

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

GREGG CHARLES LORENZO  
(CRD No. 4525167),

Respondent.

Disciplinary Proceeding No. 20120321124-01

Hearing Officer—Sara Nelson Bloom

**HEARING PANEL DECISION**

September 27, 2013

**Respondent is barred from associating with any member firm in any capacity for willfully failing to timely amend his Form U4 to disclose an SEC investigation, in violation of FINRA Rules 1122 and 2010, and FINRA By-Laws Article V, Section 2(c), and refusing to appear for an on-the-record interview, in violation of FINRA Rules 8210 and 2010. Because the Form U4 violation was willful, Respondent is statutorily disqualified. Respondent is also ordered to pay costs.**

**Appearances**

For the Department of Enforcement, Walter Naeder, Esq., and Elissa Meth Kestin, Esq., New York, New York.

For Gregg Charles Lorenzo, Martin H. Kaplan, Esq., and Robyn D. Paster, Esq., Gusrae Kaplan Nusbaum, PLLC, New York, New York.

**DECISION**

This case involves Respondent Gregg Charles Lorenzo's failure to timely amend his Uniform Application for Securities Industry Registration or Transfer ("Form U4") and his subsequent refusal to appear for testimony when FINRA Staff attempted to investigate the circumstances surrounding his late filing.

Specifically, Respondent did not timely disclose in a Form U4 that he had received notice from U.S. Securities and Exchange Commission (“SEC”) Staff that it was considering seeking authority to file an action against Respondent for violations of the anti-fraud provisions of the federal securities laws for false statements to purchasers of securities (“Wells Notice”). The filing delay was particularly significant because it coincided with Respondent’s third continuing membership application (“CMA”) seeking FINRA’s approval to purchase a member firm.

After Respondent belatedly amended his Form U4, FINRA Staff sent him a Rule 8210 request to appear for testimony regarding the filing delay. Respondent refused to appear, suggesting that he might have a Fifth Amendment right to refuse to testify. Just before the hearing in this disciplinary matter, he conceded that he did not.

At the hearing, Respondent’s argument shifted to a claim that FINRA Rule 8210, which requires registered persons to appear for testimony upon FINRA Staff’s request, is unenforceable. Specifically, Respondent claimed that when he signed the Form U4 to register with FINRA, he did not knowingly waive his right to assert his Fifth Amendment privilege against self-incrimination in connection with Rule 8210 requests for information, a privilege that Respondent would invoke, if available, in response to FINRA’s request for his testimony. Respondent raised the same issue in a recent expedited proceeding. For the reasons set forth in the resulting decision, which is now FINRA’s final action, Respondent’s argument fails.<sup>1</sup>

The Hearing was held in New York, New York on April 3, 2013.<sup>2</sup> After careful consideration, the Hearing Panel has concluded that Respondent committed the violations alleged, and determined that the appropriate sanction for each violation is a bar.

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<sup>1</sup> See *Dep’t of Enforcement v. Gregg Charles Lorenzo*, Expedited Proceeding No. FPI130001, 2013 FINRA Discip. LEXIS \_\_ (OHO June 18, 2013), available at <http://www.finra.org/Industry/Enforcement/Adjudication/OHO/ExpeditedDecisions/P307474>.

<sup>2</sup> Enforcement’s exhibits CX-1 through CX-21 and Respondent’s exhibit RX-2 were admitted into evidence.

## **I. FINDINGS OF FACT**

### **A. Respondent**

Respondent is registered with FINRA as a General Securities Representative with FINRA member firm Charles Vista LLC (“Charles Vista”).<sup>3</sup>

### **B. The Investigation**

FINRA Staff began its investigation after Respondent’s late filing of a Form U4 amendment disclosing that he was being investigated by the SEC.

### **C. The Late U4 Disclosure**

There is no dispute that Respondent failed to timely amend his Form U4. On February 27, 2012, Respondent received a Wells Notice informing him that SEC Staff was considering recommending the institution of proceedings under the anti-fraud provisions of the federal securities laws against Respondent for making false representations to purchasers of a security.<sup>4</sup>

Specifically, the Form U4 question at issue, 14G(2), asks whether “you have been notified, in writing, that you are now the subject of any investigation that could result in a ‘yes’ answer to any part of 14A, B, C, D, or E?” Question 14C(1) refers to false statements or omissions. Question 14C(6) refers to willful violations of the Securities Act of 1933 [or] the Securities Exchange Act of 1934.

Because the Wells Notice advised Respondent that he was the subject of an investigation that could result in findings specified in Question 14C(1) or (6), Respondent had an obligation to update his Form U4 within 30 days of his February 27, 2012, receipt of the Wells Notice; that is, no later than March 28, 2012.

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<sup>3</sup> CX-1.

<sup>4</sup> CX-2.

At the time Respondent received this Wells Notice, he had a strong motivation not to make the required Form U4 disclosure. Specifically, Respondent had a continuing membership application (“CMA”) pending with FINRA seeking approval for a change of ownership to allow a firm Respondent owned to purchase Charles Vista.<sup>5</sup> In fact, this was his third CMA. The prior two had been denied due to Respondent’s disciplinary history, which included settlement of a Montana regulatory action involving allegations of fraud, and failure to disclose a state regulatory action in his Form U4.<sup>6</sup> To overcome FINRA’s concerns, Respondent’s third CMA proposed that a trust would be interposed between Respondent and Charles Vista such that Respondent would be insulated from involvement with the firm.<sup>7</sup> As a result, Charles Vista would be managed by an independent trustee with Respondent participating solely as a beneficiary.<sup>8</sup>

In December 2011, FINRA Staff indicated to Respondent’s counsel that the proposed trust structure was promising.<sup>9</sup> After working out the details of the trust, in conversations on April 4 and April 5, 2012, FINRA Staff verbally informed Respondent’s counsel of its decision to approve the CMA, and that the final written approval letter would be sent in a few days.<sup>10</sup> At the time of these conversations, Respondent’s Form U4 filing to disclose the Wells Notice was approximately a week overdue. FINRA Staff was not aware of the Wells Notice, and neither Respondent nor his counsel advised them of it.<sup>11</sup>

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<sup>5</sup> Tr. 51-52, 56 (Goro); CX-8.

<sup>6</sup> Tr. 51-56 (Goro); CX-3, at 4, 6; CX-4.

<sup>7</sup> Tr. 57 (Goro).

<sup>8</sup> Tr. 57- 59 (Goro).

<sup>9</sup> *Id.*

<sup>10</sup> Tr. 66-67 (Goro).

<sup>11</sup> Tr. 69 (Goro).

On April 9, 2012, FINRA Staff reviewing the CMA became aware that Respondent had received a Wells Notice from the SEC.<sup>12</sup> On the morning of April 10, 2012, Respondent's counsel sent an email to FINRA Staff inquiring about the status of the decision letter on the CMA.<sup>13</sup> FINRA Staff did not communicate with Respondent or his counsel that day.<sup>14</sup> The following morning, FINRA Staff checked Respondent's Central Registration Depository disclosure record and confirmed that Respondent still had not filed a Form U4 amendment disclosing the Wells Notice. FINRA Staff considered the impact of the Wells Notice on the pending CMA, and concluded that it gave rise to a rebuttable presumption of denial of the application, which was memorialized in a letter to Respondent's counsel dated April 11, 2012.<sup>15</sup>

FINRA Staff later learned that Respondent's Form U4 amendment disclosing the Wells Notice had been filed at the end of the day on April 10, 2012, 13 days after the deadline under the plain terms of FINRA's By-Laws.<sup>16</sup>

At the hearing, Respondent raised as a defense that he relied upon his Chief Compliance Officer, Michael Molinaro ("Molinaro"), to timely file the Form U4 amendment.<sup>17</sup> Molinaro appeared at the hearing and confirmed that he took responsibility for updating the Form U4, but stated that he miscalculated the filing deadline, using "business days" instead of "calendar days."<sup>18</sup>

The Hearing Panel did not find Molinaro's testimony credible. Both Molinaro and Respondent previously had been disciplined for failing to timely amend Respondent's Form U4.

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<sup>12</sup> Tr. 61-62 (Goro).

<sup>13</sup> Tr. 72-73 (Goro); CX-6.

<sup>14</sup> Tr. 73-74 (Goro).

<sup>15</sup> Tr. 74-75 (Goro); CX-8.

<sup>16</sup> CX-1, at 13.

<sup>17</sup> Tr. 43 (Respondent).

<sup>18</sup> Tr. 113 (Molinaro).

The Hearing Panel therefore found it unlikely that Respondent would have relied on Molinaro without confirming that the filing was made. The Hearing Panel also found that Molinaro was an experienced compliance officer; he had served as a compliance officer for six years and had made many Form U4 filings. Moreover, he should have been sensitive to the correct time to file Forms U4 because he had been disciplined for failure to timely amend Respondent's Form U4 in the past. For these reasons, he was likely aware that he was required to make the filing within 30 *calendar* days.<sup>19</sup>

The Hearing Panel's credibility findings were bolstered by the strong motivation that Respondent and Molinaro had to delay amending Respondent's Form U4. A timely Form U4 filing disclosing the SEC Wells Notice would have had a negative impact on Respondent's pending CMA. In addition, FINRA Staff responsible for reviewing and approving the CMA testified, and NASD Rule 1014(g) provides, that once a decision to approve a CMA is issued, it is final FINRA action, unless the applicant requests review.<sup>20</sup> As a result, if the decision approving the application had been issued, FINRA Staff's only recourse upon learning of the SEC Wells Notice would be a referral to Enforcement with the view toward an eventual disciplinary proceeding.

Accordingly, the Hearing Panel found, based upon a preponderance of the evidence, that Respondent intentionally delayed his Form U4 filing to avoid derailing his CMA.

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<sup>19</sup> Tr. 111-112, 114-115, 119-121, 131, 151-152 (Molinaro); CX-4.

<sup>20</sup> Tr. 99-101 (Goro).

## **D. The Failure to Respond to Requests for Testimony**

### **1. First Request**

On May 4, 2012, FINRA Staff sent Respondent a Rule 8210 request to appear for an on-the-record interview (“OTR”) on May 15, 2012.<sup>21</sup> Respondent’s attorney acknowledged the request on May 10, 2012, and requested that the OTR be rescheduled for May 23, 2012.<sup>22</sup> The request was granted.<sup>23</sup>

The day before the scheduled OTR, Respondent’s counsel requested an indefinite postponement in light of Respondent’s assertion of his Fifth Amendment rights before the SEC Staff during the February 10 and 17, 2012, depositions.<sup>24</sup> FINRA Staff denied the request.<sup>25</sup> However, Respondent did not appear for the OTR.

### **2. Second Request**

When Respondent did not appear for his OTR, on May 24, 2012, FINRA Staff sent a second Rule 8210 request, this time scheduling the OTR for May 31, 2012.<sup>26</sup> Again, Respondent’s counsel requested an indefinite adjournment, which FINRA Staff denied.<sup>27</sup> Nonetheless, Respondent did not appear on May 31, 2012, for the OTR.<sup>28</sup>

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<sup>21</sup> CX-10.

<sup>22</sup> CX-11.

<sup>23</sup> *Id.*

<sup>24</sup> CX-15.

<sup>25</sup> CX-12.

<sup>26</sup> CX-13.

<sup>27</sup> CX-16.

<sup>28</sup> CX-14.

### 3. Final Request

On May 31, 2012, FINRA Staff sent a final Rule 8210 request to Respondent to appear for an OTR June 7, 2012.<sup>29</sup> Respondent's counsel again requested an indefinite adjournment, which FINRA Staff again denied.<sup>30</sup> Again, Respondent did not appear.

## II. CONCLUSIONS OF LAW

### A. Respondent violated Article V, Section 2 of FINRA's By-Laws, and FINRA Rules 1122 and 2010 by failing to timely amend his Form U4

Article V, Section 2 of FINRA's By-Laws requires that persons who apply for registration with FINRA must provide "such ... reasonable information with respect to the applicant as [FINRA] may require." A registrant is under a continuing obligation to update information required by the Form U4 as changes occur.<sup>31</sup> Article V, Section 2(c) requires that "[e]very application for registration filed with the Corporation shall be kept current at all times by supplementary amendments ... filed with the Corporation not later than 30 days after learning of the facts or circumstances giving rise to the amendment." FINRA uses the Form U4 to screen applicants and monitor their fitness for registration within the securities industry.<sup>32</sup> FINRA Rule 1122, in turn, provides: "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 which could in any way tend to mislead, or fail to correct such filing after notice thereof."<sup>33</sup>

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<sup>29</sup> *Id.*

<sup>30</sup> CX-17.

<sup>31</sup> *Dep't of Enforcement v. Neaton*, No. 2007009082902, 2011 FINRA Discip. LEXIS 13, at \*15 (NAC Jan. 7, 2011), *aff'd*, *Richard A. Neaton*, Exchange Act Rel. No. 65598 (October 20, 2011).

<sup>32</sup> *Id.* at \*14-15.

<sup>33</sup> Amended by SR-FINRA-2009-009 eff. Aug. 17, 2009; *see* Reg. Notice 09-33.



Submitting a Form U4 that is inaccurate or incomplete so as to be misleading may be deemed conduct inconsistent with just and equitable principles of trade.<sup>34</sup> When a registered representative's Form U4 has not been promptly updated, the Form U4 is misleading, and the representative has violated FINRA Rules 1122 and 2010.<sup>35</sup>

Here, Respondent delayed his Form U4 disclosure of the Wells Notice detailing serious allegations of misconduct for 43 days—13 days past the deadline.

Accordingly, the Panel finds that Respondent violated FINRA Rules 1122 and 2010 and FINRA By-Laws, Article V, Section 2(c).

**B. Respondent Acted Willfully and is Subject to Statutory Disqualification**

Enforcement alleges that Respondent's failure to make the required Form U4 disclosure was willful. Section 15(b)(4)(A) of the Securities Exchange Act of 1934 states that a person who files an application for association with a member of a self-regulatory organization and who "willfully" fails to disclose "any material fact which is required to be stated" in that application is statutorily disqualified from participating in the securities industry.

Here, there is no dispute that Respondent was required to amend his Form U4 to disclose the Wells Notice. Further, the Panel finds that the Wells Notice, which alleged serious misconduct, was material, consistent with the National Adjudicatory Council's ("NAC's") guidance 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

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<sup>34</sup> *Dep't of Enforcement v. Neaton*, 2011 FINRA Discip. LEXIS 13, at \*15.

<sup>35</sup> *Dep't of Enforcement v. Kaweske*, No. C07040042, 2007 NASD Discip. LEXIS 5, at \*33 (NAC Feb. 12, 2007).

information available.”<sup>36</sup> Moreover, 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.”<sup>37</sup>

To support a finding of willfulness, the Hearing Panel need not find that Respondent intended to violate a specific rule or law; rather, the Hearing Panel need only find that Respondent “voluntarily committed the act that constituted the violation ....”<sup>38</sup> However, in this case, Respondent did more than that; he made a conscious decision to delay the required disclosure, in hopes that he would obtain FINRA Staff approval of his CMA before the Wells Notice was discovered. Accordingly, the Panel finds that Respondent acted willfully and is therefore statutorily disqualified.

### **C. Respondent Refused to Testify**

There is no dispute that Respondent refused to appear for testimony, despite repeated requests by FINRA Staff. His refusal was not justified; he admits that he could not validly assert his Fifth Amendment right against self-incrimination in this FINRA proceeding. Moreover, Respondent’s argument that the Form U4 is an unenforceable contract of adhesion is without merit.<sup>39</sup>

Accordingly, the Hearing Panel finds that Respondent violated FINRA Rules 8210 and 2010 by refusing to appear for an OTR.

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<sup>36</sup> *Dep’t of Enforcement v. Knight*, No. 10020060, 2004 NASD Discip. LEXIS 5, at \*14 (NAC April 27, 2004)(quoting *SEC v. Mayhew*, 121 F.3d 44, 52 (2d Cir. 1997)).

<sup>37</sup> *Id.* at \*13.

<sup>38</sup> *Dep’t of Enforcement v. Kraemer*, No. 2006006192901, 2009 FINRA Discip. LEXIS 39, at \*16-17 (NAC Dec. 18, 2009).

<sup>39</sup> See *Dep’t of Enforcement v. Gregg Charles Lorenzo*, Expedited Proceeding No. FPI130001, 2013 FINRA Discip. LEXIS \_\_ (OHO June 18, 2013), available at <http://www.finra.org/Industry/Enforcement/Adjudication/OHO/ExpeditedDecisions/P307474>.

### **III. SANCTIONS**

#### **A. The Failure to Timely Amend the Form U4**

The FINRA Sanction Guidelines (“Sanction Guidelines”) for filing a late Form U4 calls for a fine of \$2,500 to \$25,000 and a suspension in any or all capacities for five to 30 business days or, in egregious cases, a longer suspension of up to two years, or a bar.<sup>40</sup> The principal considerations applicable here are the importance of the information, and whether the misconduct resulted in harm to a person or entity.<sup>41</sup>

Here, information that Respondent received a Wells Notice from the SEC referencing possible false statements to purchasers of a security and possible violations of the anti-fraud provisions of the securities laws would have been highly material to customers, and particularly crucial to FINRA Staff considering Respondent’s CMA. The potential harm to FINRA and its regulatory program is significant; had FINRA Staff, deprived of this information, issued its written approval of Respondent’s CMA immediately after its oral approval on April 5, 2012, it would have had no ability to reverse that approval.<sup>42</sup>

Moreover, the Hearing Panel found that Respondent’s intentional delay in filing the amendment to his Form U4 was an aggravating factor. In addition, Respondent was not forthcoming about his misconduct at the hearing. He refused to answer questions and offered a fabricated defense that he relied on Molinaro to timely file the Form U4 amendment.

In light of these factors, the Hearing Panel concludes that Respondent’s misconduct was egregious and warrants a bar.

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<sup>40</sup> *Sanction Guidelines* 69-70 (2011), available at [www.finra.org/sanctionguidelines](http://www.finra.org/sanctionguidelines).

<sup>41</sup> *Id.*

<sup>42</sup> Tr. 99-101 (Goro).

## **B. The Refusal to Appear for Testimony**

FINRA must rely upon Rule 8210 to police the activities of its members and associated persons because it lacks subpoena power.<sup>43</sup> “[A member’s] failure to respond to [FINRA’s] information requests frustrates [FINRA’s] ability to detect misconduct, and such inability in turn threatens investors and markets....”<sup>44</sup> Because compliance with Rule 8210 is necessary for FINRA to carry out its regulatory functions, the Sanction Guidelines provide that for failure to respond to requests for information made pursuant to Rule 8210, a bar is the standard sanction.<sup>45</sup>

Here, Respondent failed to respond to repeated requests to appear for testimony. In addition, as an aggravating factor, Respondent refused to answer questions at the hearing, invoking the Fifth Amendment privilege against self-incrimination although he admitted through his attorney at the beginning of the hearing that he had no basis to make the assertion.<sup>46</sup>

Accordingly, the Hearing Panel finds that a bar is the appropriate sanction for Respondent’s refusal to appear for testimony.

## **IV. ORDER**

Gregg Charles Lorenzo is barred from associating with any member firm in any capacity for willfully failing to timely amend his Form U4 to disclose an SEC investigation, in violation of FINRA Rules 1122 and 2010, and FINRA By-Laws Article V, Section 2(c), and for refusing to appear for an on-the-record interview, in violation of FINRA Rules 8210 and 2010.

Respondent also is ordered to pay the costs of the hearing in the amount of \$2134.07, which include a \$750 administrative fee and the cost of the hearing transcript. The bars shall become

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<sup>43</sup> *Joseph Patrick Hannan*, Exchange Act Rel. No. 40438; 1998 SEC LEXIS 1955, at \*9 (Sept. 14, 1998).

<sup>44</sup> *PAZ Sec.*, Exchange Act Rel. No. 57656, 2008 SEC LEXIS 820, at \*13 (Apr. 11, 2008), *aff’d sub nom. PAZ Sec. v. SEC*, 566 F.3d 1172, 2009 U.S. App. LEXIS 11500 (May 29, 2009).

<sup>45</sup> *Sanction Guidelines* 33.

<sup>46</sup> Tr. 6, 40 (Respondent).

effective immediately if this decision becomes FINRA's final action. The 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. Because the Form U4 violation was willful, Respondent is statutorily disqualified.

**HEARING PANEL**

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Sara Nelson Bloom  
Hearing Officer

cc: Gregg C. Lorenzo (via overnight courier and first-class mail)  
Martin H. Kaplan, Esq. (via electronic and first-class mail)  
David A. Gehn, Esq. (via electronic mail)  
Robyn D. Paster, Esq. (via electronic mail)  
Walter Naeder, Esq. (via electronic and first-class mail)  
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