FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. BRADFORD OROSEY (CRD No.727162), Respondent.	Disciplinary Proceeding No. 2008013087201 **Hearing Panel Decision** Hearing Officer – Sara Nelson Bloom January 22, 2010

For willfully failing to disclose felony charges and an SEC action on his Form U4, in violation of Rule 2110 and IM-1000-1, Respondent is barred from associating with any member firm in any capacity.

Appearances

Jonathan Golomb, Esq. and Brian Castro, Esq., Washington, DC, appeared on behalf of the Department of Enforcement.

Bradford Orosey appeared on his own behalf.

DECISION

I. Procedural History

On March 23, 2009, the Department of Enforcement ("Enforcement") filed a two-cause Complaint against Respondent Bradford Orosey ("Respondent"). The first cause alleges that Respondent willfully failed to disclose two felony charges of racketeering and fraud relating to his employment with a broker-dealer on his Forms U4, in violation of Rule 2110 and IM-1000-1. The second cause alleges that Respondent willfully failed to disclose an SEC order entered against him, which included findings of fraud and a bar

from the securities industry with a right to reapply in five years, and a cease and desist order, in violation of Rule 2110 and IM-1000-1.[1]

Respondent filed an Answer denying the allegations of the Complaint that he willfully failed to disclose the criminal charges and the SEC action. Respondent stated that he did not wish to have a hearing. During the initial pre-hearing conference, Respondent confirmed that he wanted a decision based upon written submissions. The Hearing Panel, composed of a Hearing Officer and two current members of the District 6 Committee, considered the papers submitted by the parties and rendered its decision as reflected below.[2]

II. Respondent

Respondent was first associated with a FINRA member firm in 1981. He left the securities industry in 1997 and was barred as a result of his consent order with the SEC in 1999. CX-1. Respondent held positions in the mortgage and banking field from 2002 through 2007. In March 2007, Respondent became a mortgage loan officer with JP Morgan Chase Bank, and, in approximately November 2007, he became a Personal Banker with that bank. As part of his responsibilities, he was required to become

[1] Following the consolidation of NASD and the member regulation, enforcement, and arbitration functions of NYSE Regulation into FINRA, FINRA began developing a new "Consolidated Rulebook" of FINRA Rules. The first phase of the new consolidated rules became effective on December 15, 2008. See FINRA Regulatory Notice 08-57 (Oct. 2008). Because the Complaint in this case was filed after December 15, 2008, the procedural rules that apply are the current FINRA Rules. The conduct rules that apply are the NASD Rules that existed at the time of the conduct at issue.

[2] References to the exhibits provided by Enforcement are designated as "CX-__." References to Respondent's exhibits are designated as "RX-__." Enforcement attached CX-1-18 to its written submission. Respondent attached RX-1-9 and RX-11-16 to his submission. Enforcement objected to exhibits RX-2, 5, 6, 8, 9, and 11-16. The Hearing Officer overrules the objections as to Exhibits 5, 6 and 15, which generally relate to the Respondent's criminal and regulatory history. The Hearing Officer sustains the objections as to RX-2, 8, 9, 11, 14 and 16, which include what appear to be unsigned declarations, an unsigned stipulation, and correspondence reflecting Respondent's attempt to obtain information. Pursuant to Rule 9267(b), these excluded exhibits are attached to the record as supplemental documents.

registered with Chase Investment Services Corp. ("CISC"), an affiliate of JP Morgan Chase Bank. Accordingly, he caused Forms U4 to be submitted to FINRA as part of the registration process. CX-1, CX-8 pp. 14-18, CX-13. As discussed in greater detail below, Respondent never completed the registration process, and was terminated from CISC in April 2008. CX-13.

III. Facts

A. Respondent was charged with two felonies and consented to an SEC action resulting in a bar with a right to reapply in five years

There is no dispute that in April 1997, Respondent was charged with felony racketeering and fraud in connection with alleged misrepresentations and omissions regarding the risk involved in investments in collateralized mortgage obligations. CX-3. These charges were dismissed under a *nolle prosequi* order that attributed the dismissal to the death of the principal witness. CX-4.

There is also no dispute that in September 1998, the SEC brought an administrative and cease and desist proceeding against Respondent arising out of the same circumstances as the criminal charges. The SEC charged Respondent with violating Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 thereunder by making misstatements and omissions of material fact to a customer concerning the risk, yield, and yield projections related to collateralized mortgage obligations ("CMOs"). CX-5, CX-8 pp. 3-4. In April 1999, without admitting or denying the allegations, Respondent consented to the entry of findings of the violations in the SEC action. Respondent also consented to a cease and desist order, and agreed to a bar from association with any FINRA member firm, with a right to reapply after five years. CX-6.

B. Respondent failed to disclose his criminal charges and SEC bar on his Form U4.

On November 6, 2007, Respondent completed and caused to be filed a Form U4 application to become registered with CISC. Respondent did not disclose the felony charges or the SEC action on the Form U4. Specifically, he falsely answered "No" to the following questions:

> 14A(1)(b): Have you ever been charged with any felony?
>
> 14C: Has the U.S. Securities and Exchange Commission … ever:
>
> > (1) found you to have made a false statement or omission?
> > (2) found you to have been involved in a violation of its regulations or statutes? …
> > (4) entered an order against you in connection with investment-related activity?
> > (5) ordered you to cease and desist from any activity? …

CX-9 p. 7.

Less than two weeks later, on November 21, 2007, he completed and caused to be filed another Form U4 in response to a request by CISC to provide additional information regarding a bankruptcy. In completing this Form U4, Respondent repeated the false answers to questions 14A and 14C. CX-10, CX-13, CX-8 pp. 36-50. He did not seek clarification from CISC staff as to whether his criminal record or his SEC action should be disclosed before causing the false Forms U4 to be submitted to FINRA. CX-16 ¶4.

Shortly thereafter, CISC received the results of the fingerprint check revealing the felony charges and requested that Respondent provide additional information. CX-2, RX-15. Ultimately, the deadline to complete his registration expired and Respondent's application was terminated on December 20, 2007. CX-16 ¶5, CX-13, CX-15 ¶7, CX-1.

In March 2008, Respondent signed and caused to be submitted another Form U4 in order to reinstitute the registration process. CX-11 p. 13. This time, he answered "yes" to the question which asked whether any other regulatory agency had "denied, suspended, or revoked [his] registration or license or otherwise, by order, prevented [him] from associating with an investment – related business or restricted [his] activities?"[3] CX-11 p. 9. However, he continued to falsely answer "no" to whether any regulatory agency: (1) found that he made a false statement or omission; (2) found that he was involved in a violation of investment-related statute or regulation; or (3) entered an order against him in connection with an investment-related activity. Id.

Respondent's Disclosure Reporting Page ("DRP") detail of the SEC action was also inaccurate. Respondent stated "[t]he SEC claimed I recommened[sic] unsuitable investments to Escambia County Florida. I only recommended investments that the county written investment policy said they could invest in." CX-11 p. 16. However, in fact, the SEC found that Respondent made fraudulent misrepresentations and omissions regarding the projected performance, actual performance, and yield of CMOs which "fraudulently induced [the customer] to stock its investment portfolio with numerous high risk CMO's which incurred a significant decline in value." CX-5 p.4.

After this Form U4 was filed with FINRA, Staff notified CISC that, as a result of the bar imposed by the SEC, Respondent was statutorily disqualified from association with a FINRA member firm. CISC then dismissed Respondent and terminated the registration process as of April 2008. CX-13, CX-15 ¶¶9-10, CX-1 p. 3.

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[3] Respondent's answer appears on question 14D instead of 14C. The Regulatory Action DRP on p. 15 of CX-11 cites to question 14C(4) which would have been the appropriate question for an SEC action. It appears that Respondent probably selected question 14D instead of 14C by mistake.

IV. Violation – Respondent Failed to Disclose His Felony Charges and SEC Bar

The Complaint alleges that Respondent willfully failed to disclose on his Form U4 two felony charges and an SEC action which included findings of fraud, a cease and desist order, and a bar, in violation of Rule 2110 and IM-1000-1.

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., Douglas J. Toth, Exch. Act. Rel. No. 58074, 2008 SEC Lexis 1520 (July 1, 2008), petition for review denied, Toth v. SEC, 2009 U.S. App. LEXIS 7226 (3d Cir. Apr. 6, 2009).

Forms U4 require the disclosure of felony charges and SEC disciplinary actions. Respondent omitted these required disclosures on two Forms U4, and provided incomplete and inaccurate disclosures on a third Form U4.

In his defense, Respondent offered several arguments. First, he asserted that he was confused by the Form U4 questions.[4] The Panel did not find this credible. The questions were clear and unambiguous. Moreover, even assuming that Respondent was

[4] For example, Respondent claimed that he did not understand the phrase "charged with any felony." During his on-the-record testimony ("OTR"), Respondent explained that he had considered disclosing the felony charges, but, "when I looked at that question, charged – to me, charged is convicted. Have I been – was I charged and convicted of a felony? No." Respondent also claimed to be confused by the question as to whether the SEC "found" him to have made a false statement or omission. In his OTR, Respondent stated "I never was found to have made a false statement or omission. I'd answer that today 'no'… as I sit here today … because I had a settlement offer, in my mind and to my belief, I was not – I did not have a violation." CX-8 pp. 29-32. In addition, he stated that he had forgotten that he had been the subject of a cease and desist order. Id. at 34.

initially confused, this confusion could have easily been remedied by referring to the SEC consent order, the Form U4 instructions, or seeking clarification from CISC employees.

Second, Respondent argued that he orally disclosed the felony charges and SEC disciplinary action to his employer and he was not asked to correct his false Form U4 disclosures. Respondent provided no evidence to support this assertion. However, Enforcement offered affidavits from two CISC employees stating that Respondent did not inform them of his criminal and SEC record, which the Panel found credible. CX-15-16. 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, No. C07040042, 2007 NASD Discip. LEXIS 5, at *34 (NAC Feb. 12, 2007), citing Rosario R. Ruggiero, 52 SEC 725, 728 (1996).

Third, Respondent argued that he was unable to cross-examine Enforcement witnesses or to compel witnesses to provide testimony at a hearing. However, Respondent waived these rights when he chose not to have an in-person hearing in the matter. Respondent was specifically informed of this at the initial pre-hearing conference, and, again, at a special pre-hearing conference, when the Hearing Officer suggested an in-person hearing so that Respondent could call witnesses. Transcript of May 20, 2009, Pre-Hearing Conference, pp. 6-9; Transcript of July 20, 2009, Pre-Hearing Conference, pp. 3-13.

Fourth, Respondent argued that the allegations referenced in the undisclosed actions were without merit. In support, he notes that, while he settled the SEC action, the case was ultimately dismissed with respect to two similarly situated respondents. While Respondent may be frustrated by this turn of events, it does not change the fact that he had an obligation to make required disclosures. Moreover, the Form U4 provided him an opportunity to provide this additional context while making required disclosures.

Accordingly, the Hearing Panel finds that Respondent violated Rule 2110 and IM-1000-1 by failing to disclose two felony charges and the SEC action, which included findings of fraud, a cease and desist order, and a bar, 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."[5]

Respondent claimed that he was confused by the Form U4 questions. As noted above, the Panel did not find this credible. In any event, 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 "voluntarily committed the act that constituted the violation …" Dep't of Enforcement v. Kraemer, No. 2006006192901, 2009 FINRA Discip. LEXIS 39 at **16-17 (NAC Dec. 18, 2009) (holding that the respondent acted voluntarily when he omitted his criminal history from his Forms U4).

Here, the questions were clear and called for Respondent to disclose the felony charges and SEC action that barred him from the securities industry. The Panel finds that the omitted information was material. The SEC action, which resulted in a bar and involved misstatements and omissions to a customer, would have been extremely relevant to an employment decision concerning Respondent. Moreover, the actions did not slip Respondent's mind. He admittedly contemplated whether he should disclose the information in his Form U4.

Accordingly, the Panel finds that Respondent acted willfully in his failure to make required disclosures on his Forms U4.

[5] 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.

VI. Sanctions

For filing false, misleading, or 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 bar. Department of Enforcement's Memorandum of Points and Authorities, p. 20. Respondent took no position on an appropriate sanction.

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 or remaining associated with a firm; and (3) whether the misconduct harmed a registered person, a firm, or anyone else.

In this case, the undisclosed information did not result in harm to customers or Respondent's firm. However, the omitted disclosure involved allegations of serious misconduct, including investment-related fraud that would have been highly material to any employer or prospective employer, which the Panel found to be an aggravating factor. Moreover, the omitted disclosure involved a statutorily disqualifying event, which was also an aggravating factor.

The Panel considered several other circumstances to be aggravating as well. Respondent's misconduct was willful, and involved omissions on two Forms U4, and misleading information on a third Form U4. Moreover, Respondent did not acknowledge his misconduct prior to detection, and appears to maintain, in some instances, that he would provide the same false disclosure today.

After careful consideration of these factors, the Panel finds that the appropriate remedial sanction in this case is a bar in all capacities from associating with a FINRA member firm.

VII. Conclusion

For willfully failing to disclose two felony charges and an SEC action on his Forms U4, in violation of Rule 2110 and IM-1000-1, Respondent is barred from associating with any FINRA member firm in any capacity.[6] This bar shall become effective immediately if this Hearing Panel Decision becomes the final disciplinary action of FINRA. Respondent's failure to disclose was willful and the omitted information was material; thus, Respondent also is statutorily disqualified.

HEARING PANEL.

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By: Sara Nelson Bloom
Hearing Officer

Copies to:
Bradford Orosey *(via first-class & electronic mail & overnight courier)*
Jonathan Golomb, Esq. *(via first-class & electronic mail)*
Brian Castro, Esq. *(via first-class & electronic mail)*
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[6] The Hearing Panel considered and rejected without discussion all other arguments of the parties.