FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. NOBLE B. TRENHAM (CRD No. 449157) Respondent.	Disciplinary Proceeding No. 2007007377801 **HEARING PANEL DECISION** Hearing Officer – SNB March 18, 2010

For structuring cash transactions to avoid federal reporting requirements in violation of Rule 2110, acting in a principal capacity while suspended in violation of Rule 2110, and willfully failing to update a Form U4 to disclose a customer complaint in violation of Article V, Section 2(c) of the FINRA By-Laws and Rule 2110, Respondent is barred in all capacities.

Appearances

John Han, Esq., San Francisco, CA, and Karrin J. Feemster, Esq., Los Angeles, CA, for the Department of Enforcement.

Noble B. Trenham appeared on his own behalf.

DECISION

I. Procedural History

On May 1, 2009, the Department of Enforcement ("Enforcement") filed a three count Complaint against Noble B. Trenham ("Respondent"). The first count alleges that Respondent structured cash transactions to avoid federal reporting requirements, in violation of Rule 2110. The second count alleges that Respondent acted as a principal while suspended in that capacity, in violation of Rule 2110. The third count alleges that

Respondent willfully failed to update his Form U4 to disclose a customer complaint, in violation of Article V, Section 2(c) of the FINRA By-Laws and Rule 2110.[1]

On June 3, 2009, Respondent filed an answer requesting a hearing. The hearing was held on December 15, 2009, in Los Angeles, CA, before a Hearing Panel composed of the Hearing Officer, a current member of FINRA's District 1 Committee, and a former member of FINRA's District 2 Committee.[2]

II. Origin of Investigation

This proceeding arose from a 2007 routine examination of First Global Securities (the "Firm") covering the period January 23, 2003, through May 6, 2007. Tr. 93-95.

III. Respondent

Respondent began in the securities industry in 1964. Tr. 39. In 1986, he founded the Firm. He served as the Firm's Chief Executive Officer from 1987-1992 and 1998-2008, and served in that capacity at all times relevant to this proceeding. CX-5; Tr. 38-39. He ceased his association with the Firm in July 2008, and has not been associated with a FINRA member since October 2008. CX-6, CX-7.

IV. Discussion

A. Respondent Structured Cash Transactions to Avoid Federal Reporting Requirements

It is undisputed that on May 9, 2005, a new customer, GH, gave Respondent $26,000 in cash to open an account and purchase securities. Tr. 41- 42, 46.

[1] As of July 30, 2007, NASD consolidated with the member regulation and enforcement functions of NYSE Regulation and began operating under a new corporate name, the Financial Industry Regulatory Authority (FINRA). References in this decision to FINRA include, where appropriate, NASD. Following consolidation, FINRA began developing a new FINRA Consolidated Rulebook. The first phase of the new consolidated rules became effective on December 15, 2008, including certain conduct rules and procedural rules. *See* Regulatory Notice 08-57 (Oct. 2008). This decision refers to and relies on the NASD conduct rules that were in effect at the time of Respondent's alleged misconduct. In addition, because the Complaint was filed after December 15, 2008, FINRA procedural rules were applied in this disciplinary proceeding.

[2] Complainant's Exhibits ("CX") 1-24 were admitted into the record. The hearing transcript is referred to as "Tr."

Ten months later, in March 2006, GH again asked Respondent to accommodate a large cash deposit; this time, $20,000. Tr. 44.

U.S. Treasury anti-money laundering regulations promulgated pursuant to the Bank Secrecy Act require member firms to report customer deposits of cash in excess of $10,000. See, 31 USC § 5313(a); 31 CFR § 103.22. Accordingly, Respondent was required to report the $26,000 and $20,000 cash deposits from GH. Tr. 40, 42, 45.

However, in each case, rather than complying with the reporting requirements, he circumvented them. He made several trips to the bank to obtain cashier's checks for under $10,000, which he then deposited in GH's account at the Firm. CX-10, CX-24 p. 6; Tr. 42, 44-46, 49-53.

Respondent gave sworn testimony during his on-the-record interview ("OTR") that he obtained the cashier's checks for under $10,000, to avoid reporting requirements and "keep it under the radar." Tr. 42, 45; CX-8 p. 10. However, in his Wells Submission and at the Hearing, Respondent offered a new explanation; he claimed that a bank teller said that she would take care of the reporting requirements for him. Specifically, Respondent claimed that a bank teller approved of his plan to break the cash deposit into amounts below $10,000, and represented that the bank would report the receipt of cash for him, because the bank was required to report cash transactions in excess of $3,000. CX-24 p. 5-7; Tr. 43, 45, 49, 126. Respondent described the conversation with the teller:

> "[Respondent asked], what do we do?" And they said, "Hey, no big deal." You know, it would be a bigger deal if we did $10,000 deals 'cause then they would have to prepare a document and I'd have to sign it, and it might take a week or two to get all that done. I said we didn't have time like that . . . So I said "All right. If I have any problem with the Treasury Department, they know where to get me . . . So they seemed to think that was a reasonable thing to do and that I wouldn't be violating any fed regulations."

Tr. 52-53.

The Panel did not find this revised explanation to be credible. Instead, the Panel credited Respondent's earlier OTR admission that he acted to avoid reporting requirements because Respondent made no mention of a bank teller's involvement in his OTR. The Panel also considered that Respondent would have been familiar with his obligation to report cash transactions over $10,000 because he had recently signed a FINRA Letter of Acceptance, Waiver and Consent (the "AWC") for, among other things, failing to implement an Anti-Money Laundering program, and Respondent was the Firm's designated Anti-Money Laundering Compliance Officer. CX-12 p.4; Tr. 40.

B. Respondent Engaged in Principal Activity While Subject to a Suspension as Principal

From May 16 to June 27, 2005, Respondent was suspended from acting in a principal capacity, pursuant to the AWC discussed above.[3] CX-12, CX-13, CX-14. During Respondent's suspension, RC was the only other principal in the First Global Office, which consisted of three registered representatives. Tr. 113, 122. In a letter to FINRA Staff, Respondent represented that RC would handle his principal responsibilities during his suspension. CX-15; Tr. 56-57.

Despite this representation, Respondent continued to handle the Firm's finances during his suspension. Respondent maintained sole signing authority over the Firm's bank account and signed 64 checks, including payments to various stock exchanges, Firm employees, and suppliers. CX-17; Tr. 66-67. At the Hearing, Respondent explained that he was unwilling to delegate check-signing authority:

> "I never considered anyone else paying the bills . . . since it's my money and my responsibility and no one else has check-writing authority in my firm."

[3] The AWC cited Respondent for failing to implement an anti-money laundering program, failing to maintain minimum net capital, failing to comply with continuing education requirements, and failing to comply with Regulation S-P. CX-12.

Tr. 59-60.

Respondent also initialed three order tickets relating to RC's customer accounts during his suspension. However, he claimed he did so inadvertently, without intending to perform a principal review. CX-16; Tr. 58-59, 62-63.

C. Respondent Failed to Update his Form U4 to Disclose an Investment Related Lawsuit

On September 5, 2006, a customer served Respondent with a civil complaint, alleging that Respondent and the Firm engaged in fraud and negligent misrepresentation in connection with the purchase of securities. CX-20. Respondent admitted that he received the complaint. Tr. 69. However, he explained at the hearing that he decided not to update his Form U4 to disclose the complaint because he believed that it was frivolous, pointing to the fact that the customer ultimately defaulted and the case was dismissed.[4] Tr. 70-71. Respondent testified:

> I agree with you … there is a regulation of FINRA's to file and amend your U4 saying you're being sued. Well, if you think that's reasonable – which I do not – that means anybody with a stamp can file a complaint which forces someone in my position to amend a 13D or a U4. That doesn't make sense to me because that's abuse of good guys. And you can't dig up any legal document that ever says I've ever abused anybody ever in 45 years. So why am I in the hot seat today? Because you're practicing un-American law.

Tr. 70.

V. Violations

A. Structuring Cash Transactions to Avoid Reporting Requirements

The Complaint alleges that Respondent violated Rule 2110 by structuring cash transactions to avoid reporting requirements. Rule 2110 requires members and associated

[4] Respondent's U4 was ultimately updated to disclose the lawsuit on May 17, 2007, after FINRA Staff notified Respondent of his obligation to do so. CX-21, CX-22. However, at the hearing, Respondent claimed that he did not file the update and suggested that his secretary might have done so without his knowledge. Tr. 76.

persons to "observe high standards of commercial honor and just and equitable principles of trade."

Here, when Respondent received the $26,000 and $20,000 cash deposits from GH, he was required to file a Currency Transaction Report with the U.S. Treasury. See, 31 USC § 5313(a); 31 CFR § 103.22. However, instead of complying with the reporting requirement, Respondent made a conscious decision to circumvent it; he took cash amounts under $10,000 to a bank to obtain cashier's checks, which he then deposited in his customer's brokerage account at the Firm.

The Panel finds that by structuring cash transactions to avoid reporting requirements, Respondent failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of Rule 2110.

B. Respondent Engaged in Principal Activity While Subject to a Suspension as Principal

The Complaint alleges that Respondent engaged in principal activity while subject to a suspension as principal, in violation of Rule 2110.

In order to establish a violation, it is not necessary to prove that Respondent acted intentionally, only that he was suspended, received notice of his suspension, and violated the suspension. Dep't of Enforcement v. Michael A Usher, No. C3A980069, 2000 NASD Discip. LEXIS 5, at *6 (NAC April 18, 2000). Respondent does not dispute that he received notice of the suspension.

Respondent also acknowledges that he retained sole signing authority over the Firm's bank account and signed 64 checks to pay the Firm's expenses during the time that he was suspended. In defense, Respondent claims that writing checks was not a principal activity. Tr. 59-60. Rule 1021(b) defines "principals" as "[p]ersons associated with a member…who are actively engaged in the management of the member's investment

banking or securities business, including supervision, solicitation, conduct of business or the training of persons associated with a member for any of these functions…."

Being "actively engaged in management" is defined to include "day-to-day management of the firm's business." NASD Notice to Members 99-49; Regulatory and Compliance Alert 13.4, p. 20 (Winter 1999). Signing checks relating to the firm's securities business is an indication that a person is "actively engaged in management." See, DBCC v. Pecaro, No. C8A960029, 1998 NASD Discip. LEXIS 13, at *22 (NBCC Jan. 7, 1998).

Here, Respondent had sole signing authority for the Firm's account. Thus, he controlled the financial operations of the Firm. Respondent signed 64 checks during his suspension, which included payments to various stock exchanges and the Firm's employees and suppliers. The Panel finds that this activity constituted day-to-day management of the Firm's business. Therefore, the Panel finds that Respondent was engaged in principal activity during his suspension.[5]

Respondent complained that FINRA failed to assist him in finding a way to comply with the suspension order. Tr. 59. However, Respondent cannot shift his burden of compliance to FINRA. Hans N. Beerbaum, Exchange Act Rel. No. 55731, 2007 SEC LEXIS 971, at *19, n. 22. (May 9, 2007). Moreover, Respondent could have complied with the suspension simply by delegating check-signing authority to the other principal in the Firm.

[5] Enforcement also alleged that Respondent acted as a principal when he initialed three order tickets for RC's customers. However, Enforcement offered no corroborating evidence that Respondent was acting in a principal capacity when he signed the order tickets, and there was no charge, in the alternative, that Respondent failed to ensure appropriate review of the transactions. Under these circumstances, the Panel finds that Enforcement failed to prove by a preponderance of the evidence that Respondent acted in a principal capacity when he initialed the three order tickets.

Based on the foregoing, the Panel finds that Respondent acted as principal while under suspension, in violation of Rule 2110.

C. Respondent Failed to Update his Form U4 to Disclose an Investment-Related Lawsuit

The Complaint alleges that Respondent willfully violated Rule 2110 and FINRA By-Laws, Article V, Section 2(c) by failing to disclose an investment-related customer lawsuit.

Rule 2110 and the FINRA By-Laws Article V, Section 2(c) 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).

On September 5, 2006, Respondent was served with an investment-related customer complaint. CX-20. Accordingly, he was required to disclose the complaint on his Form U4 within 30 days. However, Respondent failed to update his Form U4 until May 17, 2007, when he was advised by FINRA Staff to do so.

Accordingly, the Panel finds that Respondent violated Rule 2110 and FINRA By-Laws, Article V, Section 2(c).

D. Respondent Acted Willfully and is Subject to Statutory Disqualification

Enforcement alleges that Respondent's failure to make the required Form U4 disclosure 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 NASD's By-Laws 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."[6]

Here, there is no dispute that Respondent was required to amend his Form U4 to disclose the customer complaint. Further, the Panel finds that the customer complaint, which alleged serious misconduct, was material, consistent with the National Adjudicatory Council's ("NAC") guidance that information on the Form U4 is material if a reasonable employer reading the Form would "view the disclosure of the omitted information as significantly altering the total mix of information available."[7] Moreover, The NAC has made clear that "[b]ecause of the importance that the industry places on full and accurate disclosure of information required by the Form U4, [it is presumed] that essentially all the information that is reportable on the Form U4 is material."[8]

To support a finding of willfulness, the Panel need not find that Respondent intended to violate a specific rule or law; rather, the Panel need only find that Respondent

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[6] Article III, Section 4 was amended on July 30, 2007, after the misconduct at issue here, to refer to Section 3(a)(39)(F) of the Exchange Act, which has essentially the same language.

[7] Dep't of Enforcement v. Knight, No. 10020060, 2004 NASD Discip. LEXIS 5, at *14 (NAC April 27, 2004)(quoting SEC v. Mayhew, 121 F.3d 44, 52 (2d Cir. 1997)).

[8] *Id.* at *13.

"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). However, in this case, Respondent did more than that; he made a conscious decision not to make the required disclosure. While the Panel appreciates Respondent's frustration with being required to disclose what he believed to be a frivolous complaint, that does not excuse his obligation to disclose it. Indeed, Respondent could have explained his position by including a comment with the disclosure.

Accordingly, the Panel finds that Respondent acted willfully in his failure to make the required disclosure of a customer complaint on his Form U4.

VI. Sanctions

In order to determine the appropriate sanctions for Respondent's violations, the Panel began by considering the FINRA Sanction Guidelines ("Guidelines"). There are no guidelines for structuring transactions to avoid reporting requirements or violating a suspension order. The Guideline for Form U4 violations recommends a fine of $2,500 to $50,000 and a suspension in all capacities for five to 30 business days, or in egregious cases, a longer suspension or bar.[9]

Enforcement requests a bar for structuring cash transactions to avoid federal reporting requirements, a two-year suspension and a $10,000 fine for acting as a principal while suspended in that capacity, and a one-year suspension and a $10,000 fine for willfully failing to disclose a customer complaint on a Form U4. Respondent made no suggestion as to the appropriate sanctions.

In reaching the conclusion that Respondent's conduct was egregious with respect to each of the violations, the Panel considered their common theme – an intentional refusal to

[9] FINRA Sanction Guidelines 73 (2007), *available at* www.finra.org/sanctionguidelines.

follow rules with which Respondent disagreed. He evaded cash-reporting requirements that he viewed as burdensome. He violated a principal suspension to avoid delegating check-signing authority. He failed to update his Form U4 to disclose a customer complaint because he thought it was frivolous and would unfairly tarnish his reputation. Even upon reflection, Respondent refused to accept responsibility for his misconduct. Instead, he stated that he was unwilling to follow rules that he considered to be unreasonable.

FINRA rules, which are designed to protect investors, are rendered meaningless if they are disregarded. Beerbaum, 2007 SEC LEXIS 971, at *20. Based upon his prior conduct and his testimony at hearing, the Panel had no confidence that Respondent would follow FINRA Rules, or, for that matter, abide by a suspension, were the Panel to impose one. For these reasons, for each of the violations, Respondent is barred from association with a FINRA firm in all capacities.

VII. Conclusion

For structuring cash transactions to avoid federal reporting requirements in violation of Rule 2110, acting in a principal capacity while suspended in violation of Rule 2110, and willfully failing to update his Form U4 to disclose a customer complaint in violation of Article V, Section 2(c) of the FINRA By-Laws and Rule 2110, Respondent is barred in all capacities. These bars shall become effective immediately if this Hearing Panel Decision becomes the final disciplinary action of FINRA.

HEARING PANEL

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By: Sara Nelson Bloom
Hearing Officer

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