

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JEFFREY A. LEE
(CRD No. 2136374),

Respondent.

Disciplinary Proceeding
No. 2008014233601

Hearing Officer – MC

DEFAULT DECISION

December 13, 2010

Respondent failed to amend his Form U4 to disclose material facts, and willfully failed to disclose material facts on his Form U4, in violation of NASD Conduct Rule 2110, IM-1000-1, and Article V, Section 2 of FINRA's By-Laws. For these violations, he is suspended from association with any FINRA member in all capacities for one year and is fined \$5,000.

Appearances

Gary M. Lisker, Senior Counsel, and Thomas B. Lawson, Chief Counsel, Washington, DC, for the Department of Enforcement.

No appearance by or on behalf of Respondent Jeffrey A. Lee.

DECISION

I. Introduction

The attached Complaint filed by the Department of Enforcement on March 4, 2010, charges Respondent Jeffrey A. Lee with violations related to his arrest for two felony offenses in 2007. Both causes of action allege that Lee violated NASD Conduct Rule 2110, IM-1000-1, and

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Article V, Section 2 of FINRA's By-Laws.¹ The First Cause of Action alleges Lee did so by failing to amend his Uniform Application for Securities Industry Registration or Transfer Form (Form U4) to reflect the material fact that he had been charged with felonies. The Second Cause of Action alleges Lee again did so by willfully failing to disclose the felony charges when he completed and signed an updated Form U4 that his employer then submitted to FINRA's Central Registration Depository.

Lee did not file an Answer to the Complaint. Consequently, Enforcement initially filed a Motion for Entry of Default Decision ("Default Motion") on June 4, 2010. In support of the Default Motion, Enforcement filed the Declaration of Gary M. Lisker and four exhibits.² Shortly thereafter, Enforcement filed a Motion to Stay because the parties had agreed to settle this disciplinary proceeding. The Motion to Stay was granted. However, the parties were unable to finalize the settlement and Enforcement filed a Motion to Lift Stay, which was granted on October 8, 2010, setting a new deadline of October 22, 2010, for Lee to file his response to the Default Motion. Lee filed no response.

II. Findings of Fact and Conclusions of Law

A. FINRA's Jurisdiction

Lee first registered with FINRA member firm Northwestern Mutual Investment Services, Inc. ("NMIS") on March 23, 2007. NMIS terminated Lee's association with the firm on July 22,

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). Lee's arrest and violations occurred prior to the adoption of the new rules. This Default Decision refers to and relies on the NASD 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 exhibits attached to Enforcement's Default Motion will be referred to as "CX-_" with the appropriate exhibit number. References to the Declaration will be referred to as "Decl." or "Lisker Declaration" with citation to specific paragraphs.

2008. Enforcement filed the Complaint less than two years following the termination of Lee's registration, and the misconduct alleged in the Complaint occurred while he was associated with NMIS.³ As a result, pursuant to Article V, Section 4 of FINRA's By-Laws, FINRA retains jurisdiction over Lee for the purposes of this disciplinary proceeding.

B. Lee Defaulted

On March 4, 2010, Enforcement served Lee with the Complaint and Notice of Complaint by first-class and certified mail at his most recent address recorded in the Central Registration Depository ("CRD address") and at a second address Lee had provided to Enforcement. The certified mailing to the CRD address was returned to Enforcement stamped "not deliverable as addressed." The certified mailing to the second address was also returned to Enforcement, marked "refused – unable to forward." The first-class mailings were not returned.⁴

When Lee failed to file an Answer to the Complaint, Enforcement served the Complaint and Second Notice of Complaint at both addresses on April 6, 2010, once again by first-class and certified mail. Enforcement received the returned certified mailing to the CRD address marked "not deliverable as addressed – unable to forward." However, the receipt from the certified mailing to the second address was returned to Enforcement with a signature indicating it had been received by "Cindy Pavon" on April 9, 2010. Neither of the first-class mailings was returned.⁵

Lee has not filed an Answer to the Complaint. By serving the Complaint, First Notice of Complaint, and Second Notice of Complaint upon Lee at his CRD address by certified mail,

³ Decl. ¶ 4; CX-1.

⁴ Decl. ¶ 5; CX-2.

⁵ Decl. ¶ 6; CX-3.

Enforcement complied with the service requirements of Procedural Rule 9134.⁶ By failing to file an Answer, Lee defaulted. Accordingly, pursuant to Rules 9215(f) and 9269(a)(2), and for the reasons given below, the Default Motion is granted.⁷

C. Lee Violated NASD Conduct Rule 2110, IM-1000-1, and Article V, Section 2 of FINRA's By-Laws

On May 9, 2007, Los Angeles County, California, law enforcement authorities arrested Lee and charged him with two felony violations of California's drug laws. Lee failed to file an amendment to his Form U4 disclosing the criminal charges placed against him.⁸ His failure to do so violated NASD Conduct Rule 2110, IM-1000-1, and Article V, Section 2 of FINRA's By-Laws, which require a registered person to amend his U4 within 30 days to disclose such material information.

Slightly less than a year later, on April 28, 2008, Lee completed and signed a Form U4 in connection with his employment at NMIS. The firm submitted the Form U4 to FINRA's Central Registration Depository on April 29, 2008. On the Form U4, the answer "No" appears in response to Question 14A(1), which asked Lee if he had ever been charged with a felony.⁹ Lee admitted in a statement he signed and submitted to FINRA that when he updated his Form U4, he remembered being charged and "failed to answer the direct question that asks if there had been any felony activity."¹⁰ Lee's failure to disclose the fact that he had been charged with

⁶ *Dep't of Enforcement v. Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at *5 (N.A.C. Dec. 9, 2003) (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. 1998)).

⁷ The factual determinations in this Default Decision are based on the allegations of the attached Complaint, which are deemed admitted, as well as the Lisker Declaration and the exhibits filed by Enforcement.

⁸ Decl. ¶ 8.

⁹ Decl. ¶ 10.

¹⁰ Lee claimed that he did not know how the question had been answered "No" because he "never answered it." Decl. ¶ 12; CX-4.

felonies was therefore willful, and violated NASD Conduct Rule 2110, IM-1000-1, and Article V, Section 2 of FINRA's By-Laws.

III. Sanctions

For these violations, Enforcement recommends suspending Lee from associating with any FINRA member firm in any capacity for one year, and a fine of \$5,000.

For an individual who fails to maintain current and accurate information on his Form U4, FINRA's Sanction Guidelines call for a suspension of five to 30 business days, and fines ranging from \$2,500 to \$50,000.¹¹ In an egregious case, the Guidelines recommend consideration of a suspension for up to two years or a bar.¹²

To determine the appropriate sanctions for failing to maintain an accurate and current Form U4, the Guidelines enumerate several factors to weigh: (i) the nature and significance of the information unreported or inaccurately disclosed; (ii) whether the inaccurate or misleading disclosure led to a statutorily disqualified person being associated with a firm; and (iii) whether the inaccurate Form U4 resulted in harm to a person or firm.¹³ There is no evidence implicating the latter two factors in this case.

Enforcement represents that the felony charges filed against Lee would not have led to statutory disqualification.¹⁴ As Enforcement points out, however, being charged with felony drug crimes is material information any securities firm would deem highly important in evaluating a registered person's fitness for employment in the securities industry. The nature and significance of the unreported information, therefore, is an aggravating factor. The accuracy

¹¹ *FINRA Sanction Guidelines*, p. 73 (2007).

¹² *Id.* at 74.

¹³ *Id.* at 73.

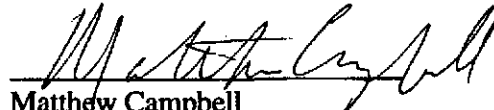
¹⁴ In his written statement to Enforcement, Lee represented that the felony charges were dismissed after he completed a period of probation and rehabilitative treatment. Complaint ¶ 6; CX-4, p. 2

of a registered person's Form U4 is an essential feature of monitoring the fitness of persons engaged in the securities industry.¹⁵ By the terms of Article V, Section 2 of FINRA's By-Laws, Lee was required to amend his Form U4 within 30 days of becoming aware of facts requiring amendment. His failure to do so, and his failure to disclose the felony charges, were serious omissions.

For these reasons, Enforcement's recommended sanctions are reasonable and appropriate.

IV. Order

Respondent Jeffrey A. Lee is suspended from associating with any FINRA member firm in any capacity for one year and is fined \$5,000 for failing to amend his Form U4 to disclose material facts, and for willfully failing to disclose material facts on his Form U4, in violation of NASD Conduct Rule 2110, IM-1000-1, and Article V, Section 2 of FINRA's By-Laws.¹⁶ The suspension shall become effective on January 18, 2011, and end at the close of business on January 17, 2012. The fine shall be due and payable upon Lee's return to the securities industry.


Matthew Campbell
Hearing Officer

Copies to:

Jeffrey A. Lee (via overnight courier and first-class mail)
Gary M. Lisker, Esq. (via electronic and first-class mail)
David R. Sonnenberg, Esq. (via electronic mail)

¹⁵ *Dep't of Enforcement v. Toth*, No. E9A2004001901, 2007 NASD Discip. LEXIS 25, at *23 (N.A.C. July 27, 2007), *aff'd*, Exch. Act Rel. No. 58074, 2008 SEC LEXIS 1520 (July 1, 2008), *petition for review denied*, 2009 U.S. App. LEXIS 7226 (3d Cir. 2009).

¹⁶ In addition, because his omissions were willful, Lee is subject to statutory disqualification pursuant to Sections 3(a)(39) and 15(b)(4)(A) of the Securities Exchange Act of 1934, which state that a person who has willfully "omitted to state" in any application for association with a member of a self-regulatory organization "any material fact" is subject to statutory disqualification.

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Jeffrey A. Lee (CRD No. 2136374),

Respondent.

DISCIPLINARY PROCEEDING
No. 2008014233601

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. This matter involves the willful failure of Respondent Jeffrey A. Lee 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 possession of a controlled substance, 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.

RESPONDENT(S) AND JURISDICTION

2. From March 3, 2007 through July 10, 2008, Lee was associated with FINRA member firm Northwestern Mutual Investment Services, Inc. ("NMIS").
3. Lee is not currently 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 May 9, 2007, Lee was arrested in Los Angeles County, California, and charged with two felonies: Possession of a Controlled Substance for Sale under California Health & Safety Code 11351 (Count 1), and Possession of a Controlled Substance under California Health & Safety Code 11350 (Count 2).
6. On or about July 9, 2008, Lee pled guilty to possession of a controlled substance, and was placed on probation and accepted in California's Proposition 36 drug treatment program pursuant to California Penal Code section 1210. The remaining charge was dismissed. After completion of the Proposition 36 program in July 2009, probation was terminated and the case against Lee was dismissed.

FIRST CAUSE OF ACTION

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

7. The Department realleges and incorporates by reference paragraphs 1 through 6 above.
8. Article V, Section 2(c) of FINRA's By-Laws requires all applicants for FINRA registration to keep applications current by filing supplementary amendments not later than 30 days after learning of the facts or circumstances giving rise to the amendment.
9. Question 14A(1) on the Form U4 asks:

Have you ever:

b. been charged with any felony?

10. Lee failed to file a supplementary amendment to his FINRA registration application within 30 days of his arrest in May 2007 to disclose the felony charges against him.
11. Disclosure of felony charges against an applicant is material to FINRA's ability to evaluate the fitness of individuals seeking entry to or continued employment in the securities industry, as well as to NMIS's ability to screen prospective and current employees.
12. By virtue of the foregoing, Lee acted in contravention of Article V, Section 2 of FINRA's By-Laws and violated IM-1000-1 and NASD Conduct Rule 2110.

SECOND CAUSE OF ACTION

(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)**

13. The Department realleges and incorporates by reference paragraphs 1 through 12 above.
14. On or about April 28, 2008, in connection with his employment at NMIS, Lee completed and executed a Form U4 that was submitted to FINRA's Central Registration Depository on his behalf by NMIS on April 29, 2008.
15. The answer to Question 14A(1) is marked "no" on Lee's Form U4 from April 2008, despite Lee's knowledge that he had in fact been charged with two felonies in May 2007.

16. In a written statement to FINRA regarding this matter, Lee explained his failure to disclose the felony charges on the Form U4 from April 2008 as follows:

When it came time [to update the Form U4] I did remember the [arrest] incident and failed to answer the direct question that asks if there had been any felony activity. I don't know how it was checked no as I never answered it.

Lee thus willfully failed to disclose the fact that he had been charged with two felony counts of possession of a controlled substance on the Form U4 he completed and signed on April 28, 2008.

17. By virtue of the foregoing, Lee acted in contravention of Article V, Section 2 of FINRA's By-Laws and violated 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 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 Second 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:

3/4/2010



Gary M. Lisker, Senior Counsel