FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. CHRISTOPHER PETER TRANCHINA (CRD No. 5657849), Respondent.	Disciplinary Proceeding No. 2018058588501 Hearing Officer–DDM **HEARING PANEL DECISION** May 18, 2021

Respondent Christopher Peter Tranchina engaged in conversion and unauthorized access to firm information by breaking into his former firm's offices and taking customer files. For this misconduct, he is barred from associating with a FINRA member firm in any capacity. He also willfully failed to timely amend his Form U4 to disclose the criminal proceeding that resulted from his misconduct. In light of the bar, no additional sanctions are imposed for this violation.

Appearances

For the Complainant: Matthew M. Ryan, Esq., Kevin M. Hartzell, Esq., Lisa M. Colone, Esq., Amanda E. Fein, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Jon-Jorge Aras, Esq., Levan Legal LLC

DECISION

I. Introduction

After Hornor Townsend & Kent ("HTK") fired him, Respondent Christopher Peter Tranchina broke into HTK's offices and took client files. He returned some client files to HTK about a week later in response to demands from the insurance company that owns HTK and two calls from the police. Unconvinced that Tranchina returned all the files he had taken, HTK began a criminal proceeding against Tranchina through a sworn complaint in New Jersey municipal court. While Tranchina faced potential imprisonment and a fine if convicted, he ultimately obtained a conditional dismissal of the proceedings.

The Department of Enforcement filed a complaint against Tranchina that contained three causes of action. The first two causes of action allege that Tranchina engaged in conversion of

HTK files and obtained unauthorized access to HTK information, respectively, in violation of FINRA Rule 2010. The third cause of action alleges that Tranchina willfully violated Article V, Section 2(a) of FINRA's By-Laws and FINRA Rules 1122 and 2010 by willfully failing to disclose the criminal action on his Form U4. Tranchina denied that he violated FINRA Rules or FINRA By-Laws and requested a hearing.

After a two-day hearing conducted by videoconference,[1] we find that Enforcement proved each of the three causes of action. For the first two causes of action, we impose a bar as a unitary sanction. For the third cause of action, we would order a six-month suspension in all capacities and a $10,000 fine. Because of the bar, however, we do not impose these added sanctions.

II. Findings of Fact

A. Tranchina's Background at HTK

Tranchina first registered with FINRA in June 2009 when he associated with HTK as an Investment Company and Variable Contracts Products Representative.[2] Tranchina was also an insurance adviser for Penn Mutual Life Insurance Company ("Penn Mutual"), which owns HTK.[3] HTK is the broker-dealer arm of Penn Mutual.[4]

Tranchina worked in a branch office in Edison, New Jersey.[5] He worked on a team led by a more senior adviser, Jerry Goldberg.[6] Goldberg gave business leads to Tranchina, and Tranchina split evenly with Goldberg any business Tranchina generated from the leads.[7] Over time, Tranchina's relationship with Goldberg deteriorated,[8] so in early 2018 Tranchina asked to leave the team.[9] Tranchina continued to have disagreements with Goldberg, however. As Tranchina put it, these disagreements led him to make "the childish and regrettable decision" to

[1] The hearing was held by videoconference pursuant to SR-FINRA-2020-027, SR-FINRA-2020-042, and SR-FINRA-2021-006, which temporarily amends FINRA Rules 9261 and 9830 to permit conversion of FINRA's in-person disciplinary hearings to videoconference hearings because of health and safety concerns caused by the COVID-19 pandemic.

[2] Stipulations ("Stip.") ¶¶ 1-3.

[3] Stip. ¶ 4; Complainant's Exhibit ("CX-_") 1, at 6.

[4] Hearing Transcript ("Tr.") 359.

[5] Complaint ("Compl.") ¶ 10; Answer ("Ans.") ¶ 10.

[6] Tr. 47.

[7] CX-26, at 1.

[8] CX-26, at 1-5; Tr. 252.

[9] CX-26, at 6.

purchase website domains that were similar to Goldberg's "doing business as" name ("DBA"), and redirect traffic from those domains to his own DBA website.[10]

Tranchina's purchase of those domain names eventually caught the attention of HTK and Penn Mutual, which suspended him pending an internal investigation.[11] A managing partner at HTK and Penn Mutual, Ed Barrett,[12] told Tranchina not to return to the office during his suspension.[13] At the same time, HTK and Penn Mutual terminated Tranchina's electronic access to their systems.[14] HTK also changed the lock on Tranchina's office door.[15]

B. HTK Fires Tranchina

About a week later, on Friday afternoon, April 27, 2018, Barrett called Tranchina to tell him that his agent contracts with HTK and Penn Mutual were terminated.[16] In that 20-minute call,[17] Barrett told Tranchina not to return to the office.[18] Barrett also told Tranchina that HTK would send his personal belongings to him.[19]

In the call, Tranchina asked Barrett about customer files.[20] Barrett told Tranchina that any customer files that Tranchina shared with Goldberg would remain with Goldberg at HTK.[21] If a file had Goldberg's name on it, Barrett said, Tranchina was not getting it back.[22] HTK would return to Tranchina information about clients outside HTK and Penn Mutual, Barrett told Tranchina.[23] And HTK would give Tranchina "client files (minus any Penn Mutual or HTK

[10] CX-26, at 9-10; *see also* CX-1, at 11.

[11] Tr. 370-71.

[12] Tr. 359.

[13] CX-26, at 10; Tr. 74, 370-71.

[14] Tr. 74, 373.

[15] Tr. 373.

[16] Compl. ¶ 19; Ans. ¶ 19; Tr. 74-75.

[17] Tr. 376.

[18] Compl. ¶ 22; Ans. ¶ 22; Tr. 75, 78.

[19] Compl. ¶ 23; Ans. ¶ 23.

[20] Compl. ¶ 24; Ans. ¶ 24.

[21] Compl. ¶ 24; Ans. ¶ 24; Tr. 75.

[22] Tr. 75-76.

[23] Tr. 375-76.

content) that Jerry Goldberg was not a part of."[24] But HTK and Penn Mutual customer files are owned by HTK and Penn Mutual, Barrett told him, and would not be returned to Tranchina.[25]

HTK's position on this tracked Tranchina's contracts with HTK and Penn Mutual, which specified that client files and policyholder data belonged not to Tranchina, but to the respective companies.[26] It also matched Tranchina's own experience at HTK, when he received leads for customer accounts of other registered representatives who left HTK.[27] Indeed, it was customary practice for the firm to retain customer files when a registered representative left HTK, Barrett testified.[28]

After their conversation, Barrett sent a termination letter to Tranchina via overnight delivery.[29] In the letter, Barrett reiterated HTK's position that all policyholder data belonged to HTK and Penn Mutual, that Tranchina needed to return all policyholder data in his possession immediately, and that Tranchina could not remove any Penn Mutual or HTK customer information from the HTK offices.[30]

C. Tranchina Breaks Into HTK's Offices

HTK's position about the client files "was unacceptable to me," Tranchina wrote in a signed statement to FINRA.[31] Because Goldberg was on "approximately 95%" of the business he had generated during his nine-year tenure at HTK, Tranchina wrote, he "could expect only 5% of my business back."[32] Tranchina knew that HTK could give those customer files directly to Goldberg, he testified,[33] and he knew that other HTK representatives could contact those customers to keep their business with HTK and Penn Mutual.[34] "I felt like he was commandeering the 60% of my book of business that I sourced," Tranchina testified.[35] This included, Tranchina elaborated, business "that I originated, that were my personal relationships,

[24] CX-26, at 10.

[25] Tr. 375.

[26] CX-9, at 3 (Penn Mutual contract); CX-10, at 5 (HTK contract).

[27] Tr. 71-73.

[28] Tr. 362-63.

[29] CX-11.

[30] CX-11.

[31] CX-26, at 10.

[32] CX-26, at 10.

[33] Tr. 78-79.

[34] Tr. 79.

[35] Tr. 107.

that were my friends and family members and that were people I had cold called and created a relationship and introduced to Penn Mutual and HTK."[36]

Tranchina viewed this prospect as "a great injustice."[37] And he wanted to fix it. He decided to retrieve the files that he did not think Barrett would return to him, but that he "deserved back."[38]

So that Friday night, Tranchina drove about 30 minutes from his home to the HTK office building in Edison.[39] Because he arrived at the HTK office after business hours at the start of a weekend, he "assumed everybody had left" and did not expect to see any other financial advisors there.[40] Tranchina entered the HTK office suite through a door with a lock that he knew did not work.[41] He went to his office but found it locked.[42] He tried his office key, but it did not work because HTK had changed the lock.[43] He saw a member of the cleaning staff and asked her to open the door.[44] But her key did not work, either.[45]

Locked out of his office, Tranchina decided to break in. Once the cleaning staff walked away, Tranchina grabbed a broom and put a chair in front of the locked office door.[46] Tranchina stood on the chair, used the broom to knock out ceiling tiles, and opened the locked door from the inside.[47]

Once inside the office, Tranchina grabbed as many files as he could carry off his desk.[48] The files consisted of manila folders color-coded based on the product bought by the customer.[49] Tranchina testified that he intended to segregate his personal files from files that belonged to

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[36] Tr. 107.

[37] CX-26, at 11.

[38] CX-26, at 11.

[39] Tr. 83.

[40] Tr. 84.

[41] Tr. 88-89.

[42] Compl. ¶ 28; Ans. ¶ 28; Tr. 93.

[43] Compl. ¶ 29; Ans. ¶ 29; Tr. 93.

[44] Tr. 93-94.

[45] Compl. ¶ 30; Ans. ¶ 30; Tr. 94.

[46] Tr. 94.

[47] Compl. ¶ 31; Ans. ¶ 31; Tr. 94-95.

[48] Tr. 102, 119.

[49] Tr. 112. Life insurance files were in blue folders, for example, while securities files were in red folders and health insurance files were in green folders.

Penn Mutual and HTK.[50] But he went into "panic mode," he testified, so he just "grabbed whatever [he] could grab and left."[51] He did not attempt to separate his personal files from the files he grabbed.[52] Nor did he take any of his personal effects, such as framed photographs, his briefcase, or his lunchbox.[53] "I just left as fast as I could," Tranchina testified,[54] though he also estimated he was in his office for about 10 to 15 minutes.[55]

Before he left the office, he replaced the broken ceiling tiles.[56] He also used the cleaning crew's vacuum cleaner for the debris on the floor caused by the broken ceiling tiles.[57] Tranchina denied that he was trying to conceal his intrusion into the office. Instead, he testified, "I didn't want to have a mess in my office if I were allowed back into it for some reason."[58]

The cleaning crew supervisor confronted Tranchina while he was vacuuming.[59] The supervisor told Tranchina that he would report what Tranchina was doing.[60] This made Tranchina concerned.[61] So when the supervisor asked Tranchina for his name, Tranchina told him "Mike."[62]

According to Tranchina, he threw the files into the trunk of his car.[63] It was not until the next morning, he testified, that he realized he had taken files that belonged to HTK and Penn Mutual.[64] Tranchina also claimed that he never accessed any of the files that belonged to HTK or Penn Mutual for his own business purposes.[65]

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[50] Tr. 117-18.

[51] Tr. 120.

[52] Tr. 118-19.

[53] Tr. 132-33; CX-3; CX-26, at 11.

[54] Tr. 118.

[55] Tr. 99.

[56] *See* CX-20, at 7, 9 (photographs of broken ceiling tiles).

[57] Tr. 100.

[58] Tr. 100.

[59] Tr. 100.

[60] Tr. 100-01.

[61] Tr. 101.

[62] Tr. 101.

[63] Tr. 255.

[64] Tr. 255.

[65] Tr. 255.

D. HTK Files a Police Report and Tranchina Returns Files

Despite Tranchina's fake name, the cleaning staff supervisor identified Tranchina by a framed photograph in Tranchina's office.[66] On the next Tuesday, May 1, 2018, Barrett made a report with the police on behalf of HTK that Tranchina had engaged in a burglary.[67] A little later, Tranchina received two phone calls from the police.[68] The first call went to voicemail.[69] Tranchina answered the second call.[70] In that call, the police officer told Tranchina that Penn Mutual and HTK would not press charges if Tranchina returned what he had taken from his office.[71]

On May 3, Penn Mutual sent Tranchina a letter via overnight delivery demanding that Tranchina return the materials he had taken from his office on April 27, 2018.[72] "You must, **IMMEDIATELY**, return all items taken by you," the letter stated.[73] Penn Mutual gave Tranchina a deadline in which to comply: "All items must be returned by 3:00 pm on Monday, May 7th to the security desk in the building where the agency is located."[74]

On May 7, 2018, Tranchina dropped a "large box" of materials off at the security desk of the HTK offices.[75] According to Tranchina, the box contained about a foot-high stack of documents.[76] Tranchina's attorney told Penn Mutual then that "[a]ccording to Chris, those were the only firm files he had."[77] Barrett testified that the documents pertained to perhaps ten customer files.[78]

What was clear, however, was that HTK and Penn Mutual did not agree that Tranchina had returned all the materials he had taken after his termination. While Tranchina returned a box of documents, Penn Mutual wrote on May 18, 2018, "the contents of the box did not match the description of the items provided by building security and cleaning personnel" that Tranchina

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[66] Tr. 378-79; CX-21, at 2.

[67] CX-21.

[68] Tr. 146; *see also* CX-21, at 2 (police report).

[69] Tr. 147.

[70] Tr. 153.

[71] Tr. 153.

[72] CX-12.

[73] CX-12, at 1.

[74] CX-12, at 1.

[75] Tr. 136; *see* CX-13, at 1 (Tranchina's attorney: "Chris advised me that he dropped off the box of files he had at the security desk Monday morning (May 7th) and then called the office after to confirm they received it.").

[76] Tr. 136.

[77] CX-13, at 1.

[78] Tr. 390-91.

took after he broke into his former office.[79] Penn Mutual therefore reiterated its demand that Tranchina return "any client files of which Mr. Tranchina is still in possession," along with an itemized list of the items he removed from HTK's office.[80] Penn Mutual also demanded that Tranchina provide a certification required by his contract that he no longer possesses any Penn Mutual property or policyholder data.[81]

On May 30, 2018, Tranchina's lawyer mailed to Penn Mutual's lawyers around 145 pages of documents.[82] Unlike the foot-high stack of documents he returned on May 8, these documents were about an inch or an inch-and-a-half thick.[83] In a cover letter, Tranchina's lawyer described the documents as "the remaining Penn Mutual/HTK files in Mr. Tranchina's possession."[84] The documents included confidential information about Penn Mutual and HTK customers, such as their account statements,[85] contract summaries,[86] contact information,[87] beneficiaries,[88] dates of birth,[89] and other financial information.[90] This type of information was typically found in HTK files, Tranchina testified.[91]

While Tranchina eventually certified that he returned all the files that belong to Penn Mutual and HTK,[92] Barrett testified that he does not think Tranchina returned all of their files.[93] "I don't know exactly what he took," Barrett testified, and "I don't know how that relates to what he gave back."[94] Rather than "hundreds" of client files that Tranchina should have returned,

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[79] CX-14, at 1.

[80] CX-14, at 1.

[81] CX-14, at 1.

[82] CX-16.

[83] Tr. 137.

[84] CX-16, at 1.

[85] *See, e.g.*, CX-16, at 2-3.

[86] *See, e.g.*, CX-16, at 4-7.

[87] *See, e.g.*, CX-16, at 4.

[88] *See, e.g.*, CX-16, at 7.

[89] *See, e.g.*, CX-16, at 7.

[90] *See, e.g.*, CX-16, at 113-14.

[91] Tr. 112-17.

[92] RX-5.

[93] Tr. 391, 403.

[94] Tr. 411.

Barrett testified, "there was maybe a dozen or less."[95] Barrett conceded, however, that he could not say when Tranchina took the files, just that "they didn't magically disappear."[96]

E. Tranchina Joins Another Firm

In early July 2018, Tranchina became associated with another FINRA member firm, Chelsea Financial Services ("Chelsea").[97] During the job interview process, Tranchina testified, he told the President of Chelsea "everything that occurred" at HTK.[98] And in the pre-hire authorization process, Chelsea obtained information regarding Tranchina from the Central Registration Depository ("CRD").[99] Tranchina's CRD records included a disclosure by HTK about why it terminated Tranchina's registration.[100] The CRD records also included HTK's disclosure about Tranchina's actions after his registration was terminated: "the RR entered the member firm's premises after business hours, accessed his locked, former office without authorization, and removed items from the office without authorization."[101]

Tranchina signed a Form U4 when he associated with Chelsea.[102] He agreed to update his Form U4 on a timely basis when necessary.[103] And in a "General Acknowledgment" he signed with Chelsea's investment advisory affiliate, Tranchina agreed to disclose "any material events," including "[a]rrests and or convictions of felonies and or misdemeanors[.]"[104]

F. The Complaint-Summons and Criminal Proceedings Against Tranchina

On July 23, 2018, the Edison Township Municipal Court sent a document entitled "Complaint-Summons" to Tranchina.[105] The Complaint-Summons was captioned "The State of New Jersey v. Chritopher [sic] P. Tranchina" and stemmed from Tranchina's actions after HTK fired him.[106] The Complaint-Summons cited three "charges," each based on a provision of the New Jersey Code of Criminal Justice, and summoned Tranchina to appear in municipal court in a

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[95] Tr. 403.

[96] Tr. 415.

[97] CX-1, at 4.

[98] Tr. 289.

[99] RX-11.

[100] RX-11, at 6.

[101] RX-11, at 6. This disclosure prompted FINRA to investigate Tranchina. Tr. 449.

[102] CX-4.

[103] CX-4, at 14 ¶ 9.

[104] CX-44, at 1.

[105] CX-22.

[106] CX-22, at 1.

month.[107] The Complaint-Summons accused Tranchina of committing "the offense of theft by unlawfully taking or exercising control of certain movable property"[108] and "criminal mischief by recklessly or negligently damaging property belonging to [HTK]."[109]

The Complaint-Summons referred to a sworn, signed statement by Barrett.[110] Barrett also attended a probable cause hearing, in which he testified before a judge.[111] Based on Barrett's statements, a judge found probable cause to issue the Complaint-Summons,[112] and a judicial officer issued the Complaint-Summons.[113]

Tranchina testified that he believed that he received the Complaint-Summons in the first week of August.[114] According to Tranchina, he "briefly glanced at it"[115] because he "didn't think it was a big deal."[116] "I understood that this was like a parking ticket," Tranchina testified.[117] Because he viewed it "as a ticket in the mail," he did not tell Chelsea that he had received a Complaint-Summons.[118] Nor did he think he needed to update his Form U4 to disclose that he had received the Complaint-Summons.[119]

Tranchina hired a criminal defense lawyer and appeared in municipal court in September 2018 and October 2018.[120] At both appearances, his lawyer spoke with a prosecutor.[121] At the October 2018 court appearance, Tranchina was granted a "conditional dismissal" for 12 months of the three alleged violations of the New Jersey Code of Criminal Justice.[122] Tranchina testified at the hearing that, as he understood it, this meant that "the charges were dismissed like it didn't happen."[123] During his on-the-record testimony ("OTR"), however, Tranchina had a different

[107] CX-22, at 1.

[108] CX-22, at 1.

[109] CX-22, at 2.

[110] Tr. 386.

[111] Tr. 387-88.

[112] CX-22, at 2.

[113] CX-22, at 1.

[114] Ans. ¶ 49; Tr. 199.

[115] Tr. 207.

[116] Tr. 206.

[117] Tr. 206.

[118] Tr. 211.

[119] Tr. 210.

[120] Tr. 216-17.

[121] Tr. 217-18.

[122] CX-23, at 1.

[123] Tr. 221.

view: the charges were *pending* for a 12-month period, and would be dismissed *at the end of that 12-month period*, so long as he did not get arrested.[124]

This different view is supported by the New Jersey Code of Criminal Justice, which describes the state's conditional dismissal program.[125] The program is available to defendants like Tranchina, who have no prior criminal history and are charged with a "disorderly persons offense" or "petty disorderly persons offense."[126] Such defendants may apply for entry into the conditional dismissal program "after a plea of guilty or finding of guilt, but prior to the entry of a conviction and with appropriate notice to the prosecutor . . . ."[127] The court may then approve the application, with no judgment of conviction, "and place the defendant under a probation monitoring status for a period of one year."[128] If a defendant fulfills the terms of the conditional dismissal, "the court may terminate the probation monitoring and dismiss the proceedings against the defendant."[129] But if a defendant who participates in the state's conditional dismissal program "is convicted of any petty disorderly persons offense, disorderly persons offense . . . or otherwise fails to comply with the terms and conditions of the court, the court may enter a judgment of conviction and impose a fine, penalty, or other assessment . . . ."[130] Consistent with these provisions, Tranchina pled guilty,[131] and the court dismissed the proceedings against Tranchina in October 2019, 12 months after Tranchina's court appearance.[132]

In any event, Tranchina did not tell Chelsea about his court appearances or the conditional dismissal when they occurred.[133] Instead, Chelsea learned about them when it received a courtesy copy of an information request sent by FINRA in its investigation of Tranchina.[134] Nor has Tranchina disclosed the Complaint-Summons or related proceedings on his Form U4. While Tranchina amended his Form U4 three times since joining Chelsea, each time he answered "no" to question 14B(1)(b), which asks if he has ever been "charged" with a misdemeanor involving the wrongful taking of property.[135]

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[124] CX-28, at 150:19-25.

[125] N.J. Rev. Stat. § 2C:43-13 (2014).

[126] N.J. Rev. Stat. § 2C:43-13.1(a); RX-7.

[127] N.J. Rev. Stat. § 2C:43-13.1(a).

[128] N.J. Rev. Stat. § 2C:43-13.2.

[129] N.J. Rev. Stat. § 2C:43-13.5.

[130] N.J. Rev. Stat. § 2C:43-13.4.

[131] CX-24, at 1.

[132] CX-24. The FINRA examination manager who investigated Tranchina also had this understanding. Tr. 459.

[133] Tr. 306.

[134] CX-28, at 156:16-22.

[135] CX-6 (Sept. 24, 2019); CX-7 (Sept. 26, 2019); CX-8 (July 7, 2020).

III. Conclusions of Law

A. Conversion

FINRA Rule 2010 states that a broker-dealer, "in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade."[136] Rule 2010 is a broad provision that applies to any unethical business-related conduct whenever the "misconduct reflects on [an] associated person's ability to comply with the regulatory requirements of the securities business."[137]

Conversion has long been viewed as conduct that violates FINRA Rule 2010.[138] That is because conversion is fundamentally a dishonest act that reflects negatively on a person's ability to comply with regulatory requirements and raises concerns that the person is a risk to investors, firms, and the integrity of the securities markets.[139] FINRA defines conversion broadly:

> Conversion generally is an intentional and unauthorized taking of and/or exercise of ownership over property by one who neither owns the property nor is entitled to possess it.[140]

This definition sets out five elements of conversion for purposes of a FINRA disciplinary proceeding: (i) intentional (ii) unauthorized (iii) taking or exercise of ownership over (iv) property (v) by one with no right of ownership or possession.[141]

Enforcement has proven these five elements. Tranchina committed conversion when he took customer files on April 27, 2018. By committing conversion, Tranchina violated FINRA Rule 2010.

1. Intentional

Tranchina acted intentionally. Barrett instructed Tranchina not to return to the office to retrieve his personal files and other items, which would be mailed to him.[142] Yet he defied those instructions. He drove about 30 minutes to his office, after normal business hours and when he

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[136] FINRA Rule 0140(a) imposes the same obligation on persons associated with a member firm.

[137] *Daniel D. Manoff*, Exchange Act Release No. 46708, 2002 SEC LEXIS 2684, at *12 (Oct. 23, 2002).

[138] *John Edward Mullins*, Exchange Act Release No. 66373, 2012 SEC LEXIS 464, at *28-29 (Feb. 10, 2012).

[139] *Stephen Grivas*, Exchange Act Release No. 77470, 2016 SEC LEXIS 1173, at *10-11 (Mar. 29, 2016); *Geoffrey Ortiz*, Exchange Act Release No. 58416, 2008 SEC LEXIS 2401, at *22 (Aug. 22, 2008).

[140] FINRA Sanction Guidelines ("Guidelines") at 36 n.2 (2020), http://www.finra.org/sanctionguidelines; *see also Dep't of Enforcement v. Doni*, No. 2011027007901, 2017 FINRA Discip. LEXIS 46, at *21 (NAC Dec. 21, 2017).

[141] *Mullins*, 2012 SEC LEXIS 464, at *33.

[142] Tr. 75, 78.

knew it was unlikely that any other HTK personnel would be there.[143] Once there, he entered the HTK offices through a door that he knew he could push open.[144] When he found his own office door locked, and his own key did not work, he asked the cleaning staff to open the door.[145] When the cleaning staff's key did not work, he stood on a chair and used a broom to break into his office through the ceiling.[146] Once inside his office, he grabbed as many files as he could carry.[147] When questioned by the cleaning staff supervisor, Tranchina gave a fake name.[148]

Tranchina claims that he did not intentionally take HTK and Penn Mutual files.[149] Instead, he asserts, he intended to take only his personal files, but panicked and did not have time to segregate his personal files from HTK and Penn Mutual files.[150] He also claims that he did not realize he took HTK and Penn Mutual files until the next morning, when he reviewed the files from the trunk of his car, where he had thrown them.[151]

But these claims are simply not credible. By his own account, Tranchina was in his office for about 10 or 15 minutes[152] – ample time to review and identify files. And while he claims he had no time to segregate files, he took the time to borrow a vacuum from the cleaning staff, vacuum his office, and replace broken ceiling tiles.[153] Nor did he immediately return HTK and Penn Mutual files once he realized he had taken them, as he claims. Instead, he kept the files for at least a week, and returned them only after multiple demands from HTK and the police.

Tranchina's claims at the hearing also contradict his signed statement to FINRA, made just a few months after he broke into HTK's offices. In that signed statement, Tranchina explained why he broke into his office. He was deeply troubled that HTK and Penn Mutual would likely return only about five percent of his business to him.[154] Indeed, Tranchina had seen something similar happen when other HTK representatives left the firm.[155] Faced with this "great injustice," Tranchina wrote, "I made the decision to go back to the office to retrieve some files

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[143] Tr. 83-84.

[144] Tr. 88-89.

[145] Tr. 93-94.

[146] Tr. 94-95.

[147] Tr. 102, 119.

[148] Tr. 101.

[149] Respondent's Post-Hearing Brief ("Resp't Post-Hearing Br.") 14.

[150] Tr. 321.

[151] Tr. 254-55.

[152] Tr. 99.

[153] Tr. 100; CX-20, at 9.

[154] CX-26, at 10; *see also* Tr. 76.

[155] Tr. 79.

that I didn't think [Barrett] would give back to me, but that I believed I deserved back."[156] His signed statement makes clear that Tranchina intended to take files over which HTK and Penn Mutual claimed ownership.

2. Unauthorized

Tranchina's actions were unauthorized. Barrett instructed Tranchina not to return to the office when he suspended Tranchina. Then, when he terminated Tranchina's agent contracts with HTK and Penn Mutual, Barrett again told Tranchina not to return to the office. When Tranchina asked whether he could return to the office to retrieve his personal files, Barrett told Tranchina no, and that HTK would return Tranchina's personal files to him.

3. Taking or Exercise of Ownership

Tranchina exercised ownership of the files he took from his office. He points out that Penn Mutual and HTK retained electronic copies of the information in the files he took.[157] But this is irrelevant. Conversion does not require the respondent to deprive the property's owner of its use. As the National Adjudicatory Counsel ("NAC") wrote, "requiring proof of deprivation in FINRA disciplinary proceedings is not in the public interest and does not reflect the contemporary realities of widespread technology in the securities industry."[158] In conversion cases, "regardless of whether the owner retains possession and use of its intangible property," it is enough to show that "the respondent took the property for the respondent's benefit."[159]

Nor is it a defense that Tranchina returned files in little more than a week. A person may be liable for conversion even if he returns the property that he improperly took.[160] And Tranchina returned the files only after a written demand by Penn Mutual[161] and two calls from the police.[162]

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[156] CX-26, at 11.

[157] Resp't Post-Hearing Br. 7-8.

[158] *Doni*, 2017 FINRA Discip. LEXIS 46, at *28.

[159] *Id.* at *28-29.

[160] *See, e.g.*, *Denise M. Olson*, Exchange Act Release No. 75838, 2015 SEC LEXIS 3629, at *28 (Sept. 3, 2015) (respondent who used firm's corporate credit card for personal expenses committed conversion, even though she reimbursed the firm after she was caught); *Dep't of Enforcement v. Kendzierski*, No. C9A980021, 1999 NASD Discip. LEXIS 40, at *7 (NAC Nov. 12, 1999) (representative converted funds when he used customer funds to repay bills, even though he repaid customer); *Dep't of Enforcement v. Wicker*, No. 2016052104101, 2020 FINRA Discip. LEXIS 31, at *49 (OHO June 5, 2020), *appeal docketed* (NAC Sept. 30, 2020).

[161] CX-12.

[162] Tr. 146-47; CX-21, at 2.

4. Property

Tranchina took property. The NAC has held that even intangible property can serve as the basis for a conversion charge.[163] Here, the property that Tranchina converted was tangible – customer files – and therefore can serve as the basis for a conversion charge.

Tranchina points out that Enforcement was unable to identify with specificity which documents he returned on May 7, 2018. While Tranchina testified that he returned a large box of customer files that day, Enforcement did not introduce a single document from that stack into evidence at the hearing. Instead, Enforcement presented evidence on the documents mailed by Tranchina's lawyer to HTK and Penn Mutual's lawyer a little more than three weeks later.[164] But those documents, Tranchina insists, were in his possession *before* April 27, 2018, when he broke into his office.[165]

Tranchina describes Enforcement's failure to pinpoint a document as fatal to Enforcement's conversion charge. We disagree. We need look no further than Tranchina's own admissions about what he took. He admitted that he took HTK and Penn Mutual client files on April 27, 2018.[166] He did not segregate any of the information in the files he took.[167] Instead, he took entire customer files, rather than just portions of the files that he viewed as belonging to him.[168] "I just grabbed whatever I grabbed and I left," Tranchina testified.[169]

Tranchina also testified that when he reviewed the documents he had taken, "I did see Penn Mutual and HTK information in there."[170] So while Tranchina denies that he took the HTK and Penn Mutual files intentionally – a denial that we do not find credible –he conceded that he took files that did not belong to him. Given these admissions, we find that Enforcement proved that Tranchina took property that belonged to HTK and Penn Mutual.

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[163] *Doni*, 2017 FINRA Discip. LEXIS 46, at *23-27.

[164] CX-16.

[165] Tr. 490-91; Resp't Post-Hearing Br. 8.

[166] Tr. 254.

[167] Tr. 118.

[168] Tr. 490-91.

[169] Tr. 490-91.

[170] Tr. 255.

5. No Right of Ownership or Possession

Tranchina took customer files to which he had no right of ownership or possession. Tranchina admitted in his signed statement that he returned to his office because Barrett told him that HTK would not give Tranchina any of the customer files with Goldberg's name on them.[171] And Tranchina admitted during the hearing that he took files from his office that were owned by HTK and Penn Mutual.[172]

To counter these admissions, Tranchina asserts that he had a contractual right to some documents he took. He points to similar provisions in his contracts with Penn Mutual and HTK entitled "Protection and Confidentiality of Customer Information."[173] Those provisions prohibited Tranchina generally from disclosing certain non-public, personal information from a client to third parties for any purpose unintended by the client. But Tranchina seizes upon exclusions to this general disclosure prohibition. The prohibitions do not apply to confidential information that was "in the possession of or rightfully known" by the agent or representative before Penn Mutual or HTK received it.[174] Nor do they apply to confidential information that was "independently developed" by the agent or representative.[175] Tranchina argues that this was precisely the information that he sought to obtain when he returned to his office.[176]

This argument is unpersuasive. Even the provision cited by Tranchina from his HTK contract states that "[a]ny customer information obtained pursuant to an HTK product or transaction is considered to be information belonging to HTK . . . ."[177] And his agency contract with Penn Mutual specified that "[a]ll policyholder data . . . records, files, manuals, blanks, forms, materials, software and supplies" provided by Penn Mutual "shall be and remain the property of Penn Mutual[.]"[178] Further, Tranchina knew from his own experience that, when a registered representative left the firm, HTK distributed that representative's business to others at the firm.[179]

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[171] CX-26, at 10.

[172] Tr. 255.

[173] CX-9, at 3; CX-10, at 4.

[174] CX-9, at 3; CX-10, at 4.

[175] CX-9, at 3; CX-10, at 4.

[176] Resp't Post-Hearing Br. 12.

[177] CX-10, at 4.

[178] CX-9, at 4.

[179] Tr. 79.

In any event, this is not a matter of contractual interpretation. Barrett instructed Tranchina not to return to the office and take any customer files. Yet that is exactly what Tranchina did. He admits that he took documents that belonged to HTK and Penn Mutual. Enforcement proved that Tranchina took HTK and Penn Mutual property to which he had no right of ownership or possession.

B. Unauthorized Access to Firm Information

In its second cause of action, Enforcement alleges that Tranchina violated FINRA Rule 2010 when he broke into HTK's office space and took HTK files containing nonpublic personal information about HTK customers and prospective customers. This cause of action overlaps with the first cause of action, alleging conversion, and relies on the same conduct. In fact, the Complaint incorporates for its second cause of action all prior allegations, including the allegations underpinning the first cause of action.[180]

For the same reasons we find Tranchina liable for conversion, we find that Tranchina violated FINRA Rule 2010 when he broke into HTK's office and took HTK and Penn Mutual files without authorization. He intentionally took HTK files. Again, Tranchina argues that Enforcement did not point at the hearing to a single document he returned on May 7, 2018, when he claims he returned all the files he took from his former office. But the customer files he returned in late May contained nonpublic personal information about HTK customers.[181] Tranchina testified that customer files typically contained such nonpublic personal information.[182] So it is reasonable to infer that the documents in the large box that Tranchina took from his office also contained nonpublic personal information about HTK customers. His unauthorized access was also for a business purpose; namely, to re-build a book of business at a new firm. Tranchina's actions departed from "moral norms or standards of professional conduct."[183] Instead, his actions demonstrated "dishonesty of belief or purpose,"[184] and violated FINRA Rule 2010.[185]

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[180] Compl. ¶ 71.

[181] CX-16.

[182] Tr. 112-17.

[183] *Edward S. Brokaw*, Exchange Act Release No. 70883, 2013 SEC LEXIS 3583, at *33 (Nov. 15, 2013).

[184] *Kimberly Springsteen-Abbott*, Exchange Act Release No. 88156, 2020 SEC LEXIS 2684, at *28 (Feb. 7, 2020), *petition for review denied in part and dismissed in part*, No. 20-1092, 2021 U.S. App. LEXIS 5724 (D.C. Cir. Feb. 26, 2021).

[185] *Cf. Dante J. DiFrancesco*, Exchange Act Release No. 66113, 2012 SEC LEXIS 54 (Jan. 6, 2012) (finding that downloading confidential nonpublic customer information for unauthorized purpose violated Rule 2010); *Dep't of Enforcement v. Hunt*, No. 2009018068701, 2012 FINRA Discip. LEXIS 62, (NAC Dec. 18, 2012), *appeal dismissed*, Exchange Act Release No. 69312, 2013 SEC LEXIS 1001 (Apr. 4, 2013) (finding that use of customer information for unauthorized purpose violated Rule 2010).

C. Failure to Update Form U4

Every person seeking to register with FINRA must submit a Form U4.[186] Applicants must keep their Form U4 current, and every applicant agrees to update a Form U4 within 30 days of learning of an event that requires amendment.[187] FINRA Rule 1122 prohibits associated persons from filing registration information with FINRA that "is incomplete or inaccurate so as to be misleading . . . ." These rules apply "to Form U4, which is used by [FINRA] and other self-regulatory organizations to determine the fitness of applicants for registration as securities professionals."[188] Filing a misleading Form U4 also violates FINRA Rule 2010.[189]

Form U4 plays a pivotal role for member firms and regulators in assessing the fitness of individual applicants for registration and association.[190] The accuracy of disclosures on the Form U4 also factors into protecting the investing public, which can access information reported in Forms U4 via BrokerCheck® and use the information to decide "to whom to entrust investor monies."[191] Criminal history, in particular, is a material disclosure.[192] "Member firms use Form U4 to screen applicants for employment and to establish procedures to supervise employees with criminal or disciplinary histories."[193] Form U4 disclosures are therefore critical.[194]

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[186] FINRA By-Laws, Art. V § 2(a).

[187] FINRA By-Laws, Art. V § 2(c).

[188] *Jason A. Craig*, Exchange Act Release No. 59137, 2008 SEC LEXIS 2844, at *8 (Dec. 22, 2008).

[189] *Id.*; *see also Joseph S. Amundsen*, Exchange Act Release No. 69406, 2013 SEC LEXIS 1148, at *25 (Apr. 18, 2013) ("Because Form U4 is so important, every Form U4 filed with FINRA must be accurate, and must be kept current through supplemental amendments that are to be filed within thirty days of learning of the facts and circumstances giving rise to the amendment."), *petition for review denied*, 575 F. App'x 1 (D.C. Cir. 2014), *reh'g denied*, No. 13-1252, 2014 U.S. App. LEXIS 20153 (D.C. Cir. Oct. 21, 2014); *Daniel Richard Howard*, Exchange Act Release No. 46269, 2002 SEC LEXIS 3421, at *9 (July 26, 2002).

[190] *See John D. Audifferen,* Exchange Act Release No. 58230, 2008 SEC LEXIS 1740, at *34 (July 25, 2008) ("[T]he candor and forthrightness of applicants [on the Form U4] is critical to the effectiveness of the screening process.").

[191] *Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at *26 (Nov. 9, 2012).

[192] *Dep't of Enforcement v. Craig*, No. E8A2004095901, 2007 FINRA Discip. LEXIS 16, at *11 n.9 (NAC Dec. 27, 2007), *aff'd*, Exchange Act Release No. 59137, 2008 SEC LEXIS 2844 (Dec. 22, 2008).

[193] *Craig*, 2008 SEC LEXIS 2844, at *19.

[194] *See id.*; *Dep't of Enforcement v. N. Woodward Fin. 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), *petition for review denied sub nom. Troszak v. SEC*, No. 15-3729, 2016 U.S. App. LEXIS 24259 (6th Cir. June 29, 2016).

Form U4 has a section entitled "Disclosure Questions."[195] Two of the questions – 14A and 14B – relate to criminal disclosures. Question 14A covers felonies. Question 14A(1)(a) requires an applicant to disclose if he or she has been convicted of or pleaded guilty or no contest to a felony, while Question 14A(1)(b) asks if an applicant has been "charged with any felony."[196]

Question 14B covers certain specified misdemeanors. Question 14B(1)(a) asks whether an applicant has ever been convicted of or pleaded guilty or no contest to certain misdemeanors, including a misdemeanor involving the "wrongful taking of property." Question 14B(1)(b) requires an applicant to disclose whether he or she has been "charged with a misdemeanor" involving the wrongful taking of property.[197]

Tranchina does not dispute that the Complaint-Summons alleged that he engaged in the "wrongful taking of property." Instead, for the first time at the hearing, he argued that he did not have to disclose the Complaint-Summons because he was not charged with either a "felony" or "misdemeanor," but a "petty disorderly offense."[198] But this argument ignores the way Form U4 defines "misdemeanor" for states like New Jersey, which use names other than "felony" and "misdemeanor" for criminal offenses. For purposes of Form U4, FINRA defines "misdemeanor" as "an offense punishable by a sentence of less than one year imprisonment and/or a fine of less than $1,000."[199] As Tranchina conceded during the investigation, each of the three provisions cited in the Complaint-Summons could result in such a sentence.[200] Indeed, theft by unlawful taking, even when charged as a petty disorderly persons offense, can result under New Jersey law in a jail sentence of up to six months and a fine of up to $1,000.[201] The Complaint-Summons therefore accused Tranchina of a "misdemeanor" for purposes of Form U4.[202]

Tranchina also argues that he was never "charged" with a crime. Like his first argument, this argument depends on a defined term. FINRA defines "charged" for purposes of Form U4 as "being accused of a crime in a formal complaint, information, or indictment (or equivalent formal charge)."[203] While the term "formal complaint" is not defined, Tranchina argues that the Complaint-Summons does not qualify as one. A criminal information or indictment are "utilized by a ***prosecutor*** after the ***prosecutor*** has had the ability to conduct at least a preliminary investigation and has exercised its ***prosecutorial judgment*** to institute formal proceedings,"

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[195] CX-5, at 13.

[196] CX-5, at 13.

[197] CX-5, at 14.

[198] Tr. 555; Resp't Post-Hearing Br. 10.

[199] http://www.finra.org/registration-exams-ce/classic-crd/forms/explanation-of-terms.

[200] CX-27, at 3.

[201] N.J. Rev. Stat. § 2C:43-8.

[202] Tranchina conceded this point in a response to an investigative request from FINRA. CX-27, at 3.

[203] http://www.finra.org/registration-exams-ce/classic-crd/forms/explanation-of-terms.

Tranchina argues.[204] By contrast, Tranchina asserts, the Complaint-Summons was a "citizen's complaint lodged by Barrett personally[.]"[205] Because only a prosecutor has the formal authority in New Jersey to charge an individual with a criminal offense, Tranchina argues, the Complaint-Summons and its proceedings do not qualify as a "formal complaint" that he must disclose on his Form U4.[206] Tranchina also points to the conditional dismissal of the Complaint-Summons.[207]

Like his first argument, Tranchina's second argument is misplaced. A judge held a probable cause hearing, at which Barrett testified,[208] and a judicial officer issued the Complaint-Summons.[209] A prosecutor represented the county during Tranchina's court appearances.[210] Given these circumstances, the Complaint-Summons and related proceedings constituted a "formal complaint . . . or equivalent formal charge" that Tranchina needed to disclose on his Form U4. And the conditional dismissal that resolved the proceedings does not alter the character of the charges, or Tranchina's obligation to disclose them. To enter the conditional dismissal program, Tranchina needed to enter a plea of guilty.

The consequences of Tranchina's argument reveal its fallacy. Rather than agreeing to a conditional dismissal, Tranchina could have insisted on a trial. A conviction is one possible outcome of such a trial. He also could have violated the terms of his probationary period for his conditional dismissal. That also could have led to a conviction. And if Tranchina had been convicted of violating the provisions of the New Jersey Code of Criminal Justice cited in the Complaint-Summons, he would have needed to disclose that conviction on his Form U4.[211] Tranchina's argument means that he must disclose only the conviction, not the complaint or proceedings that led to the conviction. But that conflicts with the plain language of Form U4, which requires applicants to disclose separately both charges and convictions.[212]

We therefore find that Tranchina had to disclose the Complaint-Summons on his Form U4. Tranchina received the Complaint-Summons in the first week of August 2019. He made three amendments to his Form U4 after August 2019. He failed to disclose the Complaint-

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[204] CX-27, at 3.

[205] Resp't Post-Hearing Br. 15.

[206] Respondent's Pre-Hearing Brief ("Resp't Pre-Hearing Br.") 9.

[207] Resp't Pre-Hearing Br. 9-10.

[208] Tr. 307-08.

[209] CX-22, at 1.

[210] Tr. 217-18.

[211] Question 14B(1)(a) requires applicants to disclose when they have been "convicted of . . . a misdemeanor involving . . . wrongful taking of property[.]" CX-5, at 14.

[212] *See also Dep't of Enforcement v. Zdzieblowski*, No. C8A030062, 2005 NASD Discip. LEXIS 3, at *12-14 (NAC May 3, 2005) (holding that respondent was required to disclose misdemeanor charge even though he was never convicted of the charge).

Summons in those three amendments.[213] Indeed, he has failed to disclose it to this day.[214] By failing to disclose the Complaint-Summons on his Form U4, Tranchina violated Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010.

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We now turn to whether Tranchina's failure to disclose the Complaint-Summons and related proceedings was willful. An associated person who willfully omits any material fact required to be disclosed in a Form U4 filed with FINRA is subject to statutory disqualification.[215] For purposes of the securities laws, a violation is willful when "the person charged with the duty knows what he is doing."[216] We need find only that Tranchina "voluntarily committed the acts that constituted the violation, not that [he] was aware of the rule that he violated or acted with a culpable state of mind."[217]

Tranchina knew about the Complaint-Summons and decided not to disclose it. Tranchina argues that he reasonably believed that he did not have to disclose the Complaint-Summons because it was diverted from prosecution through a conditional dismissal.[218] But this argument is unpersuasive. He did not obtain a conditional dismissal until around three months after he was served with the Complaint-Summons.[219] And the charges were not dismissed for another year because they depended on his good behavior during that year.[220]

As the NAC has held, a representative "has an obligation to inquire about the charge against him if he was unsure how to answer accurately any question on the Form U4."[221] Tranchina did not inquire with Chelsea about whether he had an obligation to disclose the criminal proceedings against him, however, and the firm was unaware of them until FINRA sent

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[213] CX-6; CX-7; CX-8.

[214] Tr. 239.

[215] Section 3(a)(39) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78c(a)(39); Section 15(b)(4)(A) of the Exchange Act, 15 U.S.C. § 78o(b)(4)(A); FINRA By-Laws Art. III § 4; *Michael Earl McCune*, Exchange Act Release No. 77375, 2016 SEC LEXIS 1026, at *14 (Mar. 15, 2016), *aff'd* 672 F. App'x 865 (10th Cir. 2016). Form U4 is a required application to FINRA within the meaning of Sections 3(a)(39) and 15(b)(4)(A) of the Exchange Act.

[216] *Tucker*, 2012 SEC LEXIS 3496, at *41.

[217] *Craig*, 2008 SEC LEXIS 2844, at *13; *see also Thaddeus J. North*, Exchange Act Release No. 84500, 2018 SEC LEXIS 3001, at *22 (Oct. 29, 2018), *petition for review denied*, 828 F. App'x 729 (D.C. Cir. 2020).

[218] Resp't Post-Hearing Br. 15.

[219] CX-23, at 1.

[220] CX-24.

[221] *Zdzieblowski*, 2005 NASD Discip. LEXIS 3, at *16. *See also James Allen Schneider,* Exchange Act Release No. 37463, 1996 SEC LEXIS 1914, at *6 (July 22, 1996) (finding that respondent should have checked with proper authority if unsure how to respond accurately to disclosure question on Form U4).

the firm a copy of its investigative request to Tranchina.[222] Tranchina acted willfully and is subject to a statutory disqualification.[223]

IV. Sanctions

A. The Sanction Guidelines

In considering the appropriate sanctions, we begin with FINRA's Sanction Guidelines ("Guidelines").[224] The Guidelines contain (1) General Principles Applicable to All Sanction Determinations ("General Principles") "that should be considered in connection with the imposition of sanctions in all cases;" (2) a list of Principal Considerations in Determining Sanctions ("Principal Considerations") that "enumerates generic factors for consideration in all cases;" and (3) guidelines applicable to specific violations ("Specific Considerations") that "identify potential principal considerations that are specific to the described violation."[225]

The General Principles explain that "sanctions should be designed to protect the investing public by deterring misconduct and upholding high standards of business conduct." Adjudicators must "design sanctions that are meaningful and significant enough to prevent and discourage future misconduct by a respondent and deter others from engaging in similar misconduct." Sanctions should also "reflect the seriousness of the misconduct at issue"[226] and be "tailored to address the misconduct involved in each particular case."[227]

We consider the sanctions we are imposing appropriate, proportionally measured to address Tranchina's misconduct, and designed to protect and further the interests of the investing public, the industry, and the regulatory system.

B. Conversion and Unauthorized Access to Firm Information

Enforcement's first two causes of action (conversion and unauthorized access to firm information) stem from the same conduct by Tranchina. Both turn on Tranchina's actions on

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[222] CX-28, at 156:13-22.

[223] *Dep't of Enforcement v. Doherty*, No. 2015047005801, 2020 FINRA Discip. LEXIS 29, at *15 n.13 (NAC June 15, 2020) (finding that respondent acted willfully and therefore was subject to a statutory disqualification because he "knowingly and intentionally executed prearranged trades—with no economic purpose and no change to beneficial ownership—to help a [a trader] avoid [his firm's] aged-inventory policy"); *see also Dep't of Mkt. Regulation v. Naby*, No. 20120320803-01, 2017 FINRA Discip. LEXIS 27, at *27 n.21 (NAC July 24, 2017) (finding that respondent willfully violated MSRB G-17 because her actions were voluntary).

[224] *See, e.g.*, *Allen Holeman*, Exchange Act Release No. 86523, 2019 SEC LEXIS 1903, at *43 (July 31, 2019), *petition for review denied*, No. 19-1251, 2021 U.S. App. LEXIS 208 (D.C. Cir. Jan. 5, 2021) (finding that a sanctions analysis should begin with the Guidelines as a benchmark).

[225] Guidelines at 1 (Overview).

[226] *Id.* at 2 (General Principle No. 1).

[227] *Id.* at 3 (General Principle No. 3).

April 27, 2018, when he broke into his former office and took HTK files. We therefore impose a unitary sanction.[228]

For the "Conversion or Improper Use of Funds or Securities,"[229] the Guidelines state that a bar is the standard sanction "regardless of amount converted."[230] Despite the reference to an "amount converted," this Guideline does not apply solely to the conversion of funds or securities.[231] Instead, the Guideline can also be applied to the conversion of property, including intangible property.[232]

The Guidelines recommend a bar for conversion because "in the absence of mitigating factors warranting a different conclusion, the risk to investors and the markets posed by those who commit such violations justifies barring them from the securities industry."[233] The Guidelines "are not intended to be absolute," however.[234] They "merely provide a 'starting point' in the determination of remedial sanctions."[235] We must consider each case on its own facts[236] and "tailor sanctions to respond to the misconduct at issue."[237] In deciding whether to bar Tranchina as a remedial sanction, "our foremost consideration must be whether doing so protects the public from further harm."[238]

Several of the Principal Considerations are relevant here. Tranchina's misconduct comprised several acts,[239] starting with his 30-minute drive back to the office.[240] He found a way into the firm's office through an unsecured door.[241] He used a chair and broom to dislodge

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[228] *See Dep't of Enforcement v. Tucker*, No. 2009016764901, 2013 FINRA Discip. LEXIS 45, at *20 n.20 (NAC Dec. 21, 2013) (imposing unitary sanction for multiple causes of action, including conversion, because all violations related to conversion of funds), *petition for review dismissed*, Exchange Act Release No. 71972, 2014 SEC LEXIS 4626 (April 18, 2014).

[229] There are no Guidelines specific to stand-alone Rule 2010 violations, like the second cause of action here.

[230] Guidelines at 36.

[231] *Doni*, 2017 FINRA Discip. LEXIS 46, at *37.

[232] *Id.*

[233] *Id.* (quoting *Dep't of Enforcement v. Grivas*, No. 2012032997201, 2015 FINRA Discip. LEXIS 16, at *25 (NAC July 16, 2015)).

[234] Guidelines at 1.

[235] *Hattier, Sanford & Reynoir*, Exchange Act Release No. 39543, 1998 SEC LEXIS 55, at *14 n.17 (Jan. 13, 1998) (quoting *Peter C. Bucchieri*, Exchange Act Release No. 37219, 1996 SEC LEXIS 1331, at *15 (May 14, 1996)).

[236] *McCarthy v. SEC*, 406 F.3d 179, 190 (2d Cir. 2005).

[237] Guidelines at 3.

[238] *Doni*, 2017 FINRA Discip. LEXIS 46, at *47.

[239] Guidelines at 7 (Principal Consideration No. 8) ("Whether the respondent engaged in numerous acts . . . .").

[240] Tr. 83.

[241] Tr. 88-89.

ceiling tiles and open his locked office door.[242] Once inside his office, he grabbed as many files as he could carry, including more than just what he perceived as his personal files.[243] He did not return any files until Penn Mutual and the police made repeated demands for them.[244] Tranchina characterizes his misconduct as the exercise of "poor judgment in a single instance in the midst of being terminated and potentially losing his livelihood . . . ."[245] But each of Tranchina's actions was knowing and intentional,[246] and he could have turned back after each step.

There are other aggravating factors. Tranchina ignored a warning by his supervisor,[247] Barrett, not to return to the office, even to collect his personal belongings.[248] He tried to conceal his misconduct,[249] by cleaning his office after his break-in,[250] and by providing the cleaning staff with a fake name.[251] His misconduct created the potential for monetary gain,[252] as he took the customer files because he was concerned that he would otherwise lose "approximately 95% of his business" after he was terminated by HTK. And Barrett testified that the files taken by Tranchina contained customer information that was costly for HTK and Penn Mutual to compile and maintain.[253] Tranchina caused HTK and Penn Mutual injury.[254]

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[242] Compl. ¶ 31; Ans. ¶ 31; Tr. 94-95.

[243] Tr. 118, 120.

[244] CX-12; CX-14; CX-21.

[245] Resp't Post-Hearing Br. 19.

[246] Guidelines at 8 (Principal Consideration No. 13) ("Whether the respondent's misconduct was the result of an intentional act, recklessness, or negligence.").

[247] *Id.* at 8 (Principal Consideration No. 14) ("Whether the respondent engaged in the misconduct at issue notwithstanding prior warnings from . . . a supervisor . . . that the conduct violated FINRA rules or applicable securities laws or regulations.").

[248] Tr. 375-76.

[249] Guidelines at 7 (Principal Consideration No. 10) ("Whether the respondent attempted to conceal his or her misconduct . . . the member firm with which he or she is/was associated.").

[250] Tr. 100.

[251] Tr. 101.

[252] Guidelines at 8 (Principal Consideration No. 16) ("Whether the respondent's misconduct resulted in the potential for the respondent's monetary or other gain.").

[253] Tr. 365-66.

[254] Guidelines at 7 (Principal Consideration No. 11) ("With respect to other parties, including . . . the member firm with which an individual is associated, . . . (a) whether the respondent's misconduct resulted directly or indirectly in injury to such other parties, and (b) the nature and extent of the injury.").

Tranchina points to the lack of customer harm and his lack of a disciplinary history.[255] But neither are mitigating.[256] Tranchina also emphasizes that he is a "young man who deserves the opportunity to continue his career after making a mistake."[257] But youth and inexperience are generally not mitigating factors.[258] In any event, Tranchina was in the securities industry for nearly nine years when he broke into HTK's offices, and he made more than just a mistake in judgment.

Tranchina also asserts that he has taken "full responsibility for his conduct."[259] Under the right circumstances, acceptance of responsibility can be mitigating.[260] But his acceptance of responsibility was belated. The Sanction Guidelines ask adjudicators to look to whether a respondent accepted responsibility for misconduct "prior to detection and intervention by the firm . . . ." [261] Tranchina did not accept responsibility for his misconduct before HTK discovered his break-in and contacted the police. In fact, he continued to evade responsibility for his misconduct up through the hearing. He refused to admit that he "broke into" his former office and conceded only that he "accessed it[.]"[262] His explanation about why he vacuumed the debris in the office and replaced ceiling tiles after his break-in was implausible. He did not clean the office to cover up his breaking-and-entering, he claimed.[263] Instead, he testified, he wanted to avoid having to return to a messy office if HTK allowed him back into his office.[264] But just a few hours earlier, HTK had fired him and expressly instructed him not to return to the office.[265] His testimony that he did not have time to segregate his personal files from the files he grabbed was not credible. Tranchina's acceptance of responsibility therefore merits little mitigation.

Finally, in deciding upon a sanction, we must consider the unusual context presented here, when the property converted is not money or money equivalents or securities, but customer

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[255] Resp't Post-Hearing Br. 19-20.

[256] *Dep't of Enforcement v. Jones*, No. 2015044782401, 2020 FINRA Discip. LEXIS 45, at *33 (NAC Dec. 17, 2020), *appeal docketed*, No. 3-20209 (SEC Jan. 19, 2021) (absence of customer harm and disciplinary history are not mitigating).

[257] Resp't Post-Hearing Br. 20.

[258] *See, e.g.*, *Scott Epstein*, Exchange Act Release No. 59328, 2009 SEC LEXIS 217, *73 (Jan. 30, 2009) (rejecting argument that respondent's youth and inexperience are mitigating).

[259] Resp't Post-Hearing Br. 20; *see also* Tr. 480-81.

[260] *See Doni*, 2017 FINRA Discip. LEXIS 46, at *45 ("He immediately accepted responsibility when he was confronted by his supervisor, and never attempted to justify his misconduct or blame others.").

[261] Guidelines at 7 (Principal Consideration No. 2).

[262] Tr. 135.

[263] Tr. 100.

[264] Tr. 100.

[265] Tr. 74-75, 373.

files.[266] Tranchina argues for leniency because, unlike a typical conversion case, "no funds were taken as a result of misconduct and no funds were actually spent or went missing."[267] Tranchina therefore faults Enforcement for "a novel and expansive use of conversion as a charge[.]"[268]

We are mindful that Tranchina did not take money, or money equivalents, or securities from HTK. But the property that Tranchina converted had real value to HTK,[269] and the way he took that property was shocking. The NAC has held that the Guideline for conversion may apply in cases involving forms of property other than funds or securities.[270] We deem it appropriate to do so here. Considering the several aggravating factors, and the lack of any meaningful mitigating factors, we see no reason to deviate from the standard sanction in conversion cases. Tranchina has demonstrated that he is unfit to continue as an associated person of a FINRA member. Serious sanctions are appropriate to remedy his violations, protect investors, and deter others from engaging in similar misconduct. We thus find that Tranchina should be barred from association with any FINRA member firm.

C. Failure to Amend Form U4

For an individual respondent's failure to amend Form U4, the Guidelines recommend a fine of $2,000 to $39,000, and, when there are aggravating factors, a suspension in all capacities for a period of ten business days to six months.[271] When aggravating factors predominate, the Guidelines suggest a longer suspension, up to two years.[272] The Specific Considerations include: (1) the nature and significance of the information at issue; (2) the number and nature of the disclosable events at issue; (3) whether the omission was an intentional effort to conceal information; (4) the duration of the delinquency; and (5) whether the misconduct resulted directly or indirectly in injury to other parties, including the investing public, and, if so, the nature and extent of the injury.[273]

Tranchina was charged with theft of property. A theft charge is significant information for the investing public and other members of the industry. Tranchina still has not disclosed the charge on his Form U4, around 21 months after he received the Complaint-Summons. These are aggravating factors.

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[266] *See Doni*, 2017 FINRA Discip. LEXIS 46, at *40 ("Here, the conversion at issue, which involves intellectual property, presents an unique context in comparison to other conversion matters we previously have considered.").

[267] Tr. 557.

[268] Tr. 553.

[269] Tr. 365-66.

[270] *Doni*, 2017 FINRA Discip. LEXIS 46, at *37.

[271] Guidelines at 71.

[272] Guidelines at 71.

[273] Guidelines at 71.

The parties disagree about whether Tranchina intended to conceal the theft charge by not disclosing it on his Form U4. Tranchina argues that he did not intend to conceal it. Rather, Tranchina argues, he acted out of a good-faith belief that he did not have to disclose what he viewed as "a parking ticket."[274] He notes that HTK disclosed the circumstances of his termination in CRD,[275] and he told his new firm about those circumstances before they hired him.[276] Tranchina also points out that Chelsea has not required him to disclose the criminal charge.[277]

Tranchina's arguments are unpersuasive. His testimony that he viewed the criminal charges "like a parking ticket" is not credible. Before he received the Complaint-Summons, Tranchina received two phone calls from the police about his break-in. After he received the Complaint-Summons he hired a criminal defense attorney, who represented him in court several times and negotiated with a county prosecutor. He pleaded guilty to provisions of the New Jersey Code of Criminal Justice, provisions which carry with them a potential prison sentence and fine. While Tranchina obtained a conditional dismissal of the charges, they were pending for a year, a fact he refused to acknowledge at the hearing but conceded at his OTR.[278] And while Tranchina told Chelsea about why HTK terminated his association, he did not disclose the Complaint-Summons. Tranchina did not tell Chelsea about the criminal charges until FINRA sent Chelsea a copy of a regulatory request about the charges.[279]

Balancing these factors, we conclude that an appropriately remedial sanction for Tranchina's failure to amend his Form U4 would be a suspension of six months from association with any FINRA member firm and a fine of $10,000. We do not impose this sanction, however, because of the bar imposed separately for Tranchina's conversion and unauthorized access to firm information.

V. Order

We find that Tranchina committed conversion and engaged in unauthorized access to firm information in violation of FINRA Rule 2010. For these violations, he is barred from associating with a FINRA member firm.

We also find that Tranchina violated Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010 by willfully failing to disclose the Complaint-Summons on his

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[274] Tr. 206.

[275] RX-11, at 6.

[276] Tr. 289.

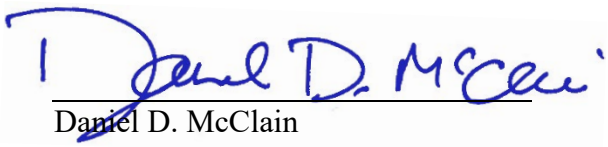
[277] Tr. 300-01.

[278] Tr. 223 ("Well, it said it was conditionally dismissed, so I took that to mean that it was dismissed, it was over."); CX-28, at 150 ("as of October 29th of this year [2019], all the charges will be dismissed" and "[u]ntil then, they are still classified as pending").

[279] CX-28, at 156.

Form U4. For his violation, we impose no sanction because of the bar we impose for his conversion and unauthorized access to firm information. As a result of our finding that Tranchina willfully failed to update his Form U4, Tranchina is subject to statutory disqualification.

Tranchina is also ordered to pay costs in the amount of $4,977.43, which includes a $750 administrative fee and $4,227.43 for the cost of the transcript. If this decision becomes FINRA's final disciplinary action, the bar will take effect immediately. The costs shall be due on a date set by FINRA, but not sooner than 30 days after this decision becomes FINRA's final action in this disciplinary proceeding. [280]



Daniel D. McClain
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For the Hearing Panel

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