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

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| DEPARTMENT OF ENFORCEMENT,<br><br>Complainant,<br><br>v.<br><br>GERARD CHANDLER GREMILLION (CRD No. 1816351),<br><br>Respondent. | Disciplinary Proceeding No. 2015044600801<br><br>Hearing Officer–MC<br><br>**AMENDED HEARING PANEL DECISION**[1]<br><br>**April 5, 2018** |

**Respondent willfully failed to update his Form U4 to disclose two tax liens, a bankruptcy filing, and a civil monetary judgment, and provided a false answer in an amendment to his Form U4. For these violations, Respondent is suspended from associating with any FINRA member firm in any capacity for two years and fined $20,000. The Panel's finding of willfulness subjects him to statutory disqualification. Respondent is also assessed the costs of the hearing.**

## Appearances

For the Complainant: Mark J. Fernandez, Esq., and Laura Leigh Blackston, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: Gerard Chandler Gremillion, *pro se*.

## DECISION

## I. Introduction

Respondent Gerard Chandler Gremillion entered the securities industry in 1988, beginning a career laden with professional, legal, and financial difficulties. He left the securities industry in 1998 and for the next six years engaged in non-investment related work or was unemployed.[2]

[1] This decision was amended to correct a typographical error before it is widely distributed.

[2] Complainant's Exhibit ("CX")-6, at 5–6.

Gremillion returned to the securities industry in April 2004 to join FINRA member firm ProFinancial, Inc., where he remained until August 2015. The firm had a single office located in Baton Rouge, Louisiana. Gordon C. Ogden III, ProFinancial's President, Chief Compliance Officer and General Securities Principal, supervised Gremillion. Ogden was the only other person registered with the firm.

In April 2006 and July 2010, the United States Internal Revenue Service filed liens against Gremillion for failure to pay past due taxes. In 2012, FINRA issued an arbitration award against Gremillion because he did not repay loans he had received from a previous FINRA member employer firm. When Gremillion failed to pay the award, FINRA suspended him. FINRA lifted the suspension when Gremillion filed a bankruptcy petition on June 28, 2012. The bankruptcy court later dismissed his case, and a state court issued a judgment against Gremillion in March 2013 for failing to repay the loans.

The Complaint charges that Gremillion did not amend his Uniform Application for Securities Industry Registration or Transfer Form ("Form U4") to disclose the liens, the bankruptcy filing, and the civil judgment, and that in one amendment he answered a question falsely, in violation of Article V, Section 2(c) of the NASD and FINRA By-Laws, as well as NASD Rule 2110, FINRA Rule 2010, NASD IM-1000-1, and FINRA Rule 1122.[3]

Gremillion denies responsibility for any wrongdoing.

## II. Respondent and Jurisdiction

Gremillion first registered as a General Securities Representative in May 1988.[4] Over the next decade, he worked for five different broker-dealers before leaving the securities industry.[5] In April 2004, Ogden hired Gremillion and he registered with FINRA through ProFinancial.[6]

Ogden terminated Gremillion's association with ProFinancial in August 2015, and he is no longer registered or associated with any FINRA member firm. However, FINRA retains jurisdiction over him for the purposes of this disciplinary proceeding under the terms of Article V, Section 4 of FINRA's By-Laws because the Complaint was filed on May 24, 2017, within

[3] Complaint ("Compl.") ¶¶ 34–37, 40, 41, 43. FINRA Rule 1122 became effective on August 17, 2009, superseding NASD IM-1000-1 without substantive change, although with some modifications not at issue here. FINRA Regulatory Notice 09-33, 2009 FINRA LEXIS 96, at *2 (June 2009). FINRA Rule 2010 became effective on December 15, 2008, superseding NASD Rule 2110, with no material change. FINRA Regulatory Notice 08-57, 2008 FINRA LEXIS 50, at *32 (Oct. 2008). Thus, NASD Rule 2110 applies to Gremillion's conduct prior to December 15, 2008, and FINRA Rule 2010 applies to Gremillion's conduct after that date; NASD IM-1000-1 applies to Gremillion's conduct prior to August 17, 2009, and FINRA Rule 1122 afterwards. *See* Rule Conversion Chart: NASD to FINRA, http://www.finra.org/ruleconversionchart/.

[4] Hearing Transcript ("Tr.") 152; CX-1, at 12.

[5] CX-1, at 3.

[6] Tr. 79; CX-6.

two years of the termination of his registration, and the alleged misconduct occurred while he was associated with ProFinancial.

## III. Origin of the Investigation

In connection with an unrelated inquiry into Gremillion's outside business activity, FINRA conducted a routine review of Gremillion's Central Registration Depository filings in March 2015. An investigator discovered the reportable events Gremillion had not disclosed on his Form U4. FINRA conducted on-the-record interviews ("OTRs") with Gremillion and Ogden.[7] At the conclusion of the investigation, the Department of Enforcement filed the Complaint.

## IV. Facts

### A. Gremillion's Liens

The two tax liens included in the Complaint were not the first tax liens filed against Gremillion. In November 2000, the IRS filed a lien for almost $14,000 in unpaid federal taxes,[8] and in January 2006, the state of Louisiana filed a lien for almost $24,000 in unpaid state taxes.[9] Gremillion disclosed these liens belatedly in a Form U4 filing in November 2009.[10] Article V Section 2(c) of FINRA's and NASD's By-Laws require a registered person to keep his Form U4 current by filing amendments within 30 days of learning of reportable changes of circumstance. However, the Complaint does not charge Gremillion for failing to disclose these liens within the required period.

The liens Enforcement identified in the Complaint were for substantially larger amounts than the November 2000 and the January 2006 liens. In April 2006, the IRS filed a lien for more than $182,000 for taxes Gremillion had failed to pay in 1997, 1998, and 2002.[11] In July 2010, the IRS filed another lien for more than $41,000 in taxes Gremillion owed for tax years 2005 and 2006.[12] Gremillion did not amend his Form U4 to disclose the April 2006 and July 2010 liens. The April 2006 lien remained outstanding for nine years, until it was satisfied on May 21, 2015.[13] As of September 2016, the 2010 lien remained unsatisfied.[14]

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[7] Tr. 41–42.

[8] CX-4.

[9] CX-7.

[10] Tr. 82–84; CX-9, at 15.

[11] CX-8.

[12] CX-10.

[13] Tr. 85; CX-17.

[14] Tr. 85–86. Enforcement made its last request for production of information about Gremillion's liens and the civil court judgment in September 2016 prior to filing the Complaint.

### B. The Arbitration Award, Bankruptcy Petition, and Judgment

In January 2012, a FINRA Dispute Resolution arbitrator issued an award for more than $43,000 against Gremillion in favor of a FINRA member firm that had previously employed him.[15] The firm had made loans to Gremillion that he did not repay as required when the firm terminated his employment.[16] Consequently, FINRA suspended Gremillion's registration in May 2012.[17]

Gremillion's suspension was short-lived. On June 28, 2012, he filed a voluntary bankruptcy petition, which caused FINRA to lift the suspension.[18] According to Ogden, Gremillion did not inform him of the bankruptcy filing. Thus, Ogden did not include the bankruptcy when he filed a Form U4 amendment on Gremillion's behalf—to report the suspension—on July 2, 2012.[19]

On July 18, 2012, the bankruptcy court dismissed Gremillion's bankruptcy petition because he had failed to pay the required filing fees.[20] Subsequently, in March 2013, Gremillion's former employer obtained a civil court judgment against him for the arbitration award plus attorneys' fees and costs, totaling more than $44,000.[21] Gremillion did not amend his Form U4 to disclose the civil judgment.

### C. Gremillion's Relevant Filing History

During Gremillion's years of employment in the securities industry, he filed multiple amendments to his Form U4 and made disclosures that demonstrate he understood his obligation to make the disclosures required of all registered persons. All of Gremillion's Form U4 amendments contained standard certifications that all the information entered in his Form U4 was accurate, and that whenever any changes occurred affecting the answers he had previously given, he would update the form on a timely basis.[22]

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[15] CX-12.

[16] Tr. 87–88.

[17] Tr. 87–88; CX-14, at 18.

[18] Tr. 88; CX-13, at 7–12.

[19] Tr. 128–31; CX-14, at 13.

[20] CX-13, at 1.

[21] CX-16.

[22] Tr. 61–63; *see, e.g.*, CX-11, at 2 ¶ 3, and Exhibit A; Tr. 155–57; CX-11, at 11 (Gremillion's handwritten signature appears directly below the certification).

### 1. The May 2000 Form U4

Approximately two years after leaving the securities industry, Gremillion again attempted to register with FINRA in May 2000, when Ogden first hired him to be a registered representative at ProFinancial.[23]

Ogden was the person who filed and amended Gremillion's Form U4 while he was employed at ProFinancial. Ogden was no neophyte when it came to filing and amending the forms. He had 15 years of filing experience before initially hiring Gremillion in May 2000.[24] Because Gremillion was statutorily disqualified at the time, he was required to apply for an exemption to allow him to become registered despite the disqualification.[25] Even though Ogden supported Gremillion's application, FINRA's National Adjudicatory Council ("NAC") denied it.[26]

Gremillion's 2000 application for registration included a number of disclosures related to previous employment and background: his disciplinary history; an alleged breach of an employment contract related to funds he owed to a former employer; circumstances surrounding terminations from former employers; a history of criminal arrests; and information related to prior drug use.[27] Consequently, Gremillion collaborated closely with his attorney and Ogden to gather the information and decide what disclosures he needed to include in the Form U4.[28] In the course of preparing the form for filing, Ogden gave Gremillion a copy of various sections to take to an attorney for review before filing.[29]

Ogden provided FINRA with his working draft of the May 2000 Form U4. It contained Ogden's notes of his discussions with Gremillion, as well as notes made by Gremillion's attorney.[30] The attorney's notes instructed Gremillion to fully explain to Ogden all of the circumstances surrounding events that might need to be disclosed. For example, the attorney wrote, in bold letters typed on the Termination Disclosure Reporting Page ("DRP") of the draft Form U4, that Gremillion "**must be very careful and detailed**," "**must fully disclose everything**," should "**not leave anything out**," and that he must ensure that Ogden approved the answers.[31] On the Regulatory Action DRP section of the draft, the attorney stressed the "need to report **all** of the facts and circumstances" of a sanction Gremillion had received for a prior

[23] Tr. 79, 104; CX-3, at 1.

[24] Tr. 104.

[25] Tr. 100, 120–21. Gremillion's statutory disqualification was related to criminal charges against him and substance abuse issues, which he disclosed.

[26] Tr. 120–21.

[27] Tr. 107–20.

[28] Tr. 119–20.

[29] Tr. 106–07.

[30] Tr. 106–08; CX-3, at 1, 26, 28.

[31] Tr. 108–09, 113–14; CX-3, at 37 (emphasis in original).

disciplinary action, and emphasized that "this information must be provided in detail and in its entirety."[32]

Ogden reviewed the attorney's notes with Gremillion. Ogden specifically recalled discussing with Gremillion the attorney's instructions to disclose all previous disciplinary sanctions to which Gremillion had been subjected,[33] and a disclosure concerning money Gremillion owed a former employer.[34] Ogden testified that before filing the Form U4 he and Gremillion reviewed "with incredible detail" seven topics Ogden listed in a note he wrote titled "[Gremillion's] U-4 work papers . . . to discuss with [Gremillion] to file U-4." The topics included "Criminal charges," "Debts & . . . obligations," "Court documents," and a reminder to review the Form U4 with Gremillion and his attorney.[35] Ogden testified that he and Gremillion discussed the entries explaining Gremillion's history—criminal, disciplinary, and financial—and that before he entered Gremillion's answer to Question 23(M), they specifically discussed the question: "Do you have any unsatisfied judgments or liens against you?"[36]

### 2. The April 2004 Form U4

After Gremillion's statutory disqualification ended in April 2004, Ogden submitted another Form U4 for Gremillion and this time succeeded in registering him with FINRA as a General Securities Representative through ProFinancial.[37] Gremillion's Form U4 disclosed that he had an unsatisfied IRS judgment for a lien filed in 2002 or 2003.[38]

### 3. The November 2009 Form U4 Amendment

Ogden amended Gremillion's Form U4 in November 2009. For the first time, Gremillion disclosed that the IRS and Louisiana had filed tax liens against him in 2001 totaling $37,732.[39] Again, Ogden discussed the disclosures with Gremillion before filing the Form U4.[40] Gremillion told him, and Ogden included on the Form U4, that Gremillion was negotiating a settlement of his tax liabilities.[41]

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[32] CX-3, at 28 (emphasis in original).

[33] Tr. 107.

[34] Tr. 110–11.

[35] Tr. 114; CX-3, at 26.

[36] Tr. 117–19.

[37] Tr. 79–80; CX-6. Gremillion's statutory disqualification was lifted, apparently because an underlying felony conviction had been expunged.

[38] Tr. 121–22; CX-6, at 15.

[39] Tr. 122–23; CX-9, at 15.

[40] Tr. 123–24.

[41] CX-9, at 15–16.

According to Ogden, while Gremillion was associated with ProFinancial, they discussed Gremillion's annual reporting obligations "in detail,"[42] and reviewed "in general" his obligation to update the Form U4 if anything occurred that would change any of the answers he had previously given.[43] Ogden testified without contradiction that he reviewed with Gremillion every entry he made on each of the several Form U4 submissions he filed on Gremillion's behalf.[44]

However, Gremillion's November 2009 Form U4 amendment did not disclose the April 2006 IRS lien.

#### 4. The July 2012 Form U4 Amendment

In July 2012, Ogden submitted another Form U4 amendment on Gremillion's behalf that was triggered when FINRA suspended his registration.[45] The Form U4 continued to reflect the previously disclosed federal and state tax liens.[46] In addition, it explained that the reason for the suspension was that Gremillion had "failed to pay arbitration fees."[47]

While the amendment to the Form U4 included the fact of the suspension, Gremillion falsely answered "No" to the question asking if he had filed a bankruptcy petition within the past ten years.[48] Ogden submitted that answer, he testified, because Gremillion did not disclose that he had filed a bankruptcy petition on June 28, 2012, just four days before Ogden submitted the amended Form U4.[49] Gremillion's July 2012 Form U4 also failed to disclose the bankruptcy petition or the April 2006 and the July 2010 tax liens.

#### 5. Gremillion Did Not Disclose the March 2013 Civil Judgment

Gremillion did not amend his Form U4 to disclose the March 2013 civil court judgment totaling more than $44,000.

## V. Form U4 Disclosures: Overview of Required Disclosures

Article V, Section 2(c) of FINRA's By-Laws requires registered persons to keep their applications for registration current by filing accurate amendments within 30 days of learning of a circumstance requiring amendment.

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[42] Tr. 132.

[43] Tr. 115–16.

[44] Tr. 118–19.

[45] Tr. 129–30.

[46] CX-14, at 16.

[47] Tr. 86–88; CX-14, at 17–18.

[48] CX-14, at 13.

[49] Tr. 129–30.

NASD IM-1000-1, "Filing of Misleading Information as to Membership or Registration," states that filing information that is incomplete, inaccurate, or that could tend to mislead, or failing to correct a filing after learning of its inaccuracy, may violate the standard of just and equitable principles of trade governing the conduct of members and associated persons. FINRA Rule 1122 has the same title as IM-1000-1, and is identical in effect. A violation of NASD IM-1000-1 violates NASD Rule 2110, and a violation of FINRA Rule 1122 violates FINRA Rule 2010.[50]

A registered person must provide accurate information on the Form U4 so that "regulatory organizations, employers, and members of the public . . . have all material, current information about the securities professional with whom they are dealing."[51] The Form U4 General Instructions state "Filers must answer all questions and submit all requested information."[52] The Form U4 contains a section titled "Disclosure Questions."[53] One question in the "Financial" section asks, in relevant part, if the registered person has, in the past decade, filed a bankruptcy petition.[54] Another asks if any unsatisfied judgments or liens have been filed against the person.[55]

If the answer to any question is in the affirmative, the Form U4 requires the registered person to provide "complete details . . . on appropriate DRP(s)."[56] Each of Gremillion's Form U4 amendments contains a lengthy "signature" section signed by him swearing or affirming that he has read and understands the instructions in the Form U4, that all his answers to the questions posed are true and complete, and attesting that he understands his continuing obligation to amend and update information on a timely basis whenever changes occur to answers he gave previously.[57] It is well established that it is the responsibility of every person submitting a Form U4 "to ensure that the information provided on the form is true and accurate."[58]

### A. Willfulness

The Complaint alleges that Gremillion's failures to disclose required information were willful. [59] To prove a violation is willful, Enforcement does not need to prove that Gremillion

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[50] *Michael Earl McCune*, Exchange Act Release No. 77375, 2016 SEC LEXIS 1026, at *12 (Mar. 15, 2016), *aff'd*, 672 F. App'x 865 (10th Cir. 2016).

[51] *Richard A. Neaton*, Exchange Act Release No. 65598, 2011 SEC LEXIS 3719, at *17–18 (Oct. 20, 2011).

[52] Form U4 Instructions, https://www.finra.org/file/form-u4-instructions.

[53] *See* CX-3, at 8; CX-6, at 6.

[54] *See* CX-3, at 10 (Question 23K); CX-6, at 8–9 (Question 14K(1)).

[55] *See* CX-3, at 10 (Question 23M); CX-6, at 9 (Question 14M).

[56] *See* CX-3, at 8; CX-6, at 6.

[57] *See* CX-3, at 11–13; CX-6, at 9–11.

[58] *Robert B. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at *30 (Nov. 9, 2012).

[59] A finding that Gremillion acted willfully and that the information omitted was material subjects him to statutory disqualification from the securities industry. *See* Section 3(a)(39) of the Securities Exchange Act of 1934.

knew his actions violated any particular NASD or FINRA rules or other securities laws. Rather, the evidence must simply establish that Gremillion acted intentionally by "committing the act which constitutes the violation." That is, the evidence must show that he knew what he was doing when he learned of but did not disclose the liens, the judgment, and his bankruptcy filing, and filed Form U4 amendments without disclosing them.[60] Put another way, a failure to make a required disclosure on Form U4 is willful if the person provides false information "of his own volition." The evidentiary bar is low: to constitute a violation, it is only necessary to establish that an untrue Form U4 entry or a failure to make an accurate and timely amendment is "neither involuntary nor inadvertent."[61]

### B. Materiality

To constitute a violation, the undisclosed information must be material. For the purposes of Form U4's reporting requirements, information is material if there is a "substantial likelihood" that its disclosure would cause "a reasonable regulator, employer, or customer" to think the information would significantly alter the "total mix" of other information available. Gremillion's undisclosed liens are material, for example, if disclosing them would provide regulators "with early notice about his financial difficulties and ability to manage his financial obligations"; provide employers with insight into "the outside financial pressures he was facing"; and provide customers with a measure of whether the liens reflect on "his ability to provide . . . appropriate financial advice."[62]

The NAC has held that "essentially all of the information that is reportable on the Form U4 may be considered material."[63] The Securities and Exchange Commission has held that the existence of substantial tax liens filed against a registered representative is material information. In reaching that conclusion, the SEC took into consideration the "large dollar amount of the liens, the number of the liens, and the lengthy period of time during which this information was not disclosed."[64]

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[60] *McCune*, 2016 SEC LEXIS 1026, at *15.

[61] *Joseph S. Amundsen*, Exchange Act Release No. 69406, 2013 SEC LEXIS 1148, at *38 (Apr. 18, 2013).

[62] *McCune*, 2016 SEC LEXIS 1026, at *21–22, and nn.25–26. *See also Mathis v. SEC*, 671 F.3d 210, 219–20 (2d Cir. 2012) (respondent's undisclosed tax liens deemed material); *Tucker*, 2012 SEC LEXIS 3496, at *32–33 (Respondent's liens, bankruptcies, and judgments were significant because they "raise concerns about whether [respondent] could responsibly manage his own financial affairs, and ultimately cast doubt on his ability to provide trustworthy financial advice and services to investors relying on him to act on their behalf as a securities industry professional . . . [and] also reflected significant outside financial pressures that could affect his judgment when providing financial services.").

[63] *Dep't of Enforcement v. Toth*, No. E9A2004001901, 2007 NASD Discip. LEXIS 25, at *34 (NAC July 7, 2007), *aff'd*, Exchange Act Release No. 58074, 2008 SEC LEXIS 1520 (July 1, 2008).

[64] *Scott Mathis*, Exchange Act Release No. 61120, 2009 SEC LEXIS 4376, at *29-30 (Dec. 7, 2009), *aff'd*, 671 F.3d 210.

## VI. Conclusions

Gremillion never disclosed the April 2006 tax lien for more than $182,000, which remained outstanding until released on May 21, 2015;[65] the July 2010 tax lien for more than $41,000, which remained unsatisfied as of September 2016;[66] and the bankruptcy petition he filed in 2012.[67] Gremillion also never disclosed the March 2013 civil judgment ordering him to pay the January 2012 arbitration award plus fees and costs totaling more than $44,000, which, as of September 2016, remained unpaid.[68]

### A. Gremillion Received Notice of the Liens and Judgment

The record establishes that Gremillion received notice of the two undisclosed liens and the civil judgment. He admitted at the hearing that he received the notice of the April 2006 lien at ProFinancial's office,[69] and a copy of the judgment at his home when it was issued in March 2013.[70]

The IRS mailed the notice of the July 2010 lien to Gremillion's work address where, according to him and Ogden, Gremillion received mail.[71] Ogden testified that although he reviewed incoming mail, it was his practice not to open what appeared to him to be Gremillion's personal mail. Ogden recalls receiving mail addressed to Gremillion from the IRS and giving it to him without opening it and without questioning him.[72] Gremillion has not denied receiving notice of the July 2010 lien.

On the basis of this record, the Panel is satisfied that Gremillion received all three notices.

### B. Gremillion Understood His Disclosure Responsibilities

Gremillion clearly understood that he was required to disclose the liens, judgment, and bankruptcy petition filing.

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[65] Tr. 85.

[66] Tr. 85–86.

[67] Tr. 86.

[68] Tr. 85–86.

[69] Tr. 165–66. In his OTR, when Enforcement asked Gremillion if he was aware of this lien, he answered that he was not. Tr. 201. When confronted with the apparent contradiction with his OTR testimony, Gremillion claimed that the reason he denied being aware of the lien was that the OTR question specified the date of the lien as April 12, 2006, and he was uncomfortable answering the question in the affirmative because it was "so date specific." Tr. 202.

[70] Tr. 171–72.

[71] Tr. 168–69.

[72] Tr. 135–37.

With regard to the bankruptcy petition, Gremillion admitted at the hearing that he was obligated to disclose it on his Form U4 but insisted that he told Ogden that he filed the bankruptcy petition before amending his Form U4 on July 2, 2012.[73] When asked why the bankruptcy petition was not included in that amendment, Gremillion suggested that "maybe [Ogden] made a mistake" and "checked no instead of yes" when he submitted it.[74]

From his first attempt to register at ProFinancial in 2000, Gremillion actively worked with Ogden on his Form U4 filings. The 2000 filing made him acutely aware of his disclosure obligations, in part because of the clear instructions from his attorney to fully disclose all of the information required on the Form U4. With his lawyer's and Ogden's guidance, Gremillion provided numerous details of his checkered background for Ogden to enter on his Form U4, including arrests, convictions, substance abuse issues, a court settlement to repay people to whom he had written bad checks, involvement with rehabilitation programs, and terminations from prior employer firms.[75]

Four years later, when Ogden filed a second Form U4 to register Gremillion as a General Securities Representative with ProFinancial, he relied once again on Gremillion to supply detailed information for disclosure, this time also including a lien for unpaid past taxes that Gremillion said he was trying to settle with the IRS.[76] In light of all of this, and considering Ogden's credible testimony about regularly discussing Form U4 disclosures with Gremillion, the Panel has no doubt that Gremillion fully understood his Form U4 disclosure responsibilities.

### C. Gremillion Is Responsible for Making Accurate and Timely Amendments to His Form U4

Gremillion's defense, in sum, is that it was Ogden, not he, who was responsible for updating his Form U4 accurately and timely.[77]

Gremillion's argument fails. As the SEC recently noted, it is well established that an individual employed in the securities industry cannot shift to another the responsibility for ensuring that information filed on his or her Form U4 is accurate and current. The SEC stated it is the representative's "responsibility to supply accurate information on the Form U4, and he ha[s] an obligation to review it before allowing his signature to be affixed to it acknowledging and consenting to its filing."[78] Thus Gremillion, not Ogden, was responsible for providing accurate information on Gremillion's Form U4 and for reviewing it before he acknowledged and

[73] Tr. 181. Gremillion also testified that he understood the importance to the investing public of a broker's making accurate financial disclosures. Tr. 197.

[74] Tr. 182–83.

[75] CX-3, at 16–24.

[76] CX-6, at 15–16.

[77] Tr. 36.

[78] *David Adam Elgart*, Exchange Act Release No. 81779, 2017 SEC LEXIS 3097, at *18 (Sept. 29, 2017), *appeal docketed*, No. 17-15283 (11th Cir. Nov. 20, 2017).

consented to having it filed. Furthermore, Gremillion's claims that he informed Ogden of the liens, judgment, and bankruptcy petition, and that Ogden neglected to disclose them on his Form U4, are not credible.

### D. Gremillion Did Not Disclose the Liens, Judgment, and Bankruptcy Filing to Ogden

Gremillion claimed that he informed Ogden of the liens and discussed them with him.[79] Gremillion's demeanor at the hearing, the substance of his testimony, and the record as a whole caused the Panel to disbelieve him.

Gremillion's hearing testimony flatly contradicted his OTR testimony on a number of significant points. For example, Gremillion acknowledged at the OTR that Ogden loaned him $20,000, recorded by a note.[80] But at the hearing, Gremillion initially denied this, asserting "I didn't owe [Ogden] $20,000" and questioning whether a note even existed.[81] The note, which was introduced into evidence, and Ogden's testimony, incontrovertibly disprove Gremillion's testimonial denial.[82]

Gremillion also testified at his OTR that he was unaware of the April 2006 lien.[83] At the hearing, however, he insisted that he had received notice of the lien and promptly disclosed it to Ogden.[84]

Although at his OTR Gremillion testified that he did not inform Ogden about the judgment because he did not believe that he was required to do so,[85] at the hearing, when asked if he told Ogden about the judgment, Gremillion replied, "Heck, yeah."[86] When confronted with the inconsistency between his OTR and hearing testimony, Gremillion claimed that at the OTR he had felt "frustrated" and had not recalled telling Ogden about it, but testified that at the hearing he felt "calmer" and could recall that he informed Ogden of the existence of the judgment when he received it.[87]

The Panel does not credit this testimony. Rather, the Panel credits Ogden's testimony. Ogden, the primary witness in proving Enforcement's case, displayed no antipathy or bias towards Gremillion, or any motive to contradict Gremillion's claims falsely. To the contrary,

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[79] Tr. 195.

[80] Tr. 185–86; CX-21, at 144.

[81] Tr. 180–81.

[82] Tr. 127; CX-23.

[83] Tr. 201–02; CX-21, at 111.

[84] Tr. 192–93.

[85] Tr. 174, 178; CX-21, at 139–40.

[86] Tr. 172.

[87] Tr. 178–79.

Ogden's testimony and the history of Ogden's relationship with Gremillion reflect his favorable and sympathetic regard for Gremillion. He hired and attempted to register Gremillion in 2000 despite Gremillion's troubled background and statutory disqualification, and sponsored an application seeking to persuade the NAC to lift it. He characterized Gremillion as a person who had a "desire to do good" for his clients. He even offered an unsolicited excuse on Gremillion's behalf, speculating that Gremillion's failures to disclose reportable events were unintentional, the result of disorganization.[88]

Gremillion not only gave inconsistent, contradictory sworn testimony, but offered testimony that is on its face simply not believable. He testified at the hearing that when he informed Ogden of the April 2006 lien the two of them decided to let it remain outstanding for a "ten-year time frame" after which, he believed, based on what a neighbor told him, the IRS would let it expire and would "let me go."[89] He testified that it was on the morning of May 21, 2015, when he was driving to his OTR that, coincidentally, he first learned that the IRS had issued the certificates of release for two liens, one of them the April 2006 lien for $182,000 and the other a lien for almost $14,000.[90]

Gremillion's explanation of the fortuitous satisfaction of the liens on the morning of his OTR does not withstand scrutiny. There is no evidence that the IRS forgives liens that are unpaid for a decade. Furthermore, neither of these liens "expired" after ten years. The IRS issued the certificate of release for the April 2006 lien nine years after it was filed, and issued the release for the smaller lien fifteen years after it was filed. Gremillion's claim that the liens had expired is also contradicted by the certificates of release which stated "the taxpayer . . . has satisfied the taxes."[91] When pressed about how the liens had been "satisfied," Gremillion insisted that he did not know, that he "did not pay [the IRS] a dollar," did not know who had paid, and claimed to be "confused" when confronted with the fact that the liens had been satisfied, rather than forgiven.[92]

The Panel does not believe that Gremillion could be, as he claims, clueless as to how two liens totaling $195,000 were satisfied on the same day—coincidentally, the date of his OTR—without his knowledge. It is also difficult to accept Gremillion's assertion that he actually believed, based on the comment of a neighbor, that the IRS forgives unpaid liens after ten years. After all, Gremillion had been a registered representative involved in giving financial guidance to clients since 1988 and surely must have had experience with basic federal tax practices.

The Panel concludes that Ogden relied on Gremillion to provide the information he entered on the Form U4, and that if Gremillion had told him of the undisclosed liens, judgment and bankruptcy petition, Ogden would have amended the Form U4 to make it accurate. Ogden's

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[88] Tr. 142–43.

[89] Tr. 192–94, 225–26.

[90] As noted previously, this lien was filed in 2000 and Gremillion disclosed it in a Form U4 amendment in 2009.

[91] CX-18; CX-17.

[92] Tr. 198–200.

testimony about painstakingly reviewing the first filing he submitted for Gremillion in 2000 is corroborated by the draft of the Form U4 with notes on it written by Gremillion's attorney and Ogden. In addition, Ogden occasionally updated the Form U4 with disclosures of other liens, based on information from Gremillion. There is no apparent reason Ogden would have failed to file accurate amendments to the Form U4 if Gremillion had disclosed the reportable events to him.

### E. Gremillion's Failures to Disclose Were Willful

As discussed above, Gremillion properly disclosed some outstanding liens in amendments he made, from 2000 through 2009, demonstrating that he understands the requirement to disclose liens and judgments. In 2004, after FINRA lifted his statutory disqualification, and he successfully registered through ProFinancial, Gremillion disclosed an existing unpaid IRS lien. He did so again in November 2009, when his Form U4 was updated and he included a long overdue disclosure of a state lien filed against him.

As noted above, Ogden offered his speculative opinion that Gremillion was disorganized, and his failures to disclose were attributable to "oversight more than anything else."[93] The Panel disagrees. Rather, the Panel credits Ogden's credible and more persuasive testimony that he had Gremillion review every one of the Form U4 filings, and discussed "at least once a year in detail . . . what needs to be reported and what does not need to be reported." Ogden persuasively testified that based on the "numerous refilings" of Gremillion's Form U4, with their "numerous disclosures" in the "original U4s and subsequent U4s," and Gremillion's participation in making the filings, Gremillion "should have known" he was required to keep his Form U4 accurate and current.[94]

The Panel also finds it significant that each of the liens Gremillion failed to disclose was for a tax liability significantly larger than the liens he had disclosed in his 2004, 2009, and 2012 Form U4 filings. This fact is inconsistent with a finding that Gremillion's failures to disclose were inadvertent, unintentional, or mistaken oversights.

For all of the reasons discussed above, the Panel concludes that Gremillion was fully aware of the liens, his bankruptcy petition, and the judgment against him, and of the requirement to disclose each of these events. Nonetheless, he chose not to inform Ogden, and thus failed to keep his Form U4 updated. Gremillion's failures to disclose were therefore willful.

### F. The Undisclosed Liens, Judgment, and Bankruptcy Filing Were Material

To determine whether an undisclosed event is material, the Panel must consider whether there is a "substantial likelihood that a reasonable regulator, employer, or customer would have viewed it as significantly altering the mix of information made available." The Panel also must

[93] Tr. 142–43.

[94] Tr. 132.

take into consideration the amount of the liens and the length of time they were undisclosed.[95] Gremillion's April 2006 tax lien for more than $182,000 alone was undisclosed for nine years. The two undisclosed liens together totaling more than $223,000, the undisclosed judgment for more than $43,000, and his undisclosed bankruptcy filing, represent significant personal financial liabilities extending over a period of years. These factors lead the Panel to conclude that there is a substantial likelihood that reasonable customers and regulators would view these liabilities as placing economic pressure on Gremillion and raising questions about his judgment and ability to manage both his own financial affairs and his customers' investments. As noted above, failing to disclose sizable tax liens on a Form U4 is a material omission.[96] For these reasons, the Hearing Panel finds that Gremillion's undisclosed tax obligations, judgment, and bankruptcy, are material.

## VII. Sanctions

### A. Sanction Considerations

If a registered person fails to amend his Form U4 to disclose required information, or files late, or files false or misleading information, and aggravating factors are present, the Sanction Guidelines recommend a fine of $2,500 to $37,000, and a suspension in any or all capacities for ten business days to six months. The Guidelines further provide that when aggravating factors predominate, a Panel should consider imposing a lengthier suspension for up to two years. When there is evidence that the associated person intended to conceal the omitted information or mislead, the Guidelines call for consideration of a bar.[97]

The Principal Considerations in Determining Sanctions that apply specifically to misconduct in filing and amending a Form U4 include:

- the significance of the information at issue and the number and dollar value of the disclosable events at issue;
- whether the omission of information was intentional or designed to conceal information;
- the duration of the misconduct; and
- whether an undisclosed lien or judgment has been satisfied.[98]

The relevant Principal Considerations in Determining Sanctions applicable to all violations here include:

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[95] *Elgart*, 2017 SEC LEXIS 3097, at *21–22.

[96] *Id.*

[97] FINRA Sanction Guidelines at 71 (2017), http://www.finra.org /industry/sanction-guidelines.

[98] *Id*.

- whether Gremillion accepted responsibility and acknowledged the misconduct to his employer or a regulator prior to detection and intervention by a regulator;

- whether Gremillion's misconduct involved numerous acts or a pattern of misconduct;

- whether the misconduct occurred over an extended period and whether Gremillion attempted to conceal the misconduct from regulatory authorities;

- whether Gremillion attempted to provide inaccurate or misleading testimony or documents to FINRA; and

- whether his misconduct was intentional.[99]

### B. Recommendations of the Parties

Enforcement argues that Gremillion's failures to disclose required information were egregious for several reasons. Enforcement contends that the liens, bankruptcy filing, and judgment were "of critical importance" to regulators and investors because they raised doubts about Gremillion's financial condition, his ability to manage his own finances, and whether he was qualified to manage customer assets.[100] Enforcement also cites the nature and significance of the undisclosed information to both FINRA and investors, and points out that Gremillion's multiple and willfully misleading filings persisted over an extended period. For these reasons, Enforcement recommends imposing a one-year suspension in all capacities, and a fine of $10,000.[101]

For his part, Gremillion contends that there is no pattern of failing to disclose the information at issue here because he disclosed liens in Form U4 amendments filed in 2002, 2004, and 2006.[102] He insists that he did not purposely mislead anyone and that he kept Ogden fully apprised of all of his financial liabilities. Importantly, he has insisted throughout this proceeding that he does not believe he did anything wrong. He asks that no fine be assessed.[103]

### C. Discussion

The Panel is persuaded that Enforcement has correctly assessed the seriousness of Gremillion's misconduct but concludes that stronger sanctions are required for remedial and deterrent purposes.

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[99] *Id.*, at 7–8.

[100] Enforcement's Pre-Hearing Brief ("Pre-Hr'g Br."), at 14.

[101] *Id.*

[102] Tr. 242.

[103] Tr. 37, 39, 247.

Together, the undisclosed liens and judgment totaled more than a quarter of a million dollars. Gremillion learned of the $182,000 lien in April 2006 and the $41,000 lien in July 2010. He learned of the arbitration award in January 2012 and the judgment enforcing it in March 2013. Thus, Gremillion's failures to disclose extended almost a decade, from April 2006 through the date of his termination from ProFinancial in August 2015. The fact that Gremillion disclosed previous liens of lower dollar value, but failed to disclose the two significantly larger liens, suggests he intended to conceal his negative financial situation. He thereby frustrated an important purpose of the disclosure requirements, which is to permit investors to take such information into consideration before deciding whether to entrust their financial assets to a particular registered person. The numerous liens and the judgment, combined with his apparent inability to satisfy them indicate that his financial situation has long been precarious, and he has failed to manage his own finances successfully.

The Panel is concerned by Gremillion's refusal to take responsibility for his failure to disclose significant events reflecting his financial situation. At the hearing he argued: "I just didn't do anything wrong here. I just really don't feel like I did anything wrong."[104] His refusal to recognize that he erred suggests that in the future, if served with another notice of a significant financial liability, he might again fail to disclose it on his Form U4, thwarting the purpose of allowing investors and regulators to know a broker is struggling with his or her own finances. The Panel concludes that it is necessary to impose sanctions sufficiently severe to deter him, as well as others similarly situated, from engaging in such misconduct in the future.

As noted above, multiple aggravating factors are present. Gremillion's misconduct occurred over an extended time and consisted of numerous acts. He filed for bankruptcy, received lien and judgment notices, failed to disclose these events, and provided a false answer on his Form U4, while participating with Ogden in filing several new Form U4 amendments. The Panel finds it aggravating that Gremillion provided testimony to FINRA at his OTR that was inconsistent, misleading and inaccurate. Considering all of these factors, the Panel concludes that Gremillion acted willfully to conceal adverse financial information from regulators and from investors, and to mislead Enforcement and the Panel.

Finally, the Panel finds there are no mitigating factors in the record of this case.

For these reasons, the Panel concludes that the appropriately remedial sanctions necessary to deter Gremillion and others from similar misconduct are a two-year suspension in all capacities and a fine of $20,000.[105]

## VIII. Order

For willfully failing to update his Form U4, and answering a question in an amendment to the Form U4 falsely, in violation of Article V, Section 2(c) of NASD's and FINRA's By-Laws,

[104] Tr. 39.

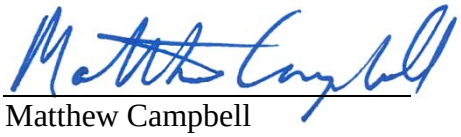
[105] The Panel considered and rejected without discussion all other arguments by the parties.

NASD IM-1000-1, NASD Rule 2110, and FINRA Rules 1122 and 2010, Respondent Gerard Chandler Gremillion is suspended from associating with any FINRA member firm in any capacity for two years and is fined $20,000. Because his misconduct was willful, and the information he failed to disclose was material, Gremillion is subject to statutory disqualification as a result of these findings.

Gremillion is ordered to pay the hearing costs of $2,723.70, consisting of an administrative fee of $750 and the cost of the hearing transcript.

If this Decision becomes FINRA's final disciplinary action, Gremillion's suspension shall become effective with the opening of business on June 4, 2018. The fines and costs shall be due on a date set by FINRA, but not sooner than 30 days after this decision becomes FINRA's final disciplinary action in this proceeding.

**SO ORDERED**.



Matthew Campbell
Hearing Officer
For the Hearing Panel

Copies to:

Gerard C. Gremillion (via email and overnight courier)
Mark J. Fernandez, Esq. (via email and first-class mail)
Laura Leigh Blackston, Esq. (via email)
David B. Klafter, Esq. (via email)
Jeffrey D. Pariser, Esq. (via email)