

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

CHUNG DINH TRAN,
also known as TONY TRAN
(CRD No. 5032068),

Respondent.

Disciplinary Proceeding
No. 20060051879-01

Hearing Officer—Andrew H. Perkins

DEFAULT DECISION

August 7, 2007

Respondent is barred from associating with any FINRA member firm in any capacity for: (1) filing a false Form U-4, in violation of Conduct Rule 2110 and IM-1000-1; and (2) failing to respond to requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2110.

Appearances

Mark A. Graves, Senior Regional Attorney, San Francisco, CA (Rory C. Flynn, Chief Litigation Counsel, Washington, D.C., Of Counsel) for the Department of Enforcement.

No appearance by or for Chung Dinh Tran.

DECISION

I. Introduction

On April 16, 2007, the Department of Enforcement (“Enforcement”) for the Financial Industry Regulatory Authority (FINRA)¹ filed the attached two-count Complaint against Chung Dinh Tran, also known as Tony Tran (“Tran” or the “Respondent”). The Complaint alleges that the Respondent (1) willfully failed to disclose material information on his Uniform Application for Securities Industry Registration or Transfer (Form U-4), in violation of Conduct Rule 2110

¹ NASD is now the Financial Industry Regulatory Authority.

and IM-1000-1; and (2) failed to respond to the staff's requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2110.²

Tran did not answer or otherwise respond to the Complaint. Consequently, on July 9, 2007, Enforcement filed a Motion for Entry of Default Decision ("Motion"). The Declaration of Mark A. Graves and seven attached exhibits support Enforcement's Motion.³ Tran did not respond to the Motion. Thus, pursuant to Procedural Rules 9215 and 9269, the Hearing Officer grants Enforcement's Motion.

II. Respondent's Default

Enforcement served Tran with copies of the Complaint, Notice of Complaint, and Second Notice of Complaint in accordance with Procedural Rules 9134(a)(2) and 9134(b)(1).

On April 13, 2007, Enforcement served the Complaint and Notice of Complaint on the Respondent by certified and first-class mail sent to his current residential address shown in the Central Registration Depository (the "CRD address").⁴ Tran did not file a response within the time required by the Code of Procedure. Hence, on May 14, 2007, Enforcement served the Complaint and Second Notice of Complaint on the Respondent by certified and first-class mail sent to the Respondent at his CRD address.⁵ To date, Tran has not filed a response.⁶

The Hearing Officer finds that Enforcement properly served Tran and that he thereby received valid constructive notice of this proceeding. Accordingly, the Hearing Officer finds Tran in default and deems the allegations in the attached Complaint admitted.⁷

² The FINRA Rules are available at <http://www.finra.org/RulesRegulation/FINRARules/index.htm>.

³ The declaration is referenced as "Graves Decl." followed by the applicable paragraph number.

⁴ Graves Decl. ¶ 6; Ex. 5.

⁵ Graves Decl. ¶ 8.

⁶ *Id.* ¶ 10.

⁷ The following findings of fact incorporate the allegations in the attached Complaint.

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

On or about September 12, 2005, Tran submitted a Form U-4 to Hold Brothers On-Line Investment Services, Inc. ("Hold Brothers"), a FINRA member firm. By so doing, Tran voluntarily submitted to FINRA's jurisdiction. Tran was associated with Hold Brothers until September 28, 2005, when he was discharged for failing to provide required information on his employment application.⁸

FINRA has jurisdiction of this proceeding pursuant to Article V, Section 4(a) of FINRA's By-Laws, which provides that FINRA may bring a disciplinary proceeding against, and may request information from, a formerly associated person for two years after his association terminated. In this case, Enforcement filed the Complaint and issued the subject requests for information within the two-year period of extended jurisdiction.

B. Filing a False Form U-4

The First Cause of Action alleges that, on or about September 12, 2005, Tran signed and submitted a Form U-4 to become registered as a Class B Proprietary Trader with Hold Brothers. The Complaint further alleges that Tran willfully provided false responses to questions requiring him to disclose if he had ever been charged with, or convicted of, a felony. Although Tran stated that he had not, in fact, in March 1992, he was charged with 15 felony counts of insurance fraud and conspiracy to commit insurance fraud in the Superior Court of the State of California, Hayward Branch. Further, on or about April 1, 1994, Tran pled guilty to one of the charges and was sentenced to 4 years in state prison.

The Hearing Officer finds the foregoing allegations sufficient to establish that the Respondent violated Conduct Rule 2110 and IM-1000-1, as alleged in the First Cause of Action, by willfully failing to disclose his felony record. Failing to disclose material information is

⁸ Ex. 1, at 1; Ex. 2, at 2.

conduct inconsistent with just and equitable principles of trade and violates Conduct Rule 2110 and IM-1000-1.⁹

C. Failure to Respond to Requests for Information

The Second Cause of Action alleges that the staff sent Tran three written requests for documents and information in accordance with Procedural Rule 8210 to which he did not respond. The staff mailed each request to the Respondent at his CRD address, the first on May 17, 2006, the second on June 1, 2006, and the third on August 9, 2006. Each request sought information regarding the reasons underlying Hold Brother's decision to terminate Tran's employment. Tran did not respond to any of the requests.

The Hearing Officer finds the foregoing allegations sufficient to establish that the Respondent violated Procedural Rule 8210 and Conduct Rule 2110, as alleged in the Second Cause of Action, by failing to provide information requested in connection with a FINRA investigation.¹⁰

IV. Sanctions

For filing a false, inaccurate, or misleading form or amendment, the FINRA Sanction Guidelines recommend a fine of \$2,500 to \$50,000 and a suspension in any or all capacities for 5 to 30 business days.¹¹ In egregious cases, such as those involving repeated filings of false, inaccurate, or misleading forms, or the failure to disclose a statutory disqualification event, the Sanction Guidelines recommend a suspension of up to two years or a bar.¹²

This is an egregious case. When Tran applied for registration, he denied that he had ever been charged with, or convicted of, a felony. Both representations were false. The nature of the

⁹ See, e.g., *Department of Enforcement v. Toth*, No. E9A2004001901, 2007 NASD Discip. 25 (N.A.C. July 27, 2007).

¹⁰ See, e.g., *Department of Enforcement v. Valentino*, No. FPI010004, 2003 NASD Discip. LEXIS 15, at *12 (N.A.C. May 21, 2003), *aff'd*, 2004 SEC LEXIS 330 (Feb. 13, 2004).

¹¹ FINRA Sanction Guidelines 73-74 (2007) available at <http://www.finra.org/web/groups/enforcement/documents/enforcement/p011038.pdf>.

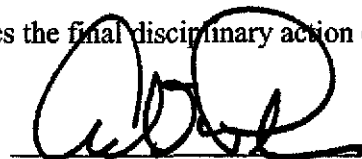
¹² *Id.* at 74.

charges—insurance fraud—and his guilty plea called into question his fitness to work in the securities industry, and there are no mitigating factors in the Complaint that would warrant a lesser sanction than a bar. Therefore, the Hearing Officer determines that a bar is the appropriate sanction for his willful submission of the false and misleading Form U-4.

In addition, the Hearing Officer finds that Tran should be barred for his failures to respond to the written requests for information, which the staff issued pursuant to Procedural Rule 8210. For such violations, the Sanction Guidelines recommend the imposition of a bar in the absence of mitigating circumstances.¹³ Here, the record discloses no mitigating factors. Accordingly, the Hearing Officer will bar the Respondent from associating with any member firm in any capacity for this violation.

V. Order

Chung Dinh Tran is barred from association with any member firm in any capacity for both of the following violations: (1) filing a false Form U-4, in violation of Conduct Rule 2110 and IM-1000-1; and (2) failing to respond to requests for information issued by the staff under Procedural Rule 8210, in violation of Procedural Rule 8210 and Conduct Rule 2110. The sanctions shall become effective once this decision becomes the final disciplinary action of FINRA.



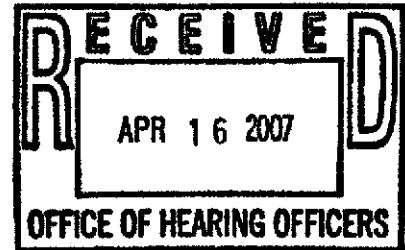
Andrew H. Perkins
Hearing Officer

Copies to:

Chung Dinh Tran (by FedEx, overnight delivery, and first-class mail)
Mark A. Graves, Esq. (by first-class and electronic mail)
Rory C. Flynn, Esq. (by first-class and electronic mail)
Mark P. Dauer, Esq. (by first-class and electronic mail)

¹³ *Id.* at 35.

**NASD
OFFICE OF HEARING OFFICERS**



DEPARTMENT OF ENFORCEMENT,

COMPLAINANT,

v.

**CHUNG DINH TRAN,
AKA TONY TRAN
(CRD No. 5032068),**

RESPONDENT.

**DISCIPLINARY PROCEEDING
No. 20060051879-01**

HEARING OFFICER –

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. In September 2005, Respondent Chung Dinh Tran became associated with a NASD member firm. As part of his association, Tran completed and signed an initial Uniform Application for Securities Industry Registration or Transfer (Form U-4). In that Form U-4, Tran willfully failed to disclose that he had previously been charged with multiple felony counts and subsequently pled guilty to one of those felony counts. It is alleged that Tran's failure to disclose the felony charges and felony conviction were in contravention of Article V, Section 2(a) of NASD's By-Laws and thus constituted violations of NASD Membership and Registration Rule IM-1000-1 and Conduct Rule 2110.
2. NASD staff sent written requests for information to Tran, pursuant to Procedural Rule 8210, during its investigation of the foregoing conduct. Tran failed to respond to these

requests. It is alleged that this conduct constitutes violations of NASD Procedural Rule 8210 and Conduct Rule 2110.

RESPONDENT

3. On or about September 1, 2005, Respondent Chung Dinh Tran, also known as Tony Tran, first became associated with NASD member firm Hold Brothers, Inc. (HBI).
4. Tran remained continuously associated with HBI until on or about September 29, 2005, when HBI filed a Uniform Termination Notice for Securities Industry Registration (Form U-5) with NASD, notifying NASD that the firm had terminated Tran's association with it because of Tran's "failure to provide required information on employment application."
5. NASD retains jurisdiction over Tran through September 28, 2007, pursuant to Article V, Section 4 of its By-Laws.

FIRST CAUSE OF ACTION

(Willful Misrepresentation on Form U-4)

NASD Membership and Registration Rule IM-1000-1 and Conduct Rule 2110

6. The Department realleges and incorporates by reference paragraphs 3 through 5 above.
7. In connection with Tran's association with HBI, he signed a Uniform Application for Securities Industry Registration or Transfer (Form U-4) dated September 12, 2005. By signing the Form U-4, Tran was attesting to the completeness and accuracy of the Form U-4.
8. On or about September 13, 2005, HBI submitted Tran's Form U-4 to NASD.
9. Form U-4 Question 14B.(1)(b) states: "**Have you ever:** been *charged* with any *felony*?"
10. Tran answered "No" to Question 14A.(1)(b) of the Form U-4.
11. Tran's response was false, in that on or about March 12, 1992, Tran was charged in the Superior Court of the State of California, Hayward Branch, with 13 felony counts (case

number H19183). The felony charges included, but were not limited to: four counts involving California Insurance Code 556(a)(1) for making a false or fraudulent insurance claim; four counts involving California Insurance Code 556(a)(4) for presenting a fraudulent insurance claim; five counts involving Section 487 of the California Penal Code for insurance fraud; one count involving California Insurance section 1871.1 for conspiracy; and one count involving Section 182 of the California Penal Code for conspiracy to commit insurance fraud. By failing to disclose these felony counts, Tran willfully failed to disclose a material fact on his Form U-4.

12. Form U-4 Question 14A.(1)(a) states: "**Have you ever:** been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign or military court to any *felony*?"
13. Tran answered "No" to Question 14A.(1)(a) of the Form U-4.
14. Tran's response was false, as on or about April 1, 1994, Tran pled guilty to one of the 13 felony counts in case number H19183 and the remaining felony counts were dismissed. The guilty plea was for a violation of California Insurance Code 556(a)(1), in that Tran did, on or about February 23, 1989, present or cause to be presented a false or fraudulent claim for the payment of a loss under a contract of insurance. As a result of that guilty plea, Tran was sentenced to 4 years in San Quentin and fined \$200.00 in restitution. By failing to disclose the felony conviction, Tran willfully failed to disclose a material fact on his Form U-4.
15. Based on the foregoing, Tran acted in contravention of Article V, Section 2(a) of NASD's By-Laws and thus violated NASD Membership and Registration Rule IM-1000-1 and Conduct Rule 2110.

SECOND CAUSE OF ACTION
(Failure to Provide Information)
NASD Procedural Rule 8210 and Conduct Rule 2110

16. The Department realleges and incorporates by reference paragraphs 3 through 5 above.
17. In or about February 2006, NASD initiated an investigation concerning Cota's termination from CFS for obtaining a loan from CR, a CFS customer.
18. Tran's last known residential address, as reflected in the NASD Central Registration Depository, is [REDACTED] (CRD Address).

FIRST REQUEST FOR INFORMATION

19. On or about May 17, 2006, NASD sent a letter to Tran, requesting information relating to Hold Brothers determination to terminate Tran on or about September 29, 2005, pursuant to NASD Procedural Rule 8210 (First Request Letter). The First Request Letter required a response no later than May 31, 2006.
20. The First Request Letter was sent via U.S. Postal Service first class mail and certified mail, return receipt requested, to Tran at his CRD Address.
21. The U.S. Postal Service did not return the envelope sent to the CRD Address via first class mail. The U.S. Postal Service returned the certified return receipt to NASD, signed by what appears to be the name Tran, indicating it was delivered and signed for on or about May 19, 2006. The information requested in the First Request Letter was due by May 31, 2006.
22. No response to the staff's First Request Letter was received from Tran.

SECOND REQUEST FOR INFORMATION

23. On or about June 1, 2006, NASD sent a second letter to Tran at his CRD Address, requesting the same information pursuant to NASD Procedural Rule 8210 (Second

Request Letter), via U.S. Postal Service first class mail and certified mail, return receipt requested. The Second Request Letter required a response no later than June 14, 2006.

24. The U.S. Postal Service did not return the envelope sent to the CRD Address via first class mail. The U.S. Postal Service returned the envelope sent to the CRD Address via certified mail, marked "Unclaimed, Unable to Forward."

25. No response to the staff's Second Request Letter was received from Tran.

THIRD REQUEST FOR INFORMATION

26. On or about August 9, 2006, NASD sent a third letter to Tran at his CRD Address, requesting the same information pursuant to NASD Procedural Rule 8210 (Third Request Letter), via U.S. Postal Service first class mail and certified mail, return receipt requested. The Third Request Letter required a response no later than August 18, 2006.

27. The U.S. Postal Service did not return the envelope sent to the CRD Address via first class mail. The U.S. Postal Service returned the envelope sent to the CRD Address via certified mail, marked "Return to Sender."

28. No response to the staff's Third Request Letter was received from Tran.

29. To date, NASD has not received any response to the foregoing requests for information.

30. Such acts, practices and conduct constitute separate and distinct violations of NASD Procedural Rule 8210. Such conduct is also inconsistent with high standards of commercial honor and just and equitable principles of trade and a violation of Conduct Rule 2110 by Tran.

PRAYER

WHEREFORE, the Department respectfully requests that the Panel:

- A. Order that one or more of the sanctions provided under NASD Rule 8310(a), including monetary sanctions, be imposed;
- B. Specific findings that Respondent's conduct with regard to his Form U-4 application was willful; the misrepresented information was material; and the misrepresentation of material facts was on a Form U-4 application; and
- C. Order that the Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330.

NASD DEPARTMENT OF ENFORCEMENT

Date: April 12, 2007



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