

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JOHN A. KOWSKE
(CRD No. 1124297),

Respondent.

Disciplinary Proceeding
No. 2011027363401

Hearing Officer – Lawrence B. Bernard

DEFAULT DECISION

Dated: January 15, 2014

Respondent is suspended for six months and fined \$5,000 for willfully failing to update his Form U4 to disclose judgments and a tax lien, in violation of NASD Rule 2110, IM-1000-1, FINRA Rules 1122 and 2010 and FINRA's By-Laws. Respondent is statutorily disqualified because the violation was willful.

Appearances

Richard A. March, Esq., for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

The Department of Enforcement (“Enforcement”) filed the one-cause Complaint in this disciplinary proceeding on September 17, 2013, charging Respondent John A. Kowske with willful failure to disclose five unsatisfied judgments and a tax lien imposed by the Internal Revenue Service on his Uniform Application for Securities Industry Registration or Transfer (Form U4), in violation of NASD Rule 2110, IM-1000-1, FINRA Rules 1122 and 2010, and FINRA’s By-Laws.¹ Despite being properly served with the Complaint, Notice of Complaint,

¹ Following consolidation of NASD and the member regulation, enforcement, and arbitration functions of NYSE Regulation into FINRA, FINRA began developing a new “Consolidated Rulebook” of FINRA Rules. The first phase of the consolidated rules became effective on December 15, 2008. *See* FINRA Regulatory Notice 08-57, 2008 FINRA LEXIS 74 (Dec. 8, 2008). Because the Complaint in this case was filed after December 15, 2008, the procedural rules that apply are the FINRA rules of procedure. The conduct rules that apply are those that existed at the time of the conduct at issue.

and Second Notice of Complaint, Respondent has not filed an Answer or otherwise responded to the Complaint.

On December 9, 2013, Enforcement filed a Motion for Entry of Default Decision. Respondent did not file a response to Enforcement's motion. Enforcement's motion is granted, and the Hearing Officer finds that Respondent has defaulted. Accordingly, pursuant to FINRA Rules 9215(f) and 9269, the allegations of the Complaint are deemed admitted.²

I. Respondent

Respondent was first registered with FINRA in May 1983. He became registered with Regal Securities, Inc., in December 2006, and remained registered with FINRA through Regal until September 19, 2011. He has not been registered with a FINRA member firm since September 19, 2011. Decl. ¶ 5; CX-2.

Respondent 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 termination of his FINRA registration, and it charges him with misconduct while he was registered with a member firm.

II. Respondent's Default

On September 17, 2013, Enforcement served the Complaint and Notice of Complaint on Respondent by first-class and certified mail at the most recent residential address listed for him in the Central Registration Depository ("CRD"). The Postal Service returned both mailings to FINRA, indicating on the envelopes that they could not be delivered. Decl. ¶ 6; CX-3 – CX-5. On September 17, 2013, Enforcement also sent a copy of the Complaint and Notice of Complaint

² The factual determinations in this decision are based on the allegations of the attached Complaint and the materials Enforcement filed with its default motion, which included the Declaration Supporting a Motion for the Entry of a Default Decision, signed by Enforcement counsel Richard A. March, and supporting documentation that was attached to counsel's Declaration. Counsel's Declaration is cited herein as "Decl. ¶ __." The supporting documentation is cited as "CX-__."

to an alternate address, which FINRA staff believed to be Respondent's current address. Enforcement sent the mailings to the alternate address by first-class and certified mail. The Postal Service returned the mailings to the alternate address, noting that they could not be delivered. Decl. ¶ 7; CX-6, CX-7.

On October 15, 2013, Enforcement served Respondent with a Second Notice of Complaint and Complaint, by first-class and certified mail, at his CRD address and the alternate address. The Postal Service returned the mailings as undeliverable. Decl. ¶¶ 8, 9; CX-8 – CX-11. Respondent has not filed an Answer or otherwise responded to the Complaint.

Despite being properly served with the Complaint, Notice of Complaint, and Second Notice of Complaint, Respondent has not answered or otherwise responded to the Complaint. By failing to file a response, he defaulted.

III. Respondent Violated NASD Rule 2110, IM-1000-1, FINRA Rules 1122 and 2010, and Article V, Section 2 of the FINRA By-Laws, by Failing to Update His Form U4

A. Respondent Is Subject to Five Judgments and an IRS Lien Between September 2005 and July 2010

On September 2, 2005, a judgment was entered in favor of FMCC against Respondent in the amount of \$2,110.87. On about May 22, 2008, FMCC filed a garnishment proceeding against Regal, the FINRA member firm with which Respondent was registered. Respondent knew of the unsatisfied judgment no later than June 9, 2008, when he communicated with his branch manager about the judgment. Respondent willfully failed to amend his Form U4 to disclose the FMCC judgment. Complaint ¶ 4.

On August 6, 2007, a judgment was entered in favor of RSI against Respondent in the amount of \$1,703.44. On about September 21, 2007, RSI filed a garnishment proceeding against Regal, where Respondent was registered. Respondent learned about the unsatisfied judgment as

a result of the garnishment proceeding. Respondent willfully failed to disclose the RSI judgment on his Form U4 until June 17, 2011, which was more than three years late. Complaint ¶ 5.

On November 24, 2008, a judgment was entered in favor of DN against Respondent in the amount of \$18,308.53. On about November 5, 2010, Respondent signed a stipulation acknowledging the existence of the judgment obtained by DN. Although he knew of the unsatisfied judgment no later than November 5, 2010, Respondent willfully failed to amend his Form U4 to disclose the DN judgment until June 17, 2011, which was more than six months late. Complaint ¶ 6.

On about July 16, 2009, the Internal Revenue Service sent Regal a Notice of Levy on Wages, Salary, and Other Income for Respondent's unpaid taxes totaling \$5,290.55. Respondent knew of the unsatisfied tax lien no later than July 20, 2009, when he communicated with a representative of Regal about the lien. Respondent willfully failed to disclose the IRS lien on his Form U4. Complaint ¶ 7.

On November 2, 2010, a judgment was entered in favor of MECA against Respondent in the amount of \$5,498.50. On about December 29, 2010, MECA filed a garnishment proceeding against Regal. On about January 20, 2011, MECA, Regal, and Respondent entered into a stipulation and order for dismissal of the non-earnings garnishment. Respondent willfully failed to amend his Form U4 to disclose the MECA judgment until June 17, 2011, which was more than three months late. Complaint ¶ 8.

On July 12, 2010, a judgment was entered against Respondent in favor of EHRC in the amount of \$737.50. On about December 27, 2010, EHRC filed a garnishment proceeding against Regal. Respondent learned about the unsatisfied judgment as a result of the garnishment

proceeding. Respondent failed to amend his Form U4 to disclose the EHRC judgment until about June 17, 2011, which was more than four months late. Complaint ¶ 9.

B. Respondent's Failure to Disclose the Judgments and Lien Violated NASD Rule 2110, IM-1000-1, FINRA Rules 1122 and 2010, and Article V, Section 2 of the FINRA By-Laws

Article V, Section 2 of FINRA's By-Laws requires that persons who apply for registration with FINRA must provide "such ... reasonable information with respect to the applicant as [FINRA] may require." Applicants must complete a Form U4 disclosing, among other things, information concerning unsatisfied judgments and bankruptcy filings. Article V, Section 2(c) of FINRA's By-Laws requires that associated persons keep their Forms U4 "current at all times by supplementary amendments," which must be filed "not later than 30 days after learning of the facts or circumstances giving rise to the amendment."

IM-1000-1 provided, "The filing with the Association of information with respect to membership or registration as a Registered Representative which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or the failure to correct such filing after notice thereof, may be deemed to be conduct inconsistent with just and equitable principles of trade and when discovered may be sufficient cause for appropriate disciplinary action." Similarly, FINRA Rule 1122, which superseded IM-1000-1 in August 2009, 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."³ Failure to

³ Amended by SR-FINRA-2009-009 eff. Aug. 17, 2009; *see* Reg. Notice 09-33.

update a Form U4 violates NASD Rule 2110, IM-1000-1, FINRA Rules 1122 and 2010, and Article V Section 2 of FINRA's By-Laws.⁴

In December 2006, Respondent submitted a Form U4 in connection with his registration with Regal. Complaint ¶ 11. Question 14M of the Form U4 asks, "Do you have any unsatisfied judgments or liens against you?" Complaint ¶ 14. As discussed above, Respondent was aware of several unsatisfied judgments and an IRS lien while he was registered with Regal, yet he failed to submit timely amendments to his Form U4 to disclose the judgments and lien. Complaint ¶¶ 15-16.

The allegations of the Complaint, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent violated NASD Rule 2110, IM-1000-1, FINRA Rules 1122 and 2010, and Article V, Section 2 of the FINRA By-Laws, by failing to update his Form U4 to disclose material information.

C. Respondent Is Statutorily Disqualified

A person is subject to a statutory disqualification under Article III, Section 4 of FINRA's By-Laws and Exchange Act Section 3(a)(39)(F) if he:

has willfully made or caused to be made in any application . . . to become associated with a member of . . . a self-regulatory organization, [or] report to be filed with a self-regulatory organization . . . any statement which was at the time, and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application, report, or proceeding any material fact which is required to be stated therein.⁵

⁴ *Dep't of Enforcement v. Hedge Fund Capital Partners*, No. 2006004122402, 2012 FINRA Discip. LEXIS 42, at *39 (N.A.C. May 1, 2012); *Dep't of Enforcement v. Kaweske*, No. C07040042, 2007 NASD Discip. LEXIS 5, at *36 (Feb. 12, 2007) (failure to update violates NASD Rule 2110, predecessor of FINRA Rule 2010, and IM-1000-1, predecessor of FINRA Rule 1122); *Richard G. Cody*, Exchange Act Rel. No. 64565, 2011 SEC LEXIS 1862, at *54 (May 27, 2011).

⁵ 15 U.S.C. § 78c(a)(39)(F).

A violation is willful if “the person charged with the duty knows what he is doing.”⁶ “A willfulness finding is predicated on [a person’s] intent to commit the act that constitutes the violation--completing the Form U4 inaccurately.”⁷ To find that Respondent’s actions were willful, Enforcement needs to establish only that Respondent voluntarily provided false answers on his Forms U4.⁸

Respondent’s conduct was clearly willful, as charged in the Complaint. He knew of the judgments and the lien, yet failed to disclose them on his Form U4 until well after they should have been disclosed. The omitted information is clearly material. The SEC has recently held that judgments and liens are material because “they cast doubt on [Respondent’s] ability to manage his personal financial affairs and provide investors with appropriate financial advice.”⁹ Furthermore, all the information on a Form U4 is presumed material.¹⁰

Respondent failed to amend his Form U4 to disclose material information within the time required by FINRA’s By-Laws. He is statutorily disqualified.

IV. Sanctions

For failing to update a Form U4, the Sanction Guidelines recommend consideration of a fine from \$2,500 to \$25,000, and suspension in any or all capacities for 5 to 30 business days.¹¹ In egregious cases, the Sanction Guidelines recommend a longer suspension or a bar. The Principal Considerations are the nature and significance of information at issue, and whether

⁶ *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000).

⁷ *Dep’t of Enforcement v. Zdzieblowski*, No. C8A030062, 2005 NASD Discip. LEXIS 3, at *14 (N.A.C. May 3, 2005).

⁸ *See Mathis v. SEC*, 671 F.3d 210, 216 (2d. Cir. 2012).

⁹ *Robert D. Tucker*, Exchange Act Rel. No. 68210, 2012 SEC LEXIS 3496, at *47 (Nov. 9, 2012)

¹⁰ *Id.*

¹¹ Sanction Guidelines at 69-70.

failure resulted in a statutorily disqualified individual becoming or remaining associated with a firm.¹²


Respondent's failure to disclose the judgments and lien was egregious. He failed to report six important events over a period of several years. Each failure was significant, but collectively they would cause firms and customers to question Respondent's ability to handle other people's money. Given his apparent dire financial circumstances, a firm might also be concerned that Respondent should be monitored carefully to be sure he did not attempt to alleviate his financial problems by improper practices with respect to the firm or customers, and customers would also question Respondent's qualifications to handle their money.

Enforcement recommends a suspension of six months in all capacities and a \$5,000 fine. The Hearing Officer finds that the recommended fine and suspension are an appropriate sanction.

V. Conclusion

Respondent John A. Kowske is suspended for six months and fined \$5,000 for willfully failing to update his Form U4 to disclose judgments and a tax lien, in violation of NASD Rule 2110, IM-1000-1, FINRA Rules 1122 and 2010, and Article V, Section 2 of the FINRA By-Laws. Respondent is statutorily disqualified because the violation was willful.

If this decision becomes FINRA's final disciplinary action, the suspension shall begin at the opening of business on February 17, 2014, and end on August 17, 2014. The fine shall be due and payable if Respondent should reenter the securities industry.


Lawrence B. Bernard
Hearing Officer

¹² *Id.*

Copies to:

John A. Kowske (*via overnight courier and first-class mail*)

Richard A. March, Esq. (*via email and first-class mail*)

Mark A. Koerner, Esq. (*via email*)

Mark P. Dauer, Esq. (*via email*)

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

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

Department of Enforcement,

Complainant,

v.

John A. Kowske,
(CRD No. 1124297),

Respondent.

DISCIPLINARY PROCEEDING
No. 2011027363401

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Respondent John Kowske willfully failed to disclose on a Uniform Application for Securities Industry Registration or Transfer (Form U4) several unsatisfied judgments and a federal tax lien, in violation of Article V, Section 2 of FINRA's By-Laws, NASD Rule 2110, IM-1000-1 and FINRA Rules 2010 and 1122.

RESPONDENT AND JURISDICTION

2. In May 1983, Kowske became registered as an Investment Company Products and Variable Contracts Representative with a FINRA-registered firm. In September 1983, he became registered as a general securities representative with a FINRA firm. In December 2006, he became registered in the same capacities with Regal Securities, Inc. ("Regal"), also a FINRA-registered firm. In September 2011, Regal terminated his registration. Since then, he has not been registered with a FINRA firm.

3. Although Kowske 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 (1) the Complaint was filed within two years after the date upon which he ceased to be associated with a FINRA member, namely, September 19, 2011, and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member.

BACKGROUND

4. On September 2, 2005, a judgment was entered in favor of FMCC against Kowske in the amount of \$2,110.87. On or about May 22, 2008, FMCC filed a garnishment proceeding against Regal, the securities firm where Kowske was registered. Kowske knew of the unsatisfied judgment no later than June 9, 2008, when he communicated with his branch manager about the judgment. Dating back to at least June 9, 2008, Kowske was aware of the FMCC judgment. Nevertheless, Kowske willfully failed to amend his Form U4 to disclose the FMCC judgment.

5. On August 6, 2007, a judgment was entered in favor of RSI against Kowske in the amount of \$1,703.44. On or about September 21, 2007, RSI filed a garnishment proceeding against Regal, the securities firm where Kowske was registered. Kowske learned about the unsatisfied judgment as a result of the garnishment proceeding. Nevertheless, Kowske willfully failed to timely amend his Form U4 to disclose the RSI judgment until on or about June 17, 2011 or, more than three years late.

6. On November 24, 2008, a judgment was entered in favor of DN against Kowske in the amount of \$18,308.53. On or about November 5, 2010, Kowske signed a stipulation acknowledging the existence of the judgment obtained by DN. Although he knew of the

unsatisfied judgment no later than November 5, 2010, Kowske willfully failed to timely amend his Form U4 to disclose the DN judgment until on or about June 17, 2011 or, more than six months late.

7. On or about July 16, 2009, the Internal Revenue Service sent Regal, the securities firm where Kowske was registered, a Notice of Levy on Wages, Salary, and Other Income for Kowske's unpaid taxes totaling \$5,290.55. Kowske knew of the unsatisfied tax lien no later than July 20, 2009, when he communicated with a representative at Regal about the lien. Dating back to at least July 20, 2009, Kowske was aware of the IRS lien. Nevertheless, Kowske willfully failed to disclose the federal tax lien on his Form U4.

8. On November 2, 2010, a judgment was entered in favor of MECA against Kowske in the amount of \$5,498.50. On or about December 29, 2010, MECA filed a garnishment proceeding against Regal, the securities firm where Kowske was registered. On or about January 20, 2011, MECA, Regal and Kowske entered into a stipulation and order for dismissal of the non-earnings garnishment. Dating back to at least January 20, 2011, Kowske was aware of the MECA judgment. Nevertheless, he willfully failed to timely to amend his Form U4 to disclose this debt until on or about June 17, 2011 or, more than three months late.

9. On July 12, 2010, a judgment was entered in favor of ERHC against Kowske in the amount of \$737.50. On or about December 27, 2010, ERHC filed a garnishment proceeding against Regal, the securities firm where Kowske was registered. Kowske learned about the unsatisfied judgment as a result of the garnishment proceeding. Nevertheless, Kowske willfully failed to timely amend his Form U4 to disclose the ERHC judgment until on or about June 17, 2011 or, more than four months late.

FIRST CAUSE OF ACTION
Willful Failure to Disclose on a Form U4
Article V, Section 2 of FINRA's By-Laws, NASD Rule 2110, IM-1000-1 and
FINRA Rules 2010 and 1122

10. The Department realleges and incorporates by reference paragraphs 1 through 9 above.
11. In or about December 2006, Kowske submitted, or caused to be submitted, a Uniform Application for Securities Industry Registration or Transfer (Form U4) in connection with his FINRA registration through Regal.
12. Pursuant to Article V, Section 2(c) of FINRA's By-Laws, every application for registration with FINRA shall be kept current at all times by supplementary amendments to be filed no later than 30 days after learning of the facts or circumstances giving rise to the amendment.
13. Kowske failed to timely update his Form U4 regarding material facts or circumstances of which he had knowledge, which were required to be disclosed.
14. Specifically, Question 14M asks, "Do you have any unsatisfied judgments or liens against you?"
15. As mentioned above, Kowske, during the course of his employment as a registered representative with Regal, became aware of several unsatisfied Wisconsin judgments and an IRS lien.
16. Despite his knowledge of such, Kowske failed to amend his Form U4 at Regal in a timely manner to disclose those judgments and the IRS lien.
17. Kowske's failure to timely amend his Form U4 to disclose those reportable events

in response to Question 14M were willful.

18. By reason of the foregoing, Kowske acted in contravention of Article V, Section 2 of FINRA's By-Laws, and thus, violated NASD Rule 2110, IM-1000-1 and FINRA Rules 2010 and 1122.

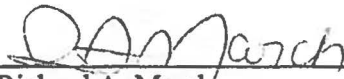
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent 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 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.

DEPARTMENT OF ENFORCEMENT

Date: September 17, 2013


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