

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ANTHONY UZOMA OGBONNA
(CRD No. 2771427),

Respondent.

Disciplinary Proceeding

No. 2014040437703

Hearing Officer–MC

DEFAULT DECISION

June 17, 2016

Respondent is fined \$10,000 and suspended from associating with any FINRA member firm in any capacity for one year for failure to timely respond to requests for information and failure to timely appear and provide sworn testimony. Respondent is also fined \$5,000 and suspended from associating with any FINRA member firm in any capacity for three months for willful failure to update his Form U4. His willful violation subjects Respondent to statutory disqualification.

Appearances

For the Complainant: Perry C. Hubbard, Esq. and Jason W. Gaarder, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: No appearance by or on behalf of Anthony Uzoma Ogbonna.

DECISION

I. Introduction

Respondent Anthony Uzoma Ogbonna (“Ogbonna”) failed to timely respond to FINRA’s requests for information and documents and failed to timely appear and provide testimony as FINRA requested. Ogbonna also willfully failed to disclose an unsatisfied judgment on his Uniform Application for Securities Registration or Transfer (Form U4).

FINRA’s Department of Enforcement filed a two-cause Complaint with the Office of Hearing Officers on February 24, 2016. The Complaint charges Ogbonna with (1) failing to timely produce information requested by FINRA and failing to timely attend an on-the-record interview, in violation of FINRA Rules 8210 and 2010; and (2) willfully failing to update his

Form U4 to disclose the existence of a judgment, in violation of Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010.

Ogbonna did not answer or otherwise respond to the Complaint. On May 20, 2016, Enforcement filed a Motion for Entry of Default Decision supported by a memorandum of law, the declaration of Jason W. Gaarder ("Decl."), and four exhibits. Ogbonna did not respond to the 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. Ogbonna's Background and FINRA's Jurisdiction

Ogbonna first became associated with a FINRA member firm in 1996.¹ In March 2000, Ogbonna registered with Banc One Securities Corporation, which later became FINRA member firm J.P. Morgan Securities LLC ("JP Morgan").² JP Morgan terminated Ogbonna's employment on February 13, 2014, and filed a Uniform Termination Notice for Securities Industry Registration (Form U5) with FINRA's Central Registration Depository ("CRD") on March 7, 2014.³ Ogbonna is not currently associated with a FINRA member firm.⁴

Enforcement filed the Complaint within two years after March 7, 2014, the effective date of termination of Ogbonna's FINRA registration, and the Complaint charges him with misconduct committed while he was associated with a FINRA member firm. Therefore, FINRA retains jurisdiction over Respondent under Article V, Section 4(a) of FINRA's By-Laws.

B. Origin of the Proceeding

Enforcement began its investigation of Ogbonna after JP Morgan filed the Form U5 with CRD. In the course of its investigation, FINRA staff sent Ogbonna two written requests under FINRA Rule 8210 to produce information. Ogbonna did not produce the information until after Enforcement initiated an expedited proceeding pursuant to FINRA Rule 9552. After receiving the documents, Enforcement issued requests under FINRA Rule 8210 for Ogbonna to provide sworn testimony. Ogbonna failed to appear for two scheduled on-the-record interviews and did not testify until after Enforcement initiated a second Rule 9552 proceeding.⁵

¹ Decl. ¶ 5; CX-1 at 7.

² Complaint ("Compl.") ¶ 7; Decl. ¶ 6; CX-1 at 5.

³ Decl. ¶ 8; CX-1 at 10.

⁴ Compl. ¶ 9; Decl. ¶ 8; CX-1 at 3.

⁵ Compl. ¶¶ 13-41.

During its investigation, Enforcement discovered that Ogbonna had failed to disclose an unsatisfied judgment on his Form U4.

C. Ogbonna's Default

Enforcement served Ogbonna 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 February 24, 2016, and the Complaint and Second Notice of Complaint on March 24, 2016.⁶ In each instance, Enforcement served Ogbonna by first-class mail and certified mail, addressed to the only two addresses Enforcement possessed for him: his residential address recorded in CRD and a second address Enforcement found through a Lexis search.⁷ By sending the Complaint via certified mail to Ogbonna's CRD address, Enforcement provided him with constructive notice of the disciplinary proceeding against him.⁸

Ogbonna did not file an Answer or otherwise respond to the Complaint or the Second Notice of Complaint. Thus, Ogbonna is in default.⁹

D. Ogbonna's Responses to Requests for Information and Interview

1. Facts

To investigate the circumstances leading to the Form U5 JP Morgan filed describing Ogbonna's termination, Enforcement staff sent request letters to Ogbonna pursuant to FINRA Rule 8210, on June 5 and June 23, 2014, by certified and first-class mail to his CRD address. Each letter asked Ogbonna to provide certain information and documents, including copies of his bank and brokerage account statements. Ogbonna did not respond to either request.¹⁰

Enforcement initiated an expedited proceeding pursuant to Rule 9552 against Ogbonna on July 25, 2014. Enforcement sent Ogbonna a Notice of Suspension letter informing him that his registration with FINRA would be suspended on August 18, 2014, unless he complied with the Rule 8210 requests.¹¹ On August 11, 2014, Ogbonna sent the written statement and documents FINRA requested.¹²

⁶ Decl. ¶¶ 11, 14; CX-2; CX-3.

⁷ Decl. ¶¶ 10, 11, 14; CX-2; CX-3. The two addresses are the same except that one shows the street of Ogbonna's residence as 141st and the other identifies it as 14th.

⁸ See, e.g., *Dep't of Enforcement v. Evansen*, No. 2010023724601, 2014 FINRA Discip. LEXIS 10, at *20-21 n.21 (NAC June 3, 2014), *aff'd*, 2015 SEC LEXIS 3080, Exchange Act Release No. 75531 (July 27, 2015).

⁹ Respondent may move to set aside the default pursuant to FINRA Rule 9269(c) upon a showing of good cause.

¹⁰ Compl. ¶¶ 13-18.

¹¹ Compl. ¶¶ 19-20.

¹² Motion for Entry of Default Decision ("Default Mot.") at 2.

Enforcement then attempted to interview Ogbonna. On December 1, 2014, and January 9, 2015, pursuant to Rule 8210, FINRA staff sent letters requesting Ogbonna's appearance for an on-the-record interview on January 30, 2015. He failed to appear. On February 6, 2015, Enforcement sent a letter requesting Ogbonna to appear for testimony on March 4, 2015. Again, he failed to appear.¹³ Consequently, Enforcement initiated a second expedited proceeding pursuant to Rule 9552 against Ogbonna on March 9, 2015. Enforcement sent Ogbonna a Notice of Suspension letter informing him that he would be suspended from associating with any FINRA member firm in any capacity unless he responded to Enforcement's requests for testimony by April 2, 2015. Ogbonna did not respond by that date and was suspended on April 3, 2015. On April 13, 2015, Ogbonna contacted staff to schedule testimony, and appeared for testimony on May 5, 2015.¹⁴

According to Enforcement, Ogbonna explained that he failed to respond to the 8210 requests in a timely manner because he was out of the country and that he responded promptly upon his return.¹⁵

2. Discussion

FINRA Rule 8210 requires persons subject to FINRA's jurisdiction to provide all information that FINRA requests with respect to an investigation. FINRA lacks subpoena power and must rely on Rule 8210 to "police the activities of its members and associated persons."¹⁶ "The failure to respond to [FINRA] information requests frustrates [FINRA's] ability to detect misconduct, and such inability in turn threatens investors and the markets."¹⁷

Members and associated persons must cooperate fully in providing information when FINRA sends requests, and they "may not ignore [FINRA] inquiries."¹⁸ Ogbonna had a duty to give his "full and prompt cooperation" under Rule 8210 when responding to FINRA's information requests.¹⁹ Failing to respond in a timely manner to requests for information is a

¹³ Compl. ¶¶ 24-32.

¹⁴ *Id.* ¶¶ 33-41.

¹⁵ Default Mot. at 3. According to Enforcement, Ogbonna provided a copy of his passport showing that he left the United States on November 28, 2014, and returned on April 5, 2015.

¹⁶ *Joseph Patrick Hannan*, Exchange Act Release No. 40438, 53 S.E.C. 854, 858-59 (1998).

¹⁷ *PAZ Sec., Inc.*, Exchange Act Release No. 57656, 2008 SEC LEXIS 820, at *13 (Apr. 11, 2008), *petition denied*, 566 F.3d 1172 (D.C. Cir. 2009).

¹⁸ *CMG Inst. Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *21 (Jan. 30, 2009).

¹⁹ *Evansen*, 2014 FINRA Discip. LEXIS 10, at *23-24.

violation of Rule 8210.²⁰ Failing to produce information until after FINRA is compelled to file a formal disciplinary action is tantamount to a complete failure to respond.²¹

Even if Ogbonna was out of the country when Enforcement sent the Rule 8210 requests to him, he was obligated to take measures to ensure that he could respond in a timely fashion to requests sent to his CRD address while he was away; because he “ostensibly made no effort to receive FINRA correspondence sent to his CRD address” while travelling, he failed to fulfill this obligation.²²

Ogbonna did not comply with Enforcement’s Rule 8210 requests for information and documents or appear for sworn testimony until after FINRA filed expedited proceedings against him, thereby violating FINRA Rules 8210 and 2010.

E. Ogbonna’s Failure to Disclose a Judgment

1. Facts

On February 14, 2012, while Ogbonna was associated with JP Morgan, a judgment was entered against him for \$1,622.00. Ogbonna learned of the judgment that month, but did not update his Form U4.²³ Later that year, on December 5, 2012, Ogbonna completed an annual compliance certification questionnaire for JP Morgan. In it, he falsely stated that he did not have any unsatisfied judgments or liens to report to the firm.²⁴

2. Discussion

Article V, Section 2(c) of FINRA’s By-Laws requires an associated person to report disclosable events on a Form U4 and to keep the form updated and accurate. The By-Laws

²⁰ *Morton Bruce Erenstein*, Exchange Act Release No. 56768, 2007 SEC LEXIS 2596, at *24 (Nov. 8, 2007) (finding that respondent failed to timely respond to information requests, in violation of Rules 8210 and 2010), *petition denied*, 316 Fed. App’x 865 (11th Cir. 2008).

²¹ The SEC has stated consistently that FINRA should not, as happened here, be required to initiate disciplinary or expedited proceedings, with the threat of sanctions, to compel a response to information requests made under Rule 8210. *See Joseph Ricupero*, Exchange Act Release No. 62891, 2010 SEC LEXIS 2988, at *12 (Sept. 10, 2010) (“We have emphasized repeatedly that NASD should not have to initiate a disciplinary action to elicit a response to its information requests made pursuant to Rule 8210.”), *petition denied* 436 Fed. App’x 31 (2d Cir. 2011); *Elliott M. Hershberg*, Exchange Act Release No. 53145, 2006 SEC LEXIS 99, at *10 (Jan. 19, 2006) (finding that FINRA should not have to institute expedited proceedings to secure a respondent’s compliance), *aff’d*, 210 F. App’x 125 (2d Cir. 2006).

²² *Evansen*, 2014 FINRA Discip. LEXIS 10, at *54 (citing *Paz Sec., Inc.*, Exchange Act Release No. 57656, 2008 SEC LEXIS 820, at *28 (Apr. 11, 2008) (finding a respondent acted with “cavalier disregard of the need to ensure” that he could respond to information requests sent to his CRD address in a timely manner when temporarily out of the country).

²³ Compl. ¶¶ 48, 50.

²⁴ *Id.* ¶ 52.

require associated persons to amend 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.

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 a statutory disqualification under Section 3(a)(39) of the Securities Exchange Act and Article III, Section 4 of FINRA's By-Laws. FINRA's National Adjudicatory Council has held that "essentially all of the information that is reportable on the Form U4 may be considered material."²⁵

A failure to make a required disclosure on Form U4 is willful if the person provides false information "of his own volition," and the untrue entry is "neither involuntary nor inadvertent."²⁶ The existence of unsatisfied judgments or liens is a fact that must be disclosed by amending one's Form U4: Question 14M of the Form asks, "Do you have any unsatisfied judgment or liens against you?"

By failing to amend his Form U4 to disclose the material fact that a judgment had been filed against him, Ogbonna violated Article V, Section 2 of FINRA's By-Laws, and FINRA Rules 1120 and 2010. Furthermore, because Ogbonna knew of the judgment when it was filed, and concealed its existence from JP Morgan by his false answer on an annual compliance form, his failure to report was willful.²⁷ His willful violation subjects Ogbonna to statutory disqualification.

III. Sanctions

A. Ogbonna's Failure to Timely Respond to Requests for Information and Timely Appear to Provide Sworn Testimony

For failing to respond to FINRA Rule 8210 requests in a timely manner, FINRA's Sanction Guidelines ("Guidelines") recommend a suspension in all capacities for up to two years and a fine of \$2,500 to \$25,000. The Guidelines further direct adjudicators to consider: (1) the importance of the information requested as viewed from FINRA's perspective; (2) the number of

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

²⁶ *Joseph S. Amundsen*, Exchange Act Release No. 69406, 2013 SEC LEXIS 1148, at *38 (Apr. 18, 2013).

²⁷ An associated person willfully violates federal securities laws so long as the "person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000). It is not necessary to find that Ogbonna intentionally violated FINRA rules, only that he knew what he was doing when he did not timely amend his Form U4 to disclose the judgment. *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).

requests and degree of regulatory pressure required obtaining a response; and (3) the length of time that elapsed before FINRA received a response.²⁸

The documents, information, and testimony Enforcement requested from Ogbonna were important to determine whether he violated any FINRA rules in connection with the JP Morgan Form U5 filing. Enforcement had to initiate Rule 9552 proceedings before Ogbonna complied with the Rule 8210 requests for information. Ogbonna did not submit the responsive documents and information for more than two months after receiving the initial 8210 request and did not appear for testimony for more than three months after the first scheduled testimony date.²⁹

The Guidelines recommend that when a respondent fails to respond to Rule 8210 requests until after FINRA files a complaint, adjudicators should apply the presumption that the failure constitutes a complete failure to respond³⁰ for which a bar is the standard sanction.³¹ Because Ogbonna ultimately provided the requested information and testimony, Enforcement recommends a one-year suspension and a \$10,000 fine.

After considering the circumstances of this case, I conclude that Enforcement's recommendation is appropriate and a one-year suspension and \$10,000 fine will achieve the remedial objectives of the Guidelines.

B. Ogbonna's Failure to Disclose a Judgment

For failure to timely amend a Form U4 the Guidelines recommend a fine ranging from \$2,500 to \$37,000 and, except in egregious cases, suspension in any or all capacities of between 5 and 30 business days. The relevant principal consideration in determining sanctions is the nature and significance of the information at issue.³²

The Securities and Exchange Commission and FINRA have consistently held that an undisclosed lien or judgment constitutes material information.³³ Ogbonna's misconduct is aggravated by his willful failure to disclose the judgment on his Form U4 for more than two years,³⁴ and his attempt to conceal the judgment from his employer member firm by answering

²⁸ Guidelines at 33 (2015), <http://www.finra.org/Industry/Sanction-Guidelines>.

²⁹ Default Mot. at 10.

³⁰ Guidelines at 33 n.1.

³¹ *Id.* at 33.

³² Guidelines at 69.

³³ See e.g. *Tucker*, 2012 SEC LEXIS 3496, at *63, and *Dep't of Enforcement v. Mathis*, No. C10040052, 2008 FINRA Discip. Lexis 49 at *35 (NAC Dec 18, 2008), *aff'd*, *Scott Mathis*, Exchange Act Release No. 61120, 2009 SEC LEXIS 4376, at *29 (Dec. 7, 2009), *aff'd*, *Mathis v. SEC*, 671 F.3d 210 (2d Cir. 2012).

³⁴ Guidelines at 6 (Principal Consideration No. 9 concerning the length of time over which the misconduct occurred).

falsely on his 2012 annual compliance certification questionnaire that he did not have any new unsatisfied judgments or liens to report to the firm.³⁵

Enforcement argues that Ogbonna's misconduct is egregious, but a possible mitigating factor for determining sanctions is the relatively small amount of the judgment, \$1,622.00. Enforcement recommends a three-month suspension and fine of \$5,000 for Ogbonna's willful failure to disclose the judgment on his Form U4.³⁶

Enforcement's recommended sanctions are appropriately remedial under the circumstances of this case. Therefore, Ogbonna is suspended in all capacities for three months and fined an additional \$5,000 for his willful failure to disclose the judgment on his Form U4. The suspension is to be served consecutively with the one-year suspension imposed above.

IV. Order

For failing to timely respond to requests for information and to timely appear and provide sworn testimony, in violation of FINRA Rules 8210 and 2010, Respondent Anthony Uzoma Ogbonna is fined \$10,000 and suspended from associating with any FINRA member firm in any capacity for one year.

For willfully failing to timely update his Form U4, in violation of Article V, Section 2 of FINRA's By-Laws and FINRA Rules 1122 and 2010, Ogbonna is fined an additional \$5,000 and suspended from associating with any FINRA member firm in any capacity for three months. The suspensions shall run consecutively. Because his misconduct was willful, and the information he failed to disclose was material, Ogbonna is subject to statutory disqualification.

If this decision becomes FINRA's final disciplinary action, the fifteen-month period of suspension shall commence on July 18, 2016. The fines shall be due and payable upon Ogbonna's return to the securities industry.


Matthew Campbell
Hearing Officer

Copies to:

Anthony Uzoma Ogbonna (via first-class mail)
Perry C. Hubbard, Esq. (via email and first-class mail)
Jason W. Gaarder, Esq. (via email)
Jeffrey D. Pariser, Esq. (via email)

³⁵ *Id.* (Principal Consideration No. 10, addressing evidence of concealment of the misconduct).

³⁶ Default Mot. at 12.