

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ROBERT D. TUCKER
(CRD No. 1725356)

Respondent.

Disciplinary Proceeding
No. 2007009981201

Hearing Officer – RSH

PANEL DECISION

May 10, 2010

Respondent violated Conduct Rule 2110 and IM-1000-1 by willfully failing to disclose, on initial Forms U4, a federal tax lien, three judgments, and two bankruptcies. For this violation, the Respondent was barred from associating with any member firm in any capacity.

Appearances

Hugh C. Patton, Senior Regional Counsel, William St. Louis, Deputy Regional Chief Counsel, and David M. Jaffe, Regional Chief Counsel, New York, NY, for the FINRA Department of Enforcement.

Robert D. Tucker, Pro Se.

DECISION

I. PROCEDURAL HISTORY¹

On February 24, 2009, the Department of Enforcement filed a Complaint with the Office of Hearing Officers alleging that Respondent Robert D. Tucker violated Conduct

¹ As of July 30, 2007, NASD began operating under a new corporate name, the Financial Industry Regulatory Authority (“FINRA”). References in this decision to FINRA include, where appropriate, NASD. On December 15, 2008, certain consolidated FINRA rules became effective, replacing parallel NASD 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 that were in effect at the time of the Respondent’s alleged misconduct and cited in the Complaint as the basis for the charges against him.

Rule 2110 and Membership and Registration Rule Interpretive Material (“IM”) 1000-1 by willfully failing to disclose on twelve initial Uniform Application for Securities Industry Registration or Transfers (“Form U4”) a federal tax lien, three judgments, and two bankruptcies. The Complaint also alleged that Tucker failed to disclose a state tax lien; however, the nondisclosure was not alleged to have been willful.²

On May 11, 2009, Tucker filed an Amended Answer in which he admitted that he had failed to disclose many of the tax liens, judgments and bankruptcies on his Forms U4, but asserted as a defense that he told some of his employers about the incidents. Tucker requested a hearing.

The hearing was held on January 21, 2010 in New York City before a Hearing Panel composed of the Hearing Officer and two members of FINRA’s District 10 Committee. Enforcement called four witnesses: the compliance directors at two of Tucker’s former employers, a FINRA examiner, and Tucker. Tucker testified on his own behalf, but did not call any other witnesses. Enforcement introduced 50 exhibits that were entered into evidence. Tucker did not introduce any exhibits.³

II. FINDINGS OF FACT

A. The Respondent

Tucker entered the securities industry in June 1989 as an associated person of a member firm. He first became registered with FINRA as a Limited Representative for Corporate Securities (“Series 62”) in October 1991, and, as of September 2009, had been

² At the start of the hearing, Enforcement dropped one of the original twelve Forms U4 from the case, leaving eleven for which evidence was submitted.

³ In this decision, “Tr.” refers to the transcript of the hearing; “CX” to Enforcement’s exhibits; and “RX” to Respondent’s exhibits.

registered as a Series 62 through a total of 22 member firms.⁴ Currently, Tucker is registered with FINRA as a Series 62 with member firm ICM Capital Markets.⁵

B. The Respondent Completed the Forms U4 at Issue

Tucker admitted that he completed the following Forms U4:

1. Broadband Capital Management, January 8, 2001⁶
2. Invest Private (currently DPEC Capital), April 10, 2001⁷
3. Schneider Securities, August 28, 2001⁸
4. GunnAllen Financial, September 27, 2002⁹
5. vFinance Investments, February 9, 2005¹⁰
6. Pointe Capital, May 19, 2005¹¹
7. Meyers Associates, June 1, 2005¹²
8. Prestige Financial Center, January 30, 2007¹³
9. PHD Capital, October 8, 2007¹⁴
10. Brill Securities, December 20, 2007¹⁵
11. Bishop Rosen, June 16, 2008¹⁶

C. Tucker Willfully Failed to Disclose a Federal Tax Lien on Eight Forms U4

A federal tax lien in the amount of \$329,917.63 was filed against Tucker on June 4, 2002. Enforcement's Complaint charged that the federal tax lien had been filed on

⁴ CX-1.

⁵ Tr. at p. 196.

⁶ CX-3; Answer, ¶ 59.

⁷ CX-4; Answer, ¶ 62.

⁸ CX-5; Answer, ¶ 65.

⁹ CX-6; Answer, ¶ 25.

¹⁰ CX-7; Answer, ¶ 29.

¹¹ CX-8; Answer, ¶ 32.

¹² CX-9; Answer, ¶ 35.

¹³ CX-10; Answer, ¶ 38.

¹⁴ CX-11; Answer, ¶ 41.

¹⁵ CX-12; Answer, ¶ 44.

¹⁶ CX-13; Answer, ¶ 47.

September 11, 2000; however, at the hearing it was shown that while the lien was assessed on September 11, it was not filed, or made public, until June 4, 2002.¹⁷ Tucker admitted at the hearing that a federal tax lien had been filed against him on June 4, 2002 and that the lien was still in effect.¹⁸

After the federal tax lien was filed against him on June 4, 2002, Tucker completed eight initial Forms U4 in connection with his employment applications for the following firms: GunnAllen Financial, vFinance Investments, Pointe Capital, Meyers Associates, Prestige Financial Center, PHC Capital, Brill Securities, and Bishop Rosen. On each of those Forms U4, Tucker answered “No” to the question, “Do you have any unsatisfied judgments or liens against you?”¹⁹

At the hearing, Tucker admitted that the federal tax lien was the result of the Internal Revenue Service’s (“IRS”) claim for 1994 unpaid taxes.²⁰ He claimed that he did not remember if or when he ever received notice of the lien.²¹ The Hearing Panel did not find Tucker’s memory lapse credible. Throughout the hearing, he continually tried to avoid answering questions, either by claiming he could not remember, or by discussing irrelevant matters.²² Tucker admitted that he was aware that the IRS “had an issue” with his taxes by 2000, that the IRS filed a tax lien on June 4, 2002, and that he received “some” of the notices of the lien.²³ In his on-the-record testimony (“OTR”), Tucker acknowledged that he knew about the tax lien “the whole time,” but did not disclose it on

¹⁷ CX-24, p. 9; CX-25; CX-43; CX-44; Tr., p. 122, 124-130.

¹⁸ Tr., pp. 200, 205.

¹⁹ CX-6 through CX-13.

²⁰ Tr., pp. 197-198.

²¹ Tr., pp. 198-201.

²² See e.g., *Id.*

²³ Tr., p. 200.

his Forms U4 because he contested the underlying tax obligation.²⁴ By August 2004, Tucker certainly was aware of the federal tax lien—he listed the IRS on his hand-written list of creditors, which was attached to his personal bankruptcy petition.²⁵

The Hearing Panel finds that Tucker was aware of the federal tax lien at least by June 4, 2002, and willfully failed to disclose it on the eight Forms U4 listed above.

D. Tucker Willfully Failed to Disclose Bankruptcy Filings on Eight Forms U4

1. The Chapter 11 Bankruptcy

On or about June 10, 2002, Tucker filed a Voluntary Petition under Chapter 11 of the United States Bankruptcy Code (“Chapter 11”) with the U.S. Bankruptcy Court, Southern District of New York.²⁶ The Chapter 11 petition was dismissed on April 15, 2004, and terminated on May 24, 2004.²⁷

On September 27, 2002, Tucker completed a Form U4 to become associated with GunnAllen Financial. Question 14K(1) of the form asked, “Within the past 10 years: have you made a compromise with creditors, filed a bankruptcy petition, or been the subject of an involuntary bankruptcy petition?” Tucker falsely answered “No” to question 14K(1), thereby failing to disclose that he had filed a bankruptcy petition three months earlier.²⁸

2. The Chapter 13 Bankruptcy

On or about August 3, 2003, Tucker filed a Voluntary Petition under Chapter 13 of the U. S. Bankruptcy Code (“Chapter 13”).²⁹ This bankruptcy was converted into a

²⁴ CX-20, p. 49, OTR p. 192.

²⁵ CX-16, p. 3.

²⁶ CX-14.

²⁷ CX-15.

²⁸ CX-6, p. 8.

²⁹ CX-16.

Chapter 7 bankruptcy on September 8, 2005.³⁰ Tucker was granted a discharge on March 29, 2006,³¹ and the proceeding was terminated on July 20, 2007.³²

Tucker completed seven Forms U4 after his Chapter 13 bankruptcy: vFinance Investments, Pointe Capital, Meyers Associates, Prestige Financial Center, PHD Capital, Brill Securities, and Bishop Rosen. Question 14K(1) of the form asked, “Within the past 10 years: have you made a compromise with creditors, filed a bankruptcy petition, or been the subject of an involuntary bankruptcy petition?” Tucker falsely answered “No” to Question 14K(1) on each of the forms, thereby failing to disclose his Chapter 13 bankruptcy.³³

3. Willfulness

Tucker admitted that he filed for bankruptcy twice.³⁴ At the hearing, he denied that his failure to disclose the bankruptcies was willful. During his OTR, however, Tucker testified that he had failed to disclose the bankruptcies on the Forms U4 because he “was just embarrassed.”³⁵ At the hearing, Tucker denied that he had been embarrassed and denied that he had so testified at the OTR.³⁶

The Hearing Panel did not find his denials credible, and evidence presented at the hearing contradicted him. For example, Tucker actively hid his bankruptcies and other financial problems from at least two of the firms with which he was associated. After failing to disclose his bankruptcies on his Form U4 when applying to PHD Capital in October 2007, Tucker warned Steven Trigili, PHD’s chief compliance officer, that Trigili

³⁰ CX-17, p. 8.

³¹ CX-18.

³² CX-19.

³³ CX-7 through CX-13.

³⁴ Tr., p. 205.

³⁵ CX-20, p. 47 at 185.

³⁶ Tr., p. 217.

might discover a bankruptcy filing when he checked Tucker's background. Trigili testified that Tucker told Trigili that the bankruptcy he might find was actually Tucker's wife's bankruptcy, not his. Tucker provided Trigili with a copy of his wife's bankruptcy petition as proof.³⁷ Tucker's wife did actually file for bankruptcy, but Tucker also filed his own separate petition.

Similarly, Isaac Schlesinger, Bishop Rosen's chief compliance officer, testified that when Tucker applied to Bishop Rosen in June 2008, he failed to disclose his bankruptcy on his Form U4. Once again, Tucker attempted to convince the firm that Tucker's wife, and not Tucker, had filed for bankruptcy. Tucker's lying continued even after Bishop Rosen received a copy of the federal tax lien—Tucker told Schlesinger that the tax debt was his wife's, not his.³⁸

The Hearing Panel finds that Tucker's failure to disclose his bankruptcies on his Forms U4 was willful.

E. Tucker Willfully Failed to Disclose Three Judgments on Seven Forms U4

1. American Express Judgment

Following a complaint filed by American Express Travel Related Services Company, Inc., a default judgment was entered against Tucker for \$10,058.62 on March 3, 2000.³⁹ The judgment was outstanding until discharged in Tucker's Chapter 13 bankruptcy on March 29, 2006.⁴⁰ At the hearing, Tucker denied knowing about the judgment,⁴¹ but his denial is belied by the facts. American Express sent a garnishment

³⁷ Tr., pp. 45-46; CX-32.

³⁸ Tr., p. 76.

³⁹ CX-21; CX-24, p. 12; CX-39.

⁴⁰ CX-16, p. 3.

⁴¹ Tr., p. 207.

order dated January 9, 2001, to Tucker's bank, and the judgment was partially paid on February 2, 2001.⁴²

Tucker answered "No" to the Form U4 question, "Do you have any unsatisfied judgments or liens against you?" He thereby failed to disclose the American Express judgment on the Forms U4 he completed for Broadband Capital Management, InvestPrivate, Schneider Securities, GunnAllen Financial, vFinance Investments, Point Capital and Meyer Associates.⁴³ The Hearing Panel finds that his failure to do so was willful.

2. Hamlet Golf & Country Club Judgment

On July 17, 2002, Hamlet Golf & Country Club obtained a judgment against Tucker and his wife for \$37,511.67.⁴⁴ This judgment remained outstanding as of the date of Tucker's OTR on July 31, 2008.⁴⁵ Tucker admitted at the hearing that he received notice of the judgment when it was entered.⁴⁶

Tucker failed to disclose the Hamlet Golf & Country Club judgment on the Forms U4 he completed for: GunnAllen Financial, vFinance Investments, Point Capital, Meyers Associates, Prestige Financial Center, PHD Capital, Brill Securities, and Bishop Rosen.⁴⁷ The Hearing Panel finds that his failure to do so was willful.

3. Friedman, Schnaier & Associates Judgment

Based upon a confession of judgment signed by Tucker on June 13, 2007, in favor of Friedman, Schnaier & Associates ("FSA"), the New York Supreme Court entered a

⁴² CX-21, pp. 7-8.

⁴³ CX-3 through CX-9.

⁴⁴ CX-23.

⁴⁵ CX-20, p. 161.

⁴⁶ Tr., p. 212.

⁴⁷ CX-6 through CX-13.

judgment against Tucker for \$48,000 on December 18, 2007.⁴⁸ This judgment had not been satisfied as of the date of Tucker's OTR on July 31, 2008.⁴⁹ At the hearing, Tucker testified that he did not know that FSA had obtained a judgment against him.⁵⁰ At his OTR, however, Tucker testified that he first became aware of the judgment when a debt collector called him in the first half of June 2008.⁵¹ The Hearing Panel did not find Tucker's testimony at the hearing to be credible and so credits his OTR testimony. Tucker failed to disclose the FSA judgment on the Form U4 he completed to become associated with Bishop Rosen.⁵² The Hearing Panel finds that his failure to do so was willful.

F. Tucker Failed to Disclose a State Tax Lien on Four Forms U4

On September 19, 2006, the New York State Tax Commission filed a State Tax Lien against Tucker in the amount of \$7,980.⁵³ Tucker denied knowing about the State Tax Lien; however, the Hearing Panel did not credit his testimony. During Tucker's OTR on July 31, 2008, he testified that he was in the process of resolving the "liens," suggesting that both the state and federal liens were still in effect as of that date, and that he was aware of them.⁵⁴ No evidence was presented that the State Tax Lien has been satisfied.

Tucker answered "No" to the question, "Do you have any unsatisfied judgments or liens against you?" on the Forms U4 that he completed to become associated with the following firms: Prestige Financial Center, PHD Capital, Brill Securities, and Bishop

⁴⁸ CX-23.

⁴⁹ CX-20, p. 161.

⁵⁰ Tr., p. 213.

⁵¹ CX-20, pp. 154-158.

⁵² CX-13.

⁵³ CX-24, p.14; CX-41.

⁵⁴ CX-20, p. 191.

Rosen.⁵⁵ He thereby failed to disclose his State Tax Lien. Enforcement did not charge that his failure to do so was willful.

III. CONCLUSIONS OF LAW

Tucker Violated IM-1000-1 and Conduct Rule 2110 by Willfully Failing to Disclose a Federal Tax Lien, Two Bankruptcies and Three Judgments on Forms U4; and by Failing to Disclose a State Tax Lien on Forms U4

Conduct Rule 2110 and IM-1000-1 require associated persons to disclose accurately and fully information required in the Form U4 and to observe high standards of commercial honor and just and equitable principles of trade.⁵⁶ 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."⁵⁷

There is no question that Tucker's tax liens, bankruptcies, and judgments were material. The National Adjudicatory Council ("NAC") has determined 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."⁵⁸ Form U4 is the primary document by which an individual becomes registered with FINRA, and the information regarding the applicant's financial history is important to FINRA's ability to evaluate and monitor the fitness of an individual in the securities industry. In addition, such information would be significant for an employer in

⁵⁵ CX-10 through CX-13.

⁵⁶ IM-1000-1 provides that the filing of registration information that "is incomplete or inaccurate so as to be misleading ... or the failure to correct such filing after notice thereof, may be deemed to be conduct inconsistent with just and equitable principles of trade" in violation of Rule 2110. *See also Thomas R. Alton*, 52 S.E.C. 380, 382 (1995).

⁵⁷ *Rosario R. Ruggiero*, 52 S.E.C. 725, 728 (1996) (*citing Alton*, 52 S.E.C. at 382); *see also Guang Lu*, Exchange Act Rel. No. 51047, 2005 SEC LEXIS 117, at *19-20 (Jan. 14, 2005) (recognizing that "the candor and forthrightness of applicants is critical to the effectiveness of the screening process").

⁵⁸ *Dep't of Enforcement v. Knight*, No. C10020060, 2004 NASD Discip. LEXIS 5, at *14 (N.A.C. April 27, 2004), (quoting *SEC v. Mayhew*, 121 F.3d 44, 52 (2d Cir. 1997)).

deciding whether to hire or retain an individual, or subject him to heightened supervision. The individual's inability to handle his own finances and tax obligations would also reasonably suggest potential issues with how he handles customers' finances. Furthermore, 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."⁵⁹

Tucker's failure to disclose the federal tax lien, bankruptcies, and judgments was also willful. "Willfulness" is established by a showing that a person "knew or reasonably should have known under the particular facts and circumstances that his conduct was improper."⁶⁰ Ample evidence presented at the hearing convinced the Hearing Panel that Tucker knew about the federal tax lien, bankruptcies and judgments, but purposely chose not to disclose them on his Forms U4.

The Hearing Panel therefore finds that Tucker willfully failed to disclose material information on his Forms U4, as required by FINRA rules. The Hearing Panel finds only that Tucker failed to disclose the state tax lien on his Forms U4; Enforcement did not charge that his failure was willful. Accordingly, the Hearing Panel finds that Tucker thereby violated FINRA Conduct Rule 2110 and IM-1000-1.

IV. SANCTIONS

FINRA Sanction Guidelines ("Guidelines") governing sanctions for false and misleading Forms U4 direct adjudicators to consider two relevant "principal considerations" when determining sanctions: (1) the nature and significance of the

⁵⁹ *Id.*, at *13.

⁶⁰ *Christopher LaPorte*, Exchange Act Release No. 39171, 1997 SEC LEXIS 2058, *8 at n. 2 (Sep. 30, 1997).

information at issue; and (2) whether [the] failure resulted in a statutorily disqualified individual becoming or remaining associated with a firm.⁶¹ Tucker's numerous tax liens, bankruptcies, and judgments, which spanned many years, would have been highly significant to regulators, broker-dealers and public customers relying on the information in his Forms U4. His member firms would have found the information directly relevant to their assessment of Tucker's fitness to work at the firm, and to provide financial advice to the firms' customers. Further, because Tucker's failure to disclose his federal tax lien, bankruptcies and judgments on his Forms U4 was willful, he was and is now subject to statutory disqualification.⁶²

Although Enforcement suggested a "lengthy suspension" and a \$10,000 fine, the Hearing Panel finds that this is an egregious case and that Tucker should be barred for his violations. The evidence presented at the hearing reflects that Tucker repeatedly made a calculated decision to hide his financial problems from numerous firms. At the hearing, he showed no remorse and took no responsibility for his actions. His answers to questions were frequently evasive and dissembling. The Hearing Panel believes that Tucker lacks respect for FINRA's rules and processes. The record contains no evidence of mitigating factors. Accordingly, the Hearing Panel will bar Tucker from associating with any member firm in any capacity for his failure to disclose his tax liens, bankruptcies, and judgments on his Forms U4.

V. Order

Robert D. Tucker is barred from association with any member firm in any capacity for his violation of FINRA Conduct Rule 2110 and IM-1000-1. In addition, he

⁶¹ FINRA Sanction Guidelines 73 (2007), www.finra.org/sanctionguidelines.

⁶² FINRA By-Laws, Article III, Sec. 4.

is ordered to pay costs in the amount of \$2,392.30, which includes a \$750 administrative fee and the cost of the hearing transcript. The fine and 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. The bar will become effective immediately if this Decision becomes FINRA's final disciplinary action in this proceeding.⁶³

Rochelle S. Hall
Hearing Officer
For the Hearing Panel

Copies to:

Robert Tucker (*via electronic and overnight courier*)
Hugh Patton, Esq. (*via electronic and first-class mail*)
William St. Louis, Esq. (*via electronic and first-class mail*)
Mark P. Dauer, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

⁶³ The Hearing Panel has considered and rejects without discussion all other arguments of the parties.