

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

MICHEL RENE LAVELANET
(CRD No. 2832739),

Respondent.

Disciplinary Proceeding
No. 2014042547601

Hearing Officer–MC

DEFAULT DECISION

April 19, 2016

For willfully failing to timely update his Form U4 in violation of FINRA Rules 1122 and 2010, Respondent is suspended from associating with any FINRA member firm in any capacity for six months and fined \$15,000. This violation subjects him to statutory disqualification. For making a false attestation on the firm’s annual compliance questionnaire in violation of FINRA Rule 2010, Respondent is suspended from associating with any FINRA member firm in any capacity for three months and fined an additional \$5,000. The suspensions shall run consecutively.

Appearances

For the Complainant: Vaishali S. Shetty, Esq. and Lara Thyagarajan, Esq. for the Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: no appearance

DECISION

I. Introduction

Respondent Michel Rene Lavelanet (“Lavelanet”) failed to timely update his Uniform Application for Securities Industry Registration (Form U4) in FINRA’s Central Registration Depository (“CRD”) to disclose multiple tax liens that had been filed against him. Lavelanet also submitted a false annual compliance form to his employer in which he denied that any tax liens had been filed against him.

Enforcement filed a Complaint with the Office of Hearing Officers on January 11, 2016. The Complaint charges Lavelanet with (1) willfully failing to timely update his Form U4, in violation of FINRA Rules 1122 and 2010; and (2) submitting a false attestation on his employer's compliance questionnaire, in violation of FINRA Rule 2010.

Lavelanet did not answer or otherwise respond to the Complaint. Accordingly, on April 4, 2016, Enforcement filed a motion for entry of default decision ("Default Motion"), together with counsel's declaration ("Decl.") in support of the motion, and supporting exhibits. Lavelanet did not respond to the Default Motion.

For the reasons set forth below, I find Respondent in default and grant Enforcement's Default Motion.

II. Findings of Fact and Conclusions of Law

A. Respondent's Background

Lavelanet was first employed in the securities industry in November 1996. From March 1998 until March 2015, he was registered with FINRA as a General Securities Representative, through his association with FINRA member firm Woodstock Financial Group, Inc. Lavelanet was also registered with Woodstock as a General Securities Principal from July 1999 to March 2015.¹

On April 22, 2015, Woodstock terminated Lavelanet's registrations by filing a Uniform Termination Notice for Securities Industry Registration (Form U5) on behalf of Lavelanet.² Lavelanet has not been registered or associated with any FINRA member since April 2015.³

B. FINRA's Jurisdiction

FINRA retains jurisdiction over Lavelanet pursuant to Article V, Section 4(a) of FINRA's By-Laws. Enforcement filed the Complaint within two years after April 22, 2015, the effective date of termination of his FINRA registration, and the Complaint charges him with misconduct committed while he was associated with Woodstock.

C. Origin of the Investigation

Member Regulation Staff conducted an examination of identified unsatisfied liens and judgments that Lavelanet failed to disclose as required on his Form U4. That examination led to this disciplinary proceeding.⁴

¹ CX-1, at 3.

² CX-1, at 17.

³ CX-1, at 3.

⁴ Decl. ¶ 4.

D. Respondent's Default

Enforcement served Lavelanet with the Complaint, First Notice of Complaint, and Second Notice of Complaint in accordance with FINRA Rules 9131 and 9134. Enforcement served the Complaint and First Notice of Complaint on January 11, 2016, and the Complaint and Second Notice of Complaint on February 9, 2016. In each case, Enforcement served Lavelanet by United States Postal Service certified mail and first-class mail, addressed to his residential address recorded in CRD.⁵ Therefore, I find that constructive notice of the Complaint has been met in this proceeding.⁶

Lavelanet did not file an Answer to the Complaint or the Second Notice of Complaint. Lavelanet therefore defaulted and I deem the allegations in the Complaint admitted under FINRA Rules 9215(f) and 9269(a).⁷

E. Respondent's Failure to Timely Update Form U4

In March 1998, Lavelanet signed and submitted an initial Form U4 when he registered with Woodstock. Beginning in June 2011, federal authorities filed three tax liens and subsequently, New York state authorities filed two tax warrants against him, on the dates and in the amounts shown below:⁸

June 27, 2011 federal tax lien	\$ 34,078.20
October 17, 2011 federal tax lien	\$176,258.45
December 15, 2011 federal tax lien	\$160,395.12
August 7, 2012 New York State tax warrant	\$ 6,117.66
June 18, 2013 New York State tax warrant	\$ 5,641.26
Total	\$382,490.69

Despite having notice of the liens and warrants on or about the time that each was recorded, Lavelanet failed to update his Form U4 within 30 days of becoming aware of them.⁹ From June 2011 to March 2014, Lavelanet filed amendments to his Form U4 on at least six occasions without disclosing the unsatisfied federal tax liens and state tax warrants. He did not amend his Form U4 to disclose the liens and warrants until March 5, 2014.¹⁰

⁵ Decl. ¶¶ 11, 16.

⁶ See *Dep't of Enforcement v. Moore*, No. 2008015105601, 2012 FINRA Discip. LEXIS 45, at *21 (NAC July 26, 2012) (finding constructive notice of a complaint served on respondent at his last known residential address, as indicated in the CRD, by first-class and certified mail).

⁷ Respondent may move to set aside the default pursuant to FINRA Rule 9269(c) upon a showing of good cause.

⁸ Compl. ¶ 6.

⁹ Compl. ¶ 10.

¹⁰ Compl. ¶¶ 8, 10.

F. False Attestation on Compliance Question

On January 14, 2013, Lavelanet completed Woodstock's annual compliance questionnaire for 2012. The Questionnaire stated:

FINRA Rules require you to update your Form U4 when certain events occur. Events or occurrences which may require the amending of your Form U4 include . . . judgments or liens against you, bankruptcy, regulatory investigations, sanctions or fines, and criminal misdemeanor or felony charges. Has any event or occurrence happened to you which would have required the filing of an amendment to your Form U4 during the review period?

Lavelanet falsely responded "No."¹¹

G. Discussion

Article V, Section 2(c) of FINRA's By-Laws requires an associated person to report certain disclosable events on a Form U4 and to keep the form updated and accurate. The By-Laws require associated persons to make a supplementary amendment to the Form U4 within 30 days of learning of a fact or circumstance requiring an amendment. FINRA Rule 1122 prohibits the filing of incomplete or inaccurate information that is misleading and requires associated persons to correct filed information when they learn that what they have filed is incomplete or inaccurate. These provisions give rise to a duty to provide accurate and current information so as to "assure[] regulatory organizations, employers, and members of the public that they have all material, current information about the securities professional with whom they are dealing."¹²

If an associated person willfully makes a false or misleading statement with respect to any material fact on a Form U4 or fails to report a material fact, he becomes subject to statutory disqualification under Section 3(a)(39) of the Securities Exchange Act of 1934 and Article III, Section 4 of FINRA's By-Laws. For Form U4 purposes, information is material if, considered in the context of the "total mix of information" available, it is substantially likely that it would be viewed by "a reasonable regulator, employer, or customer" as significant, because it would provide a regulator "with early notice about his financial difficulties and ability to manage his financial obligations;" an employer with insight into "the outside financial pressures he was facing;" and a customer with a measure of whether the liens would reflect on "his ability to provide ... appropriate financial advice."¹³ The existence of unsatisfied judgments and liens, as

¹¹ Default Motion at 5.

¹² *Richard A. Neaton*, Exchange Act Release No. 65598, 2011 SEC LEXIS 3719, at *17-18 (Oct. 20, 2011).

¹³ *Michael Earl McCune*, Exchange Act Release No. 77375, 2016 SEC LEXIS 1026, at *21-22, and n.25-26 (March 15, 2016). See also *Scott Mathis v. SEC*, 671 F.3d 210, 219-220 (Feb. 14, 2012) (respondent's undisclosed tax liens deemed material); *TSC Indus., Inc., v. Northway, Inc.*, 426 U.S. 438, 449 (1976) (an omitted fact is material if it would significantly alter mix of available information); and *Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at *32-33 (Nov. 9, 2012) (respondent's liens, bankruptcies, and judgments found significant as they "raise concerns about whether [respondent] could responsibly manage his own financial affairs, and

well as any compromise with creditors, must be disclosed on a Form U4.¹⁴ The National Adjudicatory Council has held that “essentially all of the information that is reportable on the Form U4 may be considered material.”¹⁵

By failing to amend his Form U4 to report the tax liens and warrants in a timely manner, as described above, Lavelanet violated FINRA Rules 1122 and 2010. Because Lavelanet knew of the liens and warrants, and amended his Form U4 on numerous occasions over a period of almost three years without disclosing them, I find that his failure to amend his Form U4 was willful.¹⁶

By failing to honestly and accurately complete his compliance questionnaire, Lavelanet violated FINRA Rule 2010, which requires registered persons to observe high standards of commercial honor and just and equitable principles of trade.

III. Sanctions

A. Willful Failure to Timely Update Form U4 (FINRA Rules 1122 and 2010)

The Guidelines recommend a fine ranging from \$2,500 to \$37,000 and a suspension in any or all capacities of between 5 and 30 business days for an associated person’s failure to timely amend a Form U4.¹⁷ For egregious cases, like those involving repeated failures to file, the Guidelines recommend a longer suspension of up to two years or a bar. Among the principal considerations in determining sanctions are the nature and significance of the information at issue and whether the failure resulted in a statutorily disqualified individual becoming or remaining associated with a firm.

Multiple failures to disclose a person’s unpaid debts are egregious. Lavelanet’s failure to timely disclose the three federal tax liens and two state tax warrants, totaling more than \$382,000, necessitates a significant sanction. I therefore find it appropriate to impose a \$15,000 fine and a six-month suspension in all capacities. Because Lavelanet’s failures to disclose were willful and the omitted information was material, he is also subject to statutory disqualification.

ultimately cast doubt on his ability to provide trustworthy financial advice and services to investors relying on him to act on their behalf as a securities industry professional ... [and] also reflected significant outside financial pressures that could affect his judgment when providing financial services.”).

¹⁴ The Form U4 includes the question, “Do you have any unsatisfied judgments or liens against you?” Compl. ¶ 5.

¹⁵ *Dep’t of Enforcement v. Toth*, No. E9A2004001901, 2007 NASD Discip. LEXIS 25, at *34 (NAC July 7, 2007).

¹⁶ An associated person willfully violates federal securities laws when he is a “person charged with [a] duty” and “knows what he is doing.” *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000). It is not necessary to find that Lavelanet intentionally violated FINRA rules, only that he knew what he was doing when he did not timely amend his Form U4 to disclose the three federal tax liens and two state tax warrants. *See Mathis v. SEC*, 671 F.3d 210, 216-218 (2d Cir. 2012) (finding that respondent was statutorily disqualified when he voluntarily failed to amend Form U4 to disclose tax liens).

¹⁷ FINRA Sanction Guidelines at 69 (2015), available at www.finra.org/industry/sanction-guidelines.

B. False Attestation on Firm's Annual Compliance Questionnaire (FINRA Rule 2010)

There is no specific Guideline concerning the falsification of an attestation; however, the Guideline for falsification of records in violation of Rule 2010 is analogous. That Guideline recommends a fine between \$5,000 and \$146,000, and a suspension or a bar. In cases where mitigating factors exist, the Guideline recommends consideration of a suspension up to two years. In egregious cases, it is appropriate to consider a bar. The Guidelines contain two relevant Principal Considerations for determining sanctions for falsifying documents: (1) the nature of the document falsified; and (2) whether respondent had a good faith, but mistaken, belief of express or implied authority.¹⁸

The annual compliance questionnaire Lavelanet answered falsely was used by his member firm to ensure that the firm and its employees were in compliance with federal securities laws, FINRA rules, and other applicable rules.¹⁹ Lavelanet knew that unsatisfied liens and warrants requiring him to amend his Form U4 had been filed against him during the period under review. There is no evidence that Lavelanet was mistaken or made a good faith error when falsely executing his attestation. For these reasons, I conclude that a \$5,000 fine and a three-month suspension in all capacities are appropriately remedial sanctions.

IV. Order

For willfully failing to timely update his Form U4, in violation of FINRA Rules 1122 and 2010, Respondent Michel Rene Lavelanet is suspended from associating with any FINRA member firm in any capacity for six months and fined \$15,000. Because his misconduct was willful, and the information he failed to disclose was material, he is subject to statutory disqualification. For answering his firm's annual compliance questionnaire falsely, in violation of FINRA Rule 2010, Lavelanet is suspended from associating with any FINRA member firm in any capacity for three months and fined \$5,000. The suspensions shall run consecutively.

If this Default Decision becomes FINRA's final disciplinary action, Lavelanet's suspension shall become effective with the opening of business on May 23, 2016. The fines totaling \$20,000 shall be due and payable if and when Lavelanet reenters the securities industry.

SO ORDERED.


Matthew Campbell
Hearing Officer

¹⁸ Sanction Guidelines at 37.

¹⁹ Default Motion at 11.

Copies to:

Michel Rene Lavelanet (via first-class mail)
Vaishali S. Shetty, Esq. (via email and first-class mail)
Lara Thyagarajan, Esq. (via email)
Jeffrey D. Pariser, Esq. (via email)