

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

VALERIE ELAINE KING
(CRD No. 3086903),

Respondent.

Disciplinary Proceeding
No. 2007010236401

Hearing Panel Decision

Hearing Officer – SNB

April 27, 2009

For willfully failing to amend her Form U4 to reflect four civil judgments, in violation of Rule 2110 and IM-1000-1, and failing to timely and fully respond to FINRA requests for information, in violation of Rules 8210 and 2110, Respondent shall be suspended, in all capacities, for two concurrent two-year terms, and fined \$2,500 for each of the two charges, payable upon re-entry into the industry.

Appearances

UnBo Chung, Esq., Chicago, IL, appeared on behalf of the Department of Enforcement.

Valerie Elaine King appeared on her own behalf.

DECISION

I. Procedural History

On May 12, 2008, the Department of Enforcement (“Enforcement”) filed a two-count Complaint against Respondent Valerie Elaine King (“Respondent”). Count one alleges that Respondent willfully failed to amend her Form U4 to reflect four civil judgments totaling approximately \$2,400. Count two alleges that Respondent failed to respond to two Rule 8210 requests for information regarding these judgments.

Respondent filed an Answer denying these charges and requesting a hearing.

Prior to the hearing, Respondent requested that the Hearing Panel decide the case on the papers in lieu of a hearing. The Hearing Officer granted the request, and the parties submitted sworn statements of fact from their witnesses, which served as their direct testimony. The case was decided on the papers by a Hearing Panel composed of a Hearing Officer and two members of the District 8 Committee.¹

II. Facts

A. Respondent

Respondent was first registered with FINRA in 2000. From June 2001 through August 2007, Respondent was registered as an investment company products and variable contracts representative and principal with PFS Investments Inc. (“PFS”). CX-1.

B. Form U4 Disclosures

Respondent was subject to four civil judgments between April 2003 and February 2007. Specifically:

- On April 1, 2003, National Cash Advance obtained a \$982 civil judgment against Respondent.
- On August 24, 2006, Pay Day Loan Store obtained a \$159 civil judgment against Respondent.
- Also on August 24, 2006, the City of Milwaukee obtained a \$777 civil judgment against Respondent.

¹ References to the declarations of the parties are designated as “Decl.____”, with the appropriate paragraph number. References to the exhibits provided by Enforcement are designated as “CX-____.” References to Respondent’s exhibits are designated as “RX-____.” CX-1-14 and RX-1-4 were admitted into the record without objection.

- On February 19, 2007, the City of Milwaukee obtained a \$470 civil judgment against Respondent.

CX-2; Walker Decl. 9.

During the time when these judgments were pending, Respondent's Form U4 incorrectly reflected a "No" answer to a question which asked, "Do you have any unsatisfied judgments or liens against you?" CX-2. Respondent also failed to disclose these judgments on PFS compliance certifications on October 30, 2005, and December 1, 2006. CX-9-10.

Respondent belatedly disclosed these judgments to PFS in May 2007, after PFS received a garnishment order in connection with one of the judgments and raised the issue. Walker Decl. 2-9. In June 2007, Respondent filed an amended Form U4 disclosing the judgments. Walker Decl. 10, King Decl. 2.

In late August 2007, PFS terminated Respondent for "failing to timely respond to the firm's request for information regarding a possible U4 disclosable event," apparently relating to a bankruptcy filing. Downing Decl. 2, 5-7, King Decl. 8, 11.

C. Rule 8210 Requests

Following PFS's disclosure of Respondent's termination, FINRA Staff ("Staff") initiated an investigation. In connection with the investigation, Staff requested and received Respondent's bankruptcy filing from PFS, which disclosed the four judgments at issue. On September 21, 2007, Staff issued an initial Rule 8210 request to Respondent, requesting information relating to her failure to timely disclose the judgments. Downing Decl. 13-16; CX-11. On October 16, Respondent called Staff to discuss the request. Downing Decl. 14. Enforcement claimed that Respondent promised to provide the

information requested. Id. Respondent claimed that Staff told her that the response would be her opportunity to tell her side, however, she did not feel the need to “explain anything” because Staff already had the pertinent records. King Decl. 6. Respondent claimed that Staff never told her that she had to put her response in writing. Id. When Respondent failed to respond in writing to its request, Staff issued a second request for the same information on October 30, 2007. Downing Decl. 15; CX-12. This request stated that Respondent’s failure to respond may result in disciplinary action. CX-12. Because Respondent did not respond as requested, Staff filed a Complaint. Chung Decl. 2. After receiving the Complaint, Respondent attached her response to the two FINRA requests for information to her Answer. Chung Decl. 4-5; CX-13-14.

III. Violations

A. Failure to Disclose Judgments on a Form U4

Rule 2110 and IM-1000-1 require associated persons to answer the questions on the Form U4 accurately and fully. It is well established that 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 securities professionals.” See, e.g., Dep’t of Enforcement v. Toth, No. E9A2004001901, 2007 NASD Discip. LEXIS 25, at *23 (NAC July 27, 2007), aff’d., Exch. Act. Rel. No. 58074, 2008 SEC Lexis 1520 (July 1, 2008), appeal pending, No. 08-3289 (3d Cir., filed July 7, 2008).

Moreover, Article V, Section 2(c) of the FINRA By-Laws requires that associated persons keep their Forms U4 “current at all times,” and that amendments to Forms U4 be filed “not later than 30 days after learning of the facts or circumstances giving rise to the amendment.” Failing to promptly amend a Form U4 is a violation of Rule 2110. See

Toth, 2007 NASD Discip. LEXIS 25. See also, FINRA's Membership, Registration and Qualification Requirements, IM-1000-1 (providing that an incomplete or inaccurate filing of information with FINRA by a registered representative "may be deemed to be conduct inconsistent with just and equitable principles of trade").

Forms U4 require the disclosure of unsatisfied judgments. CX-8 p. 3. There is no dispute that, over a four-year period, Respondent failed to amend her Form U4 to disclose four judgments. Respondent's failure to disclose the judgments was a material omission. As FINRA recently reaffirmed, "[b]ecause of the importance that the industry places on full and accurate disclosure of information required by the Form U4, we presume that essentially all of the information that is reportable on the Form U4 is material." Dep't of Enforcement v. Mathis, No. C10040052, 2008 FINRA Discip. LEXIS 49, at *24 (NAC Dec. 12, 2008). Moreover, an employer would likely want to know that Respondent was experiencing such financial difficulty that she could not repay small loans underlying the judgments as they came due. In fact, PFS's certification required Respondent to answer substantially the same questions, indicating that the information was material to that firm. CX-9-10. Had Respondent responded accurately, the firm might have elected to supervise her more closely or take other action. See, Dep't of Enforcement v. Perez, No. C10950077, 1996 NASD Discip. LEXIS 51, at **6-7 (NBCC Nov. 12, 1996).

Enforcement alleges that Respondent's failure to disclose her judgments was willful. A finding of willfulness has serious consequences. Section 15(b)(4)(A) of the Securities Exchange Act of 1934 states that a person who files an application for association with a member of a self-regulatory organization and who "willfully" fails to

disclose “any material fact which is required to be stated” in that application, is statutorily disqualified from participating in the securities industry.

Article III, Section 4 of FINRA’s By-Laws, as amended on July 30, 2007, gives effect to this by referring to Section 3(a)(39)(F) of the Exchange Act, which provides that a person is subject to “statutory disqualification” with respect to association with a member firm if such person “has willfully made or caused to be made...in any report required to be filed with a self-regulatory organization, report required 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...report...any material fact which is required to be stated therein.”²

To support a finding of willfulness, the Hearing Panel need not find that Respondent intended to violate a specific rule or law; rather, the Hearing Panel need only find that Respondent “intended to commit the act that constitutes the violation.” Dep’t of Enforcement v. Knight, No. C10020060, 2004 NASD Discip. LEXIS 5, at **9-10 (NAC April 27, 2004).

Here, Respondent knew that she needed to update her Form U4 to disclose judgments; she had filed a similar update in the past. CX-3. Respondent does not dispute this. Moreover, she filed two false annual certifications with PFS that failed to disclose these judgments. Accordingly, the Panel finds that Respondent’s failure to amend her Form U4 was willful.

B. Rule 8210 Requests for Information

Rule 8210 authorizes FINRA to require any person subject to its jurisdiction to provide information and testimony related to any matter under investigation. The Rule serves as a key element in FINRA's oversight function and allows FINRA to carry out its regulatory functions without subpoena power. See, e.g., Dep't of Enforcement v. Valentino, No. FPI010004, 2003 NASD Discip. LEXIS 15, at *12 (NAC May 21, 2003), aff'd, 2004 SEC LEXIS 330 (Feb. 13, 2004) ("It is well established that because [FINRA] lacks subpoena power over its members, a failure to provide information fully and promptly undermines [FINRA]'s ability to carry out its regulatory mandate.") (citation omitted); Joseph G. Chiulli, Exch. Act Rel. No. 42,359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for FINRA to effectively conduct its investigations, and emphasizing that FINRA members and associated persons must fully cooperate with requests for information). When an individual fails to provide requested documents and information, FINRA's ability to perform its regulatory responsibilities is subverted. Joseph P. Hannan, Exch. Act Rel. No. 40,438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998).

Here, Respondent is charged with failing to respond to Staff's September 21 and October 30, 2007, requests for information and documents. Respondent acknowledged that she did not provide written responses to these requests. She reasoned that it was not necessary for her to respond because Staff already had the information. She also claimed that when she spoke with Staff, she was never told that the responses had to be in writing. King Decl. 6. However, the requests clearly required a "signed statement." CX-11-12.

² Former Article III, Section 4(f) of FINRA's By-Laws had essentially the same language, but did not refer to the Exchange Act definition.

Respondent's attempt to refer the Staff to her Form U4 disclosure regarding the judgments was insufficient. It is well settled that respondents cannot dictate the terms and conditions under which they will furnish information, nor can they take it upon themselves to determine whether information requested is material to a FINRA investigation of their conduct. Hannan, 1998 SEC LEXIS 1955, at *11 ("a [FINRA] member may not second guess or impose conditions on [FINRA]'s request for information"). Moreover, a belief that FINRA does not need the information provides no excuse for a failure to provide it. Dennis A. Pearson, Jr., Exch. Act Rel. No. 54,913, 2006 SEC LEXIS 2871 (Dec. 11, 2006) (citation omitted).

After the Complaint was filed, Respondent responded to the request. However, "[R]ecipients of requests under Rule 8210 must promptly respond to the requests or explain why they cannot." Charles C. Fawcett, Exch. Act Rel. No. 56,770, 2007 SEC LEXIS 2598, at *18 (Nov. 8, 2007). Staff should not have to bring a disciplinary proceeding to obtain responses to its requests for information. Dep't of Enforcement v. Steinhart, No. FPI020002, 2003 NASD Discip. LEXIS 23, at *13 (NAC Aug. 11, 2003).

Accordingly, the Panel finds that Respondent failed to respond to requests for documents and information, in violation of Rules 8210 and 2110.³

IV. Sanctions

For failing to file amendments to Forms U4, the FINRA Sanction Guidelines ("Guidelines") recommend a fine ranging from \$2,500 to \$50,000, as well as the consideration of a 5 to 30 business-day suspension in all capacities. Guidelines, at 73 (2007 ed.). In egregious cases, such as those involving repeated misconduct, the

Guidelines suggest a longer suspension of up to two years, or a bar. Id. at p. 74.

Enforcement requests a bar.

The Guidelines' principal considerations for this violation include: the nature and significance of the information at issue, and whether the failure resulted in a statutorily disqualified individual becoming or remaining associated with a firm.

While the judgments were material, they did not statutorily disqualify Respondent,⁴ and her failure to disclose them did not cause injury to her firm, customers, or other parties. Moreover, Respondent acknowledged the judgments and provided information to her firm when confronted.

However, the Panel also considered several circumstances that it considered aggravating factors: (1) Respondent was aware of her obligation to disclose judgments, as demonstrated by an earlier disclosure; (2) her misconduct spanned four years and involved four separate judgments; and, (3) Respondent attempted to conceal the judgments by providing untrue answers in her certifications to PFS in 2005 and 2006. Based upon these aggravating factors, the Panel concluded that Respondent's misconduct was egregious and warrants a two-year suspension, in all capacities, and a \$2,500 fine, taking into account Respondent's limited financial resources as indicated by her difficulty in repaying the loans that were the subject of her undisclosed judgments.

With respect to the Rule 8210 violation, the Guidelines recommend a fine ranging from \$25,000 to \$50,000 and a bar where a respondent fails to respond in any manner to a request for information. Guidelines, at 35. Where mitigation exists, or the person did

³ A violation of Rule 8210 is also a violation of Rule 2110. Dep't of Enforcement v. Baxter, No. C07990016, 2000 NASD Discip. LEXIS 3, at *25 (NAC Apr. 19, 2000).

not provide a complete response, the Guidelines suggest a fine of \$10,000 to \$25,000 and a suspension of up to two years in all capacities. Id. The Guidelines also suggest consideration of the nature of the information requested, whether it was provided, the number of requests made, the time respondent took to respond, and the degree of regulatory pressure required to obtain a response. Id. Here, although the individual judgments were small in amount, an employer would likely want to know that Respondent was experiencing such financial difficulty that she was unable to repay the loans underlying the judgments as they came due. Respondent called Staff after receiving the first request and suggested that a review of her bankruptcy filing would provide information as to the four judgments. However, she did not provide the requested response until after she received a Complaint. Nonetheless, it cannot be said that she did not respond *in any manner*, which would have dictated a bar. After careful consideration of these factors, the Panel finds that the appropriate remedial sanction in this case is a concurrent suspension of two years, in all capacities, and a \$2,500 fine.⁵

V. Conclusion

For willfully failing to amend her Form U4 to reflect four civil judgments, in violation of Rule 2110 and IM-1000-1, and failing to timely and fully respond to FINRA requests for information, in violation of Rules 8210 and 2110, Respondent shall be suspended, in all capacities, for two concurrent two-year terms, and fined \$2,500 for each of the two violations, for a total of \$5,000.

⁴ As noted above, however, because the Panel finds that Respondent's Form U4 violation was willful, she is now subject to statutory disqualification.

⁵ 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.

These sanctions shall become effective on a date set by FINRA, but not earlier than 30 days after this decision becomes the final disciplinary action of the Association, except that if this decision becomes the final disciplinary action of the Association the suspension shall become effective on Monday, June 15, 2009, and end at the close of business on Tuesday, June 14, 2011. The fine and shall become due and payable when Respondent returns to the industry.

HEARING PANEL

By: Sara Nelson Bloom
Hearing Officer

Copies to:

Valerie Elaine King (*via overnight courier, electronic and first-class mail*)
UnBo Chung, Esq. (*via electronic and first-class mail*)
Mark P. Dauer, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)