

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

CHARLES H. MELVIN, JR.  
(CRD No. 1274431),

Respondent.

Disciplinary Proceeding  
No. 2012034045101

Hearing Officer–KBW

**HEARING PANEL DECISION**

April 2, 2015

**Respondent Charles H. Melvin, Jr., willfully violated Article V, Section 2(c) of FINRA’s By-Laws and FINRA Rules 1122 and 2010 by failing to timely amend his Form U4 to disclose that he was subject to three federal tax liens. Respondent is fined \$5,000, suspended from associating in any capacity with any FINRA member firm for six months, and ordered to pay hearing costs.**

**Appearances**

Mark J. Fernandez, Esq., and Steve Graham, Esq., New Orleans, Louisiana, for the Department of Enforcement, Complainant.

George C. Freeman, Esq., and Robert J. Dressel, Esq., New Orleans, Louisiana, for Charles H. Melvin, Jr., Respondent.

**DECISION**

**I. Introduction**

On June 23, 2014, the Department of Enforcement filed a Complaint against Respondent Charles H. Melvin, Jr. because he failed to timely disclose federal tax liens on his Uniform Application for Securities Industry Registration or Transfer (“Form U4”). The Complaint charges that by willfully failing to amend his Form U4 to disclose the federal tax liens, Melvin violated Article V, Section 2(c) of the FINRA By-Laws and FINRA Rules 1122 and 2010.<sup>1</sup> Enforcement requests that the Hearing Panel find that these violations were willful, the omitted information was material, and Melvin is therefore subject to statutory disqualification.<sup>2</sup> Melvin

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<sup>1</sup> FINRA’s rules are available at [www.finra.org/rules](http://www.finra.org/rules).

<sup>2</sup> Department of Enforcement’s Pre-Hearing Brief, at 14-15.

concedes that he failed to timely amend his Form U4 to disclose the federal tax liens, but argues that his violation was not willful and thus he is not subject to statutory disqualification.<sup>3</sup>

The Hearing Panel conducted a hearing in New Orleans, Louisiana on December 19, 2014.<sup>4</sup> The Hearing Panel finds that Enforcement established by a preponderance of the evidence that Melvin willfully violated Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010.

## **II. Findings of Fact and Conclusions of Law**

### **A. Melvin's Background**

Melvin joined Northwestern Mutual Life Insurance Company in 1980 as a special agent selling life insurance policies.<sup>5</sup> Melvin moved to Charlotte, North Carolina in 1982, where he remained throughout the relevant period.<sup>6</sup> In 1988, Melvin registered with FINRA through Northwestern Mutual Life's affiliate, Northwestern Mutual Investment Services, LLC ("NMIS," collectively, "Northwestern").<sup>7</sup> Melvin was registered as an Investment Company Products and Variable Contracts Representative.<sup>8</sup> All of Melvin's securities business involved variable universal life products that backstopped deferred compensation programs.<sup>9</sup>

An individual who acted as general agent for Northwestern in the Charlotte, North Carolina area supervised Melvin.<sup>10</sup> From 1987 into 2012, that individual was James Worrell.<sup>11</sup> Beginning in May 2012, that individual was James Worrell's son, Richard Worrell.<sup>12</sup> Richard Worrell's responsibilities included the supervision of his special agents for compliance with FINRA regulations.<sup>13</sup> Although Melvin had a good relationship with James Worrell until 1993, the relationship between Melvin and the Worrells had seriously deteriorated by 2008.<sup>14</sup>

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<sup>3</sup> Tr. 270-272.

<sup>4</sup> The Hearing Panel is composed of a current member of the District 6 Committee, a current member of the District 5 Committee, and the Hearing Officer. The hearing transcript is cited as "Tr." Enforcement's exhibits are cited as "CX." The parties filed joint stipulations, which are cited as "Stip."

<sup>5</sup> Tr. 116.

<sup>6</sup> Tr. 118.

<sup>7</sup> Answer ¶ 3; Tr. 183.

<sup>8</sup> Tr. 117.

<sup>9</sup> Tr. 116-117.

<sup>10</sup> Tr. 50.

<sup>11</sup> Tr. 121-122, 137.

<sup>12</sup> Tr. 138.

<sup>13</sup> Tr. 50.

<sup>14</sup> Tr. 121-122, 137.

Melvin left Northwestern in September 2012.<sup>15</sup> NMIS then filed a Uniform Termination Notice for Securities Industry Registration (“Form U5”), reporting that Melvin was permitted to resign following his failure to adhere to the terms of a corrective action plan.<sup>16</sup> After NMIS filed the Form U5, FINRA staff initiated an inquiry into Melvin’s activities.<sup>17</sup>

After leaving Northwestern, Melvin joined Mass Mutual Life Insurance Company (“MassMutual”), and its broker-dealer affiliate, MML Investment Services, LLC, a FINRA member firm.<sup>18</sup> MML filed a Form U4 Amendment on behalf of Melvin on September 18, 2012. On October 10, 2012, MML filed a Form U5 reporting the termination of Melvin’s registration.<sup>19</sup> Melvin has not been registered or associated with a FINRA member since October 10, 2012.<sup>20</sup>

## **B. Jurisdiction**

FINRA has jurisdiction over this disciplinary proceeding, pursuant to Article V, Section 4 of FINRA’s By-Laws, because (1) the Complaint was filed within two years after the effective date of termination of Melvin’s registration with a member firm, and (2) the Complaint charges him with misconduct that commenced while he was associated with a member firm.<sup>21</sup>

## **C. Federal Tax Liens**

Beginning in approximately 2003, Melvin started earning large commissions in connection with selling insurance related to deferred compensation plans.<sup>22</sup> Melvin responded by ramping up his business, hiring additional staff, and leasing additional space.<sup>23</sup> However, when the 2008-2009 recession hit, Melvin’s deferred compensation plan business and related commission revenues dried up, leading to his failure to timely pay his federal income tax obligations.<sup>24</sup>

Between July 25, 2010, and July 27, 2010, Melvin received a letter notifying him that the IRS had filed a federal tax lien for \$182,491.01 against his property.<sup>25</sup>

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<sup>15</sup> Tr. 94.

<sup>16</sup> CX-6, at 1.

<sup>17</sup> CX-6, at 1.

<sup>18</sup> Answer ¶ 4; Tr. 162, 164-65.

<sup>19</sup> Answer ¶ 4.

<sup>20</sup> Answer ¶ 5.

<sup>21</sup> Answer ¶ 6.

<sup>22</sup> Tr. 140-141.

<sup>23</sup> Tr. 141-142.

<sup>24</sup> Tr. 141-142.

<sup>25</sup> Stip. ¶ 2; CX-15.

Between February 12, 2012, and February 14, 2012, Melvin received two letters notifying him of additional tax liens against his property.<sup>26</sup> By one letter, the IRS notified Melvin that it had filed a federal tax lien for \$584,791.11.<sup>27</sup> By the other letter, the IRS notified Melvin that it had filed a federal tax lien for \$48,883.47.<sup>28</sup>

**D. Failure to Amend Form U4 to Disclose Federal Tax Liens**

Melvin was registered with NMIS when he learned of the federal tax liens. Melvin did not inform the Worrells or anyone in Northwestern's Compliance Department or Legal Department of the three federal tax liens.<sup>29</sup> Melvin failed to amend his Form U4 to disclose the federal tax liens while registered through NMIS.<sup>30</sup>

Melvin testified that in 2012 he did not provide information regarding the federal tax liens to Richard Worrell even though Worrell asked for it because Melvin believed that Richard Worrell would use the information to embarrass and discredit Melvin.<sup>31</sup> Richard Worrell testified that he told Melvin that he (Worrell) might terminate Melvin's special agency if there were federal tax liens against him.<sup>32</sup>

When Melvin joined MassMutual, he told MassMutual about the federal tax liens.<sup>33</sup> The Form U4 Amendment that MML filed in September 2012 on behalf of Melvin disclosed the federal tax liens.<sup>34</sup>

**E. Melvin Violated Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010 by Failing to Timely Report Tax Liens on His Form U4**

Registered representatives like Melvin must complete and file with FINRA a Form U4 to become registered through a FINRA member firm. FINRA's By-Laws require a registered representative to keep his or her Form U4 current at all times by filing a supplementary amendment within 30 days after learning of facts or circumstances giving rise to the

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<sup>26</sup> Stip. ¶¶ 3-4.

<sup>27</sup> CX-16.

<sup>28</sup> CX-17.

<sup>29</sup> Tr. 95, 165, 179-181; Stip. ¶ 18.

<sup>30</sup> Answer ¶¶ 14, 18, 22, 23.

<sup>31</sup> Tr. 152-153, 216-217. Melvin also testified on direct that Richard Worrell did not ask Melvin about the federal tax liens. Tr. 151-52.

<sup>32</sup> Tr. at 52-77.

<sup>33</sup> Tr. at 163-164. The Hearing Panel found Richard Worrell's testimony to be credible.

<sup>34</sup> Stip. ¶ 6; Answer ¶ 23; Tr. 162.

amendment.<sup>35</sup> FINRA Rule 1122, in turn, prohibits associated persons from filing registration information that “is incomplete or inaccurate so as to be misleading . . . .”

As the Securities and Exchange Commission (“SEC”) has explained, Form U4 “is critical to the effectiveness of the screening process used to determine who may enter (and remain in) the industry. It ultimately serves as a means of protecting the investing public.”<sup>36</sup> Accordingly, “Form U4 is used by all self-regulatory organizations (including FINRA), state regulators, and broker-dealers to determine and monitor the fitness of securities professionals who seek initial or continued registration with a member firm.”<sup>37</sup>

During the relevant period, Section 14 of Form U4 included Question 14M, which asked, “Do you have any unsatisfied judgments or liens against you?” The instructions to Section 14 specified, “If the answer to any of the following questions is ‘yes’, complete details of all events or proceedings on the appropriate DRP(s).” The Disciplinary Reporting Page (“DRP”) for Question 14M specified that “[i]f multiple, unrelated events result in the same affirmative answer, details must be provided on separate DRPs.” The DRP set forth six mandatory and one optional question for each judgment or lien.

Melvin should have amended the DRPs of his Form U4 to disclose each federal tax lien within 30 days after learning of the lien. Accordingly, Melvin violated Article V, Section 2(c) of FINRA’s By-Laws and FINRA Rule 1122, by failing to timely amend his Form U4 to report the federal tax liens. By failing to timely amend his Form U4, Melvin also violated FINRA Rule 2010.<sup>38</sup>

#### **F. Melvin Is Subject to Statutory Disqualification**

A person is subject to a statutory disqualification under Section 3(a)(39)(F) of the Securities Exchange Act of 1934 if, among other things, he “has *willfully* made or caused to be made in any application . . . 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 . . . any *material* fact which is required to be stated therein.”<sup>39</sup> Thus, a registered person is

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<sup>35</sup> FINRA By-Laws, Art. V, Sec. 2(c).

<sup>36</sup> *Joseph S. Amundsen*, Exchange Act Release No. 69406, 2013 SEC LEXIS 1148, at \*23 n.41 (Apr. 18, 2013) (quoting *Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at \*26 (Nov. 9, 2012)), *petition for review denied*, *Amundsen v. SEC*, 575 Fed. App’x 1 (D.C. Cir. 2014) (citations omitted).

<sup>37</sup> *Amundsen*, 2013 SEC LEXIS 1148, at \*23-24 (quoting *Tucker*, 2012 SEC LEXIS 3496, at \*26).

<sup>38</sup> *Amundsen*, 2013 SEC LEXIS 1148, at \*23.

<sup>39</sup> 15 U.S.C. § 78c(a)(39)(F) (emphasis added).

subject to statutory disqualification for failing to timely update his or her Form U4 if the failure was willful and the omitted information was material.<sup>40</sup>

## **1. Melvin Acted Willfully**

“A willful violation under the federal securities laws means ‘that the person charged with the duty knows what he is doing.’”<sup>41</sup> A finding of willfulness does not require intent to violate the law, but merely intent to do the act that constitutes a violation of the law.<sup>42</sup> Applying these principles, the Hearing Panel concludes that Melvin acted willfully in failing to amend his Form U4 to disclose the three federal tax liens.<sup>43</sup>

It is undisputed that Melvin was aware of the federal tax liens and that he failed to timely amend his Form U4 to disclose each of them.<sup>44</sup> The only dispute is whether he was aware of his obligation to timely disclose the tax liens on his Form U4. However, a registered representative “is presumed to know and abide by FINRA rules.”<sup>45</sup> In addition, Enforcement has established by the preponderance of the evidence that Melvin was aware of that obligation.

### **a. Evidence that Melvin Knew He Was Required to Report the Federal Tax Liens**

#### **i. Experience in the Securities Industry**

Melvin had many opportunities to learn of his Form U4 obligations. Although the bulk of Melvin’s business related to insurance and not securities, Melvin had been a registered representative since 1988.<sup>46</sup> Melvin completed a Form U4 to become registered.<sup>47</sup> During the subsequent 22 years, he attended numerous securities continuing education programs.<sup>48</sup>

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<sup>40</sup> *Dep’t of Enforcement v. Kraemer*, No. 2006006192901, 2009 FINRA Discip. LEXIS 39, at \*15 (NAC Dec. 18, 2009) (stating that willful omission of material information on Form U4 results in statutory disqualification).

<sup>41</sup> *Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at \*41 (Nov. 9, 2012) (quoting *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quotation omitted)).

<sup>42</sup> *Wonsover*, 205 F.3d at 414; *Arthur Lipper Corp. v. SEC*, 547 F.2d 171, 180 (2d Cir. 1976).

<sup>43</sup> *See Mathis v. SEC*, 671 F.3d 210, 216-218 (2d Cir. 2012) (finding that respondent was statutorily disqualified where he voluntarily failed to amend Form U4 to disclose tax liens).

<sup>44</sup> Answer ¶¶ 13, 17, 21; Stip. ¶¶ 2, 3, 4.

<sup>45</sup> *Dep’t of Enforcement v. Zayed*, No. 2006003834901, 2010 FINRA Discip. LEXIS 13, at \*22 n.19 (NAC Aug. 19, 2010) (discussing a registered representative’s mistaken belief that he did not have to report civil judgments on a Form U4) (citing *Carter v. SEC*, 726 F.2d 472, 474 (9th Cir. 1983)); *Dep’t of Mkt. Reg. v. Ko Sec., Inc.*, No. CMS000142, 2004 NASD Discip. LEXIS 21, at \*9 (NAC Dec. 20, 2004) (rejecting argument that violation was not willful because respondents mistakenly believed their conduct complied with NASD rules).

<sup>46</sup> Answer ¶ 2.

<sup>47</sup> Tr. 172.

<sup>48</sup> Tr. 172.

## ii. Communications Relating to Notice of Levy and Notice of Release of Levy

Two sets of correspondence in 2009 indicate that Melvin was aware while at NMIS of his obligation to provide to FINRA updated information regarding the federal tax liens. In this correspondence, NMIS and Melvin communicated regarding the amendment of his Form U4 to disclose the imposition of an IRS levy and then its release. In both sets of correspondence, NMIS (1) provided Melvin with a draft Form U4 Amendment containing Parts 1, 14, 15, and 15C of Form U4 and the DRP for judgments and liens, and (2) asked Melvin to review the draft responses that NMIS had prepared for those parts of the Form U4.

The first set of correspondence related to the imposition of an IRS levy on Melvin's compensation. In February 2009, Northwestern received from the IRS a Notice of Levy on Wages, Salary, and Other Income ("Notice of Levy") requiring Northwestern to turn over to the IRS any compensation that Northwestern was obligated to pay Melvin.<sup>49</sup> NMIS promptly sent to Melvin by email a transmittal letter ("February Transmittal Letter") with the subject line, "RE: Form U4, Amendment to Disclosure Question 14M."<sup>50</sup> NMIS attached to the February Transmittal Letter a draft Form U4 amendment reflecting the Notice of Levy.

The body of the February Transmittal Letter began with the sentence, "We have received a Notice of Levy in your name." This sentence was followed by a paragraph stating that Melvin's "Form U4 would be amended to reflect this change." The February Transmittal Letter noted that "[a] draft of [Melvin's] amended Form U4 is attached," the "answer to question 14M has been changed to 'yes,'" the "Judgment/Lien (DRP)" had been amended to detail this updated information, and "this DRP is part of your Form U-4." Under the heading, "Action Required," the February Transmittal Letter instructed Melvin to "[r]eview the documents, sign where indicated, and fax the signature back" to NMIS within seven days. The February Transmittal Letter explained that NMIS would then "complete the submission to FINRA." The February Transmittal Letter concluded by asking Melvin to contact the author of the letter if Melvin had any questions and providing the author's telephone number. Melvin received the February Transmittal Letter, signed the enclosed Form U4 Amendment under "Acknowledgment and Consent," and returned the February Transmittal Letter and attachment to NMIS.<sup>51</sup>

The second set of correspondence related to the release of the IRS levy on Melvin's compensation. In August 2009, Northwestern received a "Release of Levy/Release of Property from Levy" that released Melvin from the February tax levy ("Release of Levy").<sup>52</sup> NMIS promptly sent to Melvin by email a Transmittal Letter dated August 31, 2009 ("August Transmittal Letter") with the subject line, "RE: Form U-4, Amendment to Disclosure Question

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<sup>49</sup> Stip. ¶ 8; CX-11.

<sup>50</sup> Stip. ¶ 9; CX-19, at 1.

<sup>51</sup> Tr. 175.

<sup>52</sup> Stip. ¶ 11; CX-13.

14M.”<sup>53</sup> NMIS attached to the August Transmittal Letter a draft Form U4 amendment reflecting the Release of Levy.

Like the February Transmittal Letter, the August Transmittal Letter noted that a draft of Melvin’s amended Form U4 was attached, the “answer to question 14M has been changed,” the “Judgment/Lien (DRP)” had been amended to detail this updated information,” and “this DRP is part of your Form U-4.” Like the February Transmittal Letter, under the heading, “Action Required,” the August Transmittal Letter instructed Melvin to “[r]eview the documents, sign where indicated, and fax the signature back” to NMIS within seven days, and that NMIS would then “complete the submission to FINRA.” Melvin received the August Transmittal Letter, signed the enclosed Form U4 Amendment under “Acknowledgment and Consent,” and returned the letter and Amended Form U4 to NMIS.<sup>54</sup>

When asked about these communications, Melvin testified that he was not familiar with the term, “Form U4,” and the references to the term did not register with him.<sup>55</sup> In an effort to explain how he could have received and acted on the February and August Transmittal Letters regarding the Notice of Levy and Release of Levy without being aware that the Form U4 asked about liens, Melvin testified that there was a sticky note next to the place for his signature, he was a “good soldier,” and for each Transmittal Letter he simply went to the sticky note, signed next to the note, and faxed the letter and attachment to Northwestern without reading the responses to the DRP.<sup>56</sup>

Melvin’s testimony regarding the February and August Transmittal Letters is not persuasive. Each Transmittal Letter was only one page and in each Transmittal Letter the references to Form U4 are prominent and repeated. Furthermore, in addition to requesting that he sign and fax the attachment, each Transmittal Letter requested that he review the attachment, presumably to ensure that the DRP was accurate and complete. Accordingly, if Melvin were a “good soldier” as he claims to have been, he would have reviewed NMIS’s proposed responses to his DRPs.

### **iii. Agreement with Richard Worrell**

An agreement that Melvin signed in 2012 further indicates that Melvin was aware that Form U4 asked about liens. In April 2012, Melvin and Richard Worrell signed a one-page agreement (“April Agreement”), which stated that Melvin “will immediately disclose all reportable events or circumstances as outlined in the Field Compliance Manual including but not limited to liens, garnishments, bankruptcy, or judgments.”<sup>57</sup>

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<sup>53</sup> Stip. ¶ 12; CX-20, at 1.

<sup>54</sup> Stip. ¶ 12; CX-20.

<sup>55</sup> Tr. 171.

<sup>56</sup> Tr. 173-177.

<sup>57</sup> CX-2.



Melvin testified that he did not focus on the phrase, “reportable events or circumstances.”<sup>58</sup> Melvin testified that in reviewing the April Agreement he focused on the first bullet point (which stated that Richard Worrell would not approve Melvin’s non-Northwestern variable business until Melvin satisfied his IRS obligations) and the last bullet point (which required Melvin to move his business into a building owned in part by the Worrell family) and did not focus on the bullet points in between, including the one requiring him to “disclose all reportable events or circumstances.”<sup>59</sup>

Melvin’s testimony regarding the April Agreement is not persuasive. Immediately above the line where Melvin signed, the document specified that the signature would indicate Melvin’s “understanding of these conditions and . . . agreement.” Moreover, Melvin testified that in 2012 the relationship between him and Richard Worrell was “toxic.”<sup>60</sup> In this circumstance, it seems likely that if Melvin did not understand the phrase, “disclose all reportable events or circumstances,” he would have consulted the Field Compliance Manual for guidance or otherwise sought an explanation. Accordingly, Melvin’s failure to seek an explanation is evidence that he understood the phrase.

**b. Evidence that Melvin Did Not Know He Was Required to Report the Federal Tax Liens**

The only evidence that Melvin did not know that he was required to report the federal tax liens to FINRA is Melvin’s testimony at the hearing. At the hearing, Melvin testified that it was not until he interviewed with MassMutual that he understood that (1) there was a question in the Form U4 asking about tax liens, and (2) he was required to amend the Form U4 to reflect the federal tax liens.<sup>61</sup> This testimony does not persuade the Hearing Panel.

**i. Contemporaneous Documents and Self-Serving Nature of Melvin’s Testimony**

As set forth above, the contemporaneous documents indicate that he was aware of his obligation to disclose liens to FINRA. The contemporaneous evidence is entitled to considerable weight given that Melvin’s testimony at the hearing was self-serving.

**ii. Melvin’s False Responses to FINRA Staff Inquiries**

Melvin’s credibility is adversely affected by the fact that on three occasions he explained to FINRA staff his failure to timely update his Form U4 by falsely stating when he learned of the federal tax liens.

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<sup>58</sup> CX-2; Tr. 222-223.

<sup>59</sup> CX-2; Tr. 222-223.

<sup>60</sup> Tr. 153.

<sup>61</sup> Tr. 221-222.

By letter dated October 15, 2012, FINRA staff asked Melvin a number of questions pursuant to FINRA Rule 8210, including, “Why did you not timely report the liens to the Firm or FINRA?”<sup>62</sup> By a signed email dated October 26, 2012, Melvin responded, “I did not realize I had liens outstanding and as soon as the general agent made me aware I got with my tax advisors . . . .”<sup>63</sup> Melvin admitted at the hearing that his response was not true, stating that he did not know what he was thinking when he wrote his response.<sup>64</sup> Melvin personally prepared this response.<sup>65</sup>

By a letter dated January 11, 2013, FINRA staff sought additional information from Melvin about why he did not timely amend his Form U4 to disclose the federal tax liens. FINRA staff asked:

- Explain when you first became aware of [various tax liens, including the federal tax liens] filed against you.
- Explain why you failed to disclose these reportable events on your Form U-4 until September 18, 2012.
- Explain why you failed to follow the firm’s policies and procedures with respect to disclosing reportable events.<sup>66</sup>

By email dated February 14, 2013 (“February 14 Response”), Melvin responded, “I first became aware of the liens when the [Northwestern Mutual Life] general agent [Richard Worrell] asked me about them back in late summer 2012. . . I did not disclose the liens because to my knowledge they did not exist.”<sup>67</sup> Melvin personally prepared this response.<sup>68</sup>

When asked at the hearing about his February 14 Response, Melvin testified that he discussed tax obligations, not tax liens, with Richard Worrell and it was a mistake for him to have typed that he had discussed the liens with Richard Worrell.<sup>69</sup> Melvin’s testimony that his false explanation was a form of typo is not persuasive for two reasons. First, the question to which Melvin was responding related to why he did not disclose the federal tax liens, not tax obligations.<sup>70</sup> Second, Melvin did not learn of either his tax obligations or the federal tax liens from Richard Worrell. At the hearing, Richard Worrell testified that he did not learn of Melvin’s

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<sup>62</sup> CX-6, at 1.

<sup>63</sup> CX-7, at 2.

<sup>64</sup> Tr. 198.

<sup>65</sup> Tr. 197-198.

<sup>66</sup> CX-8, at 1.

<sup>67</sup> CX-9, at 1; Tr. 201.

<sup>68</sup> Tr. 200.

<sup>69</sup> Tr. 204.

<sup>70</sup> CX-8.

federal tax liens until he looked at BrokerCheck<sup>®</sup> after Melvin left Northwestern.<sup>71</sup> In addition, there is no evidence in the record that Melvin learned of his tax obligations from Richard Worrell.

After Melvin emailed the February 14 Response, FINRA staff informed Melvin that FINRA needed a signed response from Melvin.<sup>72</sup> Melvin made a correction to his February 14 Response, signed it, and sent it to FINRA staff on approximately February 22, 2013.<sup>73</sup> That correction related to the amount of taxes he had paid, not his failure to timely disclose the federal tax liens.<sup>74</sup> This failure further indicates that his inclusion of false information in the February 14 Response was deliberate.

### **iii. Melvin's False Response to Richard Worrell**

Melvin's credibility is adversely affected by the evidence that he falsely told Richard Worrell that no tax liens had been entered against him. Although Melvin denied that he and Richard Worrell ever discussed tax liens,<sup>75</sup> Richard Worrell testified that he personally asked Melvin in 2012 whether Melvin had any tax liens, and Melvin responded that he did not.<sup>76</sup> Moreover, Melvin concedes that he failed to inform Richard Worrell of the federal tax liens even though Richard Worrell repeatedly asked him in writing about the federal tax liens.<sup>77</sup>

### **iv. Melvin's False Response to NMIS Questionnaire**

Melvin's credibility is also adversely affected by the fact that he provided a false response to a NMIS questionnaire asking whether there were any unsatisfied liens against Melvin. In January 2011, less than six months after receiving the first of the notices of a federal tax lien, Melvin completed a Regulatory Disclosure Annual Questionnaire (the "2011 Questionnaire") that asked about liens: "Other than as PREVIOUSLY DISCLOSED to the COMPANY, is there an unsatisfied judgment or lien against you or have you made a written compromise to creditors?" Melvin answered, "No."<sup>78</sup>

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<sup>71</sup> Tr. 94-96.

<sup>72</sup> Tr. 206-207.

<sup>73</sup> Tr. 206-209.

<sup>74</sup> CX-10, at 1; Tr. 206-09.

<sup>75</sup> Tr. 154-155.

<sup>76</sup> Tr. 82-83. Melvin conceded, however, that he did not provide Richard Worrell with information about tax liens even though Worrell was asking for it. Tr. 152-153.

<sup>77</sup> Tr. at 152-153.

<sup>78</sup> CX-18, at 1.

## 2. The Information Was Material

The information regarding the federal tax liens was material. Melvin does not contest that the information regarding the federal tax liens was material.<sup>79</sup> The SEC has held that judgments and liens are material because “they cast doubt on [Respondent’s] ability to manage his personal financial affairs and provide investors with appropriate financial advice.”<sup>80</sup> Furthermore, “[b]ecause of the importance that the industry places on full and accurate disclosure of information required by the Form U4, [it is presumed] that essentially all the information that is reportable on the Form U4 is material.”<sup>81</sup>

The existence of the liens was significant to Richard Worrell in deciding whether to enter into a special agent agreement with Melvin. Richard Worrell explained that he would have considered the existence of a tax lien to be very significant because if the IRS had a lien, then the IRS’s claim on Melvin’s assets would supersede any claim Worrell had against Melvin.<sup>82</sup>

Therefore, the information regarding the federal tax liens constituted material information that should have been timely disclosed on Melvin’s Form U4.

## III. Sanctions

The FINRA Sanction Guidelines recommend a fine of \$2,500 to \$25,000 for late filings, a fine of \$2,500 to \$50,000 for failures to file and for filing false or inaccurate information, and consideration of suspension in any or all capacities for five to 30 business days.<sup>83</sup> For egregious cases, the Guidelines call for consideration of a longer suspension, for up to two years, or a bar.<sup>84</sup>

The Guidelines provide three principal considerations specific to Form U4 violations. One of these three considerations applies to Melvin’s conduct: whether the information at issue was significant and the nature of that information.<sup>85</sup> As set forth above, the undisclosed information, regarding the three unsatisfied federal tax liens, was material.

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<sup>79</sup> Tr. 270.

<sup>80</sup> *Robert D. Tucker*, 2012 SEC LEXIS 3496, at \*47.

<sup>81</sup> *Dep’t of Enforcement v. Tucker*, No. 2007009981201, 2011 FINRA Discip. LEXIS 66, at \*20-21 (Oct. 4, 2011) (quoting *Dep’t of Enforcement v. Knight*, No. C10020060, 2004 NASD Discip. LEXIS 5, at \*13 (NAC Apr. 27, 2004)), *aff’d*, *Robert D. Tucker*, 2012 SEC LEXIS 3496.

<sup>82</sup> Tr. 62, 76-77.

<sup>83</sup> Guidelines at 69.

<sup>84</sup> Guidelines at 70.

<sup>85</sup> Guidelines at 69. The other two principal considerations specific to Form U4 violations do not apply to Melvin: whether the failure resulted in a statutorily disqualified individual becoming or remaining associated with a firm; and whether a firm’s misconduct resulted in harm to a registered person, another member firm, or any person or entity. Because these considerations do not apply, the Hearing Panel did not consider them either aggravating or mitigating.

In addition, the Hearing Panel considered several of the principal considerations that the Guidelines state should be considered in imposing sanctions with respect to all violations.<sup>86</sup> Melvin's failure to amend his Form U4 related to three federal tax liens.<sup>87</sup> Melvin learned of the first federal tax lien in July 2010 and did not disclose its existence until September 2012, a delay of more than two years.<sup>88</sup> When Richard Worrell asked Melvin whether he had any federal tax liens, Melvin falsely responded that he did not.<sup>89</sup> When FINRA staff asked why Melvin did not timely update his Form U4 to disclose the federal tax liens, Melvin falsely responded that he did not disclose the tax liens because "to his knowledge they did not exist."<sup>90</sup> The evidence demonstrates that Melvin willfully failed to disclose material information.<sup>91</sup> A financial incentive is indicated by Richard Worrell's testimony that he told Melvin that in assessing whether to enter into a special agent agreement with Melvin, he (Worrell) considered it very significant whether Melvin had tax liens.<sup>92</sup>

In light of these aggravating considerations, the Hearing Panel concludes that Melvin's misconduct was egregious and a \$5,000 fine and a six-month suspension are reasonable and appropriate sanctions that will serve the remedial purposes of the Guidelines.

#### **IV. Order**

For willfully violating Article V, Section 2(c) of FINRA's By-Laws, FINRA Rules 1122 and 2010, Respondent Charles H. Melvin, Jr. is fined \$5,000, suspended from associating in any capacity with any FINRA member firm for six months, and is subject to statutory disqualification.<sup>93</sup>

Melvin is also ordered to pay the costs of the hearing in the amount of \$2,965.64, consisting of an administrative fee of \$750 and the cost of the transcript.

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<sup>86</sup> Guidelines at 6-7.

<sup>87</sup> See Guidelines at 6 (Principal Considerations in Determining Sanctions, No. 8 (directing adjudicators to consider whether the respondent engaged in numerous acts and/or a pattern of misconduct)).

<sup>88</sup> See Guidelines at 6 (Principal Considerations in Determining Sanctions, No. 9 (directing adjudicators to consider whether the respondent engaged in misconduct over an extended period of time)).

<sup>89</sup> See Guidelines at 6 (Principal Considerations in Determining Sanctions, No. 10 (directing adjudicators to consider whether the respondent attempted to mislead the member firm with which he was associated)).

<sup>90</sup> See Guidelines at 7 (Principal Considerations in Determining Sanctions, No. 12 (directing adjudicators to consider whether the respondent attempted to provide misleading information to FINRA)).

<sup>91</sup> See Guidelines at 7 (Principal Considerations in Determining Sanctions, No. 12 (directing adjudicators to consider whether respondent's misconduct was the result of an intentional act, recklessness, or negligence)).

<sup>92</sup> See Guidelines at 7 (Principal Considerations in Determining Sanctions, No. 17 (directing adjudicators to consider whether the respondent's misconduct resulted in the potential for the respondent's monetary or other gain)).

<sup>93</sup> The Hearing Panel considered all of the arguments of the parties. The arguments are rejected or sustained to the extent that they are inconsistent or in accord with the views expressed herein.

If this decision becomes FINRA's final disciplinary action, Melvin's suspension shall become effective on the opening of business on June 1, 2015, and shall end at the close of business on November 30, 2015. The fine shall be due and payable if Melvin should apply to reenter the securities industry.

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Kenneth Winer  
Hearing Officer  
For the Hearing Panel