

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

AUGUST D. WOJTKIEWICZ
(CRD No. 6083270),

Respondent.

Disciplinary Proceeding
No. 2012034042001

Hearing Officer – KBW

DEFAULT DECISION

October 8, 2014

Respondent is suspended from associating with any member firm in any capacity for one year and fined \$10,000 for violating Article V, Section 2(a) of FINRA's By-Laws and FINRA Rules 1122 and 2010 by willfully falsely denying on his Form U4 that he had ever been charged with or had ever pled guilty to any felony.

Appearances

John S. Han, Senior Regional Counsel, San Francisco, California, for the
Department of Enforcement.

No appearance by or on behalf of August D. Wojtkiewicz.

DECISION

I. Introduction

FINRA's Department of Enforcement filed the attached Complaint with the Office of Hearing Officers on May 22, 2014. The Complaint alleges that Respondent August D. Wojtkiewicz violated Article V, Section 2(a) of FINRA's By-Laws and FINRA Rules 1122 and 2010 by falsely denying on his Uniform Application for Securities Industry Registration or

Transfer (Form U4) that he had ever been charged with or and had ever pled guilty to any felony.¹

Wojtkiewicz failed to answer or otherwise respond to the Complaint. Accordingly, on August 14, 2014, Enforcement filed a Motion for Entry of Default Decision (“Default Motion”).² Wojtkiewicz did not file a response to the Default Motion with the Office of Hearing Officers.

II. Procedural History

On May 22, 2014, Enforcement served the Complaint and Notice of Complaint (collectively, the “First Notice”) on Wojtkiewicz by first-class mail and by certified mail, return receipt requested, to his most current residential address recorded in the Central Registration Depository (“CRD address”).³ The U.S. Postal Service did not return either mailing to Enforcement.⁴ The Postal Service attempted delivery of the certified mailing on May 29, 2014, and left a notice at the delivery address, but deemed the mailing unclaimed on June 13, 2014.⁵ Wojtkiewicz did not answer or otherwise respond to the First Notice.⁶

On or about June 23, 2014, Enforcement served the Complaint and Second Notice of Complaint (collectively, “Second Notice”) on Wojtkiewicz by first-class and certified mail, return receipt requested, to his CRD address.⁷ The Postal Service did not return either mailing to Enforcement.⁸ The Second Notice of Complaint required Wojtkiewicz to file an Answer with

¹ FINRA’s By-Laws and Rules are available at <http://finra.complinet.com/>.

² The Default Motion is supported by a declaration of John Han (“Han Decl.”) and eight attached exhibits.

³ Complainant’s Exhibit (“CX”) 3; CX-4, at 10; CX-5.

⁴ Han Decl. ¶ 10.

⁵ Han Decl. ¶ 11; CX-5.

⁶ Han Decl. ¶ 12.

⁷ Han Decl. ¶ 13; CX-6.

⁸ Han Decl. ¶ 14.

the Office of Hearing Officers on or before July 10, 2014.⁹ Wojtkiewicz did not answer or otherwise respond to the Second Notice.¹⁰

The Hearing Officer finds that Enforcement properly served Wojtkiewicz with the Complaint and Wojtkiewicz received valid constructive notice of this proceeding. The Hearing Officer further finds that Wojtkiewicz defaulted by failing to file an Answer or otherwise respond to the Complaint. Accordingly, the Hearing Officer deems the allegations in the attached Complaint admitted pursuant to Rules 9215(f) and 9269(a).

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

FINRA has jurisdiction over this disciplinary proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws because (1) the Complaint was filed within two years after the effective date of termination of his registration with a member firm, namely September 12, 2012, and (2) the Complaint charges him with misconduct that commenced prior to the termination of his association with the member firm.¹¹

B. Wojtkiewicz's Background

Wojtkiewicz filed an application for registration at a FINRA member firm (the "Firm") on August 13, 2012.¹² On September 12, 2012, the Firm filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") stating that Wojtkiewicz's registration was terminated because he "failed to disclose CRD reportable item(s) to firm during the hiring process."¹³

⁹ Han Decl. ¶ 13; CX-6.

¹⁰ Han Decl. ¶ 16.

¹¹ See Article V, Section 4(a), FINRA By-Laws.

¹² CX-2, at 1.

¹³ Complaint ("Compl.") ¶ 3; Han Decl. ¶ 18; CX-2.

C. Origin of the Investigation

FINRA's investigation began on or about September 14, 2012, as a result of receiving the Form U5.¹⁴

D. False Answers on Form U4

In October 2010, the State of New York charged Wojtkiewicz with five felony counts: one count of Burglary in the Second Degree, two counts of Grand Larceny in the Fourth Degree, and two counts of Criminal Possession of Stolen Property in the Fourth Degree.¹⁵ In January 2012, Wojtkiewicz pled guilty to one felony count (Attempted Burglary in the Fourth Degree), with the understanding that if he successfully complied with certain terms set by the court, his case would later be dismissed and sealed.¹⁶

Wojtkiewicz subsequently applied for registration with the Firm. In so doing, he completed, signed, and submitted a Uniform Application for Securities Industry Registration or Transfer ("Form U4") dated August 13, 2012.¹⁷ Question 14A(1) of the Form U4 asked:

Have you ever:

- (a) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign, or military court to any *felony*?
- (b) been *charged* with any *felony*?

Wojtkiewicz responded "No" to both parts of Question 14A(1).¹⁸

Wojtkiewicz's registration was approved on August 29, 2012. On September 12, 2012, the Firm terminated Wojtkiewicz's registration.¹⁹ The Firm's Form U5 reported the explanation

¹⁴ Han Decl. ¶ 18.

¹⁵ Compl. ¶ 6.

¹⁶ Compl. ¶ 8; Decl. ¶ 19.

¹⁷ Compl. ¶ 9; CX-1.

¹⁸ CX-1.

¹⁹ CX-2.

for his termination as, “RR failed to disclose CRD reportable item(s) to firm during the hiring process.”²⁰

Wojtkiewicz successfully complied with the court’s terms and the prosecution against him was dismissed. The Certificate of Disposition Dismissal is dated July 18, 2013, and states, in part:

The above mentioned dismissal is a termination of the criminal action in favor of the accused and[,] pursuant to Section 160.60 of the criminal procedures law[,] “the arrest and prosecution shall be deemed a nullity and the accused shall be restored, in contemplation of law, to the status occupied before the arrest and prosecution[.]”²¹

Article V, Section 2 of FINRA’s By-Laws requires, in pertinent part, that associated persons applying for registration provide FINRA with “such . . . reasonable information with respect to the applicant as [FINRA] may require.” FINRA Rule 1122 prohibits associated persons from filing registration information that 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.” These provisions give rise to a requirement that applicants for registration provide accurate information so that regulators, employers, and members of the public “have all material, current information about the securities professional with whom they are dealing.”²² Providing false information in a Form U4 therefore violates Article V, Section 2 of FINRA’s By-Laws,

²⁰ Han Decl. ¶ 18.

²¹ CX-8.

²² *Joseph S. Amundsen*, Exchange Act Rel. No. 69406, 2013 SEC LEXIS 1148, at *25-26 (Apr. 18, 2013) (quoting *Richard A. Neaton*, Exchange Act Rel. No. 65598, 2011 SEC LEXIS 3719, at *17-18 (Oct. 20, 2011)).

FINRA Rule 1122, and the high standards of commercial honor and just and equitable principles of trade that FINRA members and their associated persons must observe under Rule 2010.²³

When Wojtkiewicz responded “No” to each of the two parts of Question 14A(1), his answers were false.²⁴ He had been charged with felonies and had pled guilty to a felony. Accordingly, Wojtkiewicz violated Article V, Section 2 of FINRA’s By-Laws, and FINRA Rule 1122, and the high standards of commercial honor and just and equitable principles of trade that FINRA Rule 2010 requires.

E. Wojtkiewicz Is Subject to Statutory Disqualification

The Hearing Officer concludes that Wojtkiewicz is subject to statutory disqualification for filing a Form U4 that falsely denied that he had been charged with any felony and that he had pled guilty to any felony because his filing of the false Form U4 was willful and the misinformation was material.²⁵

1. Wojtkiewicz Acted Willfully

The Hearing Officer finds that Wojtkiewicz’s filing of the false Form U4 was willful.

This finding of willfulness does not require that the record demonstrate that Wojtkiewicz

²³ *Amundsen*, 2013 SEC LEXIS 1148, at *26-27 (“filing a misleading Form U4 violates not only ... FINRA Rule 1122, but also the standard of just and equitable principles of trade to which every person associated with a NASD or FINRA member is held”); *Dep’t of Enforcement v. Hedge Fund Capital Partners, LLC*, Complaint No. 2006004122402, 2012 FINRA Discip. LEXIS 42, at *37 (FINRA NAC May 1, 2012) (affirming Hearing Panel finding that respondent’s filing of misleading Forms U4 violated Article V, Section 2 of NASD’s By-Laws and the NASD rules that corresponded to FINRA Rules 2010 and 1122).

²⁴ The subsequent entry by the Supreme Court of the State of New York (New York County) of the Certificate of Disposition of Dismissal did not change the historical fact that, at the time he filed his U4, Wojtkiewicz had been charged with felonies and had pled guilty to a felony. *See Amundsen*, 2013 SEC LEXIS 1148, at *45 (stating that an applicant would be required to disclose on a Form U4 that he had been enjoined in connection with any investment-related activity even if a court had vacated the injunction after the applicant had filed the Form U4). *Dep’t of Enforcement v. Kraemer*, Complaint No. 2006006192901, 2009 FINRA Discip. LEXIS 39, at *18-19 (FINRA NAC Dec. 18, 2009) (“[T]he question presented is the status of [the] conviction on the date . . . the representations on the Form U4 [are made].”) (quoting *Thomas R. Alton*, 52 S.E.C. 380, 383 n. 8 (1995), *petition for review denied*, *Alton v. NASD*, 1996 U.S. App. LEXIS 33303 (9th Cir. Dec. 16, 1996)).

²⁵ *See* Section 3(a)(39)(F) of the Exchange Act; Article III, Section 4 of FINRA’s By-Laws; *see also Dep’t of Enforcement v. Gallagher*, Complaint No. 2008011701203, 2012 FINRA Discip. LEXIS 61, at *24 (FINRA NAC Dec. 12, 2012) (stating associated person is subject to statutory disqualification because the information he failed to disclose in his Form U4 was material and his failure to disclose that information was willful).

intended to violate FINRA's rules. Rather, this finding requires only that the record demonstrate that Wojtkiewicz knew what he was doing when he filed the false Form U4.²⁶ Here, Wojtkiewicz knew that he had been charged with felonies and had pled guilty to a felony, yet he filed a Form U4 which answered "No" to both parts of Question 14A(1). Thus, the finding that he acted willfully is predicated on his intent to commit the act that constitutes the violation—filing a false Form U4.

2. The Information Was Material

"Because of the importance that the industry places on full and accurate disclosure of information required by the Form U4, [it is presumed] that essentially all the information that is reportable on the Form U4 is material."²⁷ In this case, the materiality of information called for by Question 14A(1) is particularly evident because Wojtkiewicz had been charged with, and had pled guilty to, theft.²⁸ In addition, when Wojtkiewicz submitted his Form U4, the felony charges and guilty plea were recent events. Accordingly, a reasonable employer, regulator, or investor would have viewed the judgment as extremely relevant.²⁹ Similarly, Wojtkiewicz's false response to both parts of Question 14A(1) significantly altered the total mix of information available to his employer, the regulators, and his prospective customers. Therefore, this information constituted material information.

²⁶ See *Mathis v. SEC*, 671 F.3d 210, 216-218 (2d Cir. 2012) (finding that respondent was statutorily disqualified where he voluntarily failed to amend Form U4 to disclose tax liens).

²⁷ *Dep't of Enforcement v. Tucker*, Complaint No. 2007009981201, 2011 FINRA Discip. LEXIS 66, at *20-21 (FINRA NAC Oct. 4, 2011) (quoting *Dep't of Enforcement v. Knight*, Complaint No. C10020060, 2004 NASD Discip. LEXIS 5, at *13 (NASD NAC Apr. 27, 2004)), *aff'd*, *Robert D. Tucker*, Exchange Act Rel. No. 68210, 2012 SEC LEXIS 3496 (Nov. 9, 2012).

²⁸ *Kraemer*, 2009 FINRA Discip. LEXIS 39, at *15 (concluding that a guilty plea to a misdemeanor involving the wrongful taking of property was material).

²⁹ See, e.g., *Dep't of Enforcement v. Toth*, Complaint No. E9A2004001901, 2007 NASD Discip. LEXIS 25, at *34-35 (NASD NAC July 27, 2007), *aff'd*, *Douglas J. Toth*, Exchange Act Rel. No. 58074, 2008 SEC LEXIS 1520 (July 1, 2008), *aff'd*, 319 F. App'x 184 (3d Cir. 2009).

IV. Sanctions

The FINRA Sanctions Guidelines for failure to file or filing false, misleading, or inaccurate forms or amendments recommend a fine of \$2,500 to \$50,000 and a suspension in any or all capacities for 5 to 30 business days and, for egregious cases (such as those involving repeated violations, failure to disclose a statutory disqualification event or customer complaint, or where the failure to disclose or timely to disclose delayed regulatory investigation of terminations for cause) a longer suspension in any and all capacities (of up to two years) or a bar. Principal considerations identified in the Sanctions Guidelines include the nature and significance of the information at issue.³⁰

The information at issue was significant. By concealing that he had been charged with burglary, grand larceny, and criminal possession of stolen property and had pled guilty to burglary, Wojtkiewicz “deprived regulators, brokers, and members of the investing public of critical information necessary to determine whether he was trustworthy and could fulfill the high standards of conduct required of securities industry registrants.”³¹ The seriousness of a guilty plea to a felony is reflected in the fact that the Securities Exchange Act of 1934 provides that a felony conviction disqualifies an individual for ten years from being associated with a member of FINRA.³²

Enforcement recommends that Wojtkiewicz be suspended in all capacities for one year and fined \$10,000. The Hearing Officer concludes that this is an egregious case and Enforcement’s recommended sanctions are appropriate.

³⁰ FINRA Sanctions Guidelines at 69 (2013), *available at* www.finra.org/sanctionguidelines.

³¹ *Amundsen*, 2013 SEC LEXIS 1148, at *28.

³² Securities Exchange Act of 1934, Section 3(a)(39)(F), 15 U.S.C. Section 78c(a)(39)(F).

V. Order

For submitting false information in a Form U4 in violation of Article V, Section 2 of FINRA's By-Laws and FINRA Rules 1122 and 2010, August D. Wojtkiewicz is suspended from associating with any member firm in any capacity for one year and fined \$10,000.³³ If this Default Decision becomes FINRA's final disciplinary action, Wojtkiewicz's suspension shall become effective with the opening of business on Monday, November 17, 2014, and end at the close of business on November 16, 2015. The fine shall be due and payable if and when Wojtkiewicz re-enters the securities industry.



Kenneth Winer
Hearing Officer

Copies to:

August D. Wojtkiewicz (*via overnight courier and first-class mail*)
John S. Han, Esq. (*via email and first-class mail*)
Jeffrey D. Pariser, Esq. (*via email*)

³³ Because Wojtkiewicz's false denials were willful, this decision subjects Wojtkiewicz to statutory disqualification from the securities industry.

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FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

August D. Wojtkiewicz (CRD No. 6083270),

Respondent.

DISCIPLINARY PROCEEDING
No. 2012034042001



COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Respondent August D. Wojtkiewicz ("Wojtkiewicz") willfully made false statements concerning his criminal history on an application for registration.

RESPONDENT AND JURISDICTION

2. On or about August 13, 2012, Wojtkiewicz filed an application for registration as a General Securities Representative at FINRA member National Securities Corporation (the "Firm"). His registration was approved on or about August 29, 2012.
3. On or about September 12, 2012, Wojtkiewicz's registration at the Firm was terminated because he "FAILED TO DISCLOSE CRD REPORTABLE ITEM(S) TO FIRM DURING THE HIRING PROCESS."

4. Although Wojtkiewicz 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:
 - a. the Complaint was filed within two years after the effective date of termination of his registration with the Firm, namely, September 12, 2012; and
 - b. the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member.

CAUSE OF ACTION

FALSE STATEMENTS ON APPLICATION FOR REGISTRATION (FINRA BY-LAWS, ARTICLE V, SECTION 2 AND FINRA RULES 1122 AND 2010)

5. The Department re-alleges and incorporates by reference paragraphs 1 through 4 above.
6. On or about October 12, 2010, Wojtkiewicz was charged by the State of New York with five felony counts, to wit, Burglary in the Second Degree, two counts of Grand Larceny in the Fourth Degree and two counts of Criminal Possession of Stolen Property in the Fourth Degree. On that date, however, he was unable to be present in court.
7. On or about November 9, 2010, Wojtkiewicz appeared in New York State Supreme Court, where he was notified of the felonies with which he had been charged.
8. On or about January 13, 2012, Wojtkiewicz pled guilty to one count of Attempted Burglary in the Second Degree, a felony.
9. On or about August 13, 2012, Wojtkiewicz completed, signed and submitted to the Firm a Uniform Application for Securities Industry Registration or Transfer ("Form

U4”). On the Form U4, Wojtkiewicz willfully misrepresented that he had never been charged with or pled guilty to any felony.

10. By willfully making false statements on an application for registration with a FINRA member, Wojtkiewicz violated Article V, Section 2(a) of the FINRA By-Laws and FINRA Rules 1122 and 2010.

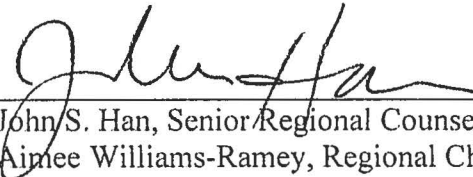
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Wojtkiewicz 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 Wojtkiewicz 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 Wojtkiewicz’s conduct, as alleged in the 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: 05/22/2014



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