FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. RONALD LESLIE GEFFNER (CRD No. 840191), Respondent.	Disciplinary Proceeding No. 2013039639101 Hearing Officer — MC **HEARING PANEL DECISION** **August 12, 2016**

For willfully failing to timely update his Form U4 and making false statements on his firm's annual compliance certifications, Respondent is suspended from associating with any FINRA member firm in any capacity for three months and fined $5,000. The violations subject him to statutory disqualification. Respondent is assessed the costs of the hearing.

Appearances

For the Complainant: Elena Kindler, Esq., and Carolyn O'Leary, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: Richard A. Levan, Esq., Levan Legal LLC, Bala Cynwyd, PA.

DECISION

I. Introduction

FINRA's By-Laws require persons associated with a member firm to provide certain information on a Uniform Application for Securities Industry Registration or Transfer Form ("Form U4"). An associated person must report any bankruptcy petition filings in the past 10 years; "any unsatisfied judgments and liens"; and, if there are any, must provide details. The By-Laws provide that a person must keep his Form U4 current by filing amendments within 30 days of learning of changes of reportable circumstances. The purpose of these disclosure requirements is to ensure that "regulatory organizations, employers, and members of the public … have all material, current information about the securities professional with whom they are dealing."

Over a span of more than five years, Respondent Ronald Leslie Geffner filed a bankruptcy petition and had six tax liens filed against him. He did not disclose these events on his Form U4 when required. After Geffner's firm discovered his omissions during a routine

branch examination, Geffner amended his Form U4. The matter came to FINRA's attention, leading the Department of Enforcement to file the Complaint. The central charge is that Geffner "failed to make timely financial disclosures and update his Form U4 in a timely manner to correct material information that had become inaccurate."[1]

Enforcement alleges that Geffner's failure to the bankruptcy and tax liens timely was willful and the information was material.[2] Finding that Geffner acted willfully and that the information omitted was material subjects him to statutory disqualification from the securities industry, "potentially a more severe sanction than a monetary penalty or temporary suspension."[3] FINRA's By-Laws provide that a person subject to statutory disqualification cannot be associated with any FINRA member firm unless the firm obtains permission from FINRA.[4]

Geffner knew about the liens, knew he was obligated to disclose them, and knew his failure to do so violated FINRA rules. Geffner contends nonetheless that his misconduct was inadvertent, not willful. He also claims that the information about the liens was immaterial because he had previously filed two Form U4 amendments that, although late and inaccurate, served the purpose of FINRA's disclosure requirements by giving notice that he had experienced financial difficulties earlier.

II. Facts

A. Respondent and Jurisdiction

Geffner has been associated with five registered broker-dealers since 1976. His business is primarily insurance sales. In 1999, he became associated with Park Avenue Securities, LLC. In 2007, he became associated with Equity Services, Inc., where he remained until December 24, 2013, when he was permitted to resign after the firm discovered the undisclosed tax liens.[5] Since then, Geffner has not been registered or associated with a FINRA broker-dealer, but has worked as a life insurance agent for National Life of Vermont, an insurance company affiliated with Equity Services.[6]

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[1] Complaint ("Compl.") ¶ 18.

[2] Compl. ¶¶ 18, 24-27.

[3] *Mathis v. SEC*, 671 F.3d 210 at 215-16, 220 (2d Cir. 2012). *See also Michael Earl McCune*, Exchange Act Release No. 77375, 2016 SEC LEXIS 1026, at *14 (Mar. 15, 2016) ("A person is subject to a statutory disqualification under Section 3(a)(39) of the Exchange Act if, among other things, 'such person … has willfully made … in any application for membership or participation in, or to become associated with a member of, a self-regulatory organization, … any statement which was at the time, and in light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such … report … any material fact which is required to be stated therein.'").

[4] FINRA By-Laws, Article III, Sections 3(b) & (d).

[5] Hearing Transcript ("Tr.") 73-74; Joint Stipulations of Fact ("Stips.") ¶¶ 1, 3.

[6] Tr. 72.

Geffner remains subject to FINRA's jurisdiction for this disciplinary proceeding under Article V, Section 4 of FINRA's By-Laws because the Complaint was filed less than two years after the effective termination of Geffner's registration with Equity Services, and charges him with misconduct that occurred when he was registered with FINRA.[7]

B. The Bankruptcy and Liens

In 2005, Geffner experienced serious family and financial problems, including the loss of a major business account in December.[8] He filed for bankruptcy in March 2006 and disclosed the bankruptcy in August 2006. The bankruptcy court issued a discharge in September 2006.[9]

From May 2006 to June 2007, three tax liens were filed against Geffner. He did not disclose the first, and did not disclose the others timely. In 2011, three more tax liens were filed against Geffner. He did not update his Form U4 to disclose the outstanding liens until May 2013, after his firm discovered them.[10] He finally filed accurate Form U4 amendments disclosing these liens in May 2013. In sum, over a seven-year period, Geffner either did not report, or reported late, six federal and state tax liens totaling $305,654.02, as summarized:[11]

A. May 2006, NY tax warrant for $21,550.44; no disclosure; satisfied Oct. 2009.

B. Feb. 2007, IRS lien for $135,565.25; U4 disclosure May 2013; unsatisfied.

C. June 2007, NY tax warrant for $8,248.66; U4 disclosure May 2013; satisfied Aug. 2010.

D. May 2011, IRS lien for $88,481.28; U4 disclosure May 2013; unsatisfied.

E. Aug. 2011, NY tax warrant for $21,560.68; U4 disclosure May 2013; unsatisfied.

F. Oct. 2011, IRS lien for $30,247.71; U4 disclosure May 2013; unsatisfied.

Geffner concedes he was aware of each lien when it was filed.[12] Throughout this period—2006 to 2013—Geffner signed and filed three amendments to his Form U4. Each time, he failed to make timely updates or responded no to the standard question about liens.[13] Geffner

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[7] Compl. ¶¶ 5-7; Answer ¶¶ 5-7.

[8] Tr. 75-76.

[9] Stips. ¶ 6.

[10] Stips. ¶¶ 9-12.

[11] Complainant's Exhibit ("CX-")1, CX-2.

[12] Tr. 45-53.

[13] Tr. 32; Stips. ¶¶ 13-15; e.g., CX-2, at 18-19.

agrees the question was not confusing and he acknowledges it was his responsibility to answer it accurately and amend his Form U4 to keep it current.[14]

C. Geffner's Awareness of His Obligation to Disclose

In October and November 2007, shortly after joining Equity Services, Geffner signed memoranda acknowledging that he had read and understood the firm's procedures.[15] Geffner attended mandatory annual compliance meetings. Each meeting addressed the representatives' responsibility to keep their Forms U4 current and accurate and to notify the firm of any changes requiring amendment. The compliance meetings included presentations with reminders of these responsibilities, specifically noting that bankruptcies and liens had to be disclosed. When Geffner saw the presentations, he knew he had unsatisfied liens that he had not disclosed.[16]

At Equity Services, Geffner completed and signed annual registration renewal forms containing reminders that unsatisfied liens must be reported. Geffner certified on these renewal forms that he had nothing to report on his Form U4.[17]

D. Geffner's Bankruptcy and $167,000 Lien Disclosures

As noted previously, Geffner filed a bankruptcy petition in March 2006. Soon after, in May 2006, state authorities filed the first tax lien of over $20,000 against him.[18] According to Geffner, he viewed his financial problems as personal and did not think he needed to let anyone be "privy" to them.[19]

In August 2006, Geffner amended his Form U4 to disclose his bankruptcy. Geffner testified that he did this after a conversation with someone in his office made him realize he needed to make the disclosure.[20] In the space for providing an explanation, the entry reads "Incurred Credit Card Debt/Lack of Production."[21] However, he falsely answered no to the question asking if he had any unsatisfied liens.[22]

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[14] Tr. 34-35.

[15] Tr. 55; CX-12.

[16] Tr. 56-58.

[17] Tr. 62-65; CX-16.

[18] CX-1; Tr. 77.

[19] Tr. 79.

[20] Tr. 78-79.

[21] CX-2, at 21.

[22] *Id.* at 19.

Two more tax liens were filed against Geffner in February and June 2007, bringing the total to three unsatisfied liens for more than $165,000. On July 31, 2007, Geffner filed another Form U4 amendment. For the first time, he answered yes to the question asking if he had unsatisfied liens.[23] But his answer was inaccurate. On the form, he did not itemize the three separate liens, two state and one federal, filed against him in 2006 and 2007. Instead, he listed a single IRS tax lien for $167,029.43, stating it had been filed against him on July 25, 2007.[24]

Geffner does not remember what prompted him to file this amendment, but thinks he had another "conversation with someone" making him realize that he "needed to report it."[25] But there was no such IRS lien.[26] He testified that he has no recollection of how he arrived at the amount, speculating that perhaps it was "a combination of prior liens that I might have received"[27] and "there were two or three other lien notifications that add up to that number."[28]

Although Geffner testified that he does not know how he came up with the amount, it is reasonable to infer that it represents his rough estimate of the total of the three previously filed liens, and that he elected to disclose them as a single lien when he amended his Form U4. If so, Geffner erred by failing to disclose each of the three liens timely and accurately.

Geffner argues that he gave Equity Services adequate notice of his financial problems when he disclosed his bankruptcy and this inaccurate tax lien, thereby relieving him of making additional disclosures; he "presumed" that the firm therefore would know of any additional liens.[29] Geffner also claims that it was "just an oversight" that he failed to disclose three later tax liens filed against him in May, August, and October 2011.[30] Geffner points out that Equity Services did not question him about his financial condition after he disclosed his bankruptcy and the $167,000 tax lien; in his words, he made the disclosure but "nothing happened."[31]

Geffner claims that when Equity Services conducted its audit in 2013, he realized that he had not filed his Form U4 amendments correctly.[32]

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[23] *Id.* at 43.

[24] Tr. 83; CX-2, at 46-47.

[25] Tr. 87-88.

[26] Tr. 83-84.

[27] Tr. 84-85.

[28] Tr. 87.

[29] Tr. 92.

[30] Tr. 90.

[31] Tr. 100.

[32] Tr. 101.

E. The Firm's Investigation

In March 2013, Equity Services conducted a routine compliance examination at Geffner's branch office. Following a standard protocol designed to check on whether representatives were properly making necessary disclosures, the firm conducted a background review and credit check on a random sample of the representatives at the branch office. Geffner was one of the representatives whose credit reports were reviewed. It was during this examination that Equity Services discovered Geffner's undisclosed liens.[33]

After the discovery, Equity Services permitted Geffner to resign in December 2013. For his disclosure failures, Equity Services made him relinquish his affiliation with the broker-dealer and pay a fine of $1,500, but allowed him to continue working as an insurance agent for National Life of Vermont.[34]

III. Complaint

The Complaint's first and principal cause of action charges Geffner with failing to update his Form U4 as FINRA's By-Laws and NASD and FINRA rules require. It alleges that when associated with Park Avenue Securities in February 2007, he failed to make a timely disclosure of his March 2006 bankruptcy. The Complaint also charges that in October 2007, when he became associated with Equity Services, which required him to update his Form U4, he failed to make timely disclosures of the May and June 2007 tax liens, and later failed to update his Form U4 to disclose the May, August, and October 2011 liens.

The Complaint charges that these failures were willful, material, and violated Article V, Section 2(c) of the By-Laws, NASD IM-1000-1, FINRA Rule 1122, NASD Rule 2110, and FINRA Rule 2010.[35]

The Complaint's second cause of action charges that in October 2011, five months after learning of the May 2011 lien, and less than two months after learning of the August 2011 lien, Geffner signed an Equity Services annual compliance certification questionnaire falsely stating that no unsatisfied liens were filed against him since the last certification he had signed. In November 2012, about one year after learning of the October 2011 lien, Geffner signed another compliance certification making the same false attestation. The second cause of action alleges

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[33] Tr. 93-94, 126, 133, 145-46, 148.

[34] Tr. 73, 94.

[35] Compl. ¶¶ 14-18. 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 Rule 2010 became effective on December 15, 2008, superseding NASD Rule 2110, with no material change. Thus, NASD Rule 2110 applies to Geffner's conduct prior to December 15, 2008, and FINRA Rule 2010 applies to Geffner's conduct after that date; NASD IM-1000-1 applies to Geffner's conduct prior to August 17, 2009, and FINRA Rule 1122 applies to Geffner's conduct afterwards. *See* Rule Conversion Chart: NASD to FINRA, http://www.finra.org/ruleconversionchart/.

that by making these false representations, Geffner violated the high standards of commercial honor and just and equitable principles of trade required of him by FINRA Rule 2010.

IV. Discussion

A. The Form U4 Disclosures: Overview

Article V, Section 2(a) of FINRA's By-Laws requires anyone applying for registration to agree to comply with federal securities laws and other applicable rules and regulations. Article V, Section 2(c) requires associated persons to keep their applications for registration current by filing amendments within 30 days of learning of any circumstance requiring amendment.

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 contravene the just and equitable principles of trade to which members must adhere. FINRA Rule 1122 has the same title as IM-1000-1, and is identical in effect. A violation of NASD IM-1000-1 also violates NASD Rule 2110, and a violation of FINRA Rule 1122 also violates FINRA Rule 2010.[36]

Here, the evidence shows, and Geffner admits, that he failed to make timely amendments to his Form U4. It is also clear, although Geffner disputes it, that his failures were willful and material.

1. Willfulness

The central issue in this case is whether Geffner's failure to disclose the liens was willful. It is unnecessary for Enforcement to show that Geffner knew his actions violated any particular NASD or FINRA rules or other securities laws to prove willfulness.[37] Rather, the evidence must establish that Geffner intentionally committed "the act which constitutes the violation"; that is, he knew what he was doing when he learned of liens and did not report them on his Form U4, and when he filed an amended Form U4 without disclosing them.[38] A failure to make a required disclosure on a Form U4 renders it inaccurate, and is willful if the person acts "of his own volition" and the resulting filing of the inaccurate Form U4 is "neither involuntary nor inadvertent."[39]

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[36] *McCune*, 2016 SEC LEXIS 1026, at *12.

[37] *McCune*, 2016 SEC LEXIS 1026, at *15; *Jason A. Craig*, Exchange Act Release No. 59137, 2008 SEC LEXIS 2844, at *13 (Dec. 22, 2008).

[38] *McCune*, 2016 SEC LEXIS 1026, at *15, quoting *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965), and citing *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000); *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949).

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

Geffner testified at one point in the hearing that failing to update his Form U4 was inadvertent, a result of "paying more attention [to] trying to earn a living selling insurance" than to his disclosure obligations.[40] At another point, Geffner claimed that he did not realize, until his firm conducted its March 2013 random background check, that he had filed Form U4 amendments incorrectly.[41]

Geffner contends that he disclosed enough information to provide notice of his financial problems, so that his late disclosures were not willful. He argues that the bankruptcy disclosure and the amendment he filed in July 2007 gave Equity Services and the investing public sufficient notice that "this representative is facing financial difficulty." [42]

Nonetheless, the evidence, including Geffner's testimony considered in its entirety, establishes that Geffner intentionally did not keep his Form U4 accurate and current. Although Geffner initially denied he made a conscious decision not to amend his Form U4, saying he "just didn't do it correctly," he then conceded he knew what he was doing at the time.[43] The Panel concurs, and concludes that Geffner willfully failed to make timely amendments to his Form U4.

2. Materiality

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. Geffner's liens are material if, for example, 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 give customers "appropriate financial advice."[44]

FINRA's National Adjudicatory Council has held that "essentially all of the information that is reportable on the Form U4 may be considered material."[45] The Securities and Exchange Commission ("SEC") has held that the existence of five tax liens filed against a registered representative totaling more than $600,000 was material information.[46] 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."[47]

To support his argument that his nondisclosures were immaterial, Geffner again cites his July 2007 Form U4 amendment. He argues that it put his firm on notice that he had a large

[40] Tr. 92-93.

[41] Tr. 101.

[42] Tr. 190-91.

[43] Tr. 116-17.

unsatisfied lien, and the fact that his firm did not take any action, such as putting him on heightened supervision, illustrates that his nondisclosure of the other liens was not material.[48]

The Panel disagrees; whether his firm did or did not respond to the July 2007 amendment has no bearing on the materiality of Geffner's nondisclosures, nor did it relieve him of his obligation to update his Form U4.

Here, Geffner's tardily disclosed liens reflected significant personal financial obligations that would indicate to regulators and customers the presence of continuing, additional economic pressures on him and raise questions about his ability to manage his financial affairs, and his judgment and his acumen in recommending appropriate life insurance policies to customers. The Panel finds Geffner's bankruptcy and liens to be material information that should have been timely and accurately disclosed on his Form U4.

B. The False Annual Certifications

FINRA Rule 2010 provides that "A member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade." Rule 2010 is recognized as a "catch-all which … preserves power to discipline members for a wide variety of misconduct, including merely unethical behavior," even if not involving a security.[49] It has long been established that conduct that is unethical or that reflects bad faith violates Rule 2010.[50]

Making false statements on a firm compliance questionnaire violates FINRA Rule 2010.[51] The failure to disclose material information required by a firm violates the rule because it

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[44] *McCune*, 2016 SEC LEXIS 1026, at *21-22, and nn.25-26. *See also Mathis*, 671 F.3d at 219-20 (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.").

[45] *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).

[46] *Mathis*, 671 F.3d at 213, 220.

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

[48] Tr. 191.

[49] *Heath v. SEC*, 586 F.3d 122, 134 (2d Cir. 2009) (quoting *Colonial Realty Corp. v. Bache & Co.*, 358 F.2d 178, 182 (2d Cir. 1966) *cert. denied*, 385 U.S. 817 (1966).

[50] *Robert E. Kauffman*, 51 S.E.C. 838, 840 n.5 (1993), citing *Robert J. Jautz*, 48 S.E.C. 702, 704 (1987).

[51] *Dep't of Enforcement v. Mielke*, No. 2009019837302, 2014 FINRA Discip. LEXIS 24, at *40, 42 (NAC July 18, 2014), *aff'd*, Exchange Act Release No. 75981, 2015 SEC LEXIS 3927 (Sept. 24, 2015).

reflects upon a representative's "ability to comply with regulatory requirements necessary for the proper functioning of the securities industry and the protection of the public."[52]

Geffner concedes that he answered Equity Services' annual certification questionnaires identically from 2008 through 2012, replying no to the question asking if he had incurred any unsatisfied liens in the prior year. Because of the two liens filed in May and August 2011, his answer on the October 2011 annual questionnaire was false. Because of the lien filed in October 2011, his answer on the November 2012 annual questionnaire was also false. On the strength of the uncontroverted evidence, therefore, the Panel finds that Geffner's false answers on two of his firm's compliance questionnaires violated FINRA Rule 2010.

C. Conclusions

Based on the evidence presented at the hearing, the Panel concludes that Geffner's failures to timely amend his Form U4 to disclose the unsatisfied liens and bankruptcy were willful, material, and violated Article V, Section 2(c) of NASD's and FINRA's By-Laws, NASD IM-1000-1, and FINRA Rule 1122. By doing so, Geffner engaged in conduct inconsistent with the standard of just and equitable principles of trade in violation of NASD Rule 2110 and FINRA Rule 2010. In addition, the Panel concludes that Geffner gave false answers on two annual firm compliance certifications, conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of FINRA Rule 2010.

V. Sanctions

FINRA's Sanction Guidelines recommend a fine ranging from $2,500 to $73,000 and a suspension in any or all capacities for 5 to 30 business days for filing false, misleading, or inaccurate Form U4 amendments.[53] For egregious cases, including cases with repeated false, inaccurate, or misleading filings, the Guidelines recommend considering suspension of an individual for up to two years in any or all capacities, or a bar. The relevant Principal Consideration in determining sanctions is the nature and significance of the information at issue.[54]

No Guideline specifically addresses providing untruthful information in response to a firm's compliance certification. Enforcement refers to the Guideline for forgery or falsification of records, in violation of FINRA Rule 2010, which recommends a fine between $5,000 and $146,000, and a suspension or a bar. In cases where mitigating factors exist, the Guideline recommends consideration of a suspension for up to two years. In egregious cases, it

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[52] *John Edward Mullins*, Nos. 20070094345, 20070111775, 2011 FINRA Discip. LEXIS 61, at *30 (NAC Feb. 24, 2011), *aff'd,* Exchange Act Release No. 66373, 2012 SEC LEXIS 464 (Feb. 10, 2012), *quoting* Dep't *of Enforcement v. Davenport*, No. C05010017, 2003 NASD Discip. LEXIS 4, at *9 (NAC May 7, 2003).

[53] FINRA Sanction Guidelines ("Guidelines") at 69 (2015), available at http://www.finra.org/industry/sanction-guidelines.

[54] *Id.* at 69-70.

recommends considering a bar. The Guideline's relevant Principal Consideration for determining sanctions for falsifying documents is the nature of the document falsified.[55]

Enforcement suggests that because both causes of action stem from a single cause, it is appropriate to "batch," or aggregate, the sanctions in this case, rather than imposing a sanction for each violation, as the Guidelines permit.[56] Because the violations described in both causes of action resulted from Geffner's willful failure to comply with his disclosure obligations, the Panel concludes that a unitary sanction is appropriate.[57]

Enforcement recommends imposing a censure, suspension in all capacities for six months, and a fine of $10,000. In its pre-hearing brief, Enforcement argues that Geffner's misconduct is egregious primarily because there were seven late disclosures spanning seven years.[58] Enforcement cites the nature of the undisclosed information as an aggravating factor for both the Form U4 and compliance certification violations, arguing that the materiality of the liens affected customer and regulatory assessment of Geffner's financial condition, and his false answer on two annual certifications impaired his firm's compliance oversight.[59] The Panel agrees that Geffner's several discrete acts over a period of time, rising to the level of a pattern of misconduct, constitute an aggravating factor, but not an egregious one.[60]

Enforcement considers, and the Panel agrees, that Geffner's misconduct was intentional, an aggravating factor under the Guidelines' Principal Consideration No. 13.[61] Enforcement also considers Geffner's concealment of his Form U4 nondisclosures by giving false answers on the certifications to be aggravating.[62] The Panel agrees that truthful answers on the compliance certifications could have flagged the attention of his firm to inquire into Geffner's financial circumstances and to find out about the liens.

Because Geffner did not accept responsibility for his misconduct before his firm discovered his nondisclosures, his acceptance of responsibility is not a mitigating factor.[63] But

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[55] Guidelines at 37.

[56] Guidelines at 4.

[57] *See Dep't of Enforcement v. Braff*, No. 2007011937001, 2011 FINRA Discip. LEXIS 15, at *25 (NAC May 13, 2011), *aff'd,* Exchange Act Release No. 66467, 2012 SEC LEXIS 620 (Feb. 24, 2012); *Mielke*, 2015 SEC LEXIS 3927, at *59.

[58] Dep't of Enforcement's Pre-Hearing Br., at 11.

[59] Tr. 186-87.

[60] Guidelines at 6.

[61] Tr. 188; Guidelines at 7.

[62] Tr. 188.

[63] Guidelines at 6 (Principal Considerations in Determining Sanctions Nos. 9-10).

Enforcement concedes, and the Panel agrees, that there are mitigating factors present. When Equity Services confronted Geffner in March 2013, after admitting that his answers on the compliance certifications were false, Geffner cooperated with FINRA's investigation.[64]

Geffner repeatedly admitted his responsibility in his testimony. When asked whose fault it was for what he termed the "oversight" of not disclosing the liens promptly, he answered unequivocally "Mine."[65] He stated: "I am guilty of not filing in a timely manner"[66] and "I take full responsibility" for the inaccuracy of the filings.[67] He expressed remorse convincingly, and stated that if he had it to do over again, he would not repeat his mistakes.[68] Based upon the content of Geffner's testimony, his demeanor, and his forthrightness with Enforcement during the investigation, the Panel is persuaded of the sincerity of his remorse, and finds there is little likelihood Geffner poses a threat of repeating the misconduct that brought him before us.

It is mitigating that Geffner's firm disciplined him for his misconduct before FINRA learned of it.[69] When Equity Services discovered Geffner's failure to keep his Form U4 current, he paid a fine of $1,500 and submitted his resignation, terminating his employment with the broker-dealer, although he was permitted to continue to work as an insurance agent for National Life Insurance of Vermont.[70]

Geffner also testified that National Life has informed him that it will fire him if his conduct is determined to have been willful and he is subject to statutory disqualification.[71] This is why Geffner urged the Panel not to impose a statutory disqualification. However, the Panel "does not subject a person to statutory disqualification as a penalty or remedial sanction;" rather, statutory disqualification flows from a finding of willfulness by operation of Exchange Act Section 3(a)(39)(F), and we are not permitted to consider the collateral consequences to a respondent's career, or employment prospects, as mitigating for the purposes of determining appropriate sanctions.[72]

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[64] Enforcement's Pre-Hearing Br., at 13 n.68; Guidelines at 7 (Principal Consideration No. 12).

[65] Tr. 90-91.

[66] Tr. 93.

[67] Tr. 96.

[68] Tr. 107.

[69] Guidelines at 7 (Principal Consideration No. 14).

[70] Tr. 93-96.

[71] Tr. 96, 111-15. Geffner testified that he contacted other insurance companies that confirmed they would not hire him if his misconduct was determined to be willful.

[72] *McCune*, 2016 SEC LEXIS 1026, at *37.

Taking into consideration all of the facts and circumstances, the Panel concludes that it is unnecessary to impose sanctions as severe as those recommended by Enforcement. The Panel believes a suspension in all capacities for three months and a fine of $5,000 are sufficient to serve the remedial purposes of the Guidelines, and to deter other registered representatives from failing to amend their Forms U4.[73]

VI. Order

For willfully failing to timely update his Form U4, in violation of Article V, Section 2(c) of NASD's and FINRA's By-Laws, NASD IM-1000-1, NASD Rule 2110, and FINRA Rules 1122 and 2010, Respondent Ronald Leslie Geffner is suspended from associating with any FINRA member firm in any capacity for three months and fined $5,000. Because his misconduct was willful, and the information he failed to disclose was material, he is subject to statutory disqualification.

Geffner is also ordered to pay the hearing costs in the amount of $2,254.74, consisting of an administrative fee of $750, and the cost of the hearing transcript.

If this Decision becomes FINRA's final disciplinary action, Geffner's suspension shall become effective October 3, 2016. 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.[74]

Matthew Campbell
Hearing Officer
For the Hearing Panel

[73] The Panel declines to impose a censure as Enforcement requests; the Guidelines state that "Adjudicators generally should not impose censures" when imposing a suspension. Guidelines at 9.

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