

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

FREDDY VAZQUEZ
(CRD No. 5497539),

Respondent.

Disciplinary Proceeding
No. 20080127218

Hearing Officer – MAD

DEFAULT DECISION

January 7, 2010

The Respondent violated Conduct Rule 2110 and IM-1000-1 by failing to disclose on his Form U4 that he had been charged with a felony. For this violation, the Respondent was suspended from associating with any member firm in any capacity for six months and fined \$10,000.

Appearances

Jeff Kern, Senior Regional Counsel, and David Jaffe, Regional Chief Counsel, New York, NY, for the Department of Enforcement.

No appearance by or for Freddy Vazquez.

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, Freddy Vazquez (“Vazquez”), violated Conduct Rule 2110 and Membership and Registration Rule Interpretive Material (“IM”) 1000-1 by willfully failing to disclose on his Uniform Application for Securities Industry

Registration or Transfer ("Form U4") that he had been charged with two felony counts of Criminal Possession of a Weapon.¹

Enforcement filed the Complaint with the Office of Hearing Officers on August 20, 2009. Vazquez did not answer or otherwise respond to the Complaint. Consequently, on November 11, 2009, Enforcement filed a Motion for Entry of Default Decision, supported by the Declaration of Jeff Kern ("Kern Decl.") and nine exhibits.² Vazquez did not respond to the motion.

II. Findings of Fact and Conclusions of Law

A. Jurisdiction

On February 25, 2008, Vasquez became an associated person through his employment with Saxony Securities, Inc. ("Saxony"), a FINRA member firm. On February 10, 2008, Vazquez completed a Form U4, which Saxony submitted on his behalf to FINRA on March 3, 2008. On March 5, 2008, Saxony terminated Vazquez because he failed to disclose his criminal history on his Form U4.³ He has not been associated with any FINRA member firm since March 5, 2008.⁴

Although Vazquez is not currently associated with a member firm, FINRA has jurisdiction of this disciplinary proceeding, pursuant to Article V, Section 4 of FINRA's Bylaws, because (1) the Complaint charges him with misconduct that occurred while he

¹ NASD consolidated with the member regulation and enforcement functions of NYSE Regulation in July 2007 and began operating under a new corporate name, the Financial Industry Regulatory Authority (FINRA). References in this decision to FINRA include, where appropriate, NASD. Following consolidation, FINRA began developing a new FINRA Consolidated Rulebook. The first phase of the new consolidated rules became effective on December 15, 2008. See Regulatory Notice 08-57 (Oct. 2008). This decision refers to and relies on the Conduct Rules that were in effect at the time of Respondent's alleged misconduct. The applicable rules are available at www.finra.org/rules.

² The factual determinations in this decision are based on the allegations of the attached Complaint, which are deemed admitted, as well as the additional evidentiary materials Enforcement filed in support of its motion for entry of default decision.

³ Complainant's Exhibit ("CX")-1, at 4.

⁴ Kern Decl. ¶¶ 4-5; CX-1.

was associated with a FINRA member firm and (2) the Complaint was filed within the two-year period following the termination of his association.⁵

B. Origin of the Complaint

Enforcement began its investigation of Vazquez upon its receipt of information from FINRA's Central Registration Depository ("CRD") concerning Vazquez's failure to report his criminal history on his Form U4.⁶

C. Respondent's Default

On August 20, 2009, Enforcement sent the Complaint and Notice of Complaint to Vazquez by first-class and certified mail (return receipt requested) to three addresses attributable to Vazquez: (1) his residential address recorded in the Central Registration Depository ("CRD Address"); (2) his CRD Address with the addition of an apartment number ("Second CRD Address"); and (3) an address Vazquez had provided to Enforcement during the course of its investigation ("Third Address").⁷ The United States Postal Service ("USPS") returned the first-class mailing to Vazquez's CRD Address, marked "Return to Sender; Insufficient Address."⁸ The first-class mailings sent to the other two addresses were not returned.⁹ The USPS returned the certified mailings sent to the CRD Address and the Third Address, marked "Return to Sender; Attempted Not Known."¹⁰ The certified mailing sent to Vazquez's Second CRD Address was not

⁵ See Article V, Sec. 4(a), FINRA By-Laws, *available at* www.finra.org/rules (then follow "FINRA Manual" hyperlink to "Corporate Organization: Bylaws").

⁶ Kern Decl. ¶ 7.

⁷ Kern Decl. ¶¶ 17-20.

⁸ Kern Decl. ¶ 21; CX-4.

⁹ Kern Decl. ¶ 22.

¹⁰ Kern Decl. ¶¶ 23, 25; CX-5-6.

returned to Enforcement.¹¹ Vazquez did not respond to the Complaint by September 22, 2009, the deadline specified in the Notice of Complaint.

On September 23, 2009, Enforcement served Vazquez with the Complaint and Second Notice of Complaint, by first-class and certified mail, to his CRD Address, Second CRD Address, and Third Address.¹² The USPS returned the first-class mailings sent to the CRD Address and the Third Address.¹³ The first-class mailing sent to the Second CRD Address was not returned.¹⁴ The certified mailings sent to the CRD Address and the Second CRD Address were not returned; however, the certified mailing sent to the Third Address was returned marked "Return to Sender; Attempted Not Known."¹⁵ The Second Notice of Complaint required Vazquez to file an answer to the Complaint by October 14, 2009. To date, Vazquez has not filed an Answer with the Office of Hearing Officers or otherwise responded to the Complaint.

Vazquez defaulted by failing to answer the Complaint.¹⁶ 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.

D. False Form U4

The Complaint alleges that Vazquez violated Conduct Rule 2110, IM-1000-1, and Article V, Section 2 of FINRA's By-Laws by failing to disclose material information on

¹¹ Kern Decl. ¶ 24.

¹² Kern Decl. ¶ 27.

¹³ Kern Decl. ¶¶ 28, 30; CX-7-8.

¹⁴ Kern Decl. ¶ 29.

¹⁵ Kern Decl. ¶¶ 31-32; CX-9.

¹⁶ *Dep't of Enforcement v. Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at *5 n.1 (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." (citing *Lubeck v. SEC*, 1998 U.S. App. LEXIS 18849, at *20 (9th Cir. Aug. 12, 1998))).

his Form U4. According to the Complaint, in October 1992, Vazquez was arrested and charged with two felony counts of Criminal Possession of a Weapon.¹⁷ On February 10, 2008, Vazquez completed and signed a Form U4, which was sent to FINRA's CRD.¹⁸ On the Form U4, Vazquez answered "No" to Question 14A(1)(b), which asked, "Have you ever...been charged with any felony?"¹⁹

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.²⁰ The accuracy of an applicant's Form U4 is critical to the effectiveness of a self-regulatory organization's ability "to determine and monitor the fitness of professionals to participate in the securities industry."²¹

The allegations in the Complaint are sufficient to establish, for purposes of this Default Decision, that Vazquez failed to disclose his felony charges on his Form U4, as required by FINRA By-Laws. "The failure of an applicant for FINRA registration to fully and accurately disclose all information required on the Form U4, including criminal history, violates NASD Rule 2110 and IM-1000-1."²² Accordingly, the Hearing Officer

¹⁷ Complaint ¶ 5.

¹⁸ Kern Decl. ¶ 11; CX-3.

¹⁹ CX-3, at 2.

²⁰ 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 Dep't of Enforcement v. Toth*, No. E9A2004001901, 2007 NASD Discip. LEXIS 25, at *23 (N.A.C. July 27, 2007). NASD Rule 0115 extends NASD rule requirements to persons associated with a member.

²¹ *See e.g., Dep't of Enforcement v. Kraemer*, No. 2006006192901, 2009 FINRA Discip. LEXIS 39, at *12 (Dec. 18, 2009) (citing *Rosario R. Ruggiero*, 52 S.E.C. 725, 728 (1996)); *Thomas R. Alton*, 52 S.E.C. 380, 382 (1995), *aff'd* 105 F.3d 664 (9th Cir. 1996) (Table); *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").

²² *Dep't of Enforcement v. Kraemer*, 2009 FINRA Discip. LEXIS 39, at **12-13.

finds that by failing to disclose his felony charges, Vazquez violated FINRA's By-Laws, NASD Conduct Rule 2110, and IM-1000-1.

E. Statutory Disqualification

The Complaint also alleges that Vazquez acted willfully in failing to disclose material information on his Form U4 and requests that the Hearing Officer make specific findings as to each allegation. If Vazquez's non-disclosure of his felony charges was willful and the omitted information was material,²³ he is subject to statutory disqualification from association with any FINRA member pursuant to Section 3(a)(39)(F) of the Securities Exchange Act of 1934 and the FINRA By-Laws.²⁴

"Willfulness" is established by a showing that a person "voluntarily committed the act that constituted the violation, i.e., that he voluntarily omitted his criminal history from the Form[] U4."²⁵ 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.²⁶ Nor is a finding of willfulness dependent on proof of "evil motive."²⁷

²³ Criminal history is material information. See *Dep't of Enforcement v. Craig*, No. E8A2004095901, 2007 FINRA Discip. LEXIS 16, at *11 n.9 (N.A.C. Dec. 27, 2007), *aff'd*, Exchange Act Rel. No. 59137, 2008 SEC LEXIS 2844 (Dec. 22, 2008).

²⁴ Article III, Section 4(f) of the FINRA By-Laws provides:

[a] person is subject to a "disqualification" with respect to ... association with a member, if such person: ... has willfully made or caused to be made in any application ... to become associated with a member of a self-regulatory organization ... any statement which was at the time, and in light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application ... any material fact which is required to be stated therein.

²⁵ *Dep't of Enforcement v. Kraemer*, 2009 FINRA Discip. LEXIS 39, at *16.

²⁶ *Dep't of Enforcement v. Mathis*, No. C10040052, 2008 FINRA Discip. LEXIS 49, at *18 (N.A.C. Dec. 12, 2008); *Dep't of Enforcement v. Knight*, No. C10020060, 2004 NASD Discip. LEXIS 5, at *10 (N.A.C. Apr. 27, 2004) (citing *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965)); *Christopher LaPorte*, Exchange Act Release No. 39171, 1997 SEC LEXIS 2058, at *8 n. 2 (Sept. 30, 1997); *Wonsover v. SEC*, 205 F.3d 408, 413 (D.C. Cir. 2000); *Arthur Lipper Corp. v. SEC*, 547 F.2d 171, 180 (2d Cir. 1976), *cert. denied*, 434 U.S. 1009 (1978).

²⁷ *E.g., Arthur Lipper Corp. v. SEC*, 547 F.2d 171, 180.

Here, Vazquez was initially charged with two felonies in October 1992.²⁸ In December 1992, the two felony charges were dismissed, and he plead guilty to a misdemeanor, a lesser charge of possession of a weapon that is not reportable on the Form U4.²⁹ Vazquez was sentenced to three years of probation.³⁰ In May 1995, Vasquez was sentenced to 35 days in jail because he violated the terms of his probation.³¹ Under these facts and circumstances, especially in light of the fact that he was incarcerated, Vazquez had to be aware of his criminal history. While it is possible that Vazquez forgot whether his criminal charges were felonies or misdemeanors, the Securities and Exchange Commission has held that it is incumbent upon a person filing a Form U4 to seek information from proper authorities about his Form U4 disclosure obligations.³² Consequently, Vazquez was responsible for following up with his firm's compliance department and other authorities if he had any questions about disclosing his criminal record on his Form U4.³³ The record does not reflect that he made such inquiries. Accordingly, although the felony charges occurred 16 years earlier, the Hearing Officer finds that Vazquez "acted voluntarily when he omitted his criminal history from the

²⁸ Kern Decl. ¶ 9; CX-2.

²⁹ Kern Decl. ¶ 10; CX-2.

³⁰ Kern Decl. ¶ 10; CX-2.

³¹ CX-2, at 2.

³² *E.g., James Allen Schneider*, Exchange Act Rel. No. 37463, 1996 SEC LEXIS 1914, at *8 (July 22, 1996) (finding that respondent should have verified whether he remained under investigation by the NYSE), *aff'd*, 118 F.3d 1577 (3d Cir. 1997); *see also Dep't of Enforcement v. Zdzieblowski*, No. C8A030062, 2005 NASD Discip. LEXIS 3, at * 16 (N.A.C. May 3, 2005) (stating that respondent had "an obligation to inquire about the charge against him if he was unsure how to answer accurately any question on the Form U4").

³³ *Mathis*, 2008 FINRA Discip. LEXIS 49, at *23.

Form[] U4. He therefore willfully violated NASD Rule 2110 and IM-1000-1.”³⁴ Vazquez is statutorily disqualified.

III. Sanctions

For filing a false, misleading, or inaccurate Form U4 or failing to file necessary amendments to a Form U4, the FINRA Sanction Guidelines (“Guidelines”) recommend that an individual be fined from \$2,500 to \$25,000 and suspended in all capacities for five to 30 business days. In egregious cases, the Guidelines call for consideration of a suspension in any or all capacities of up to two years, or a bar.³⁵

One of the principal considerations for determining sanctions for such a violation is the nature and significance of the information at issue.³⁶ Vazquez’s felony charges would have been highly significant to regulators, broker-dealers, and public customers relying on the information in his Form U4. In this case, Vazquez’s arrest involved possession of a weapon. This conduct can affect workplace safety and performance, as well as Vazquez’s ability to abide by laws, rules, and regulations. Further, the Hearing Officer finds that Vazquez’s failure to disclose his criminal history on his Form U4 was willful. Therefore, Vazquez is subject to statutory disqualification.³⁷

The record contains no evidence of mitigating factors. Accordingly, the Hearing Officer will suspend Vazquez from associating with any member firm in any capacity for six months and fine him \$10,000 for his failure to disclose his felony charges on his Form U4.

³⁴ *Dep’t of Enforcement v. Kraemer*, 2009 FINRA Discip. LEXIS 39, at *16.

³⁵ FINRA Sanction Guidelines 73-74 (2007), available at www.finra.org/sanctionguidelines.

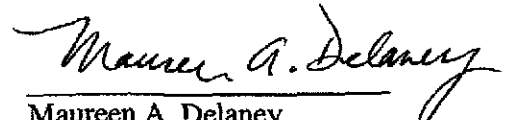
³⁶ *Id.*

³⁷ FINRA By-Laws, Article III, Sec. 4.

IV. Order

Vazquez is suspended in all capacities for six months and fined \$10,000 for his violation of FINRA By-Laws Art. V, Sec. 2, Conduct Rule 2110, and IM-1000-1. If this Default Decision becomes the final disciplinary action of FINRA, Vazquez's suspension shall begin on Tuesday, February 16, 2010, and end at the close of business on Friday, August 13, 2010, and the fine shall be due and payable if and when he re-enters the securities industry.

SO ORDERED.


Maureen A. Delaney
Hearing Officer

Copies to:

Freddy Vazquez (*via overnight courier and first-class mail*)
Jeff Kern, Esq. (*via 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.

FREDDY VAZQUEZ (CRD NO. 5497539),

RESPONDENT.

DISCIPLINARY PROCEEDING
No. 20080127218

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. This matter involves the willful failure of Respondent Freddy Vazquez to disclose on a Uniform Application for Securities Industry Registration or Transfer Form (Form U4) the material fact that he had been charged with felony weapons possession in contravention of Article V, Section 2 of FINRA's By-Laws and in violation of NASD Interpretive Material (IM)-1000-1 and NASD Conduct Rule 2110.

JURISDICTION

2. From February 10, 2008 through March 5, 2008, Vazquez was associated with FINRA member firm Saxony Securities, Inc. (BD No. 115547).

3. Vazquez is no longer employed in the securities industry. FINRA retains jurisdiction pursuant to Article V, Section 4 of FINRA's By-Laws.

BACKGROUND

4. Paragraphs 1 through 3 of this Complaint are realleged and incorporated herein by reference.
5. On October 24, 1992, Vazquez was arrested and charged with two counts of Criminal Possession of a Weapon in the Third Degree under New York Penal Law § 265-02(3) and (4), Class D felonies, in Bronx County, New York.
6. Ultimately, on December 15, 1992, Vazquez resolved these charges by pleading guilty to Criminal Possession of a Weapon in the Fourth Degree under New York Penal Law § 265-001, a Class A misdemeanor. Vazquez was sentenced to three years probation.

SOLE CAUSE OF COMPLAINT

(Willful Failure to Disclose Material Facts on a Form U4)
Contravention of Article V, Section 2 of FINRA's By-Laws
and violation of IM-1000-1 and NASD Conduct Rule 2110

7. Paragraphs 1 through 6 of this Complaint are realleged and incorporated herein by reference.
8. On February 10, 2008, in connection with his employment at Saxony, Vazquez completed and executed a Form U4 that was submitted to FINRA's Central Registration Depository on his behalf by Saxony on March 3, 2008.
9. Question 14A(1) on the Form U4 asks:

Have you ever:

(b) been charged with any felony?

10. Vazquez answered this question by checking the "no" box despite his awareness that he had, in fact, been charged with a felony in connection with his October 1992 arrest.
11. Vazquez, therefore, willfully failed to disclose the fact that he had been charged with felony weapons possession on the Form U4 he completed and signed on February 10, 2008.
12. This fact is material to FINRA's ability to evaluate the fitness of individuals seeking entry to the securities industry and, similarly, to Saxony's ability to screen prospective employees. In essence, the accurate disclosure of these facts would have affected Vazquez's ability to become registered with FINRA and remain employed at Saxony.

By reason of the foregoing, Vazquez acted in contravention of Article V, Section 2 of FINRA's By-Laws and violated NASD IM-1000-1 and NASD Conduct Rule 2110.

RELIEF REQUESTED

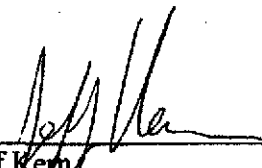
WHEREFORE, the Department respectfully requests that the Panel:

- A. order that one or more of the sanctions provided under FINRA Rule 8310(a) including monetary sanctions, be imposed.
- B. order that the Vazquez bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330

- C. make specific findings that Vazquez's conduct, as alleged in the Sole 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: August 12, 2009



Jeff Kern
Senior Regional Counsel
FINRA, District 10
One Liberty Plaza
New York, New York 10006
(212) 858-4080; Fax: (212) 858-4770
jeff.kern@finra.org

David Jaffe, Esq.
Regional Chief Counsel
FINRA, District 10
One Liberty Plaza
New York, New York 10006
(212) 858-4762; Fax: (212) 858-4770
david.jaffe@finra.org