FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. DAVID ADAM ELGART (CRD No. 825759), Respondent.	Disciplinary Proceeding No. 2013035211801 Hearing Officer–MC **HEARING PANEL DECISION** June 3, 2016

For willfully failing to timely update his Form U4, Respondent is suspended from associating with any FINRA member firm in any capacity for six months and fined $15,000. His willful violation subjects him to statutory disqualification. For submitting a false answer to a FINRA examination questionnaire, Respondent is suspended from associating with any FINRA member firm in any capacity for an additional 30 business days and fined an additional $5,000. Respondent is assessed the costs of the hearing.

Appearances

For the Complainant: William Brice La Hue, Esq., Rebecca L. Segrest, Esq., and David B. Klafter, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: Alan M. Wolper, Esq., and Heidi Vonderheide, Esq., Ulmer & Berne, LLP, Chicago, IL.

DECISION

I. Introduction

From June 2003 to June 2010, federal and state authorities filed a series of tax liens against Respondent David Adam Elgart. Elgart did not timely amend his Uniform Application for Securities Industry Registration or Transfer Form ("Form U4") to disclose the outstanding liens, as FINRA By-Laws and rules require.

The primary issue presented in this case is whether Elgart's decade-long failure to amend his Form U4 was willful. Elgart claims it was not. He asserts that he mistakenly believed that because the liens were personal and unrelated to his securities business, he was not required to disclose them. Elgart claims this is also why he incorrectly stated that there were no unsatisfied

liens filed against him when he responded to a FINRA staff questionnaire preceding a routine examination of his firm.

The Complaint's first cause of action alleges that Elgart learned about each of the liens close to the time they were filed, "or at least by January 2013."[1] It charges that Elgart's Form U4 was amended 13 times between July 2003 and December 2013, without disclosure of the liens.[2]

The NASD and FINRA By-Laws provide that a person must keep the information on his Form U4 current by filing amendments within 30 days of learning of changes of reportable circumstances. The Complaint's first cause of action charges that Elgart failed to amend his Form U4 in violation of Article V, Section 2(c) of the By-Laws. In addition, the Complaint alleges that his failure violated NASD IM-1000-1, FINRA Rule 1122, NASD Rule 2110, and FINRA Rule 2010.[3]

The Department of Enforcement alleges that Elgart's failure to disclose was willful and the information about the tax liens was material.[4] Finding that Elgart acted willfully and that the information omitted was material would subject him to statutory disqualification from the securities industry, "potentially a more severe sanction than a monetary penalty or temporary suspension."[5] FINRA's By-Laws provide that a person subject to statutory disqualification cannot be associated with any FINRA member firm unless the firm obtains permission from FINRA.[6]

The Complaint's second cause of action alleges that Elgart falsely answered a questionnaire FINRA sent in connection with a routine examination of his firm. In it, Elgart

---

[1] Complaint ("Compl.") ¶ 9.

[2] Compl. ¶¶ 10-11.

[3] Compl. ¶¶ 17-20. FINRA Rule 1122 became effective on August 17, 2009, superseding NASD IM-1000-1 without substantive change, although with some modifications not at issue here. FINRA Regulatory Notice 09-33, 2009 FINRA LEXIS 96, at *3 (June 2009). FINRA Rule 2010 became effective on December 15, 2008, superseding NASD Rule 2110, with no material change. FINRA Regulatory Notice 08-57, 2008 FINRA LEXIS 50, at *32 (Oct. 2008). Thus, NASD Rule 2110 applies to Elgart's conduct prior to December 15, 2008, and FINRA Rule 2010 applies to Elgart's conduct after that date; NASD IM-1000-1 applies to Elgart's conduct prior to August 17, 2009, and FINRA Rule 1122 applies to Elgart's afterwards. *See* Rule Conversion Chart: NASD to FINRA, http://www.finra.org/ruleconversionchart/.

[4] Compl. ¶¶ 17-18.

[5] *Mathis v. SEC*, 671 F.3d 210 at 215-16, 220 (2d Cir. 2012). *See also Michael Earl McCune*, Exchange Act Release No. 77375, 2016 SEC LEXIS 1026, at *14 (Mar. 15, 2016) ("A person is subject to a statutory disqualification under Section 3(a)(39) of the Exchange Act if, among other things, 'such person ... has willfully 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 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 ... report ... any material fact which is required to be stated therein.'").

[6] FINRA By-Laws, Article III, Sections 3(b) & (d).

denied he had pending unsatisfied liens.[7] Enforcement alleges that by giving this false answer, Elgart acted in bad faith, misled FINRA, and violated the high standards of commercial honor and just and equitable principles of trade required of him by FINRA Rule 2010.[8]

In his Answer, Elgart denies the allegations.[9]

II. Facts

A. Respondent and Jurisdiction

Elgart has more than 40 years of experience in the securities industry.[10] He first registered with FINRA as a general securities representative and as a municipal securities principal in January 1976.[11]

Since 1998 Elgart has been president and chief compliance officer of Sequoia Investments, Inc., a small firm in which he purchased a majority interest in 2001.[12] Elgart is subject to FINRA's jurisdiction.[13]

B. The Liens

In sum, over a seven-year period, federal and state tax authorities filed six liens against Elgart, totaling $407,931.78, listed chronologically below:[14]

1. June 10, 2003: federal tax lien for $150,843.50; unsatisfied.

2. December 12, 2005: State of Georgia tax lien for $6,962.92; unsatisfied.

3. January 11, 2007: federal tax lien for $19,175.80; released on February 7, 2007.

4. November 3, 2008: federal tax lien for $130,137.74; unsatisfied.

5. April 6, 2009: State of Georgia tax lien for $27,236.57; unsatisfied.

---

[7] Compl. ¶¶ 22-25.

[8] Compl. ¶¶ 27-28.

[9] Answer ("Ans.") ¶¶ 18, 25.

[10] Hearing Transcript ("Tr.") 48.

[11] Stipulations of Fact ("Stips.") ¶ 2.

[12] Stips. ¶ 7; Tr. 48-50. In addition to Elgart, Sequoia's employees include a salesman, a trader, and an outside FINOP. The firm's principal business is selling municipal bonds to high net worth individuals. Tr. 66-67.

[13] Ans. ¶ 6.

[14] Stips. ¶ 9.

6. June 2, 2010: federal tax lien for $73,575.25; unsatisfied.

The five liens that remain unsatisfied are the subject of this case.

Elgart testified that authorities filed the liens because of a dispute over the tax implications of his 2001 purchase of Sequoia.[15] He testified that he gave the notice of the first lien to his wife and an accountant to handle, and that he received notice of each lien at approximately the time it was issued.[16]

At the end of 2012, Elgart retained an attorney to assist him in dealing with the Internal Revenue Service and the liens. He claims that he did not know how many liens existed until the first meeting with the attorney on January 1, 2013.[17] Elgart did not amend his Form U4 to disclose the liens until December 23, 2013.[18]

C. The Form U4 Amendments

One of Elgart's responsibilities at Sequoia was to ensure that employees updated their Form U4 filings as needed to keep the information on file current and accurate.[19] In the decade following the filing of the first lien in July 2003, Elgart amended his Form U4 13 times without disclosing the liens.[20] The first amendment was on November 23, 2004; the last was on October 10, 2013.[21]

Although he was Sequoia's chief compliance officer, Elgart testified that from the start he delegated responsibilities for "handling basically all of the paperwork for the firm from a compliance perspective, registration perspective" to Sequoia's financial and operations principal ("FINOP").[22] Elgart testified that when his Form U4 needed to be updated, he called and instructed the FINOP to do it.[23] However, Elgart's signature, entered electronically, appears twice on each amendment, first as the "Signature of Applicant" giving his personal "Acknowledgment and Consent," and second as the "Signature of Appropriate Signatory" on

---

[15] Tr. 104-05. According to Elgart, the issue was whether funds would be subject to income tax or considered return of capital.

[16] Tr. 51-53.

[17] Tr. 91-92.

[18] Stips. ¶ 14.

[19] Stips. ¶ 8.

[20] Stips. ¶¶ 11-12.

[21] Tr. 36; CX-2.

[22] Tr. 49-50, 69-70.

[23] Tr. 69.

behalf of Sequoia.[24] When asked how his electronic signature was placed on the forms, Elgart testified that he assumes the FINOP "either had me log in and type my name in or he did it." If the FINOP entered his signature, Elgart conceded, it was with his specific authorization.[25]

D. The FINRA Examination

In late 2013, FINRA staff conducted a routine examination of Sequoia.[26] In November, in advance of the examination, FINRA staff sent Elgart a Personal Activity Questionnaire ("PAQ"). Elgart returned the completed form on November 25, 2013. He answered "No" to the PAQ question: "Do you have any unsatisfied judgments or liens against you? If so, provide details as to each."[27] At the bottom of the questionnaire, he signed an attestation that the information provided was "accurate and truthful."[28]

In preparation for the examination, FINRA staff ran a Lexis-Nexis record search to obtain reports on Sequoia's registered representatives. The report on Elgart showed tax liens filed against him.[29] On December 19, 2013, the staff called Elgart and asked him if the report was accurate.[30] A staff member who participated in the conversation testified that Elgart gave the impression "that he was aware of the possibility" there were liens against him.[31]

Following the phone conversation, FINRA staff sent Elgart an email listing the liens it found in the record search and a link to FINRA guidance about Form U4 disclosure requirements. The staff asked Elgart to ascertain whether the liens needed to be reported, and if so, to amend his Form U4, update the PAQ to reflect the liens, and send a copy of the amended Form U4 and PAQ to the staff. If he determined that he did not need to report the liens, the staff asked him to send a written explanation of how he made that determination.[32]

On December 23, 2013, Elgart amended his Form U4 and disclosed the liens.[33] On January 27, 2014, the staff sent another email to Elgart, with a blank PAQ attached, and asked

---

[24] CX-2, at 10, 24, 39, 56-57, 74, 90, 108, 125, 142, 159, 175-76, 192-93, 209-10. References to exhibits introduced by Enforcement are designated "CX-__." References to exhibits introduced by Elgart are designated "RX-___." References to joint exhibits are designated "JX-__."

[25] Tr. 94.

[26] Tr. 20-21.

[27] JX-2, at 4.

[28] JX-2, at 4.

[29] Tr. 21-23; CX-3.

[30] Tr. 24-25.

[31] Tr. 46-47.

[32] CX-11.

[33] Tr. 26-28; JX-3.

him to complete it to incorporate the information about the liens. The staff did not receive an updated PAQ from Elgart.[34]

In February 2014, the staff asked Elgart to explain why he had not disclosed the liens as required.[35] In a letter dated March 7, 2014, Elgart explained that he had delegated responsibility for filing Sequoia's taxes to his wife and accountants, and "because of this division of responsibilities," he was "simply not aware" of the need to update his Form U4 to report the liens. Elgart claimed that his failure to do so was inadvertent, "a mistake," and not intended to "obfuscate." He explained that he operates Sequoia "alone with only a modicum of assistance," and also that he had for the previous four years experienced health problems. Finally, he implied that since the liens were not against Sequoia, they did not directly affect the firm and its clients; therefore, he thought he did not need to report them.[36]

III. Discussion

A. The Form U4 Disclosures: Overview

Article V, Section 2(a) of the By-Laws requires anyone applying for registration to agree to comply with federal securities laws and other applicable rules and regulations. Article V, Section 2(c) requires registered persons to keep their applications for registration current by filing amendments within 30 days of learning of a circumstance requiring amendment.

NASD IM-1000-1, "Filing of Misleading Information as to Membership or Registration," states that filing information that is incomplete, inaccurate, or could tend to mislead, or failing to correct a filing after learning of its inaccuracy, may contravene the just and equitable principles of trade to which members must adhere. FINRA Rule 1122 has the same title as IM-1000-1, and is identical in effect. A violation of NASD IM-1000-1 also violates NASD Rule 2110, and a violation of FINRA Rule 1122 also violates FINRA Rule 2010.[37]

These rules obligate a registered person to provide accurate information to ensure "regulatory organizations, employers, and members of the public … have all material, current information about the securities professional with whom they are dealing."[38] The Form U4 General Instructions state that "Filers must answer all questions and submit all requested information." Question No. 14M asks, "Do you have any unsatisfied judgments or liens against you?" The Form U4 directs the person filing to "provide details" if the answer is Yes. The instructions further provide that "[a]n individual is under a continuing obligation to amend and

---

[34] CX-12; Tr. 29.

[35] Tr. 37.

[36] JX-4.

[37] *McCune*, 2016 SEC LEXIS 1026, at *12.

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

update information required by Form U4 as changes occur." It is the responsibility of every person submitting a Form U4 "to ensure that the information provided on the form is true and accurate."[39]

1. Willfulness

As noted above, the central issue in this case is whether Elgart's failure to disclose the liens was willful. It is unnecessary for Enforcement to show that Elgart knew his actions violated any particular NASD or FINRA rules or other securities laws to prove willfulness.[40] Rather, the evidence must establish that Elgart acted intentionally by "committing the act which constitutes the violation"; that is, he knew what he was doing when he learned of but did not disclose a lien filing, and filed Form U4 amendments without disclosing the liens.[41] A failure to make a required disclosure on Form U4 is willful if the person provides false information "of his own volition," and the untrue Form U4 entry is "neither involuntary nor inadvertent."[42]

a. Elgart's Arguments

Elgart testified that even though he was president and chief compliance officer of Sequoia, he delegated the responsibility of filing the U4 amendments to Sequoia's FINOP.[43] Although he informed the FINOP of his occasional changes of address and registrations to update his Form U4, he did not tell the FINOP about the liens and did not ask the FINOP to disclose them.[44]

Elgart understands that the purpose of a Form U4 is to collect and record information about a registered person, in contrast to the purpose of a Form BD, which is to collect and record information about a firm.[45] However, Elgart claims that he believed the requirement to amend his Form U4 only applied to disclosure of financial information relating to the *firm*, not to his *personal* financial obligations and liabilities.[46] Elgart testified that his attorneys assured him the unsatisfied liens were personal liabilities that could not affect Sequoia or its clients.[47] He testified

---

[39] *Robert B. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at *30 (Nov. 9, 2012).

[40] *McCune*, 2016 SEC LEXIS 1026, at *15; *Jason A. Craig*, Exchange Act Release No. 59137, 2008 SEC LEXIS 2844, at *13 (Dec. 22, 2008).

[41] *McCune*, 2016 SEC LEXIS 1026, at *15, quoting *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965), and citing *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000); *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949).

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

[43] Tr. 69.

[44] Tr. 69-71, 93-94.

[45] Tr. 60.

[46] Tr. 78, 106.

[47] Tr. 78.

that this is why he decided not to disclose the liens.[48] Elgart claims that in late 2013, when he "actually looked at Form U4" and FINRA staff explained question 14M to him during the examination, his understanding of the question changed "dramatically."[49] Before then, he asserts, he was not even aware that the Form U4 contained Question 14M.[50]

b. Elgart's Inconsistent Explanations of His Awareness of the Liens

In his Answer to the Complaint, Elgart flatly denies learning of the liens when they were filed.[51] On other occasions, Elgart gave different, contradictory accounts about when he learned of the liens. His first explanation appeared in the Form U4 amendments he filed on December 23, 2013. There, Elgart explained that on January 1, 2013, his attorney informed him of "liens [he] was not aware of."[52]

Later, shortly before Enforcement filed the Complaint, Elgart represented through his attorney in a letter to FINRA that he "became aware of the liens on or around the time they were filed."[53] At the hearing, he testified initially that he received the notice of the first lien, dated May 28, 2003, and turned it over to his wife, and did the same with the four other unsatisfied liens.[54] Then he hedged this admission, and testified that he was "aware of a number of the liens" but unaware of "one or two."[55] Elgart testified that in his December 23, 2013 filing he identified January 1, 2013, as the date he first learned of the liens because it "approximated the first or one of the initial meetings" with his attorney.[56] Yet he acknowledged knowing "there were tax problems that started in 2002 actually and 2003," although he "didn't know how many," and "didn't know which dates they occurred on."[57] Under questioning, he conceded that, when he amended his Form U4 on December 23, 2013, he "wasn't as precise as [he] should have been."[58]

---

[48] Tr. 106-07.

[49] Tr. 73-75.

[50] Tr. 108 ("But I wasn't aware that that question was on there.").

[51] Ans. ¶ 9.

[52] JX-3, at 17-23.

[53] RX-19, at 2.

[54] Tr. 38, 51-52.

[55] Tr. 56.

[56] Tr. 100.

[57] Tr. 99-100.

[58] Tr. 99-100.

The Hearing Panel finds Elgart's inconsistent explanations of when he became aware of the liens to be evidence of his lack of credibility.

2. Materiality

For the purposes of Form U4's reporting requirements, information is material if there is a "substantial likelihood" that its disclosure would cause "a reasonable regulator, employer, or customer" to think the information would significantly alter the "total mix" of other information available. Elgart's liens are material if, for example, disclosing them would provide regulators "with early notice about his financial difficulties and ability to manage his financial obligations"; provide employers with insight into "the outside financial pressures he was facing"; and provide customers with a measure of whether the liens reflect on "his ability to provide … appropriate financial advice."[59]

FINRA's National Adjudicatory Council ("NAC") has held that "essentially all of the information that is reportable on the Form U4 may be considered material."[60] And, in a case similar to this, the Securities and Exchange Commission ("SEC") held that the existence of five tax liens filed against a registered representative totaling more than $600,000 was material information.[61] In reaching that conclusion, the SEC took into consideration the "large dollar amount of the liens, the number of the liens, and the lengthy period of time during which this information was not disclosed."[62]

Here, Elgart's five outstanding tax liens totaling nearly $400,000 reflect significant personal financial obligations that would indicate to regulators the presence of economic pressures on him and raise questions about his ability to manage his financial affairs. Such large financial obligations and tax difficulties would clearly be material to customers, who could have concerns about Elgart's judgment and his acumen in managing their investments. For these reasons, the Hearing Panel finds that the existence of Elgart's tax liens is material information.

---

[59] *McCune*, 2016 SEC LEXIS 1026, at *21-22, and nn.25-26. *See also Mathis*, 671 F.3d at 219-20 (respondent's undisclosed tax liens deemed material); *Tucker*, 2012 SEC LEXIS 3496, at *32-33 (Respondent's liens, bankruptcies, and judgments were significant because they "raise concerns about whether [respondent] could responsibly manage his own financial affairs, and ultimately cast doubt on his ability to provide trustworthy financial advice and services to investors relying on him to act on their behalf as a securities industry professional … [and] also reflected significant outside financial pressures that could affect his judgment when providing financial services.").

[60] *Dep't of Enforcement v. Toth*, No. E9A2004001901, 2007 NASD Discip. LEXIS 25, at *34 (NAC July 7, 2007), *aff'd*, Exchange Act Release No. 58074, 2008 SEC LEXIS 1520 (July 1, 2008).

[61] *Mathis*, 671 F.3d at 213, 220.

[62] *Scott Mathis*, Exchange Act Release No. 61120, 2009 SEC LEXIS 4376, at *29 (Dec. 7, 2009), *aff'd*, *Mathis*, 671 F.3d 210.

3. Conclusions

Elgart's assertion—that he did not act willfully because he was unaware he was required to report—is unconvincing. As explained in a recent FINRA Hearing Panel decision, a respondent's "claim that he did not know that he needed to report [a] bankruptcy is not a valid defense. A registered representative is presumed to know and abide by FINRA Rules."[63] This statement is consistent with recent and long-standing decisions issued by the NAC and the SEC. The NAC recently held, in a decision upheld by the SEC, that a representative's claim that he did not understand the importance of FINRA's Form U4 disclosure requirements was "no defense" to a charge of willful failure to disclose.[64] Rather, a registered representative is responsible "to ensure that his Form U4 is accurate."[65] In reviewing a willful violation, the SEC observed that "securities industry professionals … have a responsibility to understand their duties to the investing public and to comply with the applicable rules and regulations which govern their behavior."[66] A claim of not knowing that a fact has to be disclosed fails because "ignorance of the … rules is no excuse for their violation."[67]

Elgart claims that although he understood he must disclose "bankruptcies, financial conflicts created by receipt of compensation, certain business affiliations and/or relationships, and almost any kind of regulatory action," he "was simply unaware" he had to report his personal liens.[68] Citing a leading case, he argues that his omissions were the equivalent of "an inadvertent filing of an inaccurate form," and do not support a finding that he "**falsely and intentionally denied** having 'any unsatisfied judgments or liens.'"[69]

However, in the case Elgart cites, the SEC found the respondent acted willfully in part because there was "substantial evidence to support the SEC's finding that [the respondent] received the IRS notices … and was aware of the tax liens when he filed his … Forms U4."[70] Here, Elgart's own testimony provides substantial evidence that he received the notices of the liens and turned them over to his wife and accountant, and was therefore aware of them when

---

[63] *Dep't of Enforcement v. Ottimo*, No. 2009017440201, 2015 FINRA Discip. LEXIS 42, at *40 (OHO July 10, 2015), *appeal docketed* (NAC July 31, 2015).

[64] *Dep't of Enforcement v. McCune*, No. 2011027993301, 2015 FINRA Discip. LEXIS 22, at *21 (NAC July 27, 2015), *aff'd, McCune*, 2016 SEC LEXIS 1026.

[65] *Dep't of Enforcement v. Zayed*, No. 2006003834901, 2010 FINRA Discip. LEXIS 13, at *21, n.18 (NAC Aug. 19, 2010).

[66] *Christopher LaPorte*, Exchange Act Release No. 39171, 1997 SEC LEXIS 2058, at *8, n.2 (Sept. 30, 1997).

[67] *Craig*, 2008 SEC LEXIS 2844 at *16, quoting *Richard J. Lanigan*, 52 S.E.C. 375, 378 n.13 (1995), citing *David A. Gingras*, 50 S.E.C. 1286, 1291 n.12 (1992); *Kirk A. Knapp*, 51 S.E.C. 115, 129 (1992).

[68] Respondent's Pre-Hearing Brief ("Br."), at 7.

[69] *Id.* at 9, quoting *Mathis v. SEC*, 671 F.3d at 218 (2d Cir. 2012) (emphasis added by Elgart).

[70] *Mathis*, 671 F.3d at 218.

they were filed. Furthermore, he testified that he made a conscious determination that he was not required to report them. Contemplating whether he had to disclose the liens, then deciding that he need not because they were filed against him personally, suffices to establish that Elgart acted willfully. Furthermore, Question 14M's plain, unambiguous wording makes unreasonable Elgart's claim that he did not understand he was required to disclose the liens. Because Elgart "knew what he was doing when he did not timely amend the forms to disclose" the liens he knew had been filed, when he answered "No" to Question 14M in the 13 amendments, Elgart acted willfully.[71] Finally, based upon Elgart's demeanor at the hearing, and the evidence presented, the Panel finds his claimed ignorance of Question 14M is not credible; even if it were, it is not a defense.

For these reasons, the Panel concludes that Elgart willfully violated Article V, Section 2(c) of NASD's and FINRA's By-Laws, NASD IM-1000-1, and FINRA Rule 1122 by failing to timely amend his Form U4 to disclose the five unsatisfied liens, and by filing 13 misleading amendments to his Form U4 that did not disclose the liens. By doing so, Elgart engaged in conduct inconsistent with the standard of just and equitable principles of trade in violation of NASD Rule 2110 and FINRA Rule 2010.[72]

B. Misrepresentation to FINRA

1. FINRA Rule 2010

FINRA Rule 2010 provides that "A member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade." Rule 2010 is recognized as a "catch-all which ... preserves power to discipline members for a wide variety of misconduct, including merely unethical behavior," even if not involving a security.[73] It has long been established that conduct that is unethical or that reflects bad faith violates Rule 2010.[74] It is also well established that giving untrue or misleading information to FINRA is "inconsistent with just and equitable principles of trade."[75]

---

[71] *McCune*, 2015 FINRA Discip. LEXIS 22, at *11 (NAC July 27, 2015), citing *Mathis v. SEC*, 671 F.3d at 216-18.

[72] *Tucker*, 2012 SEC LEXIS 3496, at *30.

[73] *Heath v. SEC*, 586 F.3d 122, 134 (2d Cir. 2009) (quoting *Colonial Realty Corp. v. Bache & Co.*, 358 F.2d 178, 182 (2d Cir. 1966) *cert. denied*, 385 U.S. 817 (1966).

[74] *Robert E. Kauffman*, 51 S.E.C. 838, 840 n.5 (1993), citing *Robert J. Jautz*, 48 S.E.C. 702, 704 (1987).

[75] *Dep't of Enforcement v. Rogala*, No. C8A030089, 2005 NASD Discip. LEXIS 44, at *21-22 (NAC Oct. 11, 2005), citing *Brian L. Gibbons*, 52 S.E.C. 791, 795 (1996), *aff'd*, 112 F.3d 516 (9th Cir. 1997); *Kauffman*, 51 S.E.C. at 839-40, *aff'd*, *Kauffman v. SEC*, 40 F.3d 1240 (3d Cir. 1994) (representative violated conduct rule requiring observance of high standards of commercial honor and just and equitable principles of trade, and acted both unethically and in bad faith by falsely stating on Form U4 that he had received an undergraduate college degree).

2. Elgart's Claims

Elgart claims that "No" was a truthful answer to the PAQ question, "the way I interpreted it,"[76] and that his answer was consistent with his reasoning for not disclosing the liens on his Form U4.[77] At the hearing, Elgart explained that because FINRA asked the question "as a regulator, as it related to what they are regulating," he interpreted the question as asking "how did these things affect Sequoia operations," and therefore he answered it as if it asked whether he "and Sequoia," or he, "as the president of Sequoia," had any liens.[78]

At the hearing, Elgart conceded that his answer was "incorrect."[79] Nonetheless, he argues that his answer did not violate FINRA Rule 2010 because "he intended (and believed he was)" answering truthfully. Therefore, "because he believed his answer to be truthful and accurate, he did not act in bad faith … did not act with the intent to mislead FINRA Staff" and did not violate the ethical mandate of Rule 2010.[80]

3. Conclusions

The Panel finds Elgart's claims that he "intended" to be truthful in his PAQ answer, and his answer was truthful and accurate, are not credible. Almost identical to the Form U4's Question 14M, the wording of the PAQ question is simple, straightforward, and unambiguous. It does not lend itself to Elgart's claimed misinterpretation.

Elgart answered the PAQ question on November 25, 2013. By Elgart's account, this was almost a year after he met to review his liens with a tax attorney and an accountant.[81] The liens and his argument with the IRS were not insignificant matters in his life; he testified, credibly, that he had found the number of liens and their amounts troubling.[82]

Under these circumstances, Elgart's assertion that he honestly believed the PAQ question did not require him to disclose his unsatisfied liens is not believable. Instead, the Panel concludes that Elgart, a seasoned securities professional, fully understood the question, but chose to answer

---

[76] Tr. 80.

[77] Tr. 80-81.

[78] Tr. 101.

[79] Tr. 101-02.

[80] Respondent's Pre-Hearing Br., at 12.

[81] Tr. 92-93.

[82] Tr. 103.

it dishonestly to mislead FINRA. By doing so he acted unethically and in bad faith, in violation of NASD Rule 2110 and FINRA Rule 2010.[83]

IV. Sanctions

A. Willful Failure to Disclose Liens on Form U4

FINRA's Sanction 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 for filing false, misleading, or inaccurate Form U4 amendments.[84] For egregious cases, including cases with repeated false, inaccurate, or misleading filings, the Guidelines recommend considering suspension of an individual for up to two years in any or all capacities, or a bar. The relevant principal consideration in determining sanctions is the nature and significance of the information at issue.[85]

Enforcement argues that Elgart's failure to disclose is egregious misconduct because of the nature and significance of the undisclosed information, and his multiple willfully misleading filings over an extended period. Enforcement recommends imposing a six-month suspension in all capacities, and a fine of $10,000.[86]

Elgart describes Enforcement's sanction recommendations as "incredible."[87] He discounts Enforcement's emphasis on the significance of the information, arguing that the liens "had no impact on the firm, its solvency, or his customers," and therefore the Panel should not consider their omission from his Form U4 to be significant.[88] Insisting that he did not act willfully but in good faith, Elgart argues that "no sanction, or, at worst, a modest sanction" should be imposed.[89] Elgart stresses he "misunderstood the disclosure question," and made a "simple error, not intentional."[90] Elgart also argues that although he failed to report five liens, his alleged misconduct "flows from a single misunderstanding of a single question." For these reasons, Elgart urges the Panel to "batch," or aggregate, the Form U4 reporting violations for the purpose of sanctions, citing the Guideline recommendation to batch multiple violations

---

[83] The Panel recognizes that to violate NASD Rule 2110 or FINRA Rule 2010, the "most that is required is a finding of bad faith or unethical conduct," not both. *Kauffman*, 51 S.E.C. at 840 n.5. Here, however, the evidence supports a finding that Elgart's conduct was both unethical and in bad faith.

[84] FINRA Sanction Guidelines at 69 (2015), available at http://www.finra.org/industry/sanction-guidelines.

[85] *Id.* at 69-70.

[86] Enforcement's Pre-Hearing Br., at 19-20.

[87] Respondent's Response to Enforcement's Pre-Hearing Br., at 3.

[88] Respondent's Pre-Hearing Br., at 16.

[89] Respondent's Pre-Hearing Br., at 16-17; Respondent's Response to Enforcement's Pre-Hearing Br., at 4.

[90] Respondent's Response to Enforcement's Pre-Hearing Br., at 2.

committed unintentionally or negligently, with no injury to public investors, stemming from a single problem that has been corrected.[91]

The Panel has carefully considered Elgart's arguments and reviewed the Principal Considerations he cites in support. We find that the arguments are supported by neither the Principal Considerations nor the facts.

Elgart cites Principal Consideration No. 1, relevant disciplinary history, for the proposition that his lack of disciplinary history, particularly any previous sanctions for disclosure violations, is evidence he is unlikely to repeat the conduct at issue.[92] However, as explained in General Principle No. 2, relevant disciplinary history is properly considered for the purpose of fashioning more severe sanctions for recidivists; absence of a disciplinary history is not mitigating.[93]

Elgart argues that Principal Consideration No. 2, acceptance of responsibility and acknowledgement of misconduct prior to a regulator's intervention, "weighs very heavily against the imposition of any sanction" because he "immediately accepted responsibility for his error."[94] The Panel disagrees. By his own admission, he had reviewed all of the liens with counsel by January 1, 2013; based on the evidence, he had long known the number and substantial monetary size of the liens. Yet he answered FINRA's PAQ dishonestly on November 25, 2013. When Enforcement staff called him on December 19, 2013, and asked him if the Lexis Nexis report showing his liens was accurate, he prevaricated, indicating that there might be some liens. Thus, he did not immediately acknowledge his misconduct and accept responsibility.

Contrary to Elgart's argument that "this case involves a single isolated error,"[95] his misconduct extended over a decade and involved 13 misleading amendments to his Form U4. The Panel agrees with Enforcement that Elgart's course of conduct constitutes a pattern involving numerous acts, extending over a lengthy period. These are aggravating factors recognized by Principal Considerations No. 8 and No. 9. Further, the Panel concludes that Elgart's untruthful answer to the PAQ question reflected an attempt to mislead FINRA by concealing his failure to disclose the liens, an aggravating factor identified in Principal Consideration No. 10.[96]

At the hearing, Elgart claimed that he substantially assisted FINRA in its investigation. The Panel accepts his uncontroverted testimony that he authorized his attorney and accountant to

---

[91] *Id.* at 3-4; Tr. 127-28.

[92] Respondent's Pre-Hearing Br., at 14.

[93] Guidelines at 6, n.1

[94] Respondent's Pre-Hearing Br., at 14.

[95] *Id.*

[96] Guidelines at 6.

turn over information about the liens to FINRA. However, any mitigating impact of this cooperation is diminished by its timing; it did not occur until after he had submitted the false answer to the PAQ question in November 2013, and after FINRA staff informed him on December 19, 2013, that it had discovered the liens.

Finally, Elgart unduly minimizes the nature and significance of the liens and his failure to disclose them. For the same reasons the Panel finds the information about the liens to be material—because their implications concerning Elgart's financial situation would make knowledge of them important to regulators and to customers—their number and size are significant for determining sanctions, despite Elgart's claim that they had "no impact" on Sequoia or its customers.

For these reasons, the Panel finds it consistent with the seriousness of Elgart's misconduct, and appropriately remedial, to suspend him for six months in all capacities, and to impose a fine of $15,000, for willfuly failing to timely amend his Form U4, and for filing incomplete and misleading amendments, in violation of Article V, Section 2(c) of NASD's and FINRA's By-Laws, NASD IM-1000-1, NASD Rule 2110, and FINRA Rules 1122 and 2010.

B. Providing False Information to FINRA

No guideline specifically addresses a sanction for providing untruthful information in response to a FINRA questionnaire not issued pursuant to FINRA Rule 8210. Enforcement refers to the guideline for forgery or falsification of records, in violation of FINRA Rule 2010, which recommends a fine between $5,000 and $146,000, and a suspension or a bar. In cases where mitigating factors exist, the guideline recommends consideration of a suspension for up to two years. In egregious cases, it recommends considering a bar. The guideline contains two relevant Principal Considerations for determining sanctions for falsifying documents: (1) the nature of the document falsified; and (2) whether respondent had a good faith, but mistaken, belief of express or implied authority.[97]

Enforcement recommends imposing a suspension in all capacities for an additional 30 days and a fine of $5,000 for this violation.[98] Elgart, insisting that he did not violate Rule 2010, argues that no sanction should be imposed.[99]

FINRA routinely uses PAQs to gather information prior to conducting an examination.[100] The Panel has found that Elgart intentionally answered falsely to avoid disclosing that he failed to amend his Form U4. Like the Form U4's Question 14M, the PAQ question is clear and

---

[97] Guidelines at 37.

[98] Enforcement's Pre-Hearing Br., at 21-22.

[99] Respondent's Pre-Hearing Br., at 16-17.

[100] Enforcement's Pre-Hearing Br., at 21.

unambiguous. Having rejected Elgart's claim that he misinterpreted that question in the same way he purportedly misinterpreted Question 14M, the Panel concludes that Elgart knowingly answered untruthfully. There are no mitigating factors.

For these reasons, the Panel accepts Enforcement's recommendation. We suspend Elgart in all capacities for 30 business days, to be served consecutively with the six-month suspension we have imposed, and assess an additional fine of $5,000 for Elgart's violation of FINRA Rule 2010.[101]

V. Order

For willfully failing to timely update his Form U4, in violation of Article V, Section 2(c) of NASD's and FINRA's By-Laws, NASD IM-1000-1, NASD Rule 2110, and FINRA Rules 1122 and 2010, Respondent David Adam Elgart is suspended from associating with any FINRA member firm in any capacity for six months and fined $15,000. Because his misconduct was willful, and the information he failed to disclose was material, he is subject to statutory disqualification.

For providing FINRA with a false answer to a question on a Personal Activity Questionnaire, in violation of FINRA Rule 2010, Elgart is suspended from associating with any FINRA member in any capacity for 30 business days and fined $5,000. The suspensions shall run consecutively.

Elgart is also ordered to pay the hearing costs in the amount of $1,759.42, consisting of an administrative fee of $750, and the cost of the hearing transcript.

If this Decision becomes FINRA's final disciplinary action, Elgart's suspension shall become effective with the opening of business on August 1, 2016. The fines and costs shall be due on a date set by FINRA, but not sooner than 30 days after this decision becomes FINRA's final disciplinary action in this proceeding.

Matthew Campbell
Hearing Officer
For the Hearing Panel

[101] The Panel considered and rejected without discussion all other arguments by the parties.

Copies to:

David A. Elgart (via overnight courier and first-class mail)
Alan M. Wolper, Esq. (via email and first-class mail)
Heidi VonderHeide, Esq. (via email)
William Brice La Hue, Esq. (via email and first-class mail)
David B. Klafter, Esq. (via email)
Rebecca L. Segrest, Esq. (via email)
Jeffrey D. Pariser, Esq. (via email)