

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ALEXANDER ANDUJAR
(CRD No. 5307459),

Respondent.

Disciplinary Proceeding
No. 2007009001001

Hearing Officer—Sara Nelson Bloom

DEFAULT DECISION

August 12, 2009

Respondent is barred from associating with any FINRA member in any capacity for failure to provide requested information, in violation of Rules 8210 and 2110. 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

Michael J. Newman, Esq., Woodbridge, NJ, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

I. Background

On February 20, 2009, 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 Alexander Andujar ("Respondent") violated Rule 2110 and IM-1000-1 by willfully failing to disclose a felony charge 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 ("Staff") requests for information. Respondent did not file an Answer to the Complaint. On June 16,

2009, Enforcement filed a Motion for Entry of Default and Request for Sanctions, supported by the declaration of Michael J. Newman, Esq. ("Newman Decl."), and three exhibits. Respondent did not respond to the Motion. For the reasons set forth below, the Motion is granted.¹

II. Respondent's Default

On February 20, 2009, 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"), as well as an alternate address provided earlier by Respondent (the "Alternate address"). CX-2; Newman Decl. ¶ 16. On March 20, 2009, Respondent called Counsel for Enforcement to discuss the Complaint. Newman Decl. ¶ 18. However, he did not file an Answer to the Complaint. Accordingly, on April 2, 2009, Enforcement served the Complaint and Second Notice of Complaint on Respondent at the CRD and Alternate addresses in the same manner. Again, Respondent did not file an Answer to the Complaint. The United States Postal Service returned the certified mailing to the Alternative address, as unclaimed, and returned the receipt for the certified mailing to the CRD address with an illegible signature. CX-2.

Enforcement complied with Rule 9134(b)(1) by mailing the Complaint and Notices of Complaint to Respondent's CRD address and an alternate address, thereby giving Respondent constructive notice of this proceeding. Moreover, the record shows that Respondent received actual notice of this proceeding, as evidenced by his telephone call to Counsel for Enforcement on March 20, 2009. Therefore, by failing to file an Answer, Respondent defaulted. Pursuant to Rule 9215(f), the Hearing Officer deems the allegations in the Complaint admitted.

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.

III. Jurisdiction

On April 2, 2007, Respondent submitted an initial Form U4 to apply for registration with FINRA through Chase Investment Services Corp. ("Chase" or the "Firm"). CX-1. By applying for registration with FINRA, Respondent became an associated person of Chase subject to FINRA's jurisdiction.² On May 9, 2007, Chase filed a Form U5 reflecting that it had terminated Respondent on April 18, 2007 for failing his Series 6 examination. Respondent has not been associated or registered with a FINRA member since that time. CX-1.

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 Respondent willfully failed to disclose that, on August 26, 2006, he was charged with: (1) possession of a weapon for unlawful purposes, a crime in the second degree, punishable by five to ten years imprisonment; and (2) unlawful possession of a weapon, a crime in the third degree, punishable by one to five years imprisonment.³ On April 2, 2007, Respondent answered "no" to the question 14A(1)(b) of the Form U4, which asked whether he had "ever been charged with any felony." Enforcement argues that Respondent's

² FINRA By-Law Article I(rr)(1) defines "associated person of a member" as "a natural person who is registered or has applied for registration under [FINRA's Rules]." NASD Notice to Members 99-95 states that "any person who signs and submits a Form U4 is an associated person." NASD Notice to Members 99-95 (Dec. 1, 1999).

³ In December 2006, Respondent resolved these charges by pleading guilty to improper behavior and paying a fine.

August 2006 criminal charges are the equivalent of felonies, and, therefore, Respondent's Form U4 answer was false.

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 of five and 10 years; third degree crimes are punishable by a term of 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.

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...." Both of the charges at issue are punishable by sentences of at least one year imprisonment. Therefore, the Hearing Officer finds that Respondent was required to disclose them on his Form U4.

Article V, § 2 (a)(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.⁴

Therefore, the allegations of the Complaint 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 provides that a person is subject to "disqualification" with respect to association with a member, if such person is subject to "statutory disqualification." Specifically, Section 3(a)(39) of the Securities Exchange Act of 1934 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."⁵ A finding of willfulness does not require the intent to violate the law or a specific rule, but simply intent to commit the act that constitutes the violation.⁶

In this case, Respondent's criminal charges were not specifically designated as felonies. However, the Form U4 instructions clearly explained that offenses punishable by a sentence of at least one year of imprisonment, such as the ones for which he was charged, constituted felonies for purposes of Form U4 disclosure. Moreover, the charges were serious; Respondent could not have believed that the charge of possession of a weapon for unlawful purposes, a crime in the

⁴ 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."); Dep't 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).

⁵ Christopher LaPorte, Exch. Act Rel. No. 39171, 1997 SEC LEXIS 2058, at *8 n.2 (Sept. 30, 1997).

⁶ Dep't of Enforcement v. Knight, No. C10020060, 2004 NASD Discip. LEXIS 5 (NAC Apr. 27, 2004); Dep't 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).

second degree, punishable by five to ten years, constituted a misdemeanor. It is also unlikely that Respondent would have forgotten about it in the year between the charge and his completion of the Form U4. Therefore, the Hearing Officer finds that Respondent's failure to make required disclosures in his Form U4 was willful.⁷

The Hearing Officer further finds that the charges were material. The National Adjudicatory Council ("NAC") has determined that information on the Form U4 is material if a reasonable employer reading the Form would "view the disclosure of the omitted information as significantly altering the total mix of information available."⁸ Furthermore, the NAC has made clear that "[b]ecause of the importance that the industry places on full and accurate disclosure of information required by the Form U4, [it is] presumed that essentially all the information that is reportable on the Form U4 is material."⁹ In this case, Andujar had been charged with two crimes; one carrying minimum sentence of one year in prison, and the other carrying a minimum of five years in prison. The NAC has consistently held that criminal history is material.¹⁰

B. Failure to Respond

The Complaint also alleges that Respondent failed to respond to Staff requests for information. Specifically, on July 17, 2007, Staff sent Respondent a request for information, pursuant to Rule 8210, regarding a possible failure to disclose his criminal history on his Form U4. Staff sent the request to Respondent's CRD address via first-class and certified mail. Although Staff received the receipt for the certified mailing with Respondent's signature, he failed to respond to the request. On August 14, 2007, Staff sent the same request to

⁷ LaPorte at *8 (finding willfulness when respondent knew or should have known under the particular facts and circumstances that his conduct was improper).

⁸ Dep't of Enforcement v. Knight, 2004 NASD Discip. LEXIS 5, at *14 (quoting SEC v. Mayhew, 121 F.3d 44, 52 (2d Cir. 1997)).

⁹ *Id.* at *13.

¹⁰ Dep't. of Enforcement v. Craig, 2007 FINRA Discip. LEXIS 16 (NAC Dec. 27, 2007); Dep't of Enforcement v. Knight, 2004 NASD Discip. LEXIX 5.

Respondent's CRD address in the same manner. Again, Respondent failed to respond to the request. Newman Decl. ¶ 9. 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.¹¹ Here, although Respondent received valid constructive notice of the Staff's request,¹² 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.

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 bar. The omitted disclosure involved serious and recent

¹¹ 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).

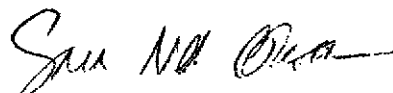
¹² See David I. Cassuto, Exch. Act Rel. No. 48087, 2003 SEC LEXIS 1496, at *9 (June 25, 2003).

charges, which Respondent likely did not forget when he filled out the Form U4. However, it involved only one false Form U4, and the undisclosed criminal charges did not, by themselves, give rise to a statutory disqualification. The Hearing Officer, therefore, concludes that the violation was serious, warranting a significant suspension, but not necessarily a bar. However, in light of the bar for the Rule 8210 violation, no further sanctions are imposed for Respondent's willful failure to make required disclosures on his Form U4.

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 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 FINRA's final disciplinary action in this proceeding.



Sara Nelson Bloom
Hearing Officer

Copies to: Alexander Andujar (via overnight courier & first-class mail)
Michael J. Newman, Esq. (via electronic & first-class mail)
Mark P. Dauer, Esq. (via electronic mail)
David R. Sonnenberg, Esq. (via electronic mail)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

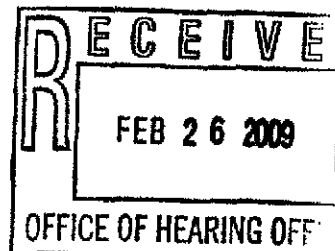
Complainant,

V.

Alexander Andujar
(CRD No. 5307459),

Respondent.

DISCIPLINARY PROCEEDING
No. 2007009001001



COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Respondent Alexander Andujar willfully failed to disclose on his Form U4 the material fact that he had previously been charged with two crimes that are the functional equivalents of felonies under New Jersey law. Andujar also failed to respond to three written request for information issued by FINRA staff. This conduct violated NASD Conduct Rule 2110 and IM-1000-1 and NASD Procedural Rule 8210.

RESPONDENT AND JURISDICTION

2. On April 2, 2007, Andujar submitted or caused to be submitted an initial Form U4 through which he applied for registration with FINRA through Chase Investment Services Corp. (Chase Investment) seeking registration as an Investment Company and Variable Contracts Products Representative.
3. On May 9, 2007, Chase Investment filed a Form U5 reflecting that it had terminated Andujar on April 18, 2007 for failing his Series 6 (Investment Company and Variable Contracts Representative) exam, a position prerequisite. Andujar has not been associated with a member firm since his termination from Chase Investment.
4. Andujar 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 Cause of Action occurred while Andujar was associated with a member firm; and this Complaint was filed within, and the violation of NASD Procedural Rule 8210 alleged in the Second Cause of Action occurred within, two years of his last association with a member firm.

FIRST CAUSE OF ACTION

Willful Failure to Disclose Material Information on a Form U4 (NASD Conduct Rule 2110 and IM-1000-1)

5. The Department realleges and incorporates by reference paragraphs 1-4 above.

6. On August 27, 2006, the North Bergen Municipal Court (New Jersey) charged Andujar with Possession of a Weapon for Unlawful Purposes and Unlawful Possession of a Weapon. Both crimes are the functional equivalents of felonies under New Jersey's criminal sentencing law. Specifically, Possession of a Weapon for Unlawful Purposes is a crime in the Second Degree, punishable by five to ten years imprisonment; and Unlawful Possession of a Weapon is a crime in the Third Degree, punishable by one to five years imprisonment.
7. In December 2006, Andujar pleaded guilty to Improper Behavior, a misdemeanor (equivalent) violation, and was fined. The weapons charges were dropped.
8. On April 2, 2007, Andujar submitted or caused to be submitted a Form U4 through a member firm. In signing the Form U4, Andujar attested to its completeness and accuracy.
9. Andujar willfully failed to disclose material facts on the Form U4. Specifically, Question 14(A)(1)(b) of the Form U4 asked Andujar whether he had "ever been charged with any felony." Andujar answered "No" to this question, which was a false answer given the felony equivalent charges referenced in paragraph 7 above.
10. By failing to disclose material facts on his Form U4, Andujar violated NASD Conduct Rule 2110 and IM-1000-1.

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

11. The Department realleges and incorporates by reference paragraphs 1-10 above.

12. On July 17, 2007 and pursuant to NASD Procedural Rule 8210, FINRA staff sent a letter to Andujar at his last known residential address reflected in the records of FINRA's Central Registration Depository: [REDACTED] [REDACTED] (CRD Address). The letter requested that he provide information regarding the New Jersey weapons charges and his failure to disclose such information on his Form U4. The letter was sent by first-class and certified mail and requested a response by August 7, 2007.
13. On July 24, 2007, the receipt for the certified mailing was returned to FINRA staff bearing the signature "Alexander Andujar." The first-class mailing did not return.
14. Andujar failed to respond to this written request for information.
15. On August 14, 2007 and pursuant to NASD Procedural Rule 8210, FINRA staff sent a second letter to Andujar at his CRD address via first-class and certified mail, renewing the request for information regarding the criminal charges and Andujar's failure to disclose this information on the Form U4. The letter contained a copy of the first request and requested a response by August 28, 2007. The letter further advised Andujar that if he failed to respond he may be subject to disciplinary action.
16. On September 4, 2007, the return receipt for the certified mailing was returned and marked, "Unclaimed, Unable to Forward." The first-class mailing did not return.
17. Andujar failed to respond to this written request for information.

18. On January 29, 2008, FINRA staff called Andujar to inquire why he had not responded to the 8210 requests. Andujar said that he “remembered” receiving the first and second requests for information, and said that if he was mailed another copy of these letters he would respond.
19. On January 30, 2008 and pursuant to NASD Procedural Rule 8210, FINRA staff sent a third request for information to Andujar at his CRD address via first-class and certified mail. The letter attached copies of the first and second requests for information and requested a response by February 13, 2008. The letter again warned Andujar that a failure to respond could result in disciplinary action.
20. On February 22, 2008, the certified letter was returned to the staff marked, “Unclaimed.” The first-class letter did not return.
21. Andujar failed to respond to this written request for information.
22. FINRA staff is not aware of any more current residential or business address for Andujar.
23. By failing to respond to the staff’s written requests for information, Andujar 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 FINRA 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 FINRA Rule 8330; and

- 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

Dated: February 20, 2009



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