

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JOHN E. DAVIDSON
(CRD No. 4637964)

Respondent.

Disciplinary Proceeding
No. 2007011375001

Hearing Officer – RSH

DEFAULT DECISION

June 8, 2009

The Respondent violated Conduct Rule 2110 and IM-1000-1 by failing to update his Form U4 to disclose that he was the subject of a state investigation of allegations that he had forged documents, and that his insurance license was subsequently revoked. For this violation, the Respondent was barred from associating with any member firm in any capacity.

Appearances

Kevin G. Kulling, Senior Regional Counsel, and Mark Koerner, Regional Chief Counsel, Chicago, IL, for the Department of Enforcement.

No appearance by or for John E. Davidson.

DECISION

I. Introduction

The Department of Enforcement (“Enforcement”) for the Financial Industry Regulatory Authority (“FINRA”) filed a Complaint (attached to this Decision as Exhibit A) charging that the Respondent, John E. Davidson (“Davidson”), violated Conduct Rule 2110 and Membership and Registration Rule Interpretive Material (“IM”) 1000-1 by willfully failing to update his Uniform Application for Securities Industry Registration or Transfer (“Form U4”) to disclose that he was the subject of an Ohio Department of

Insurance investigation of allegations that he had forged customer documents, and that his insurance license was subsequently revoked.¹

Enforcement filed the Complaint with the Office of Hearing Officers on January 6, 2009. Davidson did not answer or otherwise respond to the Complaint. Consequently, on April 8, 2009, Enforcement filed a Motion for Entry of Default Decision, supported by the Declaration of Kevin G. Kulling (“Kulling Decl.”) and six exhibits. Davidson did not reply to the motion.

II. Findings of Fact and Conclusions of Law

A. Jurisdiction

In September 2006, Davidson entered the securities industry and registered as an Investment Company and Variable Contracts Products Representative with a FINRA member firm. On December 4, 2006, he became associated in the same capacity with Financial Network Investment Corporation (“Financial Network”), another FINRA member firm. On November 28, 2007, Financial Network discharged Davidson for failing to notify the firm of a “State of Ohio regulatory investigation and permanent revocation of insurance license.” He has not since been associated with a FINRA member firm.²

Although Davidson is not currently registered with FINRA, FINRA has jurisdiction of this disciplinary proceeding, pursuant to Article V, Section 4 of FINRA’s Bylaws, because (1) the Complaint was filed within two years following the termination of his registration with FINRA and (2) the Complaint charges him with misconduct that occurred while he was associated with Financial Network.³

¹ The FINRA Rules, which include NASD Procedural and Conduct Rules, are at www.finra.org/Rules.

² Complainant’s Exhibit (CX)-2; Kulling Decl., ¶ 5.

³ See Article V, Sec. 4(a), FINRA By-Laws, available at www.finra.org/Rules (then follow “FINRA Manual” hyperlink to “Corporate Organization: Bylaws”).

B. Respondent's Default

On January 6, 2009, Enforcement sent the Notice of Complaint and Complaint to Davidson by first-class and certified mail (return receipt requested) at his residential address recorded in the Central Registration Depository ("CRD Address"). The first-class mailing was not returned; however, the certified mailing was returned marked "unclaimed."⁴ Davidson did not respond to the Complaint by February 3, 2009, the deadline specified in the Notice of Complaint.

On February 5, 2009, Enforcement served Davidson with the Second Notice of Complaint and Complaint, by first-class and certified mail, to his CRD Address. As before, the first-class mailing was not returned, and the certified mailing was returned marked, "unclaimed." The Second Notice of Complaint required Davidson to file an answer to the Complaint by February 24, 2009.⁵ To date, Davidson has not filed an Answer with the Office of Hearing Officers or otherwise responded to the Complaint.

Davidson defaulted by failing to answer the Complaint.⁶ Accordingly, pursuant to Procedural Rules 9215(f) and 9269(a)(2), the Hearing Officer deems the allegations in the Complaint admitted and grants Enforcement's motion for entry of a default decision.

C. Willful Failure to Update Form U4

The sole Cause of Action in the Complaint alleges that Davidson violated Conduct Rule 2110, IM-1000-1, and Article V, Section 2 of FINRA's By-Laws by willfully failing to update his Form U4 to disclose material information. According to

⁴ CX-2, 3, 4; Kulling Decl., ¶ 7.

⁵ CX-5, 6; Kulling Decl., ¶ 8.

⁶ *Department of Enforcement v. Reynolds Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at *5 (N.A.C. Dec. 9, 2003) (NASD Procedural Rule 9134(b)(1) allows for constructive notice by mailing a complaint to the respondent's most recent CRD address) (quoting *Lubeck v. SEC*, 1998 U.S. App. LEXIS 18849, at *20 (9th Cir. Aug. 12, 1998)).

the Complaint, on or about December 4, 2006, Davidson completed and signed a Form U4, and answered “no” to Questions 14G and 14D.⁷

In June 2007, Davidson received written notice from the State of Ohio Department of Insurance that it had instituted a formal action against him concerning a forgery allegation (“Ohio Action”). The Ohio Action was the result of an investigation begun in July 2006, into allegations that in February 2006 Davidson forged the signature of a customer on an annuity application and submitted the application to the annuity company. The investigation also included allegations that Davidson forged the same customer’s signature on a fabricated letter requesting the cancellation of another annuity contract and a refund.⁸ In the notice of the Ohio Action, the State notified Davidson that it was seeking to revoke his insurance license and that he was being given the opportunity for a hearing.⁹ The State of Ohio conducted a hearing on September 5, 2007, and found that Davidson forged the signature on the annuity application and fabricated the letter with the customer’s forged signature requesting the annuity cancellation and refund. As a result of the hearing, the Ohio Superintendent of Insurance revoked Davidson’s insurance license, effective November 26, 2007.¹⁰

Form U4 Question 14G requires an applicant to disclose if he has been notified in writing that he is the subject of any pending regulatory complaint, proceeding or investigation that could result in, among other things, a final order of a state insurance commission barring him from the insurance business.¹¹ Davidson did not update his “no”

⁷ Kulling Decl., ¶ 20.

⁸ Kulling Decl., ¶¶ 9-10, 20.

⁹ Kulling Decl., ¶ 20.

¹⁰ Kulling Decl., ¶¶ 11-14, 20.

¹¹ Form U4, Questions 14D, 14G; Kulling Decl., ¶¶ 16, 17.

answer to that question after he received notice of the Ohio Action in June 2007.¹²

Question 14D (2) of Form U4 requires an applicant to disclose, among other things, whether he is the subject of a final order of a state insurance commission barring him from engaging in the insurance business.¹³ Davidson did not update his “no” answer to that question to reflect that on November 26, 2007, the Ohio Superintendent of Insurance revoked Davidson’s insurance license.¹⁴

Furthermore, Davidson’s failure to disclose the Ohio Action and the revocation of his insurance license was willful and material. “Willfulness” is established by a showing that a person “knew or reasonably should have known under the particular facts and circumstances that his conduct was improper.”¹⁵ In this case, Davidson admitted in a written statement to FINRA Staff that he became aware of Ohio’s investigation in July 2006 and that he did not update his Form U4 after receiving notice of the Ohio Action because “he did not want to” and “he was embarrassed.”¹⁶

Conduct Rule 2110 and IM-1000-1 require associated persons to disclose accurately and fully information required in the Form U4 and to observe high standards of commercial honor and just and equitable principles of trade.¹⁷ The accuracy of an

¹² Kulling Decl., ¶ 20.

¹³ Form U4, Question 14D (2); Kulling Decl., ¶ 17.

¹⁴ Kulling Decl., ¶ 20.

¹⁵ *Christopher LaPorte*, Exchange Act Release No. 39171, 1997 SEC LEXIS 2058, at n. 2 (September 30, 1997).

¹⁶ Kulling Decl., ¶ 20.

¹⁷ IM-1000-1 provides that the filing of registration information that “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” in violation of Rule 2110. *See also Thomas R. Alton*, 52 S.E.C. 380, 382 (1995).

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."¹⁸

There is no question that the Ohio Action and the revocation of Davidson's insurance license 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."¹⁹ In this case, Davidson had been charged with forgery and dishonesty in his professional dealings with a customer. These charges are material to a person's employment in the securities industry. 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."²⁰

In addition, FINRA registrants are required to keep their Forms U4 current at all times by filing supplementary amendments as necessary. Such amendments must be filed with FINRA not later than 30 days after learning of the facts or circumstances giving rise to the amendment.²¹ Both the NAC and the Securities and Exchange Commission have stated that the responsibility for maintaining the accuracy of Form U4, by updating information as necessary, lies with the registered representative.²²

¹⁸ *Rosario R. Ruggiero*, 52 S.E.C. 725, 728 (1996) (citing *Alton*, 52 S.E.C. at 382); see also *Guang Lu*, Exchange Act Rel. No. 51047, 2005 SEC LEXIS 117, at *19-20 (Jan. 14, 2005) (recognizing that "the candor and forthrightness of applicants is critical to the effectiveness of the screening process").

¹⁹ *Dep't of Enforcement v. Knight*, No. C10020060, 2004 NASD Discip. LEXIS 5, at *14 (N.A.C. April 27, 2004), (quoting *SEC v. Mayhew*, 121 F.3d 44, 52 (2d Cir. 1997)).

²⁰ *Id.*, at *13.

²¹ Article V, Section 2(c) of FINRA's By-Laws.

²² *Frank R. Rubba*, 53 S.E.C. 670, 1998 SEC LEXIS 1499, at *8 (July 21, 1998); *Department of Enforcement v. Daniel Richard Howard*, No. C11970032, 2000 NASD Discip. LEXIS 16 at *30-32 (N.A.C. Nov. 16, 2000), *aff'd*, 2002 SEC LEXIS 1909 (July 26, 2002).

The allegations in the Complaint are sufficient to establish, for purposes of this Default Decision, that Davidson willfully failed to update his Form U4, as required by FINRA By-Laws. Accordingly, the Hearing Officer finds that by failing to disclose the Ohio Action, and his license revocation, Davidson violated FINRA's By-Laws, NASD Conduct Rule 2110, and IM-1000-1.

III. Sanctions

FINRA Sanction Guidelines ("Guidelines") governing sanctions for false and misleading Forms U4 direct adjudicators to consider two relevant "principal considerations" when determining sanctions: (1) the nature and significance of the information at issue; and (2) whether [the] failure resulted in a statutorily disqualified individual becoming or remaining associated with a firm.²³ The Ohio Action and the revocation of Davidson's insurance license would have been highly significant to regulators, broker-dealers and public customers relying on the information in his Form U4. Further, the Hearing Officer finds that Davidson's failure to update his Form U4 was willful. Therefore, Davidson is subject to statutory disqualification.²⁴

This is an egregious case for which Davidson should be barred. The Ohio Action involved serious allegations of forgery and dishonest conduct towards a customer, which resulted in the revocation of Davidson's insurance license. This was material information to regulators and investors. Davidson knew he was required to disclose the information, yet chose not to do so. His failure was willful and made him subject to statutory disqualification. The record contains no evidence of mitigating factors. Accordingly, the

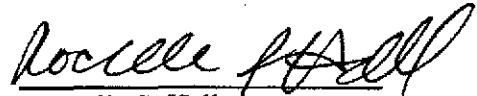
²³ FINRA Sanction Guidelines 73 (2007).

²⁴ FINRA By-Laws, Article III, Sec. 4.

Hearing Officer will bar Davidson from associating with any member firm in any capacity for his failure to update his Form U4 to disclose the Ohio Action and his license revocation.

IV. Order

John E. Davidson is barred from association with any member firm in any capacity for his violation of FINRA By-Laws Art. V, Sec. 2, Conduct Rule 2110 and IM-1000-1. The bar will become effective immediately if this Default Decision becomes FINRA's final disciplinary action in this proceeding.



Rochelle S. Hall
Hearing Officer

Copies to: John E. Davidson (*via overnight carrier and first-class mail*)
Kevin G. Kulling, Esq. (*via electronic and 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.

John E. Davidson
CRD No. 4637964

Respondent.

DISCIPLINARY PROCEEDING
No. 2007011375001

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. John E. Davidson willfully failed to disclose on his Form U4 that he was the subject of a state investigation related to forged documents that eventually resulted in the revocation of his insurance license.

RESPONDENT AND JURISDICTION

2. Respondent John E. Davidson entered the securities industry in September 2006 as an Investment Company and Variable Contracts Representative of a member of FINRA. In December 2006, he became associated with Financial Network Investment Corporation (Member), where he remained until November 28, 2007. Davidson is not currently employed in the securities industry.

3. FINRA retains jurisdiction over Davidson pursuant to Article V, Section 4 of its By-Laws.

FIRST CAUSE OF ACTION

(Willful Failure to Update Material Information on Form U4)

Art. V, Sec. 2 of FINRA's By-Laws and NASD Rules 2110 and IM 1000-1

4. The Department realleges and incorporates by reference paragraphs 1-3 above.

5. In July 2006, Davidson became aware that the State of Ohio Department of Insurance was investigating allegations that in February 2006, Davidson forged the signature of a customer on an annuity application and submitted the application to the annuity company.

6. Davidson also became aware that the investigation included allegations that he forged the same customer's signature on a fabricated letter allegedly from the customer requesting the cancellation of another annuity contract and a refund of the annuity.

7. On or about December 4, 2006, Davidson completed and signed a Uniform Application for Securities Industry Registration or Transfer (Form U4). Pursuant to Article V, Section 2(c) of the By-Laws, Davidson had an ongoing obligation to update the disclosures on his Form U4.

8. In June 2007, Davidson received written notice from the State of Ohio that it had instituted a formal action against him regarding the forgery allegation, that the State was seeking to revoke his insurance license, and that he was being given the opportunity for a hearing.

9. The State of Ohio conducted a hearing on September 5, 2007, and Davidson was found to have forged both the signature on the annuity application and fabricated the letter with the customer's signature requesting the refund.

10. As a result of the Findings of Fact and Conclusions of Law by the Hearing Officer, the Ohio Superintendent of Insurance revoked Davidson's insurance license effective November 26, 2007.

11. Despite Davidson's receipt of the written notice that he was the subject of an investigation and complaint that resulted in his insurance license revocation, he willfully failed to update his Form U4 to disclose the material fact.

12. Form U4 question 14G (1) asks: "Have you been notified, in writing, that you are now the subject of any:

(1) regulatory complaint or proceeding that could result in a "yes" answer to any part of 14C, D or E?

(2) investigation that could result in a "yes" answer to any part of 14A, B, C, D or E?

13. Form U4 question 14D (2) asks: "Have you been subject to any final order of a state securities commission (or any agency or office performing like functions), state authority that supervises or examines banks, savings associations, or credit unions, state insurance commission (or any agency or office performing like functions), an appropriate federal banking agency, or the National Credit Union Administration, that:

(a) bars you from association with an entity regulated by such commission, authority, agency, or officer, or from engaging in the business of securities, insurance, banking, savings association activities, or credit union activities;

14. Because Davidson received written notice from the state of Ohio in June 2007 that it was seeking to revoke his insurance license, Davidson was obligated to updated his Form U4, Question 14G.

15. Because Davidson did not update his Form U4 to disclose the notice, he willfully violated Article V, Section 2 of FINRA's By-Laws and NASD Rules IM100-1 and 2110.

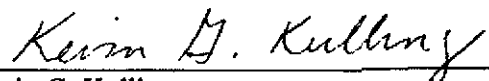
RELIEF REQUESTED

WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under NASD Rule 8310(a), 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 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 6, 2009


Kevin G. Kulling
Senior Regional Counsel
Mark A. Koerner
Associate Vice President and
Regional Chief Counsel
FINRA Department of Enforcement
55 W. Monroe St., Suite 2700
Chicago, IL 60603
Phone: (312) 899-4348
Fax: (312) 899-4600
Kevin.Kulling@FINRA.org