

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

MATTHEW PINCUS
(CRD No. 5249294),

Respondent.

Disciplinary Proceeding
No. 2006007131601

Hearing Officer – Sara Nelson Bloom

DEFAULT DECISION

September 22, 2008

For Respondent's failure to provide requested information, in violation of Rules 8210 and 2110, Respondent is barred from associating with any FINRA member in any capacity. In light of the bar, no further sanctions are imposed for Respondent's willful failure to make required disclosures on his Form U4, in violation of Rule 2110 and IM-1000-1.

Appearances

Samuel L. Barkin, Esq., Jericho, NY, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

I. Background

On January 25, 2008, the Department of Enforcement ("Enforcement") filed a two-cause Complaint in this proceeding, attached to this Decision as Exhibit A. Cause One of the Complaint alleges that Respondent Matthew Pincus ("Respondent") violated Rule 2110 and IM-1000-1 by willfully failing to disclose felony and misdemeanor charges on his Uniform Application for Securities Registration or Transfer ("Form U4"). Cause Two of the Complaint alleges that Respondent violated Rules 8210 and 2110 by failing to respond to FINRA Staff requests for information. Respondent did not file an Answer to the Complaint. On July 8, 2008,

Enforcement filed a Motion for Entry of Default and Imposition of Sanctions, supported by the declaration of Samuel L. Barkin, and 19 exhibits. Respondent did not reply to the Motion. For the reasons set forth below, the Motion is granted.¹

II. Respondent's Default

On January 24, 2008, Enforcement served the Complaint and Notice of Complaint on Respondent, by certified and first-class mail, at his last known residential address as listed in the Central Registration Depository (the "CRD address"). Respondent did not file an Answer to the Complaint. Thereafter, Enforcement learned that Respondent may have moved to a different address (the "Alternative Address"). Accordingly, on April 17, 2008, Enforcement re-served the Complaint and Notice of Complaint to Respondent to the CRD address and the Alternative Address) in the same manner. Again, Respondent did not file an Answer to the Complaint. In the same manner, on May 15, 2008, Enforcement served the Complaint and Second Notice of Complaint to Respondent to the CRD address and the Alternative Address. Once more, 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 address and the Alternative address, 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.

III. Jurisdiction

Respondent was associated with FINRA member firm Metropolitan Life Insurance Company from November 9 through November 30, 2006. Respondent has not been associated or registered with a FINRA member since that time.

¹ The factual determinations in this 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.

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. Failure to Make Form U4 Disclosures

The Complaint alleges that on November 9, 2006, in connection with his application for registration with FINRA, Respondent signed a Form U4. In that Form U4, Respondent answered "No" to Question 14A(1)(b) asking whether he had ever been charged with a felony. Respondent also answered "No" to Question 14B(1)(b) asking whether he had ever been charged with a misdemeanor involving fraud. However, Respondent's answers were false. In fact, in January 2004, Respondent was arrested and charged with felony possession of a forged instrument. Additionally, in September 2006, Respondent was charged with felony insurance fraud and grand larceny, and misdemeanor filing of a false report. These later charges were still pending when Respondent signed the Form U4.

Article V, Section 2 of FINRA's By-Laws requires that persons who apply for registration with FINRA must provide "such ... reasonable information with respect to the applicant as [FINRA] may require."

IM-1000-1 provides: "The filing with [FINRA] of information with respect to membership or registration as a Registered Representative which is incomplete or inaccurate so as to be misleading ..., or the failure to correct such filing after notice thereof, may be deemed to be conduct inconsistent with just and equitable principles of trade and when discovered may be sufficient cause for appropriate disciplinary action." The accuracy of Form U4 disclosures "is

critical to the effectiveness” of a self-regulatory organization’s ability to screen and monitor the professionals within the securities industry.²

Therefore, the allegations of the Complaint, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent violated Rule 2110 and IM-1000-1.

Enforcement requests a finding that Respondent’s failure to disclose was willful. Willfulness is not required to establish a violation of Rule 2110, but Art. III, § 4 of FINRA’s By-Laws provide a person is subject to “disqualification” with respect to association with a member, if such person is subject to “statutory disqualification” under Section 3(a)(39) of the Exchange Act, which disqualifies a person who has willfully made any false or misleading statement as to any material fact in any application to become registered with a FINRA member, or who has omitted to disclose any material fact which is required to be disclosed in such an application. For this purpose, it is sufficient to establish willfulness if the respondent “knew or reasonably should have known under the particular facts and circumstances that his conduct was improper.”³ A finding of willfulness does not require intent to violate the law or a specific rule, but simply intent to commit the act that constitutes the violation.⁴

The Hearing Officer finds that the questions on the Form U4 were clear, and that Respondent must have known that he was providing incorrect answers. Accordingly, the

² Rosario R. Ruggiero, 52 S.E.C. 725, 728 (1996); see also Daniel Richard Howard, Exch. Act Rel. No. 46269, 2002 SEC LEXIS 1909, at *9-10 (July 26, 2002) (“The candor and forthrightness of applicants is critical to the effectiveness of this screening process.”); Dept. of Enforcement v. Lu, No. C9A020052, 2004 NASD Discip. LEXIS 8, at *32 (NAC May 13, 2004), aff’d, Exch. Act Rel. No. 51047, 2005 SEC LEXIS 117 (Jan. 14, 2005), aff’d without opinion, 179 Fed Appx. 702, 2006 U.S. App. LEXIS 24875 (D.C. Cir. 2006).

³ Christopher LaPorte, Exch. Act Rel. No. 39171, 1997 SEC LEXIS 2058, at *8 n.2 (Sept. 30, 1997).

⁴ Dept. of Enforcement v. Knight, No. C10020060, 2004 NASD Discip. LEXIS 5 (NAC Apr. 27, 2004); Dept. of Enforcement v. Sarris, No. C9A020017, 2003 NASD Discip. LEXIS 12, at *11 (OHO Mar. 17, 2003); LaPorte at *8; Arthur Lipper Corp. v. SEC, 547 F.2d 171, 180 (2d Cir. 1976), cert. denied, 434 U.S. 1009 (1978).

Hearing Officer finds that Respondent's failure to make required disclosures in his Form U4 was willful.⁵

B. Failure to Respond

The Complaint also alleges that on April 5, 2007, FINRA Staff ("Staff") sent Respondent a request for information concerning the conduct charged in Cause One of the Complaint. Staff sent the request by first-class mail to Respondent's CRD address. On April 20, 2007, Staff again sent this request to Respondent's CRD address, this time by first-class and certified mail. On May 10 and 18, 2007, Staff sent its request again, in the same manner. Staff served the requests in accordance with Rule 8210(d), and therefore Respondent is deemed to have received them. Respondent did not respond.

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.⁶ Here, although Respondent received valid constructive notice of the Staff's request,⁷ 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.

⁵ LaPorte at *8 (finding willfulness when respondent knew or should have known under the particular facts and circumstances that his conduct was improper).

⁶ 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 NASD to effectively conduct its investigations, and emphasizing that [FINRA] members and associated persons must fully cooperate with requests for information).

⁷ See David I. Cassuto, Exch. Act Rel. No. 48087, 2003 SEC LEXIS 1496, at *9 (June 25, 2003).

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 filing a false, inaccurate, misleading or late Form U4, the Guidelines recommend a suspension of five to 30 business days. In egregious cases, such as those involving repeated inaccurate filings, or a failure to disclose matters which would create a statutory disqualification, among other things, the Guidelines recommend a longer suspension or a bar. Guidelines at pp. 73-74. Enforcement requests a suspension of at least a year and a \$10,000 fine. Enforcement's recommendation seems reasonable; the omitted disclosures involved serious charges, one of which was pending at the time of the omission. However, in light of the bar for the 8210 violation, no further sanctions are imposed for Respondent's failure to make required disclosures on his Form U4.

VI. Conclusion

For Respondent's failure to provide requested information, in violation of Rules 8210 and 2110, Respondent is barred from associating with any FINRA member in any capacity. In light of the bar, no further sanctions are imposed for Respondent's willful failure to make required disclosures on his Form U4, in violation of Rule 2110 and IM 1000-1. The bar shall become effective immediately if this Decision becomes the final disciplinary action of FINRA.


Sara Nelson Bloom
Hearing Officer

Copies to: Matthew Pincus (via overnight and first-class mail)
Samuel L. Barkin, Esq. (via electronic and first-class mail)
David R. Sonnenberg, Esq. (via electronic mail)
Mark P. Dauer, Esq. (via electronic mail)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

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DEPARTMENT OF ENFORCEMENT,

Complainant,

V.

MATTHEW PINCUS (CRD No. 5249294)

Respondent.

DISCIPLINARY PROCEEDING
No. 2006007131601

COMPLAINT

The Department of Enforcement alleges:

1. This case involves a broker who willfully failed to disclose that he had previously been charged on two separate occasions with multiple criminal felony charges and a reportable misdemeanor charge and subsequently failed to respond to FINRA's written requests for information, pursuant to Procedural Rule 8210, during its investigation of the foregoing conduct.
2. On November 9, 2006, Respondent Matthew Pincus became associated with a FINRA member firm when he completed and signed an initial Uniform Application for Securities Industry Registration or Transfer (Form U4). In that Form U4, Pincus willfully failed to disclose that he had previously been charged with multiple felonies and a misdemeanor. It is alleged that Pincus' failure to disclose the felony and misdemeanor charges were in contravention of Article V, Section 2(a) of FINRA's By-Laws and thus constituted

violations of NASD Membership and Registration Rule IM-1000-1 and Conduct Rule 2110.

3. FINRA staff sent written requests for information to Pincus, pursuant to Procedural Rule 8210, during its investigation of the foregoing conduct. Pincus failed to respond to these requests. It is alleged that this conduct constitutes violations of NASD Procedural Rule 8210 and Conduct Rule 2110.

Jurisdiction

4. On November 9, 2006, Respondent Matthew Pincus became associated with a FINRA member firm Metropolitan Life Insurance Company (CRD #4095) ("MetLife").
5. Pincus remained continuously associated with MetLife until on or about November 30, 2006. On November 30, 2006, MetLife filed a Uniform Termination Notice for Securities Industry Registration (Form U5) with FINRA, notifying FINRA that the firm had terminated Pincus' association with MetLife.
6. FINRA retains jurisdiction over Pincus pursuant to Article V, Section 4 of its By-Laws.

FIRST CAUSE OF ACTION

(Willful and Material Misrepresentation on Form U4 -
NASD Membership and Registration Rule IM-1000-1 and Conduct Rule 2110)

7. The Department realleges and incorporates by reference paragraphs 6 above.
8. In connection with Pincus' association with MetLife, he signed a Form U4 dated November 9, 2006. By signing the Form U4, Pincus was attesting to the completeness and accuracy of the Form U4.
9. On or about November 14, 2006, MetLife submitted Pincus' Form U4 to FINRA.

10. Form U4 Question 14A. (1)(b) states: "Have you ever: been charged with any felony?"
11. Form U4 Question 14B. (1) states: "Have you ever:
 - (a) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign or military court to a misdemeanor involving: investments or an investment-related business or any fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses?
 - (b) been charged with a misdemeanor specified in 14B(1)(a)?"
12. Pincus answered "No" to Questions 14A. (1)(b) and 14B. (1)(b) of Form U4.
13. Pincus' responses were false, in that on or about January 8, 2004, Pincus was arrested and charged, with possession of a forged instrument, a 2nd degree class D felony under New York Penal Law. In addition, on or about September 19, 2006, Pincus was charged with insurance fraud, a class D felony under New York Penal Law; grand larceny, a class D felony under New York Penal Law; and for filing a false report, a class A misdemeanor under New York Penal Law. By failing to disclose these felony and misdemeanor charges, Pincus willfully failed to disclose a material fact on his Form U4.
14. Based on the foregoing, Pincus 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)

15. The Department realleges and incorporates by reference paragraphs 14 above.

16. In or about December 2006, FINRA initiated an investigation concerning Pincus' failure to disclose the criminal charges against him.
17. Pincus' last known residential address, as reflected in the FINRA Central Registration Depository, is [REDACTED] (CRD Address).

First Request For Information

18. On or about April 5, 2007, FINRA sent a letter to Pincus, requesting information relating to Pincus' failure to disclose the criminal charges against him, pursuant to FINRA Procedural Rule 8210 (First Request Letter). The First Request Letter required a response no later than April 19, 2007.
19. The First Request Letter was sent via U.S. Postal Service first class mail to Pincus at his CRD Address.
20. The U.S. Postal Service did not return the envelope sent to the CRD Address via first class mail.
21. No response to the staff's First Request Letter was received from Pincus.

Second Request For Information

22. On or about April 20, 2007, FINRA sent a second letter to Pincus at his CRD Address, requesting information relating to Pincus' failure to disclose the criminal charges against him, 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 May 4, 2007.

23. 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."
24. No response to the staff's Second Request Letter was received from Pincus.

Third Request For Information

25. On or about May 10, 2007, FINRA sent a third letter to Pincus at his CRD Address, requesting information relating to Pincus' failure to disclose the criminal charges against him, 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 May 17, 2007.
26. 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."
27. No response to the staff's Third Request Letter was received from Pincus.

Fourth Request For Information

28. On or about May 18, 2007, FINRA sent a third letter to Pincus at his CRD Address, requesting the same information pursuant to NASD Procedural Rule 8210 (Fourth Request Letter), via U.S. Postal Service first class mail and certified mail, return receipt requested. The Fourth Request Letter required a response no later than May 25, 2007.
29. 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," "unclaimed," and "unable to forward."

30. No response to the staff's Fourth Request Letter was received from Pincus.
31. To date, FINRA has not received any response to the foregoing requests for information.
32. 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 Pincus.

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), including monetary sanctions, be imposed.
- 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.
- C. make specific findings that Respondent's conduct, as alleged in the First Cause of Action, was willful; the omitted information was material; and, the omission to state material facts was on a Form U4 application.

FINRA DEPARTMENT OF ENFORCEMENT

Date: January 24, 2008



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