FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. RICHARD A. NEATON (CRD No. 2585328), Respondent.	Disciplinary Proceeding No. 2007009082902 **Hearing Panel Decision** Hearing Officer – Sara Nelson Bloom June 5, 2009

For willfully failing to disclose on his Form U4 two suspensions and a revocation of his license to practice law, in violation of Rule 2110 and IM-1000-1, Respondent is suspended from associating with any member firm in any capacity for one year and fined $5,000. Respondent is also assessed costs.

Appearances

Mark P. Dauer, Esq., New Orleans, LA, appeared on behalf of the Department of Enforcement.

Richard A. Neaton appeared on his own behalf.

DECISION

I. Procedural History

On October 8, 2008, the Department of Enforcement ("Enforcement") filed a one-count complaint against Respondent Richard A. Neaton ("Respondent") alleging that Respondent willfully failed to amend his Form U4 to reflect disciplinary actions by the State Bar of Michigan ("State Bar"), including two suspensions and a bar, and that he also willfully failed to make required disclosures in two Forms U4 that he completed in connection with new employment, in violation of Rule 2110 and IM-1000-1. Respondent filed an answer denying these charges and requesting a hearing. The hearing was held on

February 19, 2009, before a hearing panel composed of a Hearing Officer, a current member of the District 7 Committee, and a current member of the District 6 Committee.[1]

II. Respondent

In March 1995, Respondent became registered with a FINRA member firm as an Investment Company and Variable Contracts Products Representative. Stip. 2. In October 1995, he became registered in the same capacity with Securian Financial Services ("Securian").[2] Stip. 3. Thereafter, in August 1998, he became registered with Securian as a Corporate Securities Limited Representative. Id. In April 2006, he became registered with Mutual Service Corporation ("Mutual"). Mutual terminated Respondent's employment on May 21, 2008. Respondent has not been associated with any member firm since that time. Stip. 4.

III. Facts

Respondent does not dispute that, while he was registered, he was the subject of three disciplinary actions by the State Bar: a 1995 action resulting in a three-year suspension; a 1996 action resulting in a four-year suspension; and a 2001 revocation of his license to practice law. Over an 11-year span, Respondent failed to disclose these actions on his Forms U4. Each of these actions, as well as Respondent's explanation as to why he failed to disclose them on his Forms U4, is discussed below.

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[1] References to the testimony of the hearing are designated as "Tr.___," with the appropriate page number. References to the exhibits provided by Enforcement are designated as "CX-___." References to Respondent's exhibits are designated as "RX-___." References to Stipulations are designated as "Stip. ___," with the appropriate page number and references. CX-1-10 and RX- 1-3 were admitted into the record without objection.

[2] At that time, the firm was known as MIMLIC Sales Corporation and Ascend Financial Services, Inc. CX-1, p. 1; Tr. 49.

A. Respondent Failed to Disclose his 1995 Suspension from Practicing Law in an Initial Form U4.

On June 5, 1995, the State Bar issued a Notice of Suspension and Restitution against Respondent in Case No. 93-49-GA, ordering a three-year suspension and $11,000 in restitution ("the 1995 Suspension"), and stating in part:

> Respondent was retained in a personal injury matter. He pled no contest to allegations that he failed to provide the insurance carrier with documentation of his client's injuries and neglected to communicate with the carrier; failed to take action on his client's behalf; failed to keep his client reasonably informed; failed to inform his client that he had allowed the statute of limitations to expire on her claims; after his client filed a Request for Investigation, falsely advised her that he had settled her claims for $15,000; delivered to his client a draft from his personal account in the sum of $11,000, and falsely represented that this constituted her share of the settlement; made other numerous false representations to his client; and made numerous false representations in his answer to the Request for Investigation.
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> At the time respondent was served with the above client's Request for Investigation, respondent had another client in an unrelated matter for whom he was entrusted with an $11,0000 draft, made payable to that client. He pled no contest to allegations that, without his clients' knowledge or consent, he affixed his client's signature to the draft, failed to deposit the funds into a trust account; deposited the funds into his personal account, constituting commingling; drew against the funds a draft in the amount of $11,000, made payable to the first client, constituting misappropriation; failed to pay the client the funds to which he was entitled; failed to advise his client that he commingled and misappropriated the funds; and made numerous false statements to his client concerning the funds.

Stip. 5-7; CX-6 p. 4.

Shortly after the suspension, Respondent interviewed with Dennis Harrelson ("Harrelson") for a job with member firm Securian. During this interview, Harrelson gave Respondent a package to complete, and indicated that Securian would do a thorough background check. Tr. 45, 47-48, 106. Following this, they had a second meeting. Respondent and Harrelson differ in their accounts of what was said at this meeting.

Respondent testified that he told Harrelson that he "had relinquished [his license to practice law] *voluntarily*, and that [he] also just recently settled a client complaint, and [had] another complaint pending…from the Grievance Commission of the State Bar… (italics added)" Tr. 108. In response to Harrelson's question as to whether the pending complaint was anything serious, Respondent told him that he thought there was nothing to it, but he would keep him informed. Tr. 109-10.

Harrelson acknowledged that Respondent mentioned a dispute with a customer involving his law practice in Michigan, but that Respondent never told him that the matter involved the State Bar. Tr. 24-25, 77. Consistent with Respondent's testimony, Harrelson said that Respondent told him that the pending complaint was not serious, and that Respondent would inform him when it was resolved. Tr. 24, 75. Harrelson testified that, had Respondent disclosed the true nature of Respondent's disciplinary proceedings with the State Bar, he never would have been hired by Securian. Tr. 53.

The Panel found that, even based upon Respondent's account, his disclosure minimized and obfuscated the serious nature of the 1995 Suspension. For example, Respondent's statement that he had voluntarily relinquished his license to practice law was misleading given the fact that the State Bar had recently suspended him for three years for misconduct that included false statements and misappropriation of customer funds. CX-6. Moreover, the Panel found that Respondent was untruthful in his characterization of the pending action as "not serious"; the State Bar alleged he made false statements to his client, falsified expert reports, and used a fictional notary for affidavits that he submitted to a court. Id.

Respondent also misled FINRA. In his Form U4 application to join Securian he answered "No" to two questions that called for "Yes" answers in view of the suspension by the State Bar. Respondent answered "No" to question 22E(1), which asked "has any other Federal regulatory agency or any state regulatory agency…ever: (2) found you to have made a false statement or omission or been dishonest, unfair or unethical?" He also answered "No" to question 22E(6), which asked, "has any other Federal regulatory agency or any state regulatory agency…ever (6) revoked or suspended your license as an attorney, accountant or federal contractor?" CX-1 p 3.

B. Respondent Failed to Update his Form U4 to Disclose his 1996 Suspension from Practicing Law

On August 26, 1996, the State Bar issued a Notice of Suspension and Restitution against Respondent in Case No. 95-118-GA, ordering a four-year suspension and $5,996.50 in restitution (the "1996 Suspension"), and stating in part:

> Respondent was retained to oppose his client's extradition from England to Virginia on a charge of capital murder. Respondent represented the client at trial, in two appeals, and in a federal habeas corpus proceeding. The panel found, by a preponderance of the evidence, that respondent neglected the habeas corpus matter; made false representations to his client; affixed, or caused to be affixed, the signatures of two proposed expert witnesses on two affidavits without the witnesses' knowledge or consent; improperly affixed his signature as a notary on one affidavit; affixed, or caused to be affixed, a fictitious name as notary on the other affidavit; made a false statement in his answer to the Request for Investigation; and refused to honor his client's request that his entire client file be turned over, knowing that his delay would deprive this client of a prompt habeas corpus hearing.
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> Stip. 8; CX-6 p. 5.

Respondent claimed that in early 1997, several months after the Notice of the 1996 Suspension, he called Harrelson and informed him of it. Tr. 112. Harrelson disputed this, claiming that Respondent never did so. Tr. 30-31.

The Panel found that Harrelson's testimony was credible and that Respondent did not disclose the nature of the 1996 Suspension. In reaching this finding, the Panel considered that Respondent's full disclosure of a pending State Bar action for making false statements to a client and falsifying affidavits would have raised serious red flags that would have caused any employer to refrain from employing Respondent, or, at a minimum, make a further inquiry. The Panel also considered that, at the hearing, Respondent minimized the significance of the 1996 Suspension proceeding, admitting that he told Harrelson "I don't think there's anything to it…it's by a guy I defended for murder…the ingrate." Tr. 110.

In any case, there is no dispute that Respondent failed to amend his Form U4 within 30 days following the 1996 Suspension, maintaining the same incorrect "No" responses to questions 22E(1) and 22E(6).

C. Respondent Failed to Update his Form U4 to Disclose the 2001 Revocation of his License to Practice Law

On February 2, 2001, the State Bar issued a Notice in Case No. 00-78-GA, revoking Respondent's license to practice law in Michigan, (the "2001 Revocation"), and stating in part:

> Respondent failed to return trust funds to the rightful beneficiaries; commingled trust funds with his own; made misrepresentations as to his investment of the trust funds; misappropriated funds held in trust as a fiduciary; failed to file a final accounting or deliver funds as ordered by a circuit court in the state of Maryland; and failed to make any substantial payments toward his satisfaction of the consent judgment…
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> CX-6 p. 6.

Again, Respondent failed to amend his Form U4 within 30 days following the 2001 Revocation, maintaining incorrect "No" answers to substantially the same questions

as before, which were renumbered as questions 23E(1) and 23F, respectively, in the Form U4 that was applicable at the time. Question 23F was slightly reworded to ask "Has your authorization to act as an attorney…ever been revoked or suspended?" CX-9. Respondent admits that he did not tell his employer.

Several years later, Respondent provided an incorrect "No" answer to question 4 of Securian's 2004 Compliance Questionnaire: "Are you now or while at the firm have you been involved in any type of regulatory inquiry or investigation, has the SEC, the NASD, any exchange or state regulatory body sanctioned you?" CX-7.

Again, in 2006 when Respondent changed firms, he filed a new Form U4, with false "No" answers to substantially the same questions as before, which were renumbered 14D(1)(a) and 14F, respectively. Question 14F was slightly reworded to ask: "Have you ever had an authorization to act as an attorney…that was revoked or suspended?" Stip. 10-12; Tr. 119; CX-10 p. 31.

Respondent finally disclosed the three State Bar actions in a Form U4 amendment filed on November 2, 2007, after the initiation of FINRA's investigation in this matter. CX-3.

IV. Violation – Respondent's Failure to Disclose his 1995 and 1996 Suspensions and 2001 Revocation of his License to Practice Law

Rule 2110 and IM-1000-1 require associated persons to answer the questions on Forms 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), petition for review denied, 2009 U.S. App. LEXIS 7226 (3d Cir. Apr. 6, 2009).

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 file prompt amendments to 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 suspensions or revocations of authority to act as an attorney and regulatory findings of dishonest or unethical conduct. CX-8-10. There is no dispute that, over an 11-year span, Respondent failed to amend his Form U4 to make these disclosures and omitted the required disclosures on two Forms U4 that he completed in connection with new employment.

In his defense, Respondent offered several arguments. First, he argued that the State Bar actions were not reportable because he did not renew his law license beyond November 30, 1993, and therefore the 1995, 1996, and 2001 State Bar disciplinary actions did not suspend or revoke his authority to act as an attorney. Answer para. 26. However, the Panel did not find this argument reasonable. It is axiomatic that State Bar sanctions are intended to be effective regardless of the current technical status of a license to practice law. Otherwise, a licensee might avoid sanctions by, for example,

failing to pay dues until disciplinary action is taken, and then paying the dues immediately after the action becomes final.

Second, Respondent argued that the question "has any other Federal regulatory agency or any state regulatory agency…ever: (1) found you to have made a false statement or omission or been dishonest, unfair or unethical?" did not include regulators of attorneys because attorney misconduct was included in another Form U4 question. CX-1 p. 3. The Panel rejected this argument; each question must be read and answered independently absent a specific instruction to the contrary. Moreover, the two questions are not redundant – the first asks whether a regulator has found the filer to have made a false statement, and the second asks whether the filer has been suspended or barred by a regulator. Thus, the answers to these questions may be different. For example, a person who is found to have made a false statement but is not suspended or barred would answer "yes" to the first question, and "no" to the second. On the other hand, if a person is suspended or barred for conduct not involving a false statement, the answer would be "no" to the first question and "yes" to the second. [3]

Third, Respondent argued that he orally disclosed the State Bar disciplinary actions to his employers at Securian, and he was not asked to correct his false Form U4 disclosures. However, the Panel found that Respondent's cursory reference to a dispute with a client in 1995 was, at best, grossly inadequate. Moreover, Respondent admitted that he made no disclosure to Securian of the State Bar's revocation of his license in

[3] Respondent also suggested that the term "other" modified the term "state regulatory agency" so as to exclude disclosure of the State Bar, which was covered in another question. However, the Panel found that the term "other" modifies only "Federal regulatory agency" because two Federal regulatory agencies, the SEC and the CFTC, are referenced in the immediately preceding question. In addition, the phrase "or any" precedes the reference to state regulatory agency, indicating that is to be read separately from the reference to "other federal regulatory agency."

2001, and he admits that he made no disclosure to Mutual when he became registered there in 2006. Tr. 114, 134-35. In any event, such disclosures would not have excused Respondent's obligation to file an accurate and complete Form U4. The responsibility for maintaining the accuracy of a Form U4 lies with each individual registered representative. Dep't of Enforcement v. Mathis, No. C10040052, 2008 FINRA Discip. LEXIS 49, at **13-14 (NAC Dec. 12, 2008); Dep't of Enforcement v. John D. Kaweske, Complaint No. C07040042, 2007 NASD Discip. LEXIS 5, at *34 (NAC Feb. 12, 2007), citing Rosario R. Ruggiero, 52 S.E.C. 725, 728 (1996).

Fourth, Respondent testified that his "No" answers were simply intended to affirm prior "No" answers on Forms U4 predating the State Bar disciplinary action. Tr. 144-50. The Panel rejected this clearly erroneous notion that Forms U4 may be answered without regard to the substantive questions as long as the answers were truthful at some point in history. When pressed at the hearing, Respondent conceded that he was wrong, but then attempted to deflect blame by stating that he expected his employer to advise him how to answer the questions. Tr. 149-50. As noted above, the Panel found that no such disclosure was made. However, even assuming Respondent fully disclosed the State Bar actions to Securian, there is no contention that he did so with Mutual. Moreover, the responsibility to accurately complete the Form U4 was Respondent's. Mathis, 2008 FINRA Discip. LEXIS 49, at **13-14.

Accordingly, the Panel finds that Respondent violated Rule 2110 and IM-1000-1 by failing to disclose the 1995 and 1996 Suspensions and the 2001 Revocation from practicing law in the State of Michigan on his Forms U4.

V. Respondent Acted Willfully and is Subject to Statutory Disqualification

Enforcement alleges that Respondent's failure to make required Form U4 disclosures 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, …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."[4]

Respondent argued that he disclosed his disciplinary history to Harrelson before he was hired, showing that he was not trying to hide it. Tr. 162-63, 165-66. He also claimed that when he joined Mutual in 2006, he reasoned, "they didn't make an issue over the first two, why is this any different? …I had really forgotten what was on any of the forms and …it wasn't important to me at the time." Tr. 114.

[4] 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.

However, 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) (holding that the complainant need only prove that the information was false to establish the violation of providing false information to FINRA).

Here, the questions were clear and called for Respondent to disclose the State Bar actions that suspended and ultimately barred him from practicing law. The Panel finds that the omitted information was material. The State Bar actions, which involved dishonesty and misuse of client funds, would have been extremely relevant to an employment decision concerning Respondent. Moreover, the actions did not slip Respondent's mind. He admittedly raised them at his second interview with Harrelson, which was just months after the 1995 Suspension and during the pendency of the 1996 Suspension. Indeed, the Panel found that Respondent's gross mischaracterizations that he voluntarily relinquished his law license and that the actions were not serious, also provided clear evidence of willfulness.

Accordingly, the Panel finds that Respondent willfully failed to disclose the 1995 and 1996 Suspensions and the 2001 Revocation from practicing law in the State of Michigan on his Forms U4.

VI. Sanctions

For filing late, false, misleading, and inaccurate 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. In egregious

cases, such as those involving repeated misconduct, the Guidelines suggest a longer suspension of up to two years, or a bar. Guidelines, at 73-74 (2007 ed.). Enforcement requests a one-year suspension and a $5,000 fine. Tr. 160. Respondent requests a sanction within the Guidelines for non-egregious violations, noting that he has limited financial resources and that his house is in foreclosure, which would make him unable to pay monetary sanctions. Tr. 126.

The Guidelines suggest three principal considerations: (1) the nature and significance of information at issue; (2) whether the omission resulted in a statutorily disqualified person becoming associated with a firm; and (3) whether the misconduct harmed a registered person, a firm, or anyone else.

In this case, although the undisclosed information did not result in harm to customers or his firm, and did not involve a statutorily disqualifying event,[5] it involved repeated and serious misconduct including the misuse of client funds and dishonesty, information that would have been highly material to any employer or prospective employer.

Moreover, the Panel considered several other circumstances to be aggravating. Respondent's misconduct was willful, spanned 11 years, and involved both a failure to update and two false initial Forms U4. Moreover, Respondent did not acknowledge his misconduct prior to detection, and attempted to conceal the State Bar actions, not only through his false Forms U4, but also through his untrue answers to Securian's Annual Certification and mischaracterizations to his employer.

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

After careful consideration of these factors, the Panel finds that the appropriate remedial sanction in this case is a one-year suspension in all capacities, and a fine of $5,000.

VII. Conclusion

Respondent willfully failed to amend his Form U4 to disclose two suspensions and a revocation of his license to practice law for misconduct involving dishonesty and misuse of client funds, in violation of Rule 2110 and IM-1000-1.[6] For this violation, Respondent is suspended from associating with any member firm in any capacity for one year and fined $5,000. Respondent is also assessed costs in the total amount of $1861.30, consisting of a $750 administrative fee and an $1111.30 transcript fee. The fine and costs shall become due and payable when Respondent returns to the industry.

These sanctions shall become effective on a date set by FINRA, but not earlier than 30 days after this decision becomes FINRA's final disciplinary action except that if this decision becomes FINRA's final disciplinary action, the suspension shall become effective on Monday, August 3, 2009, and end at the close of business on Monday, August 2, 2010.

HEARING PANEL

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By: Sara Nelson Bloom
Hearing Officer

Copies to:
Richard A. Neaton *(via first-class mail & overnight courier)*
Mark P. Dauer, Esq. *(via first-class mail & electronic mail)*
David R. Sonnenberg, Esq. *(via electronic mail)*

[6] The Hearing Panel considered and rejected without discussion all other arguments of the parties.