NASD REGULATION, INC.
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. NELSON C. ONYEJIAKA (CRD #2864207) Southbound Brook, NJ, Plainfield, NJ, Bloomfield, NJ East Orange, NJ, Sommerville, NJ, and Newark, NJ, Respondent.	:	Disciplinary Proceeding No. C10990121 **Majority Hearing Panel** **Decision** Hearing Officer - Ellen B. Cohn June 23, 2000

Digest

The Department of Enforcement's Complaint alleges that Respondent Nelson C. Onyejiaka ("Onyejiaka" or the "Respondent"), a former registered representative, violated NASD Conduct Rule

2110 by failing to disclose that he had been convicted of a felony on a Uniform Application for Securities Industry Registration (Form U-4). Onyejiaka filed an Answer and, thereafter, requested a hearing. The majority of the Hearing Panel determined that Onyejiaka violated Rule 2110, as alleged in the Complaint, and determined to suspend Onyejiaka from associating with any NASD member in all capacities for eighteen months and to fine him $5,000 (which shall not become due and payable unless and until he seeks to re-enter the securities industry).[1]

Appearances

Karen D. Whetzle, Esq., Regional Counsel, New York, New York (Rory C. Flynn, Chief Litigation Counsel, Washington, DC, Of Counsel), for the Department of Enforcement.

Nelson C. Onyejiaka, *pro* se.

DECISION

I. Procedural Background

On August 2, 1999, Enforcement filed a one cause Complaint against Onyejiaka alleging that he violated NASD Conduct Rule 2110 by failing to disclose on a Form U-4 that he had been convicted on charges of importing heroin, which is a felony. Onyejiaka filed an Answer to the Complaint on August 27, 1999, in which he claimed that he "did not willfully file any false application with an intent to deceive any one or association." In his Answer, Onyejiaka also asserted that the case should be "closed" because he would not be able to obtain documentary evidence or contact potential witnesses, given that

[1] A "Statement of Dissenting Panelist" is attached to this Decision.

his employer firm was no longer in business. Although Onyejiaka did not request a hearing in his Answer, he did so at the Initial Pre-Hearing Conference.[2]

On October 19, 1999, Enforcement filed a motion for summary disposition, pursuant to Rule 9264, requesting that the Hearing Panel: (1) find that Onyejiaka violated Rule 2110, as alleged in the Complaint; and (2) fine Onyejiaka $5,000 and bar him from association with any member firm in any capacity. Onyejiaka opposed the motion.[3] The Hearing Panel concluded that there was a sufficient dispute as to material facts to require a hearing and, therefore, denied the motion.[4]

A hearing in this proceeding was held on January 6, 2000,[5] before a Hearing Panel composed of an NASD Hearing Officer and two current members of the District Committee for District 10. At the hearing, Enforcement offered six exhibits, which were admitted in evidence;[6] introduced the testimony of two witnesses, Tina Wolfolk, who supervised the investigation that led to this proceeding (Tr. 19), and Cynthia Horton, a document processing manager for the Association's Central Registration Depository (CRD) (Tr. 46); and elicited testimony from Onyejiaka. Onyejiaka also testified on his own behalf.[7] In

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[2] See Transcript of Initial Pre-Hearing Conference, p. 4.

[3] Respondent filed a "Statement of Facts & A Request For Immediate Dismissal Of Case For Want of Evidence," which the Hearing Panel treated as a response to Enforcement's summary disposition motion. To the extent that Respondent's submission also could have been construed as a cross-motion for summary disposition, the Hearing Panel rejected the motion on the ground that it was untimely. See Order Denying Enforcement's Motion for Summary Disposition, dated January 4, 2000.

[4] See Order Denying Enforcement's Motion for Summary Disposition.

[5] References to the transcript of the hearing are cited as "Tr. ___."

[6] References to Enforcement's exhibits are cited as "CX ___." Five of the exhibits offered by Enforcement were admitted without objection (i.e., CX 3-CX 6, and CX 9) and CX 2 was admitted over Respondent's objection. (Tr. 110.) In the interest of completeness, the Hearing Panel determined to include as a Hearing Panel exhibit excerpts from Respondent's CRD record (HX 1), which Enforcement included as a proposed exhibit (see CX 1) but did not seek to have admitted.

[7] In advance of the hearing, Onyejiaka filed a witness list indicating that he intended to call three witnesses, DE, GS, and JG, who are former employees of Meyers Pollock Robbins, Inc. ("Meyers Pollock" or the "Firm"). (CX 6, pp. 9, 11, 13-14, 52) He did not call any of these individuals as witnesses and never requested that the Hearing Officer or

addition, prior to the hearing, the Parties filed stipulations concerning some of the relevant underlying facts.[8]

At the commencement of the hearing, the Hearing Panel considered Respondent's belated motion entitled "Request for Immediate Vacation of Further Hearing for Lack of Jurisdiction."[9] In his motion, Onyejiaka argued that the NASD does not have jurisdiction because it failed to "rest its case within two years" and, instead, allowed this proceeding "to commence into a third year without an amended Form U-5." The Hearing Panel denied the motion. That a disciplinary proceeding is not concluded within the two-year period of retained jurisdiction does not divest the Association of jurisdiction that it properly exercised by instituting the proceeding within the two-year period. (See Tr. 7-8.)[10]

At the conclusion of the hearing, the Hearing Panel decided to leave the record open for three weeks (i.e., until January 27, 2000) to afford Respondent the opportunity to submit certain correspondence that may have been relevant to his claim that his employer firm knew about his criminal record. (Tr. 84, 104-05, 116-17.) On January 26, 2000, Onyejiaka filed a letter, which the Hearing Panel determined to include in the record as a Hearing Panel exhibit. (HX 2.)

Hearing Panel compel their attendance at the hearing. Although it is not clear what steps, if any, Respondent made to secure these witnesses attendance, the Hearing Panel recognizes that Respondent may have encountered difficulty locating them given that Meyers Pollock is no longer in business.

[8] References to the Parties' Stipulations, filed on December 22, 1999, are cited as "Stip. ¶ ___."

[9] Respondent filed his motion on December 31, 1999, i.e., less than one week before the hearing and more than two months after the deadline for filing dispositive motions.

[10] See also infra, pp. 9-10.

II. Facts

A. Onyejiaka's Background in the Securities Industry

On or about May 3, 1997, Respondent sat for and passed the Series 7 qualification examination and thereafter became registered as a general securities representative through Meyers Pollock, a former NASD member firm. (HX 1.) On or about August 29, 1997, Meyers Pollock filed a Uniform Termination Notice for Securities Industry Registration (Form U-5) discharging Onyejiaka, as of August 19, 1997, because he had failed to disclose on a Form U-4 "his arrest [and] subsequent incarceration . . . for the importation of heroin." (HX 1; CX 5.) Respondent has not been employed in the securities industry since he was terminated by Meyers Pollock. (CX 6, p. 8; HX 1.)

B. Onyejiaka's Failure to Disclose his Criminal Conviction

The facts pertaining to Onyejiaka's criminal conviction are not in dispute. On or about September 27, 1989, the United States Drug Enforcement Agency arrested Onyejiaka on charges of importation of heroin, which is a felony. (Stip. ¶ 1; CX 4.) On or about November 8, 1990, Onyejiaka was convicted on this charge in United States District Court for the Eastern District of New York (Docket Number CR 89 00687) and sentenced to six months imprisonment, fined $50, and subject to ten years of supervision. (Id.)

In connection with Meyers Pollock's internal, employment application process, on or about November 2, 1996, Onyejiaka completed portions of a Form U-4 (the "November 1996 Form U-4"); the November 1996 Form U-4 was not filed with the NASD. (Stip. ¶ 3; Tr. 98; CX 6, pp. 11-12, 16-17.) Thereafter, on or about February 26, 1997, in anticipation of taking the Series 7 qualification

examination, Onyejiaka completed portions of a second Form U-4 (the "February 1997 Form U-4");[11] the February 1997 Form U-4 was filed with the NASD. (Stip. ¶ 4.)[12]

Question 22A(3) on a Form U-4 requires an applicant to answer "yes" or "no" to the following:

> 22A. Have you been convicted of or plead guilty or nolo contendere ("no contest") in a domestic or foreign court to:
>
> (3) any . . . felony?

Applicants who respond affirmatively to this question are required to provide an accurate description of the circumstances surrounding the events on the Disclosure Reporting Page (DRP) of the Form U-4. During all times relevant, Onyejiaka understood that he had been convicted of a felony. (Tr. 65; CX 6, p. 38; see also Transcript of Initial Pre-Hearing Conference, p. 9.) However, neither the November 1996 Form U-4 nor the February 1997 Form U-4 included any disclosure of Onyejiaka's felony conviction. (CX 2-3, 9.)[13] On or about August 19, 1997, after Onyejiaka became registered through Meyers Pollock, the Firm received as part of a routine background check a copy of a United States Department of Justice, Federal Bureau of Investigation Report, which disclosed Onyejiaka's felony

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[11] Onyejiaka first took the Series 7 examination on March 26, 1997 and received a failing grade. He took the examination again on May 3, 1997 and received a passing grade. (HX 1.)

[12] According to the Parties' stipulations, on November 2, 1996, Meyers Pollock hired Onyejiaka as a "cold caller." (Stip. ¶ 3.) And, on the February 1997 Form U-4, Respondent indicated that he was employed by Meyers Pollock on November 2, 1996. (Tr. 67-68; CX 3; see also HX 2.) However, at the hearing, Onyejiaka testified that he was not employed by the Firm until after he received notification that he passed the Series 7 qualification examination. (Tr. 84-85, 89-92.) For purposes of this Decision, whether Respondent was employed by the Firm at the time he completed the February 1997 Form U-4 is immaterial. As is apparent from the face of the document, a Form U-4 may be submitted by or on behalf of a "prospective" employee of a member firm (see generally Form U-4, p. 4), and a prospective employee's obligation to provide truthful information is no less than that of a person who actually is employed by a member firm at the time of completion of the Form.

[13] CX 9 is a copy of the original February 1997 Form U-4 after it was processed by CRD. CX 3 is a microfiche copy of the same Form U-4 before it was processed by CRD. (Tr. 58-60-62.) CRD microfiches all Form U-4s it receives before processing. (Tr. 52, 59, 61-62.) Enforcement offered both CX 3 and CX 9 as exhibits because Respondent challenged the authenticity of CX 3.

conviction. (Stip. ¶ 5.) The Firm then filed a Form U-5 discharging Onyejiaka for his alleged failure to disclose this information on his Form U-4. (CX 5.)

During the investigation that led to the institution of this disciplinary proceeding[14] and at the Initial Pre-Hearing Conference, Onyejiaka explained that he did not disclose his criminal conviction on either the November 1996 Form U-4 or the February 1997 Form U-4 because he: (a) did not have his eyeglasses when he completed the Forms and, consequently, did not read them properly; and (b) failed to understand that the Forms required disclosure of any type of felony, irrespective of whether it was investment-related. (CX 6, pp. 8-12; Transcript of Initial Pre-Hearing Conference, pp. 43-46.) By contrast, at the hearing (and in opposition to Enforcement's motion for summary disposition), Onyejiaka claimed that the check marks in response to Question 22A(3), on both Form U-4s, were not his, and that he did not complete any portion of page 3, including Questions 22A-22N, of either Form.

He also claimed that he completed only portions of pages 1, 2 and 4 of the February 1997 Form U-4. More specifically, according to Onyejiaka, he completed: (a) items 1 and 5 (page 1), which call for the applicant's name, social security number, and employment date; (b) page 2, with the exception of the Firm's CRD number and his social security number; and (c) page 4 with the exception of those portions that call for the Firm's CRD number and the applicant's social security number, and the portion that the sponsoring firm is required to complete. (Tr. 67-74.) Indeed, the February 1997 Form U-4 appears to include the handwriting of more than one individual. (See CX 3, CX 9.) As Onyejiaka seemed to imply, it is no doubt possible that someone else – presumably a Meyers Pollock employee – completed those portions of the February 1997 Form U-4 that he did not complete, based on the information he provided in the November 1996 Form U-4.

By way of explanation for the discrepancies between his investigative and hearing testimony, Onyejiaka asserted that, when he testified during the investigation, he was not aware there were "two distinct" Form U-4s; was aware only of the November 1996 Form U-4; and his prior testimony related only to that Form. (Tr. 82-83.) Assuming this to be the case, Onyejiaka's explanation nonetheless provides no clarification as to why he initially admitted having personally checked all of the boxes in response to Questions 22A-22N on the November 1996 Form U-4 and, at the hearing, recanted his admission. In addition, given that a U-4 is in booklet form, the Hearing Panel is puzzled as to the circumstances that may have led Respondent to complete pages 1, 2, and 4, but not page 3, of the November 1996 Form U-4.

There are undoubtedly questions pertaining to the circumstances surrounding the completion of the November 1996 Form U-4 and the February 1997 Form U-4 that cannot be answered based on the evidence in the record. However, as Onyejiaka ultimately admitted, he signed the February 1997 Form U-4 (as well as the November 1996 Form U-4) (Tr. 67, 75) and never disclosed to the NASD that he had been convicted of a felony. (Tr. 73.) He further acknowledged that, before signing the Forms, he read the first item on page 4, which states:

> I swear or affirm that I have read and understand the items and instructions on this form and that my answers (including attachments) are true and correct to the best of my knowledge. I understand that I am subject to administrative, civil or criminal penalties if I give false or misleading answers.

In his defense, Onyejiaka claimed that he was under pressure from the Firm and lured by the anticipated monetary compensation he would receive from employment as a stockbroker to sign the

[14] NASD Regulation, Inc. commenced its investigation after receiving the Form U-5. (Tr. 19.)

February 1997 Form U-4. He also demonstrated a fundamental lack of understanding of the purpose and importance of the Form. In this connection, Onyejiaka testified:

> If someone come to you, being [the] stressfulness of the job and say . . . sign this, you are going to make money, you sign it. And they go back and start completing everything, which they owe the obligation to make sure that everything is completed and factual. And besides, it is a little paper. . . . I did not read page 3, what was given to me was this page [i.e., page 4]. . . . You see this is what, application for the licensing. This is not a real application. . . . I should have been called in and given the application and [told to] fill [in the] application.

(Tr. 79-80.)

At some time – apparently before Meyers Pollock received the FBI Report – Respondent advised the Firm about his criminal conviction.[15] According to Respondent, the Branch Office Manager advised him that there was no need to "worry about it, [that the Firm] would take care of it, [and that] there [were] other people in the company with the same problem." (Tr. 86.) Enforcement offered no evidence to rebut Respondent's testimony.

III. Legal Discussion

A. Jurisdiction

Pursuant to Article V, Section 4 of the NASD's By-Laws, a person whose association with a member is terminated remains subject to the Association's jurisdiction for two years after the effective date of termination of registration. During this two-year period of retained jurisdiction, the Association may file a complaint against a formerly associated person based on conduct commencing prior to

[15] Respondent's testimony as to the timing of his disclosure to the Firm is less than clear. He initially testified that he did not disclose his conviction until after the February 1997 Form U-4 was filed and he passed the Series 7 qualification examination, but then expressed uncertainty about when he discussed the matter with the Firm. (Tr. 84-85.) Onyejiaka also indicated that he did not believe it was necessary for him to disclose his conviction to Meyers Pollock because he assumed that the Veterans Administration, by "sponsoring" his employment, had disclosed the information to the Firm and understood, based on a purported conversation he had with someone at the NASD, that his criminal conviction would not necessarily preclude his employment as a stockbroker. (Tr. 84.)

termination. The Complaint was filed within two years after the effective date of termination of his registration and it is based on conduct that occurred prior to his termination from a member firm. Accordingly, the Association had jurisdiction to bring this disciplinary proceeding against Onyejiaka.

B. Onyejiaka's Violation of Rule 2110

A Form U-4 is fundamental to the business and integrity of the securities industry. It is "used by all the self-regulatory organizations, including the NASD, state regulators, and broker-dealers to monitor and determine the fitness of securities professionals,"[16] and "serves as a vital screening device for hiring firms and the NASD against individuals with 'suspect history.'"[17] "The candor and forthrightness of applicants is critical to the effectiveness of this screening process."[18] Thus, the NASD has warned applicants that:

> [t]he filing with the Association of information with respect to . . . 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.

IM-1000-1. This is far more than a mere technical violation: "[a] material misrepresentation on a Form U-4 is a serious offense."[19]

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[16] In re Rosario R. Ruggiero, Exchange Act Release No. 37070, 1996 SEC LEXIS 990, at * 8-9 (April 5, 1996).

[17] District Business Conduct Committee No. 7 v. Prewitt, Complaint No. C07970022, 1998 NASD Discip. LEXIS 37, at *8 (NAC Aug. 17, 1998). See also, e.g., In re Thomas R. Alton, Exchange Act Release No. 36058, 1995 SEC LEXIS 1975, at *4 (Aug. 4, 1995).

[18] In re Thomas R. Alton, 1995 SEC LEXIS 1975, at *4. See also, e.g., District Business Conduct Committee No. 10 v. Perez, Complaint No. C10950077, 1996 NASD Discip. LEXIS 51, at *7 (Nov. 12, 1996) ("Full and accurate disclosures on a Form U-4 are critical to the securities industry because member firms must be able to assess properly whether an individual should be employed, and, if so, subject to enhanced supervision.").

[19] In re Thomas R. Alton, 1995 SEC LEXIS 1975, at *4.

The February 1997 Form U-4, which was filed with the NASD, was no doubt inaccurate: it failed to disclose an event that would give rise to Respondent's statutory disqualification. That Respondent may not have been personally responsible for checking "no" in response to Question 22A(3) is irrelevant for purposes of finding a violation. He had an obligation to ensure the accuracy of the information on the Form. See, e.g., In re Robert E. Kauffman, Exchange Act Release No. 33219, 1993 SEC LEXIS 3163, at *5 (Nov. 18, 1993) (construing former Rule 2110, Article III, Section 1), aff'd, 40 F.3d 1240 (3d Cir. 1994) (table); District Business Conduct Committee No. 1 v. Kark, 1995 NASD Discip. LEXIS 212 (NBCC May 18, 1995) (concluding that the respondent, by signing a Form U-4 "was responsible for verifying that the personal information on it was correct" even if his employer firm prepared the Form). And, although the Hearing Panel cannot conclude, based on the evidence, that Onyejiaka deliberately failed to disclose his conviction in order to deceive the NASD, this does not defeat a finding of liability. See, e.g., In re Robert E. Kauffman, 1993 SEC LEXIS 3163 n.5 at *4 (construing former Rule 2110, Article III, Section 1), aff'd, 40 F.3d 1240 (3d Cir. 1994) (table).[20] Rule 2110 articulates a "broad ethical principle" and empowers the NASD to discipline its members and associated persons for violations of just and equitable principles of trade, irrespective of whether the misconduct rises to the level of fraud.[21] Put differently, "[t]he violation of providing false information to the NASD requires only that the complainant prove the information was false." District Business Conduct Committee No. 7 v. Prewitt, 1998 NASD Discip. LEXIS 37, at *6.

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[20] Accordingly, the Hearing Panel rejects Enforcement's argument that Onyejiaka is subject to statutory disqualification, pursuant to Article III, Section 4(f) of the NASD By-Laws, for willfully making or causing to be made false or misleading statements in the February 1997 Form U-4.

[21] Disciplinary hearings for violations of Conduct Rule 2110 are "ethical proceedings." In re Timothy L. Burkes, 51 S.E.C. 356 (1993), aff'd mem., Burkes v. SEC, 29 F.3d 630 (9th Cir. 1994). See also District Business Conduct Committee No. 3 v. Aspen Capital Group, Complaint No. C3A940064, 1997 NASD Discip. LEXIS 53, at * 7 (NBCC Sept. 19, 1997).

Based on the foregoing, the majority of the Hearing Panel finds that Onyejiaka violated Rule 2110 as alleged in the Complaint.

IV. Sanctions

The applicable NASD Sanction Guideline recommends that, when an individual files a false Form U-4, a fine ranging between $2,500 and $50,000 should be imposed and the individual should be suspended for five to 30 days. The Guideline further suggests that in egregious cases, including "those involving the failure to disclose or timely to disclose a statutory disqualification event," the adjudicator should consider a longer suspension of up to two years or a bar.[22] Enforcement has requested that Onyejiaka be barred and fined in the range of $5,000 to $25,000. As to the proposed monetary sanction, Enforcement suggested that payment be waived unless and until Respondent seeks to re-enter the securities industry.

The Hearing Panel concludes that it would be unduly harsh to bar Respondent for his misconduct. Although the non-disclosure did involve a statutory disqualification event, there is no evidence that Respondent acted with an intent to deceive the NASD. While it may have been impossible for either Party to secure the testimony of the former Branch Office Manager or other personnel formerly employed at Meyers Pollock, the absence of such testimony leaves unanswered questions pertaining to the circumstances surrounding the completion of the February 1997 Form U-4. In particular, among other things, the Hearing Panel cannot determine the manner in which the Firm presented the Form to Onyejiaka; what, if any, instructions the Firm gave him about how to complete the Form; the Firm's role in completing the Form; and what, if anything, the Firm knew about

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[22] NASD Sanction Guidelines 65-66 (1998 ed.).

Onyejiaka's felony conviction prior to filing the Form U-4 with the NASD. Simply put, absent answers to these questions and others, the Hearing Panel cannot conclude that Respondent acted with an intent to deceive the NASD, which, while irrelevant to a determination of liability, is relevant for purposes of assessing sanctions. District Business Conduct Committee No. 7 v. Prewitt, 1998 NASD Discip. LEXIS 37, at *6.

The Hearing Panel recognizes that the National Adjudicatory Council has considered the failure to disclose information that would classify an individual as statutorily disqualified to be an aggravating factor for purposes of imposing sanctions. See, e.g., id. at *7-8. The Panel also recognizes that the submission of a false Form U-4 is antithetical to the fundamental standards of the securities industry, which relies heavily on candor and truthful representations. In re Henry Irvin Judy, Exchange Act Release No. 38418, 1997 SEC LEXIS 622, at *11-12 (March 19, 1997) (discussing the importance of providing truthful information on a Form U-5). By imposing an 18-month suspension instead of a bar, the Panel does not mean to imply any departure from these principles. Rather, the Panel believes that, given the facts and circumstances of this case, the sanctions imposed are appropriately remedial and adequately satisfy the Association's policies of special and general deterrence.

V. Order

Therefore, having considered all of the evidence, Onyejiaka is suspended from association with any NASD member in all capacities for 18 months and fined $5,000, which shall not become due and payable unless and until he seeks to re-enter the securities industry. Onyejiaka also is ordered to pay costs in the amount of $1,680, which include an administrative fee of $750 and hearing transcript costs

of $930. These sanctions shall become effective on a date set by the NASD, but not earlier than 30 days after the date of service of the decision constituting final disciplinary action of the NASD.[23]

Majority of Hearing Panel.

By: _____
Ellen B. Cohn
Hearing Officer

Copies to:

Karen D. Whetzle, Esq. (electronically and via first class mail)
Rory C. Flynn, Esq. (electronically and via first class mail)
Mr. Nelson C. Onyejiaka (via overnight courier and first class mail)

[23] The Hearing Panel has considered all of the arguments of the Parties. They are rejected or sustained to the extent they are inconsistent or in accord with the views expressed herein.

Statement of Dissenting Panelist

I dissent from the Majority Hearing Panel Decision and conclude that the Department of Enforcement (Enforcement) failed to prove, by a preponderance of the evidence, that the Respondent, Nelson C. Onyejiaka ("Onyejiaka" or the "Respondent"), violated Rule 2110 as alleged in the Complaint.

It is no doubt undisputed that: (1) Onyejiaka was criminally convicted on charges of importing heroin in November 1990; (2) the criminal conviction should have been but was not disclosed on a Uniform Application for Securities Industry Registration (Form U-4) that was submitted to the NASD (the "February 1997 Form U-4") in anticipation of Respondent's efforts to sit for the Series 7 qualification examination and to become registered as a general securities representative through Meyers Pollock & Robbins ("Meyers Pollock" or the "Firm"); and (3) Onyejiaka signed the subject Form U-4. And, to be sure, as the Majority points out, there are inconsistencies between the explanations Respondent gave during his investigative and hearing testimony for his failure to disclose his criminal conviction on the Form U-4, and he did not adequately explain these inconsistencies at the hearing.

However, I am troubled by the fact that there are numerous evidentiary deficiencies in the record. For example, it is not at all clear from the record whether Respondent was employed at the Firm when the Form U-4 was submitted and the Form appears to include the handwriting of more than one individual. Moreover, Enforcement offered no evidence whatsoever from any former Meyers Pollock employee, which could have shed light on the circumstances attendant to the completion of the Form. I therefore am unable to determine the manner in which the Firm presented the Form to Onyejiaka; what, if any, instructions the Firm gave him about how to complete the Form; and the Firm's role in completing the Form. I likewise am unable to ascertain what the Firm knew about Onyejiaka's

felony conviction prior to filing the Form U-4 with the NASD, from either the Veterans Administration, which apparently sponsored Respondent's employment (Tr. 104-05), or from Vanguard Career Services, which also played a role in securing employment for the Respondent. (See, e.g., HX 2.)

The Majority recognized these evidentiary failings and treated them as mitigating factors for purposes of imposing sanctions. In my view, however, the paucity of evidence and Onyejiaka's unrebutted testimony that a Meyers Pollock Branch Office Manager assuaged his concerns about the failure to disclose the criminal conviction and told him that the Firm "would take care of it" (Tr. 86) militate against a finding of liability.

In sum, I can conclude only that to the extent Onyejiaka had any role in completing the Form U-4 or reviewing it for its accuracy, his failure to disclose his criminal conviction was purely accidental and therefore, does not rise to the level of a violation of Rule 2110. I also note that since his conviction in 1990, Onyejiaka has rehabilitated himself and has had no subsequent brushes with the law. (Tr. 116.) Based on my review of the totality of the evidence, I find that no further "black mark" on his record is warranted.