

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

WARREN WILLIAM WALL
(CRD No.1075703),

Respondent.

Disciplinary Proceeding
No. 2007009472201

Hearing Officer – MAD

HEARING PANEL DECISION

December 30, 2009

Respondent violated Conduct Rule 2110 and IM-1000-1 by filing a Form U5 that misrepresented and omitted material facts concerning the termination of a registered representative. For this violation, the Respondent is fined \$15,000, suspended from associating in any capacity with any member firm for three months, suspended from associating in any principal capacity with any member firm for nine months, and required to re-qualify by examination before he re-enters the securities industry in any principal capacity.

Appearances

For Complainant: Michael J. Newman, Esq., and Noel C. Downey, Esq., Woodbridge, NJ, FINRA Department of Enforcement.

For Respondent: Jeffrey B. Kelvin, Esq., Parkland, FL.

DECISION

I. INTRODUCTION

On April 22, 2009, the Department of Enforcement (“Enforcement”) filed a Complaint with the Office of Hearing Officers alleging that Respondent Warren William Wall (“Wall”), in his capacity as president of Wall and Company Securities, Inc. (“Wall and Company”), violated Conduct Rule 2110 and IM-1000-1 by filing a Uniform Termination Notice for Securities Industry Registration (“Form U5”) that misrepresented

and omitted material facts concerning the termination of registered representative Guy W. Gane (“Gane”).¹ Enforcement further alleged that Wall aggravated the violation by continuing to conceal from FINRA staff the details concerning Gane’s possible misconduct after his termination from Wall and Company.

On May 20, 2009, Wall filed an Answer denying the charges and requesting a hearing. The hearing was held on October 6 and 7, 2009, in Woodbridge, New Jersey, before a Hearing Panel composed of the Hearing Officer, a current member of FINRA’s District 9 Committee, and a current member of FINRA’s District 4 Committee. Enforcement called five witnesses: Amy Mosho (“Mosho”), FINRA Principal Examiner; Robert McCarthy (“McCarthy”), FINRA exam manager; Ronald Burkhart (“Burkhart”), a former registered principal with Wall and Company; Mario A. DiTrapani (“DiTrapani”), FINRA Vice-President of Operations, Registration and Disclosure Division; and Respondent Wall. Wall testified and called two additional witnesses: Joseph Cascarelli, Esq. (“Cascarelli”), an attorney to whom Wall spoke prior to the completion of the Form U5; and Andrea Robertson (“Robertson”), an assistant at Wall and Company who completed the Form U5.²

¹ As of July 30, 2007, NASD and New York Stock Exchange Regulation, Inc. consolidated their member regulation functions and began operating under a new corporate name, the Financial Industry Regulatory Authority (“FINRA”). References in this decision to FINRA include, where appropriate, NASD. Initially, FINRA adopted NASD’s rules and certain NYSE rules, but it is in the process of establishing a consolidated FINRA rulebook. To that end, on December 15, 2008, certain consolidated FINRA rules became effective, replacing parallel NASD and/or NYSE rules, and in some cases, the prior rules were re-numbered and/or revised. *See* Regulatory Notice No. 08-57, FINRA Notices to Members, 2008 FINRA LEXIS 50 (Oct. 2008). This Decision refers to and relies on the NASD rules in the Complaint that were in effect at the time of the Respondent’s alleged misconduct.

² In this decision, “Tr.” refers to the transcript of the hearing; “CX” to Enforcement’s exhibits; “RX” to Respondent’s exhibits.

II. FINDINGS OF FACT

A. The Respondent

Wall first registered with FINRA as a General Securities Representative in December 1982.³ He was the owner and president of Wall and Company from March 1996 until he sold the company in December 2008.⁴ At Wall and Company, he was registered as a General Securities Representative and a General Securities Principal, as well as several other capacities.⁵ Wall is currently registered in the same capacities at Ridgeway and Conger, Inc.⁶

B. Background

In April 2006, Wall entered into an agreement to sell his firm to Watermark Financial Services Group, Inc. (“Watermark Financial”), a company controlled by Gane, for \$25,000.⁷ Pursuant to the agreement, Watermark Financial would purchase the corporate shell of Wall and Company.⁸ Watermark Financial filed the Application for Approval of Change in Ownership, Control or Business Operations pursuant to Rule 1017 (“1017 application”).⁹ Thereafter, Gane and the other representatives from Watermark Financial registered with Wall and Company.¹⁰ Gane was registered with Wall and Company from May 10, 2006, through April 3, 2007.¹¹ During this period,

³ CX-1, at 29; Tr. 308.

⁴ CX-1, at 4-5.

⁵ CX-1, at 5-6.

⁶ CX-1, at 4-5.

⁷ CX-3, at 59.

⁸ CX-3, at 59-81.

⁹ CX-4, at 9; Tr. 191.

¹⁰ RX-19; CX-3, at 16.

¹¹ CX-2, at 1.

Gane operated a branch office of Wall and Company in Amherst, New York (“Amherst Branch”) under the name Watermark Financial.¹² In addition, Gane conducted insurance, investment advisory, and other business activities at the branch through several affiliated entities.¹³ Burkhart was the Wall and Company principal responsible for supervising Gane and the Amherst Branch.¹⁴ Although Wall, as the president of Wall and Company, was ultimately responsible for the newly registered representatives, he had limited contact with them as he worked at Wall and Company’s primary location in Asheville, North Carolina.¹⁵

Between October and December 2006, FINRA was investigating a customer complaint it received against Gane, concerning the switching of annuities.¹⁶ As described more fully below, on April 3, 2007, Wall and Company terminated Gane.¹⁷ FINRA’s investigation of Gane continued even after Gane’s termination from Wall and Company.¹⁸ In addition, throughout this period, unbeknownst to FINRA and Wall, Gane was conducting an ongoing fraud relating to the sale of Watermark Financial debentures.¹⁹ On May 15, 2008, the U.S. Securities and Exchange Commission (“SEC”) filed an emergency action against Gane, Watermark Financial, and other individuals, alleging that Gane orchestrated a securities offering fraud through the sale of debentures

¹² Tr. 32, 92, 95.

¹³ Tr. 32, 98-100.

¹⁴ Tr. 33, 93, 95, 317.

¹⁵ CX-3, at 9-10. Without looking at a list of names, Wall could not identify the approximately five representatives in his Amherst Branch. In addition, Wall never went to the Amherst Branch. *Id.*

¹⁶ Tr. 34-35.

¹⁷ CX-2.

¹⁸ Tr. 37-40; CX-7; CX-11.

¹⁹ CX-5-6.

and promissory notes issued by various entities such as Watermark Financial.²⁰ The fraudulent scheme, some of which occurred while Gane was employed at Wall and Company, caused customer harm.²¹

C. Gane's Compliance Issues

As noted above, FINRA was investigating Gane for a customer complaint relating to switching annuities. On December 13, 2006, FINRA sent a Rule 8210 information request to Wall.²² Burkhart responded to that initial request on behalf of Wall and Company.²³ On March 13, 2007, FINRA expanded its investigation to include all annuity transactions by Gane, and sent a second information request directly to Burkhart.²⁴

At the end of March 2007, when Burkhart began reviewing Gane's files in order to respond to FINRA, Burkhart discovered several instances in which Gane had recommended to customers that they surrender annuities and use the proceeds to purchase Watermark Financial convertible debentures, without Burkhart's knowledge or Wall and Company's approval.²⁵ Burkhart learned from Gane that he was using the debenture proceeds to pay personal expenses.²⁶ On March 28, 2007, Burkhart contacted Wall and alerted him to the problems he had discovered regarding Gane.²⁷ Wall asked Burkhart to

²⁰ *Id.*; RX-16.

²¹ CX-5. The fraudulent scheme generated over \$5 million from 90 investors, a number of whom were elderly. *Id.*

²² Tr. 378-79.

²³ Tr. 379; RX-22.

²⁴ CX-7; Tr. 38, 327. Burkhart, who was at Wall and Company's primary location in Ashville, NC, requested an extension of time in which to respond in order to collect the requested information from the Amherst Branch. CX-8; Tr. 97.

²⁵ Tr. 100-05; CX-3, at 46; CX-18-19.

²⁶ Tr. 123-25; CX-3, at 46; CX-19.

²⁷ CX-3, at 13.

document his findings.²⁸ Accordingly, Burkhart prepared a memo the same day, and sent it to Wall via email.²⁹ Burkhart alerted Wall to the following potential securities violations: disclosure-related issues in connection with the liquidation and surrender of annuities; misappropriation of customer debenture funds; and private securities transactions.³⁰ Wall quickly replied to Burkhart's email, directing him to "continue [his] investigation and bring any additional findings to my attention."³¹ Burkhart told Wall that Wall and Company would need to sanction Gane for his activities; however, "the exact sanction will depend on information gathered during the remainder of [his] investigation."³²

Over the next couple of days, Burkhart attempted to gather additional information on these transactions; however, he was unable to do so because Gane and his counsel took the relevant customer files and annuity documents over Burkhart's objection and refused to return them.³³ The files were necessary not only for Burkhart to continue his investigation but also for Burkhart to respond to FINRA's March 13, 2007 information request.³⁴ Burkhart immediately reported these developments to Wall.³⁵ Gane's seizure of the files made Wall suspect that Gane must be hiding something.³⁶

²⁸ CX-3, at 13.

²⁹ CX-3, at 45-46; Tr. 103, 119-21.

³⁰ Tr. 342-45.

³¹ CX-19, at 1; Tr. 121, 328.

³² CX-3, at 46.

³³ Tr. 329, 335; CX-19, at 4; RX-4.

³⁴ Tr. 330.

³⁵ Tr. 329. Ultimately, in May 2007, Wall and Company initiated a state court action against Gane to get the annuity files back from him. Tr. 332, 335.

³⁶ Tr. 373. Wall was aware of numerous red flags, and had concerns Gane would be dealing with customers. Tr. 353, 356.

Just days before these events, on March 26, 2007, Wall had learned that there were problems with the pending 1017 application. The application, filed by Gane's consultants and submitted to FINRA, contained false statements relating to the source of funding for the purchase of Wall and Company.³⁷ The 1017 application reported that the \$25,000 purchase price came from operating income, but this was false as Watermark Financial had no income.³⁸ Burkhart and the two consultants working on the 1017 application confronted Gane regarding the misstatement in the application.³⁹ Immediately thereafter, Gane fired the consultants.⁴⁰

D. Gane's Termination

In addition to the pending FINRA investigation of Gane, other issues arose that complicated Wall's sale of his firm, namely, the false statement in the 1017 application and the newly discovered compliance issues pertaining to Gane. In an effort to address these concerns, on March 30, 2007, Wall contacted counsel, Joseph Cascarelli, of Stark and Stark.⁴¹ After speaking with Wall, Cascarelli believed he was being engaged to respond to the outstanding Rule 8210 request from FINRA.⁴² Cascarelli also thought the 1017 application was problematic.⁴³ He developed a strategy for Wall to extricate himself from the sale and get the Watermark Financial registered representatives off his books – a strategy Wall adopted and implemented immediately.⁴⁴

³⁷ CX-3, at 12.

³⁸ CX-4, at 9-10.

³⁹ CX-3, at 12; CX-4, at 10; Tr. 110-12.

⁴⁰ CX-3, at 12.

⁴¹ CX-3, at 13.

⁴² Tr. 182, 381.

⁴³ Tr. 190-95.

⁴⁴ Tr. 331-32; RX-7-9; RX-5; CX-19, at 5.

On April 2, 2007, Wall gave Gane an ultimatum: either resign from the firm and withdraw the 1017 application or be placed on heightened supervision as a result of the recent developments.⁴⁵ In addition, if Gane did not resign, Wall and Company would suspend him and submit a Rule 3070 filing to FINRA.⁴⁶ Gane and the Watermark Financial representatives in the Amherst branch resigned from Wall and Company on April 3, 2007.⁴⁷

E. Form U5

On April 4, 2007, Wall filed the Form U5 for Gane, as well as the other representatives in the Amherst Branch.⁴⁸ Robertson, Wall's assistant, completed the Forms.⁴⁹ Wall, as the president of Wall and Company, signed the Form U5 for Gane under the heading "Firm Acknowledgement," representing that he had "verif[ied] the accuracy and completeness of the information contained in and with this form."⁵⁰ Each other Form U5 was completed in the same manner.⁵¹

Wall characterized Gane's termination as "Voluntary" in Section 3 of the Form U5, and added the following in the comment section:

⁴⁵ Tr. 128-29, 331; CX-19, at 5.

⁴⁶ CX-19, at 5.

⁴⁷ CX-3, at 82-87; Tr. 130.

⁴⁸ CX-2; Tr. 300.

⁴⁹ Tr. 300, 396-97, 410. At the time Robertson completed the Forms, she was unaware of the investigation of Gane and the problems Burkhart had uncovered. Tr. 412-13.

⁵⁰ CX-2, at 4; Tr. 319. The Form U5, as well as any amendment thereto, is filed electronically with CRD by a member firm. As part of the member firm's recordkeeping requirements, it shall make such records available upon regulatory request. *See* NASD Membership Rule 1140(d).

⁵¹ Tr. 45, 366-67, 377, 390; RX-10. The lack of a considered, individual analysis on the Forms U5 is confirmed by the fact that all of the Forms were completed identically. Tr. 377. At the time of his termination, Gane was under investigation by both Wall and Company and FINRA, and had seized the relevant annuity files from Wall and Company. As such, his Form U5 should have been distinguishable from those of the other Watermark Financial representatives in the Amherst Branch.

As a result of Watermark Financial Service Group's decision to cancel the Stock Purchase Agreement of April 13th 2006 (and its subsequent amendment of March 20th 2007) and consequent decision to withdraw its 1017 application for change in ownership of Wall & Company Securities Inc.⁵²

This explanation was misleading as it omitted material facts. The explanation omitted any reference to the compliance issues Burkhart had uncovered the previous week thereby conveying the false impression that Gane's termination was the result of a business decision not to purchase Wall and Company. In reality, Gane was forced to choose between resigning from Wall and Company or being placed on heightened supervision and suspended.⁵³

In addition, Wall answered "No" to all of the disclosure questions in Section 7 of the Form, including questions regarding whether Gane was under internal review at the time of termination⁵⁴ and whether he was the subject of an investigation by FINRA.⁵⁵ His responses were false. Wall instructed Burkhart to conduct the investigation regarding Gane's Watermark Financial debenture activity.⁵⁶ Wall also knew of FINRA's

⁵² CX-2, at 2. Tr. 246. The Form U5 requires disclosure of the nature of the termination (e.g., "discharged, other, permitted to resign, deceased, voluntary"), and where the termination is not voluntary or because of death, the circumstances giving rise to it. *Douglas J. Toth*, 2008 SEC LEXIS 1520 at *13 n.12 (July 1, 2008).

⁵³ CX-19, at 5-6; Tr. 129.

⁵⁴ Question 7B asked: "Currently is, or at termination was, the individual under internal review for fraud or wrongful taking of property, or violating investment related statutes, rules or industry standards of conduct?" CX-2, at 2.

⁵⁵ Question 7A asked: "Currently is, or at termination was, the individual the subject of an investigation or proceeding by a domestic or foreign governmental body or self-regulatory organization with jurisdiction over investment-related businesses?" CX-2, at 2.

⁵⁶ Tr. 328. CX-19, at 1-2; *see* CX-3, at 13 (Wall describes the investigatory steps taken by Burkhart as "our investigation.").

investigation because he had an outstanding Rule 8210 information request in his possession, which he had provided to Cascarelli.⁵⁷

III. Form U5 Violation

A. Misrepresentations and Omissions on Gane's Form U5

Rule 2110 and IM-1000-1 require associated persons to answer the questions on the Form U5 accurately and fully. “The Form U-5 serves as a warning mechanism to firms of the potential risks and accompanying supervisory responsibilities they must assume if they decide to employ an individual with a suspect history.”⁵⁸ The accuracy of a Form U5 filing is critical to the effectiveness of a self-regulatory organization that relies heavily on candor and truthful representation.⁵⁹ “[FINRA], which cannot investigate the veracity of every detail in each document filed with it, must depend on its members to report to it accurately and clearly in a manner that is not misleading.”⁶⁰

Here, Wall and Company, through Burkhart, investigated Gane and uncovered potential violations pertaining to Gane's Watermark Financial debenture sales, as well as the false statement in the 1017 application, which had been submitted to FINRA. Rather than deal with those issues directly, Wall gave Gane an ultimatum that resulted in Gane's resignation from Wall and Company.

The Panel finds that the Form U5 as filed was misleading and omitted material information regarding the facts and circumstances surrounding Gane's termination. In

⁵⁷ Tr. 183, 299; CX-11, 13, 14.

⁵⁸ *Henry Irvin Judy*, 52 S.E.C. 1252, 1256 (1997).

⁵⁹ *Henry Irvin Judy*, 52 S.E.C. 1252, 1256 (1997); see *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) (quoting *Rosario R. Ruggiero*, 52 SEC 725, 728 (1996)); *Thomas R. Alton*, 52 SEC 380, 382 (1995), *aff'd* 105 F.3d 664 (9th Cir. 1996).

⁶⁰ *Robert E. Kaufman*, 51 S.E.C. 838, 839 (1993), *aff'd* 40 F.3d 1240 (3d Cir. 1994).

addition, Wall falsely reported that there was neither an internal review nor a FINRA investigation of Gane at the time of his termination. Accordingly, the Panel finds that Wall violated Conduct Rule 2110 and IM-1000-1.⁶¹

B. Reliance on Advice of Counsel

Wall's principal defense is that he relied on the advice of counsel. The defense of reliance on counsel requires Wall to demonstrate that he: (1) made a complete disclosure to the attorney of his intended action; (2) requested the attorney's advice as to the legality of the action; (3) received counsel's advice that the conduct would be legal; and (4) relied in good faith on that advice.⁶² Applying those standards to the facts of this case, the Panel concludes that Wall failed to establish the defense.

Wall could not in good faith have relied on this "advice" because he knew it to be false. He knew that Gane's termination arose as a result of the ultimatum he gave to Gane after potential violations were uncovered.⁶³ Wall directed Burkhart to "continue [his] investigation," and thus was fully aware of the internal review of Gane. And, Wall knew of the existence of the ongoing FINRA investigation.⁶⁴ Further, the record does not show that Wall specifically sought or received Cascarelli's advice regarding the legality of

⁶¹ See *Toth*, 2007 NASD Discip. LEXIS 25; see also, NASD'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").

⁶² *Dep't of Enforcement v. Sarris*, No. C9A020017, 2003 NASD Discip. LEXIS 12, at *7 (Mar. 17, 2003) (quoting *Dep't of Enforcement v. Flannigan*, 2001 NASD Discip. LEXIS 36, at *20 (NAC June 4, 2001), *aff'd*, 2003 SEC LEXIS 40 (Jan. 8, 2003)).

⁶³ Wall testified that he was aware of numerous red flags. Tr. 353. He also testified that he had concerns Gane would be dealing with customers. Tr. 356.

⁶⁴ Tr. 306, 327. Wall provided FINRA's Rule 8210 request letter to Cascarelli and sought Cascarelli's assistance in responding to it. Tr. 183, 299; CX-11, 13, 14.

filing Gane's Form U5 as completed in light of the facts and circumstances surrounding his termination.

C. Willfulness

The Complaint alleges that Wall willfully misrepresented and omitted material information on Gane's Form U5. A finding of willfulness has serious consequences. Article III, Section 4 of FINRA's By-Laws refers to Section 3(a)(39)(F) of the Securities Exchange Act of 1934, 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 [Form U5] ... 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 such [form] ... any material fact which is required to be stated therein."⁶⁵ A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing."⁶⁶ There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts."⁶⁷ Measured by those principles, the Panel finds that Wall's conduct was willful.

The Panel finds that the misleading and omitted information was material. The investigations by Wall and Company and FINRA, which involved dishonesty and misuse of client funds, would have been extremely relevant to FINRA and prospective employers. In conclusion, the Panel finds that Wall willfully filed a Form U5 with FINRA that misrepresented and omitted material information.

⁶⁵ Article III, Section 4(f) of the FINRA By-Laws (referring to the Securities Exchange Act Section 3(a)(39)(F), available at www.finra.org/Rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: Bylaws").

⁶⁶ *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000).

⁶⁷ *Id.* (quoting *Gearheart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

IV. SANCTIONS

For filing false, misleading, or inaccurate Forms U5, the FINRA Sanction Guidelines (“Guidelines”) recommend consideration of a fine of \$5,000 to \$100,000, and suspension of the responsible principal in all supervisory capacities for ten to 30 business days. In egregious cases, the Guidelines recommend consideration of a suspension of the responsible principal in any or all capacities of up to two years, or a bar in all supervisory capacities.⁶⁸ The Guidelines further provide three additional considerations when determining the appropriate sanction: (1) the nature and significance of the information at issue; (2) whether the failure to disclose information resulted in a statutorily disqualified individual becoming or remaining associated with a firm; and (3) whether respondent member firm’s misconduct resulted in harm to a registered person, another member firm, or any other person or entity.⁶⁹

In this case, the undisclosed information on Gane’s Form U5 was significant. It involved the misuse of customer funds, the failure to disclose transactions to Wall and Company, and the seizure of customer files. Wall’s failure to disclose the relevant information on the Form U5 delayed FINRA’s investigation of Gane and the referral of the case to the SEC.⁷⁰ Further, Wall’s misconduct allowed additional customer harm.⁷¹ As

⁶⁸ *FINRA Sanction Guidelines* 74 (2007), <http://www.finra.org/RegulatoryEnforcement/index.htm> (then follow “FINRA Sanction Guidelines” hyperlink).

⁶⁹ *Id.* at 73.

⁷⁰ Tr. 51-56, 68, 263-67.

⁷¹ Tr. 100-05, 123-25. Burkhart testified that he reviewed 15 customer annuity files. Each file reflected that the annuity had been surrendered due to a family or medical emergency. Tr. 103. Twelve of the 15 were surrendered with the proceeds re-invested in Watermark Financial debentures, totaling approximately \$1.2 million. Tr. 105. Watermark Financial was a start-up company with high risk. Tr. 102. Gane also used some of the money from the debenture sales for his own personal expenses. Tr. 123-25.

noted above, the SEC's case against Gane included the period during which he was employed at Wall and Company.

The Panel concludes that this case involves several aggravating factors. First, Wall willfully filed the Form U5 with inaccurate and incomplete information.⁷² Wall acknowledged that it would have been more difficult for him to sell his firm if either he or Wall and Company were under investigation for possible supervision problems associated with Gane's misconduct.⁷³ Second, Wall never accepted responsibility for or acknowledged his misconduct.⁷⁴ Third, Wall had several opportunities to inform FINRA of the relevant circumstances surrounding Gane's departure but failed to do so.⁷⁵ This failure delayed the discovery of Gane's misconduct and fraudulent scheme, and provided the opportunity for additional customer harm.⁷⁶ Fourth, the inaccurate Form U5 deprived the industry and the public of material information relating to Gane's fitness as a broker.⁷⁷ Fifth, Wall's misconduct also resulted in the potential for monetary and other gain.⁷⁸ The Separation Agreement with Gane permitted Wall to retain the \$5,000 deposit for the attempted purchase of Wall and Company,⁷⁹ and Wall was able to sell his firm without

⁷² Sanction Guidelines at 7 (Principal Considerations in Determining Sanctions, No. 13).

⁷³ Tr. 349.

⁷⁴ Sanction Guidelines at 6 (Principal Considerations in Determining Sanctions, No. 2).

⁷⁵ Sanction Guidelines at 6-7 (Principal Considerations in Determining Sanctions, Nos. 4, 10, and 12); Tr. 355-57, 383; CX-13-15.

⁷⁶ Sanction Guidelines at 6 (Principal Considerations in Determining Sanctions, No. 11).

⁷⁷ DiTrapani testified that all of the disclosure questions and responses, except the internal review question, are provided to the public via Broker Check, a system that allows the public to investigate brokers. Tr. 243-44, 249. Accordingly, in this instance, the public would not have had access to information about FINRA's investigation of Gane if it researched him on Broker Check.

⁷⁸ Sanction Guidelines at 7 (Principal Considerations in Determining Sanctions, No. 17).

⁷⁹ Tr. 349-50.

any encumbrances.⁸⁰ Wall's central motivation was to get the Watermark Financial representatives off his books as quickly and easily as possible.⁸¹

Wall's task was not complex. All he had to do was to provide an accurate and complete description of Gane's termination and truthfully respond to the disclosure questions on the Form U5. The disclosure questions were simple. Even a casual reader of the Form would realize that he had to disclose the internal investigation and FINRA's investigation. Wall, with 28 years of experience in the securities industry, could not reasonably have believed that the Form meant something other than what it said. At best, the record reflects a gross indifference to the Form U5 requirements.

After careful consideration, the Panel finds that Wall's misconduct is egregious. The Panel weighed the seriousness of Wall's misconduct and determined that the appropriate sanctions for the violation were a \$15,000 fine, a three-month suspension in all capacities, a nine-month suspension in all principal capacities, and a requirement that Wall re-qualify by examination before he re-enters the securities industry in any principal capacity. The Panel determines that re-qualification is necessary because Wall lacks sufficient knowledge and familiarity with the rules and laws governing the securities industry.⁸²

⁸⁰ Tr. 349.

⁸¹ Tr. 303 (Wall testified that his attorney presented him with the "quickest and easiest solution to [his] problems" and he followed it to the letter.).

⁸² Sanction Guidelines at 5 (General Principles Applicable to All Sanctions Determinations, No. 7); *see e.g.*, Tr. 320-22 (Wall testified that he had no knowledge of or familiarity with Rule 3070 filings. Despite his lack of familiarity with such a filing, he told Gane that Wall and Company would be submitting a Rule 3070 report if he did not resign and withdraw the 1017 application.).

V. CONCLUSION

Wall violated Rule 2110 and IM-1000-1 by willfully filing a false, inaccurate, and misleading Form U5 regarding Gane's termination.⁸³ For this violation, Wall is suspended from associating with any FINRA member firm in any capacity for three months, suspended from associating with any FINRA member in all principal capacities for nine months, and fined \$15,000, payable upon re-entry into the industry. The suspensions shall run concurrently. In addition, Wall shall be required to re-qualify by examination before he re-enters the securities industry in any principal capacity.

If this decision becomes FINRA's final action in this matter, Wall's suspension in all capacities will commence on Monday, March 1, 2010, and end at the close of business on Monday, May 31, 2010; and Wall's suspension in all principal capacities will commence on Monday, March 1, 2010, and end at the close of business on Tuesday, November 30, 2010. In addition, Wall shall pay costs in the amount of \$3576.50, which represents the cost of the hearing transcript together with a \$750.00 administrative fee. The costs shall be payable on a date set by FINRA, but not less than 30 days after this decision becomes FINRA's final disciplinary action in this matter.

HEARING PANEL

By: Maureen A. Delaney
Hearing Officer
For the Hearing Panel

⁸³ The Hearing Panel considered and rejected without discussion all other arguments of the parties.

Copies to: Jeffrey B. Kelvin, Esq. (*via first class & electronic mail*)
Michael J. Newman, Esq. (*via first class & electronic mail*)
Mark P. Dauer, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)