

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

KEVIN T. LITTERELL
(CRD No. 1859910),

Respondent.

Disciplinary Proceeding
No. 2006007157201

Hearing Officer – LBB

DEFAULT DECISION

February 25, 2008

For Respondent's failure to provide requested information, in violation of Procedural Rule 8210 and Conduct Rule 2110, Respondent is barred in all capacities. In light of the bar, no further sanction is imposed for Respondent's failure to amend his Form U4 to report his bankruptcy filing within the time prescribed by FINRA's By-Laws, in violation of Conduct Rule 2110.

Appearances

David Utevsky, Regional Counsel, FINRA, Seattle, WA, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

On October 12, 2007, the Department of Enforcement ("Enforcement") filed the Complaint in this proceeding, asserting two causes of action against Respondent Kevin T. Litterell ("Respondent"). The first cause of action alleges that Respondent failed to amend his Uniform Application for Securities Industry Registration or Transfer ("Form U4") within the time required by FINRA's By-Laws, in violation of Conduct Rule 2110. The second cause of

action alleges that Respondent failed to respond to Procedural Rule 8210 requests for information, thereby violating Rule 8210 and Conduct Rule 2110.

The Complaint and Second Notice of Complaint were served on Respondent by first-class and first-class certified mail at his Central Registration Depository ("CRD") address. Respondent did not file an Answer to the Complaint. On January 7, 2008, Enforcement filed a Motion for Entry of Default Decision, to which Respondent did not respond. Accordingly, pursuant to Procedural Rules 9215(f) and 9269, the allegations in the Complaint will be deemed admitted and Enforcement's motion will be granted.¹

I. Respondent's Default

Enforcement sent the Complaint and Notice of Complaint to Respondent on October 11, 2007, by first-class regular and certified mail to Respondent's most current residential address as listed in CRD. The notice sent by regular first-class mail was not returned by the U.S. Postal Service. FINRA staff received a Domestic Return Receipt for the envelope sent to Respondent's CRD address via first-class certified mail, bearing an illegible signature that appeared to be Respondent's.

Enforcement sent the Complaint and Second Notice of Complaint to Respondent on November 13, 2007, by first-class regular and certified mail to Respondent's CRD address. The Second Notice that was sent by regular first-class mail was not returned. The envelope that was sent by first-class certified mail to Respondent's CRD address was returned by the U.S. Postal Service, marked "unclaimed."

Respondent has not filed an Answer or otherwise responded to the Complaint.

¹ The factual determinations in this decision are based on the allegations of the attached Complaint and the additional materials filed by Enforcement with its motion, including certain supplemental materials concerning Respondent's employment and registration history.

Enforcement served the Complaint and the Notices of Complaint on Respondent in accordance with Procedural Rule 9134, giving him constructive notice, and in all likelihood actual notice, of this proceeding. By failing to respond, he defaulted.

II. Jurisdiction

Respondent entered the securities industry in July 1988 as an associated person of Waddell & Reed, Inc., a FINRA member, where he was registered twice for brief periods between 1988 and April 1991. From September 1999 until July 2000, he was registered with FINRA member firm Liberty Life Securities LLC. He was registered with member firm Allstate Financial Services, LLC from August 2000 until September 2001, and from December 2003 until November 2006. Although Respondent has not been associated with any FINRA member since then, he remains subject to FINRA jurisdiction for purposes of this proceeding, pursuant to Art. V, § 4 of FINRA's By-Laws, because the Complaint was filed within two years after the termination of his association with a member firm, and because it charges him with misconduct while he was associated with the firm and with failing to provide information requested during that two-year period.

III. Origin of the Investigation

FINRA's investigation commenced after it received a Rule 3070 Disclosure reporting Allstate's termination of Respondent's employment for failure to pay a fine levied by the firm. FINRA staff investigated the events leading to Respondent's termination, including Respondent's failure to amend his Form U4 to disclose his bankruptcy filing on June 27, 2005.

IV. Violations

A. Respondent's Failure to Amend Form U4 to Report His Bankruptcy Filing

The first cause of action alleges that Respondent failed to amend his Form U4 within the applicable time limits in violation of Conduct Rule 2110. Rule 2110 and IM-1000-1 require

associated persons to answer the questions of the Form U4 accurately and fully. Article V, Section 2(c) of the FINRA By-Laws requires each associated person to keep his or her Form U4 "current at all times," and that amendments to Form U4s be filed "not later than 30 days after learning of the facts or circumstances giving rise to the amendment." Failing to file prompt amendments to a Form U4 is a violation of Rule 2110. See Dep't of Enforcement v. Toth, No. E9A2004001901, 2007 NASD Discip. LEXIS 25 (N.A.C. July 27, 2007), appeal docketed, No. 3-12739 (S.E.C. Aug. 27, 2007); see also FINRA's Membership, Registration and Qualification Requirements, IM-1000-1 (providing that an incomplete or inaccurate filing of information with FINRA by a registered representative may be deemed to be conduct inconsistent with just and equitable principles of trade).

Respondent filed a personal bankruptcy petition on June 27, 2005. He did not amend his Form U4 until September 21, 2006. These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent failed to amend his Form U4 within 30 days as required by the FINRA By-Laws, in violation of Conduct Rule 2110.

B. Failure to Respond to Requests for Information

The second cause of action alleges that Respondent failed to respond to requests for information in violation of Procedural Rule 8210. Rule 8210 authorizes FINRA to require any person subject to its jurisdiction to provide information related to any matter under its investigation. A violation of Rule 8210 is also a violation of Rule 2110. Dep't of Enforcement v. Hoeper, No. C02000037, 2001 NASD Discip. LEXIS 37, at *5 (N.A.C. Nov. 2, 2001).

FINRA staff sent a request for information to Respondent via first-class mail at his CRD address on January 8, 2007. The first request required a response no later than January 23, 2007. Respondent failed to respond. A second request was sent to Respondent at his CRD address via first-class regular and certified mail on January 30, 2007. The second request letter required a

response no later than February 13, 2007, but respondent failed to respond. The request sent by regular first-class mail was not returned. Enforcement received a Domestic Return Receipt signed by Respondent's wife, indicating that she had accepted the envelope sent by first-class certified mail. Respondent did not respond to the second request for information. Enforcement sent a third request for information to Respondent at his CRD address on May 3, 2007, by first-class regular and certified mail to Respondent's CRD address. The third request required a response no later than May 17, 2007. The letter sent by regular first-class mail was not returned; the letter sent by certified mail was returned by the U.S. Postal Service, marked "unclaimed." Respondent again failed to respond to FINRA's request for information.

The requests for information required Respondent to provide information relating to his bankruptcy filing and his failure to amend his Form U4 within the time prescribed by FINRA's By-Laws. Respondent was asked to provide information on his awareness of the appropriate rules, his awareness of his employer firm's policies, and whether and when he disclosed the bankruptcy filing to his member firm. He was also asked to explain why he did not make a timely disclosure. His explanation was critical in order to determine whether his failure to amend his Form U4 was willful, which would have triggered a statutory disqualification under Art. III, § 4(f) of FINRA's By-Laws. Respondent's failure to respond to these requests for information prevented FINRA from completing its investigation, impeding its ability to carry out its regulatory mandate.

These allegations, which are deemed admitted, are sufficient to establish, for purposes of this default decision, that Respondent failed to respond to requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2110.

V. Sanctions

For failing to respond to requests for information pursuant to Procedural Rule 8210 and Conduct Rule 2110, the Guidelines recommend a bar. FINRA Sanction Guidelines at 35 (2007). The Guidelines identify two principal considerations: (1) the nature of the information requested, and (2) whether the requested information has been provided and, if so, the number of requests made, the time the respondent took to respond, and the degree of regulatory pressure required to obtain a response.

The principal considerations support the imposition of the bar. The information requested was important information. The accuracy of an applicant's Form U4 "is critical to the effectiveness" of a self-regulatory organization's ability "to monitor and determine the fitness of securities professionals." See, e.g., Toth, 2007 NASD Discip. LEXIS 25, at *23 (quoting Rosario R. Ruggiero, 52 SEC 725, 728 (1996)); Thomas R. Alton, 52 SEC 380, 382 (1995), aff'd, 105 F.3d 664 (9th Cir. 1996). The information requested was relevant to whether Respondent should be statutorily disqualified, his overall understanding of FINRA's rules, and his commitment to compliance. Respondent failed to respond to three separate, properly served requests for information. There is no evidence of any mitigating factors.

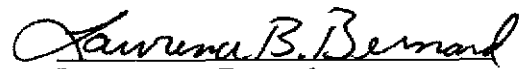
In light of the imposition of a bar for Respondent's failure to provide information, in violation of Procedural Rule 8210 and Conduct Rule 2110, no additional sanction is imposed for Respondent's failure to amend his Form U4 within the time required by the By-Laws, in violation of Conduct Rule 2110.

VI. Conclusion

Respondent Kevin T. Litterell is barred from associating with any FINRA member in any capacity for failing to respond to requests for information, in violation of Procedural Rule 8210 and Conduct Rule 2110.

The bar will be effective immediately if this decision becomes FINRA's final disciplinary action.

SO ORDERED.

A handwritten signature in cursive script, reading "Lawrence B. Bernard".

Lawrence B. Bernard
Hearing Officer

Copies to: Kevin T. Litterell (*via overnight courier and first-class mail*)
David Utevsky, Esq. (*via electronic and first-class mail*)
Mark P. Dauer, Esq. (*via electronic and first-class mail*)
David R. Sonnenberg, Esq. (*via electronic and first-class mail*)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

V.

Kevin Troy Litterell
(CRD No. 1859910),

Respondent.

DISCIPLINARY PROCEEDING
No. 2006007157201

COMPLAINT

The Department of Enforcement alleges:

1. Respondent Kevin Troy Litterell ("Litterell") was initially associated with a member of FINRA in July 1988. He became registered as an Investment Company / Variable Contracts Representative in August 1988. From on or about January 9, 2004, until on or about November 28, 2006, he was registered through Allstate Financial Services, LLC ("Allstate") as an Investment Company / Variable Contracts Representative.
2. On or about November 28, 2006, a Uniform Termination Notice for Securities Industry Registration ("Form U5") was filed by Allstate on behalf of Respondent Litterell. The Form U5 disclosed that Respondent Litterell's registration was terminated on November 28, 2006, due to his failure to pay a fine levied by Allstate.

3. Respondent Litterell is not currently registered or associated with any member firm; however, pursuant to Article V, Section 4 of the FINRA By-Laws, FINRA retains jurisdiction over him for purposes of this Complaint.

FIRST CAUSE OF ACTION
(Failure to Amend Form U4 (Rule 2110))

4. The Department realleges and incorporates by reference paragraphs 1-3 above.
5. On or about January 9, 2004, Respondent Litterell submitted a Uniform Application for Securities Industry Registration or Transfer ("Form U4") through Allstate, a FINRA member firm.
6. Question No. 14K(1) of the Form U4 asked

Within the past 10 years:

- (1) have you made a compromise with creditors, filed a bankruptcy petition of been the subject of an involuntary bankruptcy petition?

7. In response to Question No. 14K(1), Respondent Litterell correctly answered, "No."
8. Pursuant to Article V, Section 2(c) of the FINRA By-Laws, the information provided on a Form U4 is to be kept current by means of amendments not later than 30 days after the subject of the Form U4 learns of "the facts and circumstances giving rise to the amendment." That requirement was in effect during the period relevant to this Complaint.
9. On or about June 27, 2005, Respondent Litterell filed a voluntary petition under Chapter 7 of the U.S. Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of Washington.

10. The filing of that bankruptcy petition caused Respondent Litterell's previous "no" answer to Question No. 14K(1) on the Form U4 submitted on or about January 9, 2004, to become inaccurate, and it gave rise to an obligation to submit an amendment to the Form U4 with a "yes" answer to Question No. 14k(1).

11. Although he was aware of the bankruptcy petition, Respondent Litterell did not, within 30 days after he became aware of the facts and circumstances giving rise to the obligation to amend, submit a supplementary amendment to the Form U4 that had previously been submitted through his employer member firm, Allstate.

12. On or about March 14, 2006, and on or about July 31, 2006, Allstate filed Amended Forms U4 on behalf of Respondent Litterell. In those Amended Forms U4, the response to Question No. 14K(1) was, "No," and Respondent Litterell's voluntary bankruptcy petition was not disclosed.

13. During the period from on or about June 27, 2005, until on or about September 21, 2006, Respondent Litterell failed to timely amend his form U4 to disclose that he had filed a voluntary bankruptcy petition.

14. Based on the foregoing acts, practices and conduct, Kevin Troy Litterell acted in contravention of Article V, Section 2(c) of the FINRA By-Laws and in violation of NASD IM-1000-1, and thus committed a violation of NASD Conduct Rule 2110.

SECOND CAUSE OF ACTION
(Failure to Respond (Rule 8210))

15. The Department realleges and incorporates by reference paragraphs 1-3 and 5-14 above.

16. In or about December 2006, NASD initiated an investigation concerning allegations that Respondent Litterell had failed to amend his Form U4 to disclose his voluntary bankruptcy petition. The investigation focused, among other things, on whether Respondent Litterell had acted in contravention of Article V, Section 2(c) of the FINRA By-Laws and in violation of NASD IM-1000-1, and thus had committed a violation of NASD Conduct Rule 2110. In connection with that investigation, NASD requested information from Respondent Litterell.

17. Respondent Litterell's residential address, as reflected in FINRA's Central Registration Depository ("CRD"), is [REDACTED] ("the CRD Address").

First Request for Information

18. On January 8, 2007, NASD staff sent a request for information pursuant to NASD Procedural Rule 8210 relating to the subject matter of the NASD investigation, via U.S. postal service regular first class mail, to the CRD Address. The first request letter required a response no later than January 23, 2007.

19. The envelope sent to the CRD Address on January 8, 2007, was not returned by the U.S. Postal Service.

20. To date, FINRA has received no response to the request for information sent on January 8, 2007.

Second Request for Information

21. On January 30, 2007, NASD staff sent a second request for information pursuant to NASD Procedural Rule 8210 relating to the subject matter of the NASD investigation,

via U.S. Postal Service certified mail and regular first class mail, to the CRD Address.

The second request letter required a response no later than February 13, 2007.

22. The envelope sent to the CRD Address via first class mail on January 30, 2007, was not returned by the U.S. Postal Service. NASD staff received a domestic return receipt for the envelope sent to the CRD Address via certified mail, bearing the signature of "Amy Litterell."

23. To date, FINRA has received no response to the second request for information sent on January 30, 2007.

Third Request for Information

24. On May 3, 2007, NASD staff sent a third request for information pursuant to NASD Procedural Rule 8210 relating to the subject matter of the NASD investigation, via U.S. Postal Service certified mail and regular first class mail, to the CRD Address. The third request letter required a response no later than May 17, 2007.

25. The envelope sent to the CRD Address via first class mail on May 3, 2007, was not returned by the U.S. Postal Service. The envelope sent to the CRD Address via certified mail was returned by the U.S. Postal Service, marked "unclaimed."

26. To date, FINRA has received no response to the third request for information sent on May 3, 2007.

27. Respondent Litterell failed to respond in any fashion to the NASD staff's three requests for information.

28. Such acts, practices and conduct constitute separate and distinct violations of NASD Procedural Rule 8210. Such conduct is inconsistent with high standards of commercial

honor and just and equitable principles of trade and a violation of NASD Conduct Rule 2110 by Respondent Litterell.

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.

FINRA DEPARTMENT OF ENFORCEMENT

Date: October 10, 2007

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