BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of Department of Enforcement, Complainant, vs. Robert D. Tucker New York, NY, Respondent.	DECISION Complaint No. 2007009981201 Dated: October 4, 2011

Respondent willfully failed to disclose material information on his Form U4. Held, findings affirmed and sanctions modified.

Appearances

For the Complainant: Leo F. Orenstein, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Eric S. Hutner, Esq.

Decision

Robert D. Tucker ("Tucker") appeals a May 10, 2010 Hearing Panel decision pursuant to FINRA Rule 9311. The Hearing Panel found that Tucker failed to disclose on his Uniform Application for Securities Industry Registration or Transfer ("Form U4") a federal tax lien, two bankruptcies, three judgments, and a state tax lien, in violation of NASD Rule 2110 and IM-1000-1.[1] The Hearing Panel also concluded that Tucker is subject to a statutory disqualification because his actions were willful and involved the failure to disclose material information that

[1] Following the consolidation of NASD and the member regulation, enforcement and arbitration functions of NYSE Regulation into FINRA, FINRA began developing a new "Consolidated Rulebook" of FINRA Rules. The first phase of the new consolidated rules became effective on December 14, 2008. *See FINRA Regulatory Notice 08-57* (Oct. 2008). The conduct rules that apply in this case are those that existed at the time of the conduct at issue.

concerned his myriad financial problems. The Hearing Panel barred Tucker and ordered him to pay hearing costs of $2,392.30. After an independent review of the record, we affirm the Hearing Panel's findings but modify the sanctions it imposed.

I. Tucker's Background

Tucker entered the securities industry in 1989. He first became registered with FINRA as a corporate securities limited representative in October of 1991. As of September 2009, Tucker had been associated with 22 member firms.

II. Facts

A. Tucker's Federal Tax Lien

On June 4, 2002, the IRS filed a federal tax lien in the amount of $329,917.63 against Tucker.[2] Tucker admitted that this lien was related to his 1994 unpaid federal income taxes. On September 27, 2002, Tucker completed his Form U4 for association with GunnAllen Financial, Inc. Question 14M on the Form U4 asked: "Do you have any unsatisfied judgments or liens against you?" (the "Judgments and Liens Question"). Tucker answered "NO" to this question. Over the next several years, Tucker proceeded to answer "NO" to this same question on seven additional Forms U4. In 2005, he answered "NO" on Forms U4 for association with vFinance Investments, Inc., Pointe Capital, LLC, and Meyers Associates, L.P. In 2007, he answered "NO" to the Judgment and Liens Question on Forms U4 for association with Prestige Financial Center, Inc., PHD Capital, and Brill Securities, Inc., and in 2008, Bishop, Rosen & Co., Inc.

B. Tucker's Bankruptcies

On June 10, 2002, Tucker filed a voluntary petition under Chapter 11 of the U.S. Bankruptcy Code with the U.S. Bankruptcy Court for the Southern District of New York. On September 27, 2002, Tucker completed his Form U4 for association with GunnAllen Financial. Question 14K of the Form asked, "[w]ithin the past 10 years: (1) have you made a compromise with creditors, filed a bankruptcy petition, or been the subject of an involuntary bankruptcy petition?" (the "Bankruptcy Question"). Tucker answered "NO." In 2005, he answered "NO" to the Bankruptcy Question on Forms U4 for association with vFinance Investments, Pointe Capital, and Meyers Associates. In 2007, he answered "NO" to the same question on Forms U4 for association with Prestige Financial Center, Inc., PHD Capital, and Brill Securities, and in 2008, Bishop, Rosen & Co.

On August 3, 2004, Tucker again filed for bankruptcy, this time under Chapter 13, which was later converted by the court into a Chapter 7 filing. After filing this bankruptcy petition, Tucker completed seven Forms U4. In response to the Bankruptcy Question, Tucker answered "NO" on Forms U4 for association with vFinance Investments, Pointe Capital, and Meyers

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[2] While the tax lien was assessed against Tucker on September 11, 2000, it was not filed until June 4, 2002, thereby making the lien public and ensuring that Tucker had notice of the lien.

Associates in 2005. In 2007, he answered "NO" to the Bankruptcy Question on Forms U4 for association with Prestige Financial Center, PHD Capital, and Brill Securities, Inc., and in 2008, Bishop, Rosen & Co.

C. Tucker's American Express Judgment

On March 13, 2000, in response to an unanswered complaint filed by American Express Travel Related Services, a default judgment was entered against Tucker in the amount of $10,058.62. On January 9, 2001, American Express sent a garnishment notice to Chase Manhattan Bank, Tucker's bank, and the judgment was partially satisfied on February 2, 2001. The remainder of the judgment was ultimately discharged by Tucker's Chapter 7 bankruptcy on March 29, 2006. In 2001, Tucker answered "NO" to the Judgments and Liens Question on Forms U4 for association with Broadband Capital Management, InvestPrivate, and Schneider Securities. In 2002, he answered "NO" to the same question on Forms U4 for association with GunnAllen Financial, and in 2005, for association with vFinance Investments, Pointe Capital, and Meyers Associates. Before the Hearing Panel, Tucker claimed to have been unaware of the judgment, notwithstanding the garnishment of his bank account.

D. Tucker's Hamlet Golf & Country Club Judgment

On July 17, 2002, Hamlet Golf & Country Club obtained a judgment against Tucker and his wife for $37,511.67. Tucker admitted that he received notice of the judgment around the time that it was entered. When responding to the Judgments and Liens Question, however, Tucker answered "NO" on his GunnAllen Financial Form U4 in 2002. In 2005, he answered "NO" on Forms U4 for association with vFinance Investments, Pointe Capital, and Meyers Associates. This judgment was ultimately discharged by Tucker's Chapter 7 bankruptcy on March 29, 2006.[3]

E. Tucker's Friedman, Schnaier & Associates Judgment

On December 18, 2007, based upon a confession of judgment signed by Tucker, the New York Supreme Court entered judgment against Tucker for $48,000 in favor of Friedman, Schnaier & Associates. In 2008, Tucker answered "NO" to the Judgments and Liens Question on a Form U4 for association with Bishop, Rosen & Co. Tucker testified that he learned of the judgment when he was contacted by a debt collector during his employment with Brill Securities, which was prior to his employment with Bishop, Rosen & Co.

F. Tucker's State Tax Lien

On September 19, 2006, The New York State Tax Commission filed a state tax lien against Tucker for $7,980. In 2007, Tucker answered "NO" to the Judgments and Liens

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[3] While the Hearing Panel found that Tucker failed to disclose his Hamlet Golf & Country Club on eight Forms U4, we find that he failed to disclose this information on only four Forms U4. This judgment was discharged in Tucker's Chapter 7 bankruptcy on March 29, 2006, thereby erasing his obligation to disclose.

Question on Forms U4 for association with Prestige Financial Center, PHD Capital, and Brill Securities. In 2008, Tucker answered "NO" on his Bishop, Rosen & Co. Form U4. However, Enforcement did not allege in the complaint that Tucker's failure to disclose this lien was willful and Tucker maintained that he was unaware of this lien.

III. Procedural History

Enforcement initiated this action on February 24, 2009, with a complaint alleging three causes of action for willful failures to disclose two bankruptcies, a federal tax lien, and three judgments on Forms U4, as well as a fourth cause of action for non-willful failure to disclose a state tax lien. Tucker filed a motion for an extension of time to file his answer, which was granted. On April 7, 2009, Tucker submitted his answer to the Office of the Hearing Officers ("OHO"), stating that he was unable to admit or deny the allegations in the complaint and moved for a more definite statement. On April 9, 2009, the Hearing Officer denied Tucker's motion and ordered him to file an amended answer by April 30, 2009, that responded specifically to the allegations contained in the complaint. Tucker did not file the amended answer.

At the pre-hearing conference held on May 6, 2009, Tucker maintained that he was in the process of retaining counsel to represent him.[4] When the Hearing Officer told Tucker that he had failed to file his amended answer, Tucker responded that he had indeed submitted it via facsimile, but neither the Hearing Officer nor Enforcement had received it. The Hearing Officer permitted Tucker to file his amended answer by the following day. During the pre-hearing conference, Tucker stated that he anticipated calling two or three witnesses to testify in his defense. The parties and the Hearing Officer agreed to set the case for hearing on November 17-18, 2009.

The next day, Tucker wrote to OHO requesting additional time to file his amended answer. The Hearing Officer granted this request, giving Tucker until May 11, 2009 to file, which he did. On May 14, 2009, the parties submitted, and the Hearing Officer adopted, a joint proposed scheduling order that detailed, among other things, the dates for the submission of witness and exhibit lists.

As dictated by the joint proposed scheduling order, on October 26, 2009, Enforcement served and filed with OHO and served on Tucker its witness and exhibit lists while Tucker made no submissions. During what was supposed to be the final pre-hearing telephone conference, the Hearing Officer noted that Tucker had not filed any pre-hearing submissions. Tucker stated that he had provided his exculpatory evidence to a lawyer he had attempted to retain, but that this lawyer would not return the evidence until Tucker paid him. The Hearing Officer gave Tucker until November 13, 2009 to submit his evidence and witness lists, warning him that a failure to timely file these submissions with OHO would preclude him from introducing the evidence at the hearing. Tucker never made any such submissions.

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[4] On July 22, 2009, attorney David Schrader entered his appearance on behalf of Tucker; three weeks later, he withdrew his representation.

On November 17, 2009, the date the hearing was scheduled to begin, the Hearing Officer and two panelists, counsel for Enforcement, and Enforcement's witnesses were present at FINRA's offices in New York, prepared to begin. Tucker however, notified OHO that he was ill and was unable to participate in the hearing. Thus, the Hearing Officer rescheduled the hearing to commence on November 20, 2009.

On November 19, 2009, Tucker filed an emergency motion to postpone the hearing for 40 to 60 days. He argued that he needed additional time to address his health concerns as well as to give him the opportunity to retain counsel. Over Enforcement's objections, the Hearing Officer granted Tucker's motion, set another pre-hearing conference for December 1, 2009, and directed the parties to pick a hearing date in the last two weeks of January 2010. At the pre-hearing conference, Tucker stated that he had retained counsel to represent him at the hearing, but refused to reveal the attorney's identity. The parties agreed that the hearing would begin on January 21, 2010.

Notwithstanding his representations on December 1, 2009, Tucker appeared at the hearing and represented himself. At the hearing, Tucker testified on his own behalf, and did not call any other witnesses.

The Hearing Panel issued its decision on May 10, 2010, finding that Tucker violated NASD Rule 2110 and IM-1000-1 by willfully failing to disclose two bankruptcies, a federal tax lien, and three judgments. The Hearing Panel also found that Tucker failed to disclose a state tax lien, but that this failure was not willful. The Hearing Panel barred Tucker, finding his misconduct egregious and his continuous attempts to evade answering questions during the hearing troubling. The Hearing Panel also determined that Tucker was subject to statutory disqualification.

IV. Discussion

For the reasons discussed below, we affirm the Hearing Panel's findings that Tucker violated NASD Rule 2110 and IM-1000-1 by failing to disclose a federal tax lien, three judgments, two bankruptcies, and a state tax lien. We also affirm the Hearing Panel's finding that Tucker is subject to statutory disqualification. We, however, reduce the Hearing Panels' sanction of a bar and instead suspend Tucker from associating with any FINRA member in any capacity for two years and require him to re-qualify as a corporate securities limited representative at the conclusion of his suspension.

A. Tucker Violated NASD Rule 2110 and IM-1000-1

IM-1000-1 requires FINRA members and their associated persons to file, in connection with membership or registration as a registered representative, complete and accurate information. *See Robert E. Kauffman*, 51 S.E.C. 838, 840 (1993) ("Every person submitting registration documents has the obligation to ensure that the information printed therein is true and accurate."), *aff'd*, 40 F.3d 1240 (3d Cir. 1994). This requirement applies to the Form U4, which FINRA uses to screen applicants and monitor their fitness for registration within the securities industry. *See Jason A. Craig,* Exchange Act Rel. No. 59137, 2008 SEC LEXIS 2844, at *8 (Dec. 22, 2008). The information contained on the Form U4 is also important to the

investing public and FINRA firms that are evaluating whether to hire an employment applicant. Once filed, a registered representative or associated person is under a continuing obligation to timely update information required by the Form U4 as changes occur. *See Dep't of Enforcement v. Mathis*, Complaint No. C10040052, 2008 FINRA Discip. LEXIS 49, at *13-14 (FINRA NAC Dec. 12, 2008), *aff'd*, Exchange Act Rel. No. 61120, 2009 SEC LEXIS 4376 (Dec. 7, 2009). Filing a misleading Form U4, or failing to timely amend a Form U4 when required, violates IM-1000-1 and the high standards of commercial honor and just and equitable principles of trade to which FINRA holds its members and their associated persons under NASD Rule 2110.[5] *See Craig*, 2008 SEC LEXIS 2844, at *8; *see also Scott Mathis*, Exchange Act Rel. No. 61120, 2009 SEC LEXIS 4376, at *18 (Dec. 7, 2009) (finding that the failure to file timely Form U4 amendments is a violation of NASD Rule 2110 and IM-1000-1).

We, like the Hearing Panel, find that Tucker was aware of the two bankruptcies, federal tax lien, and three judgments. It is also evident that Tucker did not disclose this information on the relevant Forms U4 that he completed for his 11 employers or through timely Forms U4 amendments. The Hearing Panel found that Tucker was not a credible witness, and we find no basis to overturn that credibility determination. *See Dane S. Faber*, Exchange Act Rel. No. 49216, 2004 SEC LEXIS 277, at *17-18 (Feb. 10, 2004) (stating that, "[c]redibility determinations of an initial fact-finder, which are based on hearing the witnesses' testimony and observing their demeanor, are entitled to considerable weight and deference"). Tucker's testimony to the Hearing Panel was evasive and contradictory, evincing his continued refusal to admit his failures to disclose.

For example, in his testimony before the Hearing Panel, Tucker claimed to be unaware of the American Express judgment. The Hearing Panel found his testimony lacked credibility, especially in light of the fact that the funds owed to American Express were garnished from his bank account. He also alternated between denying knowledge of the Hamlet Golf & Country Club judgment and conceding that he was aware of it, and again the Hearing Panel took issue with his credibility.

Tucker avoided answering if he was even aware of his federal tax lien. When asked directly by Enforcement during the hearing if he was aware of the tax lien, Tucker failed to provide a definitive answer; rather, he skirted the issue and continually answered questions that were not asked. In contrast, during Tucker's on-the-record interview on July 31, 2008, he stated that he had been aware of the tax lien but did not check the box on the Forms U4 because he was contesting its validity. Isaac Schlesinger, chief compliance officer for Bishop, Rosen & Co., testified before the Hearing Panel that his firm received a copy of Tucker's federal tax lien. He confronted Tucker about the lien because it was not disclosed on Tucker's Form U4. Tucker told him that the lien was not his but rather his wife's. He stated that he was battling the lien in tax

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[5] NASD Rule 2110 states "[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade." NASD Rule 2110 applies with equal force to FINRA members and their associated persons. *See* NASD Rule 0115(a).

court and that he had the lien "reversed." When asked to provide documentation to Bishop, Rosen & Co. related to the tax court litigation, Tucker failed to do so.

Tucker also testified during his on-the-record testimony that he chose not to disclose his bankruptcies because he was "embarrassed." Before the Hearing Panel, Steven Trigili, a compliance officer at PHD Capital during the time Tucker was employed, testified that he assisted Tucker in completing his Form U4. Tucker never informed Trigili about the existence of any bankruptcies, liens, or judgments. To the contrary, Tucker explained to Trigili that should PHD Capital do a background check, a bankruptcy may appear on Tucker's record but that the bankruptcy is that of Tucker's wife and not his own. To support this assertion, Tucker provided Trigili with paperwork related to his wife's bankruptcy filing but never submitted documentation related to his own filings. Tucker also had numerous discussions with Isaac Schlesinger of Bishop, Rosen & Co. about his wife's bankruptcy issues but never admitted to filing two bankruptcies in his own name.

Over a period of seven years, Tucker inaccurately answered "NO" to the Judgments and Liens Question and the Bankruptcy Question on his Forms U4, when he should have answered in the affirmative.[6] These intentional inaccuracies on the Forms U4 are in direct contravention of high standards of commercial honor and just and equitable principles of trade. We therefore affirm the Hearing Panel's findings that Tucker violated NASD Rule 2110 and IM-1000-1.

B. Tucker Is Statutorily Disqualified

We next consider the separate question of whether Tucker is statutorily disqualified. We find that he is. A person is to subject to a statutory disqualification under Article III, Section 4 of FINRA's By-Laws and Section 3(a)(39)(F) of the Securities Exchange Act of 1934 ("Exchange Act") if he, among other things:

> has willfully made or caused to be made in any application for membership or participation in, or to become associated with a member of, a self-regulatory organization, report required to be filed with a self-regulatory organization, or proceeding before a self-regulatory organization, any statement which was at the time, and in the 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 application, report, or proceeding any material fact which is required to be stated therein.

15 U.S.C. § 78c(a)(39)(F).

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[6] Consistent with the details in the facts, we affirm the Hearing Panel's findings that Tucker failed to disclose his federal tax lien on eight separate Forms U4, his Chapter 11 Bankruptcy on eight Forms U4, his Chapter 13 Bankruptcy on seven Forms U4, his American Express judgment on seven Forms U4, his state tax lien on four Forms U4, and his Friedman, Schnaier & Associates judgment once. As previously stated, while the Hearing Panel found that Tucker failed to disclose his Hamlet Golf & Country Club Judgment on eight Forms U4, we find that he failed to disclose on only four.

We find that Tucker acted willfully in failing to disclose material information on 11 Forms U4. We therefore agree with the Hearing Panel that Tucker is subject to statutory disqualification.

1. Tucker's Actions Were Willful

In order to find a willful violation of federal securities laws we must find "that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir.2000). Thus, as is the case here, "[a] willfulness finding is predicated on [Tucker's] intent to commit the act that constitutes the violation–completing the Form U4 inaccurately." *Dep't of Enforcement v. Zdzieblowski*, Complaint No. C8A030062, 2005 NASD Discip. LEXIS 3, at *14 (NASD NAC May 3, 2005). We need not find that Tucker intentionally violated FINRA rules, only that he intended to give the inaccurate answers provided on the Forms U4. *See Wonsover*, 205 F.3d at 414 (finding that the law does not require that the willful actor "also be aware that he is violating one of the Rules or Acts"). Thus, to find that Tucker's actions were willful, we need to find that Tucker voluntarily committed the acts that constituted the violation; it is not necessary for us to determine whether he was aware of the rule he violated or whether he acted with a culpable state of mind. The evidence shows that Tucker voluntarily provided false answers on his Forms U4 and thus willfully violated IM-1000-1 and NASD Rule 2110. During his on-the-record interview, Tucker admitted that he knew about his bankruptcies and withheld information about them because he was embarrassed. Tucker also admitted that he was aware of the federal tax liens and pending judgments.

Even though he has made these admissions, Tucker argues that his failures to disclose were not willful, because compliance officials at several of his previous employers informed him that he need not disclose the bankruptcies,[7] and that such reliance precludes a finding of willfulness. We find no merit in this contention. The compliance officers from whom Tucker claimed to have received advice did not testify at the hearing, and the Hearing Panel and the NAC have serious doubts about Tucker's credibility. Moreover, Tucker completely failed to produce any documents or elicit any testimony that shows he relied on the advice of another as it relates to his Form U4 disclosures. The Hearing Panel found Tucker's testimony to be evasive and dissembling, and we agree.

Notwithstanding the lack of veracity of Tucker's testimony, it was Tucker's duty to determine whether the information he was providing on the Form U4 was complete and accurate. *See Craig*, 2008 SEC LEXIS 2844 (holding that a registered representative cannot "shift his responsibility to comply with NASD rules to his firm"); *Rafael Pinchas*, 54 S.E.C. 331, 338 (1999) (holding that "a registered representative is responsible for his actions and cannot shift that responsibility to the firm or his supervisors"). Because Tucker voluntarily provided false answers on his Form U4 he therefore willfully violated IM-1000-1 and NASD Rule 2110.

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[7] Tucker testified that compliance individuals at Broadband Capital, GunnAllen Financial, and vFinance Investments told him not to disclose his bankruptcies because he had not disclosed them on previous Forms U4 and doing so at the present would raise "red flags."

2. Tucker's Bankruptcies, Federal Tax Lien, and Judgments are Material

Having found that Tucker acted willfully, we turn next to the question of whether the federal tax lien, bankruptcies, and judgments were material for purposes of disclosure on Tucker's Forms U4. We find that they were. As we have noted, "[b]ecause of the importance that the industry places on full and accurate disclosure of information required by the Form U4, we presume that essentially all the information that is reportable on the Form U4 is material." *Dep't of Enforcement v. Knight*, Complaint No. C10020060, 2004 NASD Discip. LEXIS 5, at *13 (NASD NAC Apr. 27, 2004). In the context of Exchange Act Rule 10b-5, a fact is material if a reasonable investor would view the disclosure of the omitted information as "significantly alter[ing] the total mix of information made available." *Mathis*, 2009 SEC LEXIS 4376, at *29, n.27 (*quoting TSC Indus., Inc. v. Northway*, Inc., 426 U.S. 438, 449 (1976)). Applying this materiality standard to the circumstances here, we find that a reasonable employer or regulator would have viewed the tax liens, judgments, and bankruptcies as extremely relevant. *See, e.g., Dep't of Enforcement v. Toth*, Complaint No. E9A2004001901, 2007 NASD Discip. LEXIS 25, at *34-35 (NASD NAC July 27, 2007), *aff'd, Douglas J. Toth*, Exchange Act Rel. No. 58074, 2008 SEC LEXIS 1520 (July 1, 2008), *aff'd*, 319 Fed. Appx. 184 (3d Cir. Apr. 6, 2009).

Tucker's inability to handle his own finances and tax obligations presents potentially serious issues regarding his capability with handling the finances of others. In fact, Isaac Schlesinger, chief compliance officer at Bishop, Rosen & Co., testified that he would have considered a bankruptcy or a lien a poor reflection of a representative's business judgment, and such a blemish would have given Schlesinger reservations about hiring that individual. We find that Tucker's nondisclosure of the bankruptcies, federal tax lien, and judgments on Tucker's Forms U4 significantly altered the total mix of information available. Therefore, this information constituted material information that should have been disclosed on Tucker's Forms U4.

C. Tucker's Procedural Arguments

The crux of Tucker's appeal is that FINRA failed to provide him with a fundamentally fair hearing. Tucker argues that he was denied a fair hearing before the Hearing Panel and raises several interrelated arguments to support his claim, particularly that his lack of legal representation lead directly to the Hearing Panel's findings against him.

As an initial matter, Section 15A(b)(8) of the Exchange Act provides that FINRA disciplinary proceedings must be conducted in accordance with fair procedures. *See Scott Epstein*, Exchange Act Rel. No. 59328, 2009 SEC LEXIS 217, at *51 (Jan. 30, 2009) (holding that FINRA must provide fair procedures for its disciplinary actions), *aff'd*, 2010 U.S. App. LEXIS 24119 (3d Cir. Nov. 23, 2010). Section 15A(h)(1) of the Exchange Act requires that FINRA, in a disciplinary proceeding, "bring specific charges, notify such member or person of and give him an opportunity to defend against, such charges, and keep a record." Fairness is determined by examining the entirety of the record. *See Mark H. Love*, Exchange Act Rel. No. 49248, 2004 SEC LEXIS 318, at *16 (Feb. 13, 2004). Here, we find that the proceedings before the Hearing Panel were fair and conducted in accordance with FINRA rules. We further find that Tucker had ample notice of the allegations against him and had an opportunity to defend himself.

In particular, Tucker claims that because he was required to appear without counsel, he was unable to participate meaningfully in the hearing and thus should be entitled to a remand.[8] For example, Tucker asserts that, without an attorney, he did not understand the importance of the deadlines imposed by the Hearing Officer related to his ability to introduce documentary evidence. We find the premise of Tucker's argument to be incorrect. Although FINRA provisions "permit the participation of counsel[,] . . . there is no constitutional or statutory right to counsel in [FINRA] disciplinary proceedings." *Falcon Trading Group, Ltd.*, 52 S.E.C. 554, 559 (1995), *aff'd*, 102 F.3d 579 (D.C. Cir. 1996). There is no right to counsel in FINRA proceedings because that right "does not come into play until the initiation of criminal proceedings." *SEC v. Jerry T. O'Brien, Inc.*, 467 U.S. 735, 742 (1984). *See also Phyllis J. Elliott*, 51 S.E.C. 991, 996 n.17 (1994); *Richard R. Perkins*, 51 S.E.C. 380, 386 n.35 (1993). Tucker has requested that the NAC institute a policy providing *pro se* respondents facing serious sanctions such as a potential bar with free legal assistance that would be provided pro bono. He argues that a respondent facing the imposition of a bar is equivalent to an individual facing the death penalty and should be similarly entitled to assistance of counsel. We are not inclined to entertain such a request in this decision as the arguments for and against entitlement to representation have been well litigated previously and the issue laid to rest. Moreover, in our disciplinary cases, as in all civil litigation, the adjudicator should not be required to appoint an attorney for a party that is not represented.

Tucker's final procedural argument involves his possession of allegedly exculpatory information that, due to his lack of legal representation, he was never able to present during the hearing. Tucker attached some of these allegedly exculpatory documents as appendices to his appellate brief. These documents include a copy of Tucker's Discharge of Bankruptcy Filing with a certificate of service showing delivery to Broadband Capital, a Notice of Levy from the IRS sent to PHD Capital and Bishop, Rosen & Co., and an e-mail from Tucker to Mr. Lopez at vFinance Investments, Inc. inquiring about the status of a Form U4 update. Tucker requests that his case be remanded for the Hearing Panel to consider those documents that Tucker was unable to present at his original hearing. Even if we were to conclude that the Hearing Officer abused

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[8] While the hearing eventually went forward without Tucker having secured counsel, throughout the entirety of the proceedings Tucker represented to the Hearing Panel that he had or was in the process of retaining an attorney. Therefore, Tucker's attempt to color his argument with an inference that he was forced to proceed without an attorney is not entirely accurate. On the contrary, the hearing was delayed several times based on Tucker's representations that he was hiring an attorney, thereby providing Tucker with ample opportunities to actually do so. It was not until the start of the hearing, which had previously been postponed at Tucker's request, that the Hearing Panel learned that Tucker would be representing himself.

her discretion by excluding the documents that Tucker referred to during the hearing, which we do not,[9] we independently conclude that the documents do not alter our view of the facts and violations. As we review the Hearing Panel's decision de novo, we have considered the documents attached to Tucker's pleading and do not find them to be material or exculpatory. None of the documents could extinguish or even diminish Tucker's obligation to disclose his bankruptcies, judgments, and liens on his Forms U4.

We find that FINRA afforded, and Tucker received, a disciplinary proceeding conducted in accordance with fair procedures. Tucker was not entitled to assistance of counsel and FINRA is neither obligated nor inclined to provide him an attorney. The NAC has reviewed Tucker's claimed exculpatory documents and finds them immaterial to his failures to disclose.

V. Sanctions

The Hearing Panel barred Tucker from associating with any firm in any capacity. We find this sanction too severe and therefore reduce it. We suspend Tucker from associating with any FINRA member in any capacity for two years and require him to re-qualify as a corporate securities limited representative at the conclusion of his suspension.

As an initial matter, we find that the circumstances in this case lend themselves to an aggregation of Tucker's violations to determine sanctions. Each cause of action stems from a single source, Tucker's ongoing desire to conceal his myriad financial woes. Because we find Tucker's violations are related and derive from the same underlying issue, we impose a single sanction. *See Dep't of Enforcement v. Fox & Co. Invs., Inc.*, Complaint No. C3A030014, 2005 NASD Discip. LEXIS 5, at *37 (NASD NAC Feb. 24, 2005), *aff'd*, Exchange Act Rel. No. 52697, 2005 SEC LEXIS 2822, at *36 (Oct. 28, 2005).

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[9] FINRA Hearing Officers are empowered to resolve any procedural and evidentiary matters, discovery requests, and other non-dispositive motions, subject to any limitations elsewhere in the Code of Procedure. *See* FINRA Rule 9235(a)(4). In this case, Tucker failed to abide by the Hearing Officer's order, issued under FINRA Rule 9242, directing each party to provide the other and the Hearing Officer with copies of the documentary evidence and a list of the witnesses that each party intended to present at the disciplinary hearing. The rules expressly grant a Hearing Officer the power to exclude at the hearing the presentation of any witness or the use of any evidence by a party that, without substantial justification, failed to disclose information pursuant to an order issued under FINRA Rule 9242. *See* FINRA Rule 9280(b)(2). We agree with the Hearing Officer that Tucker was given multiple opportunities to produce his documentary evidence, failed to provide substantial justification for his failure to abide by the Hearing Officer's pre-hearing order, and that such failure was not harmless. We therefore affirm the Hearing Officer's decision to preclude Tucker from offering any testimony, except his own, or any documents into evidence at the hearing.

The FINRA Sanction Guidelines ("Guidelines") for misconduct involving a Form U4 recommend a fine of between $2,500 and $50,000 and a suspension of five to 30 business days.[10] In egregious cases, such as those involving repeated failures to file, untimely filings, or false, inaccurate, or misleading filings, the Guidelines recommend considering a longer suspension of up to two years or a bar.[11] In evaluating the appropriate sanctions to impose, the Guidelines provide three principal considerations specific to Form U4 violations, only one of which–the nature and significance of the information at issue–is relevant here.[12] These considerations are in addition to the principal considerations contained within the Guidelines that apply in every disciplinary case.[13]

First, we consider the nature of the information that Tucker failed to disclose. The information related to his bankruptcies, federal tax lien and judgments expressly implicates Tucker's financial stability, judgment, and ability to manage his own finances. Such serious financial issues present deep concerns about Tucker's ability to handle the finances of others. We conclude that the non-disclosed information, when considered in its totality, was highly significant.

Next, we consider that Tucker's misconduct spanned a period of greater than seven years –a lengthy period of time.[14] Tucker's failures involved numerous acts and a pattern of misconduct.[15] He executed 11 false and misleading Forms U4 and repeatedly failed to timely amend when presented with opportunities to do so. We find that Tucker thus systematically failed to uphold just and equitable principles of trade. His willful misconduct was not the result of a momentary lapse of judgment, aberrant behavior, or negligence that could establish mitigation.[16] Indeed, Tucker was active in the concealment of his bankruptcies on several occasions, demonstrating deliberativeness rather than mere oversight.

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10 *FINRA Sanction Guidelines* at 71 (2011), http://www.finra.org/web/groups/industry/@ip/@enf/@sg/documents/industry/p011038.pdf.

11 *Id.* at 72.

12 *Id.* at 71. Tucker's failures to disclose information in this case do not implicate the other two principal considerations applicable to Form U4 violations: 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. *Id.* Because these considerations do not apply, we do not consider them either aggravating or mitigating.

13 *See id.* at 6-7.

14 *Id.* at 6 (Principal Considerations in Determining Sanctions, No. 9).

15 *Id.* (Principal Considerations in Determining Sanctions, No. 8).

16 *Id.* at 7 (Principal Considerations in Determining Sanctions, Nos. 13, 16).

Finally, Tucker's failure to acknowledge his improprieties is disconcerting. Tucker has not accepted responsibility for his actions and continues to blame others–including his former employers–for his choice to make false statements on the Forms U4. The securities industry "presents a great many opportunities for abuse and overreaching, and depends very heavily upon the integrity of its participants." *Bernard D. Gorniak*, 52 S.E.C. 371, 373 (1995). True and complete answers to Form U4 questions are therefore "essential to a meaningful system of self-regulation" and "vital to determining the fitness of an applicant for registration as a securities professional." *Dep't of Enforcement v. Craig*, Complaint No. E82004095901, 2007 FINRA Discip. LEXIS 16, at *25 (FINRA NAC Dec. 27, 2007), 2008 SEC LEXIS 2844.

We agree with the Hearing Panel that Tucker's misconduct was egregious and that it demands considerable sanctions. We disagree, however, with the Hearing Panel that his violations warrant a bar. A significant suspension of two years, under the facts present in this case, strikes the appropriate balance between addressing the egregiousness of the violation without being unreasonably harsh. The securities laws require firms and individuals to make truthful and accurate disclosures in numerous and varied situations. Tucker's repeated failures to disclose material information about his financial problems demonstrate that he is currently unable to meet the high standards required of those employed in the securities industry. We therefore believe that a two year suspension, coupled with a requalification requirement, will best serve to remedy the violation and deter others who may consider unremittingly hiding important negative information when seeking registration through a FINRA member.

VI. Conclusion

Tucker failed to disclose his two bankruptcies, federal tax lien, three judgments, and one state tax lien on Forms U4, in violation of NASD Rule 2110 and IM-1000-1. For this violation, we suspend Tucker in all capacities for two years, require him to re-qualify as a corporate securities limited representative at the conclusion of his suspension, and affirm the Hearing Panel's assessment of costs of $2,392.30. Tucker's failure to disclose his two bankruptcies, federal tax lien, and three judgments were willful, and the omitted information was material; thus, Tucker also is statutorily disqualified.[17]

On Behalf of the National Adjudicatory Council,

Marcia E. Asquith, Senior Vice President
and Corporate Secretary

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[17] We also have considered and reject without discussion all other arguments advanced by respondent.