

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

NORTH WOODWARD FINANCIAL
CORP.
(CRD No. 104097),

and

DOUGLAS A. TROSZAK
(CRD No. 2219763),

Respondents.

Disciplinary Proceeding
No. 2010021303301

Hearing Officer – LOM

HEARING PANEL DECISION

March 29, 2012

Respondents Douglas A. Troszak and his firm, North Woodward Financial Corp., violated Article V, Section 2 of the FINRA By-Laws, NASD Rule 2110, and FINRA Rule 2010, by failing to amend Troszak's Form U4 to disclose that he was subject to a federal tax lien. Respondents violated FINRA Rules 8210 and 2010 by failing to provide documents and information requested by FINRA staff.

For the failure to respond to requests for documents and information pursuant to FINRA Rule 8210, Respondent Douglas A. Troszak is barred from association with a FINRA-registered firm in all capacities and Respondent North Woodward Financial Corp. is expelled from FINRA membership. In addition, Respondents are jointly and severally ordered to pay the costs of this proceeding. No sanctions are imposed for the failure to amend the Form U4 in light of the bar and expulsion.

Appearances

Richard S. Schultz, Senior Regional Counsel; Marcletta Kerr, Senior Regional Counsel, FINRA Department of Enforcement, Chicago, Illinois, for Complainant.

Douglas A. Troszak for Respondents.

HEARING PANEL DECISION

I. INTRODUCTION

The Respondents are North Woodward Financial Corp. (“North Woodward” or the “Firm”), a FINRA-registered firm conducting a general securities business in Birmingham, Michigan, and Douglas A. Troszak (“Troszak”), North Woodward’s President and sole owner, who was, and is, registered with the Firm as a General Securities Principal and a Financial and Operations Principal (FINOP).¹

In April, May, and June 2010, FINRA staff issued written requests for documents and information from North Woodward and Troszak pursuant to FINRA Rule 8210.² FINRA staff sought the materials in connection with an investigation into Respondents’ failure to disclose on Troszak’s Uniform Application for Securities Industry Registration or Transfer (“Form U4”) a federal tax lien against him personally and allegations that he had borrowed funds from his

¹ Compl. ¶¶ 3-4; Answer ¶¶ 3-4.

² Compl. ¶ 2; Answer ¶ 2; CX-9 (April 22, 2010 letter); CX-10 (May 4, 2010 letter); CX-14 (June 10, 2010 letter). “CX” refers to documents pre-marked before the Hearing as Complainant’s exhibits. CX-1 through CX-17 were admitted into evidence as joint exhibits, however, by stipulation at the Hearing. Hearing Tr. 25-32, 43. Other documents admitted at the Hearing were marked CX for Complainant’s exhibits or RX for Respondents’ exhibits. See CX-18 (Hearing Tr. 46); CX-19 (Hearing Tr. 246-47); RX-100 (Hearing Tr. 89); RX-101 (Hearing Tr. 135); and RX-102 (Hearing Tr. 134).

The Financial Industry Regulatory Authority, Inc. (“FINRA”) is responsible for regulatory oversight of securities firms and associated persons who do business with the public. FINRA was formed in July 2007 by the consolidation of NASD and the regulatory arm of the New York Stock Exchange (“NYSE”). FINRA is developing a new “Consolidated Rulebook” of FINRA Rules that includes NASD 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, FINRA’s procedural rules apply. The conduct rules that apply are those that existed at the time of the conduct at issue. FINRA’s Rules are available at www.finra.org/Rules.

customers, potentially in violation of FINRA Rules.³ Respondents partially answered some of the questions but refused to provide any further information or documentation. They argued that the information and documents sought by the staff were outside FINRA's jurisdiction and personal and confidential to Respondents' clients.

The Department of Enforcement filed its Complaint on May 18, 2011, alleging two causes of action. *First*, Enforcement alleged that Troszak became personally subject to a federal tax lien in October 2008 and that he and North Woodward failed to amend his Form U4 to disclose the lien. This conduct is alleged to violate Article V, Section 2 of the FINRA By-Laws, NASD Rule 2110, and FINRA Rule 2010. *Second*, Enforcement alleged that Respondents had provided only partial responses to its April, May, and June 2010 inquiries pursuant to FINRA Rule 8210. This conduct is alleged to violate FINRA Rules 8210 and 2010.

The Respondents filed their Answer on July 1, 2011, denying any wrongdoing. They requested a hearing. A one-day hearing was held on December 8, 2011, in Chicago. The Hearing Panel consisted of the Hearing Officer, and two current members of District 8. During the investigation that gave rise to this proceeding and most of the time that the proceeding was pending, Respondents were represented by counsel; but at the Hearing Troszak represented himself and his Firm. Enforcement called a FINRA examiner and her manager as witnesses. Enforcement would have called Troszak as well, but the parties agreed to allow Troszak to

³ FINRA staff had issued an earlier written request for information pursuant to FINRA Rule 8210 in February 2010, explaining that FINRA was conducting an inquiry into whether Troszak had borrowed money from North Woodward customers. CX-6 (February 12, 2010 letter). Respondents' attorney responded on their behalf, providing information about the loans from customers and copies of promissory notes reflecting those loans, along with a redemption certificate dated December 8, 2009, reflecting payment in full by Troszak on a Sheriff's deed on mortgage sale. CX-8 (March 10, 2010 letter). The subsequent inquiries pursuant to FINRA Rule 8210 focused on details of the loan transactions and customer accounts, and on a failure to disclose two federal tax liens and a state tax lien on Troszak's Form U4. CX-9 (April 22, 2010 letter); CX-10 (May 4, 2010 letter); CX-14 (June 10, 2010 letter).

testify first in his defense in a narrative fashion. Then Enforcement conducted cross-examination.

Based upon a careful review of the record, the Hearing Panel makes the following findings of fact and conclusions of law.

II. BACKGROUND

A. The Firm And Troszak's Employment History

North Woodward registered with FINRA on November 3, 2000. Troszak is President, CFO, CCO, FINOP, and sole owner of the Firm. He was initially registered as a General Securities Principal and then became registered in 2003 as a Financial and Operations Principal. Troszak had been previously employed at another FINRA-registered firm from 1992 until he left to operate North Woodward.⁴

Troszak is a certified public accountant,⁵ and, from the mid-1980s to the present, he has owned and operated a CPA firm, Troszak, C.P.A., PC.⁶ He describes his primary business as his CPA business and his brokerage firm as secondary, with clients coming to him primarily for tax and accounting advice. He testified that he has no brokerage clients who are not also CPA clients.⁷

⁴ Compl. ¶¶ 3-4; Answer ¶¶ 3-4; CX-1 (North Woodward CRD); CX-2 (Troszak CRD).

⁵ Hearing Tr. 110-11; CX-8 (March 10, 2010 letter) p. 3 of 58.

⁶ CX-8 (March 10, 2010 letter) p. 3 of 58; CX-2 (Troszak CRD).

⁷ “You don’t get to open up a brokerage account at my office unless you’re a CPA client. That’s the only way it works.” Hearing Tr. 124. “Do [the panel members] have a comprehension of a BD that’s actually a subservient of a CPA group...?” Hearing Tr. 261.

B. The Investigation By FINRA Staff

In February 2010, FINRA staff initiated an inquiry into whether Troszak had borrowed money from North Woodward customers and, if so, the circumstances.⁸ Respondents' counsel provided information and documents in response to the initial inquiry, including 11 promissory notes to persons identified as North Woodward customers. The promissory notes showed that a total of \$200,000 had been loaned by the customers and that Troszak and Troszak Capital Corp. were obligated to pay principal and interest (at a rate of 10% per annum) in six quarterly installments starting on February 1, 2010. Counsel explained that Troszak needed the money to enable him to redeem a foreclosed commercial unit in a condominium development. Counsel provided a redemption certificate reflecting payment of \$188,689.52 to recover the property and a document giving the promissory note holders a \$200,000 mortgage as security.⁹

By letter dated April 22, 2010, FINRA staff then requested additional documents and information relating to the loans pursuant to FINRA Rule 8210. Among other things, the staff requested information regarding any disclosures made to customers who lent Troszak money. Seven customers took money from their IRAs to make the loans, and some of the questions related to whether a taxable event had resulted and whether the customers were informed of that possibility. Other questions related to what Troszak had disclosed about the foreclosed property he redeemed with the borrowed funds. The staff also asked whether the loans were reflected in customer accounts and requested copies of the customers' new account forms, account amendments, and account statements for 2009 and 2010. FINRA staff specifically asked for an accounting for the difference between the amount Troszak borrowed and the amount of the

⁸ CX-6 (February 12, 2010 letter). The inquiry was triggered by a "regulatory tip." *Id.*

⁹ CX-8 (March 10, 2010 letter). Counsel's response to the staff's initial inquiry is not charged as a violation.

redemption payment (an \$11,310.48 difference) and any documentation supporting the response. FINRA staff also noted that the promissory notes contained a schedule of principal and interest payments to be paid in six consecutive quarterly payments commencing in February 2010. In that regard, the staff requested copies of the February 2010 and May 2010 payments for each of the customers and a discussion of the source of funds for repayment.¹⁰

By letter dated May 20, 2010, counsel responded on behalf of Troszak and North Woodward. No documents were provided. With respect to the queries related to whether a taxable event had resulted, the response was that no taxable event had occurred and that additional details could not be disclosed because the information was “personal and confidential to the customers.” The letter represented that the customers were told “verbally” that the property was in foreclosure. For account statements, the letter told FINRA staff to obtain information from the Firm’s clearing firm. With respect to the accounting for the \$11,310.48, the letter declared that the funds were not in a North Woodward account and that the funds were reserved for payment of taxes and interest. The letter stated that interest payments had been made according to the schedule in the promissory notes, but it did not provide any documentation. The letter maintained that the loan transactions were private transactions unrelated to North Woodward’s business. It stated that Respondents were “willing to produce documents regarding accounts owned by North Woodward Financial, but they are not willing to produce information regarding any other account, as such information is personal and confidential and is irrelevant to the subject matter of this examination.”¹¹

¹⁰ CX-9 (April 22, 2010 letter).

¹¹ CX-11 (May 20, 2010 letter).

The April 22, 2010, letter from FINRA staff also asked questions about public records indicating that two federal tax liens and a state tax lien had been filed against Troszak and sought an explanation why the liens had not been disclosed in an amended Form U4. The response letter indicated that Troszak was unaware of the state tax lien and that he did not believe he was required to disclose the federal liens on his Form U4 “[b]ecause the Federal tax liens originated with his CPA practice.”¹²

FINRA staff issued a letter dated May 25, 2010, informing Respondents that a full response still had not been made and reiterating specified queries from the staff’s April 22, 2010, letter, including items 3, 4, 5, 6b, 9, 10b, 10c, and 12. Among other things, these queries renewed the staff’s requests for customer account statements for 2009 and 2010, documentation reflecting an accounting for the balance of the borrowed funds (\$11,310.48), copies of the principal and interest payments on the loans in February 2010 and May 2010, correspondence with the IRS relating to the tax liens, and bank and brokerage statements in which Troszak had a beneficial interest for January 2009 to the present (then April 2010).¹³

Respondents’ counsel sent a letter dated June 8, 2010, in response. It said, “Mr. Troszak and North Woodward Financial Corp. have nothing additional to disclose to FINRA....[M]uch of the information sought by FINRA is personal and confidential to the firm’s clients, and to the extent any tax issues are implicated, Mr. Troszak [and his Firm] are prohibited by statute and relevant regulations from disclosing such information.”¹⁴

¹² *Id.*

¹³ CX-12 (May 25, 2010 letter).

¹⁴ CX-13 (June 8, 2010 letter).

FINRA staff made a final request for documents and information pursuant to FINRA Rule 8210 by letter dated June 10, 2010. The June letter attached the staff's prior April and May letters and cautioned that a failure to comply with the requests could subject Troszak and the Firm to disciplinary action.¹⁵

Respondents' counsel sent a letter dated June 18, 2010. No documents were attached. Respondents provided no customer account statements for the customers from whom Troszak borrowed money. Respondents provided none of the new account forms. Instead, the letter declared that no new account forms were created for the loan transactions and that account statement information could not be disclosed because it was "personal and confidential" to Respondents' customers. The letter directed the staff to ask North Woodward's clearing firm for customer account statements, but noted that the statements would not show the amount of the loan or the outstanding balance. Respondents stated that the unaccounted for \$11,380.48 balance of the loans was in an account belonging to Troszak Capital Corp. However, Respondents declared that "[i]nformation relating to this account cannot be disclosed as is [sic] it personal and confidential to Troszak Capital Corp." Similarly, with respect to the request for documentation of the payments made in February and May on the loans, Respondents declared that "[t]his information cannot be disclosed as it is personal and confidential to the customers of Mr. Troszak/North Woodward Financial Corp." With respect to the federal tax lien, Respondents declared that "[t]his is an ongoing matter that does not involve the broker-dealer." Respondents also refused to provide bank and brokerage statements in which Troszak had a beneficial interest.

¹⁵ CX-14 (June 10, 2010 letter). The material sent with the June 2010 letter reiterated that Troszak's Form U4 should be amended to reflect the federal tax lien. In addition, FINRA staff had a conference call with Respondents' counsel on June 10, 2010, in which the staff "emphasized the importance of his client providing the documents pursuant to our 8210 request." Hearing Tr. 99.

They declared that the information was “personal and confidential” to Troszak and North Woodward and was “irrelevant” to the staff’s examination.¹⁶

By letter dated February 15, 2011, Enforcement informed Respondents that the staff had made a preliminary determination to recommend disciplinary action against Respondents.¹⁷ Respondents did not produce any additional documents or information in response. Troszak wrote Enforcement on February 25, 2011, that Respondents had already produced an “inordinately large amount of information and documentation” and that the remaining requests covered “privileged” information not within the scope of the examination.¹⁸

Enforcement filed its Complaint on May 18, 2011. The only documents that FINRA staff had received from Respondents up to that point were the documents attached to the March 10, 2010 letter from Respondents’ counsel, which had triggered the further inquiries pursuant to Rule 8210 in April, May, and June that are charged in the Complaint.¹⁹ As Troszak acknowledged when his On-The-Record (“OTR”) testimony was taken on November 1, 2011, no additional documents were produced until October 2011, well after the filing of the Complaint, and even then Respondents did not produce all the documents requested.²⁰

In October and November 2011 (five to six months after the filing of the Complaint and shortly before the December 8, 2011, Hearing), Respondents produced to Enforcement three binders of documents bates-stamped 1-5601. These documents included 1922 pages of

¹⁶ CX-15 (June 18, 2010 letter).

¹⁷ CX-16 (February 15, 2011 letter).

¹⁸ CX-17 (February 25, 2011 letter).

¹⁹ CX-8 (March 10, 2010).

²⁰ The entire transcript of Troszak’s OTR testimony relating to this proceeding (which occurred for two hours the afternoon of November 1, 2011) was admitted into evidence at the Hearing. Hearing Tr. 246-47. CX-19 (OTR Testimony, November 1, 2011) at 38-39.

correspondence with the IRS and litigation records relating to taxes and liens, various bank account statements belonging to Troszak and his business ventures covering different periods of time in 2009, 2010, and 2011, and North Woodward securities account statements for January 2009 through October 2011 for two customer accounts.²¹

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. The By-Laws And Rules Alleged To Be Violated

Pursuant to Article V, Section 2(a)(1), of FINRA's By-Laws, every application by an individual for registration must be signed and must contain an agreement to comply with the federal securities laws, and FINRA's By-Laws, Rules, orders, directions, decisions and sanctions. Pursuant to Article IV, Section 1 of FINRA's By-Laws, every firm that applies for membership in FINRA must agree to the same requirements. FINRA Rule 0140(a) also specifies, "The Rules shall apply to all members and persons associated with a member. Persons associated with a member shall have the same duties and obligations as a member under the Rules." Thus, member firms and associated persons are subject to FINRA's jurisdiction and must abide by its By-Laws and Rules.

Article V, Section 2(c) of the By-Laws further requires that "[e]very application for registration [by an associated person] ... shall be kept current at all times by supplementary amendments." That subsection of Article V specifies that any amendment shall be filed "not later than 30 days after learning of the facts or circumstances giving rise to the amendment."

NASD Conduct Rule 2110 was applicable in 2008 until its identical successor, FINRA Rule 2010, became effective on December 15, 2008. Both Rules require that "[a] member, in the conduct of [his] business, shall observe high standards of commercial honor and just and

²¹ CX-18 (index to documents, from which the descriptions in text are taken). The underlying documents were not offered into evidence.

equitable principles of trade.” It is inconsistent with the duties imposed by these Rules to violate other FINRA (and formerly applicable NASD) rules.²²

Respondents argue that FINRA staff had no authority to obtain information regarding the loans to customers because, according to Respondents, the promissory notes were not securities.²³ Troszak testified: “I don’t feel that we even are discussing securities....This was not an investment....These were six or seven of my friends loaned me money....So in order to save the condo, some friends got together, chipped in. They’ve used it. It’s a very nice condominium in Harbor Springs. And we paid it off and kept it.”²⁴ Troszak repeatedly challenged FINRA’s jurisdiction over the loan transactions, declaring: “There’s really problematic jurisdictional questions in my mind about what is a security and the security regulation and what is not.”²⁵ He reiterated: “I will tell you I don’t believe this is a securities transaction. This is a private. This has nothing to do with a security. How did this become a security? And how does FINRA get to continue to ask for private documents from my clients? This isn’t a security transaction. It’s not a securities transaction in my mind....”²⁶ Troszak made plain his continuing belief that FINRA was not entitled to information about the loans, declaring:

²² The Securities and Exchange Commission has consistently held that a violation of an NASD rule or regulation is inconsistent with NASD Rule 2110. *Alvin W. Gebhart*, Exchange Act Rel. No. 53136, 2006 SEC LEXIS 93, at *54 n.75 (Jan. 18, 2006), *rev’d and remanded in part on other grounds sub. nom Gebhart v. SEC*, 2007 U.S. App. LEXIS 27183 (9th Cir. Nov. 21, 2007). *See also Richard F. Kresge*, Exchange Act Rel. No. 55,988, 2007 SEC LEXIS 1407, at *42 (June 29, 2007). A failure to cooperate with an investigation is a violation of both FINRA Rule 8210 and FINRA Rule 2010, the successor to NASD Rule 2110. *Stephen J. Gluckman*, 54 S.E.C. 175, 1999 SEC LEXIS 1395, at *22 (July 20, 1999).

²³ Hearing Tr. 23-24, 125, 202-203.

²⁴ Hearing Tr. 23-24.

²⁵ Hearing Tr. 125.

²⁶ Hearing Tr. 202-203.

“And I believe that my [other regulatory and contractual] responsibilities trump FINRA’s request for documents in nonsecurities-related transactions.”²⁷

FINRA’s authority to pursue conduct inconsistent with the duties imposed by NASD Rule 2110 and FINRA Rule 2010 is broad, and encompasses a member’s business practices even if a security is not involved.²⁸ Accordingly, regardless of whether the promissory notes are securities, FINRA had authority to investigate the loans to Troszak.

Furthermore, Respondents are subject to FINRA Rule 3240 and its predecessor, NASD Rule 2370 which impose conditions on the circumstances in which an associated person may borrow from customers, and FINRA has authority to investigate whether Respondents complied. Troszak in fact was aware of the Rule regarding borrowing from customers at the time that he engaged in the transactions because North Woodward’s clearing firm required him to verify that he and his Firm had complied with the Rule regarding borrowing from customers.²⁹

FINRA Rule 8210 requires FINRA members and their associated persons “to provide information orally, in writing, or electronically” in connection with any investigation. The Rule is crucial to FINRA’s ability to oversee and regulate broker-dealers because FINRA does not have subpoena power. Instead, FINRA must depend on member firms and their associated

²⁷ Hearing Tr. 271.

²⁸ *Dep’t of Enforcement v. Gallagher*, 2011 FINRA Discip. LEXIS 40, at *17-18 and n.46 (OHO June 13, 2011) (“Rule 2110 is an ethical rule...FINRA’s authority to pursue disciplinary action for violations of Rule 2110 is sufficiently broad to encompass any unethical business-related misconduct, regardless of whether it involves a security.”); *Dep’t of Enforcement v. Mullins*, 2011 FINRA LEXIS 70, at *22 (NAC Feb. 24, 2011) (“FINRA’s disciplinary authority under NASD Rule 2110 is also broad enough to encompass business-related conduct that is inconsistent with just and equitable principles of trade, even if that activity does not involve a security.”); *Dep’t of Enforcement v. DiFrancesco*, 2010 FINRA Discip. LEXIS 37, at *16 n.11 (NAC Dec. 17, 2010) (citing cases) (“There is a long line of cases stating that a member can be disciplined for “business-related conduct” that violates NASD Rule 2110, even when that activity does not involve a security.”).

²⁹ CX 8 (March 10, 2010 letter) at p. 4 of 58.

persons to cooperate fully and promptly with requests for information.³⁰ A failure to respond promptly and completely to information requests frustrates FINRA's ability to detect misconduct and protect investors and markets.³¹ It is well-established that a violation of the duty to cooperate and provide information pursuant to Rule 8210 is also a violation of Rule 2010.³²

B. Respondents Failed To Disclose A Federal Tax Lien Against Troszak On His Form U4, In Violation Of Article V, Section 2 of the FINRA By-Laws, NASD Rule 2110, and FINRA Rule 2010

Question 14M of the Form U4 asks: “Do you have any unsatisfied judgments or liens against you?” Until October 2011, Troszak’s Form U4 answered that question “no,” despite the filing of a federal tax lien against Troszak personally on October 6, 2008.³³

Troszak was on constructive notice of the federal tax lien when it was filed because notice of the lien was addressed to his current residential address (as shown in the Central Registration Depository (“CRD”)) and to North Woodward’s current business address (as shown in the CRD).³⁴ Troszak certainly was on actual notice of the lien by the time FINRA staff began to ask him about it in the April 22, 2010 letter issued pursuant to FINRA Rule 8210 and

³⁰ See, e.g., *Dep’t of Enforcement v. Valentino*, No. FPI010004, 2003 NASD Discip. LEXIS 15, at *12 (NAC May 21, 2003), *aff’d*, 2004 SEC LEXIS 330 (Feb. 13, 2004) (“It is well established that because NASD [FINRA’s predecessor] lacks subpoena power over its members, a failure to provide information fully and promptly undermines NASD’s ability to carry out its regulatory mandate.”) (citation omitted); *Joseph G. Chiulli*, 54 S.E.C. 515, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for FINRA to effectively conduct its investigations, and emphasizing that FINRA members and associated persons must fully cooperate with requests for information). See also *Morton Bruce Erenstein*, 316 Fed. Appx. 865, 871, 2008 U.S. App. LEXIS 19746, at *13 (11th Cir. Sept. 16, 2008) (“[I]t is critically important to the self-regulatory system that members and associated persons cooperate with NASD investigations, especially because the NASD lacks subpoena power.”); *Robert Fitzpatrick*, 55 S.E.C. 419, 2001 SEC LEXIS 2185, at *11-12 (Oct. 19, 2001).

³¹ *PAZ Sec., Inc.*, 2008 SEC LEXIS 820, at *13 (Apr. 11, 2008), *petition for review denied sub nom. Paz Sec. v. SEC*, 566 F.3d 1172, 2009 U.S. App. LEXIS 11500 (D.C. Cir. May 29, 2009).

³² See *CMG Inst. Trading, LLC*, 2009 SEC LEXIS 215, at *30 (Jan. 30, 2009); *Stephen J. Gluckman*, 54 S.E.C. 175, 1999 SEC LEXIS 1395, at *22 (July 20, 1999).

³³ CX-5 (Troszak Form Filing History and Form U4 Amendment) at p. 10 of 15; CX-3 (federal tax lien) at p. 3 of 5; Hearing Tr. 95-97.

³⁴ CX-1 (North Woodward CRD); CX-2 (Troszak CRD); CX-3 (federal tax lien) at p. 3 of 5.

reminded him of the obligation to disclose such a lien on the Form U4.³⁵ Nevertheless, Respondents did not disclose the lien on the Form U4 until October 2011, less than two months before the Hearing, more than a year after the staff had reminded him of his disclosure obligation, and approximately three years after entry of the tax lien. Troszak's Form U4 was no longer accurate in October 2008, and at least by the end of April 2010 he knew that he should correct the Form U4 and yet failed to do so. As a result, false information was disseminated to the investing public by means of Broker-Check, a resource made available at FINRA.org for investors to review the licenses, employment history, and regulatory disclosures of FINRA members and individual brokers.³⁶

At the Hearing, Troszak conceded that he was subject to a federal tax lien in October 2008, and that he and his Firm had failed to disclose that fact until October 2011. Troszak also conceded that he "probably" should have amended the Form U4 to disclose the tax lien. He indicated that he was only persuaded that he had to disclose the tax lien because of his counsel's insistence.³⁷

³⁵ CX-9 (April 22, 2010 letter) at p. 3 of 4.

³⁶ Hearing Tr. 97-98.

³⁷ Starting in April 2010, FINRA staff reminded Respondents at least three times in writing of the obligation to amend Troszak's Form U4 to disclose the federal tax lien. CX-9 (April 22, 2010 letter) at p. 3 of 4; CX-12 (May 25, 2010 letter) at p. 2 of 8; CX-14 (June 10, 2010 letter) at p. 3 of 10; Hearing Tr. 39.

Respondents' counsel had stipulated in writing prior to the Hearing to the existence of the federal tax lien, and Troszak's failure to amend his Form U4 until October 2011. At the Hearing, however, Troszak declined to agree to all of the stipulations entered into prior to the Hearing by his counsel. In any event, at the Hearing Troszak did expressly agree that: (i) on October 6, 2008, the IRS issued a notice of federal tax lien against Troszak individually, as well as various Troszak entities; (ii) the tax lien stated that taxes remained unpaid; (iii) a lien had issued in favor of the United States in all property and rights to property of Troszak and the entities. Hearing Tr. 146-149. Troszak admitted that he and North Woodward did not disclose the outstanding tax lien in his Form U4 at any time from at least November 5, 2008, to October 13, 2011. Hearing Tr. 149. Troszak acknowledged that the Form U4 was amended to disclose the tax lien only shortly before the Hearing. Hearing Tr. 149.

Troszak said in his opening statement with regard to the charge of failing to disclose the tax lien on the Form U4, "And after arm wrestling with former counsel a great deal about this issue, the U4 I will at this point, after a great deal of education and a great deal of digging and reading, say that I needed to probably disclose that." Hearing Tr. 22. Under oath, Troszak reiterated, "And I talked with people about the U4, and finally they convinced me I had to do it." Hearing Tr. 121.

In his defense, Troszak essentially argued “no harm, no foul” and attempted to trivialize the violation.³⁸ It is not clear that no harm was done – if the customers who had lent Troszak money had known that he was unable or unwilling to satisfy the tax lien, the information might have led them to assess the risks of loaning him money differently. The information also might have affected other customers’ evaluation of whether Respondent and his Firm should be entrusted with their funds. Additionally, regulators were deprived of information relevant to their oversight of these two registrants’ activities. Even if no harm was done, however, that is no defense. Harm is not required for a violation.

The Hearing Panel finds that Respondents were required to disclose the tax lien against Troszak on his Form U4 by November 5, 2008 (within 30 days of its imposition on October 6, 2008), but the Respondents failed to do so. The Hearing Panel finds that this misconduct violated Article V, Section 2 of the FINRA By-Laws, NASD Rule 2110, and FINRA Rule 2010.

C. Respondents Failed To Provide Documents And Information Requested By FINRA Staff Pursuant To FINRA Rule 8210 In Violation Of That Rule And FINRA Rule 2010

Prior to the filing of the Complaint in May 2011, Respondents produced *none* of the documents FINRA staff requested pursuant to Rule 8210 in the April, May, and June 2010 letters.³⁹ In October and November 2011, half a year after the filing of the Complaint, Respondents produced some – but not all – of the requested documents.⁴⁰ Approximately six weeks before the Hearing, in October 2011, Respondents produced customer account statements

³⁸ “I want to establish the fact of who’s been harmed here. Eight of my personal friends didn’t get a chance to see that I didn’t have an exactly correct U4.” Hearing Tr. 106-07.

³⁹ Hearing Tr. 63-65, 84-85. The examiner noted that she did have the promissory notes that were produced in response to the staff’s February 2010 letter. *Id.*

⁴⁰ CX-18 (index of documents, from which the descriptions in text are taken). Correspondence between counsel dated December 5, 2011, three days before the Hearing, indicated that there still remained two outstanding issues with respect to the Rule 8210 requests. Hearing Tr. 74, 87; RX-100 (December 5, 2011 letter).

that had been requested in April 2010.⁴¹ However, Respondents produced no accounting for the \$11,310.48 difference between the \$200,000 Troszak borrowed and what he used to redeem his foreclosed property, even though that remained a subject of inquiry. At the Hearing, Troszak vaguely asserted that FINRA staff had – at some unspecified point in time – received sufficient material for an accounting. He did not identify any specific documents.⁴² The examiner who sent the Rule 8210 requests testified that she had received no documentation regarding the \$11,310.48 and how it was used.⁴³

The staff also requested copies of principal and interest payments on the loans for February 2010 and May 2010. No documentation was provided, and Troszak said inconsistent things regarding loan repayments, preventing the staff from ascertaining whether he had complied with the terms of the loan arrangements. Initially, in response to the staff's February 2010 letter, Respondents' counsel represented that interest payments had been made according to schedule.⁴⁴ At the Hearing, however, Troszak testified that the scheduled payments were not made because some of the customers had told him they did not want the money at that time. No

⁴¹ Hearing Tr. 79-81.

⁴² Troszak asserted: "You have all of the documents that you need to make that accounting." Hearing Tr. 189. However, he acknowledged that FINRA had only received partial information in piecemeal fashion until some unspecified time when he believed that the staff could put the pieces of the puzzle together. Troszak testified: "See, you received piece-meal documents so you received partial parts of this. You did not receive a full – you did not have the full ability to put together that 11 grand, and I don't know at what point in time. But you do have it now." Hearing Tr. 191.

⁴³ Hearing Tr. 65, 86.

⁴⁴ CX-11 (May 20, 2010 letter) at p. 4 of 6.

written record of a change in loan repayment terms is in the record.⁴⁵ Troszak also said that FINRA's examiner would be unable to reconstruct the payments that had been made on the loans from the documents provided by Respondents because some of the loan interest payments had been made in cash and were not recorded in one place.⁴⁶

In particular, for example, Troszak testified that one of the customers who loaned him money was an elderly woman (84 years old) whose memory was not very good and that he paid her interest on the promissory note in cash. He testified that "somewhere" was "a sheet of paper" with her initials against some numbers representing cash payments to her.⁴⁷ He continued, "So when the group here is trying to match up what's going on, [the examiner may say] 'He's not paying her. I can't see payments,' well, you've got 16,000 sheets of paper there, and in there there's payments from [the lady] on sheets of paper with her initials. And then [she]

⁴⁵ Troszak acknowledged that the promissory notes provided that the loans would be repaid in six consecutive quarterly installments of principal and interest on the first day of each quarter commencing February 1, 2010, with the balance due being paid at the end of the term on May 1, 2011. He also acknowledged that at least three or four specific customers had not received May or August 2010 payments, but he claimed that they had not wanted those payments at that time. Hearing Tr. 240-41.

Troszak testified: "People have actually told me and written me, 'Oh, I don't want my interest payment this year. I want it next year.' So you're asking for – [the examiner]'s sitting here looking at a document that says you're going to provide payments on these. Well, these are people that are my friends. They said, 'Doug, don't give it to me this year. Give it to me next year because I don't want to pay the taxes on it this year.' 'Oh, okay, [my friend]. Not a problem.' So you want statements showing the payments when the people that actually loaned me the money don't want the money yet." Hearing Tr. 189. *See also* Hearing Tr. 196-97, 219. Although Troszak testified that some of his clients had expressed in writing a desire not to be paid in accordance with the promissory note schedule, he offered no such documents into evidence. He justified his failure to provide any revised promissory notes by saying, "FINRA has never requested any. FINRA has never requested an update on any of this. . . . I don't understand how it's my obligation to give private client information to FINRA." Hearing Tr. 257.

⁴⁶ Troszak testified: "[H]ow we would disburse the money. We'd make journal entries, which is where [the examiner], because she doesn't have an accounting background, couldn't put it together. So that's why she sent that bullet saying, 'Provide an accounting.' Well, it's all over the place, including cash payments on notes that have been supplied but she's got to pull from other spots to put it together to make it work." Hearing Tr. 186-87.

⁴⁷ Hearing Tr. 154-56, 187.

says, ‘Well, you know, I don’t really want that money in December. You owe it to me. Give it to me in January.’”⁴⁸

The examiner testified that Respondents failed to provide documentation to show that the investors who lent Troszak money had been repaid by May 1, 2011, as required by the promissory notes. She further testified that Respondents failed to provide all the accounting statements that had been requested for North Woodward or the other companies in which Troszak had a beneficial interest for the time period specified.⁴⁹

The examiner testified that Respondents’ failure to respond to the Rule 8210 requests “substantially” impaired her examination. She explained: “Well, I wasn’t able to review any of the customer documentation to determine if – if this was a legitimate investment, if it was suitable for customers, or if there was misuse of customer funds and if any of the investors were harmed.”⁵⁰

The Hearing Panel finds that Respondents failed to provide documents and information requested by FINRA staff pursuant to FINRA Rule 8210, thereby violating that Rule and FINRA Rule 2010. The Hearing Panel further finds that the requested documents and information were material to the investigation of the loan transactions with the brokerage clients.

⁴⁸ Hearing Tr. 154-55. Troszak testified: “I made a cash payment to her which is -- or four or five different ones that are in all this. It’s here. I supplied it to the lawyers. And, you know, they were all kind of giggling at the way I did this, but I did it that way.” Hearing Tr. 202.

⁴⁹ Hearing Tr. 46-49.

⁵⁰ Hearing Tr. 49.

IV. SANCTIONS

A. Sanction Guidelines

(1) **Failure To Disclose Tax Lien On Form U4**

FINRA's Sanction Guidelines provide a range of sanctions for the filing of a false, misleading, or inaccurate Form U4. The responsible individual may be suspended for five to 30 business days and may be fined from \$2,500 to \$50,000. In egregious cases, adjudicators may consider suspending the responsible individual for up to two years or imposing a bar and suspending a firm until the deficiency is corrected. Principal considerations in evaluating the appropriate sanctions within these parameters include: the nature and significance of information at issue and whether the violation resulted in harm to any person or entity.⁵¹

(2) **Failure To Comply With FINRA Rule 8210 Requests**

The Sanction Guidelines specify that where a respondent fails to respond to a Rule 8210 request until after the complaint is filed adjudicators should apply a presumption that the failure constitutes a complete failure to respond.⁵² Respondents here failed to provide any documents covered by the April, May, and June 2010 staff requests until almost half a year after the Complaint was filed in May 2011. Consequently, it is appropriate to treat Respondents' untimely and deficient responses as a complete failure to respond.

The Sanction Guidelines state that a bar should be the standard sanction for a complete failure to respond to a request for information pursuant to Rule 8210. In addition, the Sanction Guidelines recommend a monetary sanction of \$25,000 to \$50,000 in appropriate cases. Among

⁵¹ FINRA Sanction Guidelines 69-70 (2011), available at www.finra.org/oho (then follow "Enforcement" hyperlink to "Sanction Guidelines").

⁵² Sanction Guidelines 33 note 1.

the principal considerations in determining sanctions for this type of violation, is the importance of the information requested, as viewed from FINRA's perspective.⁵³

(3) Overarching Principles And Considerations

Pertinent to this case are certain General Principles applicable to all sanction determinations. The sanction should be remedial in nature, designed to deter the respondent and other market participants from similar misconduct in the future and to encourage improved market conduct overall. Disciplinary sanctions should be more severe for recidivists. Principal Considerations include a respondent's disciplinary history, whether the respondent accepts responsibility for the misconduct, whether there is a pattern of misconduct, whether the misconduct extends over a long period of time, whether the misconduct injured other parties (and if a customer was injured the degree of sophistication of that customer), whether the misconduct interfered with a FINRA investigation, whether the misconduct intentional, reckless, or merely negligent, whether the respondent engaged in the misconduct notwithstanding prior warnings from FINRA, and whether the misconduct created a potential gain for the respondent.⁵⁴

B. Aggravating Factors In This Case

(1) The Hearing Panel Finds That Troszak Was Not Credible

The Hearing Panel finds that Troszak's testimony at the Hearing was evasive, obfuscatory, and lacked credibility. He claimed, for example, that his customers did not want to be repaid according to the schedule in the promissory notes, but he provided no proof.⁵⁵ The Hearing Panel did not find the claim credible.

⁵³ *Id.*

⁵⁴ Sanctions Guidelines 2, 6-7.

⁵⁵ Hearing Tr. 195-97, 219.

Troszak also repeatedly claimed that the reason he refused to turn over North Woodward customer account statements was because he was concerned with clients' privacy and he could not produce the documents requested by FINRA without his clients' written permission.⁵⁶ He was asked whether he had any documentation that he had attempted to secure permission from his clients to produce their account records – which at least would have shown a good faith effort to overcome the conflict he allegedly perceived. But Troszak testified he had no such documentation.⁵⁷ In fact, he admitted that he eventually produced responsive material without securing his clients' permission,⁵⁸ which undermines the credibility of Respondents' proffered reason for failing to comply with the staff's Rule 8210 document requests.

Troszak further claimed that records relating to the unaccounted-for \$11,310.48 “could” not be produced because the records were “personal and confidential” to a company that Troszak himself controlled. He also refused to produce records from accounts he controlled to show his payment history on the loans on the ground the records were “personal and confidential.” He pointed to no particular statute or regulation to justify his refusal to produce these records, however.⁵⁹ Obviously, Troszak could have produced the financial records within his control if had he chosen to do so, and, eventually, he did produce some of those requested records.

⁵⁶ Hearing Tr. 115-117, 119-20, 126-27, 129, 138-39, 165, 184-85, 223, 229-32, 257.

⁵⁷ Hearing Tr. 223-26.

⁵⁸ Hearing Tr. 165-66. He testified: “As time went on, we supplied that information and took out the pieces that were the very onerous ones. And I did it without checking with every single person.” He testified that he had some concern about turning over the information requested by FINRA without obtaining his customers' written consent but that he did so because he did not “believe they're going to come back at me legally.” He said, “So the balance was my best friends, are they going to sue me because I didn't get written consent? I hope not.” Hearing Tr. 229.

⁵⁹ CX-15 (June 18, 2010 letter).

(2) Troszak And His Firm Have A Disciplinary History

On January 6, 2005, Troszak and North Woodward settled an NASD disciplinary proceeding alleging that the Firm had engaged in securities related activities without a FINOP. They were jointly and severally fined \$5,000. On August 14, 2009, the Securities and Exchange Commission issued a decision affirming an NASD decision jointly and severally fining Troszak and the Firm \$2,500 for failing to prepare and maintain a general ledger and trial balance for February and March 2005.⁶⁰

(3) Customers May Have Been Put At Risk

Troszak admitted that many of the customers who lent him money have not been paid back in accord with the promissory notes. He claimed that these “extensions” on the notes were documented and “business-like,” but no documentation is in the record. Troszak claimed that he kept a tally of what he owed to whom but that he did not produce it because FINRA staff did not request it.⁶¹ Particularly troubling are the cash payments to the elderly woman who has a bad memory. The failure to provide the requested account statements and payment records made it difficult for the staff to determine whether customers have been injured. The circumstances and Troszak’s evasiveness raise significant concerns.

(4) Troszak’s Low Regard For His FINRA Responsibilities Casts Doubt On His Commitment To Compliance

Troszak only amended his Form U4 because of significant regulatory pressure and his counsel’s insistence. Troszak also did not accept responsibility for the failure to respond promptly and completely to the staff’s Rule 8210 requests, but rather portrayed himself as caught

⁶⁰ CX-1 (North Woodward CRD); CX-2 (Troszak CRD); Hearing Tr. 145. *N. Woodward Fin. Corp.*, Exchange Act Rel. No. 60505, 2009 SEC LEXIS 2796 (Aug. 14, 2009).

⁶¹ Hearing Tr. 196-202.

between conflicting – but unspecified – regulatory demands. He made plain that in his mind FINRA is at the bottom of the “totem pole” of regulators because it is not a governmental body.⁶²

Troszak also took a “cat-and-mouse” view of the staff’s Rule 8210 requests. He knew that the staff had asked for documents showing quarterly payments on the promissory notes in order to determine whether the clients had been repaid. He claimed to have a summary or running tally of how much he owed to the different customers documents in connection with the loans, but when asked whether he had discussed the document with anyone at FINRA in the course of the investigation he responded, “It was never requested.”⁶³ Similarly, when he was asked if he had provided revised promissory notes showing that some of the clients had, as he claimed, extended the time for repayment, he responded, “FINRA has never requested any. FINRA has never requested an update on any of this. . . . I don’t understand how it’s my obligation to give private client information to FINRA.”⁶⁴

(5) Other Considerations

In this case, both violations extended over a substantial period of time. Troszak’s Form U4 was only amended to disclose the federal tax lien three years after the notice of lien issued. Respondents only provided account statements and other materials requested by the staff pursuant to Rule 8210 a year and a half later – after the Complaint was filed. The violations were not inadvertent or negligent. The failure to respond promptly and completely interfered

⁶² RX-101 (chart purporting to show numerous regulatory bodies with authority over aspects of Troszak’s businesses); Hearing Tr. 109-12, 114-21, 126-30, 162-66. For example, Troszak testified: “It becomes even more complicated when you look at the big picture, which is I have to report to the IRS, I have to report to the Department of Labor, I have to report indirectly to the AICPA and FINRA, and, with regards to privacy, what they’re reviewing right now, the Federal Trade Commission.” Hearing Tr. 117. He further testified: “[T]he IRS really has me by a tight grip. And so when it comes down to a request for information, I just go down the totem pole and I’m sitting here saying FINRA isn’t the IRS and isn’t the Department of Labor....” Hearing Tr. 119. He later declared: “I’ve got governmental agencies saying this, and these guys [FINRA staff] don’t have that status.” Hearing Tr. 164.

⁶³ Hearing Tr. 215-16.

⁶⁴ Hearing Tr. 256-57.

with FINRA staff's investigation of the loan transactions. All of these considerations are aggravating factors.

The Hearing Panel did not find any mitigating factors.

C. Sanctions Imposed

(1) Failure To Disclose Tax Lien On Form U4

Respondents' failure to amend Troszak's Form U4 to disclose the federal tax lien would be of less concern if it had been corrected when FINRA staff informed him in April 2010 that he needed to do so. Respondents' refusal to file an amendment for more than a year after the staff instructed Troszak to do so makes this violation more serious. According to Troszak, Respondents only amended the Form U4 after their counsel said they had to do it. Neither instruction by FINRA staff, nor the threat of enforcement action, nor the filing of the Complaint had any effect on Respondents' misconduct. This signifies that a severe sanction is necessary to deter such misconduct by Respondents in the future.⁶⁵

The Hearing Panel finds that the sanctions recommended by Enforcement are appropriately remedial. For violation of Article V, Section 2 of the FINRA By-Laws, NASD Rule 2110, and FINRA Rule 2010, it would be appropriate to suspend Troszak from association with any FINRA-registered firm for 30 business days, to suspend the Firm from FINRA membership for 30 business days, and to fine both Respondents jointly and severally \$10,000.

(2) Failure To Comply With Rule 8210 Requests

Respondents failed to provide documents and information in response to the April, May, and June 2010 Rule 8210 requests until after the Complaint was filed. The Sanction Guidelines

⁶⁵ Respondents were not charged with a "willful" violation. See *Mathis v. SEC*, 2012 U.S. App. LEXIS 2907 (2d Cir. Feb. 14, 2012) (affirming SEC decision that knowing failure to disclose tax liens on Forms U4 was willful). But Respondents' conduct borders on willful at least from the time that FINRA staff directed them to amend Troszak's Form U4 and for that reason qualifies as egregious within the Sanction Guidelines.

presume such a violation to be the same as a complete failure to comply, for which a bar is the standard sanction. Even aside from the presumption, the failure here to comply with the staff's Rule 8210 requests was egregious because of the degree of regulatory pressure required to prompt a much-delayed response and because the violation impeded an investigation into whether customers had been harmed or defrauded. The aggravating factors discussed above support the imposition of the most stringent sanctions. The Hearing Panel finds that it would be appropriate to impose a \$50,000 fine jointly and severally on the Respondents, to bar Troszak from association with any FINRA member in any capacity, and to expel North Woodward from registration as a FINRA member firm.

V. ORDER

For Respondents' failure to comply with requests for information and documents pursuant to FINRA Rule 8210, in violation of Rules 8210 and 2010, the Hearing Panel Orders that Respondent Douglas A. Troszak be barred from association in any capacity with any FINRA member firm and that Respondent North Woodward Financial Corp. be expelled from FINRA membership. If this decision becomes FINRA's final disciplinary action, the bar and expulsion shall become effective immediately. The Respondents are also ordered to pay costs in the amount of \$2712.00, which includes a \$750.00 administrative fee and the cost of the hearing transcript.⁶⁶ In light of the bar and expulsion, the other sanctions are not imposed.

Lucinda O. McConathy
Hearing Officer
For the Hearing Panel

⁶⁶ The Hearing Panel has considered and rejects without discussion all other arguments of the parties that are inconsistent with this decision.

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