

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JOHN A. GARGIULO
(CRD No. 3174988),

Respondent.

Disciplinary Proceeding
No. 2006005919501

Hearing Officer – Sara Nelson Bloom

AMENDED DEFAULT DECISION¹

February 12, 2009

Respondent is barred from associating with any FINRA member in any capacity for failing to provide requested information, in violation of Rules 8210 and 2110. In light of the bar, no suspension is imposed for Respondent's unauthorized trading in a customer account, in violation of Rule 2110 and IM-2310-2. However, Respondent is ordered to pay \$3,000 in restitution, plus interest, for this violation. In light of the bar, the Hearing Officer declines to determine whether Respondent willfully failed to make required disclosures on his Form U4, in violation of Rule 2110 and IM-1000-1.

Appearances

Lynn M. Kaseta, Esq., Woodbridge, NJ, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

I. Background

On August 11, 2008, the Department of Enforcement ("Enforcement") filed a three-cause Complaint in this proceeding, attached to this Amended Decision as Exhibit A. Cause One of the Complaint alleges that Respondent John A. Gargiulo ("Respondent") violated Rule 2110 and

¹ On January 30, 2009, Enforcement filed a Motion for Reconsideration of the dismissal of the second cause of action. This Amended Decision addresses Enforcement's Motion and declines to reach the issue of whether Respondent failed to update his Form U4 to disclose a felony charge and conviction, in violation of Rule 2110.

IM-2310-2 by engaging in unauthorized transactions in a customer's account. Cause Two of the Complaint alleges that Respondent violated Rule 2110 and IM-1000-1 by willfully failing to disclose a felony charge and conviction on his Uniform Application for Securities Registration or Transfer ("Form U4"). Cause Three of the Complaint alleges that Respondent violated Rules 8210 and 2110 by failing to respond to FINRA Staff ("Staff") requests for information. Respondent did not file an Answer to the Complaint. On October 31, 2008, Enforcement filed a Motion for Entry of Default and Imposition of Sanctions, supported by the declaration of Lynn M. Kaseta, Esq., and three exhibits. Respondent did not reply to the Motion. For the reasons set forth below, the Motion is granted.²

II. Respondent's Default

On August 11, 2008, Enforcement served the Complaint and Notice of Complaint on Respondent, by certified and first-class mail, at his last known residential addresses as listed in the Central Registration Depository (the "CRD addresses"). Respondent did not file an Answer to the Complaint. Accordingly, on September 9, 2008, Enforcement served the Complaint and Second Notice of Complaint on Respondent at the CRD addresses in the same manner. Again, Respondent did not file an Answer to the Complaint.

Enforcement complied with Rule 9134(b)(1) by mailing the Complaint and Notices of Complaint to Respondent's CRD addresses, thereby giving Respondent constructive notice of this proceeding. By failing to file an Answer, Respondent defaulted. Pursuant to Rule 9215(f), the Hearing Officer deems the allegations in the Complaint admitted.

² The factual determinations in this Amended Decision are based on the allegations of the attached Complaint, which are deemed admitted, and the declaration and exhibits filed by Enforcement with its Motion.

III. Jurisdiction

Respondent was registered with FINRA member firm Grayson Financial LLC from April 13, 1999, through June 15, 2005, and again from November 10, 2005, to June 13, 2006. He was also associated with member firm Meyers Associates LP from December 22, 2005, through February 24, 2006. Finally, he was associated with member firm Network 1 Financial Securities Inc. from June 16, 2006, through October 10, 2006, and again from October 20, 2007, through April 6, 2008. Respondent has not been associated or registered with a FINRA member since that time.

Although Respondent is not currently associated with a member firm, FINRA has jurisdiction to bring this proceeding, pursuant to Art. V, § 4 of FINRA's By-Laws, because (1) the Complaint charges Respondent with misconduct while he was an associated person and with failing to comply with requests for information made during the two-year period following termination of his last association, and (2) the Complaint was filed within that two-year period.

IV. Violations

A. Unauthorized Trading

The Complaint alleges that Respondent engaged in unauthorized transactions in a customer's account. Specifically, in April and May 2006, Respondent purchased 1000 shares of China Yuchai International Limited and 2500 shares of Diesel Corporation in customer TLH's account without her authorization or consent.

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent violated Rule 2110 and IM-2310-2.

B. Failure to Respond

The Complaint alleges that Respondent failed to respond to Staff requests for information. Specifically, on May 1, 2008, Staff sent Respondent a request for information, pursuant to Rule 8210, regarding a possible failure to disclose his criminal history on Forms U4 with three member firms. Staff sent the request to Respondent's CRD addresses via first-class and certified mail. Respondent failed to respond to the request. On May 20, 2008, Staff again sent this request to Respondent's CRD addresses in the same manner. Again, Respondent failed to respond to the request. On June 19, 2008, Staff sent Respondent a "Wells" notice to Respondent's CRD addresses in the same manner. On July 11, 2008, Staff received a handwritten letter from Respondent partially responding. Respondent also claimed that an attorney advised him that the contempt in the fourth degree charge was a misdemeanor and that he had disclosed his criminal history to his employers.

Accordingly, on July 17, 2008, Staff sent Respondent a request for information, pursuant to Rule 8210, regarding the advice Respondent received from his attorney about the nature of the charge and Respondent's disclosure to his employers. Staff sent the request to Respondent's CRD addresses via first-class and certified mail. In the same manner, on July 25, 2008, Staff sent another request, pursuant to Rule 8210, for the same information requested in the July 17, 2008, letter. Respondent did not respond to either request. Staff served the requests in accordance with Rule 8210(d), and therefore Respondent is deemed to have received them.

Rule 8210 authorizes FINRA to require any person subject to its jurisdiction to provide information related to any matter under investigation. The Rule serves as a key element in FINRA's oversight function and allows FINRA to carry out its regulatory functions without

subpoena power.³ Here, although Respondent received valid constructive notice of the Staff's request,⁴ he failed to respond.

Therefore, the allegations of the Complaint, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent violated Rules 8210 and 2110.

C. Failure to Make Form U4 Disclosures

The Complaint alleges that Respondent willfully failed to disclose a *felony* charge and conviction on his Form U4. The basis of this charge is Respondent's October 30, 2004, charge of *contempt in the fourth degree*, and his March 1, 2005, guilty plea to this charge in the Municipal Court of Red Bank, New Jersey. On January 22, 2009, the Hearing Officer issued a Decision dismissing this charge, on the basis that Enforcement did not meet its burden of establishing that the violation constituted a *felony*. On January 30, 2009, Enforcement filed a Motion for Reconsideration on this issue.

The New Jersey Code of Criminal Justice does not classify offenses as "felonies" or "misdemeanors." Instead, Title 2C:43-6 of the New Jersey Code of Criminal Justice characterizes crimes from first to fourth degree: first degree crimes are punishable by a term of 10 to 20 years; second degree crimes are punishable by a term between five and 10 years; third degree crimes are punishable by a term between three and five years; and fourth degree crimes are punishable by a term of up to 18 months. There is no minimum term for a fourth degree crime.

³ See, e.g., Dep't of Enforcement v. Valentino, No. FPI010004, 2003 NASD Discip. LEXIS 15, at *12 (NAC May 21, 2003), aff'd, 2004 SEC LEXIS 330 (Feb. 13, 2004) ("It is well established that because [FINRA] lacks subpoena power over its members, a failure to provide information fully and promptly undermines [FINRA's] ability to carry out its regulatory mandate.") (citation omitted); Joseph G. Chiulli, Exch. Act Rel. No. 42359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for [FINRA] to effectively conduct its investigations, and emphasizing that [FINRA] members and associated persons must fully cooperate with requests for information).

⁴ See David I. Cassuto, Exch. Act Rel. No. 48087, 2003 SEC LEXIS 1496, at *9 (June 25, 2003).

The Form U4 instructions define a “felony,” for jurisdictions such as New Jersey that do not differentiate between a felony and a misdemeanor, as “an offense punishable by a sentence of *at least one year imprisonment....*” Finding that the plain meaning of the text could be construed to limit the definition of “felony” to crimes for which the minimum sentence was one year in prison, the Hearing Officer dismissed the charge. In its Motion, Enforcement argues that the Form U4 instruction should include within the definition of “felony” any crime for which a sentence of one year or more is possible. Enforcement further argued that since fourth degree contempt under New Jersey law is *punishable* by a sentence of up to 18 months, it should be deemed a felony under the Form U4 instruction.

While Enforcement certainly highlights an ambiguity in the instruction, the scant information in the record provides an inadequate basis to adopt Enforcement’s reading of the instruction. For example, the record reflects that Respondent’s case was handled in Municipal Court, a court of limited jurisdiction,⁵ and involved a charge in the fourth, or lowest, degree. Further, the notion of “contempt” encompasses a wide range of possible misconduct, not all of which might be reasonably considered felonious. Indeed, Enforcement’s Complaint acknowledges Respondent’s claim that his lawyer characterized the crime as a misdemeanor. In addition, Enforcement did not provide any information on the actual sentence that Respondent received.

Enforcement’s request for reconsideration speculates that failing to characterize Respondent’s crime as a felony “could result in serious crimes going unreported.” Accordingly, Enforcement urges the Hearing Officer to resolve any ambiguity in favor of Enforcement. On reconsideration, the Hearing Officer determines that she need not reach this issue in this case.

⁵ Generally, the New Jersey Municipal Courts’ criminal jurisdiction is limited to crimes where the punishment does not exceed one year. See N.J. Stat. § 2B:12-18 (2009).

Respondent is already subject to a bar for his failure to respond to Staff requests for information, in violation of Rules 8210 and 2110. Therefore, under these circumstances, the Hearing Officer declines to determine whether Respondent failed to disclose a felony charge and conviction on his Form U4, leaving the question Enforcement raises for some future case in which the record is more fully developed or it is material to the outcome.

V. Sanctions

A bar is standard for failure to provide requested information. FINRA Sanction Guidelines (“Guidelines”) at p. 35 (2007 ed.). There is no evidence of any mitigating circumstances that would justify a lesser sanction. Therefore, Respondent is barred from associating with any FINRA member in any capacity.

For unauthorized transactions, the Guidelines suggest a fine between \$5,000 and \$75,000 and a suspension of 10 business days to one year, or, in egregious cases, a longer suspension of up to two years or a bar. Id. at p. 103. Enforcement requests a bar for this violation and restitution to customer TLH. In light of the bar for the Rule 8210 violation, no further suspension is imposed for Respondent’s unauthorized trading. However, Enforcement requests restitution to customer TLH. The Guidelines also provide that adjudicators may order restitution when an identifiable person has suffered a quantifiable loss as a result of a respondent’s misconduct. Id. Enforcement requests a restitution award in the amount of \$10,000, which represents \$3,000 in market losses and \$7,000 that the customer borrowed on margin to pay for the transaction. The Hearing Officer finds that a payment of the customer’s \$3,000 in market losses, plus pre-judgment interest, calculated in accordance with 26 U.S.C. § 6621(a)(2) from the date of each purchase, is warranted. However, there is no evidence that the customer’s margin loan resulted in a quantifiable loss to the customer, particularly given that there was no evidence

presented as to any margin interest that the customer might have paid. Therefore, the Hearing Officer does not find a basis to order that Respondent repay the customer's \$7,000 margin loan.

VI. Conclusion

Respondent is barred from associating with any FINRA member in any capacity for failing to provide requested information, in violation of Rules 8210 and 2110. In light of the bar, no suspension is imposed for Respondent's unauthorized trading in a customer account, in violation of Rule 2110 and IM-2310-2. However, Respondent is ordered to pay \$3,000 in restitution, plus interest, for this violation. In light of the bar, the Hearing Officer declines to determine whether Respondent willfully failed to make required disclosures on his Form U4, in violation of Rule 2110 and IM-1000-1.

These sanctions shall become effective on a date set by FINRA, but not sooner than 30 days after this Decision becomes the final disciplinary action of FINRA, except that if this Decision becomes FINRA's final disciplinary action, the bar shall become effective immediately.


Sara Nelson Bloom
Hearing Officer

Copies to: John A. Gargiulo (*via overnight courier & first-class mail*)
Lynn M. Kaseta, Esq. (*via electronic & first-class mail*)
Mark P. Dauer, Esq. (*via electronic & first-class mail*)
David R. Sonnenberg, Esq. (*via electronic & first-class mail*)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

John A. Gargiulo (CRD No. 3174988),

Respondent.

DISCIPLINARY PROCEEDING
No. 2006005919501

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. On April 21, 2006 and May 3, 2006, John A. Gargiulo entered unauthorized transactions in customer TLH's account. He also failed to disclose on Forms U4 filed at three member firms that he had been charged with and convicted of a felony equivalent crime. Further, Gargiulo failed to respond, and respond timely, to requests for information issued by FINRA staff. This conduct violated NASD Conduct Rule 2110, IM-2310-2, IM-1000-1 and NASD Procedural Rule 8210.

RESPONDENT AND JURISDICTION

2. Gargiulo was registered with FINRA (f/k/a National Association of Securities Dealers or NASD) through the following member firms as a General Securities Representative:

Grayson Financial LLC	April 13, 1999 to May 30, 2005
Grayson Financial LLC	November 10, 2005 to June 6, 2006
Meyers Associates, L.P.	December 22, 2005 to February 15, 2006
Network 1 Financial Securities Inc.	June 16, 2006 to October 7, 2006
Network 1 Financial Securities Inc.	October 30, 2007 to April 15, 2008

3. Gargiulo is not currently associated with a member firm.
4. Gargiulo remains subject to FINRA's jurisdiction pursuant to Article V, Section 4, of the FINRA By-Laws in that: the misconduct alleged in the First and Second Causes of Action occurred while Gargiulo was associated with a member firm; and this Complaint was filed within, and the violations of NASD Procedural Rule 8210 alleged in the Third Cause of Action occurred within, two years of his last association with a member firm.

FIRST CAUSE OF ACTION
Unauthorized Trading
(NASD Conduct Rule 2110 and IM-2310-2)

5. The Department realleges and incorporates by reference paragraphs 1-4 above.
6. On April 21, 2006, Gargiulo purchased 1,000 shares of China Yuchai International Limited in customer TLH's account without her authorization or consent.
7. On May 3, 2006, Gargiulo purchased 2,500 shares of Diesel Corporation in TLH's account without her authorization or consent.
8. By entering unauthorized transactions in TLH's account, Gargiulo violated NASD Conduct Rule 2110 and IM-2310-2.

SECOND CAUSE OF ACTION

Willful Failure to Disclose Material Events on Forms U4
(NASD Conduct Rule 2110 and IM-1000-1)

9. The Department realleges and incorporates by reference paragraphs 1-8 above.
10. Pursuant to Article V, Section 2(c), of the FINRA By-Laws, the information provided on a Form U4 must be kept current by means of amendments not later than 30 days after the registered representative learns of "the facts and circumstances giving rise to the amendment. If such amendment involves a statutory disqualification as defined in Section 3(a)(39) and Section 15(b)(4) of the [Securities Exchange] Act [of 1934], such amendment shall be filed not later than ten days after such disqualification occurs." These requirements were in effect during the relevant time period.
11. On April 13, 1999, Gargiulo submitted or caused to be submitted an initial Form U4 with Grayson Financial LLC (Grayson) that included questions as to whether he had ever been charged with or convicted of a felony.¹ Gargiulo answered "no" to those questions, which were true responses at that time.
12. On October 30, 2004, Gargiulo was charged with Contempt in the fourth degree in the Municipal Court of Red Bank, New Jersey. Such crime is punishable by up to 18 months in prison, and is therefore a felony for purposes of Form U4 disclosures.² Gargiulo, however, willfully failed to amend his Form U4 at Grayson to disclose this material fact.

¹ The Form U4 Instructions explain that "[t]he term FELONY, for jurisdictions that do not differentiate between a felony or misdemeanor, is an offense punishable by a sentence of at least one year imprisonment and/or a fine of at \$1,000."

² See *N.J. Stat. §2C:29-9 and 2C:43-6*.

13. On March 1, 2005, Gargiulo was convicted by guilty plea of Contempt in the fourth degree in the Municipal Court of Red Bank, New Jersey. Gargiulo willfully failed to amend his Form U4 at Grayson to disclose this material fact.
14. On November 10, 2005, Gargiulo submitted or caused to be submitted an initial Form U4 with Grayson that included questions as to whether he had ever been charged with or convicted of a felony. Gargiulo answered "no" to those questions, which were false answers at that time. Specifically, Gargiulo willfully failed to disclose material facts, namely his criminal charge and conviction, on such Form U4. Thereafter, Gargiulo willfully failed to disclose those material facts on his Form U4 at Grayson.
15. On December 22, 2005, Gargiulo submitted or caused to be submitted an initial Form U4 with Meyers Associates, L.P. (Meyers) that included questions as to whether he had ever been charged with or convicted of a felony. Gargiulo answered "no" to those questions, which were false answers at that time. Specifically, Gargiulo willfully failed to disclose material facts, namely his criminal charge and conviction, on such Form U4. Thereafter, Gargiulo willfully failed to disclose those material facts on his Form U4 at Meyers.
16. On June 16, 2006, Gargiulo submitted or caused to be submitted an initial Form U4 with Network 1 Financial Securities Inc. (Network 1) that included questions as to whether he had ever been charged with or convicted of a felony. Gargiulo answered "no" to those questions, which were false answers at that time. Specifically, Gargiulo willfully failed to disclose material facts, namely his criminal charge and conviction, on such Form U4. Thereafter, Gargiulo willfully failed to disclose those material facts on his Form U4 at Network 1.

17. On October 30, 2007, Gargiulo submitted or caused to be submitted an initial Form U4 with Network 1 Financial Securities Inc. (Network 1) that included questions as to whether he had ever been charged with or convicted of a felony. Gargiulo answered "no" to those questions, which were false answers at that time. Specifically, Gargiulo willfully failed to disclose material facts, namely his criminal charge and conviction, on such Form U4. Thereafter, Gargiulo willfully failed to disclose those material facts on his Form U4 at Network 1.
18. By willfully failing to disclose material facts on Forms U4, Gargiulo violated NASD Conduct Rule 2110 and IM-1000-1.

THIRD CAUSE OF ACTION

Failure to Respond to Requests for Information
(NASD Procedural Rule 8210 and NASD Conduct Rule 2110)

19. The Department realleges and incorporates by reference paragraphs 1-18 above.
20. On May 1, 2008, FINRA staff sent a letter to Gargiulo at his last known residential addresses as reflected in the records of FINRA's Central Registration Depository: [REDACTED] (CRD – NJ Address) and [REDACTED] (CRD – PA Address). The letter requested, pursuant to NASD Procedural Rule 8210, that Gargiulo provide information concerning his failures to disclose his criminal history on his Forms U4. The letter, which requested a response by May 15, 2008, was sent to each address via first-class and certified mail.
21. The certified mail envelope sent to the CRD – NJ Address was delivered.

22. The certified mail envelope sent to the CRD – PA Address was returned to the staff by the United States Postal Service (USPS) as “UNCLAIMED” and “UNABLE TO FORWARD.”
23. The first class mailings were not returned to the staff.
24. Gargiulo, however, failed to respond to the staff’s requests for information.
25. On May 20, 2008, FINRA staff sent a letter to Gargiulo at CRD – NJ Address and CRD – PA Address. The letter requested, pursuant to NASD Procedural Rule 8210, that Gargiulo provide information concerning his failures to disclose his criminal history on his Forms U4. The letter, which requested a response by June 3, 2008, was sent to each address via first-class and certified mail and advised Gargiulo that if he failed to respond he may be subject to disciplinary action.
26. The certified mail envelope sent to the CRD – NJ Address was returned to the staff by the USPS as “RETURNED TO SENDER.”
27. The first class mail envelope sent to the CRD – NJ Address was not returned to the staff.
28. The certified mail envelope sent to the CRD – PA Address was returned to the staff by the USPS as “UNCLAIMED” and “UNABLE TO FORWARD.”
29. The first class mail envelope sent to CRD – PA Address was returned to the staff by the USPS as “NOT DELIVERABLE AS ADDRESSED” and “UNABLE TO FORWARD.”
30. Gargiulo, again, failed to respond to the staff’s requests for information.
31. On June 19, 2008, the staff mailed a “Wells” notice to Gargiulo at his CRD – NJ Address and his CRD - PA Address wherein he was advised that the staff intended to

recommend that a disciplinary action be filed against him for unauthorized trading, failure to report material events on his Forms U4 and failure to respond to the staff requests for information.

32. On July 11, 2008, the staff received a hand-written letter from Gargiulo wherein he partially responded to the staff's earlier requests for information and implied that such response was late because he traveled for several weeks at a time in his new career as a manufacturer's representative. In this letter, Gargiulo also claimed that an attorney advised him that the Contempt in the fourth degree was a misdemeanor. Further, he asserted that he had disclosed his criminal history to Grayson, Meyers and Network 1.
33. On July 17, 2008, FINRA staff sent a letter to Gargiulo at his CRD – NJ Address and CRD – PA Address. The letter requested, pursuant to NASD Procedural Rule 8210, that Gargiulo provide the outstanding information concerning his failures to disclose his criminal history on his Forms U4. The letter also requested that Gargiulo provide information regarding his current employment, including documentary evidence of his recent work-related travel, as well as information to support his claims that he had been advised by an attorney that he had been charged with a misdemeanor, not a felony, and that he had disclosed his criminal history to Grayson, Meyers and Network 1. The letter, which requested a response by July 24, 2008, was sent to each address via first-class and certified mail and advised Gargiulo that if he failed to respond he may be subject to disciplinary action.
34. The first class mail envelope sent to the CRD – PA Address was returned to the staff by the USPS as "MOVED," "RETURN TO SENDER," "NOT DELIVERABLE AS ADDRESSED" and "UNABLE TO FORWARD."

35. The certified mail envelope sent to the CRD – PA Address was returned to the staff by the USPS as “NO LONGER AT THIS ADDRESS,” “RETURN TO SENDER,” “ATTEMPTED – NOT KNOWN” and “UNABLE TO FORWARD.”
36. The first class mail and certified mail envelopes sent to the CRD – NJ Address were not returned to the staff by the USPS.
37. Gargiulo failed to respond to the staff’s requests for information.
38. On July 25, 2008, FINRA staff sent a letter to Gargiulo at his CRD – NJ Address and CRD – PA Address. The letter requested, pursuant to NASD Procedural Rule 8210, that Gargiulo provide the same information requested in the staff’s July 17, 2008 letter. The letter, which requested a response by August 4, 2008, was sent to each address via first-class and certified mail and advised Gargiulo that if he failed to respond he may be subject to disciplinary action.
39. The first class and certified mail envelopes sent to the CRD – NJ Address and CRD – PA Address have not, as of the date of this Complaint, been returned to the staff by the USPS.
40. Once again, Gargiulo failed to respond to the staff’s requests for information.
41. The staff is not aware of any more current residential or business addresses for Gargiulo.
42. By failing to respond to the information requests, Gargiulo violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110.

RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under NASD Rule 8310(a) be imposed, including that the Respondent be required to disgorge fully any and all ill-gotten gains and/or make full and complete restitution, together with interest;
- B. order that the Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with NASD Rule 8330; and
- C. make specific findings that Respondent's conduct, as alleged in the Second Cause of Action, was willful; the omitted information was material; and, the omission to state material facts was on Form U4 applications.

FINRA DEPARTMENT OF ENFORCEMENT

Dated: August 11, 2008



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