

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

TRENT A. JOHNSON
(CRD No. 3187364),

Respondent.

Disciplinary Proceeding
No. 2006004240301

Hearing Officer—Andrew H. Perkins

HEARING PANEL DECISION

September 7, 2007

Respondent violated NASD Conduct Rule 2110 and IM-1000-1 by submitting an inaccurate Form U4. Respondent is suspended from associating with any member firm in any capacity for two years and ordered to pay costs.

Appearances

Dale A. Glanzman, Esq., and Kevin G. Kulling, Esq., Chicago, IL (Rory C. Flynn, NASD Chief Litigation Counsel, Washington, DC, and Mark P. Dauer, New Orleans, LA, Of Counsel) for the Department of Enforcement.

Kevin Frost, Esq., CLARK, JUSTEN & ZUCCHI, LTD, ROCKFORD, IL, for the Respondent.

DECISION

On February 23, 2007, the Department of Enforcement (“Enforcement”) for the Financial Industry Regulatory Authority (“FINRA”)¹ filed a Complaint against Trent A. Johnson (“Johnson”) alleging that in 1999 he violated NASD Conduct Rule 2110 and IM-1000-1 by failing to disclose on a Uniform Application for Securities Industry Registration or Transfer (“Form U4”) the following material facts: (1) a 1992 felony conviction for unlawful delivery of

¹ Effective July 30, 2007, the corporate successor to NASD is FINRA. FINRA’s rules, which include NASD Conduct and Procedural Rules, are available on FINRA’s Internet site at <http://www.finra.org/RulesRegulation/FINRARules/index.htm>.

cannabis; (2) a 1988 misdemeanor conviction for retail theft and attempted retail theft; and (3) a 1994 revocation of his insurance license by the Illinois Department of Insurance based on his failure to timely report the foregoing felony conviction. Johnson filed an Answer to the Complaint on March 23, 2007, in which he admitted the violations and requested a hearing. On June 19, 2007, a hearing was held in Chicago before a hearing panel composed of the Hearing Officer and two current members of the District 8 Committee.²

I. FINDINGS OF FACT

A. Background

Johnson first registered as an Investment Company and Variable Contracts Products Representative (Series 6) in March 1999 through Country Capital Management Company (“Country Capital”), a FINRA member firm.³ At the time of the hearing, Johnson remained registered through Country Capital where he works as an independent contractor selling insurance products.⁴

In January 1988, while Johnson was a student at Rock Valley College, he pled guilty to attempted retail theft, and in December 1992, he pled guilty to retail theft. Both charges were misdemeanors.

In March 1992, shortly after Johnson graduated from Illinois State University, the State of Illinois indicted him on two charges of unlawful delivery of cannabis. The two charges, one a felony and the other a misdemeanor, arose from his sale of a small amount of marijuana to an undercover police officer. In December 1992, Johnson entered into a plea agreement pursuant to

² References to Enforcement’s exhibits are cited as “CX- ___,” and references to the Respondent’s exhibits are cited as “RX- ___”. References to the transcript of the hearing are cited as “Tr. ___.”

³ CX-1, at 2.

⁴ Tr. 21.

which he pled guilty to the felony charge. In return for his guilty plea, the prosecutor agreed to drop the misdemeanor charge. In February 1993, the court accepted the plea agreement and sentenced Johnson to 30 months probation.⁵

In January 1994, the Department of Insurance for the State of Illinois revoked Johnson's insurance producer's license because it found that he had pled guilty to one felony count of unlawful delivery of cannabis and had failed to report the conviction to the Department of Insurance within 30 days after the judgment was entered on that guilty plea.⁶

In or about January 2006, Johnson applied for a Wisconsin insurance license. In connection with that application, he was asked to provide information about why his license had been revoked by the Illinois Department of Insurance in 1994. Johnson then decided to inform his supervisor at Country Capital that he had not disclosed his felony conviction for selling marijuana on his Form U4.⁷ Johnson met with his supervisor on January 19, 2006. Country Capital then notified FINRA of the issue, and FINRA staff opened an investigation into the matter.⁸

Johnson does not have a prior disciplinary history.

B. Johnson's Form U4

In April 1998, Johnson applied for employment as a sales agent with Country Capital.⁹ Country Capital's employment application asked if Johnson had ever been convicted of a felony. Johnson answered "no."¹⁰

⁵ See CX-4, at 1.

⁶ Stips. ¶ 1; CX-5. The final order revoking his insurance producer's license was entered on July 27, 1994.

⁷ CX-6.

⁸ Tr. 14.

⁹ CX-2. (employment application).

¹⁰ *Id.* at 6.

On January 4, 1999, Johnson signed and submitted a Form U4 to register with FINRA as an Investment Company and Variable Contracts Products Representative.¹¹ Johnson answered “no” to question 22A(1) on the Form U4 that asked whether he had ever been convicted of a felony or any misdemeanor involving the wrongful taking of property.¹² Johnson also answered “no” to question 22E(5) that asked whether any state regulatory agency had ever suspended or revoked his registration or license.¹³ Johnson testified that he knew his answers were untruthful when he signed the Form U4 and that he answered untruthfully because he did not want to lose his job.¹⁴ In addition, Johnson testified that he later submitted three updated Forms U4 to Country Capital that contained the same inaccuracies.¹⁵

II. CONCLUSIONS OF LAW

A. Johnson Failed to Disclose Material Information on his Form U4

Conduct Rule 2110 and IM-1000-1 require associated persons to answer the questions of the Form U4 accurately and fully and to observe high standards of commercial honor and just and equitable principles of trade.¹⁶ The accuracy of an applicant’s Form U4 “is critical to the effectiveness” of a self-regulatory organization’s ability “to monitor and determine the fitness of

¹¹ *Id.* at 10-15.

¹² *Id.* at 12.

¹³ *Id.*

¹⁴ Tr. 23-25.

¹⁵ Tr. 24.

¹⁶ IM-1000-1 provides that the filing of registration information that “is incomplete or inaccurate so as to be misleading ... or the failure to correct such filing after notice thereof, may be deemed to be conduct inconsistent with just and equitable principles of trade” in violation of Rule 2110. *See also Department of Enforcement v. Toth*, No. E9A2004001901, 2007 NASD Discip. LEXIS 25, at *23 (N.A.C. July 27, 2007). NASD Rule 0115 extends NASD rule requirements to persons associated with a member.

securities professionals.”¹⁷ In addition, Article V, Section 2(c) of FINRA’s By-Laws requires registered representatives to keep current their registration applications filed with FINRA.

Here, it is undisputed that Johnson provided inaccurate information on his Form U4 when he applied for registration as an Investment Company and Variable Contracts Products Representative in 1999. Johnson falsely answered “no” to the questions that asked if he had been convicted of a felony or a misdemeanor involving the wrongful taking of property and to the question of whether a state regulatory agency had ever revoked his registration or license. The answer to each of these questions should have been “yes,” which Johnson acknowledges. Thus, the Form U4 contained inaccurate information.¹⁸ Moreover, Johnson admits that he knowingly provided inaccurate information on each Form U4 he submitted during his employment with Country Capital, and he repeatedly signed annual compliance questionnaires that failed to disclose his criminal record.¹⁹

Accordingly, the Hearing Panel finds that Johnson violated Conduct Rule 2110 and IM-1000-1 by submitting an inaccurate Form U4 in January 1999.

B. Johnson Acted Willfully and is Subject to Statutory Disqualification

The Complaint alleged that Johnson acted willfully in failing to disclose material information on his Form U4. Johnson did not dispute this allegation, and the facts support this determination.²⁰ Thus, the Panel finds that Johnson did act willfully when he failed to disclose his criminal convictions and the revocation of his insurance license by the Illinois Department of

¹⁷ *Toth*, 2007 NASD Discip. LEXIS 25, at *23 (quoting *Rosario R. Ruggiero*, 52 S.E.C. 725, 728 (1996)).

¹⁸ *Department of Enforcement v. Knight*, No. C10020060, 2004 NASD Discip. LEXIS 5, at *8 (N.A.C. Apr. 27, 2004) (holding that the complainant need only prove that the information was false to establish the violation of providing false information to [FINRA]).

¹⁹ See CX-2, at 17, 24, and 30.

²⁰ See Tr. 57.

Insurance.²¹ The Panel further finds that the omitted information was material. Without question, Country Capital would have found these facts extremely relevant to any employment decision concerning Johnson.²² Johnson is therefore statutorily disqualified from association with any FINRA member pursuant to Section 15(b)(4)(A) of the Securities Exchange Act of 1934 and FINRA By-Laws, Article III, Section 4(f).²³

III. SANCTIONS

The FINRA Sanction Guidelines (“Guidelines”) for filing a false or inaccurate Form U4 provides for fines ranging from \$2,500 to \$50,000 and a suspension in any or all capacities for 5 to 30 business days.²⁴ In egregious cases, such as those involving false, inaccurate, or misleading filings, the Guidelines recommend consideration of a longer suspension (of up to two years) or a bar.²⁵ The Guidelines for submission of an inaccurate Form U4 also provide three considerations in determining the appropriate sanction: 1) whether the information at issue was significant and the nature of that information; 2) whether the respondent’s failure to disclose information

²¹ A finding of willfulness does not require proof that the respondent intended to violate NASD rules. A finding that the respondent intended to commit the act that constitutes the violation is sufficient. *See Jacob Wonsover*, 54 S.E.C. 1, 17-18 & n.36 (1999), *aff’d*, 205 F.3d 408 (D.C. Cir. 2000).

²² *Cf. Toth*, 2007 NASD Discip. LEXIS 25, at *34 (holding that essentially all of the information that is reportable on the Form U4 may be considered to be material).

²³ FINRA By-Laws, Article III, Section 4(f) provides in relevant part:

[a] person is subject to a “disqualification” with respect to ... association with a member, if such person: ... has willfully made or caused to be made in any application ... to become associated with a member of a self-regulatory organization ... any statement which was at the time, and in 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 ... any material fact which is required to be stated therein.

In order for Johnson to seek readmission to FINRA, a firm must sponsor him through the process known as the Membership Continuation Application or the MC-400. *See Toth*, 2007 NASD Discip. LEXIS 25, at *40.

²⁴ FINRA Sanction Guidelines 73 (2007), *available* at <http://www.finra.org/web/groups/enforcement/documents/enforcement/p011038.pdf>.

²⁵ FINRA Sanction Guidelines 74.

resulted in a statutorily disqualified individual associating with a firm; and 3) whether the respondent's misconduct resulted in harm to a registered person, another member firm, or any other person or entity.²⁶

The Hearing Panel concludes that Johnson's misconduct was serious and warrants sanctions in the higher end of the range suggested by the Guidelines. Although Johnson did not cause any direct harm to investors, his firm, or any other registered person, the information was significant. Indeed, pursuant to Article III, Section 4(g), Johnson was statutorily disqualified from associating with any member firm as a result of his criminal convictions. Had Johnson disclosed his convictions, he would not have been eligible to associate with Country Capital and register with FINRA.

In addition, the Hearing Panel considered the "Principal Considerations in Determining Sanctions," which are applicable to all cases.²⁷ The Hearing Panel found the following considerations pertinent to the determination of sanctions in this case. First, the Hearing Panel found aggravating that Johnson repeatedly supplied false information to his firm and FINRA between 1999 and 2005 to conceal his failure to disclose from his firm and FINRA. Johnson testified that he continued to supply inaccurate information because he did not want to risk losing his job.²⁸ Johnson's efforts to conceal his misconduct are relevant in assessing the appropriate remedial sanctions for his misconduct.²⁹ Second, the Hearing Panel found aggravating that Johnson acted intentionally.³⁰ Johnson knew at the time he submitted the first

²⁶ *Id.* at 73.

²⁷ *Id.* at 6-7.

²⁸ *See* Tr. 25-26.

²⁹ *Toth*, 2007 NASD Discip. LEXIS 25, at *39. *See also* Guidelines 7 (Principal Considerations No. 10).

³⁰ Guidelines 7 (Principal Considerations No. 13).

Form U4 that the information he failed to disclose was significant. Further, he was under no misunderstanding regarding his obligation to answer the questions truthfully. On the other hand, the Hearing Panel found somewhat mitigating that Johnson ultimately accepted responsibility for his misconduct and reported it to Country Capital although his decision to come forward may have been precipitated in part by the inquiry from the Wisconsin Department of Insurance.³¹

This is far more than a mere technical violation: “[a] material misrepresentation on a Form U-4 is a serious offense.”³² “Full and accurate disclosure is vital, not only to [FINRA] and other self-regulatory organizations, but also to state regulators and broker-dealers who use the information to determine the fitness of an applicant for registration as a securities professional.”³³ Given the vital importance of this information in general and the fact that Johnson was statutorily disqualified from associating with any member firm due to his criminal convictions, the Hearing Panel found Johnson’s nondisclosure egregious.³⁴ Accordingly, the Hearing Panel determined that the appropriate remedial sanction was a two-year suspension in all capacities for this misconduct. The Hearing Panel believes these sanctions will remediate Johnson’s misconduct.

IV. ORDER

Trent A. Johnson violated NASD Conduct Rule 2110 and IM-1000-1 by willfully failing to provide material information on his Form U4.³⁵ For this violation, Johnson is suspended from

³¹ *Id.* at 6 (Principal Considerations No. 2). The Hearing Panel did not find mitigating that Country Capital suspended Johnson’s ability to sell securities products because he was statutorily disqualified due to his criminal convictions. Thus, he should not have been registered.

³² *See, e.g., Thomas R. Alton*, Exchange Act Release No. 36,058, 1995 SEC LEXIS 1975, at *4 (Aug. 4, 1995).

³³ *Toth*, 2007 NASD Discip. LEXIS 25, at *39-40.

³⁴ *Id.* at *40.

³⁵ The Hearing Panel considered and rejected without discussion all other arguments of the parties.

associating with any member firm in any capacity for two years. The suspension shall begin on November 5, 2007, and end at the close of business on November 4, 2009. In addition, Johnson is ordered to pay costs of \$1,217.36, which includes an administrative fee of \$750 and the cost of the hearing transcript.

Andrew H. Perkins
Hearing Officer
For the Hearing Panel

Copies sent to:

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