

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JOSEPH S. AMUNDSEN
(CRD No. 4728125)

Respondent.

Disciplinary Proceeding
No. 2010021916601

Hearing Officer – RSH

HEARING PANEL DECISION

December 30, 2011

Respondent violated NASD Rule 2110 and IM-1000-1, and FINRA Rules 1122 and 2010 by willfully failing to disclose, on 36 Forms U4, an SEC injunction against him and the revocation of his accountant’s license. For this violation, the Respondent was barred from associating with any member firm in any capacity.

Appearances

Thomas M. Huber, Senior Regional Counsel, and Walter Naeder, Principal Regional Counsel, Philadelphia, Pennsylvania, for the FINRA Department of Enforcement.

Joseph S. Amundsen, *pro se*.

DECISION

I. PROCEDURAL HISTORY¹

On May 23, 2011, the Department of Enforcement filed a Complaint with the Office of Hearing Officers alleging that Respondent Joseph S. Amundsen violated NASD

¹ As of July 30, 2007, NASD began operating under a new corporate name, the Financial Industry Regulatory Authority (“FINRA”). References in this decision to FINRA include, where appropriate, NASD. On December 15, 2008, certain consolidated FINRA rules became effective, replacing parallel NASD rules, and in some cases the prior rules were re-numbered and/or revised. *See* Regulatory Notice No. 08-57, FINRA Notices to Members, 2008 FINRA LEXIS 50 (Oct. 2008). This Decision refers to and relies on the NASD rules and FINRA rules that were in effect at the time of the Respondent’s alleged misconduct and cited in the Complaint as the basis for the charges against him.

Rule 2110 and Membership and Registration Rule Interpretive Material (“IM”) 1000-1, and FINRA Rules 1122 and 2010 by willfully providing false information and willfully failing to disclose material information on 36 Uniform Applications for Securities Industry Registration or Transfers (“Form U4”). Specifically, the Complaint alleged that Amundsen failed to disclose that in 1983, pursuant to a complaint filed against him by the Securities and Exchange Commission (“SEC”), a federal district judge entered an injunction that permanently enjoined him from violating the anti-fraud provisions of the federal securities laws, and from appearing or practicing before the SEC. Amundsen also failed to disclose that in 1985 the California Board of Accountancy revoked his Certified Public Accountant (“CPA”) license.

In his Answer, Amundsen admitted that he completed and filed or caused to be filed, the Forms U4; however, he argued that he was not required to disclose the injunction because it involved his conduct as an accountant, rather than as a securities professional. Amundsen further argued that he was not required to disclose the revocation of his CPA license because his license had been reinstated by the time he filled out the first Form U4.

The hearing was held in New York, NY on September 22, 2011, before a Hearing Panel composed of the Hearing Officer and two members of FINRA’s District 10 Committee. Enforcement called to testify a FINRA examiner and Amundsen. Amundsen testified on his own behalf, but did not call any other witnesses. Enforcement introduced 15 exhibits that were entered into evidence. Amundsen introduced 10 exhibits that were entered into evidence.²

² In this decision, “Tr.” refers to the transcript of the hearing; “CX” to Enforcement’s exhibits; and “RX” to Respondent’s exhibits.

II. FINDINGS OF FACT

A. The Respondent

Prior to 1983, Amundsen worked as an accountant, and also owned a small painting business.³ On February 15, 1983, the SEC filed a civil complaint alleging that, in connection with an audit he had done for Olympic Gas and Oil, Inc. (“Olympic”), an oil and gas company that had issued securities, Amundsen violated Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 10b-5 thereunder (“SEC Complaint”). The SEC Complaint alleged that Amundsen had issued and signed an audit report that falsely stated that Olympic’s financial statements fairly represented its financial position and results of operations. Amundsen’s report was distributed to broker-dealers and investors in connection with the offers and sales of Olympic common stock.⁴

The SEC also filed an executed Consent of Joseph S. Amundsen (“SEC Consent”) under which he agreed to the entry of a permanent injunction.⁵ On February 15, 2003, a federal district judge for the Northern District of California issued a Final Judgment of Permanent Injunction as to Joseph S. Amundsen (“Judgment”). The Judgment permanently enjoined Amundsen from engaging in any fraudulent acts, practices or conduct in the offer or sale, and in connection with the purchase or sale, of any security of Olympic or any other issuer. It also permanently enjoined him from appearing and practicing before the SEC “in any way.”⁶

³ Tr. at 77:25-79:3.

⁴ CX-2.

⁵ CX-3.

⁶ CX-4.

On October 10, 1986, the California Board of Accountancy, citing the SEC's injunction, revoked Amundsen's license to practice as a CPA in California.⁷ Between 1983 and 2003, Amundsen owned a small paint manufacturing company and worked as a painter.⁸ On or about August 20, 2002, Amundsen became licensed as a CPA in New York, and California reinstated his CPA license on or about September 6, 2002.⁹

Amundsen entered the securities industry in November 2003. At that time, he was employed by two consulting firms--Gettenberg, which provided Financial and Operations Principals ("FINOP") for New York Stock Exchange floor brokers and small broker dealers, and Buchanan, which provided compliance services for small broker dealers. Gettenberg asked Amundsen to become a FINOP for Sort Securities.¹⁰ On or about November 4, 2003, Amundsen completed a Form U4 and had it filed with FINRA through Sort Securities.¹¹

The Sort Securities Form U4 was the first of 36 Forms U4 that Amundsen filed or caused to be filed by 34 FINRA member firms between November 4, 2003, and January 26, 2010.¹² Amundsen became a FINOP for Sort Securities after passing the FINOP examination on November 19, 2003. Between August 2004 and October 2007, Amundsen passed the examinations for the General Securities Principal ("Principal"), General Securities Representative ("Series 7"), and Introducing Broker-Dealer

⁷ CX-10.

⁸ Tr. at 69:4-7.

⁹ Compl. at ¶ 8; Ans. at ¶ 8.

¹⁰ Tr. at 26:17-27:3, 62:18-63:9; CX-1 at 6.

¹¹ Compl. at ¶ 9; Ans. at ¶ 9; CX-1 at 5.

¹² Amundsen worked for two firms during two different time periods. CX-1 at 2-5. Although CX-1 reflects that Amundsen worked for 35 firms, and that 37 Forms U4 were filed on his behalf, the Complaint and testimony at the hearing referred to 34 firms and 36 Forms U4, so those numbers are used throughout this Decision.

(“Introducing BD”) licenses. During that time, he acted as a FINOP and in other capacities for 34 different FINRA-regulated firms.¹³

B. The Respondent Completed the Forms U4 at Issue

Amundsen admitted that he completed the Forms U4 at issue in this proceeding.¹⁴ He also stated that he accepted responsibility for the answers that are contained in all of the Forms U4 that were filed for him.¹⁵

C. Amundsen Willfully Failed to Disclose the Judgment

On all of the Forms U4 that Amundsen completed and signed, he answered “No” to disclosure question 14H(1)(a), which asked: “Has any domestic or foreign court ever: (a) enjoined you in connection with any investment-related activity?”¹⁶

In explaining why he failed to disclose the Judgment, Amundsen said that he did not view the Judgment as “investment-related” because, at the time he conducted the audit that was used in Olympic’s registration statement, Olympic was a private company.¹⁷ He also stated that he believed that the Judgment enjoined him only from auditing a public company.¹⁸

Amundsen did not give any support for his position, and The Hearing Panel did not find his explanation to be credible. In June 2003, the Instructions to Form U4 defined the term “investment-related” as “pertains to securities....”¹⁹ Amundsen admitted that he read the SEC Complaint, the SEC Consent, and the Judgment.²⁰ The SEC Complaint states that Amundsen’s audit was used in a registration statement filed with the SEC, and

¹³ CX-1 at 6.

¹⁴ Compl. at ¶ 9; Ans. at ¶ 9.

¹⁵ Tr. at 57:3-6.

¹⁶ CX-12.

¹⁷ Tr. at 29:17-30:3.

¹⁸ Tr. at 37:15-16.

¹⁹ NASD Manual, November 2003 ed. At 472.

²⁰ Tr. at 21:8-25.

was disseminated to investors in connection with their purchase of Olympic's *securities*. The text of the Judgment clearly enjoined Amundsen from engaging in fraudulent activity "in the offer or sale of any *security* of [Olympic] or any other issuer," and from engaging in any fraudulent activity "in connection with the purchase or sale of any *security* of [Olympic] or any other issuer."²¹

Amundsen also claimed that the answers on the Form U4 were somehow "self-populated" or "rolled over," either by FINRA or his employers, so that after he filled out the first Form U4 for Sort Securities, he merely signed the subsequent Forms U4 without reading them.²² Amundsen provided no evidence to support this explanation, which is completely contradicted by the Hearing Panel's own experience. Even if his explanation were true, Amundsen admitted that he signed the Forms U4.²³ Amundsen knew or should have known that regulators and employers would rely on the information contained on his Form U4. He was reckless if he did not read the forms before signing them, and he is nevertheless responsible for the information contained in them. The Hearing Panel did not find Amundsen's explanation to be credible.

The Hearing Panel finds that Amundsen willfully failed to disclose the Judgment on his Forms U4.

D. Amundsen Willfully Failed to Disclose the Revocation of his CPA License

On all of the Forms U4 that Amundsen completed and signed, he answered "No" to disclosure question 14F, which asked: "Have you ever had an authorization to act as an attorney, accountant or federal contractor that was revoked or suspended?"²⁴

²¹ CX-4 at 2-3.

²² Tr. at 34:2-13, 35:8-18, 48:2-13, 61:16-62:7, 64:18-66:18.

²³ Tr. at 35:15-20.

²⁴ CX-12.

At the hearing, Amundsen’s only explanation for why he failed to disclose that California had revoked his CPA license in 1986 was that at the time he filed the Forms U4 his CPA license “had been re-established.” He claimed that he answered the question the way he would for his CPA certificate—“Since the last filing, has your license ever been revoked?”²⁵ He provided no evidence that the CPA certification asked any such question. Setting aside the fact that the Form U4 questions are asked by FINRA, not any accountancy board, even using Amundsen’s logic, he should have disclosed the revocation of his CPA license on the first Form U4 he completed because he had never filed one before. The Hearing Panel did not find Amundsen’s explanation to be credible.

The Hearing Panel found that Amundsen willfully failed to disclose the revocation of his CPA license on his Forms U4.

III. CONCLUSIONS OF LAW

Amundsen Violated NASD Rule 2110 and IM-1000-1, and FINRA Rules 1122 and 2010 by Willfully Failing to Disclose the Judgment and the Revocation of his CPA License on Forms U4 Filed with FINRA

Conduct Rule 2110 and IM-1000-1 require associated persons to disclose accurately and fully information required in the Form U4 and to observe high standards of commercial honor and just and equitable principles of trade.²⁶ As of August 17, 2009, IM-1000-1 was replaced by FINRA Rule 1122, which provides that, “No member or person associated with a member shall file with FINRA information with respect to membership or registration which is incomplete or inaccurate so as to be misleading, or

²⁵ Tr. at 29:2-16, 66:20-67:21.

²⁶ IM-1000-1 provides that the filing of registration information that “is incomplete or inaccurate so as to be misleading ... or the failure to correct such filing after notice thereof, may be deemed to be conduct inconsistent with just and equitable principles of trade” in violation of Rule 2110.

which could in any way tend to mislead, or fail to correct such filing after notice thereof.”

NASD Rule 2110 was renumbered to FINRA Rule 2010 as of December 15, 2008.

The accuracy of an applicant’s Form U4 “is critical to the effectiveness” of a self-regulatory organization’s ability “to monitor and determine the fitness of securities professionals.”²⁷

There is no question that the Judgment and the revocation of Amundsen’s CPA license were material. The National Adjudicatory Council (“NAC”) has determined that information on the Form U4 is material if a reasonable employer reading the Form would “view the disclosure of the omitted information as significantly altering the total mix of information available.”²⁸ Furthermore, the NAC has made clear that “[b]ecause of the importance that the industry places on full and accurate disclosure of information required by the Form U4, [it is] presumed that essentially all the information that is reportable on the Form U4 is material.”²⁹

Form U4 is the primary document by which an individual becomes registered with FINRA, and the information regarding the applicant’s history is important to FINRA’s ability to evaluate and monitor the fitness of an individual in the securities industry. Member firms need such information to evaluate a candidate’s competence, professional qualifications, integrity, honesty, and overall fitness for employment. In Amundsen’s case, the materiality of the false answers was magnified. The Judgment proscribed fraudulent conduct in connection with securities, subjected Amundsen to

²⁷ *Rosario R. Ruggiero*, 52 S.E.C. 725, 728 (1996) (citing *Alton*, 52 S.E.C. at 382); see also *Guang Lu*, Exchange Act Rel. No. 51047, 2005 SEC LEXIS 117, at *19-20 (Jan. 14, 2005) (recognizing that “the candor and forthrightness of applicants is critical to the effectiveness of the screening process”).

²⁸ *Dep’t of Enforcement v. Knight*, No. C10020060, 2004 NASD Discip. LEXIS 5, at *14 (N.A.C. April 27, 2004), (quoting *SEC v. Mayhew*, 121 F.3d 44, 52 (2d Cir. 1997)).

²⁹ *Id.*, at *13.

statutory disqualification, which precluded his association with a registered broker-dealer, and enjoined him from practicing “in any way” before the SEC, thereby directly impacting whether he could function as a FINOP with a firm that filed financial reports with the SEC.

Amundsen’s failure to disclose the Judgment and CPA license revocation was also willful. “Willfulness” is established by a showing that a person “knew or reasonably should have known under the particular facts and circumstances that his conduct was improper.”³⁰ Ample evidence presented at the hearing convinced the Hearing Panel that Amundsen did not forget or overlook either the Judgment or the CPA license revocation; he deliberately chose to conceal them. Amundsen thereby violated NASD Conduct Rule 2110 and IM-1000-1, and FINRA Rules 1122 and 2010.

IV. SANCTIONS

FINRA Sanction Guidelines (“Guidelines”) governing sanctions for false and misleading Forms U4 direct adjudicators to consider two relevant “principal considerations” when determining sanctions: (1) the nature and significance of the information at issue; and (2) whether [the] failure resulted in a statutorily disqualified individual becoming or remaining associated with a firm. In egregious cases, including repeated inaccurate or misleading filings and filings that involve the failure to disclose a statutorily disqualifying event, the Guidelines recommend a suspension of up to two years or a bar.³¹ Principal Considerations include: whether a respondent engaged in numerous violative acts or a pattern of misconduct (No. 8), whether the respondent engaged in the misconduct over an extended time period (No. 9), whether the

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

³¹ FINRA Sanction Guidelines 71-72 (2011), www.finra.org/sanctionguidelines.

respondent's conduct was intentional or reckless (No. 13), and whether the conduct resulted in monetary gain (No. 17).³²

The Judgment subjected Amundsen to statutory disqualification pursuant to the Exchange Act, as well as FINRA's By-Laws. Under Exchange Act Section 3(a)(39), a person who is enjoined from any action, conduct or practice specified in Section 15(b)(4)(C) of the Exchange Act is subject to statutory disqualification. Section 15(b)(4)(C) encompasses various types of injunctions, including injunctions that permanently enjoin a person from, "engaging in or continuing any conduct or practice...in connection with the purchase or sale of any security."³³ The Judgment enjoined Amundsen from fraudulent conduct in connection with the offer, purchase, or sale of any security.³⁴ Article III, Section 4 of FINRA's By-Laws also enjoin Amundsen from conduct encompassed within Exchange Act Section 15(b)(4)(C). The Hearing Panel finds that Amundsen has been subject to statutory disqualification since February 15, 1983.

In addition to concealing the Judgment, Amundsen disregarded the explicit injunction contained in the Judgment. Amundsen admitted that between June 2003 and November 4, 2010, he prepared and signed at least 66 Independent Auditor's Reports for 16 different broker-dealers to include with their Annual Audited Reports, which were filed with the SEC. Amundsen signed each of these 66 audit reports as a CPA. Thus, Amundsen appeared and practiced before the SEC, in direct contravention of the Judgment. At the hearing, Amundsen claimed that he did not understand that filing such reports with the SEC violated the injunction contained in the Judgment. However,

³² Guidelines 6-7.

³³ See *Rosario R. Ruggiero*, 52 SEC 725, 726, 1996 SEC LEXIS 990, *728, n. 3 (Apr. 5, 1996).

³⁴ CX-4 at 2-3.

Amundsen included language in his reports acknowledging that they were going to be used by the SEC.³⁵

The Hearing Panel finds that this is an egregious case. Broker-dealers would have wanted to know that Amundsen--the person they planned to hire as their FINOP--had been enjoined from violating securities laws and had his CPA license revoked. In addition, under Article V, Section 1 of FINRA's By-Laws, member firms, if aware of the injunction, were prohibited from allowing Amundsen to engage in the firm's investment banking and securities business. Concealing the injunction from the broker-dealers who employed him as their FINOP therefore put those firms at great risk. The large number of false Forms U4, completed repeatedly over an extended period of time, and Amundsen's willfulness are aggravating factors.

The evidence presented at the hearing reflects that Amundsen repeatedly made a calculated decision to hide the Judgment and license revocation from numerous firms. At the hearing, he took no responsibility for his actions. His answers to questions were frequently evasive and dissembling. Typically, he claimed not to understand the terms of the Judgment, or the consequences of the Judgment. With respect to the license revocation, he simply disregarded the plain meaning of the question. When asked whether he had ever verbally disclosed the Judgment or the CPA license revocation to his broker-dealer employers, he answered that he didn't think he had to because they could "Google" him and find out for themselves.³⁶

Amundsen's conduct is strong evidence of his complete lack of respect for FINRA's rules, processes, and the broker-dealers who employed him. The record

³⁵ CX-6 at 2-3, 5; Tr. at 53:13-54:9.

³⁶ Tr. at 27:22-28:3, 36:12-37:9.

contains no evidence of mitigating factors. Accordingly, the Hearing Panel will bar Amundsen from associating with any member firm in any capacity.

V. Order

Joseph S. Amundsen is barred from association with any member firm in any capacity for his violation of NASD Conduct Rule 2110 and IM-1000-1 and FINRA Rules 1122 and 2010. In addition, he is ordered to pay costs in the amount of \$1,597.35, which includes a \$750 administrative fee and the cost of the hearing transcript. 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. The bar will become effective immediately if this Decision becomes FINRA's final disciplinary action in this proceeding.³⁷

Rochelle S. Hall
Hearing Officer
For the Hearing Panel

Copies to:

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³⁷ The Hearing Panel has considered and rejects without discussion all other arguments of the parties.