

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

ALEXIS J. POLLARD
(CRD No. 5543185),

Respondent.

Disciplinary Proceeding
No. 2008013810901

Hearing Officer—Sara Nelson Bloom

DEFAULT DECISION

March 22, 2010

For failing to provide requested information, in violation of Rules 8210 and 2110, and willfully failing to make required disclosures on her Form U4, in violation of Rule 2110 and IM-1000-1, Respondent is barred from associating with any FINRA member in any capacity.

Appearances

Julie K. Glynn, Esq., New York, NY, for the Department of Enforcement.

No appearance by or for Respondent.

DECISION

I. Background

On May 21, 2009, the Department of Enforcement ("Enforcement") filed a two-count Complaint in this proceeding, which is attached to this Decision as Exhibit A. Count One of the Complaint alleges that Respondent Alexis J. Pollard ("Respondent") violated Rule 2110 and IM-1000-1 by willfully failing to disclose two felony charges and one felony conviction on her Uniform Application for Securities Registration or Transfer ("Form U4"). Count Two of the Complaint alleges that Respondent violated Rules 8210 and 2110 by failing to respond to FINRA

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Staff ("Staff") requests for information.¹ Respondent did not file an Answer to the Complaint. On November 25, 2009, Enforcement filed a Motion for Entry of Default and Imposition of Sanctions, supported by the declaration of Julie K. Glynn ("Glynn Decl."), and 13 exhibits.² On February 2, 2010, Enforcement filed a supplement to its Motion.³ Respondent did not respond to the Motion. For the reasons set forth below, the Motion is granted.⁴

II. Respondent's Default

On May 21, 2009, Enforcement served the Complaint and Notice of Complaint on Respondent, by first-class and certified mail, at her last known residential address as listed in the Central Registration Depository (the "CRD address"). The certified mailing to the CRD Address was returned to Enforcement. The first-class mailing was not returned. CX-3; Glynn Decl. ¶ 12.

On June 2, 2009, prior to the expiration of Respondent's time to respond to the Complaint, Enforcement served an Amended Complaint and First Notice of Amended Complaint on Respondent in the same manner, in order to correct a typographical error. CX-4; Glynn Decl. ¶¶ 14-15. The certified mailing to the CRD address was returned to Enforcement. The first-

¹ As of July 30, 2007, NASD consolidated with the member regulation and enforcement functions of NYSE Regulation 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, including certain conduct rules and procedural rules. *See* Regulatory Notice 08-57 (Oct. 2008). This decision refers to and relies on the NASD conduct rules that were in effect at the time of Respondent's alleged misconduct. In addition, because the Complaint was filed after December 15, 2008, FINRA procedural rules were applied in this disciplinary proceeding.

² Complainant's Exhibits are referred to as "CX-__."

³ The supplement was filed to resolve a discrepancy between the Declaration and the Complaint. It also provided support for Enforcement's argument that the criminal charges and convictions were equivalent to felonies.

⁴ The factual determinations in this Decision are based on the allegations of the attached Complaint and the Declaration and Exhibits filed by Enforcement with its Motion.

class mailing was not returned. CX-4; Glynn Decl. ¶ 17. Respondent did not file an Answer to the Amended Complaint. Glynn Decl. ¶ 18.

On July 1, 2009, Enforcement served the Amended Complaint and Second Notice of Amended Complaint on Respondent in the same manner. CX-5; Glynn Decl. ¶ 19. This time, both mailings were returned undelivered. CX-5; Glynn Decl. ¶ 21. Again, Respondent did not file an Answer to the Amended Complaint.

On August 28, 2009, Enforcement served the Amended Complaint and Third Notice of Amended Complaint on Respondent at the CRD address and an alternative address noted on one of the returned mailings (the "Alternative address") in the same manner. CX-6; Glynn Decl. ¶ 23. The certified and first-class mailings to the CRD address and the certified mailing to the Alternative address were returned to Enforcement. The first-class mailing to the Alternative address was not returned. CX-5; Glynn Decl. ¶¶ 25-26. Again, Respondent did not file an Answer to the Amended Complaint. Glynn Decl. ¶ 27.

On September 28, 2009, Enforcement served the Amended Complaint and Fourth Notice of Amended Complaint on Respondent at the CRD address and the Alternative address in the same manner. CX-7; Glynn Decl. ¶ 28. This time, all mailings were returned to Enforcement. CX-7; Glynn Decl. ¶¶ 30-31. Again, Respondent did not file an Answer to the Amended Complaint. Glynn Decl. ¶ 32.

Enforcement complied with Rule 9134(b)(1) by mailing the Amended Complaint and Notices of Complaint to Respondent's CRD address and Alternative 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 Amended Complaint admitted.

III. Jurisdiction

On June 3, 2008, Respondent became associated with FINRA member Andrew Garrett, Inc. (the "Firm"). CX-1 p. 3. On June 4, 2008, the Firm filed an initial Form U4 on Respondent's behalf. Id. On June 6, 2008, the Firm filed a Form U5 notifying FINRA that it had terminated Respondent as of that date. Id. Respondent has not been associated or registered with a FINRA member since her termination.

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 Amended Complaint charges Respondent with misconduct while she was associated with a FINRA member and with failing to comply with requests for information made during the two-year period following the termination of her registration with FINRA, and (2) the Amended Complaint was filed within that two-year period.

IV. Origin of Investigation

The investigation that led to this proceeding followed the Firm's filing of a Form U5 terminating Respondent for failing to disclose a felony conviction on her Form U4.

V. Violations

A. Failure to Make Form U4 Disclosures

The first count of the Amended Complaint alleges that Respondent willfully failed to disclose two felony charges and one felony conviction, in violation of IM-1000-1 and Rule 2110. 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.⁵

In this case, on June 3, 2008, Respondent answered “no” to question 14A(1)(a) of the Form U4, which asked whether she had “ever been convicted of or pled guilty ... to any felony.” CX-8 at 11. She also answered “no” to question 14A(1)(b) of the Form U4, which asked whether she had “ever been charged with any felony.” Id.

The Amended Complaint alleges that Respondent’s U4 answers were false, based upon the fact that, on July 13, 2006, a Grand Jury in Essex County, New Jersey, indicted and charged Respondent with endangering an injured victim, a crime in the third degree, and leaving the scene of an accident which resulted in serious bodily injury, a crime in the fourth degree, and further, that Respondent pled guilty to the third degree charge of endangering an injured victim on May 4, 2007. Enforcement alleges that the criminal violations were felonies.

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 in four degrees: first degree crimes are punishable by a term of 10 to 20 years; second degree crimes are punishable by a term of five to 10 years; third degree crimes are punishable by a term of three to 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

⁵ See, e.g., Dep’t of Enforcement v. Toth, No. E9A2004001901, 2007 NASD Discip. LEXIS 25, at *23 (NAC July 27, 2007), aff’d, Douglas J. Toth, Exch. Act. Rel. No. 58074, 2008 SEC Lexis 1520 (July 1, 2008), petition for review denied, Toth v. SEC, 2009 U.S. App. LEXIS 7226 (3d Cir. Apr. 6, 2009).

at least one year imprisonment....”⁶ The charge of endangering an injured victim, as a third degree crime punishable by a term of three to five years, clearly falls within the definition of a felony under the Form U4 instructions.⁷

Based upon the foregoing, the allegations that Respondent failed to disclose a charge and guilty plea for a felony offense are sufficient to establish, for purposes of this default decision, that Respondent violated Rule 2110 and IM-1000-1.

B. Respondent Acted Willfully and is Subject to Statutory Disqualification

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. To support a finding of willfulness, the Hearing Officer need not find that Respondent intended to violate a specific rule or law; rather, the Hearing Officer need only find that Respondent “voluntarily committed the act that constituted the violation”⁸

⁶ The Form U4 instructions have not changed since the time that Respondent completed her Form U4. However, they are now contained in a document called “Explanation of Terms” which can be found at <http://www.finra.org/Industry/Compliance/Registration/CRD/FilingGuidance/p005235>.

⁷ In light of the finding that Respondent willfully violated Rule 2110 by failing to report the third degree criminal charge and guilty plea, the Hearing Officer finds it unnecessary to determine if Respondent was also obligated to report the other charge, leaving the scene of an accident which resulted in serious bodily injury, a fourth degree crime punishable by a sentence of up to 18 months.

⁸ *Dep’t of Enforcement v. Kraemer*, No. 2006006192901, 2009 FINRA Discip. LEXIS 39, at **16-17 (NAC Dec. 18, 2009).

In this case, Respondent's criminal charge and conviction for endangering an injured victim was not specifically designated as a felony. However, as a third degree offense punishable by a sentence of three to five years, the offense clearly fell within the definition of a felony in the Form U4 instructions. Moreover, the violation was serious; Respondent could not have believed that a crime punishable by a three to five year sentence would not be subject to disclosure. It is also unlikely that Respondent would have forgotten about it in the 13 months between her guilty plea and her completion of the Form U4. Therefore, the Hearing Officer finds that Respondent's failure to make the required disclosures on her Form U4 was willful.

The Hearing Officer further finds that the undisclosed criminal offenses were material. The National Adjudicatory Council ("NAC") has determined that information on a 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."⁹ 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."¹⁰ In this case, Respondent failed to disclose a serious crime. The NAC has consistently held that criminal history is material.¹¹

Therefore, the Hearing Officer finds that Respondent's failure to provide truthful answers on her Form U4 was willful.

⁹ Dep't of Enforcement v. Knight, No. C10020060, 2004 NASD Discip. LEXIS 5, at *14 (quoting SEC v. Mayhew, 121 F.3d 44, 52 (2d Cir. 1997)).

¹⁰ *Id.* at *13.

¹¹ Dep't of Enforcement v. Craig, No. E8A2004095901, 2007 FINRA Discip. LEXIS 16 (NAC Dec. 27, 2007); Dep't of Enforcement v. Knight, 2004 NASD Discip. LEXIS 5.

C. Failure to Respond

The second count of the Amended Complaint alleges that Respondent failed to respond to Staff requests for information. Specifically, on July 23, 2008, Staff sent Respondent a request for information, pursuant to Rule 8210, regarding Respondent's failure to disclose her criminal history. CX-12; Glynn Decl. ¶ 47. Staff sent the request to Respondent's CRD address via first-class and certified mail. The receipt for the certified mailing was returned, marked "attempted, not known." The first-class mailing was not returned. *Id.* However, someone identifying herself as Respondent left a telephone message for Staff regarding the request. Respondent did not respond to Staff's return call. Glynn Decl. ¶¶ 48-49.

On August 7, 2008, Staff sent the same request to Respondent's CRD address in the same manner. CX-13; Glynn Decl. ¶ 52. The receipt for the certified mailing was returned, signed "Alexis J. Pollard." CX-13; Glynn Decl. ¶ 53. The first-class mailing was not returned. Again, Respondent failed to respond to the request. Glynn Decl. ¶¶ 53-54.

Staff served the requests in accordance with Rule 8210(d), and therefore Respondent is deemed to have received them. Moreover, Respondent received actual notice of the request, as evidenced by the return receipt for the August 7, 2008 certified mailing and Respondent's telephone call to Staff.

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 role and allows FINRA to carry out its regulatory functions without subpoena power.¹² Here, although Respondent received valid constructive notice and actual notice of Staff's request, she failed to respond.

¹² 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

Therefore, the allegations of the Complaint are sufficient to establish, for purposes of this default decision, that Respondent violated Rules 8210 and 2110.

VI. Sanctions

A bar is standard for failure to provide requested information in any manner. FINRA Sanction Guidelines ("Guidelines") at p. 35 (2007). There are no mitigating factors that would warrant a lesser sanction. Accordingly, the Hearing Officer has determined to impose the standard sanction - a bar.

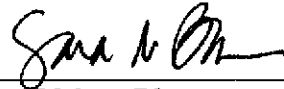
For filing a false, inaccurate, misleading or late Form U4, the Guidelines recommend a suspension of five to 30 business days and a fine of \$2,500 to \$50,000. In egregious cases, such as those involving a significant non-disclosure, or a failure to disclose a matter which would create a statutory disqualification, the Guidelines recommend a longer suspension or a bar. Id. at pp. 73-74. Enforcement requests a bar for this violation.

Here, Respondent's misconduct was egregious. She failed to disclose that she had been charged with, and pled guilty to, a serious crime. It can reasonably be inferred, particularly because she completed her Form U4 just 13 months after her guilty plea, that she omitted the disclosure to hide the information from her employer, regulators, and potential customers. Moreover, the guilty plea meant that Respondent was subject to statutory disqualification. There are no mitigating factors warranting a lesser sanction. Therefore, Respondent is also barred for this violation.

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).

VII. Conclusion

For failing to provide requested information in violation of Rules 8210 and 2110, and willfully failing to make required disclosures on her Form U4 in violation of Rule 2110 and IM-1000-1, Respondent is barred from associating with any FINRA member in any capacity. These bars shall become effective immediately if this Decision becomes FINRA's final disciplinary action in this proceeding.



Sara Nelson Bloom
Hearing Officer

Copies to: Alexis J. Pollard (*via overnight courier and first-class mail*)
Julie Glynn, 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.

ALEXIS J. POLLARD (CRD No. 5543185),

Respondent.

DISCIPLINARY PROCEEDING
No. 20080138109-01

AMENDED COMPLAINT

The Department of Enforcement alleges:¹

SUMMARY

1. On June 3, 2008, Respondent Alexis Pollard became associated with a FINRA member firm when she completed and signed an initial Uniform Application for Securities Industry Registration or Transfer (Form U4). In that Form U4, Pollard willfully failed to disclose that she had previously been charged with two felonies and convicted of a felony. It is alleged that Pollard's failure to disclose the felony charges and conviction 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.
2. FINRA staff sent written requests for information to Pollard, pursuant to Procedural Rule 8210, during its investigation of her conduct. Pollard failed to respond to these requests. This conduct constitutes violations of NASD Procedural Rule 8210 and Conduct Rule 2110.

¹ This Amended Complaint corrects a typographical error that appeared on page 4 of the original Complaint, filed on May 21.

RESPONDENT AND JURISDICTION

3. On June 3, 2008, Pollard became associated with a FINRA member firm Andrew Garrett, Inc. (BD No. 29931) ("AGI").
4. AGI filed a Uniform Termination Notice for Securities Industry Registration (Form U5) with FINRA, on June 6, 2008, notifying FINRA that the firm had terminated Pollard's association with AGI and that her last date of employment was June 6, 2008.
5. FINRA retains jurisdiction over Pollard pursuant to Article V, Section 4 of its By-Laws.

FIRST CAUSE OF ACTION (Willful and Material Misrepresentation on Form U4 - NASD Membership and Registration Rule IM-1000-1 and Conduct Rule 2110)

6. The Department realleges and incorporates by reference paragraphs 1-5 above.
7. In connection with Pollard's association with AGI, she completed and signed a Form U4 dated June 3, 2008. By signing the Form U4, Pollard was attesting to the completeness and accuracy of the completed form.
8. On or about June 4, 2008, AGI submitted Pollard's Form U4 to FINRA.
9. 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 any *felony*?"
10. Form U4 Question 14A(1)(b) asks: "Have you ever been charged with any *felony*?"
11. Pollard answered "No" to Questions 14A(1)(a) and 14A(1)(b) of Form U4.
12. Pollard's responses were false. On July 13, 2006, Pollard was indicted and charged with the felonies of (i) Endangering an Injured Victim and (ii) Leaving the Scene of an Accident Which Resulted in Serious Bodily Injury, by a Grand Jury in Essex County, New Jersey. These offenses were punishable by a sentence of at least one year.

13. By failing to disclose these felony charges, Pollard willfully failed to disclose a material fact on her Form U4.
14. On May 4, 2007, the New Jersey court accepted Pollard's plea of guilty to the felony of Endangering an Injured Victim, in the Superior Court of New Jersey, Essex County.
15. By failing to disclose this felony conviction, Pollard willfully failed to disclose a material fact on her Form U4.

Based on the foregoing, Pollard acted in contravention of Article V, Section 2(a) of FINRA's By-Laws and 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)**

16. The Department realleges and incorporates by reference paragraphs 1-15 above.
17. In or about June 2008, FINRA initiated an investigation concerning Pollard's failure to disclose her criminal history.
18. Pollard's last known residential address, as reflected in CRD, is [REDACTED]
[REDACTED] (CRD Address).

First Request For Information

19. On or about July 23, 2008, FINRA sent a letter to Pollard, requesting information about her failure to disclose her criminal history (First Request Letter). The letter was sent pursuant to Procedural Rule 8210. The First Request Letter required a response no later than August 6, 2008.
20. The First Request Letter was sent via U.S. Postal Service first class mail and certified mail, return receipt requested, to Pollard at her CRD Address.

21. Pollard left a telephonic voice message for FINRA staff on Friday August 1, 2008, concerning the First Request Letter. The staff returned her call on Monday August 4, 2008, and left Pollard a phone message. Pollard did not respond to the telephone call.
22. The U.S. Postal Service did not return the envelope sent to the CRD Address via first class mail.
23. On August 25, 2008, the July 23, 2008 letter sent to Pollard via certified mail was returned to the District marked as "Attempted, Not Known" by the U.S. Postal Service.
24. Pollard did not respond to the staff's First Request Letter.

Second Request For Information

25. On or about August 7, 2008, FINRA sent a second letter to Pollard at her CRD Address, requesting information relating to Pollard's failure to disclose her criminal history (Second Request Letter). The letter was sent pursuant to Procedural Rule 8210. The Second Request Letter required a response no later than August 21, 2008.
26. The Second Request Letter was sent via U.S. Postal Service first class mail and certified mail, return receipt requested, to Pollard at her CRD Address.
27. On or about August 28, 2008, the return receipt that accompanied the Second Request Letter was returned to Staff, signed by "Alexis J. Pollard."
28. The U.S. Postal Service did not return the Second Request letter sent via first class mail.
29. Pollard did not respond to the staff's Second Request Letter.

Based on the foregoing, Pollard violated NASD Procedural Rule 8210 and Conduct Rule 2110.

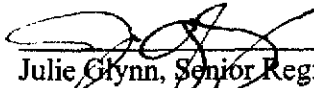
RELIEF REQUESTED

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;
- 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: June 2, 2009


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