

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

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REGISTRATION & DISCLOSURE

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

AMANDA MICHELLE FLEITES
(CRD No. 4884432)

Respondent.

Disciplinary Proceeding
No. 2008013621001,

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 her Form U4, in violation of Rule 2110 and IM-1000-1.

Appearances

David L. Fenimore, Esq., Washington, DC, for the Department of Enforcement

No appearance by or for Respondent.

DECISION

I. Background

On March 24, 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 Amanda Michelle Fleites ("Respondent") violated Rule 2110 and IM-1000-1 by willfully failing to disclose her guilty plea and resulting conviction for misdemeanor theft in her 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

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Answer to the Complaint. On June 17, 2009, Enforcement filed a Motion for Entry of Default and Imposition of Sanctions, supported by the affidavit of David L. Fenimore, Esq. ("Fenimore Aff.") and six exhibits. Respondent did not respond to the Motion. For the reasons set forth below, the Motion is granted.¹

II. Respondent's Default

On March 24, 2009, Enforcement served the Complaint and Notice of Complaint on Respondent, by certified and first-class mail, at her last known residential address as listed in the Central Registration Depository (the "CRD address"), as well as an alternate address identified through an internet search (the "Alternate address"). The certified mailing to the CRD address was returned marked "moved left no address, unable to forward, return to sender." The certified mailing to the Alternate address was returned marked "attempted, not known." The first-class mailings were not returned. Fenimore Aff. ¶¶ 8-9; CX-3-4. Respondent did not file an Answer to the Complaint. Accordingly, on April 22, 2009, Enforcement served the Complaint and Second Notice of Complaint on Respondent at the CRD and Alternate addresses in the same manner. The certified mailing to the CRD address was returned marked "moved left no address, unable to forward, return to sender." The certified mailing to her Alternate address was returned marked "unclaimed." The first-class mailings were not returned. Fenimore Aff. ¶¶ 10-11; CX-5-6. Again, Respondent did not file an Answer to the Complaint. Fenimore Aff. ¶ 12.

Enforcement complied with Rule 9134(b)(1) by mailing the Complaint and Notices of Complaint to Respondent's CRD address and the Alternate address, thereby giving Respondent constructive notice of this proceeding. 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 affidavit and exhibits filed by Enforcement with its Motion.

III. Jurisdiction

On April 28, 2008, Respondent submitted a Form U4 to apply for registration with FINRA through FINRA member Directed Services LLC ("Directed Services"). By applying for registration with FINRA, Respondent became an associated person of Directed Services subject to FINRA's jurisdiction.² On May 15, 2008, Directed Services filed a Form U5 reflecting that it had terminated Respondent because of a misstatement on her employment application with an affiliated insurance company. Respondent has not been associated or registered with a FINRA member since that time. CX 1-2.

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 she was an associated person and with failing to comply with requests for information made during the two-year period following termination of her 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 October 29, 2007, she pled guilty and was therefore convicted of misdemeanor theft by the District Court for Dallas County, Iowa, for writing a personal check for \$75.83 without sufficient funds for payment.

On April 28, 2008, Respondent completed and submitted an initial Form U4 to register through Directed Services. Respondent answered "no" to the question 14B(1)(a) of the Form U4, which asked whether Respondent had "ever been convicted or pled guilty...to a

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).

misdemeanor involving...any fraud, false statements, or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, [or] extortion” She also answered “no” to question 14B(1)(b), which asked whether Respondent had ever been charged with a misdemeanor specified in question 14B(1)(a). In light of her conviction for theft less than a year earlier, Respondent’s answers were false.

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.³

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

³ 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 applicant 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).

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.”⁴ 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.⁵

In this case, the theft conviction was only six months prior to Respondent’s false answers on the U4; it is unlikely that Respondent would have forgotten about it. Moreover, the Form U4 questions were clear. Therefore, the Hearing Officer finds that Respondent’s failure to make required disclosures in her Form U4 was willful.⁶

The Hearing Officer further finds that the charge was 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.”⁷ 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

⁴ Christopher LaPorte, Exch. Act Rel. No. 39171, 1997 SEC LEXIS 2058, at *8 n.2 (Sept. 30, 1997).

⁵ 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).

⁶ LaPorte at *8 (finding willfulness when respondent knew or should have known under the particular facts and circumstances that his conduct was improper).

⁷ 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)).

reportable on the Form U4 is material.”⁸ In this case, Respondent had been convicted of a misdemeanor involving theft. The NAC has consistently held that criminal history is material.⁹

B. Failure to Respond

The Complaint also alleges that Respondent failed to respond to Staff requests for information. Specifically, on May 30, 2008, Staff sent Respondent a request for information, pursuant to Rule 8210, regarding the possible failure to disclose her criminal history on her Form U4. Staff sent the request to Respondent’s CRD address via first-class and certified mail. Staff received the receipt for the certified mailing signed with Respondent’s name. Fenimore Aff. ¶ 22. However, Respondent failed to respond to the request. On July 7, 2008, July 30, 2008, August 15, 2008 and September 10, 2008, Staff sent a second, third, fourth, and fifth request for the same information to Respondent’s CRD address in the same manner.¹⁰ Fenimore Aff. ¶¶ 23-26. Again, Respondent did not respond to any of these requests. On October 16, 2008, Staff sent a sixth and final request via first-class mail and certified mail to Respondent at the Alternate address. Fenimore Aff. ¶ 27. Respondent again did not respond. Staff served the requests in accordance with Rule 8210(d), and therefore Respondent is deemed to have received them. In addition, the record reflects that she received the first request dated May 30, 2008.

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

⁸ *Id.*, at *13.

⁹ Dep’t. of Enforcement v. Craig, 2007 FINRA Discip. LEXIS 16 (NAC Dec. 27, 2007); Dep’t. of Enforcement v. Knight, 2004 NASD Discip. LEXIS 5.

¹⁰ These requests were sent via first-class regular mail and certified mail except for the fourth request, which was sent via Federal Express and first-class regular mail. There was nothing in the record to indicate why the request was sent so many times to the same address.

subpoena power.¹¹ Here, although Respondent received valid constructive notice of the Staff's request,¹² she 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 Hearing Officer concludes that the violation was serious, warranting a significant suspension, but not necessarily a bar. Although the omitted disclosure involved a recent charge for theft, it involved only one false Form U4, and, the theft involved a relatively small amount. However, in light of the bar for the Rule 8210 violation, no further sanctions are imposed for Respondent's willful failure to make the required disclosure on her Form U4.

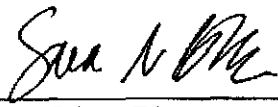
¹¹ See, e.g., Dep't of Enforcement v. Valentino, No. FPI010004, 2003 NASD Discip. LEXIS 15, at *12 (NAC May 21, 2003), aff'd, 2004 SEC LEXIS 330 (Feb. 13, 2004) ("It is well established that because [FINRA] lacks subpoena power over its members, a failure to provide information fully and promptly undermines [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).

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 her 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: Amanda M. Fleites (via overnight courier & first-class mail)
David L. Fenimore, Esq. (via electronic & first-class mail)
David R. Sonnenberg, Esq. (via electronic mail)

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Amanda Michelle Fleites
CRD No. 4884432

Respondent.

DISCIPLINARY PROCEEDING
No. 2008013621001

MAR 24 2008

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. On April 28, 2008, Amanda Michelle Fleites signed and submitted to her firm a Uniform Application for Securities Registration and Transfer (Form U4), which was filed with FINRA, willfully responding falsely that she had never been charged with, convicted of or pled guilty in a domestic court to a misdemeanor involving the wrongful taking of property. Those responses were false and failed to disclose material information because in October 2007 Fleites had entered a plea of and was found guilty of the charge of "theft - 5th degree," a misdemeanor, in the District Court for Dallas County, Iowa. In addition, FINRA staff mailed letters dated May 30, 2008, July 7, 2008, July 30, 2008, August 15, 2008, September 10, 2008 and October 16,

2008 to Fleites requesting information from her pursuant to NASD Procedural Rule 8210. Fleites failed to respond to those request letters.

RESPONDENT AND JURISDICTION

2. Amanda Michelle Fleites entered the securities industry in December 2003 and in January 2005, Fleites registered as an Investment Company and Variable Contracts Product (Series 6) representative. Fleites was associated with two other FINRA member firms prior to associating with FINRA member firm Directed Services LLC in April 2008. On April 28, 2008, Fleites completed and submitted her initial Form U4 to register through Directed Services LLC. On May 15, 2008, Fleites was terminated by Directed Services LLC and since then Fleites has not associated with any other FINRA member.
3. Although Fleites is not currently associated, she remains subject to the jurisdiction of FINRA until May 15, 2010, pursuant to Article V, Section 4 of FINRA's By-Laws, which provides for a two-year period of retained jurisdiction over formerly registered persons.

FIRST CAUSE OF ACTION

(Willful Falsification of a Form U4—Violation of NASD Membership and Registration Rule IM-1000-1 and NASD Conduct Rule 2110)

4. The Department realleges and incorporates by reference paragraphs 1-3 above.
5. On October 29, 2007, Fleites pled guilty to and was judged guilty of the crime of "theft – 5th degree" by the District Court for Dallas County, Iowa. The theft occurred on November 24, 2006 when Fleites wrote a personal check for \$75.83 at a retail establishment in West Des Moines, Iowa without sufficient funds for payment.

6. Pursuant to Section 714.2(5) of the Iowa Criminal Code, the theft of property not exceeding two hundred dollars in value is theft in the fifth degree and theft in the fifth degree is a simple misdemeanor.
7. On January 8, 2008, the District Court for Dallas County, Iowa issued a "Citation and Notice to Pay Fines" to Fleites, indicating that Fleites had failed to pay her financial obligation of \$270 in connection with the October 29, 2007 judgment against her charging her with the public offense of theft – 5th degree. The court ordered Fleites to make payment in full or appear in court on January 31, 2008, noting that failure to appear as required "will result in the issuance of a warrant for your arrest." Fleites informed her employer payment was made on January 30, 2008.
8. Fleites completed and submitted an initial Form U4 on April 28, 2008 to register through Directed Services LLC and, on her behalf, Directed Services LLC filed that Form U4 with FINRA.
9. In completing the Form U4, Fleites willfully answered "No" to question 14B(1)(a) which asks "Have you ever been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign or military court to a misdemeanor involving: investments or an investment-related business or any fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses?"
10. Fleites' answer to question 14B(1)(a) was false and failed to disclose material information because she did not disclose her plea of guilty to and conviction for misdemeanor theft, as required.

11. In completing the Form U4, Fleites willfully answered "No" to question 14B(1)(b) which asks "Have you ever been charged with a misdemeanor specified in 14B(1)(a)?"
12. Fleites' answer to question 14B(1)(b) was false and failed to disclose material information because she did not disclose that she had been charged in District Court for Dallas County, Iowa with theft – 5th degree, a misdemeanor, as required.
13. Such acts, practices, and course of conduct constitute separate and distinct violations of NASD IM-1000-1 and NASD Conduct Rule 2110 by Fleites.
14. The false statements and failures to disclose material information when answering questions posed by Form U4 were willful in that, among other things, Fleites had submitted an employment application on November 26, 2007 to an insurance affiliate of Directed Services LLC in which she responded "Yes" to the question "In the past seven years have you been released from prison or convicted of any crime, whether a felony or misdemeanor" and explained the conviction as "I received a fine for driving on a suspended license." Immediately below her answer, was a written warning that "applicants for positions that require FINRA licenses must also truthfully answer all questions on the U-4 application, including those relating to criminal convictions." She did not disclose her plea of guilty to and conviction for misdemeanor theft on October 29, 2007 in this employment application, a pattern repeated just months later with respect to her April 28, 2008 Form U4.

SECOND CAUSE OF ACTION

(Failures to Respond to Requests for Information—Violations of NASD Procedural Rule 8210 and NASD Conduct Rule 2110)

15. The Department realleges and incorporates by reference paragraphs 1-14 above.
16. By letter dated May 30, 2008, FINRA staff requested, pursuant to and in accordance with NASD Procedural Rule 8210, that Fleites provide a detailed explanation of her termination from Directed Services LLC for failing to declare her prior criminal history on her employment application and that she provide copies of all relevant court and arrest documents. FINRA staff mailed the request letter on May 30, 2008, via certified return receipt requested and first class regular mail, to [REDACTED] [REDACTED] Fleites' address of record as contained in the records of the Central Registration Depository (CRD address). The letter included a due date for the information of June 30, 2008. The letter was delivered to Fleites' CRD address on June 2, 2008 and the U.S. Post office certified mail receipt has the signature "Amanda Fleites." The envelope sent by regular first-class mail to Fleites' CRD address was not returned by the U.S. Postal Service. Fleites failed to respond to the requests set forth in the May 30, 2008 letter.
17. FINRA staff mailed a second request letter pursuant to and in accordance with Rule 8210 on July 7, 2008, via certified return receipt requested and first class regular mail, to her CRD address. The letter requested, pursuant to Rule 8210, that Fleites provide information previously requested by FINRA letter dated May 30, 2008. The July 7, 2008 letter enclosed a copy of the May 30, 2008 letter and included a due date

for the information of July 21, 2008. Fleites failed to respond to the requests set forth in the July 7, 2008 letter.

18. FINRA staff mailed a third request letter pursuant to and in accordance with Rule 8210 on July 30, 2008, via certified return receipt requested and first class regular mail to her CRD address. The letter included a due date for the information of August 13, 2008. Both the certified return receipt letter and the letter sent by regular first-class mail to her CRD address were "returned to sender" by the U.S. Postal Service both with the notation "moved left no address unable to forward." Fleites failed to respond to the requests set forth in the July 30, 2008 letter.

19. FINRA staff mailed a fourth request letter pursuant to and in accordance with Rule 8210 on August 15, 2008, via FedEx and first class regular mail, to her CRD address. The letter included a due date for the information of August 29, 2008. Both the FedEx letter and the letter sent by regular first-class mail to Fleites' CRD address were returned to FINRA by FedEx and the U.S. Postal Service with no forwarding address. Fleites failed to respond to the requests set forth in the August 15, 2008 letter.

20. FINRA staff mailed a fifth request letter pursuant to and in accordance with Rule 8210 on September 10, 2008, via certified return receipt requested and first class regular mail, to her CRD address. The letter included a due date for the information of September 25, 2008. Both the certified return receipt and the letter sent by regular first-class mail to Fleites' CRD address were "returned to sender" by the U.S. Postal Service with the notation "moved left no address unable to forward." Fleites failed to respond to the requests set forth in the September 10, 2008 letter.

21. FINRA staff mailed another request letter pursuant to and in accordance with Rule 8210 on October 16, 2008, via certified return receipt requested and first class regular mail, to an alternative address identified by staff through an internet search as a possible residence for Fleites. The letter included a due date for the information of October 31, 2008. The certified return receipt letter was returned to FINRA by the U.S. Postal Service marked as "unclaimed" with notations by the Postal Service of a first notice on October 20 and a second notice on October 27. The first class regular mail letter was not returned to FINRA. Fleites failed to respond to the requests set forth in the October 16, 2008 letter.

22. Such acts, practices, and course of conduct constitute separate and distinct violations of NASD Conduct Rule 2110 and NASD Procedural Rule 8210 by Fleites.

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.
- 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: March 24, 2009
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