FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. HUGH VINCENT MURRAY III (CRD No. 826261), Respondent.	Disciplinary Proceeding No. 2008016437801 Hearing Officer – LBB **HEARING PANEL DECISION** Dated: October 25, 2012

Respondent Hugh Vincent Murray III is suspended in all supervisory capacities for 90 days and ordered to requalify by examination as a principal before serving in any supervisory capacity for failing to supervise the filing of Forms U4 by two registered representatives, in violation of NASD Rules 3010 and 2110, and FINRA Rule 2010. The Hearing Panel finds that Respondent did not fail to supervise the allegedly excessive trading by a registered representative.

Appearances

James M. Stephens, Esq., Senior Regional Counsel, and Seema Chawla, Esq., Principal Regional Counsel, Kansas City, Missouri, for the Department of Enforcement.

Hugh Vincent Murray III, *pro se*.

DECISION

The Department of Enforcement ("Enforcement") filed the Complaint in this disciplinary proceeding on June 21, 2011, charging Respondent Hugh Vincent Murray III ("Respondent") with failing to supervise three registered representatives at FINRA member firm Forsyth Securities, Inc. ("Forsyth" or the "Firm"), in violation of NASD Rules 3010 and 2110, and

FINRA Rule 2010.[1] The Complaint charges Respondent failure to supervise Joseph Dale Frost Sr. ("Frost") and John Charles Reilly Jr. ("Reilly") with respect to the filing of amendments to their Forms U4, and Russell Philip Macke ("Macke") with respect to allegedly excessive trading in two discretionary accounts. Respondent answered the Complaint on July 19, 2011.[2]

A two-day hearing was conducted in Saint Louis on April 17-18, 2012, before a Hearing Panel composed of two current members of the District 4 Committee and a Hearing Officer. Enforcement called a FINRA examiner and Respondent as its witnesses. Respondent testified on his own behalf, and called Macke as a witness.

I. Respondent

Respondent entered the securities industry in 1976. He was employed by Forsyth from 1985 until December 24, 2011. Beginning in 2004, he was the Firm's president and compliance officer. He has not been employed in the securities industry or registered with a member firm since December 24, 2011. CX-4, CX-27; Tr. 134-135, 178, 267. Respondent supervised Frost (Tr. 144, 154), Reilly (Tr. 181), and Macke (Tr. 253-254, 266, 376). He submitted all Forms U4 for Forsyth. Tr. 144.

In 2011, Respondent entered into a consent order with the State of Missouri, barring him from being registered in any capacity in Missouri, his home state. CX-4.

[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. *See* Regulatory Notice 08-57, FINRA LEXIS 50 (Oct. 2008). This decision relies on NASD Rules 3010 and 2110, and FINRA Rule 2010, which were the applicable rules at the time of Respondent's alleged misconduct. The applicable rules are available at www.finra.org/rules.

[2] The Complaint charged Frost and Reilly with failure to update their Forms U4 to disclose criminal matters; and Macke with excessive trading in two accounts. Frost, Reilly, and Macke settled before the hearing.

II. Respondent's Supervision of Frost's and Reilly's Form U4 Filings

A. Frost's Felony Charge and Guilty Plea

Frost worked for Forsyth from 2001 to 2003, and was re-hired in May 2005. CX-1. On April 20, 2005, Frost was charged in Missouri with a Class D felony for failure to pay child support. CX-13, CX-14. Respondent spoke to Frost about the child support issue in about May 2005, but they did not discuss the issue in depth. Tr. 141-145. Respondent told Frost that he did not think the child support charge was reportable because Respondent believed that almost all child support matters were misdemeanors. Tr. 176, 362.

On May 24, 2005, FINRA received an FBI report on Frost in response to FINRA's submission of Frost's fingerprints. The FBI reported that Frost had been charged with non-support on about April 27, 2005, but the report did not say if the charge was a felony. CX-17. The report noted that Frost's trial was scheduled for April 10, 2006. CX-18. On May 26, 2005, FINRA's Research and Disclosure Department ("RAD") sent a Disclosure Letter to Respondent informing him that Frost had been arrested, noting that Forsyth might have to report Frost's criminal matter, and requesting documents and information, including whether the charge against Frost was a felony or a misdemeanor.[3] CX-18.

RAD sent another Disclosure Letter to Respondent on October 12, 2005, stating that RAD had not received sufficient documentation concerning Frost's criminal matter, but that the documents received indicated that Frost might have been charged with a felony. CX-18. Respondent filed an update to Frost's Form U4 on February 1, 2006, disclosing that Frost had been charged with one count of failure to make child support payments, a felony. The updated Form U4 reported the date of the felony charge as September 29, 2005, when it was actually

[3] Respondent was the Firm's recipient of Disclosure Letters from RAD. Tr. 146.

April 20, 2005. CX-22. RAD sent another Disclosure Letter to Respondent on February 2, 2006, again asking for documents relating to the charge against Frost. CX-18; Tr. 160-162.

Frost pled guilty to felony failure to pay child support on April 10, 2006. CX-13, CX-16, CX-26. The trial court found Frost guilty, but deferred imposition of a sentence and placed Frost on probation for five years. CX-26, at 20-27.

RAD sent additional Disclosure Letters to Respondent on September 13, 2006, April 17, 2007, June 21, 2007, and July 27, 2007, noting that Frost's trial had been scheduled for April 2006, and asking for documents showing the final disposition of the matter, or further information if the matter was still pending. CX-18.

RAD sent another Disclosure Letter to Respondent on August 31, 2007, referencing Frost's April 10, 2006, guilty plea, and requesting documents about the matter. CX-18. Respondent had not sent information to RAD about Frost's guilty plea. Tr. 168. There is no direct evidence of how RAD learned of Frost's guilty plea. However, when Respondent asked Frost for documents relating to the criminal matter, Frost always said he would check with his attorney. Tr. 150, 160-162, 165, 166. At some point, at Respondent's request, Frost and his lawyer began communicating directly with RAD. Tr. 148-149, 361-362; RX-1.

On July 7, 2008, another RAD Disclosure Letter noted that RAD had not received updated information about Frost's criminal matter, and asked for more detail. The Disclosure Letter informed Respondent that Forsyth needed to amend the answers to the criminal disclosure questions on Frost's Form U4, and the Disclosure Reporting Page, as appropriate. The Disclosure Letter noted that RAD had received court documents. CX-18. Respondent had not sent the court documents referenced in the Disclosure Letter of July 7, 2008. Tr. 170. Other

than the request to Frost to deal directly with RAD, there is no evidence of how RAD obtained the court documents.

On July 10, 2008, RAD sent a letter to Respondent, informing him that it had determined that because Frost had pled guilty to criminal non-support, a felony, Frost was subject to statutory disqualification, and the Firm either needed to file a Membership Continuance Application ("Form MC-400") to begin the membership continuance process, or terminate Frost's employment. CX-25. Respondent filed a Form MC-400 on behalf of Frost on July 25, 2008, disclosing Frost's guilty plea, and sponsoring Frost in his request to continue his FINRA registration. CX-26. Frost's statement accompanying the application stated that Frost had not been convicted under Missouri law because of the deferred imposition of sentence. CX-26 at 12. Respondent did not amend Frost's Form U4. Tr. 172-175.

Respondent filed an amendment to Frost's Form U4 on September 15, 2008. The response to question 14A(1)(a), asking if Frost had been convicted or pled guilty to a felony, was checked "No."[4] The Disclosure Reporting Page was amended to disclose that Frost had pled guilty and that the judge had suspended the imposition of a sentence, and stated that the judge's action was considered non-acceptance of a plea under Missouri law. CX-23. RAD sent Respondent a Disclosure Letter on September 16, 2008, informing him that the response to question 14A(1)(a) should be amended to "Yes" to disclose the guilty plea. CX-18. On September 17, 2008, Respondent filed an amendment to Frost's Form U4 disclosing the guilty plea. CX-24.

[4] "Have you ever been convicted of or pled guilty or nolo contendere ('no contest') in a domestic, foreign, or military court to any *felony*?"

B. Reilly's Felony Charge

On May 18, 2008, a prosecutor in Pike County, Missouri, filed an "Affidavit or Complaint in Felony Case" with the Circuit Court of Pike County, stating that Reilly had committed the Class D felony of driving while intoxicated ("DWI"), and asking the court to issue a warrant for Reilly's arrest. An arrest warrant was issued on May 18, 2008. CX-30, CX-31. A friend of Reilly's called Respondent on about May 19, 2008, and told him Reilly had been arrested for DWI and needed bail money. Tr. 184-185; CX-37. Respondent advanced money to Reilly for bail and to hire an attorney. Tr. 185-186. Reilly was served with a warrant on May 19, 2008, and was also arraigned on that date. CX-30. Respondent talked to Reilly's attorney many times after Reilly's arrest. The attorney told Respondent that he was not certain if Reilly would be charged with a felony. Tr. 185-186.

The prosecutor filed a felony information on November 13, 2008, charging Reilly with DWI, a Class D felony. CX-32. Reilly was arraigned and entered a plea of not guilty on December 22, 2008. Respondent received a copy of a court record on the arraignment the next day. CX-33; Tr. 187.

Respondent filed a Form U4 amendment for Reilly on January 21, 2009, reporting that Reilly had been charged with a felony. The Form U4 was inaccurate because it stated that the date on which Reilly had first been charged was December 22, 2008. CX-35.

Reilly pled guilty to felony DWI on June 18, 2009. CX-30. Respondent filed a Form U5 on June 25, 2009, reporting that Reilly's employment had been terminated on June 22, 2009. CX-36.

C. Supervision of Macke's Trading in Two Discretionary Accounts

Respondent is charged with failing to supervise Macke's trading in two discretionary accounts. The Complaint alleges that the volume of the trading in the two accounts was excessive and unsuitable for the customers.

1. Respondent's Overall Supervision of Macke

Macke became employed by Forsyth in October 2005. CX-3. When Respondent hired Macke, he immediately placed Macke on heightened supervision because Macke had a history of disciplinary problems. Although most brokers in the Firm were permitted to work at home, Macke was required to work at the Firm's office. Tr. 200, 373.

Respondent reviewed all of Macke's tickets when they came in, and initialed them. He examined the tickets more carefully if they showed that Macke had exercised discretion. For a trade in a discretionary account, Macke indicated on the tickets that trades were discretionary trades even when they were not. Respondent told Macke that he only needed to put a "D" on the ticket if discretion was exercised. Tr. 201, 212. Respondent frequently asked Macke about individual trades, primarily to learn why Macke liked the particular stock. Tr. 202-203. Respondent regularly reviewed account statements for Macke's accounts. Tr. 370.

Macke's trading strategy was to identify a stock he considered undervalued, buy the stock, and sell if it went up three points. Tr. 296-297. Respondent knew that Macke liked to trade frequently. Tr. 206.

2. Respondent's Supervision of Macke's Trading in Customer Account for A.K., R.H., and C.H. (the "A.K. Account")

In August 2007, A.K. was 85 years old, retired, living in a nursing home, and had dementia. Her niece, C.H., and her niece's husband, R.H., opened the A.K. Account at Forsyth on August 6, 2007. The new account form identified A.K. as the primary account holder, and

Macke as the broker. The new account form also listed C.H. and R.H. on the account registration. The account was classified on the form as owned by "joint tenants with right of survivorship." C.H. was listed on the form as having full power of attorney. Both C.H. and R.H. signed the form. CX-38; Tr. 131, 229. C.H. was A.K.'s only heir. Tr. 327. According to the new account form, A.K. had an income of $60,000 and assets of $600,000, including liquid assets of $380,000. The objectives of the account were identified as growth, income, trading, and speculation, with moderate risk. CX-38; Tr. 67.

The customers deposited $390,558.15 in the A.K. Account soon after it was opened. CX-41, CX-47 at 12. C.H. and R.H. told Macke that the objective of the account was to try to generate money to support A.K. in a nursing home, but Respondent was not aware of that objective. Tr. 208, 308, 371. C.H. and R.H. told Macke that A.K. would need about $6,000 to $7,000 per month. Macke told them that the only way to make that amount was to use margin. They agreed. Tr. 311, 333-334. C.H. and R.H. signed a margin agreement for the account on August 6, 2007, the day it was opened. CX-39. Respondent also signed the margin agreement. Tr. 215.

C.H. and R.H. granted discretion to Macke to trade in the account on August 6, 2007. CX-40. Respondent told Macke that the amount of discretion should be limited, but he let Macke and the clients work out the limits. Tr. 209-210, 223. Macke's purchasing discretion was limited to one stock purchase per day for an amount not to exceed $50,000. There was no limit on his discretion to sell. CX-40.

Macke talked to C.H. or R.H. almost every time he bought or sold a security in the A.K. Account. Tr. 322-324.[5] When the market declined, Macke talked to C.H. and R.H. almost every day. By that time, he was not using discretion in the account, and did not trade in the account frequently. He regularly visited them at their home. Tr. 223, 320, 340-341. Macke wrote C.H. and R.H. on May 23, 2008, saying company policy had changed and he was no longer going to exercise discretion in the A.K. Account. CX-42.

Respondent was quite familiar with the A.K. Account. He knew at the time the account was opened that A.K. was elderly and in a nursing home, and that C.H. had a power of attorney and was managing A.K.'s affairs because A.K. had dementia. Tr. 207, 213, 229. When the account was opened, Macke told Respondent that C.H. and R.H. wanted to generate more money in the account. Tr. 233. Because the account was opened as a joint tenancy with the right of survivorship, Respondent regarded it as an account for all three account owners. Tr. 213, 238. Respondent knew C.H. and R.H. had granted discretionary authority to Macke. Tr. 223. Respondent was familiar with the stocks that Macke was trading for A.K. because Macke would discuss the stocks he liked at weekly meetings. Tr. 223. Respondent and Macke talked about the A.K. account "all the time." Tr. 223, 309.

In the spring of 2008, Respondent told Macke to start reducing the margin balance in the A.K. Account, but the market kept declining, making it difficult to reduce margin. Tr. 239-240, 248, 315; CX-46. Macke and Respondent spoke to C.H. and R.H. on the telephone, and C.H. and R.H. came to Forsyth's office to devise a strategy to reduce margin, but Macke could not execute the strategy because of the declining market, except by incurring losses for the clients. Tr. 243, 319-320, 338.

[5] C.H. and R.H. were not unsophisticated investors. R.H. and C.H. had bought five variable annuities from Macke when Macke had been at a previous firm. Tr. 250-251, 300. C.H. was a schoolteacher. R.H. was an engineer at a large corporation. Tr. 299-300. They had $450,000 in other investments through Macke. Tr. 301-302.

In August 2008, FINRA examiners asked Respondent to send a "comfort letter" to A.K., C.H., and R.H., to be sure they were comfortable with the level of trading in the A.K. Account. Tr. 73. Respondent sent the letter on August 11, 2008. The letter informed the clients that total commissions in the account over the previous 16 months had been $39,069, on a total of 139 trades. The letter noted that there had been $390,558 in deposits and $60,176 in withdrawals. The account value at the end of July 2008 was $256,539. C.H. signed the letter, acknowledging receipt. In signing, C.H. wrote that she was not comfortable with the account and wanted to draw down the margin balance so the portfolio would be more suitable for A.K. CX-43.

From August 30, 2007 until June 30, 2008, Macke executed 99 transactions in the A.K. Account. Tr. 73-74; CX-41. The annualized turnover rate for the period was 8.29, and the cost-to-equity ratio was 18%. Commissions and fees were $38,456.53. The initial deposit was $390,558.15. CX-41. Respondent never calculated a turnover rate or cost-to-equity ratio for the A.K. Account. Tr. 226-227. The loss in the account was about $53,000. Tr. 79; CX-41. More than half the trades took place in the first 60 days in which there was trading in the account, starting at the end of August 2007. The trading during that period was profitable, with a profit of about 10%. CX-41; Tr. 308-310.

3. Respondent's Supervision of Trading in Customer Account for N.H. and C.H. (the "H. and H. Account")

N.H. and C.H., husband and wife, opened the H. and H. Account with Macke on January 19, 2006. N.H. was 67 years old, C.H. was 65 years old, and both were retired. The new account form showed that their investment objective was income, and their risk tolerance was aggressive. The form showed that they had liquid assets of $125,000. They had 20 years of experience in stocks, bonds, mutual funds, and annuities or life insurance. They listed their income as less than $50,000 and their net worth as $200,000-500,000. Respondent signed the

form as principal. CX-48. The first date on which the value of the account is in the record is November 30, 2006, when the value of the account was $114,853.51. CX-55.

N.H. and C.H. had been Macke's clients and friends for almost 20 years. Tr. 302-303. They had $560,000 in total assets with Macke when Macke was a Series 6. Tr. 306. N.H. was very interested in stocks, and had invested for a long time. Tr. 322. Macke testified that N.H. and C.H. listed income as their investment objective on their new account form because they started the account with a mutual fund, but they decided to trade stocks. Macke did not amend the form when they decided to trade stocks. Tr. 358.

N.H. and C.H. did not need the money in the Forsyth account for living expenses; their income from pensions and social security was adequate. Tr. 336. Their retirement savings were in their annuity accounts. Tr. 347. Macke discussed margin with N.H. Tr. 334-335. N.H. and C.H. signed a margin agreement on May 15, 2006. CX-49. On May 18, 2007, they signed a written authorization for Macke to exercise discretion in their account. The discretion on purchases was limited to 1,000 shares on a single day, not to exceed $50,000. There was no limit on the discretion on sales. CX-50.

Respondent was familiar with the H. and H. Account. Respondent and Macke talked about what was going on in the account every day or two. Tr. 257. Respondent reviewed the margin agreement. Tr. 255. Respondent was aware that the N.H. and C.H. had given Macke discretionary authority. Tr. 255. Macke told Respondent that N.H. and C.H. had several hundred thousand dollars in annuities. Tr. 254, 261. Respondent understood that the purpose of the account at Forsyth was extra money, i.e., money that was not needed immediately. They later wanted to take money out of the account for living expenses. Tr. 260. Respondent was aware of the trading in the account. He reviewed every ticket. Tr. 256. He did not talk to

Macke about fees and commissions, but knew that Macke was giving the clients a discount. Tr. 256, 288.

Respondent sent a "comfort letter" to N.H. on August 11, 2008. The letter stated that the value of the account had declined from about $150,000 at the end of April 2007 to $82,000 at the end of July 2008, with $8,000 in withdrawals. N.H. wrote back saying that the money in his account was retirement money, and that he had lost $150,000 since June 2007. CX-53 at 2. Macke testified that N.H. and C.H. might have lost $150,000 in all of their accounts because they had $566,000 in their annuity accounts, plus other securities. He also testified that the account at Forsyth was not a retirement account. Tr. 348. Macke's testimony on this point, and, in general, was credible.

Macke executed 67 transactions in the H. and H. Account from February 16, 2007, until June 30, 2008. Commissions and fees were $19,890. The turnover rate was 4.92, and the cost-to-equity ratio was 18%. The account lost $31,681 in value during that period. CX-51. Respondent never calculated a turnover rate or cost-to-equity ratio for the H. and H. Accounts. Tr. 252-253. A substantial part of the loss was due to the decline in value of a mutual fund in the account. Tr. 344-346; CX-55 at 19, 125. Most of the trading took place from February 2007 through October 2007. Approximately 80% of the commissions and fees was incurred during that period, when the account gained 14% in value. CX-51.

III. Respondent Failed to Supervise Frost's and Reilly's Registration Filings, but Adequately Supervised Macke's Trading in Two Accounts

NASD Rule 3010(a) requires that FINRA members "establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities

laws and regulations, and with the Rules of [FINRA]."[6] "Assuring proper supervision is a critical component of broker-dealer operations."[7] Under NASD Rule 3010, a supervisor is responsible for "reasonable supervision," a standard that "is determined based on the particular circumstances of each case."[8] A violation of NASD Rule 3010 is also a violation of NASD Rule 2110 and FINRA Rule 2010.[9]

A. Respondent Failed to Supervise Filing of Forms U4 for Frost and Reilly

1. The Duty to Update the Form U4

Article V, Section 2 of NASD and FINRA By-Laws require that persons who apply for registration with FINRA must provide "such … reasonable information with respect to the applicant as NASD may require." Article V, Section 2(c) of the NASD By-Laws provides that every Form U4 filed with FINRA be kept current at all times by supplementary amendments that must be filed within thirty days of learning of the facts or circumstances giving rise to the amendment.[10] When a registered representative's Form U4 has not been promptly updated, the Form U4 is misleading, and the representative has violated NASD Rule 2110 and FINRA Rule 2010.[11]

2. Respondent Failed to Supervise the Updating of Frost's Form U4

Respondent failed to supervise Frost with respect to the updating of Frost's Form U4 to report the criminal charge and guilty plea. Respondent knew in May 2005, when Frost was re-

[6] NASD Conduct Rule 3010(a).

[7] *Richard F. Kresge*, Exchange Act Rel. No. 55988, 2007 SEC LEXIS 1407, at *27 (June 29, 2007).

[8] *Dep't of Enforcement v. Midas Securities, LLC*, No. 2005000075703, 2011 FINRA Discip. LEXIS 62, at *23 (N.A.C. Mar. 3, 2011), citing *Christopher J. Benz*, 1997 SEC LEXIS 672, at *12 (Mar. 26, 1997), *petition for review denied*, 168 F.3d 478 (3d Cir. 1998) (table).

[9] *Ronald Pellegrino*, Exchange Act Rel. No. 59125, 2008 SEC LEXIS 2843, at *2 n.2 (Dec. 19, 2008).

[10] *Richard A. Neaton*, Exchange Act Rel. No. 65598, 2011 SEC LEXIS 3719, at *17 (Oct. 20, 2011).

[11] *Richard G. Cody*, Exchange Act Rel. No. 64565, 2011 SEC LEXIS 1862, at *54 (May 27, 2011); *Dep't of Enforcement v. Kaweske*, No. C07040042, 2007 NASD Discip. LEXIS 5, at *33 (N.A.C. Feb. 12, 2007).

hired, that Frost had a criminal problem involving child support. Respondent merely assumed that the charge against Frost was a misdemeanor, and told Frost, incorrectly, that the matter was not reportable. He should have investigated further to determine the nature of the criminal charge. He knew by October 12, 2005, when he received a Disclosure Letter from RAD, that Frost might have been charged with a felony, yet he did not update Frost's Form U4 to report the charge until February 1, 2006, which was more than seven months late.[12]

Respondent also failed to supervise Frost to ensure that Frost's conviction was reported within the time required by FINRA's By-Laws. Frost was convicted on April 10, 2006, yet Respondent and Frost did not update Frost's Form U4 to reflect the guilty plea and conviction until September 2008, approximately 28 months late.[13] Respondent should have ensured that Frost kept him informed of developments in the matter. In addition, he received multiple requests from FINRA concerning the matter that should have prompted Respondent to take action to obtain current information. During the first fifteen months after Frost's guilty plea, Respondent received four requests from RAD requesting an update on the status of the criminal matter. Respondent received a Disclosure Letter in August 2007 referencing Frost's guilty plea, and another in July 2008. Respondent admitted that he did not diligently check for notifications from FINRA, such as Disclosure Letters. Tr. 366. RAD also sent Respondent a letter in July 2008 concerning the requirement to file a Form MC-400 on behalf of Frost due to his felony

[12] Respondent's misunderstanding of the nature of the guilty plea and deferred imposition of sentence does not explain his failure to report the felony charge in May 2005. Even if the court had not accepted Frost's guilty plea when it deferred imposition of sentence, FINRA's Rules required Forsyth and Frost to report the filing of the felony charge. *Dep't of Enforcement v. Zdzieblowski*, No. C8A030062, 2005 NASD Discip. LEXIS 3, at *11-12 (N.A.C. May 3, 2005).

[13] A guilty plea with a deferred imposition of sentence is reportable. The plain language of Form U4 required Frost, and Respondent, to report that Frost had pled guilty to a felony. The National Adjudicatory Counsel has addressed a related issue in a statutory disqualification matter, citing an interpretative letter from the SEC that determined that "a person is convicted for purposes of Section 3(a)(39) of the Exchange Act if a judge defers judgment and puts a defendant on probation after the judge … finds the defendant guilty…." *Continued Association of X as an Investment Company/Variable Contracts Representative*, SD Decision No. 04014 (2004), available at www.finra.org/web/groups/industry/@ip/@enf/@adj/documents/nacdecisions/p013420.pdf (emphasis in original).

conviction, and Respondent filed the Form MC-400 that month. Nevertheless, Respondent did not amend Frost's Form U4 until more than 50 days after filing the Form MC-400.

Respondent disregarded his supervisory responsibilities by failing to supervise Frost to ensure that Frost's Form U4 was kept current, as required by FINRA's By-Laws. By failing to supervise Frost, Respondent violated NASD Rules 3010 and 2110.

3. Respondent Failed to Supervise the Updating of Reilly's Form U4 to Disclose the Felony Charge

Respondent failed to supervise Reilly to ensure that Reilly's Form U4 was updated to disclose his felony DWI charge. As a result, the amendment to Reilly's Form U4 disclosing the charge was filed 39 days late.

Enforcement argues that Respondent should have amended Reilly's Form U4 within 30 days of May 18, 2008, the date on which Reilly was arrested. Reilly was not actually charged with a felony until the felony information was filed on November 13, 2008. Form U4 requires registrants to report felony charges.[14] It does not require the reporting of an arrest.[15] Using the date of the felony information as the date of the charge, Reilly's Form U4 should have been amended by December 13, 2008. The amendment was not filed until January 21, 2009, or 39 days late.

Although Reilly might not have been forthcoming with information about the status of the criminal matter, Respondent was very familiar with the existence of the matter, and should have taken more decisive measures to ensure that he was kept current on the progress of the matter. He failed to update Reilly's Form U4 promptly when he received a copy of Reilly's arraignment on December 23, when the amendment to Form U4 would already have been late.

[14] Question 14A(1)(b) of Form U4 asks, "Have you ever been *charged* with any *felony?*"

[15] See Form U4 and U5 Interpretive Questions and Answers, available at www.finra.org/web/groups/industry/@ip/@comp/@regis/documents/appsupportdocs/p119944.pdf.

Reilly's Form U4 was not amended until 28 days after Respondent received the court's record on the arraignment, and was inaccurate when filed.

Respondent violated NASD Rules 3010 and 2110, and FINRA Rule 2010, by failing to supervise Reilly with respect to the duty to keep Reilly's Form U4 current.

B. Respondent Adequately Supervised Macke's Trading

Respondent adequately supervised Macke's trading in the A.K. Account and in the H. and H. Account.

1. The A.K. Account

Respondent monitored Macke's activity in the A.K. Account regularly. Respondent understood that the A.K. Account was a trading account, and the activity in the account was consistent with the customers' objectives. He approved the account and spoke to Macke about the account very frequently. He knew that Macke was in frequent contact with C.H. and R.H. about the account. When the market decline caused the margin levels to increase, he spoke to Macke about reducing the margin in the account. He reviewed all the initial account opening documents, trade tickets, margin reports, and account statements for the account.

The most active trading period was in the first 60 days after the account was funded with cash. The initial trades were made to move the cash into stocks, and the trades in those 60 days were profitable. Although the turnover rate and cost-to-equity ratio were somewhat high, the overall level of trading in the account was not a red flag, given the objectives as stated on the new account form and the profitability of the account when the Macke was trading most actively.

The Hearing Panel finds that Respondent did not fail to supervise the level of trading in the A.K. Account.

2. The H. and H. Account

Respondent also adequately supervised the H. and H. Account. As with the A.K. Account, Respondent monitored the account closely. He reviewed the trading tickets and account statements, and discussed the account with Macke frequently. He understood that N.H. and C.H. had substantial annuities, and that the account at Forsyth was "extra money," and not intended to provide for living expenses.

The new account form listed the customers' risk tolerance as aggressive. Macke knew the customers well, and knew that they were experienced investors who had adequate income and investments, and did not need the money in the account for living expenses. Although the initial objective was income, the account quickly became a trading account because N.H. was interested in trading. Macke communicated with the customers frequently.

The level of trading was not a red flag, given the clients' objective of aggressive investing and the profitability of the account from February 2007 through October 2007, when most of the trading occurred. Most of the losses in the account occurred in a mutual fund, rather than as a result of Macke's trading. Furthermore, the decline in value from February 2007 until the end of June 2008 occurred in a declining market, and does not demonstrate that the trading was excessive.

The Hearing Panel finds that Respondent did not fail to supervise Macke's trading in the H. and H. Account.

IV. Sanctions

For failure to supervise by an individual, the FINRA Sanctions Guidelines recommend a fine of $5,000 to $50,000, and consideration of a suspension in all supervisory capacities for up to 30 business days.[16] In egregious cases, the Guidelines recommend consideration of a suspension in any or all capacities for up to two years, or a bar. The principal considerations are:

(1) Whether respondent ignored "red flag" warnings that should have resulted in additional supervisory scrutiny. Consider whether individuals responsible for underlying misconduct attempted to conceal misconduct from respondent;

(2) Nature, extent, size and character of the underlying misconduct; and

(3) Quality and degree of supervisor's implementation of the firm's supervisory procedures and controls.[17]

There were red flags suggesting that the Forms U4 for Frost and Reilly should be updated, but Respondent failed to take the action necessary to ensure that their Forms U4 were updated within the time required by FINRA's By-Laws. Although neither Frost nor Reilly was forthcoming with information about their respective criminal problems, Respondent knew enough about their situations that he should have made certain that he was aware of developments in their cases. Their cooperation in ensuring that their registrations were kept current, as required by FINRA's By-Laws and Rules, should have been a condition of continued employment.

Respondent knew of Frost's arrest in May 2005, and knew that Frost might have been charged with a felony in October 2005, yet he did not report the charge until February 2006. He did not file the update for Frost's guilty plea for more than a year after receiving a Disclosure Letter requesting information about the conviction, and more than 50 days after filing the Form MC-400 in support of continuing Frost's registration. An additional aggravating factor is that

[16] *FINRA Sanction Guidelines* 103 (2011) ("*Guidelines*").

[17] *Guidelines* 103.

Respondent's failure to report Frost's conviction resulted in a statutorily disqualified individual remaining associated with Forsyth.[18]

Respondent was also not diligent in reporting Reilly's felony charge. When he belatedly learned that Reilly had been charged with a felony, he did not file an amendment to Reilly's Form U4 promptly, but waited 28 days, and then reported the date of the charge inaccurately.

The Hearing Panel finds that Respondent's disregard of his duties to ensure that Frost's and Reilly's Form U4 require a sanction above the 30 days recommended by the Guidelines, and suspends Respondent in all supervisory capacities for 90 days. Respondent's failure to supervise the registration filings for Frost and Reilly demonstrate that Respondent lacks a full understanding of his responsibilities as a supervisor.[19] Accordingly, Respondent is required to requalify by examination as a principal before serving in any supervisory capacity.

V. Conclusion

Respondent Hugh Vincent Murray III is suspended in all supervisory capacities for 90 days and ordered to requalify by examination as a principal before serving in any supervisory capacity, for violating NASD Rules 3010 and 2110, and FINRA Rule 2010, by failing to supervise the filing of Forms U4 by registered representatives. If this Decision becomes FINRA's final disciplinary action, Respondent's suspension shall become effective on December 17, 2012, and shall end on March 16, 2013.

[18] See Principal Consideration No. 2, in guideline for late filing of Form U4 amendments. *Guidelines* 69.

[19] See General Principles Applicable to All Sanction Determinations, No. 5, *Guidelines* 5.

Respondent shall pay costs in the amount of $3,600.00, which represents the cost of the hearing transcript together with a $750 administrative fee.[20] The costs shall be payable on a date set by FINRA, but not less than 30 days after this decision becomes FINRA's final disciplinary action in this matter.

Hearing Panel

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Lawrence B. Bernard
Hearing Officer

Copies to: Hugh Vincent Murray III (*via overnight courier and electronic mail*)
James M. Stephens, Esq. (*via first-class mail and electronic mail*)
Seema Chawla, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

[20] The Hearing Panel has considered all the arguments advanced by the parties. We reject or sustain them to the extent that they are inconsistent or in accord with the views expressed herein.