

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

DEPARTMENT OF ENFORCEMENT,

Complainant

v.

BRIAN SCOTT BROWN
(CRD No. 4674731),

Respondent.

Disciplinary Proceeding
No. 2008013493101

Hearing Officer – RSH

DEFAULT DECISION

February 13, 2009

The Respondent violated Conduct Rule 2110 and Procedural Rule 8210 by failing to respond to requests for information, and violated Conduct Rule 2110 by failing to report multiple felony convictions on his Form U4. For these violations, the Respondent was barred from associating with any member firm in any capacity.

Appearances

Samuel Barkin, Senior Regional Counsel, Chicago, IL (Mark P. Dauer, New Orleans, LA, Of Counsel) for the Department of Enforcement.

No appearance by or for the Respondent.

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) on September 16, 2008. The Complaint alleges that Respondent Brian S. Brown (“Brown”) violated Membership and Registration Rule Interpretive Material (“IM”) -1000-1 and Conduct Rule 2110 by willfully failing to disclose his felony convictions on a Uniform

Application for Securities Industry Registration or Transfer ("Form U4") and Procedural Rule 8210 and Conduct Rule 2110 by failing to respond to FINRA requests for information.

Brown did not answer or otherwise respond to the Complaint. Consequently, on December 18, 2008, Enforcement filed a Motion for Entry of Default Decision, supported by the Declaration of Samuel Barkin ("Barkin Decl.") and 11 exhibits. Brown did not reply to the motion.¹

II. Findings of Fact and Conclusions of Law

A. Respondent's Default

The Hearing Officer finds that Enforcement properly served Brown with the Complaint by mailing the Complaint and the First and Second Notices of Complaint to his last known residential address as shown in FINRA's Central Registration Depository (the "CRD Address"), in accordance with Procedural Rule 9134(b)(1).

Enforcement mailed the Complaint and First Notice of Complaint by regular first-class and certified mail, on September 15, 2008.² Enforcement served the Complaint and Second Notice of Complaint on Brown by regular first-class and certified mail on October 17, 2008.³ None of the mailings was returned to FINRA.⁴ The Second Notice of Complaint sent to Brown stated that he was required to answer the Complaint by November 3, 2008.⁵ To date, Brown has not filed an Answer with the Office of Hearing Officers or otherwise responded to the Complaint.⁶

¹ The factual determinations in this decision are based on the allegations of the attached Complaint, which are deemed admitted, as well as additional materials filed by Enforcement.

² Barkin Decl., ¶ 8; Complainant's Exhibit ("CX") 3.

³ Barkin Decl., ¶ 13; CX-4.

⁴ Barkin Decl., ¶¶ 11, 15.

⁵ Barkin Decl., ¶ 15; CX-4.

⁶ Barkin Decl., ¶ 17.

Brown defaulted by failing to answer the Complaint.⁷ Accordingly, pursuant to Procedural Rules 9215(f) and 9269(a)(2), the Hearing Officer deems the allegations in the attached Complaint admitted and grants Enforcement's motion for entry of a default decision.⁸

B. Jurisdiction

On July 11, 2003, Brown became registered with FINRA as a General Securities Representative through member firm EKN.⁹ He remained continuously associated with EKN until on or about May 30, 2008.¹⁰

On May 30, 2008, EKN filed a Uniform Termination Notice for Securities Industry Registration (Form U5), notifying FINRA that EKN had allowed Brown to resign because he had failed to disclose to the firm that he had become statutorily disqualified.¹¹

Brown has not been registered with FINRA since May 30, 2008. Nonetheless, he remains subject to FINRA's jurisdiction for purposes of this 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 committed while he was associated with a FINRA member firm and with

⁷ *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)).

⁸ On December 15, 2008, the first phase of new consolidated FINRA Rules went into effect. See, Regulatory Notice 08-57. Pursuant to the consolidation, NASD Rules 9210-9290 were superseded by FINRA Rules 9210-9290. With respect to this decision, unless otherwise noted, the relevant FINRA Rules are identical to the corresponding NASD Rules. The FINRA Rules are at www.finra.org/Rules.

⁹ CX-1.

¹⁰ CX-1, 2.

¹¹ *Id.*

failing to respond to FINRA's requests for information made during the two-year period following his registration termination.¹²

C. Willful Failure to Amend Form U4

The first cause of action in the Complaint alleges that Brown violated Membership and Registration Rule IM-1000-1 and Conduct Rule 2110 by willfully failing to amend his Form U4 to disclose that he had been convicted of four felonies.

The first cause of action alleges that on June 16, 2003, Brown signed a Form U4 which was submitted by EKN to FINRA on or about June 24, 2003. Form U4 Question 14A. (1)(a) asks: "Have you ever [...] been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign, or military court to a felony? Question 14A. (1)(b) asks: "Have you ever [...] been charged with any felony? Brown answered "no" to both questions.¹³

On June 30, 2006, Brown was charged in federal court with four felonies: (1) conspiracy to defraud; (2) wire fraud; (3) mail fraud; and (4) conspiracy to distribute narcotics.¹⁴ On or about July 30, 2006, Brown pled guilty to all charges.¹⁵ At the time of these events, Brown was employed by and registered with EKN.¹⁶ Brown did not disclose his felony charges or convictions to EKN or on his Form U4.¹⁷

Applicants for registration with FINRA must fully and accurately disclose all material information in response to questions on Form U4. In addition, FINRA registrants are

¹² Article V, Sec. 4(a), FINRA By-Laws, available at www.finra.org/Rules (then follow "NASD Manual" hyperlink to "Corporate Organization: Bylaws").

¹³ CX-5.

¹⁴ CX-6.

¹⁵ CX-7; CX- 8.

¹⁶ CX-2.

¹⁷ Barkin Decl., ¶27; CX-2.

required to keep their Form U4s 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.¹⁸

Both the National Adjudicatory Council ("NAC") and the Securities and Exchange Commission ("SEC") have stated that the responsibility for maintaining the accuracy of Form U4, by updating information as necessary, lies with the registered representative.¹⁹ By failing to disclose the felony charges and conviction, Brown violated FINRA's By-Laws, Membership and Registration Rule IM-1000-1 and NASD Conduct Rule 2110.

Furthermore, Brown's failure to disclose the criminal charges and convictions 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."²⁰ In this case, Brown knew that his answers to Form U4 Questions 14A.(1)(a) and (1)(b) would be false unless he amended them to disclose his criminal charges and convictions. Significantly, in September 2007, while he was registered with EKN, Brown amended his Form U4 to disclose that he had been charged by the State of New York with two drug-related felonies in October 2004 and that the charges had been dismissed in August 2007. Yet, he failed to disclose his 2006 felony charges and convictions.²¹ His failure to do so appears to have been knowing and intentional.

¹⁸ Article V, Section 2(c) of FINRA's By-Laws.

¹⁹ *Frank R. Rubba*, 53 S.E.C. 670, 1998 SEC LEXIS 1499, at *8 (July 21, 1998); *DOE v. Daniel Richard Howard*, Complaint No. C11970032, 2000 NASD Discip. LEXIS 16 at *30-32 (N.A.C. November 16, 2000), *aff'd*, 2002 SEC LEXIS 1909 (July 26, 2002).

²⁰ *Christopher LaPorte*, Exchange Act Release No. 39171, 1997 SEC LEXIS 2058, at n. 2 (September 30, 1997).

²¹ CX-9; Barkin Decl., ¶¶27, 28.

There is no question that Brown's felony charges and convictions were material. The 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."²² When EKN learned about Brown's charges and convictions, it terminated his employment. 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."²³

The Hearing Officer finds that the allegations in the first cause of action are sufficient to establish, for purposes of this default decision, that Brown violated Membership and Registration Rule IM-1000-1 and Conduct Rule 2110.

D. Failure to Respond to Information Requests

The second cause of action alleges that Brown failed to respond to two written requests that he provide information to FINRA staff concerning his failure to amend his Form U4 to disclose the criminal charges and convictions. FINRA staff sent each request to the Respondent at his CRD Address pursuant to Procedural Rule 8210. The requests were dated May 21, 2008 and June 5, 2008. FINRA staff sent each request to Brown at his CRD Address by first-class mail and by certified mail, return receipt requested, in accordance with Procedural Rule 8210. The certified mailings were returned marked "unclaimed;" however, neither of the first-class mailings was returned to FINRA. To date, Brown has not responded to either of the staff's letters.²⁴

²² *DOE v. Andrew C. Knight*, No. C10020060, 2004 NASD Discip. LEXIS 5, at *17 (N.A.C. April 27, 2004), (quoting *SEC v. Mayhew*, 121 F.3d 44, 52 (2d Cir. 1997)).

²³ *Id.*, at *13.

²⁴ CX-10; CX-11; Barkin Decl. ¶¶34-41.

The Hearing Officer finds that the allegations in the second cause of action are sufficient to establish, for purposes of this default decision, that Brown violated Procedural Rule 8210 and Conduct Rule 2110.

III. Sanctions

A. Willful Failure to Amend Form U4

For filing a false, misleading or inaccurate Form U4 or failing to file necessary amendments to a Form U4, FINRA Sanction Guidelines (“Guidelines”) recommend that an individual be fined from \$2,500 to \$50,000. In egregious cases, the Guidelines call for consideration of a suspension in any or all capacities of up to two years or a bar.²⁵

The Guideline governing sanctions for false and misleading Forms U4 directs 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.²⁶ Brown’s criminal history would have been highly significant to regulators, broker-dealers and public customers relying on the information in his Form U4.

Brown’s felony convictions rendered him subject to statutory disqualification.²⁷ By failing to disclose them, he remained associated with EKN for nearly two years after he was convicted. Further, Brown is also subject to statutory disqualification if he willfully makes a false or misleading statement with respect to any material fact on his Form U4.²⁸ Brown

²⁵ *FINRA Sanction Guidelines* 73-74 (2007 ed.).

²⁶ *Id.*

²⁷ FINRA By-Laws, Article III, Sec. 4.

²⁸ *Id.*

knowingly failed to disclose multiple serious criminal charges on his Form U4 and the Hearing Officer finds that his failure was willful.

Under the Guidelines' Principal Considerations, Brown's willful failure to disclose the criminal charges against him, and his continued employment as a broker when he should have been statutorily disqualified are aggravating circumstances that make his conduct egregious.²⁹

For all of these reasons, the Hearing Officer finds that Brown should be barred from associating with any member firm in any capacity.

B. Failure to Respond to Requests for Information

The Guidelines recommend a bar where a respondent fails to respond in any manner to a request for information issued pursuant to Procedural Rule 8210.³⁰ Here, Brown failed to respond in any manner to two written requests that he provide information in connection with the staff's investigation of his failure to disclose his felony charges and convictions on his Form U4. There are no mitigating factors that would justify a sanction less than a bar. Accordingly, the Hearing Officer will bar Brown from associating with any FINRA member in any capacity for violating Procedural Rule 8210 and Conduct Rule 2110.

IV. Order

Brian Scott Brown is barred from association with any member firm in any capacity for willfully failing to disclose felony charges and convictions on his Form U4 in violation of FINRA's By-Laws, Membership and Registration Rule IM-1000-1 and Conduct Rule 2110, and for failing to respond to requests for information, in violation of Conduct Rule 2110 and

²⁹ *FINRA Sanction Guidelines* 7, Principal Consideration 13.

³⁰ *Sanction Guidelines* at 35.

Procedural Rule 8210. The bars will become effective immediately if this Default Decision becomes FINRA's final disciplinary action in this proceeding.

SO ORDERED.

A handwritten signature in cursive script, appearing to read "Rochelle S. Hall", written over a horizontal line.

Rochelle S. Hall
Hearing Officer

Copies to: Brian Scott Brown (*via overnight courier and first class mail*)
 Samuel Barkin, Esq. (*via electronic mail and first class mail*)
 Mark Dauer, Esq. (*via electronic mail and first class mail*)
 David R. Sonnenberg, Esq. (*via electronic mail and first class mail*)

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

V.

BRIAN S. BROWN (CRD No. 4674731)

Respondent.

DISCIPLINARY PROCEEDING
No. 2008013493101

COMPLAINT

The Department of Enforcement alleges:

1. This case involves a broker who willfully failed to disclose on a Form U4 that he had been charged with and convicted of multiple criminal felony charges. He 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 July 11, 2003, Respondent Brian S. Brown became associated with a FINRA member firm. In connection therewith, Respondent completed and signed an initial Uniform Application for Securities Industry Registration or Transfer (Form U4). Thereafter, Brown was charged with and convicted of several felonies. Brown willfully failed to amend his Form U4 to disclose those charges and conviction. Brown's 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 Brown, pursuant to Procedural Rule 8210, during its investigation of the foregoing conduct. Brown failed to respond to these requests. This conduct constitutes violations of NASD Procedural Rule 8210 and Conduct Rule 2110.

Jurisdiction

4. On July 11, 2003, Respondent Brian S. Brown became associated with a FINRA member firm EKN Financial Services Inc. (CRD #113525) ("EKN").
5. Brown remained continuously associated with EKN until on or about May 30, 2008. On May 30, 2008, EKN filed a Uniform Termination Notice for Securities Industry Registration (Form U5) with FINRA, notifying FINRA that the firm had terminated Brown's association with EKN.
6. FINRA retains jurisdiction over Brown pursuant to Article V, Section 4 of its By-Laws.

FIRST CAUSE OF ACTION

(Willful Failure to Amend Form U4 -
NASD Membership and Registration Rule IM-1000-1 and Conduct Rule 2110)

7. The Department realleges and incorporates by reference paragraphs 1-6 above.
8. All applicants for registration with FINRA must complete and sign a Form U4. Pursuant to Article V, Section 2(c) of FINRA's By-Laws, every such application filed with FINRA shall be kept current at all times by supplementary amendments. Such amendments shall be filed with NASD not later than 30 days after learning of the facts or circumstances giving rise to the amendment.

9. Brown was continuously registered with FINRA through EKN from approximately July 11, 2003 through May 30, 2008.
10. On June 30, 2006 Brown was charged in federal court with four felonies: (i) conspiracy to defraud; (ii), wire fraud; (iii) mail fraud; and (iv) conspiracy to distribute narcotics. On July 31, 2006, Brown pled guilty to all charges. At the time of these events, Brown was employed by and registered through EKN. Brown did not disclose the charges or the conviction to EKN or on his Form U4.
11. Pursuant to Article V, Section 2(c) of FINRA's By-Laws, Brown was required to submit an amendment to NASD within thirty days of the felony charges and the conviction.
12. Brown willfully failed to amend his Form U4 to disclose either the charges or the conviction.
13. The charges and the conviction were each a material event.
14. Based on the foregoing, Brown acted in contravention of Article V, Section 2(a) of FINRA'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 1-14 above.
16. In or about May 2008, FINRA initiated an investigation concerning Brown's failure to disclose the criminal charges and his conviction.

17. Brown' last known residential address, as reflected in the FINRA Central Registration Depository, is [REDACTED] (CRD Address).

First Request For Information

18. On May 21, 2008, FINRA sent a letter to Brown, requesting information relating to his 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 June 4, 2008.
19. The First Request Letter was sent via U.S. Postal Service first class mail and certified mail, return receipt requested to Brown at his CRD Address.
20. 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."
21. No response to the staff's First Request Letter was received from Brown.

Second Request For Information

22. On or about June 4, 2008, FINRA sent a second letter to Brown at his CRD Address, requesting information relating to Brown' 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 June 12, 2008.
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 Brown.
25. To date, FINRA has not received any response to the foregoing requests for information.
26. 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 Brown.

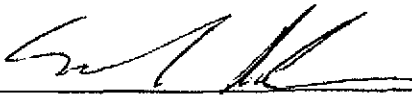
RELIEF REQUESTED

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: September 15, 2008



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