

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

FREDERICK JURI KOTOWITZ
(CRD No. 4170441),

Respondent.

Disciplinary Proceeding
No. 2013037815302

Hearing Officer–MJD

DEFAULT DECISION

September 4, 2015

Respondent is barred from associating with any FINRA member firm in any capacity for failing to attend an on-the record interview and for providing untimely responses to FINRA’s written requests for information, in violation of FINRA Rules 8210 and 2010. In light of the bar, no further sanctions are imposed for Respondent’s failure to timely update his Form U4 to disclose two judgment liens.

Appearances

Clarence E. Sanders, Jr., Esq. and Michael S. Choi, Esq. for the Department of Enforcement.

No appearance by or for Respondent Frederick Juri Kotowitz.

DECISION

Respondent Frederick Juri Kotowitz failed to attend an on-the-record interview requested by FINRA and he failed to timely comply with requests for information and documents, in violation of FINRA Rules 8210 and 2010. Kotowitz also failed to timely disclose two judgment liens on his Uniform Application for Securities Registration or Transfer (Form U4), in violation of Article V, Section 2(c) of FINRA’s By-Laws and FINRA Rules 1122 and 2010.

The Department of Enforcement began its investigation of Kotowitz after FINRA received his amended Form U4, in April 2013, disclosing the existence of two unsatisfied judgments entered against him in June and July 2012. In the course of its investigation, FINRA staff sent Kotowitz two written requests to produce information. Kotowitz did not produce the information until after Enforcement initiated an expedited proceeding pursuant to FINRA Rule

9552. After receiving the information and documents from Kotowitz, Enforcement requested that he attend an on-the-record interview. Kotowitz failed to attend his on-the-record interview.

Enforcement initiated this disciplinary proceeding by filing a three-cause Complaint with the Office of Hearing Officers. In the First Cause of Action, FINRA alleges that Kotowitz willfully failed to timely disclose the existence of two judgments, and that this constituted a violation of Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010. The Second and Third Causes of Action allege that Kotowitz violated FINRA Rules 8210 and 2010 by failing to timely produce information requested by FINRA staff relating to the undisclosed judgment liens and by failing to attend an on-the-record interview. Kotowitz did not file an Answer to the Complaint.

On July 2, 2015, Enforcement filed a Motion for Entry of Default Decision supported by the Declaration of Clarence E. Sanders, Jr. ("Sanders Decl.") and six exhibits (CX-1 through CX-6). Kotowitz did not respond to the motion. Thus, the Hearing Officer grants Enforcement's motion and deems the facts alleged in the attached Complaint admitted pursuant to FINRA Rules 9215(f) and 9269(a).

I. Findings of Fact and Conclusions of Law

A. Jurisdiction

Kotowitz was first registered with FINRA in 2000. He was registered as a General Securities Representative with LPL Financial LLC ("LPL" or "the Firm") from October 2011 until July 31, 2013, when the Firm filed a Uniform Termination Notice for Securities Industry Registration (Form U5) to terminate his registration.¹

Kotowitz was last registered with FINRA on July 31, 2013. Although he is not currently registered with FINRA or associated with a FINRA member firm, FINRA has jurisdiction over this disciplinary proceeding pursuant to Article V, Section 4 of FINRA's By-Laws because: (i) the Complaint was filed within two years after Kotowitz's registration terminated, and (ii) the Complaint charges him with misconduct committed during the time that he was registered and with failing to comply with requests for the production of information and for on-the-record testimony that FINRA staff issued during the two-year period following the termination of his FINRA registration.

B. Kotowitz Defaulted by Failing to Answer the Complaint

Enforcement served Kotowitz 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 April 6, 2015, and the Complaint and Second

¹ Sanders Decl. ¶¶ 5-6; CX-1, at 5-9 (excerpts of Kotowitz's CRD records); CX-2 (Kotowitz's Form U5, dated July 31, 2013). The Form U5 stated that the reason for Kotowitz's termination was "job abandonment." CX-2, at 2.

Notice of Complaint on May 6, 2015.² In each case, Enforcement served Kotowitz by first-class certified mail addressed to his residential address recorded in FINRA's Central Registration Depository ("CRD") and to two additional addresses of Respondent known to Enforcement.³ Enforcement also served Kotowitz with the Complaint, First Notice of Complaint, and Second Notice of Complaint via email.⁴ Thus, Kotowitz received valid constructive notice of this proceeding.⁵

Pursuant to Rule 9215, Kotowitz's Answer was due by May 25, 2015. Kotowitz did not file an Answer to the Complaint and Second Notice of Complaint. Thus, Kotowitz is in default.⁶

On June 2, 2015, the Hearing Officer issued an Order holding Kotowitz in default for failing to file an Answer. On July 2, 2015, Enforcement filed a motion for Entry of Default Decision ("Default Motion"). Pursuant to FINRA Rules 9215(f) and 9269(a)(2), the Default Motion is granted. Accordingly, the Hearing Officer deems the allegations in the attached Complaint admitted.

C. Kotowitz Failed to Timely Disclose Two Judgments

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 so as to be 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

² Sanders Decl. ¶¶ 10, 13.

³ *Id.*

⁴ Sanders Decl. ¶¶ 10, 13; CX-4; CX-6.

⁵ 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).

⁶ Kotowitz also failed to attend two conferences ordered by the Hearing Officer. On April 6, 2015, within minutes of Enforcement serving a copy of the Notice and Complaint via email, Kotowitz emailed Enforcement acknowledging receipt of the Complaint. Kotowitz told Enforcement he did not have the income to pay a fine and that his securities license would soon lapse. Enforcement filed Kotowitz's email with the Office of Hearing Officers. The Hearing Officer did not treat Kotowitz's correspondence as an Answer but issued an Order scheduling an initial pre-hearing conference for May 4, 2015. Kotowitz failed to attend the initial pre-hearing conference on May 4, 2015. As a result of his failure to appear at the conference, on May 5, 2015, the Hearing Officer issued a Show Cause Order directing Kotowitz to appear at a conference on May 15, 2015, to show cause why he should not be held in default pursuant to FINRA Rule 9241(f). Kotowitz failed to appear.

of FINRA's By-Laws. Information is material if it "significantly alter[s] the 'total mix' of information made available," such that there is a "substantial likelihood that a reasonable investor would consider it important in deciding whether to buy or sell shares."⁷ The National Adjudicatory Council has held that "essentially all of the information that is reportable on the Form U4 may be considered material."⁸

The existence of unsatisfied judgments or liens is a fact that must be disclosed by amending a Form U4. Question 14M of the Form U4 asks, "Do you have any unsatisfied judgment or liens against you?" On October 14, 2011, Kotowitz signed and submitted an initial Form U4 when he registered with LPL in which he agreed to timely update the form with material changes.⁹

Two judgments were entered against Kotowitz in June and July 2012, for \$872.16 and \$2,880.54, respectively. On May 30, 2012, Kotowitz was served with a Small Claims Writ and Notice of Suit in Connecticut Superior Court in a civil matter. On June 6, 2012, the court sent Kotowitz a Notice requiring him to file an Answer to the Complaint by June 22, 2012. On June 29, 2012, the court entered a civil judgment in the amount of \$872.16 against Kotowitz, and sent him a Notice of Judgment or Disposition by first-class mail informing him of the judgment.¹⁰

On May 16, 2012, Kotowitz was served with a Small Claims Writ and Notice of Suit in Connecticut Superior Court in another civil matter. On June 6, 2012, the court sent Kotowitz a Notice requiring him to file an Answer to the Complaint by June 26, 2012. On July 9, 2012, the court entered a judgment against Kotowitz for \$2,880.54, and sent him a Notice of Judgment and Disposition by first-class mail notifying him of the entry of judgment.¹¹

Kotowitz failed to disclose the two judgments on his Form U4 until April 24, 2013, approximately eight months after the judgments were entered against him.¹² In a written statement to FINRA dated January 20, 2014, Kotowitz acknowledged that he did not report the two judgments when he learned of them.¹³ After the Firm learned of the judgments, LPL reminded Kotowitz that he had an obligation to amend his Form U4 but Kotowitz did not do so until April 24, 2013.¹⁴

⁷ *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976).

⁸ *Dep't of Enforcement v. Toth*, No. E9A2004001901, 2007 NASD Discip. LEXIS 25, at *34-35 (NAC July 7, 2007).

⁹ Complaint (Compl.) ¶ 5.

¹⁰ Compl. ¶¶ 5-9.

¹¹ Compl. ¶¶ 14-18

¹² Compl. ¶¶ 13, 21; CX-3, at 7, 9-10 (Kotowitz's amended Form U4, dated April 24, 2013).

¹³ Default Mot. 9.

¹⁴ Default Mot. 9-10.

These facts, as Cause One alleges, establish that Kotowitz violated Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1120 and 2010 by willfully¹⁵ failing to report the first judgment, in the amount of \$872.16, between July 29, 2012, and April 24, 2013, and by failing to report the second judgment, in the amount of \$2,880.54, between August 9, 2012, and April 24, 2013.¹⁶

D. Kotowitz Produced Untimely Responses to Requests for Information and Documents and Failed to Attend his On-the-Record Interview

FINRA Rule 8210 requires persons subject to FINRA's jurisdiction to provide information requested by FINRA with respect to any matter involving a FINRA investigation, complaint, examination, or proceeding. Because FINRA lacks subpoena power, it must rely on Rule 8210 to "police the activities of its members and associated persons."¹⁷ "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."¹⁸

Members and associated persons must cooperate fully in providing information requested by FINRA, and they "may not ignore [FINRA] inquiries . . . nor take it upon themselves to determine whether information is material to [a FINRA] investigation of their conduct."¹⁹ Kotowitz had a duty to give his "full and prompt cooperation" under Rule 8210 when responding to FINRA's information requests.²⁰ Failing to respond in a timely manner to requests for information is a violation of Rule 8210.²¹ Failing to produce information until after FINRA is compelled to file a formal disciplinary action is tantamount to a complete failure to respond.²²

¹⁵ 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 Kotowitz intentionally violated FINRA rules, only that he knew what he was doing when he did not timely amend his Form U4 to disclose the two judgments. 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). The record demonstrates that Kotowitz knew about the two judgments but failed to amend his Form U4 for eight months.

¹⁶ *Dep't of Enforcement v. Tucker*, No. 2007009981201, 2011 FINRA Discip. LEXIS 66, at *12-13 (NAC Oct. 4, 2011) (failure to timely amend Form U4 violated predecessor to Rule 1122) (citing *Scott Mathis*, Exchange Act Release No. 61120, 2009 SEC LEXIS 4376, at *18 (Dec. 7, 2009), *aff'd*, *Mathis v. SEC*, 671 F.3d 210 (2d Cir. 2012).

¹⁷ *Joseph Patrick Hannan*, Exchange Act Release No. 40438, 53 S.E.C. 854, 858-59 (1998).

¹⁸ *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).

¹⁹ *CMG Inst. Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *21 (Jan. 30, 2009).

²⁰ *Evansen*, 2014 FINRA Discip. LEXIS 10, at *23-24.

²¹ *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).

²² 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)

An associated person has a duty to appear and provide sworn testimony requested by FINRA staff.²³

As part of the investigation into Kotowitz's untimely disclosures of the judgment liens, on October 2 and October 17, 2013, FINRA staff sent letters to Kotowitz pursuant to Rule 8210 via certified and first-class mail at his CRD address. Each letter asked Kotowitz to provide a written statement and documents concerning his alleged failure to timely amend his Form U4 to disclose two civil judgments. Kotowitz did not respond to the 8210 requests.²⁴

As a result of his failure to produce the materials requested by FINRA, Enforcement initiated an expedited proceeding against Kotowitz on December 27, 2013, pursuant to Rule 9552. Enforcement sent Kotowitz a letter notifying him that his registration with FINRA would be suspended effective January 21, 2014, and that he would be barred from associating with any FINRA member effective March 31, 2014, if he failed to respond to FINRA's October 2 and October 17, 2013, 8210 requests for information.²⁵ Kotowitz responded to the staff's information requests only after FINRA filed a formal action. On January 20, 2014, one day before his suspension would become effective, Kotowitz provided the written statement and documents that FINRA requested.²⁶ Kotowitz's production of information was untimely and because FINRA had to file a formal action against him to get the information, Kotowitz's late response amounted to complete failure to respond.²⁷

To complete its investigation, Enforcement later attempted to question Kotowitz in person. On four occasions, the staff sent Kotowitz written notices to attend an on-the-record interview concerning his untimely disclosure of the judgments. On July 17, 2014, pursuant to Rule 8210, FINRA staff sent Kotowitz a letter requesting that he appear for an on-the-record interview on July 30, 2014. The letter was sent to Kotowitz's last known residential address recorded in CRD, via Federal Express and certified and first-class mail.²⁸ The staff also emailed a copy of the letter to Kotowitz. The copy of the letter sent via Federal Express was delivered on July 21, 2014. The certified mailing was returned marked "Unclaimed." The first-class mailing

("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."); *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 testimony) *aff'd*, 210 F. App'x 125 (2d Cir. 2006).

²³ *Dep't of Market Reg. v. Sciascia*, CMS040069, 2006 NASD Discip. LEXIS 22, at *12 (NAC Aug. 7, 2006) ("Failure to attend an [on-the-record] interview falls squarely within the scope of conduct that violates Rule 8210.").

²⁴ Compl. ¶¶ 22-23.

²⁵ Compl. ¶ 24.

²⁶ Compl. ¶ 25.

²⁷ *Evansen*, 2014 FINRA Discip. LEXIS 10, at *48-49 (finding that a bar is appropriate sanction when respondent does not respond to requests for information until after a disciplinary action is filed).

²⁸ Compl. ¶ 26.

was not returned to FINRA.²⁹ Kotowitz failed to appear for his on-the-record interview on July 30, 2014.³⁰

On September 9, 2014, FINRA staff sent Kotowitz another request, pursuant to Rule 8210, that he appear for an on-the-record interview. The second 8210 letter asked that he appear for his on-the-record interview on September 25, 2014. The second 8210 letter was sent to Kotowitz's last known residential address recorded in CRD, via certified and first-class mail. FINRA staff also emailed Kotowitz a copy of the 8210 letter.³¹ The certified mailing was returned to FINRA marked "Unclaimed." The first-class mailing was not returned to FINRA.³² Kotowitz failed to appear for testimony on September 25, 2014.³³

On September 25, 2014, FINRA staff sent Kotowitz a third request, pursuant to Rule 8210, that he appear for an on-the-record interview on October 3, 2104. The letter was sent to Kotowitz's last known residential address recorded in CRD, via Federal Express and certified and first-class mail.³⁴ The staff also emailed a copy of the 8210 letter to Kotowitz on September 29, 2014.³⁵ The copy of the letter sent via Federal Express was delivered on September 30, 2014. The certified mailing was returned marked "Unclaimed." The first-class mailing was not returned to FINRA.³⁶ Kotowitz failed to attend his October 3, 2014, on-the-record interview.³⁷

On December 19, 2014, FINRA staff sent Kotowitz a fourth request, pursuant to Rule 8210, that he appear for an on-the-record interview. The fourth 8210 letter asked that he appear for his on-the-record interview on January 6, 2015. The letter was sent to Kotowitz's last known residential address recorded in CRD, via certified and first-class mail. The staff also emailed a copy of the 8210 letter to Kotowitz.³⁸ The certified mailing and the first-class mailing were not returned to FINRA.³⁹ Kotowitz failed to attend his January 6, 2015, on-the-record interview.⁴⁰

²⁹ Compl. ¶ 27.

³⁰ Compl. ¶ 28.

³¹ Compl. ¶ 29.

³² Compl. ¶ 30.

³³ Compl. ¶ 31.

³⁴ Compl. ¶ 32.

³⁵ *Id.*

³⁶ Compl. ¶ 33.

³⁷ Compl. ¶ 36.

³⁸ Compl. ¶ 38.

³⁹ Compl. ¶ 39.

⁴⁰ Compl. ¶ 40.

Kotowitz never appeared to provide sworn testimony at an on-the-record interview as requested in the four Rule 8210 letters dated July 17, September 9, September 25, and December 19, 2014. He also waited until after FINRA filed an expedited proceeding to produce information and documents Enforcement had requested in its October 2 and October 17, 2013, 8210 requests. Thus, Kotowitz violated FINRA Rules 8210 and 2010.

II. Sanctions

A. Kotowitz's Failure to Attend On-the-Record Interview and Untimely Responses to Requests for Information

FINRA's Sanction Guidelines ("Guidelines") support a bar for Kotowitz's failure to produce information and documents until after Enforcement filed an expedited proceeding and also for his failure to attend his on-the-record interview. For failing to respond "in any manner" to a Rule 8210 request for information, the Guidelines provide that a bar should be the standard sanction.⁴¹ Thus, starting with the Third Cause of Enforcement's Complaint, the record concerning Kotowitz's failure to provide testimony is clear. He failed, in the face of four written requests for his appearance at an on-the record interview, to give sworn testimony. Kotowitz thus failed to respond "in any manner" and a bar is warranted for his failing to appear at an on-the-record interview.⁴²

The Guidelines also endorse a bar for the misconduct alleged in the Second Cause of Action concerning Kotowitz's late responses to FINRA's two information requests. "When a respondent does not respond [to a FINRA Rule 8210 notice] until after FINRA files a complaint," the Guidelines instruct adjudicators to "apply the presumption that the failure constitutes a complete failure to respond." In such a case, the standard sanction is a bar.⁴³

The information and documents Enforcement sought from Kotowitz, including his testimony, were needed for FINRA to perform its regulatory function to fully investigate potential misconduct. Enforcement was investigating Kotowitz's failure to timely disclose judgment liens entered against him.⁴⁴ The misconduct under investigation was serious. The information contained in the Form U4 is needed by self-regulatory organizations, state regulators, broker-dealers, and the investing public to determine the fitness of securities professionals.⁴⁵ Kotowitz's failure to provide testimony and timely produce information and

⁴¹ FINRA Sanction Guidelines 33 (2015), available at www.finra.org/industry/sanction-guidelines.

⁴² See *Howard Brett Berger*, 2008 SEC LEXIS 3141, at *24 ("[T]he risks presented by persons who, in the absence of mitigating factors, completely fail to respond to Rule 8210 requests [for testimony] are appropriately remedied by a bar.")

⁴³ Sanction Guidelines 33, n.1.

⁴⁴ Default Mot., at 7.

⁴⁵ *Dep't of Enforcement v. McCune*, No. 2011027993301, 2015 FINRA Discip. LEXIS 22, at *16-17 (NAC July 27, 2015).

documents prevented FINRA from fulfilling its regulatory responsibilities.⁴⁶ The evidence shows no reason for his failure to respond to FINRA's requests.

Kotowitz violated Rules 8210 and 2010 by failing to attend an on-the-record interview and by waiting to produce information and document until after FINRA filed an expedited proceeding. There are no mitigating factors present in this case. Thus, the Hearing Officer concludes that the appropriate sanction is a bar in all capacities.

B. Untimely Disclosure of Judgment Liens

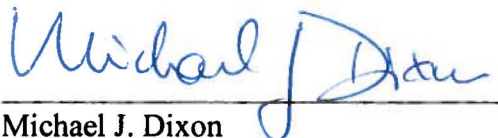
The Guidelines recommend a fine ranging from \$2,500 to \$37,000 and, in other than egregious cases, a suspension in any or all capacities of between five and 30 business days for an associated person's failure to timely amend a Form U4. Among the principal consideration in determining sanctions is the nature and significance of the information at issue.⁴⁷

A failure to disclose a person's unpaid debts is significant. Kotowitz's failure to timely disclose the two judgments, totaling less than \$4,000, warrants a sanction at the low end of the recommended ranges. The Hearing Officer accordingly imposes a \$2,500 fine and a suspension in all capacities of five business days. Because Kotowitz's failures to disclose were willful and the omitted information was material, he is also statutorily disqualified. In light of the bar imposed for Kotowitz's violations of Rule 8210, it is not necessary to impose additional sanctions for his failure to report his judgment liens in a timely manner.

III. Order

Frederick Juri Kotowitz is barred from associating with any FINRA member firm in any capacity for failing to attend an on-the-record interview and for his untimely response to FINRA's request for information and documents, in violation of FINRA Rules 8210 and 2010. In light of the bar, no sanctions are imposed for Kotowitz's failure to timely update his Form U4, as alleged in the First Cause of Action.

The bar shall become effective immediately if this Default Decision becomes FINRA's final disciplinary action.



Michael J. Dixon
Hearing Officer

⁴⁶ *Dep't of Enforcement v. Sahai*, No. C9B020032, 2004 NASD Discip. LEXIS 14, at *19-20 (NAC Aug. 12, 2004) (finding that a person who fails to respond to FINRA requests for information subverts FINRA's regulatory responsibilities).

⁴⁷ Sanction Guidelines 69.

Copies to:

Frederick Juri Kotowitz (*via overnight courier and first-class mail*)

Clarence E. Sanders, Jr., Esq. (*via email and first-class mail*)

Michael S. Choi, Esq. (*via email*)

Jeffrey D. Pariser, Esq. (*via email*)

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Frederick Juri Kotowitz (CRD No. 4170441),

Respondent.

DISCIPLINARY PROCEEDING
No. 2013037815302

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. On two separate occasions between July and August 2012 while associated with a FINRA-regulated entity, Respondent Frederick Juri Kotowitz willfully failed to timely amend his Uniform Application for Securities Industry Registration or Transfer (“Form U4”) to disclose civil judgments in violation of Article V, Section 2(c) of FINRA By-Laws, and FINRA Rules 1122 and 2010. Respondent also failed to timely respond to FINRA Rule 8210 requests for information in violation of FINRA Rules 8210 and 2010. In addition, Respondent failed to respond to requests for testimony in violation of FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

2. Respondent entered the securities industry in March 2000 with a FINRA-regulated entity and was approved as a General Sales Representative (“GSR”) in June 2000.

Respondent remained associated as a GSR with that entity until August 2001. Thereafter, between September 2001 and January 2011, Respondent served as a GSR with a number of other FINRA-regulated entities. In October 2011, Respondent joined LPL Financial LLC (“LPL”), where he served as a GSR until July 26, 2013. Respondent is not currently associated with any FINRA-regulated entity.

3. Although Respondent is no longer registered or associated with a FINRA member, he remains subject to FINRA’s jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA’s By-Laws, because the Complaint was filed within two years after the effective date of termination of Respondent’s registration with LPL, namely, July 26, 2013.

4. In addition, the Complaint charges Respondent with failing to respond to FINRA requests for information and testimony, during the two-year period after the date upon which Respondent ceased to be registered or associated with a FINRA-regulated entity.

STATEMENT OF FACTS

Willful Failures to Amend Form U4 to Disclose Material Information

Respondent’s June 2012 Civil Judgment

5. On October 14, 2011, in connection with his registration with LPL, Respondent signed and submitted an initial Form U4 in which he agreed to timely update the Form U4 whenever changes occurred that made any previous answer inaccurate.

6. On or about May 30, 2012, Respondent was duly served with a Small Claims Writ and Notice of Suit (“May 30th Complaint”) in a civil matter seeking \$792.91 plus costs and fees.

7. On or about June 1, 2012, the May 30th Complaint and proof of service were filed with the Small Claims Part of the Connecticut Superior Court (the “Superior Court”). On June 6,

2012, the Superior Court sent Respondent an Answer Notice requiring Respondent to file an Answer by June 22, 2012.

8. On June 29, 2012, a civil judgment for \$872.16 was entered by the Superior Court against Respondent in favor of the plaintiff (the "June 2012 Judgment").

9. On June 29, 2012, the Superior Court sent Respondent a Notice of Judgment or Disposition ("NJD") by first class mail, notifying him of the June 2012 Judgment.

10. Respondent knew or should have known of the June 2012 Judgment in July 2012.

11. Respondent was required to amend his Form U4 within 30 days of his receipt of notice of the June 2012 Judgment.

12. On February 13, 2013, Respondent made a \$226.95 partial payment for damages and an income execution related to the June 2012 Judgment.

13. Respondent's Form U4 was amended on April 24, 2013 disclosing the June 2012 Judgment.

Respondent's July 2012 Civil Judgment

14. On or about May 16, 2012, Respondent was duly served with a Small Claims Writ and Notice ("May 16th Complaint") in a civil matter seeking \$2,802.04 plus costs and fees.

15. On or about June 5, 2012, the May 16th Complaint and proof of service of the Small Claims Writ and Notice of Suit was filed with the Small Claims Part of the Superior Court.

16. On June 6, 2012, the Superior Court sent Respondent an Answer Notice requiring Respondent to file an Answer by June 26, 2012.

17. On July 9, 2012, a civil judgment for \$2,880.54 was entered by the Superior Court against Respondent in favor of the plaintiff (the "July 2012 Judgment").

18. On July 9, 2012, the Superior Court sent Respondent a NJD by first class mail at a residential address known to Respondent's creditor, notifying him of the July 2012 Judgment.

19. Respondent knew or should have known of the July 2012 Judgment in July 2012.

20. Respondent was required to amend his Form U4 within 30 days of his receipt of notice of the July 2012 Judgment.

21. Respondent's Form U4 was amended on April 24, 2013 disclosing the July 2012 Judgment.

Respondent's Failure to Timely Respond to Requests for Information

22. On October 2, 2013 and October 17, 2013, pursuant to FINRA Rule 8210, FINRA sent letters to Respondent by certified mail, return receipt requested, and first class mail at his last known address as reflected on the Central Registration Depository ("CRD Address"). Each letter required Respondent to provide a written statement and documents regarding the allegation that he failed to timely amend his Form U4 to disclose unsatisfied civil judgments. Respondent's responses to the letters were due on October 16, 2013 and October 21, 2013, respectively.

23. Respondent failed to respond to FINRA's Rule 8210 requests for information and documents within the prescribed time periods.

24. On December 27, 2013, FINRA initiated an expedited proceeding, pursuant to FINRA Rule 9552, against Respondent and sent Respondent a letter notifying him that his registration with FINRA would be suspended on January 21, 2014, and on March 31, 2014, he would be barred from associating with any FINRA member in any capacity for failing to respond to FINRA's requests for information.

25. On January 20, 2014, prior to the date his suspension was scheduled to start, Respondent provided a written statement responding to FINRA's requests for information and documents.

Respondent's Failure to Respond to Requests for Testimony

26. On July 17, 2014, Enforcement sent a letter requesting, pursuant to FINRA Rule 8210, that Respondent appear and provide testimony on July 30, 2014 at Enforcement's office in New York, New York. The letter and copies of the letter were sent by Federal Express ("FEDEX"), certified mail with return receipt requested, and first class mail to Respondent at the CRD Address. Enforcement also sent a copy of the letter to Respondent at an email address known to Enforcement.

27. The letter sent by FEDEX to the CRD Address was delivered on July 21, 2014. The copy of the letter sent by certified mail with return receipt requested to the CRD Address was returned to Enforcement marked "Unclaimed." The copy of the letter sent by first class mail to the CRD Address was not returned to Enforcement.

28. Respondent failed to appear and testify on July 30, 2014.

29. On September 9, 2014, Enforcement sent a letter requesting, pursuant to FINRA Rule 8210, that Respondent appear and provide testimony on September 25, 2014 at Enforcement's office in New York, New York. The letter and a copy of the letter were sent by certified mail with return receipt requested and first class mail to Respondent at the CRD Address. Enforcement also sent a copy of the letter to Respondent at an email address known to Enforcement.

30. The letter sent by certified mail with return receipt requested to the CRD Address was returned to Enforcement marked "Unclaimed." The copy of the letter sent by first class mail to the CRD Address was not returned to Enforcement.

31. Respondent failed to appear and testify on September 25, 2014.

32. On September 25, 2014, Enforcement sent a letter requesting, pursuant to FINRA Rule 8210, that Respondent appear and provide testimony on October 3, 2014 at Enforcement's office in New York, New York. The letter and copies of the letter were sent by Federal Express, certified mail with return receipt requested, and first class mail to Respondent at the CRD Address. On September 29, 2014, Enforcement sent a copy of the letter to Respondent at an email address known to Enforcement.

33. The letter sent by FEDEX to the CRD Address was delivered on September 30, 2014. The copy of the letter sent by certified mail with return receipt requested to the CRD Address was returned to Enforcement marked "Unclaimed." The copy of the letter sent by first class mail to the CRD Address was not returned to Enforcement.

34. On September 30, 2014, Enforcement received an email from Respondent claiming that he could not appear and testify on October 3, 2014 because of work obligations. Without proposing a date for his testimony, Respondent stated that he could make arrangements for a date later in the month.

35. On October 1, 2014, Enforcement notified Respondent that his request for an adjournment was denied.

36. Respondent failed to appear and testify on October 3, 2014.

37. On October 3, 2014, Respondent sent Enforcement an email stating, "I cannot get away from work. I have provided financial evidence of my situation. I'm not sure why this needs

to be adversarial rather than working to set things right. As I cannot afford counsel, not to take time off work, please advise.”

38. On December 19, 2014, Enforcement sent a letter requesting, pursuant to FINRA Rule 8210, that Respondent appear and provide testimony on January 6, 2015 at Enforcement’s office in New York, New York. The letter and a copy of the letter were sent by certified mail with return receipt requested, and first class mail to Respondent at the CRD Address. Enforcement also sent a copy of the letter to Respondent at an email address known to Enforcement.

39. The letter and copy of the letter sent by certified mail with return receipt requested and first class mail to the CRD Address were not returned to Enforcement.

40. Respondent failed to appear and testify on January 6, 2015.

FIRST CAUSE OF ACTION
FAILURE TO DISCLOSE CIVIL JUDGMENTS
(Article V, Section 2 of the FINRA By-Laws and FINRA Rules 1122 and 2010)

41. The Department realleges and incorporates by reference paragraphs 1 through 40, above.

42. Article V, Section 2(c) of the FINRA By-Laws requires that registrations filed with FINRA be kept current at all times and that amendments must be filed with FINRA “not later than 30 days after learning of the facts or circumstances giving rise to the amendment.”

43. FINRA Rule 1122 provides, “No member or person associated with a member shall file with FINRA information with respect to membership or registration which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or fail to correct such filing after notice thereof.”

44. FINRA Rule 2010 provides in relevant part that “[a] member, in the conduct of [his] business, shall observe high standards of commercial honor and just and equitable principles of trade.”

45. Question 14M of the Form U4 asks, “Do you have any unsatisfied judgments or liens against you?” If an affirmative answer is given to Question 14M, the registered person is required to provide details about the lien or judgment.

46. On October 14, 2011, in connection with his registration with LPL, Respondent signed and submitted an initial Form U4 in which he agreed to timely update the Form U4 whenever changes occurred that made any previous answer inaccurate.

47. On June 29, 2012, the June 2012 Judgment for \$872.16 was entered by the Superior Court against Respondent. On June 29, 2012, the Superior Court mailed a NJD to Respondent at the CRD Address notifying Respondent of the entry of the June 2012 Judgment against him.

48. On July 9, 2012, the July 2012 Judgment for \$2,880.54 was entered by the Superior Court against Respondent. On July 9, 2012, the Superior Court mailed a NJD to Respondent at the CRD Address notifying Respondent of the entry of the July 2012 Judgment against him.

49. Between July 2012 and April 23, 2013, Respondent did not amend or cause his Form U4 to be amended to report the June 2012 Judgment or the July 2012 Judgment.

50. Although Respondent was aware of his obligation to amend his Form U4 to report each judgment within 30 days of his receipt of written notification of each judgment, Respondent willfully failed to do so.

51. By willfully failing to timely amend his Form U4 on two separate occasions to disclose the existence of each judgment described above, Respondent willfully violated Article V, Sec. 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010.

SECOND CAUSE OF ACTION
Failure to Timely Comply with Requests for Information
(FINRA Rules 8210 and 2010)

52. The Department realleges and incorporates by reference paragraphs 1 through 51, above.

53. FINRA Rule 8210 provides that FINRA staff has the right to require a person subject to FINRA's jurisdiction to provide information and testimony with respect to any matter involved in a FINRA investigation, complaint, examination, or proceeding.

54. FINRA Rule 8210 required Respondent to timely respond to requests for documents and information and testimony.

55. By letters dated October 2, 2013 and October 17, 2013, FINRA requested, pursuant to FINRA Rule 8210, that Respondent provide a written statement and various documents by specified dates.

56. Respondent failed to respond to FINRA's requests within the prescribed time periods set forth in the October 2, 2013 and October 17, 2013 8210 requests.

57. Respondent did not seek an extension of time to respond to the requests set forth in the October 2, 2013 and October 17, 2013 8210 requests.

58. Only after FINRA initiated an expedited proceeding, pursuant to FINRA Rule 9552, against Respondent on December 27, 2013 seeking his suspension did he respond to FINRA's requests for information and documents on January 20, 2014.

59. By failing to timely respond to FINRA's requests for information and documents, Respondent violated FINRA Rules 8210 and 2010.

THIRD CAUSE OF ACTION
Failure to Comply with Requests for Testimony
(FINRA Rules 8210 and 2010)

60. The Department realleges and incorporates by reference paragraphs 1 through 59, above.

61. By letters duly served on Respondent and dated July 17, 2014, September 9, 2014, September 25, 2014, and December 19, 2014, Enforcement requested, pursuant to FINRA Rule 8210, that Respondent appear and testify on specified dates.

62. Respondent failed to appear and testify as requested.

63. By failing to appear and testify, Respondent violated FINRA Rules 8210 and 2010.

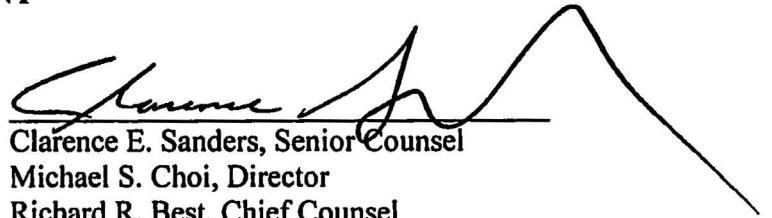
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent(s) committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed;
- C. order that Respondent(s) bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330; and
- D. make specific findings that Respondent's conduct, as alleged in the First Cause of Action, was willful; the omitted information was material, and, the omission to state material facts was on a Form U4 application.

FINRA DEPARTMENT OF ENFORCEMENT

Date: April 6, 2015

A handwritten signature in black ink, appearing to read "Clarence Sanders", is written over a horizontal line. The signature is stylized and extends to the right of the line.

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