-268 (2d Cir. 1993); *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976). The "reasonable investor" standard is an objective one. *Id.* at 445; *Robert Tretiak*, Exchange Act Release No. 47534, 56 S.E.C. 209, 222 (2003).

[147] *See* Tr. 102-104, 112, 120-121, 138, 148, 468-469, 471; JX-1 ¶¶ 50-53, 56-58, 60, 62-65.

[148] *See Fillet*, 2015 SEC LEXIS 2142, at *32 (finding that omission of adverse facts is a material omission under FINRA's fraud rule); *Shlomo A Sela*, Exchange Act Release No. 33789, 1994 SEC LEXIS 863 (Mar. 21, 1994) (finding material statements that accounts were making money when in fact they were losing substantial amounts).

Section 10(b)'s "in connection with" language.[149] Here, Ortiz "deprived [MV and VE] of material information necessary to make an informed investment decision, and created a false impression of fact" that resulted in MV and VE taking no action to minimize their losses or liquidate their account.[150] Had Ortiz been honest with MV and VE when their account first showed signs of decline, MV and VE could have liquidated their account to prevent additional losses. Ortiz prevented them from making a fully informed decision as to whether to hold or sell their investments. We find that Ortiz's misrepresentations and omissions with respect to MV and VE were in connection with the purchase or sale of a security.[151]

We also find that Ortiz acted with scienter. The Supreme Court has defined scienter as "a mental state embracing intent to deceive, manipulate or defraud."[152] During the Relevant Period, Ortiz intentionally misrepresented to MV and VE that their account held investments that did not exist and artificially inflated its value by as much as $200,000. He admittedly and repeatedly made these misrepresentations before, during, and after the Relevant Period, to lull MV and VE into inaction. We find that Ortiz was motivated to lie to MV and VE, individuals that he considered "friends," by a desire to avoid confrontation and embarrassment. He did not want to acknowledge to them that he led them astray and made unfortunate investment choices for himself and them.

Ortiz claims that he acted dishonestly to try to buy enough time to force JTF and AB to make MV and VE whole and that, because he was not motivated by monetary gain, we should not find that he acted with scienter. We reject Ortiz's argument. We need not find that Ortiz was motivated by monetary gain or that he benefitted financially to conclude that he acted fraudulently.[153] In any event, Ortiz was motivated by his desire to forestall confrontation with MV and VE and keep them in the dark for as long as possible. Although Ortiz may not have been inspired by the potential for personal monetary gain, he nonetheless acted intentionally and

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[149] *See Merrill Lynch, Pierce, Fenner & Smith v. Dabit*, 547 U.S. 71, 85-86 (2006) (rejecting argument that fraud was not in connection with the purchase or sale of a security because the alleged victim held the securities for too long based on fraudulent statements, but did not purchase or sell securities based on fraudulent statements); *SEC v. Zanford*, 535 U.S. 813, 819-821 (2002) (holding that the "in connection with" element of securities fraud can be met where the fraudulent activity touches or coincides with a securities transaction).

[150] *Fillet*, 2015 SEC LEXIS 2142, at *41.

[151] *See Orlando Joseph Jett*, 57 S.E.C. 350, 394-395 (2004) (holding that, where respondent reported to customers fictitious trading profits in their securities accounts to enhance the inadequate results of actual trading, the fraud satisfies the "in connection with" requirement).

[152] *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n.11 (1976). Scienter also may be established by a showing that the respondent acted recklessly. *See DWS Securities Corp.*, 51 S.E.C. 814, 821(1993). "Recklessness" has been defined as "an extreme departure from the standards of ordinary care." *Hollinger v. Titan Capital Corp.*, 914 F.2d 1564, 1569 (9th Cir. 1990); *see also SEC v. Falstaff Brewing Co.*, 629 F.2d 62, 77 (D.C. Cir. 1980) (holding that the knowledge of what one is doing, not necessarily the legal definition, is sufficient to demonstrate scienter).

[153] *See Dep't of Enforcement v. Kirlin Sec., Inc.*, No. EAF0400300001, 2009 FINRA Discip LEXIS 2, at *52 (Feb. 25, 2009) (rejecting argument that respondent's failure to generate a profit from his misconduct precludes finding of fraud), *aff'd in relevant part*, Exchange Act Release No. 61135, 2009 SEC LEXIS 4168 (Dec. 10, 2009); *Hibbard, Brown & Co., Inc.*, 52 S.E.C. 170, 180 (1995) (rejecting assertion that applicant's failure to profit from the misconduct defeats a finding of fraud).

placed his own interests ahead of MV's and VE's interests. We find that Ortiz acted with scienter.

We find that, during the Relevant Period, Ortiz intentionally misrepresented and omitted material facts in four communications with MV and VE. His misconduct was contrary to high standards of commercial honor and just and equitable principles of trade and violated FINRA Rules 2020 and 2010, Section 10(b) of the Exchange Act, and Exchange Act Rule 10b-5.

C. Cause Two

1. Findings of Fact

Cause two alleges that Ortiz failed to amend his Form U4 to disclose an unsatisfied judgment in favor of LC. Equivalores employed LC in Venezuela during the years leading up to 2009.[154] Equivalores agreed to pay LC a percentage of the profits garnered on all business that LC brought into Equivalores.[155] LC brought a significant amount of business into Equivalores, so the company paid LC substantial sums of money over the time of their association.[156] In late 2009, Equivalores and LC had a business dispute. At the time, Equivalores was not generating significant profit, and LC was dissatisfied with Equivalores's payments to him.[157]

In July 2010, after Ortiz arrived in the U.S., LC filed a lawsuit against Ortiz and Equivalores in federal court in Miami, Florida.[158] On November 10, 2011, a federal court in Florida entered a final judgment against Ortiz in the amount of $4,293,196.[159] In December 2011, LC submitted the Florida judgment to the New York County Clerk to enforce the judgment against Ortiz in New York.[160]

Ortiz testified that he hired a lawyer in Miami to represent him and Equivalores, but the lawyer failed to appear, and the federal court in Miami entered a default judgment against him.[161] Ortiz filed motions to vacate the judgment, and the Florida court vacated the judgment on April 4, 2012.[162] LC amended his complaint and refiled.[163] Ortiz answered the amended complaint.[164]

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[154] Tr. 29, 451.

[155] Tr. 451.

[156] Tr. 451-452.

[157] Tr. 451-452.

[158] Tr. 32-33, 458-459; JX-1 ¶ 76; JX-109.

[159] JX-1 ¶ 77; JX-110.

[160] JX-1 ¶ 78; JX-111; JX-112.

[161] Tr. 459-462.

[162] JX-1 ¶ 79; JX-113; JX-114.

[163] JX-1 ¶ 79.

[164] JX-1 ¶ 79; JX-115.

On September 18, 2012, the federal court in Miami entered a final judgment against Ortiz in the amount of $4,983,606 plus interest of $110,253 (the "Florida Judgment").[165]

Ortiz testified that he advised individuals at First Liberties about LC's pending matter and told them that he was considering filing bankruptcy if the court entered a final judgment against him.[166] An email chain and other communications between Ortiz and individuals at First Liberties indicate that Ortiz was aware, when the federal court issued the Florida Judgment in September 2012, that he needed to update his Form U4 if any answers changed.[167]

2. Conclusions of Law

Article V, Section 2(c) of FINRA's By-Laws requires applicants for registration with FINRA to keep their applications for registration current by filing supplementary amendments as necessary. The By-Laws also require that any amendments be filed with FINRA within 30 days of learning of the facts or circumstances that give rise to the amendments. "The duty to provide accurate information and to amend the Form U4 to provide current information assures regulatory organizations, employers, and members of the public that they have all material, current information about the securities professional with whom they are dealing."[168] The importance of the accuracy of the information provided in the Form U4 cannot be overstated.[169] FINRA Rule 1122 similarly requires associated persons to correct information filed with FINRA with respect to registration that is incomplete or inaccurate. FINRA Rule 2010 requires associated persons to observe the high standards of commercial honor and just and equitable principles of trade, which includes disclosing accurately and fully information required in the Form U4.[170]

During Ortiz's association with First Liberties from April 13, 2012, to March 15, 2013, question 14M on the Form U4 asked if the applicant for registration had any unsatisfied judgments or liens against him.[171] Ortiz answered "no" to Question 14M on the Form U4 that he signed on April 10, 2012, and First Liberties filed with FINRA.[172] We find that, in accordance

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[165] JX-1 ¶¶ 81, 82; JX-117. On February 6, 2013, the Supreme Court of the State of New York entered the Florida Judgment for full faith and credit in New York. JX-1 ¶ 82; JX-119. On March 7, 2013, the Supreme Court of the State of New York entered a final judgment against Ortiz based on the Florida Judgment. JX-1 ¶ 82; JX-120.

[166] Tr. 168-170. Ortiz testified that his contacts at First Liberties suggested that they did not anticipate that a bankruptcy would interfere with his registration based on their experiences with other registered representatives who filed for bankruptcy protection. Tr. 169-170.

[167] Tr. 169-170; JX-6, at 1; JX-118.

[168] *Joseph S. Amundsen*, Exchange Act Release No. 69406, 2013 SEC LEXIS 1148, at *25-26 (Apr. 18, 2013) (internal quotation marks omitted).

[169] *See Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at *26 (Nov. 9, 2012); *Dep't of Enforcement v. North Woodward Fin'l Corp.*, No. 2010021303301, 2014 FINRA Discip. LEXIS 32, at *16 (NAC July 21, 2014), *aff'd*, Exchange Act Release No. 74913, 2015 SEC LEXIS 1867 (May 8, 2015).

[170] *See Tucker*, 2012 SEC LEXIS 3496, at *30; *Jason A. Craig*, Exchange Act Release No. 59137, 2008 SEC LEXIS 2844, at *8 (Dec. 22, 2008); *North Woodward Fin'l Corp.*, 2014 FINRA Discip. LEXIS 32, at *17.

[171] JX-1 ¶ 75; JX-4, at 7.

[172] Tr. 166; JX-1 ¶ 80; JX-4, at 7-8.

with FINRA's By-Laws and its rules, Ortiz should have updated his Form U4 to disclose the Florida Judgment, which remained unsatisfied. Ortiz was aware of the judgment no later than December 2012, yet he never amended the Form U4 to disclose the judgment.[173]

We also find that Ortiz's failure to amend his Form U4 was willful. "A willful violation under the federal securities laws means 'that the person charged with the duty knows what he is doing.'"[174] The Commission has held that, it is not necessary to find that a respondent acted with a culpable state of mind or that he was aware of the rule that he violated.[175] "A failure to disclose is willful under Exchange Act…if the respondent of his own volition provides false answers on his Form U4."[176] Here, Ortiz admits that he knew of the judgment against him as of December 2012.[177] Ortiz knew that he answered "no" to question 14M on the Form U4, yet he never amended his Form U4 to disclose the judgment.[178] We find that his inaction in this regard was willful.

We find that Ortiz willfully failed to amend his Form U4 to disclose the Florida Judgment against him in the amount of $4,983,606, in violation of Article V, Section 2(c) of the FINRA By-Laws and FINRA Rules 1122 and 2010.[179]

IV. Sanctions

A. Cause One - Fraud

FINRA's Sanction Guidelines ("Guidelines") for fraud, misrepresentations or material omissions of fact recommend, for intentional or reckless misconduct, that the adjudicator strongly consider barring the individual respondent in all capacities.[180] The Guidelines do not provide principal considerations specific to fraud, misrepresentations, or material omissions. Therefore, we have considered the principal considerations applicable to all violations.[181]

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[173] JX-1 ¶¶ 81, 83.

[174] *Amundsen*, 2013 SEC LEXIS 1148, at *37-38 (quoting *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000)).

[175] *See Amundsen*, 2013 SEC LEXIS 1148, at *38.

[176] *Id*.

[177] Tr. 170.

[178] JX-1 ¶ 83.

[179] A person is subject to statutory disqualification under Section 3(a)(39)(F) of the Exchange Act if, among other things, he has willfully made or caused to be made in any application to become associated with a FINRA member any statement that is false or misleading with respect to a material fact or has omitted to state any material fact that is required to be stated. "[E]ssentially all the information that is reportable on the Form U4 is material." *Tucker*, 2012 SEC LEXIS 3496, at *47 (quoting *Dep't of Enforcement v. Knight*, No. C10020060, 2004 NASD Discip. LEXIS 5, at *13 (NAC Apr. 27, 2004)). Thus, as a result of our finding that Ortiz acted willfully, he may be statutorily disqualified from the securities industry.

[180] *FINRA Sanction Guidelines* at 88 (2015), http://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf.

[181] *Guidelines* at 6-7.

In this case, we find that numerous aggravating factors exist. First, Ortiz continued the charade of lying to MV and VE about their JTF account for a significant number of years, before, during, and after his association with First Liberties.[182] Ortiz admittedly knew as early as June 2011 that the majority of MV's and VE's money was gone, yet he continued to lie to them even after they confronted him in September 2013.[183] Second, although Ortiz now seems to regret his decision to mislead MV and VE, his belated remorse is not mitigating. When confronted by MV and VE, he did not apologize or express remorse.[184] Instead, he continued to feed them fanciful stories that resulted in their inaction, and they incurred additional losses in their account.[185] Had Ortiz been honest with MV and VE after the first month of trading when their account had already suffered significant losses, they could have considered liquidating their account and curtailing their losses.[186] Instead, he concealed their losses, recommended that they change account advisors, and commenced a series of emails that suggested that the U.S. economy in general and their investments in particular were improving.

Third, Ortiz engaged in a pattern of misconduct.[187] In total, Ortiz sent MV or VE more than 20 emails that contained unfounded positive statements regarding the asset value of their account, attached fake account statements, or omitted the truth about their significant losses. Additionally, once Ortiz began his dissent into a pattern of lies, he attempted all the more to conceal his misconduct and lull MV and VE into inaction.[188] In August 2013, when MV expressed concern about her account (even though she did not know the true extent of her losses), Ortiz tried to assuage her worry with false promises and by stating "the good thing about [the U.S.] is that there are laws."[189] Later, when MV and VE were in the U.S. with him, he shepherded them to his bank under the pretense that he would obtain a cashier's check to make them whole. All the while, he knew that he could not recompense them because his bank account was already overdrawn.[190]

Fourth, Ortiz's actions were intentional and designed to mislead unsophisticated investors who were not familiar with the U.S. financial markets.[191] MV and VE testified that they had

[182] *See Guidelines* at 6 (Principal Consideration No. 9).

[183] Tr. 144.

[184] Tr. 294.

[185] *See Guidelines* at 6 (Principal Consideration Nos. 2, 11).

[186] After one month of trading, in April 2011, MV's and VE's joint account lost approximately $40,000. Tr. 61; JX-1 ¶ 31; JX-26. In September 2013 when MV and VE closed their account, their losses had increased to $162,843. JX-1 ¶ 74; JX-107.

[187] *See Guidelines* at 6 (Principal Consideration No. 8).

[188] *See Guidelines* at 6 (Principal Consideration No. 10).

[189] Tr. 145-146; JX-98; JX-98a.

[190] Tr. 156-157, 284-286, 359.

[191] *See Guidelines* at 7 (Principal Consideration Nos. 13, 19).

very limited prior investment experience and neither was financially sophisticated.[192] In fact, MV testified that she did not access her account online because she trusted Ortiz and believed that he would monitor her investments and protect her money.[193] When she received information directly from JTF or its clearing firm, she immediately contacted Ortiz for assistance and intervention on her behalf.[194] Furthermore, although Ortiz's misconduct did not result in his own monetary gain, he appears to have been motivated by other personal interests, such as his desire to avoid confrontation and embarrassment.[195]

We find no mitigating factors. When MV and VE confronted Ortiz in Brickstone's office in September 2013, he once again resorted to lies. In an effort to borrow funds from another friend to pay off MV and VE, he lied to that friend, in MV's and VE's presence, by stating that he needed to borrow money to purchase art.[196] Given the egregious nature of Ortiz's violations and the danger that this type of misconduct poses to public investors, we find that barring Ortiz is necessary to protect investors. We therefore bar Ortiz from associating with any member firm in any capacity for his misconduct under cause one.

B. Cause Two - Failure to Update Form U4

FINRA's Sanction Guidelines for failing to file amendments to a Form U4 recommend the imposition of a fine and a suspension of up to two years or a bar.[197] Ortiz willfully failed to amend his Form U4 to disclose a significant judgment against him. "[T]he duty to amend a Form U4 assures regulatory organizations, employers, and members of the public that they have all material, current information about the securities professionals with whom they are dealing."[198] The importance to the regulatory process of timely and accurate amendments to the Form U4 therefore is beyond question, and a violation of this nature is significant. For this misconduct, we would impose a suspension of up to two years and a fine. In light of the bar that we have imposed for Ortiz's fraudulent misconduct, however, we decline to impose any additional sanction.

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[192] Tr. 179-180, 314.

[193] Tr. 207-208. VE similarly testified that they relied upon and trusted Ortiz. Tr. 346-347. We find MV's and VE's testimony to be highly credible. Their testimony in this regard is consistent with the plethora of optimistic emails and false account statements that Ortiz sent them. Additionally, both acknowledged that they are unlikely to recover their losses, yet they willingly traveled to the U.S. to testify because they hope to protect future investors from falling victim to Ortiz's misrepresentations. Tr. 293, 361.

[194] Tr. 197-199, 211-212, 216, 221; JX-68; JX-68a.

[195] *See Guidelines* at 7 (Principal Consideration No. 17).

[196] Tr. 287-289, 360, 474.

[197] Guidelines at 70.

[198] *North Woodward Fin'l Corp.*, 2015 SEC LEXIS 1867, at *30.

V. Order

Respondent Miguel Ortiz is barred from associating with any member firm in any capacity for fraudulently misrepresenting and omitting material facts in connection with four communications with MV and VE, as alleged in cause one of the Amended Complaint, in violation of Section 10(b) of the Exchange Act, Exchange Act Rule 10b-5, and FINRA Rules 2020 and 2010. We conclude that a fine and suspension is also in order for Ortiz's willful failure to amend his Form U4 to disclose an unpaid civil judgment against him, as alleged in cause two, in violation of FINRA Rules 2010 and 1122, and Article V, Section 2(c) of FINRA's By-Laws. In light of the bar imposed for violations under cause one, however, we do not impose additional sanctions. The bar shall become effective immediately if this decision becomes FINRA's final action in this disciplinary proceeding.[199]

Ortiz is ordered to pay the costs of the hearing in the amount of $5,309.73, which includes a $750 administrative fee. The costs shall be payable on a date set by FINRA, but not less than 30 days after this decision becomes FINRA's final disciplinary action in this matter.

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Carla Carloni
Hearing Officer
For the Hearing Panel

[199] We considered and rejected without discussion all other arguments by the parties.